5-31-79
Vol. 44 No. 106
Pages 31159-31598

Federal Register

Thursday
May 31, 1979

Highlights

List of Acts Requiring Publication in the Federal Register, 1978 For publication of list, see Federal Register Index, January–April 1979, p. 89

Privacy Act Issuances—1978 Compilation For publication of compilation, see Federal Register Index, January–April 1979, p. 88

31159 **Motor Gasoline Allocation** Executive order delegating authorities

31442 **Nondiscrimination on Basis of Handicap** DOT issues rules requiring recipients of financial assistance to make existing and future facilities and programs accessible to handicapped persons, and prohibits employment discrimination; effective 7–2–79, (Part II of this issue)

31486 **Cargo Lightering Operations** DOT/CG proposes rules regarding transferring oil cargos in bulk, on the high seas, from one vessel to another; comments by 8–29–79, (Part III of this issue)

31500 **Lost and Stolen Securities Program** SEC adopts amendments to establish provisions for all reporting institutions; effective 7–1–79, (Part IV of this issue)

31510 **Electric and Hybrid Vehicles** DOE amends rules regarding research, development, demonstration, and production loan guaranties; effective 7–2–79, (Part V of this issue)

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Highlights

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31568 **Polychlorinated Biphenyls** EPA proposes to modify criteria for chemical waste landfills; comments by 7-16-79, hearing 8-6-79, requests to hold hearing and participate by 7-16-79, (Part VI of this issue)

31514 **Polychlorinated Biphenyls** EPA implements and holds hearing on rules prohibiting manufacture, processing, distribution in commerce, and use; effective 7-2-79, hearing 7-9-79, requests to participate by 7-2-79, (Part VI of this issue) (3 documents)

31578 **Endangered and Threatened Species of Fish, Wildlife and Plants** Interior/FWS amends rules concerning State cooperative agreements; effective 7-2-79, (Part VIII of this issue)

31592 **Electronic Navigation Equipment** DOT/CG amends rules requiring certain vessels to have a Loran-C or specified alternative electronic navigation receiver; effective and comments by 7-16-79, (Part X of this issue)

31596 **Hazardous Air Pollutants** EPA proposes amendment to National Emission Standards; comments by 7-30-79, (Part XI of this issue)

31279 **Powerplant and Industrial Fuel Use** DOE gives notice to Federal agencies that Powerplant and Industrial Fuel Use Act of 1978 is effective 5-8-79

31162 **Domestic Crude Oil Allocation** DOE/ERA adopts emergency rules and holds hearing on providing entitlement benefits for imports of middle distillates; effective 5-1-79 through 8-31-79, requests to speak 6-12-79, hearing 6-20-79, comments by 7-10-79

31386 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Executive Order 12140 of May 29, 1979

Delegation of Authorities Relating To Motor Gasoline End-User Allocation

By virtue of the authority vested in me by the Constitution and the statutes of the United States of America, including the Emergency Petroleum Allocation Act of 1973, as amended (P.L. 93–159), and as President of the United States of America, notwithstanding the delegations to the Secretary of Energy in Executive Order 11790 as amended by Executive Order 12038, it is hereby ordered:

Section 1–101. Each Governor is hereby delegated the authority to establish a system of end-user allocation for motor gasoline, subject to the terms and conditions as set forth below.

Sec. 1–102. When a Governor determines that his State, or any locality therein, is experiencing a shortage of motor gasoline available for retail distribution, such that the public health, safety, or welfare is endangered, he may require motor gasoline retail sales outlets in that State or locality to:

(a) Supply with gasoline (including gasohol) vehicles:

(1) which have a license plate number, the last digit of which is an even number, or where there are only letters on the license plate, the last letter of which is a letter in the first half of the alphabet (A–M), only on even days of the month;

(2) which have a license plate number, the last digit of which is an odd number, or where there are only letters on the license plate, the last letter of which is a letter in the last half of the alphabet (N–Z), only on odd days of the month; and

(3) which have individually or as a class been designated by the Governor of that State as eligible to purchase gasoline on any day in order to assure adequate supplies for such vehicles to protect the public health, safety, or welfare, or to assure necessary governmental services (including local, State and Federal).

(b) Require purchasers to purchase a specified minimum amount of gasoline (including gasohol), expressed in either gallons, fractions of gas tanks, or dollars, as determined by the Governor; and

(c) Supply gasoline at specified times of day or on specified days, as determined by the Governor to be necessary to reduce the length of or prevent lines of purchasers.

Sec. 1–103. A Governor may adopt such additional rules or regulations not inconsistent with Department of Energy policies and regulations and subdelegate this authority as he deems necessary to implement and enforce the provisions of section 1–102 above.

Sec. 1–104. For purposes of this Order, the term "Governor" includes the Governors of the 50 States, the Chief Executive Officer of the District of Columbia, Puerto Rico, and the territories and possessions of the United States, other than the Panama Canal Zone.

Sec. 1–105. This Order shall terminate, unless extended, at midnight on September 30, 1979. The Secretary of Energy may at any time revoke this delegation in whole or in part and with respect to any State.

Jimmy Carter

THE WHITE HOUSE,
May 29, 1979.

[FR Doc. 79–17158
Filed 5–30–79; 10:28 am]
Billing code 3195–01–M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 614]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 1–7, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: June 1, 1979.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on May 29, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges appears to be easing.

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 is 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. 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.

§ 908.914 Valencia Orange Regulation 614.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 1, 1979, through June 7, 1979, are established as follows:

(1) District 1: 435,000 cartons;

(2) District 2: 315,000 cartons;

(3) District 3: Unlimited.

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

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

Dated: May 29, 1979.

D. S. Kuryloski

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

[FR Doc. 79-17184 Filed 5-30-79; 11:14 am]

BILLING CODE 3410-02-M

7 CFR Part 981

Administrative Rules and Regulations; Almonds Grown in California

Correction

In FR Doc. 79–16240, appearing at page 30074 in the issue for Thursday, May 24, 1979, on page 30075 in the third column, in the final paragraph, *(4) Disposition obligation,* in the sixth line the final word "obligations" should be corrected to read "obligation."

BILLING CODE 1505-01-M

Farmers Home Administration

[FmHA Instruction 1942-A]

[7 CFR Part 1942]

Associations; Community Facility Loans Amendment

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule with comments requested.

SUMMARY: The Farmers Home Administration amends its regulations concerning use of a facility. The intended effect of this action is to allow recipients of loans under this Subpart to provide free use or service of a facility except where a utility type service is being provided.

EFFECTIVE DATE: May 31, 1979. However, comments must be received by July 30, 1979.

ADDRESSES: Submit written comments with an original and one copy to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Louis K. Bangma, 202–447–7669.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration amends § 1942.17(n)(i)(iii) of Subpart A, Part 1942, Chapter XVIII, Title 7 in the Code of Federal Regulations. The present regulation prohibits loan recipients from allowing free service or use of their facilities. This prohibition was directed at utility type facilities. However,

increased statutory loan authorities now allow for financing essential community facilities that are not utility type. The present regulation, therefore, causes difficulty for some recipients of loans who customarily provide free service or use of their facilities; i.e., medical services, fire and rescue services, police services, and educational services for the disadvantaged and handicapped.

This change will permit recipients of loans under this subpart to allow free use or service of a facility except where a utility type service is being provided. For utility type facilities the regulation will remain as it is now.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published as a final rule with comments requested. This action is being taken to simplify and improve this regulation, eliminate a conflict in an on going program, provide a more responsive delivery system and at the same time permit public participation in the rule making process. Since no substantive changes are being made, publication in prior rule making format is unnecessary. Also, delay in implementing this change, although non substantive, would be contrary to the public interest because the establishment and improvement of essential services such as fire, rescue and health care may be delayed or denied to eligible rural people.

This determination has been made by Dwight O. Calhoun.

Accordingly § 1942.17(n)(1)(iii) is amended to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(n) *Actions prior to loan closing and start of construction.*

(1) *Loan resolutions.* * * *

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility type facilities, free service use may be permitted. If free services are extended no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

* * * * *

A copy of the Impact Analysis is available from the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6346, Washington, D.C. 20250.

Note: This document has been reviewed in accordance with FmHA Instruction 1901-G, Environmental Impact Statements. It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Note: This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

Dated: May 17, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-16874 Filed 5-30-79; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-79-27]

Mandatory Petroleum Allocation Regulations; Emergency Adoption of Final Rule Providing Entitlement Benefits for Imports of Middle Distillates

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Emergency adoption of final rule and notice of public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is adopting, on an emergency basis for the months May 1979 through August 1979, a rule which amends the domestic crude oil allocation (entitlements) program to provide entitlement benefits for imports of middle distillates.

Several factors, including the continued curtailment of exports of crude oil from Iran have resulted in serious domestic shortages of middle distillates. We are granting entitlement benefits on an emergency basis to imports of middle distillates in order to remove economic disincentives that currently exist to their importation. We will also monitor the level of low sulfur residual fuel oil imports and will take appropriate action if it appears that they are being reduced below levels needed to meet environmental requirements.

DATES: Effective for the period May 1, 1979 through August 31, 1979. Requests to speak by June 12, 1979. Hearing date: June 20, 1979. Written comments by July 10, 1979.

ADDRESSES: Written comments and requests to speak to: Office of Hearing Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-27, 2000 M Street, N.W., Washington, D.C. 20461. Hearing Location: Room 2105, 2000 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Gerald P. Emmer, Office of Regulations and Emergency Planning, Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461 (202) 254-7200

Douglas McIver, Entitlements Program Office, Economic Regulatory Administration, 2000 M Street, N.W., Room 6128-I, Washington, D.C. 20461 (202) 254-8660

Fred A. Wolgel, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6A-127, Washington, D.C. 20585 (202) 252-6754

William L. Webb, Office of Public Information, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461 (202) 634-2170

SUPPLEMENTAL INFORMATION:

I. Background
II. Amendments Adopted
III. Procedural Requirements
IV. Specific Comments Requested
V. Comment Procedures

I. Background

We are adopting today, on an emergency basis, amendments to the entitlements program to provide entitlement benefits for imports of middle distillates. This action is based on our finding that there currently is a serious shortage of domestic supplies of middle distillates. It is clear that increased middle distillate imports are necessary to alleviate the effects of this continued shortage on consumers in the United States. We are therefore adopting, on an emergency basis, amendments to the entitlements program which will provide a $5 entitlement benefit to imports of middle distillates for the months of May 1979 through August 1979. We believe this action will facilitate and encourage the increased importation of middle distillates from refineries located in the Caribbean and in the western hemisphere.

The current tight supply situation for middle distillate fuels is a result of a number of factors. First, in the last quarter of 1978, refiners maximized the production of motor gasoline at the expense of middle distillates in order to meet an unexpected demand for gasoline and to build up depleted gasoline inventories. Second, resulting

primarily from the prolonged interruption of Iranian crude oil exports in the first quarter of this year, crude oil imports to the United States in the first quarter of 1979 were about 700,000 barrels per day less than that needed to maintain petroleum product stocks at desired levels. Consequently, refinery utilization rates declined from 91 percent last December to 87.2 percent in January, 83.8 percent in February, and increased only slightly to 84.1 percent in March and 84.1 percent in April. Third, extremely severe weather conditions caused the demand for middle distillate fuels to increase dramatically during the winter months.

As a result of these factors, middle distillate inventories have been drawn down at excessive rates to meet demand, which has increased approximately 16 percent since 1974. Middle distillate primary stocks currently total 115 million barrels, an unacceptably low level.

We have taken a number of actions to deal with the middle distillate supply situation. On January 12, 1979, we issued a final rule (44 FR 3467, January 17, 1979) which reinstated special middle distillate set-aside procedures for the period January 12 through March 31, 1979 to insure adequate supplies of middle distillate products to wholesale purchaser-consumers and end-users facing emergency and hardship situations. At that time we believed that the demand for middle distillates would decrease with the advent of warm weather and, as a result, that set-aside procedures would not be necessary after March 31. However, by mid-March, the supply situation had not improved as anticipated and we determined that continued availability of the set-aside procedures after March 31 was necessary to prevent the interruption of adequate supplies of home heating oil in the colder areas of the nation and diesel fuel for agricultural and high-priority transportation purposes. Accordingly, on March 21, 1979, we adopted an amendment on an emergency basis extending the set-aside procedures through June 30, 1979 (44 FR 18640, March 28, 1979) and asked comments extending the set-aside procedures indefinitely.

On April 19, 1979, we published a notice in the Federal Register urging all suppliers of middle distillate products to recognize the priority needs for diesel fuel for essential uses and recommending that, to the extent possible, middle distillates be distributed to high priority users on the basis of the priorities provided in the middle distillate allocation regulations which are now in standby-status (44 FR 23275, April 19, 1979). In the April 19 notice, we stated that voluntary action was being urged in order to alleviate continued middle distillate shortages for high priority uses that cannot be adequately addressed by the middle distillate set-aside program.

Additionally, we have requested refiners to take voluntary action to build distillate primary stocks to specified target levels in October 1979, so that total distillate stocks reach at least 240 million barrels, to insure adequate heating oil supplies for the winter heating season. These voluntary measures for increasing middle distillate inventory levels, as well as other actions which may be implemented to deal with the general petroleum supply situation, are detailed in DOE's *Response Plan: Reducing U.S. Impact on the World Oil Market (April 1979).*

Finally, on May 10, 1979, we issued, on an emergency basis, Special Rule No. 9 to Subpart A of 10 CFR Part 211 to permit consumers engaged in agricultural production to receive 100 percent of their current requirements for middle distillates through July 31, 1979, and asked comments on whether this rule should be extended.

Information available to us indicates that the tight supply situation for middle distillates will continue through the summer. We believe that granting entitlement benefits to imports of middle distillates will remove economic disincentives that currently exist with respect to the importation of available product from Caribbean and other western hemisphere refineries. In addition, this action should enable such imports to be priced more competitively with domestic products, and should mitigate the upward pressure on prices induced by the shortage. We believe that taking this action will further the objectives of the Emergency Petroleum Allocation Act of 1973, as amended (Pub. L. 93-159) (EPAA), particularly the section 4(b)(1)(A) objective, "protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units) * * *" because this rule should increase the supplies of middle distillates available for the next winter heating season.

We believe that the current shortages of middle distillate products necessitate taking this action, effective immediately, in order to eliminate economic barriers to the importation of available product, thereby maximizing such imports and reducing the level of product shortfall. In addition, if we were to issue a notice of proposed rulemaking before adopting a final rule on this subject, it is likely that middle distillate importers would await outcome of the rulemaking proceeding before committing further volumes to the U.S. market.

Because the entitlements program operates on a monthly basis, it is administratively impracticable to adopt these amendments effective in the middle of a month. If we were to adopt these amendments on a prospective basis only, effective on the first day of the next month (June 1979), it is very likely that middle distillate importers would withhold delivery until the effective date in order to qualify for entitlement benefits. Moreover, only a small amount of middle distillate, imported between May 1 and the date of issuance of this rule, would receive entitlement benefits as a result of the retroactive application of this rule. Consequently, we have decided to make these amendments effective retroactively to the first day of the month in which these amendments are adopted, *i.e.*, May 1, 1979.

II. Amendments Adopted

We are implementing this action by adding a new paragraph (a)(6) to the entitlements regulations contained in 10 CFR 211.67. As adopted, § 211.67(a)(6) treats imports of middle distillates, as that term is defined in the instructions to ERA Form ERA-60, in a similar fashion to the manner in which § 211.67(a)(3) provides entitlement benefits to imports of residual fuel oil into the East Coast market. In other words, the importer of record would be the firm eligible to receive any entitlements issued with respect to the import of the product. As with imports of residual fuel oil into the East Coast market, a firm importing middle distillates into the United States would receive the entitlement benefits in the second month following the month of importation. For example, a firm that imported middle distillates in June would receive the applicable entitlement benefit in August.

Imports of middle distillates from the U.S. Virgin Islands and Puerto Rico, as is the case with imports of residual fuel oil, will not be eligible for entitlement benefits, since refineries in Puerto Rico and in the U.S. Virgin Islands already receive entitlement issuances with respect to their crude oil runs to stills.

For reasons of administrative convenience, we are using the definition of "middle distillates" as defined in the instructions to ERA Form ERA-60 rather than as that term is defined in § 211.51, because that is the form from which we

will obtain the necessary data to issue the entitlements. The definition of middle distillates in the instructions to ERA Form ERA-60 varies only slightly (defined as either "distillate fuel oil, less No. 4" or "kerosene") from the regulatory definition found in § 211.51.

We are granting an $5 entitlement benefit for each barrel of middle distillate imported into the United States during the period May 1, 1979 through August 31, 1979. This relatively very high benefit amount [1] is based on analysis of recent spot market differentials for middle distillates, comparing the New York spot market to the Caribbean and European spot markets. We believe that it is necessary to provide an entitlement benefit greater than the New York-Caribbean differential in order to provide a significant economic incentive to the importation of middle distillates that have been refined in Caribbean or other western hemisphere refineries.

We are concerned that this rulemaking not have an adverse effect on domestic refinery utilization rates, by encouraging the diversion to Caribbean refineries of imported crude oil shipments that would otherwise be delivered to U.S. refineries. Accordingly, we will monitor domestic refinery utilization rates, and we will take appropriate regulatory action if we determine that this rulemaking has the effect of reducing domestic refinery utilization rates in favor of increasing Caribbean refinery operations.

In adopting this rule, it is not our intention to encourage imports of middle distillates from the eastern hemisphere. Recent Rotterdam-New York and the Mediterranean-New York spot differentials are approximately $2 to $3 per barrel higher than the New York-Caribbean spot market differential when adjusted for transportation costs. If we were to establish a higher entitlement benefit which would approximate the New York-European differential, we would in effect be directly competing for middle distillates refined and marketed in Europe, which might result in higher European spot prices. Such action would not be in the best interests of furthering our relationships with the International Energy Agency.

III. Procedural Requirements

Section 501(e) of the Department of Energy Organization Act (DOE Act, Pub. L. 95-91) allows us to waive the requirements of section 501(b)(1) of the DOE Act as to notice and opportunity to comment prior to promulgation of regulations in those cases where strict compliance with such requirements is likely to cause serious harm or injury to the public health, safety or welfare. Inasmuch as failure to adopt this rule on an emergency basis could result in either more serious shortages or significantly higher prices of middle distillates than would otherwise occur, strict compliance with the notice and hearing requirements of section 501 is likely to cause serious harm or injury to the public health, safety or welfare. The 60-day public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978), and DOE's implementing Order 2030 (44 FR 1040, January 3, 1979) has been waived for the same reasons by the Deputy Secretary.

However, in accordance with section 501(e), and in order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are soliciting public comments and will hold a public hearing on the amendments adopted today. Based on the comments received and our further analysis of these issues, we will determine the necessity for any further revisions or adjustments to the amendments adopted today, retroactive to the effective date of May 1, 1979, and whether the scope of the rule should be otherwise modified.

Section 553(b) of the Administrative Procedure Act requires that a general notice of proposed rulemaking shall be published in the Federal Register, except where the agency, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest. In addition, section 553(d) of the Administrative Prcoedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. As set forth above, we believe that it is necessary to take this action effective immediately in order to maximize the importation of certain refined petroleum products (*i.e.*, middle distillates) that are in short supply. We therefore find that notice is impracticable and contrary to the public interest and that good cause exists to waive the section 553(d) requirement.

In accord with section 404 of the DOE Organization Act, the Federal Energy Regulatory Commission received a copy of this rule and did not determine that the rule would significantly affect any function within its jurisdiction pursuant to section 402 (a)(1), (b), or (c)(1) of the DOE Act.

As required by section 4(a)(1) of the Federal Energy Administration Act of 1974 (FEAA, Pub. L. 93-275), a copy of this emergency amendment was submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the impact of the rule on the quality of the environment. EPA expressed concern that the adoption of this rule may have a detrimental effect on the availability of low sulphur residual fuel oil imported into the United States. DOE shares this concern and will jointly monitor with EPA actual imports of both middle distillates and residual fuel oil (including the sulphur content of residual fuel oil imports).

In view of the emergency nature of this rulemaking, DOE has been unable to complete its environmental review under the National Environmental Policy Act (42 U.S.C. 4331 *et seq.*). Upon conclusion of this review, DOE will consider whether any additional action should be taken with respect to the environmental effects of this rulemaking.

IV. Specific Comments Requested

We invite comments on (1) the effect of this rule on middle distillate supplies; (2) the effect of this rule on domestic middle distillate prices, and the extent to which the benefits of this rule will be passed through to reduce prices or to restrain price increases that would otherwise occur; and (3) whether we should reconsider this rule if the International Energy Agreement is triggered.

V. Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views, or arguments with respect to the special rule adopted today by no later than July 10, 1979. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Entitlements for Imports of Middle Distillates." Fifteen copies should be submitted. All comments that we receive will be available for public inspection in the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

You should identify separately any information or data you consider to be

[1] Based on the most recent month for which data is available (March 1979), domestic refiners receive an entitlement benefit worth $1.79 for each barrel of crude oil processed in a domestic refinery.

confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure to request participation.* The time and place for the public hearing are indicated in the "ADDRESSES" and "DATES" sections of this Notice. If necessary to present all testimony, the public hearing will be continued to 9:30 a.m. of the first business day following the hearing date shown above.

You may make a written request for an opportunity to make an oral presentation at the hearing. The request should contain a phone number where you may be contacted through the day before the hearing.

We will notify each person selected to be heard before 4:30 p.m., June 14, 1979. Persons scheduled to speak at the hearing must send 100 copies of their statement to the address indicated in the "ADDRESSES" section of this notice by 4:30 p.m., June 19, 1979.

2. *Conduct of the hearing.* We reserve the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing, which will not be a judicial or evidentiary-type hearing. Questions may be asked only by those officials conducting the hearing. Each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing. Questions must be submitted three days before the hearing to the same address indicated above for requests to speak. In addition, at the hearing you may submit questions, in writing, to the presiding officer. He or she will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be made available for inspection at the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

In the event that it becomes necessary for us to cancel the hearing, we will make every effort to publish advance notice in the Federal Register of such cancellation. Moreover, we will notify all persons scheduled to testify at the hearing. However, it is not possible to give actual notice of cancellations or schedule changes to persons not identified to us as participants. Accordingly, persons desiring to attend the hearing are advised to contact us on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below effective May 1, 1979.

Issued in Washington, D.C., May 24, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

§ 211.62 [Amended]

1. Section 211.62 is amended by revising the definition of "National domestic crude oil supply ratio" to read as follows:

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements issuable under § 211.67(a)(4), § 211.67(a)(5), and § 211.67(a)(6), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and thirty percent (30%) of the total volume of imports of eligible products by eligible firms for that month, *provided that*, for the period July 1, 1978 through June 30, 1979, the reference herein to thirty percent (30%) shall read fifty percent (50%). The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

2. Section 211.67(a) is amended by adding new paragraph (a)(6) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(a) *Issuance of entitlements.*

* * * * *

(6)(i) For each month in the period May 1, 1979 through August 31, 1979, each firm that imports "distillate fuel oil, less No. 4" and "kerosene" as those terms are defined in the instructions to ERA Form ERA-60, that is the importer of record under a license issued pursuant to Part 213 of this chapter, and that owns the product at the time of importation thereof pursuant to that license shall be issued a number of entitlements equal to the number of barrels of distillate fuel oil and kerosene imported in that month by that firm multiplied by a fraction, the numerator of which is $5, and the denominator of which is the entitlement price for that month.

(ii) For purposes of paragraph (a)(6), the time of importation shall be the earliest of the following dates as specified on the Customs Form 7501 or 7505: (A) the "release date"; (B) the "entry date"; (C) the "validation date"; (D) the "PAID stamp date"; (E) the "date of importation"; or (F) the "withdrawal date."

* * * * *

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. § 7101, *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

Appendix

Excerpt from Instructions to Form ERA-60

11. *Kerosene.* (Kerosene) A petroleum distillate in the 300 degrees F to 500 degrees F boiling range and generally having a flash point higher than 100 degrees F by ASTM Method D56, a gravity range from 40 degrees to 46 degrees API, and a burning point in the range of 150 degrees F to 175 degrees F. It is a clean-burning product suitable for use as an illuminant when burned in wick lamps. Includes grades of kerosene called range oil having properties similar to No. 1 fuel oil, but with a gravity of about 43 degrees API and an end point of 625 degrees F. Used in space heaters, cooking stoves, and water heaters.

12. *Distillate Fuel Oil, Less No. 4.* (Distillate Fuel Oil, Less No. 4) A general

classification for the petroleum fractions which, when produced in conventional distillation operations, have a boiling range from 10 percent point at 420 degrees F to 90 percent point at 640 degrees F. Included are products known as Nos. 1 and 2 heating oils conforming to ASTM Specification D396 and diesel fuel conforming to ASTM Specification D975 for No. 1-D and No. 2-D, fuel oils having a kinematic viscosity at 100 degrees F of less than 5.8 centistokes or a Saybolt Universal Viscosity at 100 degrees F of less than 45 seconds.

Note: This Appendix is for informational purposes only and will not be included in the Code of Federal Regulations.

[FR Doc. 79-16869 Filed 5-25-79; 1:35 pm]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-NW-13-AD; Amdt. 39-3482]

Airworthiness Directive; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) to require that thrust lever actuated switches, which operate the takeoff warning system and auto-speedbrake inhibit circuits for the Boeing Model 727 series airplanes, be checked to insure positive operation down to −65°F temperature. Boeing 727 airplanes delivered from Boeing production line number 1252 and on may have had these thrust lever switches misrigged during production. At low temperatures it is possible to set the thrust levers for takeoff power at a position (angle) insufficient to actuate the thrust takeoff warning system lever switches because of this misrigging. The result is the takeoff warning system would be inactive and the auto-speedbrake would not be inhibited and could be actuated during takeoff causing an unsafe condition.

DATES: Effective date—June 11, 1979. Compliance times as prescribed in the body of this AD. The Boeing alert service bulletin specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Systems and Equipment Section, ANW-213, Engineering and Manufacturing Branch, FAA, Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2500.

SUPPLEMENTARY INFORMATION: One operator has reported to Boeing an instance in which the 727 thrust lever operated auto-speedbrake/takeoff warning switches were set at a thrust lever angle of approximately 19.5 degrees from the idle stop. Further investigation has revealed that 727 airplanes from Boeing production line number 1252 and on may have had these thrust lever switches misrigged during production. To date, four operators have reported after inspection that ten airplanes have been misrigged. At low temperatures, with these large thrust lever angle switch settings, it is possible to set the thrust levers for takeoff power at a position insufficient to actuate the thrust lever switches. Under these conditions during takeoff or go-around, the takeoff warning system may be inactive and the auto-speedbrake inhibit function may not be activated. Thus, the flight crew would not be warned when the airplane is not in the takeoff configuration and additionally the speedbrakes may actuate if inadvertently armed. Boeing issued by telegraphic message M-7350-79-82 dated April 3, 1979, the Boeing Alert Service Bulletin 727-31-A44. This alert message stated that the affected 727 operators should advise the flight crews of this situation. In addition, it was recommended that the operator should perform a check of the auto-speedbrake switches on auto-speedbrake equipped airplanes to determine that these switches activated before 13.5 degrees of forward motion of the thrust levers from idle stop. If the switch settings do not fall below this limit, they should be adjusted. This adjustment will provide thrust lever switch activation down to −65°F, which is the 727 low temperature operating certificated limit.

Boeing telegraphic message M-7010-5323, dated April 10, 1979, was issued to revise the Alert Service Bulletin 727-31-A44, to include instructions for checking/resetting the thrust lever-actuated takeoff warning switch(es) on non-speedbrake equipped airplanes and auto-speedbrake equipped airplanes on which the auto-speedbrakes have not been activated. The provisions of this telegraphic message were incorporated as revision 1 to the Alert Service Bulletin 727-31-A44 which was issued on May 4, 1979.

This AD is being issued to require the following:

A. Within 50 hours time-in-service after the effective date of this AD, when operating in temperatures below 25°F outside air temperature, the auto-speedbrake system must be deactivated and placarded inoperative and the flight crew advised that the takeoff warning system may not function. This action will not be required if the thrust lever switches have been checked and set in accordance with the Boeing Alert Service Bulletin 727-31-A44, Revision 1, or later FAA-approved revisions.

B. Within 1,000 hours time-in-service or 6 months, whichever comes first, unless already accomplished, check the thrust lever switches and set if necessary, in accordance with the Boeing Alert Service Bulletin 727-31-A44, Revision 1, or later FAA-approved revisions.

These requirements will alert the flight crew when the takeoff warning system may not function and will prevent inadvertent speedbrake deployment during takeoff.

A similar Airworthiness Directive, (Amendment 39-3113, Federal Register Vol. 43, No. 5, dated January 9, 1978) was issued to provide auto-speedbrake inhibit/takeoff throttle lever switch actuation down to −65°F for those 727's operated with combinations of reduced thrust and/or engine derate. That Airworthiness Directive and this amendment do not have a common applicability by individual 727 airplane serial numbers.

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

Adoption of the Amendment

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

§ 39.13 [Amended]

BOEING: Applies to the Model 727 airplanes that have the following serial numbers:

Group I: These airplanes were delivered with auto-speedbrakes operative:

727-212 21458 through 21460
727-2F2 21603
727-222 21398 through 21425; 21557 through 21574

727-225 21449 through 21453; 21578 through 21581
727-2R1 21636
727-2A1 21341 through 21344
727-2F9 21426 and 21427
727-287 21688 and 21689
727-290 21510 and 21511
727-2A1 21343 and 21344
727-243 21661 through 21664
727-256 21609 through 21611
727-2K3 21494 and 21495
727-2L5 21332 and 21333; 21539 and 21540
727-2J4 21676
727-281 21455 through 21456; 21474
727-251 21503 through 21506
727-2P1 21595
727-2M7 21457 and 21502; 21655
727-212 21347 through 21349; 21458 through 21460

Group II: These airplanes were delivered without auto-speedbrakes:
727-277 21480 and 21647
727-227 21363 through 21366; 21394 and 21395; 21461 through 21466; 21488 through 21493; 21529 through 21531
727-232 21303 through 21315; 21430 through 21433; 21469 through 21472; 21582 and 21583
727-230 21442; 21618 through 21623
727-264 21577 and 21617; 21637
727-276 21479 and 21646
727-2H3 21318 through 21320
727-247 21329 through 21331; 21392 and 21393; 21481 through 21485
727-243 21320

Group III: These airplanes were delivered with auto-speedbrakes deactivated:
727-214 21512 and 21513
727-2Q8 21608

Compliance required as indicated:

A. Within 50 hours time-in-service after the effective date of this AD, unless Service Bulletin 727-31-A44, revision 1, or later FAA approved revisions, have already been accomplished, accomplish the following:

For Group I airplanes delivered with the auto-speedbrake system operative: Prior to conducting operations when the outside air temperature is below 25° F the auto-speedbrake system must be deactivated by pulling and collaring the circuit breakers and placarding handle inoperative and the crew advised that the takeoff warning system may not function.

For Group II airplanes delivered without the auto-speedbrake system, and for Group III airplanes that were delivered with the auto-speedbrake system deactivated: Prior to conducting operations when the outside air temperature is below 25° F advise the flight crew that the takeoff warning system may not function.

B. Within 1,000 hours time-in-service or 6 months after the effective date of this AD, whichever comes first, and unless already accomplished, perform a one-time check of the throttle lever auto-speedbrake/takeoff warning switch setting and adjust these switches, if necessary in accordance with Boeing Alert Service Bulletin 727-31-A44, Revision 1, or later FAA-approved revisions.

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

This amendment becomes effective June 11, 1979.

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

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

Issued in Seattle, Washington, on May 21, 1979.

C. B. Walk, Jr.,
Director, Northwest Region.

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

[FR Doc. 79-16808 Filed 5-30-79; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-SO-35; Amdt. No. 39-3478]

Airworthiness Directives; Maule Aircraft Corp. Models M-4/M-5 Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and modification of the horizontal tail-to-fuselage front attach tube on certain Maule Aircraft Corporation Models M-4 and M-5 series aircraft. The AD is needed to prevent failure of the tube, which could result in loss of control of the airplane.

DATE: Effective June 7, 1979. Compliance as prescribed in body of AD.

ADDRESSES: The applicable Maule Service Bulletin may be obtained from Maule Aircraft Corporation, Spence Air Base, Moultrie, Georgia 31768, telephone (912) 985-2045. A copy of the Service Bulletin is also contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Two cases of fatigue cracks have been found on the horizontal tail-to-fuselage front attach tube on Maule M-4 series aircraft. Since this situation is likely to occur on other aircraft of the same type design, an AD is being issued which requires inspection, modification, and replacement of defective parts as necessary. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

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

§ 39.13 [Amended]

Maule Aircraft Corporation

Applies to certain M-4 and M-5 series aircraft. Serial Numbers are: M-4 series: 4 to 94, 1001 to 1045, 1S to 3S, 1T to 3T, 1C to 11C; M-4-210C: 1001C to 1117C; M-4-220S: 2001S; M-4-220C: 2001C to 2190C; M-4-180C: 3001C to 3006C; M-5 series: M-5-210C: 6001C to 6206C; M-5-220C: 5001C to 5057C; M-5-235C: 7001C to 7283C; M-5-180C: 8001C to 8004C; M-5-210TC: 9001C, airplanes certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the horizontal tail-to-fuselage front attach tube, accomplish the following within 25 hours' time in service after the effective date of this AD, or 60 days after the effective date whichever occurs first:

1. Inspect the horizontal tail-to-fuselage front attach tube in accordance with paragraphs (1) and (5) of Maule Aircraft Corporation Service Bulletin No. 1, dated May 3, 1979, or later revision approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

2. If cracks are found, obtain replacement parts from Maule Aircraft Corporation and replace in accordance with Advisory Circular (AC) 43.13-1A prior to further flight.

3. Modify the horizontal tail-to-fuselage front attach tube in accordance with paragraphs (3) and (4) of Maule Aircraft Corporation Service Bulletin No. 1, dated May 3, 1979, or later revision approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

4. Make appropriate maintenance record entry.

5. An equivalent method of compliance may be used if approved by the Chief,

Engineering and Manufacturing Branch, FAA, Southern Region.

This amendment is effective June 7, 1979.

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

Phillip M. Swatek,

Director, Southern Region.

Issued In East Point, Georgia, on May 18, 1979.

[FR Doc. 79-16810 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 78-EA-116; Amdt. 39-3479]

Fairchild (Hiller); Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Fairchild (Hiller) FH-1100 type rotorcraft and requires an inspection, repair and replacement where necessary of the transmission lower housings. The purpose of the requirement is to preclude cracking of the transmission lower housing gimbal ring supports. The cracking can lead to complete failure of the housing and eventual loss of input drive shaft power.

DATE: June 4, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Fairchild Service Bulletins may be acquired from the manufacturer at Fairchild Industries, Inc., Fairchild Republic Company, Hagerstown, Maryland 21740.

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

SUPPLEMENTARY INFORMATION: There had been reports of cracks developing in the gimbal ring mounting holes of the transmission lower housing assembly. These cracks then relate to the housing attachment lugs causing them to fail, which results in a loss of power. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Fairchild (Hiller): Applies to Model 1100 and FH-1100 type helicopters certificated in all categories.

Compliance required as indicated unless already accomplished.

In order to prevent cracking of the transmission lower housing gimbal ring supports, accomplish the following:

a. For P/N 24-23030-7 transmission lower housings (installed in P/N 24-23000-11, -31, and -41 transmission assemblies) which have accumulated 500 or more hours since new or overhauled, inspect and repair as necessary within 50 hours after the effective date on this AD, unless already accomplished within the last 500 hours, in accordance with Fairchild Service Bulletin No. FH-1100-23-10 dated September 25, 1974, revised April 24, 1979. This inspection shall be repeated at each 500-hour interval thereafter.

b. For P/N 24-23030-7 Transmission lower housings which have accumulated 1200 or more hours, unless already accomplished within the last 1100 hours, ream the gimbal ring mounting holes to the next larger size in accordance with Fairchild Service Bulletin No. FH-1100-23-10 dated September 25, 1974, revised April 24, 1979, within 100 hours after the effective date if this AD and at each 1200-hour interval thereafter.

c. As a result of the inspection and repair required under paragraphs a and b herein, if the gimbal ring mounting hole diameter exceeds 0.8755 inch or a total time of 3600 hours is attained on the P/N 24-23030-7 lower housing assembly the housing shall be retired from further service.

d. Upon installation of transmission lower housing assembly P/N 24-23030-11, the requirements of this AD are no longer applicable.

e. Equivalent inspections or parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the inspection interval specified in this airworthiness directive.

f. Rotorcraft may be flown to a base where the maintenance required by this airworthiness directive is to be performed per FARs 21.197 and 21.199.

Effective date: This amendment is effective June 4, 1979.

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

Issued in Jamaica, New York, on May 18, 1979.

Louis J. Cardinali,

Acting Director, Eastern Region.

[FR Doc. 79-16885 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-EA-4; Amdt. 39-3480]

Mooney Aircraft; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Mooney Mite M-18, M-18C, M-18C55, M-18L, and M-18LA type airplanes and requires an inspection of the areas of the rib attachments on the wing rear spar and the fin front spar for wood deterioration and repair or replacement where necessary. The purpose of the requirement is to preclude failure of the vertical fin spar in flight and detect other deterioration. This failure can lead to loss of control.

DATE: June 5, 1979. Compliance is required as set forth in the AD.

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

SUPPLEMENTARY INFORMATION: There had been reports of extensive wood rot in aircraft structure. These areas indicate the fin front spar in the vicinity of the bottom rib and the wing rear spar in the vicinity of the rib attachment point. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Mooney: Applies to Mooney M-18L S/N's 2 and up, M-18C S/N's 201 and up, M-18LA S/N's 100 through 200, M-18C55 S/N's 323 and up certificated in all categories. Compliance required as indicated:

To prevent failure of the vertical fin spar in flight due to wood deterioration and to detect other wood and glue joint deterioration in the wood wing and wood empennage structure, accomplish the following within the next 30

days after the effective date of this AD, unless already accomplished within the last 35 months, and thereafter at intervals not to exceed 36 months from the last inspection:

(1) Remove all fabric from the horizontal and vertical stabilizers. Inspect all wood and glue joints including attachment of leading edge skin to main spar for deterioration.

(2) At center junction of stabilizer spar and fin inspect glue joint between attach blocks and stabilizer spar for deterioration and inspect spar and blocks for cracks. Inspect fin and spar for cracks at attachment bolts.

(3) Inspect rear bulkhead of the stabilizer for cracks and looseness in the area of the stabilizer attachments. Inspect attachment blocks for cracks or looseness at spar.

(4) Remove wing fabric locally in area of aileron hinges and at inboard corner of aileron cutout. Check condition of wood and glue joints. If evidence of deterioration is found, remove fabric further as necessary for complete examination of forward area of wing trailing edge. Check attachment of wing trailing edge in aileron area for looseness.

(5) Ensure that all drain holes in empennage and wing are clear.

(6) If any defects set forth in paragraphs (1), (2), (3) or (4) above are detected, repair in accordance with FAA Advisory Circular AC 43.13-1A or approved equivalent or replace with an identical new part or equivalent prior to further flight. Equivalent repairs or parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(7) Upon submission of substantiating data by an owner or operator, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection time in this Airworthiness Directive.

Effective date: This amendment is effective June 5, 1979.

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

Issued in Jamaica, New York, on May 21, 1979.

L. J. Cardinali,

Acting Director, Eastern Region.

[FR Doc. 79-16886 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-EA-6; Amdt. 39-3481]

Piper Aircraft; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-23, PA-23-250, PA-23-235, and PA-23-250 type airplanes and requires repetitive inspection of the landing gear selector lever, for cracks and replacement where necessary. The purpose of the requirement is to preclude failure of the selector lever.

DATE: June 5, 1979. Compliance is required as set forth in the AD.

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

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

SUPPLEMENTARY INFORMATION: There had been reports of the landing gear selector lever breaking during attempts to lower the landing gear. This can be precluded by repetitive inspections or a replacement with a heavy duty selector lever. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Applies to Piper Model PA-23 S/N's 23-1 thru 23-2046, PA-23-250 S/N's 27-1 thru 27-504, PA-23-235 S/N's 27-505 thru 27-622 and PA-23-250 (Six Place) S/N's 27-2000 thru 27-7854139 certificated in all categories except aircraft which have Landing Gear Selector Lever, Piper P/N 761213, installed.

To prevent possible failure of the landing gear selector lever, Piper Part No. 752303 accomplish the following:

a. Within the next 50 hours in service after the effective date of this AD, unless already accomplished, inspect the landing gear selector lever in accordance with Instructions Section in Piper S/B No. 635 steps (1) through (4) or equivalent inspection.

b. If cracks are found, replace the landing gear selector lever with lever Piper P/N 761213 or equivalent before further flight.

c. If no cracks are found, repeat the inspection in (a) at intervals not to exceed 100 hours in service. The requirements of this AD may be cancelled upon installation of landing gear selector lever Piper P/N 761213 or equivalent.

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

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

Effective date: This amendment is effective June 5, 1979.

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

Issued in Jamaica, New York, on May 21, 1979.

L. J. Cardinali,

Acting Director, Eastern Region.

[FR Doc. 79-16887 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 78-WE-25]

Establishment of Jet Routes and Area High Routes; Alteration of Jet Routes, Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a rule published in the Federal Register of April 19, 1979, Vol. 44, Page 23208, several jet route definitions were incorrect because of errors in computing radials from navigation aids to form intersections. This correction reflects the correct radials required for accurate jet route definition of 5 routes.

EFFECTIVE DATE: May 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: Federal Register Document 79-12163 was published on April 19, 1979, (44 FR 23208) with an effective date of June 14, 1979, and altered several jet routes in the Los Angeles, Calif., area.

In the definition of Jet Route No. 4 (J-4) and J-104 Los Angeles 068° should be 083° and Twentynine Palms 268° should be 269°. In J-9 Milford 212° should be 213°. In J-96 Ontario 092° should be 093° and Parker 260° should be 261°. In J-128 the route from Ontario to Peach Springs should be direct rather than a 3° intersection. Action is taken herein to correct these errors.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Register, Document 79-12163, as

published on April 19, 1979, on page 23208 is amended in the definition of Jet Routes in the amendatory paragraph to § 75.100 as follows:

§ 75.100 [Amended]

1. Under Jet Route No. 4. "From Los Angeles, Calif., via INT Los Angeles 068° and Twentynine Palms, Calif., 268° radials;" is deleted and "From Los Angeles, Calif., via INT Los Angeles 083° and Twentynine Palms, Calif., 269° radials;" is substituted therefor.

2. Under Jet Route No. 9. "INT Las Vegas 046° and Milford, Utah, 212° radials;" is deleted and "INT Las Vegas 046° and Milford, Utah, 213° radials;" is substituted therefor.

6. Under Jet Route No. 96. "INT Ontario 092° and Parker, Calif., 260° radials;" is deleted and "INT Ontario 093° and Parker, Calif., 261° radials;" is substituted therefor.

8. Under Jet Route No. 104. "From Los Angeles, Calif., via INT Los Angeles 068° and Twentynine Palms, Calif., 268° radials;" is deleted and "From Los Angeles, Calif., via INT Los Angeles 083° and Twentynine Palms, Calif., 269° radials;" is substituted therefor.

10. Under Jet Route No. 128. "From Los Angeles, Calif., via Ontario, Calif., INT Ontario 060° and Peach Springs, Calif., 243° radials; Peach Springs;" is deleted and "From Los Angeles, Calif., via Ontario, Calif., Peach Springs, Ariz.;" substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

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

Issued in Washington, D.C., on May 23, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-16809 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; Extension of Effective Date

AGENCY: Federal Trade Commission.

ACTION: Extension of effective date of Final Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures.

SUMMARY: On December 21, 1978, the Federal Trade Commission published a Trade Regulation Rule to be effective July 21, 1979, entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, together with the Statement of Basis and Purpose for the Rule, and proposed interpretive guides for compliance with the Rule (43 FR 59614). At the same time, the Commission invited public comment on these guides and indicated that it expected to publish final guides prior to the effective date of the Rule. Because of the large number of comments submitted on the proposed guides, the Commission's desire to give careful consideration and thorough review to the issues raised by these comments, and the Commission's desire to provide franchisors with the benefit of final interpretive guides well in advance of the Rule's effective date so that they may be able to prepare the necessary documents and train their personnel to use them, the Commission is extending the effective date of the Rule from July 21, 1979 to October 21, 1979.

EFFECTIVE DATE: May 22, 1979.

FOR FURTHER INFORMATION CONTACT: John M. Tifford, Federal Trade Commission, Pennsylvania Ave. and Sixth Street NW., Washington, D.C. 20580, 202-523-1753.

By direction of the Commission dated May 22, 1979.

Carol M. Thomas,

Secretary.

[FR Doc. 79-17020 Filed 5-30-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 273

[Docket No. RM79-3]

Natural Gas Policy Act of 1978; Collection Authority; Refunds; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has promulgated the rule herein to complete the Commission's process of establishing rules to carry out its statutory responsibilities pursuant to section 503(e) of the Natural Gas Policy Act of 1978 (NGPA). This rule amends §§ 273.202(c), 273.204(a)(2) and 273.204(b) by extending the filing dates in each of the above sections from March 1, 1979, to April 1, 1979.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426 (202) 275-4166.

SUPPLEMENTARY INFORMATION: On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued Interim Regulations implementing the Natural Gas Policy Act of 1978 (NGPA). Although the Interim Regulations were effective upon date of issuance, the Commission called for a sixty day comment period which ended January 31, 1979. After consideration of the comments filed, this order amends the Interim Regulations, Part 273, without an additional comment period.

Part 273 of the Interim Regulations sets forth procedures for the interim collection of prices, subject to refund, for certain categories of natural gas for which a determination of eligibility is made by a jurisdictional agency.

Specifically, § 273.202 deals with the collection of such prices pending a jurisdictional agency determination of eligibility. Section 273.202(c) places a special limitation on the period of collection. It suspends such collections after March 1, 1979 unless the Commission is notified in writing that "the jurisdictional agency has authority to process applications for determinations under Subparts B, C, G, and H of Part 271 and is making such determinations."

Section 273.204(a) sets forth the general rule for retroactive collection after the final determination and allows retroactive collection for first sales of natural gas delivered after November 30, 1978, if the application for determination was filed by March 1, 1979. Section 273.204(b) places a special limitation on the period of collection. It suspends retroactive collections authorized in § 273.204(a) for deliveries commencing March 1, 1979, unless the Commission is notified in writing by March 1, 1979, that "the jurisdictional agency has authorized to process applications for determinations under Subparts B, C, G, and H of Part 271 and is making such determinations."

Prior to the March 1, 1979 filing date, many jurisdictional agencies have notified the Commission that they have the authority to make and are making these determinations. However, due to

varied internal state situations, a limited number of jurisdictional agencies have not yet filed this statement of authority. To date, the Commission has received numerous comments from producers, producer associations, and jurisdictional agencies requesting an extension of the March 1, 1979 deadlines in §§ 273.202(c) and 273.204 (a) and (b). After consideration of the comments filed, it is the Commission's understanding that these varied state situations can be resolved in the near future. The Commission is further informed that the jurisdictional agencies are presently endeavoring to obtain the legal authority necessary to make the NGPA Section 503 determinations. (*See, e.g.*, the filing of the Governor of the State of Oklahoma).

Accordingly, the Commission finds that good cause exists to amend §§ 273.202(c) and 273.204(b) of the Interim Regulations by extending the time for filing the statement of authority from March 1, 1979 to April 1, 1979, and to amend § 273.204(a) of the Interim Regulations by extending the time for filing an application for determination from March 1, 1979 to April 1, 1979. In light of the need for prompt Commission action in these circumstances to forestall the imposition of unnecessary burdens, and in view of prior Commission action in holding public hearings and soliciting comments on these regulations (43 FR 53270 (November 15, 1978), and 43 FR 56448 (December 1, 1978)), the Commission also finds that good cause exists to issue these amendments without further notice and comment; and that the amendments should be made effective immediately.

(Natural Gas Act, as amended, 15 U.S.C. 717, et seq., Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, et seq., Federal Energy Administration Act, 15 U.S.C. 761, et seq., Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 273 of Subchapter H, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

§ 273.202 [Amended]

1. Section 273.202 is amended in paragraph (c) by deleting where it occurs the date "March 1, 1979" and inserting in lieu thereof the date "April 1, 1979".

§ 273.204 [Amended]

2. Section 273.204 is amended in paragraph (a)(2) by deleting the date "March 1, 1979" and inserting in lieu thereof the date "April 1, 1979".

§ 273.204 [Amended]

3. Section 273.204 is amended in paragraph (b) by deleting where it occurs the date "March 1, 1979" and inserting in lieu thereof the date "April 1, 1979".

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16915 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 605

National Security Information Regulations

AGENCY: U.S. Arms Control and disarmament Agency.

ACTION: Final rule.

SUMMARY: These regulations revise national security information regulations for the U.S. Arms Control and Disarmament Agency (hereinafter referred to as the Agency or ACDA). They implement Executive Order 12065 (43 FR 28949) dated June 28, 1978, entitled "National Security Information", and Information Security Oversight Office Directive No. 1 (43 FR 46280) dated October 2, 1978, entitled "National Security Information".

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Murphy, ACDA Classification Adviser, U.S. Arms Control and Disarmament Agency, 320—21st Street, NW, Washington, D.C. 20451, telephone 202-632-3442.

SUPPLEMENTARY INFORMATION: For the most part, provisions of Executive Order 12065 and Security Oversight Office Directive No. 1 are not repeated in these implementing regulations, which are issued to (1) assist Agency employees in classifying and declassifying national security information, (2) specify Agency responsibilities and establish Agency programs required by the order, and (3) assist the public in obtaining information that may be declassified.

Since these regulations are "rules of agency organization, procedure or practice," notice and public procedure respecting these regulations are not deemed necessary or appropriate under 5 U.S.C. 553(b)(A).

Dated: May 25, 1979.

James T. Hackett,

Administrative Director.

Part 605 of Title 22, CFR, is revised to read as follows:

PART 605—NATIONAL SECURITY INFORMATION REGULATIONS

Sec.
605.1 Basis.
605.2 Objective.
605.3 Original Classification.
605.4 Classification Authority.
605.5 Derivative Classification.
605.6 Declassification and Downgrading.
605.7 Mandatory Review for Declassification.
605.8 Safeguarding.
605.9 Information Security Oversight.

Authority.—Executive Order 12065 (43 FR 28949) dated June 28, 1978, and Information Security Oversight Office Directive No. 1 (43 FR 46280) dated October 2, 1978.

§ 605.1 Basis.

These regulations, taken together with the Information Security Oversight Office Directive No. 1 dated October 2, 1978 (43 FR 46280), provide the basis for the ACDA security classification program implementing Executive Order 12065, "National Security Information" (43 FR 28949), dated June 28, 1978.

§ 605.2 Objective.

The objective of the ACDA classification program is to ensure that national security information is protected from unauthorized disclosure, but only to the extent and for such a period, as is necessary.

§ 605.3 Original Classification.

(a) *Definition.* Original classification is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security, together with a designation of the level of classification.

(b) *Classification Designations.*—(1) *Top Secret* shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include, but are not limited to, armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. The classification Top Secret shall be used with the utmost restraint.

(2) *Secret* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. Examples of "serious damage" include, but are not limited to, disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification Secret shall be sparingly used.

(3) *Confidential* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause identifiable damage to the national security.

(c) *Classification Restraints.* (1) The classification level of any form of information is premised on an evaluation of its contents as a whole, as well as on its relationship to other information.

(2) In classifying information, the public's interest in access to Government information must be balanced against the need to protect certain national security information.

(3) Both underclassification and overclassification shall be scrupulously avoided. In case of doubt, the lower level of classification is to be used.

(d) *Duration of Classification.* United States Government originated information or material which is originally classified on or after December 1, 1978, shall be marked with a date for automatic declassification or for review for declassification no more than six years later than the date of original classification. Original classification may be extended beyond six years only by an official with Top Secret classification authority. This authority is to be used sparingly, and only for one or more of the reasons set forth below, which are to be stated or referenced on the document. In such cases a declassification date or event, or a date for review for declassification shall be set. This date or event shall be as early as national security permits and shall be no more than 20 years after original classification, except for foreign government information for which the date or event may be up to 30 years after original classification.

(1) The classified information is information that has been provided to the United States in confidence by, or produced by the United States pursuant to a written joint arrangement requiring confidentiality with, a foreign government or international organization of governments (i.e., foreign government information);

(2) The classified information is protected from disclosure by statute, or pertains to cryptography, or discloses intelligence sources and methods;

(3) The classified information if disclosed would reveal a system, plan, installation, project, or specific foreign relations matter the continued protection of which is essential to the national security;

(4) The classified information if disclosed, would jeopardize a confidential foreign source, prejudice future access to the source, impair the government's ability to obtain information from other sources, or place life or safety of the source or the source's family in immediate jeopardy.

§ 605.4 Classification Authority.

(a) *General.* Each person possessing original classification authority shall be held accountable for the propriety of the classifications attributed to that person. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency, or to restrain competition.

(b) *Designations.* The following ACDA officials shall have original classification authority in each of the three designations under which they are shown below. This authority vests only in the officials or positions designated and may not be redelegated. In the absence of any of the authorized classifiers (for TDY outside Washington, annual leave, temporary position vacancy, etc.), the officer acting in that person's position may exercise the classifier's authority. A copy of any designation shall be sent to the ACDA Classification Adviser.

(1) *Top Secret.* (i) Director, (ii) Deputy Director, (iii) such other principal officials who have a frequent need to exercise Top Secret authority and are specifically delegated this authority in writing by the Director.

(2) *Secret.* (i) Officials having Top Secret classification authority, (ii) such other officials who have a frequent need to exercise Secret authority and are specifically delegated this authority in writing.

(3) *Confidential.* (i) Officials having Top Secret and Secret classification authority, (ii) such other officials who have a frequent need to exercise Confidential authority and are specifically delegated this authority in writing.

(c) *Delegation of Classification Authority.* (1) Executive Order 12065 restricts delegation of original classification authority to officials who have a frequent need to exercise such authority. Such delegations will be held to an absolute minimum.

(2) If in the judgment of bureau or office heads an officer has a demonstrable need for classification authority, a written request over the bureau or office head's signature should be forwarded to the Director or Deputy Director for action via the Administrative Director. The request should set forth the officer's name, title, justification for having the authority, and the level of classification authority sought.

(3) The ACDA Classification Adviser shall maintain a complete current list by classification designation of individuals to whom and positions to which original classification authority has been delegated.

(4) Periodic reviews of delegations of classification authority will be made by the Administrative Director and the ACDA Classification Adviser to ensure that officials so designated have demonstrated a continuing need to exercise such authority. Recommendations by the Administrative Director for Discontinuance of delegations will be forwarded to the Director or Deputy Director for action.

(5) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

(d) *Classification Responsibilities.* (1) Each officer of the Agency who signs, authenticates, or otherwise produces a document is responsible for determining that it is properly classified and marked. This responsibility includes determining whether the document contains any originally classified material, in which case the classification must be authorized by an appropriate ACDA classifying official; or contains information already classified, in which case the proper derivative markings must be applied. If in doubt on any of these points, the officer should consult the ACDA Classification Adviser. Any reasonable doubts on the questions of proper classification or whether the material should be classified at all should be resolved in favor of the less restrictive treatment.

(2) If a holder of classified information challenges the classification in the belief that there is unnecessary classification, that the assigned classification or other markings are improper, that the classification is for an inappropriate period of time, or that the document is subject to declassification under E.O. 12065, the holder should refer the information to the responsible bureau or office within ACDA for review and appropriate action. As an alternative, the holder may submit such a challenge involving classified information to the ACDA Information Security Committee via the Administrative Director for action within 30 days, requesting and receiving anonymity if desired. Similarly, if the holder of unclassified information has reason to believe that it should be classified, or that the classification designation given to particular information does not ensure adequate protection the holder shall safeguard it in accordance with the classification designation deemed appropriate, and submit a recommendation to the original classifier or to the responsible bureau or office within ACDA. The ACDA Classification Adviser is available to provide guidance in such cases. When the information was not originally classified within the Agency, it will be referred to the ACDA Classification Adviser for coordination with the responsible agency or department, if declassification or downgrading apears to be warranted.

(3) The assignment or transfer of a research, development, or other kind of project by one ACDA entity to another ACDA entity, must never leave open the question of classification. The same principle is true in ACDA contract operations where designation of classifications before work is started is necessary not only for security protection, but also for adequate budgetary and procedural planning.

(e) *Contractor Classification Authority.* (1) Each ACDA contract calling for classified work shall be processed either under the Department of Defense (DOD) or Department of Energy (DOE) industrial security program.

(2) Each contract processed under the DOD Industrial Security Program requires the preparation of a contract security classification specification (DD254) which serves as the contractor's guidance and authority to apply classification markings.

(3) Each contract processed under the DOE Industrial Security Program shall include a provision for naming a classification coordinator in the contractor organization. This individual shall coordinate the derived classification of all documents prepared under the contract in accordance with guidance received from ACDA via the ACDA project officer handling the contract, or by direct consultation on classification problems with the ACDA Classification Adviser.

(4) Only designated officials of the U.S. Government may originally classify information. Contractor personnel, as potential developers of classified information, must follow the guidelines outlined above under "Classification Responsibilities" for such holders. When there is a question involving the original classification of information, the contractor is obligated to safeguard it in accordance with the classification designation deemed appropriate and submit recommendations to ACDA for classification determination.

(5) In general, the classification of the information provided by ACDA for use or reference in the completion of the contract will be the source of the classification of documents prepared under the contract.

§ 605.5 Derivative Classification.

(a) *Definition.* Derivative classification is a determination that information is in substance the same as information that is currently classified, and a designation of the level of classification.

(b) *Responsibility.* Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide.

(c) *Classification Guides.* (1) Classification guides used to direct derivative classification and issued by ACDA shall specifically identify the information to be protected, using categorization to the extent necessary to ensure that the information involved can be identified readily and uniformly.

(2) Each classification guide issued by ACDA shall be approved personally and in writing by the Director of ACDA or by an official with Top Secret classification authority. Such approval constitutes an original classification decision.

(3) Each classification guide issued by ACDA shall be kept current by the ACDA Classification Adviser, and shall be reviewed at least once every two years. The ACDA Classification Adviser shall maintain a list of all classification guides.

§ 605.6 Declassification and Downgrading.

(a) *Importance of Declassification.* Declassification of classified information is to be given emphasis comparable to that accorded classification. Classified information shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event. Information that is officially declassifed in accordance with proper procedures may not be again classified.

(b) *Early Downgrading or Declassification.* Every effort must be made by originators of classified information to determine if the information can be downgraded or declassified on or after a given date or after the occurrence of a specified event if such date is earlier than the date for automatic declassification or review.

(c) *Action Following Review.* When information is reviewed for declassification pursuant to E.O. 12065 or the Freedom of Information Act by an ACDA official having declassification authority, it shall be declassified unless the reviewing official determines that the information continues to meet classification requirements, despite the passage of time.

(d) *Declassification After Balancing of Considerations.* It is presumed that information which continues to meet classification requirements requires continued protection. In exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the ACDA official with Top Secret classification authority having primary jurisdiction over the information in question. That official, after conferring with the ACDA Public Affairs adviser, Freedom of Information Officer, and Classification Adviser, will determine whether the public interest in disclosure outweighs the damage to national security that reasonably could be expected from disclosure. In making such determinations, ACDA officials shall respect the intent of E.O. 12065 to protect foreign government information and confidential foreign sources.

(e) *Authority to Downgrade and Declassify.* (1) Classified information may be downgraded or declassified in accordance with proper procedures by

the official who authorized the original classification if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, by the ACDA Classification Adviser, or by any other official specifically designated by the Director. Contractor personnel do not have authority to downgrade or declassify.

(2) The ACDA Classification Adviser will maintain a record of ACDA officials specifically designated as declassification authorities by the Director. Any such official, including the ACDA Classification Adviser, before taking final downgrading or declassification action on specific documents or categories of documents, must obtain the concurrence of the ACDA bureau or office originating or having substantive responsibility. When there is disagreement involving the action to be taken, the matter will be referred to the Director or Deputy Director for decision.

(3) Downgrading or declassification decisions covered by ACDA classification guides may be made only by an official having Top Secret Classification authority.

(f) *Authority to Upgrade.* The authority to upgrade is restricted to the official who originally classified the information or the official's successor or supervisor provided any of these has authority to classify at the higher level, or an official having Top Secret classification authority.

(g) *Public Dissemination.* Unless in response to a Freedom of Information or mandatory review request, declassification of information does not imply automatic public dissemination. Regular clearance procedures for the dissemination of official information must be observed.

§ 605.7 Mandatory review for declassification.

(a) *Action on Requests.* (1) All requests to ACDA by a member of the public, a government employee, or an agency, to declassify and release information, shall result in a prompt and mandatory classification review of the information by the Agency, provided the requests reasonably describe the information.

(2) Such requests may be directed to the ACDA Classification Adviser, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, D.C. 20451. The ACDA Classification Adviser will promptly acknowledge receipt of the request if a response containing a decision on the request cannot be made within twenty (20) working days.

(3) Requests for declassification under mandatory review procedures shall be acted upon within 60 days. After review, the information or any reasonably segregable portion thereof that no longer requires protection under E.O. 12065 shall be declassified and released unless withholding is otherwise warranted under applicable law.

(4) If a request does not reasonably describe the information sought, the ACDA Classification Adviser will notify the requester that unless additional information is provided or the scope of the request is narrowed, no further action will be taken.

(5) If the request can be acted upon, it will be referred by the ACDA Classification Adviser to the responsible bureau or office for appropriate action.

(6) If the request requires the rendering of services for which reasonable fees should be charged pursuant to the Freedom of Information Act and ACDA regulations thereunder (Title 22 of the CFR, Part 602), such fees will be imposed at the Freedom of Information schedule rates, and the requester shall be so notified.

(7) The office which has been assigned action will determine whether, under the declassification procedures of E.O. 12065, the requested information may be declassified, and if so, the ACDA Classification Adviser will promptly make such information available to the requester, unless withholding is otherwise warranted under applicable law.

(8) If at the end of 60 days from receipt of the request for review no determination has been made, the requester may apply to the ACDA Information Security Committee for determination.

(b) *Appeal from Denials.* (1) If information requested for review under the declassification procedures of E.O. 12065 may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the ACDA Information Security Committee, and a notice that such an appeal must be filed with the Agency within 60 days in order to be considered. The address of the Committee is as follows:

ACDA Information Security Committee, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, D.C. 20451, Attn: Administrative Director.

(2) The ACDA Information Security Committee shall act within 30 days of receipt on all appeals of denials of requests for declassification under the procedures of E.O. 12065. The Committee shall determine whether continued classification is required in whole or in part. If in the opinion of the Committee continued classification is required under the provisions of E.O. 12065, the requester shall be so notified and informed of the reasons therefore. The requester will also be advised of his or her right to appeal a determination not to declassify to the Director of the Information Security Oversight Office established by E.O. 12065.

(3) If requested, the ACDA Information Security Committee, through the ACDA Classification Adviser, will also communicate the appeal determination to any referring agency.

(c) *Information Classified by Another Agency.* When ACDA receives a request for information in its custody that was classified by another agency, the ACDA Classification Adviser, after consulting with the bureau or office most concerned, shall forward the request, together with a copy of the document containing the information requested where practicable and the Agency's recommendation to withhold any of the information where appropriate, to the appropriate agency for review and direct response to the requester. Unless the agency that classified the information objects on grounds that its association with the information requires protection, the ACDA Classification Adviser shall also notify the requester of the referral. In such cases, the ACDA Classification Adviser may ask the reviewing agency to communicate its determination to ACDA.

(d) *Freedom of Information Requests.* Requests for declassification which are submitted under the Freedom of Information Act shall be processed under the provisions of that Act and implementing ACDA regulations contained in Title 22 of the CFR, Part 602.

(e) *Confirmation of Existence of Document.* In responding to a request for a document made under the Freedom of Information Act or the mandatory review provisions of E.O. 12065, ACDA may not refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable under E.O. 12065.

§ 605.8 Safeguarding.

Specific controls on the use, processing, storage, reproduction and transmittal of classified information within ACDA that provide adequate protection and prevent access by unauthorized persons are contained in

Part 1 of the ACDA Security Classification Handbook, an internal guidance manual, and shall be followed by Agency personnel and when appropriate by contractors.

§ 605.9 Information Security Oversight.

(a) *ACDA Information Security Committee.* (1) The ACDA Information Security Committee is comprised of the following permanent members:

Administrative Director of ACDA, Chairman, Executive Secretary of the Agency, ACDA Classification Adviser.

(2) Deputy Assistant Directors of ACDA Bureaus and deputy heads of ACDA offices will be included as voting members in committee meetings on an *ad hoc* basis when the matter under discussion relates to their area.

(b) *Functions of the ACDA Information Security Committee.* The Committee shall:

(1) Have authority to act on all suggestions and complaints with respect to the Agency's administration of the information security program, and proper application of E.O. 12065 and implementing directives.

(2) Review and act within 30 days of receipt on challenges to classification submitted by holders of classified information who believe that information is classified unnecessarily, improperly, or for an inappropriate period of time.

(3) Consider cases involving repeated abuse of the classification process. When it finds that unnecessary classification or overclassification has occurred or in cases of repeated abuse or violation of any provision of E.O. 12065 or implementing directives, the Committee will make a report to the Director with recommendations as to corrective steps or disciplinary action to be taken. Such steps or disciplinary action may include notifications by warning letter, formal reprimand, termination of classification authority, and to the extent permitted by law, suspension without pay and removal.

(4) Review and act within 30 days of receipt upon all appeals from determinations not to declassify or release requested classified information, following mandatory review of such requests under § 605.7. Action by the Committee will be taken pursuant to the procedures set forth therein.

(c) *Chairman of the ACDA Information Security Committee.* In addition to chairing the ACDA Information Security Committee, the Chairman shall:

(1) As a senior ACDA official, conduct an active oversight program to ensure effective implementation of E.O. 12065 and implementing directives within ACDA.

(2) Carry out decisions of the ACDA Information Security Committee and of the Director, acting through the Committee. This responsibility will include taking on behalf of the Director, appropriate and prompt corrective action whenever a violation of E.O. 12065 occurs, including implementation of any decisions or sanctions and reporting action taken to the Director and the Information Security Oversight Office.

(3) Ensure that all Agency and other personnel who have access to classified information are familiar with the provisions of E.O. 12065 and implementing directives. In particular, this responsibility will include impressing upon Agency personnel their responsibility to exercise vigilance in complying with E.O. 12065, and encouraging ACDA employees to challenge, through mandatory review and other appropriate procedures, those classification decisions they believe to be improper.

(4) Promulgate ACDA classification guides and guidelines for systematic review of classified information for declassification.

(5) Prepare and issue procedures, through the ACDA Security Classification Handbook or other means, to prevent unnecessary access to classified information, including procedures which require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and which ensure that the number of people granted access to classified information is reduced to and maintained at the minimum number that is consistent with operational requirements and needs.

(6) Ensure that practices for safeguarding information are systematically reviewed and that those which are duplicate or unnecessary are eliminated.

(7) Submit to the Information Security Oversight Office established by E.O. 12065 such information or reports as the Director of that Office may find necessary to carry out the office's responsibilities.

(d) *Monitoring Responsibility.* The ACDA Classification Adviser is responsible for monitoring and implementing classification and declassification procedures within ACDA and also for ensuring that information classified under E.O. 12065 and previous orders is properly classified and declassified in accordance with these procedures.

[FR Doc. 79-15911 Filed 5-30-79; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

24 CFR Part 882

[Docket No. R. 79-669]

Low Income Housing Section 8 Housing Assistance Payments Program—Existing Housing Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: HUD is publishing as a final rule amendments to the Section 8 Housing Assistance Payments Program—Existing Housing, which:

(1) Allow an owner to be compensated for damages and other amounts owed by the tenant up to an amount equal to two months' Contract Rent rather than one month's Contract Rent; and

(2) Changes the formula for computing vacancy payments.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Director, Existing Housing Division, Office of Existing Housing and Moderate Rehabilitation, Housing, Department of Housing and Urban Development, Washington, D.C. 20410. 202-755-6460. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Based upon comments from Public Housing Agencies (PHAs) administering the Section 8 Existing Housing Program, the vacancy payment and security deposit provisions for the Existing Housing Program have been revised.

Section 882.112 of the Existing Housing regulations is being amended to allow an owner to be compensated for damages or other amounts owed by the tenant up to an amount equal to two months' rather than one month's Contract Rent. It is anticipated that this amendment will encourage Owner participation in the program since it will provide improved protection against damages caused by Families.

Under § 882.105(b), for vacancies after initial occupancy, an Owner will be allowed to retain the housing assistance payment received at the beginning of the

month for the month in which the tenant vacates, provided the unit remains vacant for the remainder of the month. If the unit remains vacant for up to an additional month, the Owner may receive 80 percent of the Contract Rent for the vacancy period. However, if the Owner collects any of the Family's share of the rent for this period, the payment must be reduced to an amount which when added to the Family's payment, does not exceed 80 percent of the Contract Rent. The Existing Housing Program will retain the policy of only compensating Owners for vacancies where the tenant has vacated in violation of the lease. The previous regulation provided for adjustment of the housing assistance payment to the date the Family moves and a maximum of 60 days of vacancy payments up to 80 percent of the Contract Rents.

Since PHAs will be administering both the Existing Housing and Moderate Rehabilitation Programs, it would be administratively cumbersome to have differing policies with respect to vacancy payments and security deposits. Accordingly, the Department has determined that notice and public procedure with respect to this amendment are impracticable, and that this rule should be published as final without prior public comment so that the Existing Housing and Moderate Rehabilitation Programs will have consistent policies.

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 business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, Part 882 is amended as follows:

(1) Section 882.105(b)(1) is revised to read:

§ 882.105 Housing assistance payments to owners.

* * * * *

(b) *Vacated Units.* (1) If an Eligible Family vacates its unit in violation of the Lease or tenancy agreement, the Owner shall receive the housing assistance payments due under the Contract for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit continue to remain vacant, the Owner shall receive from the PHA a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month, or the expiration of the Lease or tenancy agreement, whichever comes first. However, if the Owner collects any of the Family's share of the rent for this period, the payment must be reduced to an amount which when added to the Family's payment, does not exceed 80 percent of the Contract Rent. Any such excess must be reimbursed to the PHA. If the Owner evicts an Eligible Family, the Owner will not be entitled to any payment under this section unless the PHA determines that the Owner complied with all requirements of Section 882.215, the Contract, and all applicable State and local laws.

(2) Section 882.112(d) is revised to read as follows:

§ 882.112 Security and utility deposits.

* * * * *

(d) If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from the PHA for an amount not to exceed the lesser of: (1) the amount owed the Owner, or (2) two months' Contract Rent; minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the Owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Family Contribution due under the Lease and then to any other amounts owed. No reimbursement may be claimed for unpaid rent for the period after the Family vacates.

(Section 7(d), Department of HUD Act (42 U.S.C. 3535(d); section 5(b)), U.S. Housing Act of 1937 (42 U.S.C. 1437(c)(b)).)

Issued at Washington, D.C. April 30, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-16873 Filed 5-30-79; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Chap. X

44 CFR Chap. I

[Docket No. FEMA-1]

Transfer and Redesignation of Federal Insurance Administration Regulations

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Final rule.

SUMMARY: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979, by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency." The plan transfers to FEMA the functions of the Federal Insurance Administration which was a part of the U.S. Department of Housing and Urban Development. Therefore, this rule transfers and redesignates the existing regulations of the Federal Insurance Administration to Title 44, Chapter I, Subchapter of the Code of Federal Regulations.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Collins, Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency, 451 Seventh Street, SW., Washington, D.C. 20410, Telephone: (202) 755-7355.

SUPPLEMENTARY INFORMATION: Establishment of the organization of FEMA, including delegation of authority to the position of Associate Director for Insurance and Hazard Mitigation, which also carries the title of Federal Insurance Administrator, was published on April 6, 1979 (44 FR 20963).

Establishment of Title 4, Chapter I, Subchapter B, for the redesignated regulations, was published on Wednesday, May 2, 1979 (4 FR 25797).

The Federal Insurance Administration regulations were previously published under Title 24, Chapter X, Subchapters A, B, and C of the Code of Federal Regulations.

Because this rule is simply a redesignation of existing regulations it has been determined that a period for notice and comment is not necessary.

Redesignation of Regulations

Accordingly, existing regulations of the Federal Insurance Administration

set forth at 24 CFR are redesignated and transferred to Title 44, Chapter I, Subchapter B of the Code of Federal Regulations as follows:

Old Part	Title of Regulation	New Part
24 CFR		44 CFR
	Subchapter B—Federal Insurance and Hazard Mitigation (Reserved)	50-54
	National Insurance Development Program	
1905	Statewide "FAIR" Plans	55
1906	Standard Reinsurance Contract	56
1907	State reimbursement requirement	57
1908	(Reserved)	58
	National Flood Insurance Program	
1909	General Provisions	59
1910	Criteria for land management and use	60
1911	Insurance coverage and rates	61
1912	Sale of insurance and adjustment of claims	62
1913	(Reserved)	63
1914	Communities eligible for the sale of insurance	64
1915	Identification and mapping of special hazard	65
1916	Consultation with local officials	66
1917	Appeals from proposed flood elevation determinations	67
1918	Administrative hearing procedures	68
1919	(Reserved)	69
1920	Procedures for map correction	70
1921-1924	(Reserved)	71-74
1925	Exemption of state-owned properties under	75
1926-1929	(Reserved)	76-79
	Federal Crime Insurance Program	
1930	Description of program and offer to agents	80
1931	Purchase of insurance and adjustment of claims	81
1932	Protective device requirements	82
1933	Coverage, rates, and prescribed policy forms	83
1934	Classification of territories	84
	(Reserved)	85-149

Nomenclature Changes

Wherever appearing in the regulations listed above, the nomenclature listed below is changed as follows:

Old nomenclature	New nomenclature
Secretary of Housing and Urban Development	Director of the Federal Emergency Management Agency
Secretary	Director
Department of Housing and Urban Development	Federal Emergency Management Agency
Federal Insurance Administration	Office of Federal Insurance and Hazard Mitigation.

The title "Federal Insurance Administrator" or "Administrator" remains the same.

(Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of Authority to Federal Insurance Administrator (44 FR 20963).)

Issued at Washington, D.C. on May 3, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-16880 Filed 5-30-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7626]

Income Tax; Taxable Years Beginning After December 31, 1953; Bad Debt Reserves for Thrift Institutions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to additions to reserves for losses on loans of mutual savings banks, domestic building and loan associations, and cooperative banks. These regulations will modify an effective date in an existing regulation. These regulations provide necessary guidance to thrift institutions for computing the bad debt deduction.

DATE: The amendment is effective for net operating losses that arise in taxable years beginning after December 31, 1978.

FOR FURTHER INFORMATION CONTACT: Lawrence M. Axelrod of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 593(b)(2)(E) of the Internal Revenue Code of 1954 (43 FR 60964). The amendments were proposed to modify the existing regulations contained in § 1.593-6A(b)(5)(vi). A public hearing was held on March 6, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

The proposed amendments would have required a thrift institution that sustained a net operating loss in a taxable year beginning after December 31, 1977, and which carried back the loss to a prior taxable year, to reduce the prior year's percentage-of-taxable-income bad debt deduction.

In response to taxpayer comments that they entered into transactions during the latter part of 1978, which created a net operating loss, in reliance upon the then existing regulations, the effective date of the amendment has been deferred. Under the Treasury decision, only net operating losses sustained in taxable years beginning after December 31, 1978, which are carried back to a prior taxable year, will require an adjustment to the prior year's percentage-of-taxable-income bad debt deduction.

Drafting Information

The principal author of this regulation is Lawrence M. Axelrod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation both on matters of substance and style.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.593-6A [Amended]

Section 1.593-6A(b)(5)(vi) is amended by deleting the words "to such year under section 172" and inserting in their place the words "to such year from a taxable year beginning before January 1, 1979".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: May 18, 1979.

Daniel I. Halperin,

Acting Assistant Secretary of the Treasury.

[FR Doc. 79-16943 Filed 5-30-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 195

[DoD Directive 5010.19] [1]

Configuration Management

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule consolidates this Part and 32 CFR Part 195a, incorporates certain procedural changes and clarifies policy and responsibilities regarding configuration managment of systems, equipments and other designated materiel items.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

EFFECTIVE DATE: May 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. S. Miller, Office of the Under Secretary of Defense, Defense Materiel Specifications and Standards Office, Cameron Station, Alexandria, Virginia 22314, Telephone: 202-274-6337.

SUPPLEMENTARY INFORMATION: In FR Doc. 68-11153, appearing in the Federal Register (33 FR 13017) on September 14, 1968, the Office of the Secretary of Defense published Part 195, effective July 17, 1968, which established Department of Defense policies governing the configuration management of systems, equipments and other designated materiel items. This rule updates the previously published Part 195. Part 195a will be deleted as a separate action.

Accordingly, 32 CFR Chapter I, is amended by revising Part 195, reading as follows:

PART 195—CONFIGURATION MANAGEMENT

Sec.
195.1 Reissuance and Purpose
195.2 Applicability
195.3 Definitions
195.4 Policy
195.5 Responsibilities

Authority: The provisions of this Part 195 issued under 10 U.S.C. 2202.

§ 195.1 Reissuance and purpose.

This Part consolidates into a single document 32 CFRs § 195 and § 195a, and updates and redefines policies for configuration management of materiel including systems, equipment, computer programs, facilities and other designated items.

§ 195.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components"), and shall be applied throughout the life cycle of configuration items.

§ 195.3 Definitions.

(a) *Configuration.* The functional and physical characteristics of materiel as described in technical documents and achieved in a product.

(b) *Configuration Items.* Materiel items designated by DoD Components for configuration management. They may differ widely in complexity, size, and kind. Examples are an aircraft, ship, mobile test unit, navigation system, embedded computer, computer program, facility, electronic system, test meter or a round of ammunition.

(c) *Configuration Management.* The engineering management procedure that includes the following:

(1) *Configuration Identification.* Selection of the documents which identify and define the configuration baseline characteristics of an item.

(2) *Configuration Control.* Controlling changes to the configuration and its identification documents.

(3) *Configuration Status Accounting.* Recording and reporting the implementation of changes to the configuration and its identification documents.

(4) *Configuration Audit.* Checking an item for compliance with the configuration identification.

(d) *Other.* Expanded and additional definitions are contained in the Joint Services Regulation, "Configuration Management," July 1, 1974.[2]

§ 195.4 Policy.

(a) It is the policy of the Department of Defense to apply configuration management to ensure operational efficiency and control cost, and to achieve uniformity in configuration management procedures and practices within the Department of Defense and between DoD and industry.

(b) Specific policy for application of configuration management is as follows:

(1) The degree of configuration management applied for an item shall be appropriately tailored to be consistent with the complexity, size, quantity, intended use, mission criticality and life-cycle phase of the item DoD Directives 4120.21,[1] "Specifications and Standards Application," April 9, 1977, 5000.1,[1] "Major Systems Acquisition," January 18, 1977, 7920.1,[1] Life Cycle Management of Automated Information Systems (AIS)," October 17, 1978.

(2) Appropriate DoD configuration management of interface baseline characteristics shall be applied to any developmental item, before approval for full-scale engineering development, Milestone II (DoD Directives 5000.1 [1] and 7920.1 [1]), if the item is required to interface with specified configuration baselines of other configuration items under development, in production or in supply; or, if the item is required to be compatible with an existing or planned maintenance program.

(3) Appropriate DoD configuration management shall be applied to any item to be developed wholly or partially with Government funding, immediately following approval for full-scale engineering development, Milestone II.

(4) For configuration items wholly developed with private funding and procured by the Government, appropriate configuration management shall be applied to the configuration baseline when the procurement is initiated.

(5) During the deployment/operation/support phase, appropriate configuration management shall be continued to the extent required for readiness support.

(6) In the acquisition of major systems, any intended exception to this Part or any intended deviation from the fundamental elements of configuration management required by this Directive and as further set forth in the Joint DoD Services/Agencies Regulation [2] shall be proposed, with justification, in the System Decision Paper (DoD Directive 7920.1,[1] and in the Acquisition Strategy Plan (DoD Directive 5000.2,[1] "Major Systems Acquisition Process," January 18, 1977), by the cognizant DoD Component to the Office of the Secretary of Defense. For other than major systems acquisitions, any such intended exceptions or deviations shall be proposed for approval by the appropriate authority delegated to act for the Head of the cognizant DoD Component. For any acquistion, tailoring of the application of specifications and standards specified in the Joint DoD Services/Agencies Regulation [2] shall be in accordance with DoD Directive 4120.21.[1]

§ 195.5 Responsibilities.

(a) *The Under Secretary of Defense for Research and Engineering (USDR&E)* shall prescribe overall management policy for DoD configuration management practices.

(b) Following acquistion and deployment of materiel, the *Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)* shall ensure effective implementation of DoD configuration management during operational logistics functions (see § 195.4(b)).

(c) *The Secretary of the Navy* or a designee [3] shall:

(1) In coordination which the other DoD Components, maintain the Joint DoD Services/Agencies Regulation [2] and any other joint documents considered necessary.

(2) Provide the Chairperson for the DoD Configuration Management Committee.

(d) *The Head of each DoD Component* shall:

(1) Designate for specific, individual items or categories of items, the

[2] May be obtained by writing the Commanding Officer, Naval Publications and Forms Center, ATTN: NPFC 105, 5801 Tabor Avenue, Philadelphia, PA 19120

[3] Authority for the above actions has been delegated by the Secretary of the Navy to the Chief of Naval Material.

technical organization, office or individual having authority and responsibility for configuration management during each life-cycle phase of the items being procured. When more than one DoD Component is involved in the acquisition, modification or support of an item, the DoD Component designated by the Secretary of Defense to have primary responsibility shall develop and document intercomponent joint agreements for configuration management of the item.

(2) Provide a representative for membership and active participation on the DoD Configuration Management Committee.

(e) *The DoD Configuration Management Committee* shall provide necessary support in the conduct of the DoD Configuration Management Program in accordance with this Directive and the Joint DoD Services/Agencies Regulation.

(1) Membership of the committee includes one representative of each DoD Component. Each member is authorized and responsible for presenting the consolidated position of the respective DoD Component on matters concerning DoD configuration management policy, implementation and standard practices. When solicited, the committee provides comments to the DoD acquisition program reviewing authorities regarding the application of configuration management.

(2) A representative from the national Aeronautics and Space administration participates in the activities of the committee in a consulting capacity.

May 24, 1979

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-16882 Filed 5-30-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD5-79-04R]

33 CFR Part 100

Safety of Life on Navigable Waters; Establishment of Special Local Regulations for the President's Cup Regatta, Washington, D.C.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule details the special local regulations for the President's Cup Regatta. The special local regulations are established to limit access to and control vessel traffic within the immediate vicinity of the President's Cup Regatta. Due to the confined nature of the waterway and the expected congestion at the time of the regatta, these regulations are necessary to ensure safety of life on the Potomac River at Washington, D.C., immediately before, during, and immediately after the regatta.

DATE: Effective dates: From 10:00 a.m. EDST until 7:00 p.m. EDST on June 2 and 3, 1979.

FOR FURTHER INFORMATION CONTACT: LT R.T.VIA, Commander(b), Fifth Coast Guard District, Portsmouth, Virginia 23705, 804-396-6202.

SUPPLEMENTARY INFORMATION: The establishment of special local regulations to ensure the safety of life on the navigable waters of the United States immediately before, during and immediately after a regatta is authorized by 46 U.S.C. 454 and 33 CFR 100.35. The area subject to the special local regulations is identical to that area which has been subject to the regulations for the past four President's Cup Regattas. The special local regulations are the same as those established in the past, except that, under these regulations, the operator of a vessel must stop his vessel upon being directed to do so by any Coast Guard officer or petty officer rather than upon hearing five or more short blasts of a horn or a whistle as had been the requirement in the past. The Coast Guard patrol commander has also been designated by name in these regulations. Since there were no comments received from the public concerning the special local regulations last year, and since there have been no significant changes in the area to be subject to the regulations or the regulations themselves, I find that notice and public procedure is unnecessary. In order that these special local regulations will be effective at the time of the scheduled event, I find that they may be made effective in less than 30 days from publication. Accordingly, the following local regulations are established:

(a) *Location.* The area subject to these regulations is those waters enclosed by a line drawn from the southern tip of Haines Point northwards along the eastern seawall to a point 1,000 feet from the southern tip of Haines Point; thence easterly to a point 400 feet from the seawall; thence in a southerly direction to a point 1,400 feet distant; thence along a line of bearing 240° T. to the Virginia shore; thence upstream along the Virginia shoreline to the Penn Central Railroad bridge between Washington, D.C., and Arlington, Va.; thence 034° T. to the Potomac Park-Potomac River shoreline; thence along the Potomac Park-Potomac River shoreline to the southern tip of Haines Point.

(b) *Regulations.* (1) Except for participants in the President's Cup Regatta or persons or vessels authorized by the Coast Guard patrol commander, no person or vessel may enter or remain in the area specified in paragraph (a) of these regulations.

(2) The operator of any vessel in the immediate vicinity of the area specified in paragraph (a) above of these regulations shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer; and

(ii) Proceed as directed by the Coast Guard officer or petty officer.

(3) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(4) The Coast Guard patrol commander is Captain W. E. Paulsen, USCG, a commissioned officer of the Coast Guard, who has been designated by the Commander, Fifth Coast Guard District.

(5) These regulations and other applicable laws and regulations shall be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

(46 U.S.C. sec. 454, 49 U.S.C. sec. 1655(b)(1); 33 CFR 100.35, 49 CFR 1.46(b).)

Dated: May 25, 1979.

G. L. Kraine,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District, Acting.

[FR Doc. 79-16863 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 1235-2]

Delayed Compliance Orders; Approval of a Delayed Compliance Order Issued by the Nebraska Department of Environmental Control to the City of Fremont, Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by Nebraska Department of Environmental Control to the City of

Fremont, Nebraska. The Order requires the company to bring air emissions from its Lon D. Wright Memorial Power Plant, Units 6 and 7 at Fremont, Nebraska into compliance with certain regulations contained in the federally approved Nebraska State Implementation Plan (SIP). Because of the Administrator's approval, the City of Fremont compliance with the Order will preclude suits under the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

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

FOR FURTHER INFORMATION CONTACT: Renelle P. Rae or Peter J. Culver, Environmental Protection Agency, Region VII, 324 East Eleventh Street, Kansas City, Missouri 64106, telephone 816-374-2576.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, 324 East Eleventh Street, Kansas City, Missouri 64106, telephone 816-374-2576.

SUPPLEMENTARY INFORMATION: On March 7, 1979, the Regional Administrator of EPA's Region VII Office published in the Federal Register, 44 FR 12464, a notice proposing approval of a delayed compliance order issued by Nebraska Department of Environmental Control to the City of Fremont. The notice asked for public comments on or before April 6, 1979, on EPA's proposed approval of the Order. No public comments were received.

Therefore, the delayed compliance order issued to the City of Fremont is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the City of Fremont on a schedule to bring its Lon D. Wright Memorial Power Plant, Units 6 and 7 at Fremont, Nebraska into compliance as expeditiously as practicable with Rules 6 and 13 of the Nebraska Air Pollution Control Rules and Regulations, a part of the federally approved Nebraska State Implementation Plan. The Order also imposes interim controls and monitoring requirements. However, the inclusion of emission and monitoring requirements in the order would be unreasonable. If the conditions of the Order are met, it will permit the City of Fremont to delay compliance with the SIP regulations covered by the Order until June 15, 1979. The company is unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective May 31, 1979 because of the need to immediately place the City of Fremont on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Nebraska State Implementation Plan.

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

Dated: May 24, 1979.

Douglas M. Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.321:

§ 65.321 EPA approval of State delayed compliance orders issued to major stationary sources.

The State orders identified below have been approved by the Administrator in accordance with section 113(d)(2) of the Act and with this part. With regard to each order, the Administrator has made all the determinations and findings which are necessary for approval of the order under section 113(d) of the Act.

Source	Location	Order number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
City of Fremont	Fremont, Nebr.	VII-79-DCO-2	6 and 13	March 7, 1979	June 15, 1979
*	*	*	*	*	*

[FR Doc. 79-16958 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[Docket No. HM-143; Amdt. Nos. 172-48, 173-124, 174-34, 175-8, 176-7, 177-45]

49 CFR Parts 172, 173, 174, 175, 176, 177

Blasting Agents

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Revision of previous amendment.

SUMMARY: This revision of the final rule for Blasting Agents as published on December 11, 1978, in the Federal Register (43 FR 57898) makes several changes in the requirements for materials known as ammonium nitrate-fuel oil mixtures. Among these are: (1) A provision that testing may be done by the manufacturer; (2) only the blasting cap sensitivity test need be passed; (3) written reports of the tests must be submitted to the Associate Director for Operations and Enforcement; and (4) the required usage of the proper shipping name "ammonium nitrate-fuel oil mixtures" for such materials.

The notification and approval requirements have also been consolidated into § 173.114a rather than being referenced in § 173.86. A provision which allows materials presently properly described, offered, and transported as nitrocarbonitrate to continue to be shipped under that description until December 31, 1980, is included in this revision. Also, minor changes in other parts and sections of the final rule have been made to accommodate the addition of the "ammonium nitrate-fuel oil mixture" entry.

EFFECTIVE DATE: August 15, 1979; however, shipments may be prepared, offered for transportation, and transported in accordance with these amendments beginning May 31, 1979.

FOR FURTHER INFORMATION CONTACT: Charles W. Schultz, Technical Division, Office of Hazardous Materials Regulation, 2100 Second Street, SW., Washington, D.C. 20590, 202/755-4906.

SUPPLEMENTARY INFORMATION: On December 11, 1978, the MTB published a final rule under Docket HM-143 in the Federal Register (43 FR 57898), establishing the new shipping descriptions of Blasting Agent, n.o.s., Ammonium nitrate-fuel oil mixture, and a new hazard class, Blasting Agents.

Since this publication, the MTB has received three petitions for reconsideration in accordance with the provisions of 49 CFR 106.35.

One petitioner stated that the amendment creates a new hazard class ". . . which is inconsistent with all other regulatory schemes all over the world."; that the basis of this new hazard class is the end use of the materials rather than their intrinsic characteristics; that no need or justifiable evidence was presented by any participant in the proceedings to warrant the establishment of the new class; that establishment of the new class makes all training material somewhat obsolete; and that there are twelve other alleged errors in the Docket.

The MTB is not aware of any governmental regulatory class scheme, except those of the United States and Canada, which officially recognizes the term "nitrocarbonitrate." The "Transport of Dangerous Goods" (ST/SG/AC.10/1/Rev. 1. Page 153) as published by the United Nations does not include the term "nitrocarbonitrate" in its index and further implies that this term is used only in North America. The materials called nitrocarbonitrates are included in Explosives, Blasting, Type B. Also, nitrocarbonitrate is not a recognized shipping name under the Inter-governmental Consultative Organization (IMCO) regulations. Because of this, the MTB believes that the term "blasting agent" is more in line with international regulatory schemes.

As to the statement that the new hazard class is based on end use rather than intrinsic characteristics, it is the MTB's opinion that the phrase ". . . a material designed for blasting . . ." constitutes only a limited part of the definition of a blasting agent and is included only to aid in the identification of the type of materials being addressed by these regulations. The fundamental part of the definition is the test criteria and these tests do evaluate the intrinsic characteristics, kind, and degree of hazard of these materials. The statement that there was no need or justification for establishing a new class of materials was addressed in the preamble of Docket HM-143 (43 FR 57898) in the last paragraph under Section 172.101. The MTB's opinion has not changed since this publication.

A petitioner's statement that the new class makes training materials somewhat obsolete may be addressed to any new rulemaking. It is the MTB's opinion that training materials must reflect the regulations and be based on the regulations, rather than regulations being based on training materials.

Another petitioner stated that the cost of compliance with the required tests would place an extremely high and unjustifiable burden on the industry. The petitioner also asserted that there existed large inventories of materials prepared in compliance with the requirements for nitrocarbonitrates, that supplies of preprinted packaging existed, and that compliance with the August 15, 1979, effective date would not be practicable since a longer period of time is necessary to deplete existing stocks of completed packagings and packaging supplies. The MTB has reviewed the test requirements for blasting agents and believes that such tests are necessary. However, for products consisting of only "prilled ammonium nitrate and fuel oil," the MTB has determined that only the blasting cap sensitivity test need be passed. Based on figures obtained from industry, this will eliminate the requirement to perform approximately 10,000 tests for this type of blasting agent with a significant cost savings to industry. Also included in this amendment is an allowance for materials presently described, offered and transported as nitrocarbonitrate to continue to be shipped in accordance with the regulations in effect on August 14, 1979, until December 31, 1980.

Another petitioner requested that manufacturers of blasting agents be allowed to perform the required tests, that the classing of blasting agents be done by DOT, and that the effective date be extended to August 15, 1981. Upon further consideration, it is the MTB's opinion that materials which contain only prilled ammonium nitrate and fuel oil may be tested by individual manufacturers with the results being forwarded to the MTB. According to industry figures, these materials comprise about 85% of materials included in the blasting agent classification. Testing of the remaining materials must be conducted by one of the designated agencies, with approvals for the class and packaging being issued by the Associate Director for Operations and Enforcement of the MTB. The MTB believes that extension of the effective date is not required in light of the allowance for materials presently shipped as nitrocarbonitrate.

The primary drafters of this document are Charles W. Schultz, Technical Division, Office of Hazardous Materials Regulation, and Delmer F. Billings, Standards Division, Office of Hazardous Materials Regulation.

For clarity and convenience, the final rule on blasting Agents as published in the Federal Register (43 FR 57898) on December 11, 1978 is repeated here in its entirety with all modifications.

In consideration of the foregoing, 49 CFR Parts 172, 173, 174, 175, 176 and 177 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. § 172.101 is amended by deleting the entries "nitro carbo nitrate," and "ammonium nitrate fuel oil mixtures . . ." and adding the following entries in alphabetical order to read as follows:

§ 172.101 Hazardous materials table.

(1)	(2)	(3)	(4)	(5) Packing		(6) Maximum net quantity in one package		(7) Water Shipments		
*/ A/ W	Hazardous materials description and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific Requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo Vessel	(b) Passenger vessel	(c) Other Requirements
	(Add)									
	Ammonium nitrate - fuel oil mixtures (Containing only prilled ammonium nitrate and fuel oil). See Blasting agent, n.o.s.									
	Ammonium nitrate - fuel oil mixtures See High explosive									
	Blasting Agent, n.o.s.	Blasting agent	Blasting agent	None	173.114a	Forbidden	100 lb	1,2	1, 2	
	(Delete)									
	Ammonium nitrate - fuel oil mixture. See Nitro carbonitrate or Explosive, class A or B									
	Nitro carbo nitrate	Oxidizer	Oxidizer	173.153	173.182	2 pounds	100 pounds	1, 2	1, 2	

2. In § 172.411 the Heading is revised and new paragraphs (c) and (d) are added to read as follows:

§ 172.411 EXPLOSIVE A, EXPLOSIVE B, EXPLOSIVE C, and BLASTING AGENTS labels.

* * * * *

(c) Except for size and color, the BLASTING AGENT label must be as follows:

(d) In addition to complying with § 172.407, the BLASTING AGENT label must be orange. The printing must be black.

§ 172.504 [Amended]

3. In § 172.504 Table 2 is amended by adding the following entry immediately following "Class C explosives."

"Blasting agents . . . BLASTING AGENT"

4. § 172.524 EXPLOSIVES B placard is redesignated § 172.523; a new § 172.524 is added to read as follows:

§ 172.524 BLASTING AGENTS placard.

(a) Except for size and color, the BLASTING AGENTS placard must be as follows:

(b) In addition to meeting the requirements of this part, the BLASTING AGENTS placard must be orange with a ½-inch (12.7 mm) white outer border. The printing must be black.

5. Appendix B to Part 172 is amended by adding a new paragraph (c)(19) to read as follows:

Appendix B—Dimensional Specification for Placards

* * * * *

(c) * * *

(19) BLASTING AGENTS placard. The words BLASTING AGENTS must be across the center area of the placard and made with letters 1⅞ inches (47.6 mm) high with a 5/16-inch (7.9 mm) stroke.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The title to Subpart C is revised to read as follows:

Subpart C—Explosives and Blasting Agents; Definitions and Preparation

7. In § 173.2 paragraph (b)(2) is revised to read as follows:

§ 173.2 Classification of a material having more than one hazard as defined in this Part.

* * * * *

(b) * * *

(2) An explosive required to be classed and approved under § 173.86, or a blasting agent required to be classed and approved under § 173.114a.

* * * * *

8. In § 173.86 the Heading is revised to read as follows:

§ 173.86 New explosives definitions; approval and notification.

9. A new § 173.114a is added to read as follows:

§ 173.114a Blasting agents.

(a) *Definition of a blasting agent.* A blasting agent is a material designed for blasting which has been tested in accordance with paragraph (b) of this

section and found to be so insensitive that there is very little probability of accidental initiation to explosion or of transition from deflagration to detonation.

(b) *Tests.* Except as provided in paragraph (c) of this section, no material may be offered for transportation described or classed as a blasting agent unless it passes the following tests:

(1) *Blasting cap sensitivity test.* (i) The container used for the blasting agent sample must be cylindrical, having a diameter of 3⅜ inches and a length of 6⅜ inches. The container must provide essentially no confinement.

(ii) The container must be filled with the sample. Solid materials must be packed to the same filling density as they will be packed in the shipping container. The temperature of the sample must be between 70°F. and 75°F. If it is difficult to achieve an appropriate filling density in the test container, e.g., auger packed products, it may be necessary to auger fill a special container for the test.

(iii) The filled container must be placed on a solid lead cylinder 4 inches long by 2 inches in diameter which must, in turn, be placed upright on a firm surface.

(iv) A commerical No. 8 fuse blasting cap or electric blasting cap must be inserted in the center of the top of the sample for the full length of the cap. A No. 8 commercial cap means a cap which contains 0.40–.45 grams of PETN base charge pressed into an aluminum shell with bottom thickness not to exceed 0.03 inch to a specific gravity of not less than 1.4 g/cc and primed with standard weights of primer, in accordance with the manufacturer's specifications.

(v) The blasting cap must be initiated from a safe position.

(vi) If the lead block is compressed ⅛-inch or more, the material is considered to have detonated.

(vii) The test must be conducted three times or until detonation occurs, whichever occurs first.

(viii) A material which detonates in any trial may not be classed as a blasting agent.

(2) *Differential thermal analysis test.* (i) This test must be conducted using a standard, commercially produced, differential thermal analysis instrument or a laboratory constructed apparatus which gives comparable results.

(ii) The portion of the blasting agent tested must be representative of the complete mixture.

(iii) The test must be conducted three times. If the first exotherm exhibited by the material in any trial is less than 212° F. (100° C.), it may not be classed as a blasting agent.

(3) *Thermal stability test.* (i) At least 50 grams of the material must be placed in a loosely covered glass vessel and mantained at 167° F. (75° C.) for 48 consecutive hours.

(ii) A material which ignites or evidences decomposition by fumes, discoloration, or other characteristics may not be classed as a blasting agent.

(4) *Electrostatic sensitivity test.* (i) The apparatus must be designed so that an electrostatic spark can be caused to jump from a pointed electrode to a metal plate which also serves as a sample holder.

(ii) Ten milligrams of material must be used for each test. The portion of the blasting agent tested must be representative of the complete mixture.

(iii) If the test portion flames, smolders, or glows from the spark, the materials is considered to have ignited.

(iv) The test must be conducted three times or until ignition occurs, whichever occurs first.

(v) A material which ignites in any trial when exposed to a spark of 0.006 joules delivered from a 0.002 to 0.004 micro-farad capacitor may not be classed as a blasting agent.

(5) *Impact sensitivity test.* (i) Impact tests must be conducted in a Bureau of Explosives Impact Apparatus. (See § 173.53, Note 4.)

(ii) The tests must be run on ten milligram samples. The test portions must be representative of the complete mixture.

(iii) The drop height used in all trials must be ten inches.

(iv) The test must be conducted ten times or until an explosion occurs, whichever occurs first. An explosion is evidenced by flame or flame and noise. The production of smoke alone is not evidence of explosion.

(v) A material which explodes in any trial may not be classed as a blasting agent.

(6) *Fire test.* (i) The largest package [not to exceed 200 kg (440 lbs.)] of each type to be offered for transportation must be placed on incombustible supports and subjected to a fire.

(ii) The fuel used may be kerosene-soaked wood, flammable or combustible liquid, or flammable gas.

(iii) The fire shall be large enough to engulf the bottom of the package. The flames must reach at least halfway up on all sides.

(iv) The duration of the fire must be such as to cause the material in the package to burn or fume off completely, except for substances such as the oxides of aluminum or iron which are incombustible.

(v) Explosion is evidenced by a loud noise and the projection of fragments from the fire area.

(vi) Any material which explodes in this test may not be classed as a blasting agent.

(c) A material containing no ingredients, other than prilled ammonium nitrate and fuel oil, need only pass the test specified in (b)(1) of this section to be classed as a blasting agent. If a material classed as a blasting agent is offered for transportation under the test exception of this paragraph, it must be described as "ammonium nitrate-fuel oil mixture."

(d) *Notification and approval.* Except as provided in paragraphs (e) and (f) of this section, approval by the Associate Director for Operations and Enforcement (OE) is required for materials classed as blasting agents produced by a person who:

(1) Has not previously produced that blasting agent; or

(2) Has previously produced the blasting agent but has made a change in the formulation, process, or components. A blasting agent is not required to be approved by the Associate Director for OE if an agency listed in paragraph (d)(3) of this section has determined and confirmed in writing to the Associate Director for OE that there are no significant differences in hazard characteristics relative to a blasting agent previously approved by the Associate Director for OE.

(3) No blasting agent may be approved for transportation unless it has been examined and tentatively classed by one of the following agencies according to the tests prescribed in this section.

(i) Bureau of Explosives (B of E);

(ii) U.S. Department of Energy (DOE) for blasting agents made by, or under the direction or supervision of DOE; or

(iii) U.S. Army Materiel Development and Readiness Command (DRCSF), Naval Sea Systems Command (NAVSEA 04H), or HQUSAF (IGD/SEV) for blasting agents made by or under the direction of the DOD.

(4) Except as otherwise provided in this section, each person who offers a blasting agent for transportation must submit a copy of the tentative class accompanied by a supporting laboratory report or equivalent data to, and receive a written approval from, the Associate Director for OE prior to offering the blasting agent for transportation.

(e) For each mixture of a blasting agent containing only prilled ammonium nitrate and fuel oil classed in

accordance with paragraph (c) of this section, a copy of the test report on which the class is based must be filed with the Associate Director of OE before the material is offered for transportation and a copy of the report retained as long as that formulation is in use. As a minimum, the test report must contain the name and address of the person or organization conducting the test, date of test, quantitative composition of the mixture, including prill size and porosity, and a description of test results.

(f) Samples of materials designed for blasting not previously approved may be offered for transportation to a testing facility for examination if:

(1) The material has been assigned a tentative description and class in writing by one of the agencies listed in paragraph (d)(3) of this section.

(2) The material is packaged as required by this part according to the tentative description and class assigned.

(3) The package is labeled as required by this subchapter and the following is marked on the package:

(i) The words "SAMPLE FOR LABORATORY EXAMINATION";

(ii) The net weight of material; and

(iii) The tentative shipping description.

(g) A material designed for blasting that has not been examined or approved may be transported from where it was produced to an explosive testing facility under the following conditions:

(1) The material is not a forbidden explosive or an initiating explosive according to this subchapter;

(2) The material must be described as high explosive or high explosive, liquid, as appropriate and packed, marked, labeled, and described on the shipping paper as required by this subchapter;

(3) The material is transported in a motor vehicle operated by the owner of the material; and

(4) The shipment is accompanied by a person, in addition to the driver of the motor vehicle, who is qualified by training and experience to handle the blasting material.

(h) *Packaging for blasting agents.* Each package of blasting agent when prepared for shipment must comply with the applicable requirements of § 173.24 and withstand one of the following tests:

(1) Rigid packages (e.g., boxes and drums), prepared as for shipment, must be capable of withstanding a four-foot drop onto solid concrete so as to strike the most vulnerable point on the package without rupture or any loss of contents.

(2) Non-rigid packages (e.g., tubes and bags), prepared as for shipment, must be capable of withstanding three four-foot drops onto solid concrete without rupture or any loss of contents.

(3) Blasting agents may not be transported in portable tanks, cargo tanks, or tank cars except in accordance with the terms of specific exemptions issued by the Office of Hazardous Materials Regulation.

(i) See §§ 174.83, 176.83 and 177.848 of this subchapter for loading requirements.

(j) Notwithstanding the requirements of this section, materials properly described as nitrocarbonitrate on August 14, 1979, and offered for transportation and transported as nitrocarbonitrate in accordance with the requirements of this subchapter in effect on that date, may continue to be offered and transported in compliance with those requirements until December 31, 1980.

§ 173.151 [Amended]

10. In § 173.151 the words "nitro carbo nitrate" are deleted from the fourth line.

§ 173.182 [Amended]

1. In § 173.182 paragraph (a) is amended by deleting "nitro carbo nitrate (see Note 1)" in the fourth and fifth lines from the end of the paragraph; Note 1 and paragraph (c) are deleted.

PART 174—CARRIAGE BY RAIL

12. In § 174.81 paragraph (a) the Table is amended by adding "Blasting agent" as the first entry under "OTHER HAZARDOUS MATERIALS" in the vertical column and between "Fireworks, common" and "Flammable liquids or flammable gases; * * *" in the horizontal column. The "Blasting agent" entry is designated No. 10 with the subsequent entries redesignated with appropriate consecutive numberings in both columns. An "X" is placed at the intersection of those columns headed, "Blasting Agent," "Initiating and primary explosives * * *," and "Fireworks, special or railway torpedoes." Footnote e following the table is amended by striking the work "nitrocarbonitrate" in the first line and replacing it with "blasting agent, ammonium nitrate-fuel oil mixture".

PART 175—CARRIAGE BY AIRCRAFT

13. In § 175.78, the present text is designated paragraph (a); paragraph (b) is added to read as follows:

§ 175.78 Stowage compatibility of cargo.

* * * * *

(b) No person may stow a package labeled BLASTING AGENT on an aircraft next to, or in a position that will allow contact with a package of special fireworks or railway torpedoes.

14. In § 175.320 paragraph (a), the Table is amended by revising the following entries:

§ 175.320 Cargo-only aircraft; only means of transportation.

(a) * * *

Material description	Class	Conditions
*	* * *	* * *
Gasoline	Flammable liquid	Permitted in metal drums having rated capacities of 55 gal. or less. May not be transported in the same aircraft with materials classed as class A, B, or C explosives, blasting agents, corrosive materials or oxidizing materials. Permitted in installed tanks each having a capacity of more than 110 gal. Subject to the conditions specified in para. (c) of this section.
High explosives	Class A explosives	Limited to explosives to be used for blasting. Permitted only when no other cargo is aboard the aircraft or when being transported in the same aircraft with an authorized shipment of any 1 or more of the following materials to be used for blasting: Ammonium nitrate-fuel oil mixtures Blasting agent, n.o.s. Cordeau detonant fuse. Propellant explosive (solid) class B (water gels only). Propellant explosive (liquid) class B (water gels only).
Oil n.o.s.; petroleum oil or petroleum oil, n.o.s.	Flammable liquid	Permitted in metal drums having rated capacities of 55 gal. or less. May not be transported in the same aircraft with materials classed as class A, B, or C explosives, blasting agents, corrosive materials, or oxidizing materials. Permitted in installed tanks each having a capacity of more than 110 gal. subject to the conditions specified in para. (c) of this section.
*	* * *	* * *

PART 176—CARRIAGE BY VESSEL

§ 176.83 [Amended]

15. In § 176.83 paragraph (a), Table I is amended by adding a new subheading "Blasting Agents" in the vertical column following the entry "Fireworks, common, * * *". Two new entries numbered 17 and 18 are added to the vertical column under the new subheading "Blasting Agents" and to the horizontal column following the entry "Fireworks, common, * * *" as follows: "17. Blasting agent, nos" and "18. Ammonium nitrate-fuel oil mixtures". An "X" is placed at the intersection of those columns numbered 3 and 10, with those columns numbered 17 and 18.

Table II is amended by changing the third line to read: "EXPLOSIVE C; BLASTING AGENTS".

16. The Subpart J Heading is revised to read as follows:

Subpart J—Detailed Requirements for Flammable Solids, Oxidizers, Organic Peroxides, and Blasting Agents

§ 176.400 [Amended]

17. In § 176.400 the Heading and paragraphs (a) and (b) are amended by adding the words "blasting agents," preceding the word "oxidizer".

18. In § 176.410 the Heading and paragraph (a)(1) are revised; the introductory text of paragraphs (c), (d), and (e) and paragraph (e)(1) are amended by deleting the words "nitro carbo nitrate" and adding "blasting agents" in place thereof:

§ 176.410 Blasting agents, ammonium nitrate, and ammonium nitrate-mixtures.

(a) * * *

(1) Blasting agents and ammonium nitrate-fuel oil mixtures.

* * * * *

19. In § 176.415 the Heading is revised; paragraphs(a)(2), (b)(6), (c)(1), (c)(2), and (c)(5) are amended by deleting "nitro carbo nitrate" and inserting "blasting agents or ammonium nitrate-fuel oil mixtures" in place thereof:

§ 176.415 Permit requirements for blasting agents, ammonium nitrates, and certain ammonium nitrate mixtures.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

19. In § 177.848 paragraph (a) the loading and storage chart is amended by adding "Blasting agent" as the first entry under "OTHER HAZARDOUS MATERIALS" in the vertical column and between "Fireworks, common" and "Flammable liquids or flammable gases; * * *" in the horizontal column. The Blasting agent entry is designated No. 10, with the subsequent entries redesignated with appropriate consecutive numberings in both columns. An "X" is placed at the intersection of those columns headed, "Blasting agent," "Initiating and primary explosives * * *," and "Fireworks, special or railway torpedoes." Footnote e following the table is amended by striking the words "nitro carbo nitrate" in the first line and replacing it with "blasting agent, ammonium nitrate-fuel oil mixture."

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53. and App. A to Part 1)

Note—The Materials Transportation Bureau has determined that this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034). A regulatory evaluation is available in the docket.

Issued in Washington, D.C., on May 21, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 79-16417 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 44, No. 106
Thursday, May 31, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 46]

Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930, Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of proposed revisions of regulations (7 CFR Part 46).

SUMMARY: This docket proposes revisions of Part 46, Regulations (Other Than Rules of Practice) under the Perishable Agricultural Commodities Act. The purpose of the proposed revisions is, in part, to bring the regulations into conformity with and to implement the recent amendments to the Act provided in Pub. L. 95–562, approved November 1, 1978, 92 Stat. 2381.

DATE: Written comments to these revisions must be filed not later than July 30, 1979 to be assured of consideration.

ADDRESSES: Written comments should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27)).

FOR FURTHER INFORMATION CONTACT: Wilbur A. Rife, Head, License Section, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447–2189.

SUPPLEMENTARY INFORMATION: This notice, proposing the revisions of the regulations, is issued pursuant to Section 15 of the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a et seq.). The Perishable Agricultural Commodities Act was enacted in 1930, after representatives of the produce industry recognized and convinced Congress that there was a need for a code of fair trading standards to curb abuses in the marketing of perishable agricultural commodities in interstate or foreign commerce. It establishes a means for the enforcement of marketing contracts by providing for the collection of damages from anyone who fails to live up to contractual obligations. Licenses are the key to the enforcement of the Act, and can be suspended or revoked for violations of the law. The Act has been amended numerous times to keep it up to date with changes in trading practices. The latest amendment was enacted on November 1, 1978.

Public hearing and considerations by the House and Senate Subcommittees on the 1978 legislation amending the Act can be found in House Report No. 95–1620 and Senate Report No. 95–1156. These reports show that there were extensive discussions on the proposed legislation and that all segments of the industry were heard in the public hearing regarding the proposal to amend the Act.

The recent amendments to the Act (Pub. L. 95–562), increased the exemption, effective January 1, 1979, on purchases of produce by retailers and sales of frozen food brokers from $100,000 to $200,000 during a calendar year, before they are subject to a license under the Act; authorized a change in the manner in which license fees are assessed from the current uniform fee, regardless of size or volume of business, to a variable basis; increased the maximum annual license fee from $100 to $150, and permitted an assessment of up to $50 per branch for each branch operation exceeding nine, provided that the aggregate annual license fees that can be assessed a firm operating under the Act cannot exceed $1,000; authorizes inspection of the accounts, records, and memoranda of any commission merchant, dealer or briker, who has been determined, in a formal disciplinary proceeding, to have violated the prompt payment provisions of Section 2(4) of the Act to insure that this provision is not being further violated; and authorizes the Secretary to require that any commission merchant, dealer or broker who has been determined, in a formal disciplinary proceeding, to have violated the prompt payment provision of Section 2(4) of the Act, furnish, maintain, and from time to time adjust a surety bond in a form and amount satisfactory to the Secretary as assurance that the commission merchant, dealer or broker will pay all reparation awards subject to its right of appeal under Section 7(c) of the Act.

(a) *License fees and collateral matters.* As noted above, the 1978 amendments to the Act affect license fees in two ways. First, the amendment authorizes annual assessments of up to $50 per branch for each branch operation exceeding nine providing that the aggregate annual license fee cannot exceed $1,000, and authorizes a maximum annual basic license fee of $150. The authority to assess a fee on branch operations establishes a more equitable assessment of license fees by having the larger volume firms pay a fairer share of the cost of administering the program. Because of this authority to assess license fees on branches or additional business facilities operated by firms subject to the Act, it is proposed that § 46.2 of the regulations be amended to include a definition of the term "Branch or additional business facility." This additional definition is necessary in order to establish, for fee assessment purposes, which business operations fall within the purview of the newly assessable category.

Additionally, it is proposed that §§ 46.4(b), 46.13 and 46.14(b) be amended to reflect that records and memoranda regarding the number and address of any branches or additional business facilities must be kept and preserved by the commission merchant, dealer, or broker and reported to the Secretary.

The second effect of the amendments is to raise the maximum basic annual license fee which may be assessed by the Secretary. These license fees and assessments provide the revenue through which the cost of administration of the Persishable Agricultural Commodities Act program is financed. The statutory maximum license fee was last increased by Congress in 1969, to $100. The recent amendments increase the maximum basic annual license fee to $150.

The increased fee structure was needed to maintained the financial solvency of the program, caused by a decline in the number of firms subject to a license during the 1970's. This decline was due primarily to mergers,

consolidations, and closures of all firms. During the same period, the cost of administering the Act increased sharply, even though the number of employees in the program has remained relatively stable, or been slightly reduced over the past decade.

As a result, the present annual license fee of $100 is not producing sufficient revenue to meet administrative expenses. Therefore, it is proposed that § 46.6 of the regulations be amended to increase the basic annual license fee to $135. Additionally, it is proposed that licensees with multiple branches pay an annual fee of $35 per branch for each branch in excess of nine, subject to the aforementioned $1,000 limit. It is proposed that this new fee structure be effective October 1, 1979.

(b) *Retailer exclusion.* The amendments to the Act increase the amount of perishable agricultural comodities retailers are permitted to buy without being considered a "dealer" from $100,000 in any calendar year to $200,000 in any calendar year. It is proposed to amend § 46.2(m) of the regulations to make the definition of the term "dealer" in the regulations consistent with that in the Act.

(c) *Broker exclusion.* The amendments to the Act increase the exempted amount of frozen fruits and vegetables for which a person acting as an independent agent may negotiate a sale on behalf of a vendor form $100,000 in any calendar year to $200,000 in any calendar year. It is proposed to amend § 46.2(n) of the regulations to make the definition of the term "broker" in the regulations consistent with that in the Act.

(d) *Bond.* The amendments to the Act authorize the Secretary to require that any commission merchant, dealer or broker, who has been determined, in a formal disciplinary proceeding, to have violated the prompt payment provisions of Section 2(4) of the Act to furnish, maintain and from time to time adjust a surety bond in a form and amount satisfactory to the Secretary as an assurance that the commission merchant, dealer or broker will pay all reparation awards subject to its right of appeal under Section 7(c) of the Act. It is proposed to amend § 46.5 of the regulations to reflect that Section 13(b) of the Act permits the Secretary to require the posting of a bond. It is also proposed that the minimum bond acceptable, under any provision of the Act be increased to $10,000.

(e) *License suspension.* The amendments to the Act permit the suspension of the license of a commission merchant, dealer or broker who, after having been determined in a formal disciplinary proceeding to have violated the prompt payment provisions of Section 2(4) of the Act, refuses to permit inspection of its accounts, records and memoranda or fails or refuses to furnish, maintain, or adjust the surety bond required by the Secretary. It is proposed that § 46.9(h) of the regulations be amended to reflect this added authority.

(f) *Commercial Unit.* Several recent reparation cases, brought pursuant to the Act, have raised questions as to what constituted a "commercial unit." Inasmuch as this has not heretofore been a problem, no definition of the term had been included in the regulations. In order to forestall any further difficulties from arising, a definition of the term "commercial unit" is proposed to be added to § 46.43 of the regulations.

(g) *Miscellaneous.* Section 46.4(b)(4) of the regulations currently provides that responsibly connected female married persons furnish the full legal name of their husbands on the application for a license. Inasmuch as no requirement is made that male married persons furnish the full legal name of their wives on the application, the requirement that a female provide the name of her spouse may be construed as discriminatory. It is therefore proposed that § 46.4(b)(4) be amended to delete the requirement.

Additionally, it is proposed that § 46.13 of the regulations be amended to require that licensees using trade names report the deletion or addition of any trade name to the Director. Currently, licensees are only required to obtain approval of the Secretary before using a trade name. It is believed that knowing which trade names are being used, at any point in time, will be useful in administering the Act.

The proposed revisions are as follows:

§ 46.2 [AMENDED]

1. Amend § 46.2 to read as follows:

The terms defined in the first Section of the Act shall have the same meaning as stated therein. Unless otherwise defined, the following terms whether used in the regulations, in the Act, or in the trade shall be construed as follows:

* * * * *

(m) "Dealer" means any person engaged in the business of buying or selling produce in wholesale or jobbing quantities in commerce, and includes:

* * * * *

(2) Retailers, when the invoice cost of all purchases of produce exceeds $200,000 during a calendar year. In computing dollar volume, all purchases of fresh and frozen fruits and vegetables are to be counted, without regard to quantity involved in a transaction or whether the transaction was in intrastate, interstate or foreign commerce;

* * * * *

(n) "Broker" means any person engaged in the business of negotiating sales and purchases of produce in commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a "broker" within the meaning of the Act if such person is an independent agent negotiating sales for or on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of $200,000 in any calendar year.

* * * * *

(gg) "Branch or additional business facility," as used in Section 3(b) of the Act, means an office or outlet in a location other than that of the principal or main office of a firm, out of which or through which the firm purchases, sells, negotiates contracts, solicits, or handles consignments, or otherwise contracts in perishable agricultural commodities including seasonal, part-time and full-time operations. As used in this paragraph, "branch or additional business facility" includes, but is not limited to, the following:

(1) Jobbers, Wholesalers, Distributors.—Each location through which commodities are bought, sold or otherwise contracted;

(2) Retailers.—Each outlet through which retail sales of commodities are made and each office which purchases commodities;

(3) Trucker/Dealer.—A truck is a "branch" office if the driver is authorized to buy, sell or otherwise contract for commodities on behalf of the firm;

(4) Shippers.—On-the-ground representatives making purchases, sales or otherwise contracting for commodities;

(5) Brokers.—Each office conducting contract negotiations including on-the-ground representatives negotiating contracts for commodities;

(6) Processors.—Each location at which commodities are purchased, sold or contracted to be purchased or sold;

(7) Cooperative.—Each operation away from the main office that has responsibility to account for proceeds received from sales of commodities; or

(8) Seasonal/Part-Time Operations.—Any facility with on-the-ground

representatives making purchases, sales, or otherwise contracting for commodities.

§ 46.4 [Amended]

2. Amend § 46.4(b) to read as follows:

* * * * *

(b) The applicant shall furnish the following information:

(1) Name or names in which business is conducted; place of business; mailing address; name, location and number of branches or additional business facilities, divisions or affiliates; name of firm succeeded and whether the applicant assumes responsibility of settling any complaints filed under the Act against the firm succeeded.

* * * * *

(4) Full legal name, all other names used, if any, and home address of the owner. If a partnership, the applicant shall furnish the full legal names, all other names used, if any, and home address of all partners, indicating whether general, limited or special partners; or if an association or corporation the applicant shall furnish the full legal names, all other names used, if any, and home address of all officers, directors and holders of more than 10 per centum of the outstanding stock and percentage of stock held by each such person. Minors shall also furnish the full name and home address of their guardian. If the applicant is a trust the name of the trust and full name and home address of the trustee shall be furnished.

§ 46.5 [Amended]

3. Amend § 46.5 *Bonds* to read as follows:

Bonds prescribed in Sections 4(c), 4(e), 8(b), and 13(b) of the Act shall be in the form of cash or surety bonds in the form and amount satisfactory to the Director and shall not be less than $10,000. When cash is posted as surety, it shall be deposited into a special account of the United States Treasury and no interest is to accrue or be paid the licensee. When surety bonds are furnished, the surety shall be a company holding a certificate of authority from the Secretary of the Treasury under Act of Congress approved July 30, 1947 (6 U.S.C. secs. 6–13) as acceptable surety on Federal bonds.

§ 46.6 [Amended]

4. Amend § 46.6 *License fee* to read as follows:

The annual license fee is one hundred and thirty-five ($135) dollars plus thirty-five ($35) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed one thousand ($1,000) dollars. The Director may require that the fee be submitted in the form of a money order, bank draft, cashier's check, or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Division may accept fees and issue receipts therefor.

§ 46.9 [Amended]

5. Amend § 46.9(h) to read as follows:

* * * * *

(h) Under Section 13 of the Act a license can be suspended:

(1) If the licensee refuses to permit inspection of his records or of any lot of produce under his ownership or control; or

(2) If the licensee, subsequent to a determination in a formal disciplinary proceeding that it has violated the prompt payment provision of Section 2(4) of the Act, refuses to permit an inspection of its accounts, records and memoranda to insure that it is in compliance with the prompt payment provision of Section 2(4) of the Act or fails or refuses to furnish, maintain, or adjust a surety bond in a form and amount satisfactory to the Secretary.

6. Revise § 46.13 to read as follows:

§ 46.13 Address, ownership, changes in trade name, changes in number of branches, changes in members of partnership, and bankruptcy.

The licensee shall:

(a) Promptly report to the Director in writing:

(1) Any change of address;

(2) Any change in officers, directors, and holders of more than ten percent of the outstanding stock of a corporation, with the percentage of the stock held by each such person;

(3) Any deletions or additions of trade names;

(4) Any change in the number and address of any branches or additional business facilities, and;

(5) When the licensee, or if the licensee is a partnership, any partner is subject to proceedings under the bankruptcy laws. A new license is required in case of a change in the ownership of a firm, an addition or withdrawal of members of a partnership, or in case business is conducted under a different corporate charter from that under which the license was originally issued.

(b) Obtain approval from the Director prior to using any trade name.

§ 46.14 [Amended]

7. Amend § 46.14(b) to read as follows:

* * * * *

(b) Every commission merchant, dealer, and broker shall prepare and preserve records and memoranda required by the Act which shall fully and correctly disclose the true ownership and management of such business during the preceeding four years. Such records shall include the number and location of all branches or additional business facilities operated by or for the commission merchant, dealer or broker. In the case of a corporation, such records shall include the corporate charter, record of stock subscription and stock issued, the amounts paid in for stock and minutes of stockholders' and directors' meetings showing the election of directors and officers, resignations and other pertinent corporate actions. In the case of a partnership, the records shall contain a copy of the partnership agreement showing the type of partnership, the full names and addresses of all partners including general, special or limited partners, the partnership interest of each individual, and any other pertinent records of the partnership.

§ 46.17 [Revised]

8. Revise § 46.17 to read as follows:

Each licensee shall, during ordinary business hours, promptly upon request, permit any duly authorized representative of the Department to enter his place of business and inspect such accounts, records, and memoranda as may be material (a) in the investigation of complaints under the Act, or (b) to the determination of ownership, control, packer, or State, country, or region or origin in connection with commodity inspections, or (c) to ascertain whether there is compliance with Section 9 of the Act, or (d) in administering the licensing and bonding provisions of the Act, or (e) if the licensee has been determined in a formal disciplinary proceeding to have violated the prompt payment provision of Section 2(4) of the Act, to determine whether, at the time of the inspection, there is compliance with that Section. Any necessary facilities for such inspection shall be extended to such representative by the licensee, his agents, and employees.

§ 46.43 [Amended]

9. Amend § 46.43 to read as follows:

* * * * *

(ii) "Commercial Unit" means a single shipment of one or more perishable agricultural commodities tendered for

delivery on a single contract, such commercial unit must be accepted or rejected in its entirety. Acceptance of a commercial unit does not modify the parties' existing contractual rights and responsibilities.

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." A copy of an approved Draft Impact Analysis is available from Wilbur A. Rife, Head, License Section, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447-2189.

Dated: May 24, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-16858 Filed 5-30-79; 8:45 am]

BILLING CODE 3410-02-M

[7 CFR Part 917]

Fresh Pears, Plums, and Peaches Grown in California; Proposed Extension of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes to continue through May 31, 1980, the current U.S. No. 1 minimum grade requirement applicable to fresh shipments of California peaches. It would also continue through such date specifed minimum size requirements except that from July 3, 1979, through October 31, 1979, the minimum size for varieties not named in the regulation would be increased from size 96 to size 80. These requirements are designed to provide for orderly marketing in the interest of producers and consumers.

DATES: Written comments must be received on or before June 19, 1979. Proposed effective date: July 3, 1979.

ADDRESS: Send comments to the Hearing Clerk, United States Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447-5975.

SUPPLEMENTARY INFORMATION: Peach Regulation 11 (§ 917.449; 44 FR 28775) sets forth the current grade and size requirements for the handling of fresh California peaches through July 2, 1979. This proposed amendment would continue these requirements through May 31, 1980, except that during the period July 3 through October 31, 1979, size 80 would be the minimum size for varieties not listed in the regulation. The proposal was recommended by the Peach Commodity Committee established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917). The marketing agreement and order regulate the handling of fresh pears, plums, and peaches grown in California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This proposal has not been determined significant under the USDA criteria for implementing Executive Order 12044.

Fresh shipments of California peaches from the 1979 crop have been estimated at 12.0 million packages by the Peach Commodity Committee, as compared with actual shipments of 10.1 million packages last season. Shipments of peaches from the production area are currently underway.

The grade and size requirements are designed to permit shipment of ample supplies of peaches of acceptable grades and sizes in the interest of both producers and consumers pursuant to the declared policy of the act.

Under the proposal, the provisions of Peach Regulation 11 (§ 917.449; 44 FR 28775) would be amended to read as follows:

§ 917.449 Peach Regulation 11.

(a) During the period July 3, 1979, through May 31, 1980, no handler shall handle:

(1) Any package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade.

(2) Any package or container of Armgold, Desertgold, Pat's Pride, Royal April, Royal Gold, or Springold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in subdivision (i) of this subparagraph (2) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) Any package or container of any type of Babcock, Bonjour, Cardinal, Dixired, Early Coronet, Early Royal May, Flavorcrest, JJK-1, June Lady, May Lady, Merrill Gemfree, Pat's Redhaven, Royal May, or Springcrest variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box;

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in subdivisions (i) and (ii) of this subparagraph (3) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 79 peaches.

(4) Any package or container of Aurora, Coronet, Indian Red, Merrill Gem, Redhaven, Redtop, or Regina variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 70 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in subdivisions (i) and (ii) of this subparagraph (4) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 71 peaches.

(5) Any package or container of Angelus, Autumn Gem, Bella Rosa, Belmont, Cal Red, Carnival, Early Fairtime, Early O'Henry, Fairtime, Fay Elberta, Fayette, Fiesta, Fire Red, Flamecrest, Fortyniner, Franciscan, Halloween, John Gee, Jody Gaye, July Elberta (Early Elberta, Kim Elberta, and Socala), July Lady, Madera Gem, Mardigras, Merricle, O'Henry, Pacifica, Pageant, Parade, Paradise, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Regular Elberta, Rio Oso Gem, Scarlet Lady, Sparkle, Summerset, Summertime, Suncrest, Sun Lady, Toreador, Treasure, Williams Gem, or Windsor variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box;

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in subdivisions (i) and (iii) of this subparagraph (5) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches.

(b) During the period July 3, 1979, through October 31, 1979, no handler shall handle any package or container of any variety of peaches not specifically named in subparagraphs (2), (3), (4), or (5) of paragraph (a) unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22 D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(2) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 70 peaches in the box; or

(3) Such peaches in any container when packed other than as specified in subparagraphs (1) or (2) of this paragraph (b) are of a size that 16-pound sample, representative of the peaches in the package or container, contains not more than 71 peaches.

(c) As used herein, "U.S. No. 1" and "standard pack" mean the same as defined in the United States Standards for Peaches (7 CFR 2851.1210–1223); "No. 22D standard lug box" and "No. 12B standard fruit (peach) box" means the same as defined in Section 1387.11 of the "Regulations of the California Department of Food and Agriculture." All other terms mean the same as defined in this marketing order.

Dated: May 25, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-16955 Filed 5-30-79; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[12 CFR Part 16]

Securities Offering Disclosure Rules

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Proposed Amendments.

SUMMARY: The Comptroller of the Currency ("Comptroller") is proposing amendments to Part 16, a regulation which requires that each existing or newly organized national bank provide an offering circular to investors when it offers or sells its equity or debt securities, subject to specific exemptions. The proposals are based upon two years of staff experience interpreting the requirements of Part 16, and the suggestions of bankers and other professionals who have worked with the regulation. The amendments are being proposed in order to codify staff interpretations based upon the existing requirements and to enable more expeditious processing of offering circulars relating to certain types of offerings by providing for review by the Regional staff. Also, the Comptroller is requesting comment on specific questions concerning possible future proposed amendments to Part 16.

DATE: Written comments must be received on or before July 30, 1979.

ADDRESS: Written comments should be addressed to John E. Shockey, Chief Counsel, Comptroller of the Currency, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT: Ralph Janvey, Attorney, Securities Disclosure Division, Comptroller of the Currency, Washington, D.C. 20219, at (202) 447–1954.

SUPPLEMENTARY INFORMATION: The major proposed amendments to Part 16 are discussed below:

I. Proposed Amendments to Securities Offering Disclosure Rules

1. Section 16.2, "Definitions" would be amended to include a definition of the term "beneficial ownership." The term would have the same definition as set forth in 12 CFR 11.4(g). Proposed amendments to 12 CFR 11.4(g) have been published in the Federal Register on the same date as these amendments and all interested parties should refer to the proposed 12 CFR 11.4(g) definition.

2. Section 16.4(b) currently provides a transaction exemption from the requirements of § 16.6 for any offering by a bank of its securities where the amount of the securities offered for sale, when aggregated with the amount of all other sales by the bank of its securities within the 12 months immediately preceding the commencement of the subject offering, does not exceed $300,000.

The Comptroller proposes to eliminate the exemption, thus requiring that every public offering and sale by a national bank of its securities be made pursuant to an offering circular filed and prepared in accordance with the regulation. In place of the exemption, the Comptroller proposes a substantially abbreviated offering circular format available to a bank which offers and sells its securities in an amount which, when aggregated with all other sales by the bank of its securities within the 12 months immediately preceding the commencement of the subject offering, does not exceed $1,000,000. This proposal is set forth as § 16.4(e). In addition, an offering circular prepared in accordance with the abbreviated format and which relates exclusively to common stock would be filed with the Region in which the bank's principal office is located. The Comptroller would reserve the right to require the filing of any such offering circular with the Washington Office.

Elimination of the §16.4 exemption recognizes the need of public investors for certain basic information about a bank which is offering its securities, regardless of the amount of securities being offered, for sale. The abbreviated offering circular format is designed to afford smaller banks, which typically offer smaller amounts of their securities as part of a twelve month capital plan, a vehicle for such disclosure which will more accurately match the complexity of their operations and minimize the burdens and expenses of preparing an offering circular.

The Comptroller requests comment on this proposal and requests answers and comments to the following questions: (1) should the present $300,000 exemption be retained or raised to a higher dollar amount; (2) should a combined dollar exemption up to $300,000 and an abbreviated offering circular format for an offering between $300,000 and $1,000,000 be utilized; and (3) should the $300,000 exemption be deleted and the Comptroller require that any bank when offering and selling securities in a public offering comply with the requirements of §16.6.

3. Section 16.4(a) provides an exemption from the offering circular requirement of §16.6 for any transaction by a bank not involving a public offering of its securities. The Comptroller proposes to amend § 16.4(a) to provide an unqualified exemption from the notice requirement of § 16.5(f) for a transaction by a bank involving the offer, offer to sell, offer for sale, or sale of securities by a bank to its holding company in reliance on § 16.5. A bank which engages in a transaction involving its holding company, as defined in 12 U.S.C. 1841, will continue to be subject to the requirements of § 16.5, but no notice would have to be filed. This

should eliminate any unnecessary paperwork burden currently imposed by the regulation.

4. Section 16.4(c) provides an exemption from the offering circular requirements of § 16.6, for any reorganization, merger, consolidation or acquisition of assets by a bank which utilizes a proxy statement prepared substantially in accordance with the requirements of 12 CFR 11.5 and § 11.51. The Comptroller proposes to amend § 16.4(c) to clarify that the exemption is available where constituent shareholders who will receive securities are provided with certain information about the bank issuing those securities. Present § 16.4(c) would be renumbered as § 16.4(b).

5. The Comptroller is proposing technical amendments to Items 1, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of § 16.6 and Items 1, 2, 3, 4, 5, 7 and 12 of § 16.7 to codify staff interpretations, and to expand and clarify the requirements of those Items. In particular, Item 4 of § 16.6 and Item 4 of § 16.7 would set forth, respectively, a prescribed tabular format for presenting the capital structure information of an existing bank, and the pro forma statement of capitalization of a bank in organization. Also, Item 6 of § 16.6 is proposed to be amended to clarify the requirements for describing the business of the bank. The statistical information required by Items 5 and 6 of § 16.6 is the kind set forth in The National Bank Surveillance System Performance Report which may be used as a source in preparing offering circular disclosure. The purpose of the proposed amendments is to assist a bank in the process of preparing an offering circular and to decrease the number of standard comments transmitted by the staff of the Comptroller.

6. Item 16 of § 16.6 sets forth the requirements for the financial statements and related notes required in an offering circular. The Comptroller proposes to amend Item 16, which would be renumbered as Item 15, to clarify the requirements as to the form and content of the various financial statements and notes. Also, Instruction 2 of Item 16 presently requires that an offering circular include financial statements as of the date not more than 90 days prior to the date the offering circular is expected to be declared effective. The Comptroller proposes to amend Item 16 to require that a bank furnish the required financial statements as of a date within 90 days prior to the date of filing the offering circular and any amendment thereto. The purpose of the proposal is to enable a bank to determine with some degree of certainty as of what date the financial information must be presented in a preliminary and revised offering circular. The Comptroller requests comments and suggestions on the proposed amendments of Item 16. The Comptroller also requests comments concerning a concept of only requiring financial statements as of a date 6 months prior to the date of filing the offering circular and permitting the use of "capsule information" for interim periods. Specifically, comment is sought as to the merit of this concept and whether it should be limited to only certain banks and, if so, what criteria should be established.

7. Items 13 and 14 of § 16.6 currently require the disclosure of information concerning "Remuneration of Directors and Officers" and "Material Transactions", respectively. The Comptroller proposes to combine the two items into a new Item 13 entitled "Remuneration and Other Transactions with Management", and to cross-reference the requirements of the new item to Item 7 of 12 CFR 11.51. Accordingly, Items 15 and 16 would be renumbered. Amendments proposed by the Comptroller to Item 7 of 12 CFR 11.51 have been published in the Federal Register on the same date as these proposals and all interested parties should refer thereto.

II. Advance Notice of Additional Proposed Rulemaking

The Comptroller specifically requests comment from all interested parties on the following two issues: (1) Should the present requirements of Part 16 be eliminated in favor of setting forth the requirements in the form of a policy statement urging banks to follow its contents and format when raising capital; and/or (2) should Part 16 be eliminated in its entirety, and a statement or regulation adopted stating that any national bank when raising capital should be aware of the substantial liabilities which may accrue to the bank under the antifraud provisions of the Federal securities laws with respect to the offer and sale of its securities.

DRAFTING INFORMATION: The principal drafter of this document in Ralph Janvey, Attorney, Securities Disclosure Division, Comptroller of the Currency, Washington, D.C. 20219.

Proposed Amendments

The Comptroller proposes to amend 12 CFR Part 16 as follows:

PART 16—SECURITIES OFFERING DISCLOSURE RULES

1. By amending § 16.2 by revising paragraph (f) and addding paragraph (g) as follows:

§ 16.2 Definitions.

* * * * *

(f) The term "associate," when used to indicate a relationship with any person, means (1) any corporation or organization (other than the bank or a majority owned subsidiary of the bank) of which said person is an officer or partner or is, directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse or relative of such spouse of such person who has the same home as such person or who is a director or officer of the parent of the bank.

(g) The term "beneficial ownership" shall have the same definition as set forth in 12 CFR 11.4(g).

2. By amending § 16.3 by adding a sentence to the end of paragraph (b) and revising paragraph (c) as follows:

§ 16.3 Offering circular requirements, filing and effective date.

* * * * *

(b) * * * If a preliminary offering circular is utilized there shall be included on the cover page the following language: "This preliminary offering circular has been filed with the Comptroller of the Currency but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the offering circular becomes effective. This preliminary offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state."

(c) The offering circular required by § 16.6 for an existing bank and by § 16.4(b) for an existing bank offering preferred stock, debt or any other senior security shall be filed with the Comptroller of the Currency, Washington, D.C. 20219. Any abbreviated offering circular required by

§ 16.4(e) for common stock, and any offering circular required by § 16.7 for a bank in organization shall be filed with the Regional Office of the Comptroller of the Currency in the Region where the bank is or will be located. The Comptroller reserves the right to have a common stock offering, which qualifies for an offering pursuant to § 16.4(e), be filed with and reviewed by the staff of the Washington Office.

* * * * *

3. By revising § 16.4 as follows:

§ 16.4 Exempt Transactions and Abbreviated Offering Circular Requirements.

This part shall not apply to: (a) Any transaction by a bank not involving a public offering as defined in § 16.5. A transaction by a bank involving the offer, offer to sell, offer for sale, or sale of securities of a bank to its holding company, as defined in 12 U.S.C. 1841, which relies upon § 16.5, is *per se* exempt, and a Notice of non-public sales and exchange is not required.

(b) Any reorganization, merger, consolidation or acquisition of assets by a bank where constituent shareholders who will receive securities in the transaction are furnished with a proxy statement or information statement prepared substantially in accordance with the requirements of 12 CFR 11.5 and 11.51. Such proxy or information statement must contain information about the issuing bank which is substantially similar to that called for by Items 5 and 6 of § 16.6.

(c) Any transaction by a bank with its existing security holders which involves an exchange of a security pursuant to the exercise of a right of conversion.

(d) Any transaction in which the securities of a bank are offered to its employees or directors pursuant to a stock purchase, stock option, or savings plan meeting the requirements of 12 CFR 13.

(e) *Abbreviated Offering Circular.* Any offering of securities by a bank where the amount being offered, when aggregated with all other sales by the bank of its securities within the 12 months immediately preceding the commencement of the subject offering does not exceed $1 million, need only include in the offering circular information required by the following Items of § 16.6: Items 1; 2; 3; 4; 6 (a) through (j) including Instructions 2 and 4; 7; 8; 9; 10; 11; 12; 13; 15 and 16. In responding to Item 13 the bank need only provide information required by Items 7(a), Instructions 1 and 2, 7(d) and 7(e) of 12 CFR 11.51.

4. By amending § 16.5 by revising paragraph (e) as follows:

§ 16.5 Nonpublic Offerings.

* * * * *

(e) *Limitations on disposition.* * * *

No securities may be sold until two years after the date the securities are fully paid for.

5. By amending § 16.6, Item 1 as follows:

§ 16.6 Form and content of an offering circular of an existing bank.

* * * * *

Item 1—Cover Page

* * * * *

(d) The following statements in capital letters and boldface type.

THE MERITS OF THESE SECURITIES HAVE NOT BEEN PASSED UPON BY THE COMPTROLLER OF THE CURRENCY NOR HAS THE COMPTROLLER OF THE CURRENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE OFFERING CIRCULAR.

NO AGENT OR OFFICER OF THE BANK OR ANY OTHER PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THE OFFERING CIRCULAR AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS SHOULD NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE BANK.

(e) * * *

(1) The statement in capital letters and boldface type:

THESE OBLIGATIONS WILL NOT REPRESENT DEPOSITS AND WILL NOT BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY. THESE OBLIGATIONS MAY NOT BE REPAID PRIOR TO MATURITY, EITHER PURSUANT TO AN ACCELERATION IN EVENT OF DEFAULT OR OTHERWISE, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMPTROLLER OF THE CURRENCY. THESE OBLIGATIONS WILL BE SUBORDINATE TO THE CLAIMS OF DEPOSITORS AND OTHER CREDITORS, WILL BE INELIGIBILE AS COLLATERAL TO SECURE A LOAN FROM THE BANK, AND WILL BE UNSECURED.

(2) The offering price, denominations, aggregate amount offered, interest rate, maturity, repayment terms, dates and restriction on payment of dividends.

* * * * *

(g) The information called for by the following table presented in substantially the same form:

	Price to public	Underwriting commissions	Proceeds to bank*
Per unit	$———	$———	$———
Total	$———	$———	$———

*Before deducting expenses to be incurred by the bank in connection with the offering circular estimated at ——.

(1) Any compensation, other than regular salaries, to be paid to directors, officers and employees of the bank in connection with the offering circular should be disclosed in a statement following the table. If no special compensation is to be paid, a statement to that effect should be added following the table.

(h) A brief statement of the plan of distribution and the method and terms of subscription described in response to Item 2 below.

(i) The date the offering circular is declared effective by the Comptroller of the Currency.

(j) Immediately following the cover page there should be a page with a detailed table of contents and the following paragraph in capital letters and bold face type:

* * * * *

(k) If a bank has a class of securities registered with the Comptroller of the Currency pursuant to the Securities Exchange Act of 1934, include a section captioned "Available Information" on a page following the cover page, setting forth a statement that the bank is subject to the reporting requirements of the Securities Exchange Act of 1934 and in accordance therewith files periodic reports and proxy statements with the Comptroller of the Currency. Also, indicate that these reports and proxy statements can be inspected at and are available from the Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, SW., Washington, D.C. 20219 and at the Office of the Regional Administrator of National Banks (state address of appropriate Regional Office).

6. By amending § 16.6, Item 2 as follows:

Item 2—Plan of Distribution

* * * * *

(b) If there is no underwriter, outline briefly the bank's plan for distributing the securities. State whether any director, officer or employee will be involved and quantify any special compensation they will receive.

(c) Indicate the method and terms of subscription. Describe any applicable

preemptive rights or voluntary plan for pro rata subscription. State how oversubscription and fractional shares will be handled. (See Interpretive Ruling 7.6040.) Indicate whether it is expected that current directors will exercise their proportional preemptive rights. (Please note the Comptroller's policy that directors may not be afforded oversubscription preferences.) State how and to whom unsubscribed shares will be offered. A copy of any underwriting agreement, subscription form to be used, or transferable right to be issued, must be appended to the offering circular when filed.

7. By amending § 16.6, Item 3 as follows:

Item 3—Use of Proceeds

* * * * *

Instructions

1. A statement that the bank needs a broader capital base or that the proceeds will be used for general banking purposes will generally not be sufficient without additional information. If the offering is part of an overall plan to supplement the bank's capital base, discuss: The current capital ratios (loans to capital, deposits to capital and total assets to capital); the effect of the issue on the capital ratios giving details of any existing impairment of capital; the objectives and provisions of the plan; and the role of the subject offering in the plan. If the principal purpose of the issue is to replace existing debt which will be retired, so state.

2. If any part of the proceeds are to be used for construction or addition of equipment, furnish a brief outline of any such programs. If any material amounts of the proceeds will be used to acquire assets, briefly describe those assets, identify the persons, if associated with the bank, from whom they are to be acquired, and state the expected cost of the assets to the bank.

8. By amending § 16.6, Item 4 as follows:

Item 4—Capital Structure

Set forth in the following tabular format, the title, basic terms, and the amount of each class of securities of the bank authorized and the amount outstanding as of the most recent practicable date.

Capitalization

The following table sets forth the capitalization of the Bank at ———, 197— and as adjusted to give effect to the issuance of the securities offered hereby.

	Outstanding	As adjusted
Subordinated Notes[1]		
—— percent subordinated notes due 19——[2]	$XXX	$XXX
	XXX	XXX
Stockholders' equity—		
Capital Stock (Par Value $— Per Share); Authorized Shares ——; Outstanding	XXX	XXX
Shares ———	XXX	XXX
Surplus	XXX	XXX
Undivided Profits	XXX	XXX
	$XXXX	$XXXX
Total	$XXXX	$XXXX

See Note — of Notes to Financial Statements for lease commitments.

[1] Subordinated to claims of depositors and general creditors of the Bank.

[2] See Note — of Notes to Financial Statements.

Instructions

1. If the bank is offering debt securities, indicate in a footnote to the table how those securities will rank in priority with respect to any outstanding debt securities. If the bank is offering common stock, preferred stock or any other equity security, or a right to subscribe thereto, state the book value before and after the sale based on an assumption that all shares offered will be sold. Any dilution in book value to be incurred by either the existing or prospective shareholders of the bank should be quantified.

2. Proceeds from the sale of equity securities shall be allocated only to the par value of the stock and surplus in the pro forma presentation.

3. Indicate in a note to the table, any contractual or statutory restrictions on the payment of dividends.

9. By amending § 16.6, Item 5 as follows:

Item 5—Summary of Earnings

(a) Present a summary of the earnings of the bank for each of the last five (5) fiscal years and any interim period between the end of the last fiscal year and the date of the most recent Balance Sheet and Statement of Income being filed and for the corresponding interim period for the preceding fiscal year. For the same periods, present in a statement, separate from information on earnings per share and dividends per share, the following ratios: (1) Net income to stockholders' equity, (2) net income to total assets, and (3) total interest expense to gross interest income.

(b) In a comparative format, fully discuss the bank's earnings for both the last two (2) fiscal years and the reported interim periods. Material changes in the bank's revenue and expense accounts should be described, both in percentage terms and absolute amounts, and fully explained. The analysis should include an explanation of any changes made by the bank in accounting principles and practices, or the method of their application, which have had a material effect on operating income as reported.

Instructions

1. The summary required by paragraph (a) above should set forth, at a minimum, figures with respect to: Operating revenues; provision for possible loan losses; all other operating expenses; income before income taxes and securities gains or losses; applicable income taxes; income before securities gains or losses; securities gains or losses; extraordinary items; net income; earnings per share; dividends per share; and number of shares used in the computation of per share data.

2. (a) In addition, if debt securities are being offered, set forth, in a tabular format following the summary, ratios of earnings to fixed charges (computed both including and excluding interest on deposits) for each year and any reported interim periods. Also set forth, for the last fiscal year and any reported interim period or latest twelve months if interim data is provided, a pro forma ratio of earnings to fixed charges adjusted to give effect to (i) the issuance of the securities being offered, (ii) any issuance, retirement or redemption of securities during such period, and (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period. The pro forma presentations should be shown both including and excluding interest on deposits. An exhibit setting forth the computations should be forwarded along with the offering circular when filed.

(b) The term "fixed charges" means (i) interest on all indebtedness, including deposits; and (ii) one-third rental or interest charges that would have been paid had the properties been purchased instead of leased.

(c) Earnings shall be computed after all operating and income deductions, except fixed charges and taxes based on income or profits, and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

Note—* * *

10. By amending § 16.6, Item 6 as follows:

Item 6—Description of Business

* * * * *

(b) The competitive conditions and the competitive position of the bank and

other financial intermediaries, with which the bank competes, in its service area. The deposit and asset range of the bank's competitors and the bank's position within the range should be disclosed.

* * * * *

(e) The practices of the bank in managing liabilities such as demand and time deposits, certificates of deposits, Federal funds, securities sold subject to repurchase agreements and other short term borrowings, and matching of funds raised from incurring such liabilities to assets.

* * * * *

(g) The investment portfolio, including a description of any material risks therein.

(h) To the extent applicable, the importance of, and risks attendant to foreign sources and applications of funds.

(i) The manner in which federal and state laws may materially affect the bank's operations such as branching, interest rates, bank holding companies, etc.

(j) (i) The name, address and business done by any parent bank holding company; (ii) the status of the holding company under the Bank Holding Company Act of 1956 and the Securities Exchange Act of 1934 and the applicable reporting requirements; and (iii) the identity and address of any person who owns beneficially more than 5% of the voting stock of the parent bank holding company.

Instructions

* * * * *

2. *Loan Portfolio*—In a separate caption entitled "Loan portfolio":

* * * * *

(iv) If a material portion of the bank's loans is currently or usually concentrated within a single industry or group of related industries, include a description of such customers, their other relationships, if any, with the bank, any material risks involved in the concentration and their importance to the business of the bank.

(v) For banks with assets in excess of $300 million, disclose the following:

* * * * *

3. *Interest rates and interest differentials*—* * *

(iii) The net interest differential. Material changes in interest income and interest expense and the net interest differential should be described in percentage terms and absolute amounts, and fully explained. For banks with assets in excess of $300 million, the dollar amounts should be analyzed to indicate the change resulting from variances in volume and rate.

4. *Summary of loan loss experience.*—An analysis of the bank's loan loss experience including the following items:

(i) A discussion of the trends in the loss provision, gross charge-offs, and recoveries, for a two-year reported period. Discuss any material loan losses during the last fiscal year and any reported interim period.

* * * * *

(iii) Discuss the adequacy of the "Allowance for possible loan losses" at the end of the latest fiscal year and the last reported interim period. Discuss whether the trends in the Allowance for possible loan losses for the reported periods has increased or decreased as a percentage of average loans outstanding.

* * * * *

5. *Deposits*—In a separate section captioned "Deposits": (i) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State, and local governments and agencies thereunder) the loss of any one or more of whom would have material adverse effect on the business of the bank, include a description of such customers, their other relationships, if any, with the bank, and their importance to the business of the bank.

* * * * *

(iii) Discuss any material deposit liabilities incurred from outside the bank's service area, and present the ratios of time and savings deposits to demand deposits, and public deposits to private deposits.

(iv) For banks with assets in excess of $300 million, present the maturity distribution of deposits as set forth in the most recently filed Call Report.

6. *Investment Securities*—* * *

7. *Investment Portfolio*—In a separate section entitled "Investment Portfolio" show in schedule format the bank's investment portfolio by maturity distribution of the portfolio and describe its effect on liquidity. A statement of the bank's investment policies should be set forth. Any material trends in the composition of the investment portfolio should be discussed.

8. *Liability Management*—In a separate section entitled "Liability Management" describe the bank's policies with respect to (i) certificates of deposit of $100,000 or more, (ii) securities sold subject to repurchase agreements, and (iii) other short term borrowings. If significant in amount, the attendant risks should be discussed. The bank's methods for matching asset and liability maturities should also be discussed.

11. By amending § 16.6, Item 7 as follows:

Item 7—Capital Stock

(a) If common or preferred stock is being offered, briefly outline the applicable: (1) Dividend rights and restrictions; (2) cumulative rights; (3) preemptive rights; (4) liquidation rights; (5) vote required in connection with any merger, consolidation, liquidation, increase in capital or amendment to the articles of association; (6) redemption provisions; and (7) other material terms of the securities.

(b) In a separate section of the offering circular entitled "Dividend History" set forth on a per share basis: (1) In tabular format a five-year summary of dividends paid by the bank, net income and the ratio of dividends to net income; and (2) a description of the bank's dividend policy, and any statutory, contractual or regulatory restrictions on the payment of dividends.

12. By amending § 16.6, Item 8 as follows:

Item 8—Debt Securities

* * * * *

(c) The Statement: "These obligations may not be repaid prior to maturity, either pursuant to an acceleration in event of default or otherwise, without the prior written approval of the Comptroller of the Currency."

(d) The provisions as to the payment and rate of interest, conversion, repayment, events of default, modification of the terms of the debt security and any other material terms.

(e) The provisions restricting the declaration of dividends, the issuance and incursion of additional indebtedness and any other material restrictions. If convertible debt securities are being offered, set forth the information required by Item 7(b) of 12 CFR 16.6.

* * * * *

13. By amending § 16.6, Item 10 as follows:

Item 10—Nature of Trading Market

For each class of securities to be offered, state briefly the nature of the trading market, if any, in such securities. Include the names of the principal market makers, and the reported high and low bid prices for each quarterly period during the last two years and latest interim period. If the securities are inactively traded, so state and indicate the range of sales prices (including

volume) known to the bank and the sources of such information. Also, state the date, price and volume of the latest trade in the class of securities to be offered and, if true, indicate that this price may not be indicative of its present value.

* * * * *

14. By amending § 16.6, Item 11 as follows:

Item 11—Directors and Officers

* * * * *

(b) The number of shares of each class of equity securities of the bank or its parent owned beneficially, directly or indirectly, as of the most recent practicable date.

* * * * *

(d) Describe any material proceedings to which any director or executive officer of the bank or any associate is a party to or has an interest materially adverse to the bank, its parent holding company or any subsidiaries.

15. By amending § 16.6, Item 12 as follows:

Item 12—Principal Security Holders

* * * * *

(a) As to each outstanding class of equity securities of the bank, the amount owned beneficially, directly or indirectly, by all directors and officers of the bank, as a group, without naming them. The following format should be used:

* * * * *

(b) The name, business address, and relationship to the bank of any individual or corporation who owns beneficially, directly or indirectly, more than 5 percent of the bank's outstanding voting securities. The following format should be used:

* * * * *

A footnote to the table should disclose the nature of the beneficial ownership. A disclaimer of beneficial ownership can be added in the footnote with an appropriate explanation indicating the number of shares disclaimed.

(c) Describe any material proceedings to which any principal security holder of the bank is a party to or has an interest materially adverse to the bank, its parent holding company or any subsidiaries.

Instructions

1. If, to the knowledge of the bank, more than 5 percent of any class of voting securities of the bank are held or to be held subject to any voting trust, pledge, or other similar agreement, state (i) the title of such securities, (ii) the amount held or to be held, and (iii) the duration and material terms of the agreement. If applicable, give the names of the voting trustees.

2. If the bank is controlled by a bank holding company, as defined by 12 U.S.C. 1841, disclose as to each class of equity securities of the bank holding, the name, business address and relationship to the bank holding company of any individual or corporation who owns beneficially, directly or indirectly, more than 5 percent of the bank holding company's outstanding voting securities.

16. By amending § 16.6 to combine Items 13 and 14 as follows:

Item 13—Remuneration and Other Transactions With Management

Furnish the information called for by Item 7 of 12 CFR 11.51.

17. By amending § 16.6, Item 16, to be renumbered Item 15, to read as follows:

Item 15—Financial Statements

Furnish the following statements. Refer to the following Instructions for requirements as to form and content, number of periods to be shown, informative disclosures and reports of independent accountants.

a. Balance Sheet,

b. Statement of Income,

c. Statement of Changes in Capital Accounts,

d. Statement of Changes in Financial Position.

Instructions

1. Financial statements shall be prepared in accordance with generally accepted accounting principles applicable to banks. Financial statement format and classification conforming with the "Call Report Instructions" ("Foreign and Domestic," "Domestic Only," or "Small Bank") applicable to the most recent call report filed by the bank may generally be used. Where the financial statements are accompanied by the report of an independent accountant, variations of format or classification which also conform with generally accepted accounting principles may be used. Financial statement captions should not be shown for items or conditions not present.

2. The bank shall file a balance sheet as of the end of its most recent fiscal year. If that date is more 90 days prior to the date of filing of the Offering Circular, and any amendment thereto, a balance sheet as of a date within 90 days of the filing date shall also be presented.

3. The bank shall file statements of income, changes in capital accounts, and changes in financial position for each of the last two fiscal years and for the comparative interim period, if any, between the end of the last fiscal year and the date of the most recent balance sheet being filed.

4. The financial statements shall include informative disclosures necessary for their fair presentation for the periods presented. Where information required to be disclosed in connection with the financial statements is also presented elsewhere in the offering circular, such information may be incorporated in the notes to financial statements by specific reference to that particular schedule or discussion. Informative disclosures should be presented on the face of the financial statements or as notes to the financial statements and should include the following items, where applicable:

(i) A summary of significant accounting policies.

(ii) A description of any change in accounting principles made during any period covered by the financial statements which affects comparability or which is expected to have a material effect on future financial statements. A change in principle includes a change in method of applying a principle. The disclosure shall include the reason for the change and the effect of the change on income before securities gains or losses and net income for each period presented.

(iii) Disclosure of any material retroactive adjustment of undividued profits and operating results made during any period for which an income statement is filed. State the reason for the adjustment and its effect upon net income reported.

(iv) The approximate market value of each major category of investment securities as of each balance sheet date.

(v) An alnalysis of changes in the allowance for possible loan losses during each period for which a statement of income is presented.

(vi) The major categories of bank premises, furniture and fixtures, and other assets representing bank premises and related accumulated depreciation as of each balance sheet date, if the amounts are material.

(vii) The amount and balance sheet classification of assets pledged, mortgaged, or otherwise subject to liens or encumbrances as of each balance sheet date.

(viii) The significant components of liabilities for borrowed money, mortgage indebtedness, and subordinated notes or debentures, as of each balance sheet date. Information as to interest rates, due dates, pledged assets, and restrictive convenants should be summarized.

(ix) Where preferred stock is authorized and outstanding, the rights and preferences of various classes of stock outstanding.

(x) A description of any stock option plan authorized, including information as to the number of shares of stock involved and the terms under which option may be granted and exercised.

(xi) A description of any significant restrictions on the availability of undivided profits for the payment of dividends as of the latest balance sheet date. Such restrictions include limitations imposed by 12 U.S.C. 56 or 60, by any covenant, or by the terms of a formal agreement or order between the bank and the Comptroller of the Currency.

(xii) a description of any pension plan for bank employees, including the amount provided for pension plan expense in each income statement filed.

(xiii) An analysis of income tax expense for each period for which an income statement is presented. Information to be shown includes the amounts for current and deferred tax expense, the major components of deferred tax expense, and a reconciliation of the total provision for income taxes with an amount determined by multiplying income before taxes and securities gains or losses times the statutory federal income tax rate.

5. Earnings per share shall be reported on the face of the income statement for each period presented. Per share amounts shall be shown for income before securities gains or losses, and for net income. The number of shares used in computing per share amounts shall give appropriate recognition to stock dividends and stock splits declared, the issuance of shares, and shares issuable, under stock option plans or other similar arrangements.

6. If the most recent fiscal year's financial statements included in the offering circular have been examined and reported upon by an independent accountant, the offering circular shall include the report of that accountant. The report shall be manually signed in at least one copy of the initial offering circular filed.

18. By amending § 16.7, to insert General Instruction (b) which would read as follows. Present General Instruction (b) would be relabelled General Instruction (c).

§ 16.7 Form and content of an offering circular of a bank in organization.

* * * * *

(b) A bank in organization may, with the prior approval of the Comptroller, authorize additional shares up to 15% of its stated capitalization to cover potential oversubscriptions. In such event, information set forth in the offering circular with respect to the bank's capitalization should make reference both to the stated capitalization and to the total capitalization including the shares authorized to cover oversubscriptions. Where shares are authorized to cover oversubscriptions, no director, officer or organizer of the bank can oversubscribe so as to exceed the maximum ownership percentages permitted under the Comptroller's guidelines.

§ 16.7 [Amended]

19. By amending § 16.7, Item 1 as follows:

Item 1—Cover Page

* * * * *

(d) The following statements in capital letters and boldface type:

THE MERITS OF THESE SECURITIES HAVE NOT BEEN PASSED UPON BY THE COMPTROLLER OF THE CURRENCY NOR HAS THE COMPTROLLER OF THE CURRENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE OFFERING CIRCULAR.

NO AGENT OR OFFICER OF THE BANK OR ANY OTHER PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THE OFFERING CIRCULAR, AND IF GIVEN OR MADE, SUCH INFORMATION AND REPRESENTATIONS SHOULD NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE BANK.

THE ISSUANCE OF THE STOCK OFFERED HEREBY IS SUBJECT TO THE APPROVAL OF THE COMPTROLLER OF THE CURRENCY. THE BANK RESERVES THE RIGHT TO CANCEL ACCEPTED SUBSCRIPTION OFFERS AT THE DIRECTION OF THE COMPTROLLER OF THE CURRENCY UNTIL THE DATE THE BANK COMMENCES OPERATIONS. IF, FOR ANY REASON, THE BANK DOES NOT OPEN FOR BUSINESS OR IF FUNDS ARE RETURNED TO SUBSCRIBERS, ALL OF THE CASH PAID BY THE SUBSCRIBERS FOR THEIR SHARES WILL BE RETURNED, PLUS OR MINUS ANY PROFITS OR LOSSES INCURRED THROUGH INVESTMENT OF SUCH FUNDS IN UNITED STATES GOVERNMENT SECURITIES. ANY OTHER COSTS OR EXPENSES WILL BE BORNE BY THE ORGANIZERS.

* * * * *

(f) The information called for by the following table presented in substantially the same form:

	Price to public	Underwriting commission	Expenses of the offering	Proceeds to bank
Per unit	$	$	$	$
Total	$	$	$	$

* * * * *

(i) Immediately following the cover page, include a page with a table of contents and the following paragraph in capital letters and boldface type. * * *

20. By amending § 16.7, Item 2 as follows:

Item 2—Offering and Method of Subscription

* * * * *

(f) The statements: "Subscriptions will be accepted until ——— p.m./a.m. on the expiration date, ————, 19——. It is anticipated that the bank will commence operations on or about ————, 19——.

"If for any reason the bank does not open for business or if funds are returned to a subscriber for any reason, all of the cash paid by the subscriber for its shares will be returned plus or minus any profit or losses incurred through investment of such funds in United States Government Securities. Any other costs or expenses will be borne by the Organizers."

21. By amending § 16.7, Item 3 as follows:

Item 3—Use of Proceeds

State the principal purposes for which the net proceeds are intended to be used and the approximate amount to be used for each purpose. Indicate the proposed expenditures in the following categories:

(a) Operating expenses for a period of 12 months from the date the bank intends to open for business. The underlying assumption that all of the stock will be sold and that the bank will open for business on a particular date should be stated.

(b) Organizational and pre-operating expenses incurred before the bank opens for business. These expenses should be broken down into those incurred to the date of the financial statements and an estimate of those expected to be incurred between that date and the date of the opening.

(c) The balance to be used for general corporate purposes.

22. By amending § 16.7, to add a new Item 4 entitled "Pro Forma Statement of Capitalization." Present Items 4 through 12 would be renumbered accordingly. Proposed Item 4 would read as follows:

Item 4—Pro Forma Statement of Capitalization

Set forth in the following tabular format the title, basic terms, and amount of each class of securities authorized and outstanding, as of the date of the balance sheet included in the offering circular after giving effect to the proposed offering.

		Pro forma capitalization
Equity Capital—		
Common Stock (Par value $— per share):		
——shares authorized.		
——shares issued and outstanding)		———
Surplus[1]		———
Deficit accumulated during developmental stage[2]		
Organizational and pre-operating expenses	a	
Less investment income	b	a minus b
Total equity capital		$———

[1] The expenses of the offering are to be charged to surplus.

[2] The pre-operating income earned on the investment securities, and the organizing and pre-operating expenses as approved by the Comptroller of the Currency, are credited/charged to undivided profits when the Bank opens for business.

23. By amending § 16.7, Item 5 as follows:

Item 5—Organizers, Directors and Officers

* * * * *

(f) A summarization of any borrowing arrangements to finance the stock subscription for each organizer, proposed director and executive officer of the bank.

24. By amending § 16.7, Item 6 as follows:

Item 6—Principal Security Holders

* * * * *

(b) The amount and percent of the class to be owned beneficially directly or indirectly, by all directors, officers, and organizers of the bank, as a group, without naming them and the amount that will be held by the investing public. The following format should be used:

* * * * *

A footnote to the table should disclose the nature of the beneficial ownership. A disclaimer of beneficial ownership can be added in the footnote with an appropriate explanation provided for the disclaimer and indicating the number of shares disclaimed.

25. By amending § 16.7, Item 8 as follows:

Item 8—Material Transactions

(a) Describe any direct or indirect material interest of any of the following persons in any transactions, or proposed transactions, to which the bank was or is to be a party:

* * * * *

26. By amending § 16.7, Item 12 as follows:

Item 12—Financial Statements

The bank shall furnish the following financial statements with appropriate notes, as of the most recent practicable date:

a. Balance Sheet.

b. Statement of Organizational and Pre-Operating Expenses.

c. Statement of Changes in Capital Accounts.

In addition to the above statements, the bank should provide a description of any assets contributed by organizers or stockholders and the method used to value those assets.

27. By amending § 16.8 by revising the introductory paragraph as follows:

§ 16.8 Advertisements.

Any written advertisement, announcement, film, radio or television broadcast which refers to a present or proposed public offering of securities subject to this Part may be published, distributed, or broadcast only after a copy of the above advertisements and the preliminary offering circular have been filed with the Comptroller of the Currency. After the effective date of the offering circular, any additional advertisements or announcements may only be used after being filed with, and cleared by, the Comptroller of the Currency. Such advertisement may only contain the following information:

* * * * *

(12 U.S.C. 1 et seq.)

Dated: May 24, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79-16310 Filed 5-30-79; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Chapter 1]

[Summary Notice No. PR-79-4]

Petitions for Rule Making; Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rule making and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before: August 24, 1979.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on May 25, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
		Description of Petition
19169	Mr. Kaz Thomas	Petitions for amendment to FAR 1.1 and FAR 43, Appendix A, to change the definition of preventive maintenance and to make the list of preventive maintenance items in FAR 43, Appendix A, compatible with the new definition. Specifically, it is proposed that FAR 1.1 be altered to read: "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts weighing less than five pounds, where such replacement does not involve complex assembly operations.
		Petitioner's Reasons for Rule
		These changes to the existing regulations are needed in order to [1] add clarification to the term "small standard parts," [2] render the Federal Aviation Regulations internally consistent with respect to definitions of "preventive maintenance," and [3] afford pilot/operators a greater opportunity to participate in aircraft servicing operations, thereby facilitating compliance with FAR 91.163(a).
		Description of Petition
19170	Canadian Owners and Pilots Association.	Petitions for amendment to appropriate sections of Part 47 of 14 CFR so as require that the Certificate of Registration document must be surrendered before the aircraft can be de-registered by FAA authorities at Oklahoma City when an FAA registered aircraft is sold to a foreign owner.
		Petitioner's Reasons for Rule
		To assure that Canadian purchasers of U.S. registered aircraft cannot be prosecuted under Transport Canada's Aeronautics Act Section 200 of the Air Regulations which reads as follows: 200. No person shall fly an aircraft in Canada unless it is registered (a) under this Part, or (b) under the laws of a contracting state or that is a party to an agreement entered into with Canada relating to interstate flying.

Petitions for Rulemaking: Denied

None During the Period From April 21 Through May 25, 1979.

[FR Doc. 79-16913 Filed 5-30-79; 8:45 am]
BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-GL-26]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this Federal action is to designate additional controlled airspace near Ashland, Wisconsin to accommodate revised Very High Frequency Omnidirectional Range (VOR) and Non-Directional Radio Beacon (NDB) instrument approach procedure into the John F. Kennedy Memorial Airport, Ashland, Wisconsin. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual weather conditions.

DATES: Comments must be received on or before July 7, 1979.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 79-GL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace will be lowered from 1200 feet above the surface to 700 feet for a distance of approximately one mile beyond that now depicted. The development of the proposed procedure necessitates the FAA to alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 79-GL-26, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before July 7, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The Federal Aviation Administration is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Ashland, Wisconsin. Subpart G of Part 71 was published in the Federal Register on January 2, 1979 (44 FR 442).

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In Section 71.181 (44 FR 442) the following transition area is amended to read:

Ashland, Wisconsin

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the John F. Kennedy Memorial Airport (Latitude 40°32'59" N; Longitude 90°56'06" W) and within 4.5 miles west and 10.5 miles east of the Ashland, Wisconsin VOR 205° radial,

extending from the 8 mile radius area to 18.5 miles southwest of the Ashland, Wisconsin VOR.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 79-GL-26, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on May 22, 1979.

John Truhan,

Acting Director, Great Lakes Region.

[FR Doc. 79-16884 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, 212, and 214]

[EDR—381, Docket No. 35661, dated May 24, 1979]

Overseas Military Personnel Charters

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board is proposing to reduce the minimum charter size requirement for Overseas Military Personnel Charters from 40 to 20 persons. This change is being made in response to a request by the Davis Agency.

DATES: Comments by: July 30, 1979.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: June 15, 1979. Dockets Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 714, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

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

SUPPLEMENTARY INFORMATION: On December 15, 1977, the Board issued SPR-142, 143, and 144 (42 FR 65487, December 30, 1977), amending the rules and generally liberalizing the conditions for Advance Booking Charters, Inclusive Tour Charters, and One-stop-inclusive Tour Charters. (Since then these rules have been revoked in favor of the Public Charter rule, 14 CFR Part 380.) One of the liberalizations reduced the minimum contract size for such charters from 40 to 20 persons. After the rule had gone into effect, Davis Agency, an Overseas Military Personnel Charter (OMPC) operator, filed in the relevant docket (Docket 31520) a Petition for Modification of a Rule, requesting that the minimum charter size for OMPC's be likewise reduced from 40 to 20.

Under its rules (14 CFR 302.38(d)) the Board does not consider petitions filed on a rulemaking proceeding after the final has gone into effect. Davis's petition and answering documents filed by certain trunkline carriers (American, Eastern, National, Northwest, Pan American, TWA, and Western) and Air Charter Tour Operators of America (ACTOA) were, however, placed in Docket 33903, to be considered for future action. Docket 33903 dealt with a petition by the Department of Defense (DOD) to eliminate geographical limitations and expand the eligible class of participants for OMPC's. Later, Davis applied for and was granted a temporary waiver of the Board's charter regulations to permit OMPC operators to contract for a minimum of 20 seats per charter. The Board is proposing in this notice to reduce permanently the minimum contract size for OMPC's to 20. The DOD petition has been handled separately.

Overseas Military Personnel Charters are the only type of charter organized and marketed by an independent charter operator for which a minimum contract size of 40 is still required. When OMPC's were first authorized in 1972, all charter types were restricted to that minimum size. Since then, the Board has reduced the minimum for other charter forms as part of more comprehensive rule changes. The OMPC rules, which serve a particularized purpose and are not available to the general public, were not included in the earlier rulemakings.

We see no reason why OMPC's should not have the same minimum charter size as other types of charters. The minimum size affects the ease with which charters can be organized or coordinated with other charters. Davis's request would not complicate our charter regulations and would not open OMPC's to a broader class of participants or extend their range of operations. The proposal would allow the same organizational flexibility for OMPC's that is permitted for other charter operations.

The trunkline carriers argued (in February 1978) that Davis's proposal would be injurious to scheduled service. Under current Board policies, including those mandated by the Airline Deregulation Act, such arguments are, however, no longer considered material. Competitive forces are to be the main determinant of success or failure, and the Board will no longer restrict one industry segment in order to protect the markets of another.

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Parts 207, 208, 212, and 214 as follows:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

1. The Proviso to section 207.11(c) of Part 207 would be amended to read as follows:

§ 207.11 Charter flight limitations.

* * * * *

(c) * * *

Provided, That with respect to paragraphs (c)(4) and (c)(9) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 20 or more seats. With respect to paragraphs (c)(1) and (c)(2) of this section * * *

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

2. The Proviso to § 208.6(c) of Part 208 would be amended to read as follows:

§ 208.6 Charter flight limitations.

* * * * *

(c) * * *

Provided, That with respect to paragraphs (c)(5) and (c)(9) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 20 or more seats. With respect to paragraphs (c)(1) and (c)(2) of this section * * *

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

3. The Proviso to § 212.8(b) of Part 212 would be amended to read as follows:

§ 212.8 Charter flight limitations.

* * * * *

(b) * * *

Provided, That with respect to paragraphs (b)(4) and (b)(9) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 20 or more seats. With respect to paragraphs (b)(1) and (b)(2) of this section * * *

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

4. The Proviso to § 214.7(b) of Part 214 would be amended to read as follows:

§ 214.7 Charter flight limitations.

* * * * *

(b) * * *

Provided, * * * : *And provided further,* That with respect to paragraphs (b)(4) and (b)(8) of this section each person engaging less than the entire capacity of the aircraft shall contract and pay for 20 or more seats. With respect to paragraphs (b)(1) and (b)(2) of this section * * *

(Secs. 102, 204, 401, 92 Stat. 1706, 72 Stat. 743, 72 Stat. 754; (49 U.S.C. 1302, 1324, 1371).)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16952 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 292

[EDR-319A; Docket No. 30176; Dated: May 24, 1979]

Classification and Exemption of Alaskan Air Carriers; Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The CAB is terminating a rulemaking proceeding or limiting certain off-route charters by Alaskan air carriers, because the proposed rule is inconsistent with current agency policy.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Rules and Legislation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: This proceeding began with a petition for rulemaking filed by Wien Air Alaska in December, 1976. Alaskan air carriers' off-route charters to and from points outside of Alaska have been limited by 14 CFR 292.2 to trips that are "casual, occasional or infrequent, and are not made in such manner as to result in establishing a regular or scheduled service." Wien asked the Board to extend this limitation to off-route charters between pairs of points *within* Alaska where another Alaskan air carrier has certificated route authority.

In EDR-319 (42 FR 11017, February 25, 1977), the Board proposed to amend Part 292 as Wien had suggested. Several comments were filed, generally supporting the amendment but disagreeing about the policy that should govern waivers of the restriction.

The proposed rule has been overtaken by events. The Board's policies on protecting scheduled service from diversion in general and limiting off-route charters in particular have changed substantially in the last 2 years. Those policies now favor vigorous competition and minimizing unnecessary restrictions on operating authority. The Board's movement to a pro-competitive policy has been confirmed by the Airline Deregulation Act of 1978, Pub. L. 95-504. There is therefore no need for the proposed amendment.

There is a related Board proceeding in Docket 27617. In that case, the Board sought to impose a similar restriction on intra-Alaska off-route charters of Alaska Airlines by amending that carrier's exemption authority. In EDR-319, the Board stayed the proceeding in Docket 27617 pending the outcome of the rulemaking. In Order 79-5-198, also adopted today, the Board is terminating that other proceeding because it has similarly become unnecessary.

Accordingly, the Civil Aeronautics Board terminates the rulemaking proceeding in Docket 30176.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16951 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. C-2884]

Diners Club, Inc., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: This amended order, accepted subject to final Commission approval, modifies an April 22, 1977 consent order issued against National Account Systems, Inc. (NAS), its owner, The Diners Club, Inc. (Diners), and three NAS subsidiaries, by including Payco American Corporation (Payco) as a respondent. Payco, who has purchased NAS and its subsidiaries from Diners, has agreed, upon transfer of interest, to assume Diner's obligations under the amended order; although Diners would still be bound by the provision prohibiting the use of independent agents or other entities to circumvent any term of the amended order.

DATE: Comments must be recieved on or before July 30, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Harvey Saferstein, Director, 7R, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, Calif. 90024. (213) 824-7575.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at is principal office in accordance with

§ 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

Diners Club, Inc., et al. Amended Agreement Containing Consent Order To Cease and Desist, Docket No. C 2884

In the Matter of The Diners Club, Inc., a corporation, National Account Systems, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, and Payco American Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, and The Diners Club, Inc., a corporation, and having issued on April 22, 1977 its Decision and Order with respect to those Respondents, and it now appearing that National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, Payco American Corporation, a corporation, and The Diners Club, Inc., a corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an amended agreement containing an order to cease and desist from the use of the acts and practices which were investigated:

It is hereby agreed by and between National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A.B. Hartman, Inc., a corporation, Payco American Corporation, a corporation, and The Diners Club, Inc., a corporation, and their counsel and counsel for the Federal Trade Commission that:

1. Proposed respondent National Account Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at. 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of The Diners Club, Inc..

Proposed respondent NAS Creditors Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Proposed respondent National Account Systems of Milwaukee, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Proposed respondent A. B. Hartman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Proposed respondent The Diners Club, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 10 Columbus Circle, New York, New York. The Diners Club, Inc. is joined as a respondent in that it is presently the sole owner of National Account Systems, Inc., and will be liable for civil penalty as provided in Paragraph 7 of this amended agreement in the event that it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. violates any of the provisions of Part IV of the order after it becomes final and before the transfer of interests described in the next succeeding paragraph or in the event that National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., or A. B. Hartman, Inc., violates any of the other provisions of the order after it becomes final and before such transfer of interests, or in the event that it violates any of the provisions of the first paragraph of Part IV of the amended order after it becomes final and after such transfer of interests.

Proposed respondent Payco American Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 2401 North Mayfield Road, Milwaukee, Wisconsin. Payco American Corporation is joined as a respondent in that, pursuant to an agreement heretofore entered into by Payco American Corporation and The Diners Club, Inc., *inter alia*, and subject only to the satisfaction of certain express conditions precedent to closing set forth in such agreement, The Diners Club, Inc. shall, not later than June 30, 1979, transfer all of its right, title and interest in and to National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc. (together with their successors-in-interest and certain of their corporate affiliates) to Payco American Corporation, acting through certain of its subsidiaries. Payco American Corporation will be liable for civil penalty as provided in Paragraph 7 of this amended agreement in the event that it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. violates any of the provisions of Part IV of the amended order after it becomes final and after such transfer of interests or in the event that National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. violates any of the other provisions of the amended order after it becomes final and after such transfer of interest.

Proposed respondent National Account Systems, Inc. owns fifty percent (50%) of the stock of Indianapolis Account Service, Inc., an Indiana corporation and directs and controls the acts and practices of Indianapolis Account Service, Inc., whose corporate mailing address is 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois, but whose principal place of business is 1308 North Meridian Street, Suite 103, Indianapolis, Indiana.

2. Proposed respondents admit all the jurisdictional facts set forth in the Complaint issued by the Commission on April 22, 1977. Proposed respondent Payco American Corporation admits that it has a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, and has been and is in competition in or affecting commerce with other persons, partnerships and corporations in the attempted collection and collection of consumer debt on behalf of creditors.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the amended order entered pursuant to this amended agreement.

4. This amended agreement shall not become part of the official record of the proceeding unless and until it is accepted by the Commission. If this

amended agreement is accepted by the Commission it, together with the complaint issued on April 22, 1977, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such aceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or consideration which indicate that the amended order contained in the amended agreement is inappropriate, improper or inadequate.

5. This amended agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the complaint issued on April 22, 1977.

6. This amended agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) reissue its complaint corresponding in form and substance with the complaint issued on April 22, 1977 and its decision containing the following amended order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the amended order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The amended order shall become final upon service. Delivery by the U.S. Postal service of the complaint and decision containing the agreed-to amended order to proposed respondents' addresses as stated in this amended agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the amended order, and no agreement, understanding, representation, or interpretation not contained in the amended order or the agreement may be used to vary or contradict the terms of the amended order.

7. Proposed respondents have read the proposed complaint and amended order contemplated hereby, and they understand that once the amended order has been issued they will be required to file one or more compliance reports showing that they have fully complied with the amended order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the amended order after it becomes final; *Provided, however,* That any such liability of proposed respondent The Diners Club, Inc. shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. of any of the provisions of Part IV of the amended order after it becomes final and before the transfer of interests hereinabove set forth and described, or arising from violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., or A. B. Hartman, Inc. of any of the other provisions of the amended order after it becomes final and before such transfer of interest, or arising from violations by it of any of the provisions of the first paragraph of Part IV of the amended order after it becomes final and after such transfer of interests; *And provided, further,* That any such liability of proposed respondent Payco American Corporation shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. of any of the provisions of Part IV of the amended order after it becomes final and after such transfer of interests, or arising form violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. of any of the other provisions of the amended order after it becomes final and after such transfer of interests.

8. Proposed respondent Payco American Corporation hereby undertakes to cause each of its subsidiaries that, as part of the transfer of interests hereinabove set forth and described, succeeds to the ownership of any of the proposed respondents herein to become an additional respondent herein and a party to this amended agreement and the amended order. Alternatively (since it is presently contemplated that each subsidiary of Payco American Corporation that succeeds to the ownership of a proposed respondent herein shall absorb such respective proposed respondent by merger and shall thereupon cause its corporate name to be changed to the name of the absorbed entity), Payco American Corporation hereby agrees for itself and each such subsidiary that references contained in this amended agreement and the amended order to proposed respondents National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. and A. B. Hartman, Inc. shall, upon and after such transfer of interests, for all purposes be deemed to be references to such subsidiaries, respectively.

9. All parties hereto hereby agree that, should the transfer of interests hereinabove set forth and described fail to be consummated on or before June 30, 1979, then this amended agreement and the amended order to be issued in accordance with the terms hereof shall be deemed to be null and void; and the agreement as originally entered into in this proceeding by certain of the parties hereto, and the order issued pursuant to such agreement, shall be deemed to have theretofore and thereafter been in full and continuous force and effect.

Order

National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., for the purposes of Parts I, II, and III of this amended order are the only parties to whom reference is made when the term "respondents" is used.

Liability of The Diners Club, Inc. for civil penalty resulting from violations of this amended order shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartmen, Inc. of any of the provisions of Part IV of this amended order after it becomes final and before the transfer of interests set forth and described in the Amended Agreement Containing Amended Consent Order to Cease and Desist in accordance with the terms of which this amended order has been issued with the terms of which this amended order has been issued, or violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. of A. B. Hartman, Inc. of any of the other provisions of this amended order after it becomes final and before such transfer of interests or violations by it of any of the provisions of the first paragraph of Part IV of the amended order after it becomes final and after such transfer of interests. Liability of Payco American Corporation for civil penalty resulting from violation of this amended order shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Miluaukee, Inc. or A. B. Hartman, Inc. of any of the provisions of Part IV of this amended order after it becomes final and after such transfer of interests, or violations

by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A. B. Hartman, Inc. of any of the other provisions of this amended order after it becomes final and after such transfer of interests. If the aforesaid transfer of interests shall fail to be consummated on or before June 30, 1979, then this amended order shall thereupon be deemed to be null and void, and the order originally issued in this proceeding shall be deemed to have theretofore and thereafter been in full and continuous effect.

I

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device in connection with the collection of or attempting to collect consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Obtaining information on consumers from a consumer reporting agency or any other source under false pretenses.

2. Failing to keep accurate records of the sources of all information obtained on all consumers.

3. Retaining on respondents' premises any books, pamphlets, or any other writings or materials containing subscriber codes or any information which would enable respondents to use codes or any information which would enable respondents to use subscriber codes unless respondents or their employes or agents are:

(a) Members of a consumer reporting agency; and

(b) Authorized to possess and use such codes; such authorization must expressly include collecting or attempting to collect debts for respondents and such authorization must be maintained in respondents' files.

Any such codes or information currently in respondents' possession or which subsequently come into respondents' possession and are not permitted as required in (a) and (b) must be destroyed or returned to the authorized user and a record kept of such action for three years, making such record available to the Federal Trade Commission for inspection and copying upon request.

4. Representing in any manner, directly or by implication, orally or in writing, that respondents have the authority or right to cause debtors to go to jail or to be defendants in criminal prosecutions for not paying their debts; or misrepresenting in any manner respondents' authority to affect debtor's legal rights or liabilities.

5. Representing in any manner, directly or by implication, orally or in writing, that respondents are serving legal or judicial documents upon debtors unless such is the case; or misrepresenting in any manner the status, significance or official naure of any papers sent to debtors.

6. Representing in any manner, directly or by implication, orally or in writing, that respondents or their agents are something or someone other than a debt collection agency or debt collector; or misrepresenting in any manner the official, professional or vocational status of respondents or their agents, or misrepresenting, in any manner, the position or function of any of respondents' agents, employees, and representatives.

7. Representing in any manner, directly or by implication, orally or in writing, that respondents will destroy or attempt to harm debtors' credit standings, or that respondents possess the authority or intend to disclose information regarding debtors to a consumer reporting agency; or misrepresenting in any manner the effect of any action taken by respondents on a debtor's credit standing.

8. Representing in any manner, directly or by implication, orally or in writing, that legal action has been initiated or is being initiated unless respondents have in fact instituted the legal action represented; or misrepresenting in any manner that legal action will be initiated, including but not limited to, attachment or garnishment proceedings, unless respondents are able to establish that at the time the representation was made respondents intended in good faith to institute the legal action represented.

9. Representing in any manner, directly or by implication, orally or in writing, that judgment may be entered against a debtor without the debtor having notice of the legal action and an opportunity to appear and defend himself or herself in a court of law.

10. Informing a debtor of a creditor's post judgment rights without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself or herself in a court of law.

11. Representing in any manner, directly or by implication, orally or in writing, the post judgment rights of a creditor unless said rights are in fact as specifically represented in the jurisdiction in which collection is sought; or misrepresenting in any manner, directly or by implication, the post judgment rights of a creditor.

12. Using abusive or obscene language when talking with or writing to debtors.

13. Placing any telephone call to any debtor, or orally contacting debtors in any manner, between the hours, in the time zone of the debtor, of 9:00 p.m. and 7:00 a.m. on weekdays, including Saturdays, and between the hours of 9:00 p.m. and 12:00 noon on Sundays.

14. Initiating more than two (2) oral conversations with any debtor in any one week regarding the collection of the same debt.

It is further ordered, That respondents, their successors and assigns, with respect to oral or written communications to persons other than the alleged debtor, cease and desist from:

(a) Communicating or threatening to communicate, or implying the fact or existence of any debt to a debtor's employer prior to any judgment;

(b) Communicating with or threatening to communicate, or implying the fact or existence of any debt to any other third parties, including former employers of the debtor other than one who might be reasonable expected to be liable therfor except with the written permission of the debtor or except where legal documents are being served according to law;

(c) Reporting a debt or an alleged debt to a consumer reporting agency unless respondents also promptly report to said consumer reporting agency the subsequent payment of said debt or alleged debt, or the resolution of any dispute concerning said debt, or alleged debt.

It is further ordered, That said respondents shall maintain for a period of three (3) years with respect to each debtor, records which shall consist of copies of all collection letters, dunning notices, requests for information and similar correspondence delivered to such debtor or third parties, or any indication of what items or documents were sent; a record or tabulation of all telephone calls made to or about the debtor showing the identity of the caller, the date of the call, the telephone number called, the purpose and result of the call and any notes or reports made in connection therewith when obtained;

and copies of all documents pertaining to collection efforts such as referrals to lawyers or other agencies and legal documents utilized in collection efforts, or any indication of what items were sent.

II

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device, in connection with any consumer credit transaction, including, but not limited to, transactions involving the deferment of the payment of debts and/or the refinancing of any existing extension of credit or the increasing of existing obligations, as these terms are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (15 U.S.C. Sections 1601–65 (1970), *as amended,* 15 U.S.C. Sections 1601–65(a), (Supp. IV, 1974)), forthwith cease and desist from:

1. Failing to disclose the finance charge, as "finance charge" is defined in § 226.2 of Regulation Z, expressed and identified as an annual percentage rate, as "annual percentage rate" is defined in § 226.2 of Regulation Z, as required by § 226.8(b)(2) of Regulation Z.

2. Failing to disclose the date on which the finance charge begins to accrue, as required by §226.8(b)(1) of Regulation Z.

3. Failing to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments" as is required by § 226.8(b)(3) of Regulation Z.

4. Failing to disclose the total amount of finance charges, with a description of ecach amount included, using the term "finance charge", as required by § 226.8(b)(3) of Regulation Z.

5. Failing to disclose the annual percentage rate computed in accordance with § 226.5 of Regulation Z, as required by § 226.8(b)(2) of Regulation Z.

6. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with § 226.5 of Regulation Z, as required by § 226.8(b)(2) of Regulation Z.

7. Failing to make the disclosures required by § 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by § 226.6(a) of Regulation Z.

8. Failing in any consumer credit transaction to make all disclosures, required by §§ 226.6, 226.7, 226.8, and 226.9 of Regulation Z, and failing to make all disclosures, determined in accordance with §§ 226.6, 226.7, 226.8, and 226.9 of Regulation Z, and failing to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by §§ 226.6, 226.7, 226.8, and 226.9 of Regulation Z.

III

It is further ordered, That:

(a) Respondents shall deliver a copy of this amended order to all present and future employees and their agents engaged in debt collection and to any other person or entity connected with respondents to whom respondents presently refer or assign and to whom in the future respondents may refer or assign matters for debt collection;

(b) Respondents shall provide each of their employees with a form returnable to respondents clearly stating the employee's intention to conform his or her business practices to the requirements of this amended order; respondents shall require said persons to agree in writing on said form to conform his or her business practices to the requirements of this amended order and shall retain said statement during the period said person is so engaged, and for three (3) years thereafter, and make said statement available to representatives of the Federal Trade Commission for inspection and copying upon request;

(c) In the event such person will not agree to sign and file the form set forth in paragraph (b) above with respondents and conform to the provisions of this amended order, respondents shall not use or engage or continue the use or engagement of such person to collect debts or aid or assist respondents in the collection of debts;

(d) Respondents shall inform each person and entity described in paragraph (a) above that respondents shall not use or engage or shall terminate the use or engagement of any such person or entity unless such person or entity's business practices conform to the requirements of this amended order; and that respondents are obligated by this amended order to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this amended order;

(e) Respondents shall institute a program of reasonable surveillance of their officers, employees and their agents engaged in debt collection, adequate to reveal whether the business practices of each said person conform to the requirements of this amended order;

(f) Upon receiving information from any source (including but not limited to respondent's program of surveillance, and representatives of the Federal Trade Commission) indicating reasonable proof of a violation of any provision of this amended order by any person of entity described in paragraph (a) above, respondents shall within 72 hours notify such person or entity by certified mail, return receipt requested, that such violation of this amended order has occurred ("Termination Notice"), and that respondents shall forthwith discontinue dealing with said person or entity. Immediately after such notification, respondents shall permanently discontinue dealing with said person or entity;

(g) Respondents shall retain evidence of compliance with this amended order and all Termination Notices and make such evidence available to representatives of the Federal Trade Commission for inspection and copying upon request;

(h) Respondents shall prepare and maintain a list of all employees containing the names of all such persons and their aliases, if any, and their last known addresses and telephone numbers for three (3) years following the date of their last employment with respondents; such list shall be made available to representatives of the Federal Trade Commission for inspection and copying upon request.

IV

It is further ordered, That respondents National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, Payco American Corporation, a corporation, and The Diners Club, Inc., a corporation, hereinafter referred to as respondents, shall not use independent agents or other entities knowingly for the purpose of circumventing any provision of this amended order.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the amended order.

It is further ordered, That respondents herein shall within sixty (60) days after service upon them of this amended order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this amended order.

It is further ordered, That no provision of this amended order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with more restrictive agreements, orders or directives of any kind obtained by any other governmental agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provisions of this amended order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has granted the petition of The Diners Club, Inc., submitted pursuant to Rule 3.72(b) of the Commission's Rules of Practice, to modify a consent agreement previously accepted by the Commission and executed by Diners Club, Inc. (Diners); National Account Systems, Inc. (NAS) and three NAS subsidiaries. Diners requested that the order be modified because on March 30, 1979, Diners sold NAS and its subsidiaries to Payco American Corporation of Milwaukee, Wisconsin. In purchasing NAS and its subsidiaries, Payco agreed to assume Diners' obligations under the order, although Diners agreed to continue to be bound by one provision which prohibits using independent agents or other entities to circumvent the other provisions of the order.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission originally accepted a consent agreement on April 22, 1977, from all of the proposed respondents other than Payco. The order prohibited NAS and its subsidiaries NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. and A. B. Hartman, Inc. from obtaining information on consumers under false pretenses, and required that they make disclosures required by the Truth in Lending Act, monitor their employees' compliance with the order, and fire those who failed to comply.

While Diners was not charged with engaging in the challenged practices, it had agreed to be liable for violations of the order by the other respondents. While Payco has agreed to become responsible for any violations of the order by NAS and its subsidiaries, Payco has not been charged with any violation of the law.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,
Secretary.

[FR Doc. 79-16992 Filed 5-30-79; 8:45 am]
BILLING CODE 6750-01-M

[16 CFR Part 13]

[File No. 791 0001]

Schering-Plough Corp.; Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Kenilworth, N.J. manufacturer of various drugs, including athlete's foot products, to divest completely, within one year, Scholl, Inc., the fourth largest U.S. manufacturer of athlete's foot products, subject to Commission approval. The order also would require the firm to provide the acquirer with specified assistance, and prohibit the company from acquiring for ten years, any business engaged in the manufacture, sale or distribution of athlete's foot products.

DATE: Comments must be received on or before July 30, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, Alfred F. Dougherty, Jr., Washington, D.C. 20580. (202) 523-3601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6 (f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

Schering-Plough Corp.; Agreement Containing Consent Order, File No. 791 0001

The Federal Trade Commission having initiated an investigation of the proposed acquisition of Scholl, Inc., a corporation, by Schering-Plough Corporation, a corporation, and it now appearing that Schering-Plough Corporation, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order with respect to that acquisition,

It is hereby agreed by and between Schering-Plough Corporation, by its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Schering-Plough Corporation (Schering-Plough) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033.

2. Scholl, Inc. (Scholl) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 213 West Schiller Street, Chicago, Illinois 60610,

3. Schering-Plough admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Schering-Plough waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shalll not become part of the public record of the

proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Schering-Plough in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Schering-Plough that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Schering-Plough's address as stated in this agreement shall constitute service. Schering-Plough waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Schering-Plough has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Schering-Plough further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions shall apply:

A. "Solvex" means the SOLVEX trademark registered under the Lanham Act or any predecessor federal statute. The term "Solvex" does not include any rights, title or interest in the name or trademark DR. SCHOLL's or Scholl or in any distinctive packaging associated with the name Scholl or with any Scholl product.

B. "Athlete's foot products" means nonprescription fungicidal or fungistatic pharmaceutical products manufactured, distributed or sold primarily for the treatment of athlete's foot (*tinea pedis*).

I

It is ordered, That, subject to the prior approval of the Federal Trade Commission, respondent Schering-Plough, through its officers, directors, agents, representatives, employees, subsidiaries, affiliates, divisions, successors and assigns, shall, within one (1) year form either the date Schering-Plough acquires Scholl or service of this Order, whichever occurs later, divest the assets, tangible and intangible, acquired, improved or added by respondent as a result of its acquisition of Scholl and utilized by Scholl primarily for the manufacture, distribution or sale in the United States of Solvex athlete's foot products. Such assets shall include all raw material reserves, inventory, machinery, equipment, trade names, trademarks, patents, licenses, research and development projects, good will and other property of whatever description.

II

It is further ordered, That, at the option of the acquirer (the option to be exercised at the time of the contract), Schering-Plough shall assist the acquirer in the manufacture, distribution or sale of athlete's foot products so that they are comparable in quality to the Solvex products manufactured by Scholl at the time of the acquisition by respondent, in one or more of the following ways:

A. Schering-Plough shall provide acquirer with Scholl's formulations, specifications and manufacturing procedures, including Scholl's quality control standards and methods, relating to such Solvex products;

B. Schering-Plough shall provide the acquirer with all of Scholl's written know-how and scientific research data relating to athlete's foot products;

C. For no longer than three (3) years from the date of the contract with the acquirer, Schering-Plough shall provide the acquirer, at reasonable cost, with the assistance of such technical and production personnel as may be necessary in establishing or expanding the acquirer's facility for the production of such Solvex products; and

D. Schering-Plough shall use its best efforts to assist the acquirer in obtaining raw materials required to manufacture such Solvex products: *Provided, however,* That nothing in this provision shall require Schering-Plough (1) to participate in, to guarantee or to stand behind any financial arrangement between the acquirer and the suppliers of raw materials, or (2) to furnish any such materials except as specifically provided elsewhere herein.

E. Schering-Plough shall provide the acquirer with all Scholl's Solvex customer lists, sales and promotional materials, proprietary market research materials (except for materials from A. C. Nielsen Co. and Towne-Oller and Associates, Inc. that are subject to a contractual agreement not to disclose) and sales training materials and devices relating thereto.

F. As an interim measure, pending the establishment or expansion of the acquirer's manufacturing capability and for no longer than three (3) years from the date of the contract with the acquirer, Schering-Plough shall agree to supply the acquirer, at reasonable cost, with its bulk requirements of products the same or similar to those manufactured by Scholl in the United States under the SOLVEX trademark at the time of the acquistion by respondent.

III

It is further ordered, That, until all the requirements of Paragraph I of this Order have been accomplished, Schering-Plough, its subsidiaries, affiliates, divisions, successors and assigns, shall not take any action which diminishes the value of the products or other assets, tangible or intangible, that are subject to this Order or which in any way impairs Schering-Plough's ability to comply with the requirements of this Order: *Provided, however,* That nothing in this provision shall prohibit or prevent Schering-Plough, its subsidiaries, affiliates, divisions, successors or assigns, from competing in the manufacture, distribution or sale of athlete's foot products.

IV

It is further ordered, That, pursuant to the requirements of Paragraph I of this Order, none of the assets, property, rights or privileges, tangible or intangible, acquired or added by respondent shall be divested, directly or indirectly, to anyone who is at the time of divestiture an officer, director, employee or agent of, or under the control, direction or influence of, respondent or its subsidiaries or affiliated corporations, or who owns or

controls more than one (1) percent of the outstanding shares of the capital stock of the respondent.

V

It is further ordered, That, for a period of ten (10) years from the date this Order becomes final, or until June 30, 1989, whichever occurs first, Schering-Plough, its subsidiaries, affiliates, divisions, successors and assigns, shall not acquire directly or indirectly, without prior approval of the Federal Trade Commission, any stock, share capital, actual or potential equity interest or right of participation in the earnings of any concern, corporate or non-corporate, engaged in, or the assets of any concern relating to, the manufacture, distribution or sale in the United States of athlete's foot products: *Provided, however,* That nothing in this paragraph shall require prior approval of the merger of Scholl into any subsidiary of Schering-Plough or other reorganization of Schering-Plough or its subsidiaries, affiliates and divisions.

VI

It is further ordered, That Schering-Plough shall, within sixty (60) days after the date of service upon it of this Order, and every sixty (60) days thereafter until Schering-Plough has fully complied with Paragraph I of this Order, and annually thereafter for the duration of this Order, submit in writing to the Federal Trade Commission a verfied report setting forth in detail the manner and form in which Schering-Plough intends to comply, is complying or has complied with this Order. All compliance reports shall include, among other things that are from time to time required, a summary of contacts or negotiations with anyone for the assets, property, rights and privileges specified in Paragraph I of this Order, the identify of all such persons, and copies of all written communications between such persons and Schering-Plough.

VII

It is further ordered, That Schering-Plough shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate identity of Schering-Plough, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance obligations arising out of the Order.

Schering-Plough Corp., File No. 791 0001

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Schering-Plough Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Allegations of the Complaint

On April 2, 1979, Schering-Plough Corporation (Schering-Plough) acquired Scholl, Inc. (Scholl) and merged Scholl into a subsidiary of Schering-Plough.

The Federal Trade Commission alleges in its complaint that this acquisition violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, in that it lessens or eliminates competition and tends to create a monopoly in the manufacture and sale of athlete's foot products in the United States.

The Federal Trade Commission alleges that the acquisition violates Section 7 and Section 5 by (a) eliminating actual and potential competition between Schering-Plough and Scholl in the manufacture and sales of athlete's foot products in the United States, (b) lessening actual competition between competitors generally in the manufacture and sale of athlete's foot products (c) eliminating a substantial independent competitor, namely Scholl, (d) entrenching Schering-Plough's leading position in the manufacture and sale of athlete's foot products, (e) maintaining or increasing the concentration in the manufacture and sale of athlete's foot products, and reducing the possibility of deconcentration, (f) substantially increasing existing barriers to entry, (g) encouraging additional acqusitions and mergers in the industry, (h) depriving independent manufacturers and sellers of athlete's foot products of a fair opportunity to compete with combined resources and market position of Schering-Plough and Scholl, and (i) depriving members of the consuming public of the benefits of free and unrestricted competition in the manufacture and sale of athlete's foot products.

The Terms of the Proposed Consent Order

Paragraph I of the proposed order requires Schering-Plough to divest, within one (1) year from either the date Schering-Plough acquires Scholl or service of the order, whichever occures later, all Scholl's raw material reserves, inventory, machinery, equipment, trade names, trademarks, patents, licenses, research and development projects, good will and other property of whatever description utilized by Scholl primarily for the manufacture, distribution or sale of athlete's foot products in the United States.

Paragraph II of the proposed order requires Schering-Plough to assist the acquirer, at the acquirer's option, in the manufacture, distribution, or sale of athlete's foot products. The acquirer must exercise the option at the time of his contract to acquire the assets. Schering-Plough must, where such option is exercised, provide the acquirer with Scholl's formulations, specifications, manufacturing procedures, written know-how, scientific research data, customer lists, market research data, and promotional materials. In addition, Schering-Plough must, at the acquirer's option, assist the acquirer in obtaining raw materials. Similarly, for no longer than three years, Schering-Plough must, at the acquirer's option, make available at reasonable cost such technical and production personnel as may be necessary in establishing or expanding the acquirer's production facility. Furthermore, the acquirer has the option, pending the establishment or expansion of his manufacturing capability, but for no longer than three years, of obtaining at reasonable cost his bulk requirements of product the same or similar to those manufactured by Scholl at the time of its acquisition.

Paragraphs III and IV are standard provisions. Paragraph III prevents Schering-Plough from diminishing the value of the products or other assets that are subject to this order or in any way impairing Schering-Plough's ability to comply with this order. Paragraph IV prohibits the divestiture of any of the assets, property, rights or privileges subject to the order to anyone who is, at the time of the divestiture, an officer, director, employee or agent of or under contract, direction or influence of Schering-Plough or which owns more than one percent of the outstanding share of the capital stock of Schering-Plough.

Paragraph V prohibits Schering-Plough, for a period of 10 years from the

date this order becomes final or until June 30, 1989, whichever occurs first, from acquiring without prior Commission approval any stock, share capital, actual or potential equity interest or right of participation in the earnings of any concern engaged in, or the assets of any concern relating to, the manufacture, distribution or sale of athlete's foot products in the United States. Future competition in the athlete's foot product market is thereby protected without the expenditure of significant Commission resources.

Paragraphs VI and VII are standard provisions. Paragraph VI sets forth the standard compliance obligations of a company under a Commission consent order. Paragraph VII requires notice to be given to the commission of any change in the corporate structure of Schering-Plough.

The divestiture of the assets described in Paragraph I furthers competition in the United States athlete's foot product market by restoring an independent competitor that would otherwise be eliminated.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16931 Filed 5-30-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1105]

Development of Proposed Consumer Product Safety Standards Proposed Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is reorganizing and proposing to amend a portion of its regulation on developing proposed safety standards. This action is necessary to reflect changes in section 7 of the Consumer Product Safety Act resulting from the Consumer Product Safety Act Authorization Act of 1978. The changes to section 7 of the act include allowing the Commission to develop proposed consumer product safety standards itself and to publish as proposed standards certain types of existing standards without first soliciting offers to develop standards or soliciting the submission of existing standards; deleting the 150 day period for developing standards and the 60 day period for the Commission to review a recommended standard submitted by an offeror; requiring the Commission to provide for notice, public participation and recordkeeping when it develops standards itself; and allowing the Commission to fund participants when it develops standards itself. The Commission has reorganized Part 1105 for clarity into four subparts. The Commission is soliciting comment only on proposed Subpart C, which contains new provisions implementing the Commission's authority to develop proposed standards itself, and on §§ 1105.5(a)(7) and 1105.11 of Subpart B, which describe the development period for offeror developed standards. Subparts A, B (except §§ 1105.5(a)(7) and 1105.11) and D are essentially identical to the existing regulation with the exception of nondiscretionary changes required by the amendments to section 7 and minor editorial changes. Therefore, except as noted above, the Commission seeks no comment on these Subparts.

DATES: Written comments on proposed Subpart C must be received by the Commission by July 2, 1979.

The Commission proposes that Subpart C and §§ 1105.5(a)(7) and 1105.11 become effective on publication in final form in the Federal Register. While the nondiscretionary changes in the other subparts are not proposed for comment, the Commission intends that they take effect at the same time the entire rule is published in final form.

ADDRESSES: Send comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Copies of any comments may be seen in, or obtained from the Office of the Secretary, Consumer Product Safety Commission, 3rd floor, 1111 18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Alan H. Schoem, Office of the General Counsel, Consumer Product Safety Commission, 1111 18th Street, N.W., Washington, D.C. 20207, (202) 634-7770.

SUPPLEMENTARY INFORMATION: A major objective of the Consumer Product Safety Commission is to protect the public against unreasonable risks of injury associated with consumer products. One way in which the Commission may achieve this objective is by developing and issuing mandatory consumer product safety standards when the Commission believes they are necessary to eliminate or reduce an unreasonable risk of injury. These standards are authorized by section 7 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2056.

The CPSA as originally enacted (Pub. L. 92-573) provided a novel method for the development and issuance of consumer product safety standards. The act required the Commission to solicit from outside parties the submission of offers to develop recommended standards for the Commission or the submission of existing standards for consideration as proposed mandatory standards. The Commission could develop standards itself only under limited circumstances and, in any event, only after it had invited outside parties to offer to develop recommended standards for the Commission.

To implement its authority to develop and issue mandatory standards, the Commission on May 7, 1974, after providing an opportunity for public comment, issued a regulation covering (1) the submission of existing standards to the Commission, (2) the submission of offers to develop recommended consumer product safety standards, and (3) the actual development of recommended consumer product safety standards by parties outside the Commission (16 CFR Part 1105, 39 FR 16213). The regulation also included requirements for cost contributions by CPSC toward the development of standards.

The Commission amended the regulation on November 9, 1977 (42 FR 58400) to reflect changes in section 7 of the act contained in the Consumer Product Safety Commission Improvement Act of 1976 (Pub. L. 94-284). In November 1978, the Consumer Product Safety Act Authorization Act (Pub. L. 95-631) became law. It authorized appropriations for the Commission through 1981 and contained, among other things, changes and additions to the provisions of the Consumer Product Safety Act.

The amendments to the CPSA include a number of changes to section 7 of the CPSA which sets forth the procedures for the development of proposed consumer product safety standards. The changes include allowing the Commission to develop proposed standards itself without the necessity of first soliciting offers to develop recommended standards or soliciting the submission of existing standards; allowing the Commission to propose certain types of existing standards without the necessity of soliciting offers to develop standards or the submission of existing standards; deleting the prescribed 150 day period for developing

standards and the 60 day period for the Commission to review a recommended standard submitted by an offeror; allowing the Commission to fund participants when it develops standards itself; and requiring the Commission to prescribe regulations governing situations where it develops standards itself without using the offeror process.

In this document, the Commission is proposing to amend its standard development regulation, 16 CFR Part 1105, to reflect the amendments to section 7 of the CPSA. In addition, because of the complexity of section 7 as amended and the need to include new provisions in the regulation to reflect the amendments, the Commission is reorganizing the regulation and reprinting the entire regulation in this document. The Commission believes it is necessary to reorganize the regulation to assure that, with the addition of new provisions, the regulation is clear and understandable. The Commission has also made several nonsubstantive editorial changes in the reorganized regulation to simplify and clarify the regulation.

The regulation as reorganized contains four subparts. Subpart A contains general purpose and policy provisions. Subpart B contains procedures for the development of recommended standards under the Consumer Product Safety Act by persons or groups outside the Commission. Subpart C contains procedures for Commission development of proposed standards, and Subpart D applies where the Commission proposes existing standards as mandatory standards.

The Commission is proposing for comment only Subpart C, which contains provisions for Commission developed standards needed as a result of the amendments to section 7, and §§ 1105.5(a)(7) and 1105.11 of Subpart B, which describe the development period for offeror developed standards. Subparts A, B and D of the reorganized regulation are essentially the same as the existing regulation, and except for §§ 1105.5(a)(7) and 1105.11 of Subpart B, the Commission is not seeking comment on them. Generally, the only changes the Commission has made to the provisions of those subparts from the existing regulation are minor editorial changes and changes specifically required by the recent amendments to section 7. The amendment to section 7 deleting the prescribed 150 day period for developing standards and requiring the Commission to specify a development period had been reflected in the regulation at § 1105.5(a)(7). Similarly, the amendment requiring the Commission to publish a proposed standard within 45 days after the development period ends has been reflected in the regulation at section 1105.11. The amendment authorizing the Commission to publish an existing standard as a proposed standard without first soliciting offers to develop a standard or the submission of existing standards is reflected in the regulation at § 1105.26. In addition, the Commission has made minor changes in the regulation at § 1105.25(a) to reflect the amendment to section 7 regarding the Commission's authority to publish an existing standard as a proposed standard in lieu of accepting an offer to develop a standard. Previously, the Commission could publish only certain types of existing standards. The amendment to section 7 has broadened this authority. The Commission has revised its standard development regulation to reflect these nondiscretionary changes.

The amendments to section 7 authorizing the Commission to develop proposed standards itself without using the offeror process also require that the Commission amend its existing regulation by adding new provisions for Commission development of proposed standards. These new provisions appear in proposed Subpart C. The new provisions require the Commission, when developing proposed standards itself, to follow procedures similar to those in Subpart B applicable to offerors who develop standards.

The provisions of Subpart C also reflect requirements in the amended act that are unique to Commission developed standards. Under the amendments, the CPSC may develop a proposed standard without inviting offers only if it determines that it is more expeditious for the Commission itself to develop a standard that would adequately protect the public from the identified risk of injury than to use the offeror process. In making this determination, the amendment requires the Commission to consider various factors. These include the nature of the risk of injury associated with the product; the CPSC's expertise with respect to the risk of injury; its expertise in developing consumer product safety standards; and its available resources and priorities. In considering these criteria, the Commission, in accordance with the legislative history of the amendments, must also consider the qualifications of persons or groups outside the Commission. In addition, in determinating whether it is more expeditious for the Commission to develop standards itself rather than using the offeror process, the Commission must consider not only technical expertise but also the ability to translate technical results into understandable enforceable standards. These requirements are included in the regulation at Subpart C.

The amended act also requires the Commission to give interested persons 30 days in which to comment on the Commission's determination to develop a standard itself. While the Commission is not required to reply in the Federal Register to the comments on its determination (H.R. Rep. No. 1164, 95th Cong. Sess. 11 (1978)), it will take them into consideration in determinating whether to proceed with standard development itself.

The regulation also provides that the Commission, in its discretion, may publish the determination that it intends to develop a standard itself before it publishes a notice beginning the standard development proceeding, or, it may combine the two notices. This provision is found in § 1105.16.

The amended act permits the Commission to make financial contributions to participants who participate with the Commission when it develops proposed standards itself in addition to being able to contribute to an offeror's cost in developing a standard. When the Commission develops standards itself, it may provide financial assistance directly to any interested persons or groups whose participation in the standard development process is likely to result in a more satisfactory standard. Subpart C reflects this authority and generally follows the provisions of the Commission's interim regulations on financial contributions, found at 16 CFR Part 1050 (43 FR 23560, May 31, 1978).

The financial contribution provision proposed in Subpart C is intended to encourage and insure representation of various viewpoints when the Commission develops standards itself. This provision does not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid in the development of Commission developed standards.

Effective date. The Commission proposes that Subpart C and §§ 1105.5(a)(7) and 1105.11 become effective on publication in final form in the Federal Register. Because the regulation is a rule of agency practice or procedure, a delayed effective date is not necessary. Moreover, the Commission finds that proposed Subpart C and proposed §§ 1105.5(a)(7) and 1105.11 of Subpart B should take effect

upon publication in final form because the Commission has already determined to develop a standard itself for omindirectional CB antennas and should have a regulation in effect as soon as possible in order to begin the development proceeding. The changes in Subparts A, B and D required by the amendments will take effect at the same time as proposed Subpart C.

This regulation is a rule of agency practice or procedure and thus is not subject to the notice and comment provisions of the Administrative Procedure Act (APA), 5 USC 553. However, to obtain full public participation in development of the regulation, the Commission followed the notice and comment procedure of the APA in issuing the original regulation by proposing it for comment before issuing it in final form. The Commission believes it will be beneficial to propose for public comment Subpart C and §§ 1105.5(a)(7) and 1105.11 of the regulation below, which provide the procedure whereby the Commission itself may develop a proposed safety standard and which describe the development period for offeror developed standards. Because, as noted above, it will be necessary for the Commission to use the regulation in the CB standard development proceeding, the Commission is allowing only 30 days for comment in this case.

The Commission believes comment is not needed on Subparts A, B and D, except for §§ 1105.5(a)(7) and 1105.11 of Subpart B, because, as explained earlier, the changes to these subparts from the original regulation are either editorial or non-discretionary modifications required by the recent amendments to the CPSA. Therefore, except for §§ 1105.5(a)(7) and 1105.11 of Subpart B, the Commission is not seeking comment on these changes. While, with these exceptions the changes to Subparts A, B and D are not being proposed for comment, the Commission will review to the extent feasible any comments it receives on changes to those subparts made as a result of the recent amendments.

Accordingly, pursuant to section 7 of the Consumer Product Safety Act, Pub. L. 92-573, 86 Stat. 1212-15, as amended, Pub. L. 94-284, 90 Stat. 505-506, as amended, Pub. L. 95-631, 92 Stat. 3742-45, 15 U.S.C. 2056, Part 1105 of Title 16 Chapter II, Subchapter B is proposed to be amended to read as follows:

PART 1105—DEVELOPMENT OF PROPOSED CONSUMER PRODUCT SAFETY STANDARDS

Subpart A—General

Sec.
1105.1 Purpose.
1105.2 General policy considerations.

Subpart B—Development of Recommended Standards by Offerors

1105.5 Beginning proceedings to develop recommended standards.
1105.6 Submission of offers to develop recommended standards.
1105.7 CPSC acceptance of offers to develop recommended standards.
1105.8 Development of recommended standards.
1105.9 Requirements for recommended standards developed by offerors.
1105.10 CPSC contributions to the offeror's cost of developing recommended standards.
1105.11 CPSC publication of proposed standards based on recommended standards.

Subpart C—Development of Proposed Standards by the Commission

1105.15 When CPSC may develop standards itself; procedures to be followed.
1105.16 Statement of Commission intent to develop a proposed standard.
1105.17 Beginning of proceedings for CPSC to develop proposed standards.
1105.18 CPSC development of proposed standards.
1105.19 CPSC contributions to costs of participants in the development of proposed standards.
1105.20 CPSC publication of proposed standards developed by the Commission.

Subpart D—Use of Existing Standards as Proposed Standards

1105.25 Submission of existing standards to CPSC as recommended standards.
1105.26 CPSC publication of proposed standards based on existing standards.

AUTHORITY: Sec. 7, Pub. L. 92-573, 86 Stat. 1212-15, as amended Pub. L. 94-284, 90 Stat. 505-506, as amended Pub. L. 95-631, 92 Stat. 3742-45, 15 U.S.C. 2056.

Subpart A—General

§ 1105.1 Purpose.

(a) A major objective of the Consumer Product Safety Act ("act") is to reduce unreasonable risks of injury associated with consumer products. The Consumer Product Safety Commission ("Commission") may achieve this objective through the development and promulgation of mandatory consumer product safety standards where they are considered necessary to eliminate or reduce an unreasonable risk of injury. This Part sets forth the Commission's policy and procedures for developing proposed consumer product safety standards.

(b) Consumer product safety standards may originate in three ways:

(1) the Commission may accept an offer from a person or organization to develop a recommended standard (Subpart B);

(2) the Commission may itself develop a proposed standard (Subpart C);

(3) the Commission may publish an existing standard as a proposed standard (Subpart D). An existing standard may be published in whole, in part, or in combination with a recommended or proposed standard developed by an offeror or by the Commission.

§ 1105.2 General policy considerations.

(a) The general policy underlying this Part 1105 is that the interest and participation of the public are vital for carrying out the functions of the Consumer Product Safety Commission. Commission activities and deliberations are open to the public and afford any interested person the opportunity to participate and be heard. Accordingly, standards development activities will be open to the public and will afford the opportunity for any interested person to participate in the development of standards.

(b) Since safety standards are intended to eliminate or reduce unreasonable risks of injury associated with consumer products, the Commission seeks the involvement of all interested persons, the general public, and especialy ultimate consumers. Ultimate consumers and their representatives, as well as all other interested persons, are invited and encouraged to become involved by submitting offers to develop standards and by participating in the development of standards.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards; such groups are referred to in these rules as "ad hoc associations."

(d) Public involvement in the development of standards by either an offeror or the Commission will be encouraged through the use of extensive public notice. In addition to providing notice in the Federal Register, the Commission will issue a press release at the beginning of a proceeding and at the time participants are sought.

(e) The Commission will maintain a list of all persons and organizations that have expressed an interest either in being offerors or in participating in the development of proposed standards. The Commission will send copies of the Federal Register notice of proceeding,

press release, and other relevant documents to appropriate persons and organizations on the list that have expressed an interest in being offerors. The Commission will also send copies of the Federal Register notice of proceeding, the notice of acceptance of any offers, and other relevant notices to appropriate persons and organizations on the list that have expressed an interest in participating in the development of standards.

(f) The act enables the Commission to contribute to the offeror's cost or the cost of any person who participates with the Commission in developing a proposed standard in any case in which the Commission determines that a contribution is likely to result in a more satisfactory standard. The Commission views this provision of the act as a means by which a variety of persons and organizations will be able to develop standards and participate in the development of standards. The Commission also views this provision as a means by which the Commission can assist a cross section of interested persons, including consumers, to participate in the development of standards.

(g) The Commission will adopt a reasonable approach to determining the amount of time necessary to develop standards. The Commission believes that as a general rule the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in the act and this Part 1105.

Subpart B—Development of Recommended Standards by Offerors

§ 1105.5 Beginning proceedings to develop recommended standards.

(a) The Commission will begin a proceeding for the development of a recommended consumer product safety standard by an offeror by publishing a "notice of proceeding" in the Federal Register. The "notice of proceeding" shall:

(1) Identify the product and clearly describe the nature of the risks of injury associated with the product;

(2) State the Commission's preliminary determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risks of injury associated with the product;

(3) Include information with respect to any existing domestic, foreign, or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed rule;

(4) Provide information concerning the availability of Commission material relating to: (i) the specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard, and (iii) additional information relating to the development of a mandatory standard which may be helpful to potential offerors;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person within 30 days after the date of Federal Register publication of the notice:

(i) To submit to the Commission an existing standard as the proposed consumer product safety standard; or

(ii) To offer to develop a recommended consumer product safety standard;

(6) Include, to the extent known at the time the notice of proceeding is published, any requirement for additional information that is to be submitted to the Commission with either an existing standard or a standard to be developed by an offeror; and

(7) Specify the development period. The development period is the time the Commission allots for the offeror to develop and submit to the Commission a recommended standard and for the Commission staff to make any necessary revisions to the recommended standard and to prepare it for publication as a proposed standard.

(b) The Commission will, for the purpose of providing greater public awareness of its actions, issue a press release announcing the beginning of the proceeding. The press release will summarize the information contained in the Federal Register notice, including the invitation to any interested organization or person to submit an existing standard or to offer to develop a recommended standard.

(c) The Commission will send a copy of the Federal Register notice, press release, and other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in being offerors for one or more standards.

§ 1105.6 Submission of offers to develop recommended standards.

(a) Any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit an offer to develop a recommended standard. Each offer shall include a detailed description of the procedure the offeror will use in developing the standard. Each offer shall also include:

(1) A description of the plan the offeror will use to give adequate and reasonable notice to interested persons (including individual consumers, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, educational institutions, and consumer organizations) of their right and opportunity to participate in the development of the recommended standard;

(2) A description of the method whereby interested persons who have responded to the notice may participate, either in person or through correspondence, in the development of the recommended standard; and

(3) A realistic estimate of the time required to develop the recommended standard, including a detailed schedule for each phase of the standard development process.

(b) Each offeror shall submit with the offer the following information to supplement the description of the standard development procedure:

(1) A statement listing the number and experience of the personnel, including voluntary participants, the offeror intends to utilize in developing the recommended standard. This list should distinguish between (i) persons directly employed by the offeror, (ii) persons who have made a commitment to participate, (iii) organizations that have made commitments to provide a specific number of personnel and (iv) other persons to be utilized, although unidentified and uncommitted at the time of the submission. The educational and experience qualifications of these personnel relevant to the development of the recommended standard should also be included in the statement. This list should include only those persons

who will be directly involved, in person, in the development of the recommended standard; and

(2) A statement describing the type of facilities or equipment which the offeror plans to utilize in developing the recommended standard and how the offeror plans to gain access to the facilities or equipment.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing recommended standards. These groups are referred to as "ad hoc associations." An offer by an ad hoc association may be submitted by an individual member if the offer states that it is submitted on behalf of the members of the association. The individual member submitting the offer shall submit to the Commission a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer on behalf of each other member.

§ 1105.7 CPSC acceptance of offers to develop recommended standards.

(a)(1) If the Commission (i) does not decide to publish an existing standard as a proposed consumer product safety standard or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product, the Commission will, as soon as practicable, accept one or more offers to develop a recommended consumer product safety standard to address at least those risks of injury not addressed by an existing standard the Commission intends to propose.

(2) Acceptance of an offer will be based on a determination by the Commission that an offeror is technically competent, is likely to develop an appropriate standard within the period specified in the notice of proceeding or within the period determined by the Commission to be necessary and appropriate from the development of the recommended standard, and will comply with all of the requirements of the Commission for the development of the recommended standard.

(3) An offeror will be considered to have technical competence if the offer submitted indicates to the satisfaction of the Commission (i) that the offeror has demonstrated a thorough understanding of the problem, (ii) that the offeror has provided a rational approach to the solution of that problem, and (iii) that persons with appropriate technical expertise or experience will be utilized in the development of the recommended standard either as employees, consultants, or volunteers.

(b) Before accepting an offer to develop a recommended standard, the Commission may require minor modifications of the offer as a condition of acceptance.

(c) The Commission shall publish in the Federal Register the name, address, and organizational affiliation of each person whose offer it accepts and a summary of the terms of each accepted offer including the date established for the submission of the recommended standard and the date specified for the Commission to make any necessary changes and prepare the recommended standard as a proposed consumer product safety standard.

(d) The Commission, at or near the time of the Federal Register acceptance notice, will issue a press release which:

(1) Identifies each person (name, address, and organizational affiliation) whose offer has been accepted;

(2) Summarizes the terms of each accepted offer including the date established for the submission of the recommended standard; and

(3) Invites all interested persons to participate in the development of the recommended standard and informs them of how they may participate.

(e) The Commission will transmit to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating in the development of one or more standards a copy of the Federal Register notice of proceeding as well as the notice of the acceptance of any offers.

(f) All persons submitting offers to develop recommended standards whose offers have not been accepted will be notified in writing by the Commission. If requested by an offeror, the reasons for the nonacceptance of the offer will be supplied.

(g) If the Commission does not accept an offer to develop a recommended consumer product safety standard, the Commission may independently develop a proposed consumer product safety standard in accordance with Subpart C. Notice of this decision will be published in the Federal Register.

(h) If the Commission accepts an offer to develop a recommended consumer product safety standard, the Commission may not develop a proposed rule or publish such rule unless (1) the offeror's development time expires, or (2) the offeror whose offer was accepted is making unsatisfactory progress in the development of the recommended standard or, (3) the sole offeror whose offer is accepted is a manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard.

§ 1105.8 Development of recommended standards.

(a) The offeror shall comply with all Commission requirements for the development of recommended standards and with all terms of the acceptance and shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

(b) In developing a recommended standard, the offeror shall use the method agreed upon for interested persons to participate in the development of the standard and shall fully consider all of the suggestions and contributions of the respective participants. The offeror, after considering all suggestions and contributions, shall draft a recommended standard. The draft standard shall be sent to all participants for their review and concurrence or nonconcurrence. Unanimity among all participants shall not be a prerequisite to the submission by the offeror to the Commission of a recommended standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission.

(c) The offeror shall maintain complete written records of the development of the recommended standard. These records shall include:

(1) The names, addresses, and titles, if any, of all persons contacting the offeror for the purpose of participating in the development of the recommended standard;

(2) All written comments and any other information submitted by any person in connection with the development of the recommended standard including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the offeror of all of the substantive issues raised during the development of the recommended standard;

(4) A statement of the economic and environmental factors considered during the development of the recommended standard; and

(5) Records of all other matters relevant to the development and evaluation of the recommended standard.

(d) The records required in subsection (c) shall be submitted to the Commission

at the termination of the offeror's development time. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of its regulations relating to the availability of Commission records (16 CFR Part 1015).

(e) The offeror shall provide monthly progress reports containing a summary of progress made, the work under way, the significant problems encountered and the work remaining to be accomplished. These reports shall be transmitted to the Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207. The offeror shall cooperate fully with the Commission and permit the inspection of its facilities and development activities by duly authorized representatives of the Commission for the purpose of determining whether satisfactory progress is being made toward the completion of the recommended standard. The offeror shall be considered to be making satisfactory progress if the Commission concludes that the recommended standard may reasonably be expected to be completed in accordance with the provisions of the accepted offer by the end of the offeror's development time.

(f)(1) If it appears to the Commission that an offeror is not making satisfactory progress, the offeror will be given the opportunity (i) to demonstrate ability and willingness to complete the development of the recommended standard by the end of its development time or (ii) to justify the need for an extension of the development time.

(2) The Commission, after consideration and due notice, may (i) terminate the offeror's role in the development process and require the offeror to submit to the Commission all information, records, and documents which pertain to the development of the recommended standard or (ii) extend the development period and publish notice of such extension in the Federal Register, with the justification for the extension. If the Commission terminates the offeror's role in the development process, the offeror shall remit all funds contributed by the Commission which have not been expended.

(g) The offeror shall submit, with the recommended standard, test instruments or devices constructed or acquired to perform compliance tests if the Commission determines that these instruments or devices are necessary for the evaluation of the standard. In such a case, the instrument or device shall be sold to the Commission at the offeror's cost or loaned to the Commission for the evaluation of the recommended standard. Further, the offeror shall in any circumstance submit detailed descriptions or plans and specifications for the acquisition or construction of these instruments or devices.

§ 1105.9 Requirements for recommended standards developed by offerors.

(a) Recommended standards must be suitable for proposal and eventual promulgation under the act. To be considered suitable, a recommended standard shall be written in a manner appropriate for use as a Federal mandatory standard as specified in the format established by the Commission. The format of each standard will be made available by the Commission on or before the acceptance of an offer. Recommended standards shall be supported by test data or other documents or materials which the Commission requires. Recommended standards, if the Commission considers it to be appropriate, shall also contain suitable test methods and be accompanied by reasonable testing programs, if the Commission requires. Test methods for the measurement of compliance with proposed standards shall be reasonably capable of being performed by the Commission and by persons subject to the act or by private testing facilities. Testing programs accompanying but not part of the recommended standard, if the Commission considers it to be appropriate and so states in the Federal Register notice of the acceptance of the offer, shall include sampling plans.

(b) Recommended standards shall consist of:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging; or

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions; or

(3) Any combination of (1) and (2).

(c) A recommended standard shall be supported by:

(1) An analysis demonstrating that each of the requirements is reasonably necessary to prevent or reduce the unreasonable risk of injury identified in the notice of proceeding;

(2) An analysis explaining why the recommended standard is in the public interest; and

(3) An analysis of the extent to which elderly and handicapped persons may be adversely affected by the recommended standard.

(d) Each requirement of a standard, other than requirements relating to labeling, warning, or instructions, shall whenever feasible be expressed in terms of performance. Whenever the requirements are not expressed in terms of performance, an explanation shall be provided to support the use of the nonperformance requirements.

(e) The offeror, in submitting a recommended standard, shall include data and information to demonstrate that compliance with the standard would be technologically practicable. The offeror shall also submit, to the extent that it can reasonably be obtained by the offeror, data and information on the potential economic effect of the standard, including the potential effect on small business and international trade. The economic information should include data indicating (1) the types and classes as well as the approximate number of consumer products which would be subject to the standard; (2) the probable effect of the standard on the utility, cost, and availability of the products; (3) any potential adverse effects of the standard on competition; and (4) the standard's potential disruption or dislocation, if any, of manufacturing and other commerical practices. Further, the offeror shall include information, to the extent that it can reasonably be obtained by the offeror, concerning the potential environmental impact of the standard.

§ 1105.10 CPSC contributions to the offeror's cost of developing recommended standards.

(a) The Commission, in accepting an offer, may agree to contribute to the offeror's cost in developing a recommended consumer product safety standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the offeror is financially responsible.

(b) In order to be eligible to receive a financial contribution, the offeror, in addition to furnishing the information required under § 1105.6, must submit:

(1) A request for a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution;

(2) A statement asserting that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record standard development costs and expeditures; and

(3) A request for an advance payment of funds if necessary to enable the offeror to meet operating expenses during the development period.

(c) The Commission, in publishing the terms of the accepted offer, shall include a statement of the purpose and amount of the Commission's contribution.

(d) The offeror whose offer has been accepted shall, for a period of three years after final payment under the development agreement, maintain records which fully disclose the total cost and expenditures for the project and such other records which will facilitate an effective audit. The Commission and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records relevant to the development of the recommended standard or to the expenditure of any contribution of the Commission for the development of the recommended standard.

(e) The Commission, based upon a finding after an informal hearing that all or part of the Commission's contribution has been or is being misused, may seek reimbursement of that part of the contribution which has been or is being misused and shall have the right, after providing due notice, to terminate the development agreement and to discontinue payments towards the contribution. For the purpose of this Part 1105, "misuse of a contribution" means a use other than that agreed upon in writing by the parties.

(f) The items of cost toward which the Commission may contribute are those allowable direct and indirect costs allocable to the development project (as set forth in the applicable subparts of Part 1–15 of the Federal Procurement Regulations (41 CFR Part 1–15)). The Commission may contribute to the costs of assuring adequate consumer participation in the development of the standard. The Commission may make its contribution in advance and without regard to 31 U.S.C. 529.

(g) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings (however, the Commission may contribute toward the lease or rental of land or buildings);

(2) Costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer, except for longevity and other routine increases which may accrue during the development of the standard;

(3) Costs for the payment of items in excess of the offeror's actual cost;

(4) Costs for items having a usable lifespan in excess of the development period, except that a contribution may be made toward the proportionate value of the item during the development period determined by subtracting the item's estimated market value at the termination of the development period from the actual acquisition cost (the cost of items purchased by the Commission under § 1105.8(g) cannot be included in the Commission's contribution); and

(5) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

(h) Offerors who have received contributions from the Commission shall submit to the Commission a full accounting of these contributions and shall remit within 60 days after the offeror submits the recommended standard all amounts not expended during the development of the recommended standard.

§ 1105.11 CPSC publication of proposed standards based on recommended standards.

(a) The Commission will normally publish a proposed standard within 45 days after the development period ends. The development period is the time the Commission allots for the offeror to develop and submit to the Commission a recommended standard, and for the Commission staff to make any necessary revisions to the recommended standard and to prepare it for publication as a proposed standard. The Commission will specify the time periods in the Federal Register notices beginning a proceeding and accepting an offer to develop a recommended standard. The Commission may extend the development period by publishing a notice in the Federal Register announcing the extension(s) and providing reasons for the extension(s).

(b) If the Commission does not publish a proposed standard within 45 days after the specified development period, the Commission shall either (1) publish a Federal Register notice ending the proceeding or (2) publish a Federal Register notice stating the reasons for not publishing the proposed standard and specifying the time period within which the Commission will publish the proposed standard or will publish a notice ending the proceeding. For any good reason, the Commission may extend the time within which it will publish a proposed standard or end the proceeding. The reasons may include that the Commission is considering other approaches (such as a voluntary consumer product safety standard) to eliminate or reduce the unreasonable risk of injury that is the subject of the proceeding.

Subpart C—Development of Proposed Standards by the Commission

§ 1105.15 When CPSC may develop standards itself; procedures to be followed.

(a) The Consumer Product Safety Act authorizes the Commission to develop a proposed consumer product safety standard itself in the following five circumstances:

(1) Whenever it determines that it is more expeditious to develop a proposed standard itself without inviting offers to develop a recommended standard;

(2) When the Commission has published a notice inviting offers and does not, within 30 days after the date of publication of the notice, accept an offer;

(3) If the Commission has accepted an offer to develop a recommended standard and the recommended standard has not been submitted to the Commission during the specified period for developing the recommended standard;

(4) If no offeror whose offer was accepted is making satisfactory progress in the development of the recommended standard; and

(5) If the sole offer accepted is from a manufacturer, distributor, or retailer of the consumer product proposed to be regulated.

(b) The Commission will use the following procedures in developing a proposed standard itself for each of the five circumstances:

(1) In cases where the Commission decides to develop a proposed standard itself without using the offeror process (§ 1105.15(a)(1)) the Commission will use the procedures in this Subpart C.

(2) Whenever the Commission has begun the development process by inviting offers to develop a recommended standard but has not accepted an offer (§ 1105.15(a)(2)) the Commission will use the procedures in this Subpart C. However, the Commission need not publish a Federal Register notice of intent to develop a standard or a notice beginning a proceeding to develop a standard, as required in §§ 1105.16 and 17. Instead, the Commission will publish a notice in the Federal Register announcing (i) that no offer was accepted, (ii) that the Commission will develop the proposed standard itself, and (iii) the timetable for the remainder of the development

proceeding and the method for interested persons to participate with the Commission in the development effort.

(3) In the remaining three situations where the Commission develops a proposed standard itself only after an offeror process has been used (§§ 1105.15(a)(3) and (a)(4)) or an offeror process is being used (§ 1105.15(a)(5)), the Commission will use procedures it deems reasonable and appropriate. The Commission will publish a notice in the Federal Register announcing its decision to develop the proposed standard and stating the procedures it will use.

§ 1105.16 Statement of Commission intent to develop a proposed standard.

(a) The Commission shall develop a proposed standard itself without first inviting offers to develop a recommended standard only when it determines that it is more expeditious for the Commission to follow this procedure to develop a standard that adequately protects the public from the identified risks of injury than to use the offeror process. The Commission shall consult with any interested parties it deems necessary before it makes its determination and it shall publish in the Federal Register a notice of its intent to develop the standard in this way. The Federal Register notice shall give interested persons 30 days to submit written comments on the determination. The Commission shall consider those comments before developing a proposed standard itself.

(b) The Federal Register notice of intent shall:

(1) Include a statement that the Commission itself intends to develop a proposed consumer product safety standard and specify the period of time in which it intends to develop the standard; and

(2) Include a determination that it is more expeditious for the Commission itself to develop a proposed standard that adequately protects the public from the identified risk of injury than to use the offeror process. In making this determination, the Commission shall consider:

(i) The nature of the risk of injury associated with the product;

(ii) The expertise of the Commission with respect to the risk of injury;

(iii) The expertise of the Commission in developing consumer product safety standards as well as that of persons or groups outside the Commission, including the comparative ability of the Commission and those outside persons or groups to translate technical results into understandable, enforceable standards; and

(iv) The resources available to the Commission and the priorities established by the Commission.

(c) In its discretion, the Commission may publish a notice of intent to develop a proposed standard itself before any notice beginning the development proceeding is published, or, it may combine the two notices. If the notice of intent is published before the notice beginning the development proceeding, however, the Commission shall begin the development proceeding as soon as practicable, or publish a notice in the Federal Register stating the reasons for any delay and estimating the time in which the proceeding will begin.

§ 1105.17 Beginning the proceedings for CPSC to develop proposed standards.

(a) If the Commission determines to develop a proposed consumer product safety standard itself (instead of using the offeror process) it shall begin the proceeding by publishing a notice in the Federal Register that includes the following:

(1) A statement that the Commission itself intends to develop a proposed standard without using the offeror process. This statement shall be in accordance with § 1105.16 and need not be repeated in detail if it has been published separately before the notice beginning the proceeding has been published; and

(2) The Commission shall also specify the development period. The development period is the time the Commission allots to develop the provisions of a proposed standard and to prepare the standard for publication as a proposed standard.

(b) The Federal Register notice shall also:

(1) Identify the product and clearly describes the nature of the risk of injury associated with the product;

(2) State the Commission's preliminary determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risk of injury;

(3) Include information with respect to any existing domestic, foreign or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed standard;

(4) Provide information concerning the availability of Commission material relating to: (i) the specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard; and (iii) additional information relating to the development of the proposed standard by the Commission which may be helpful to potential participants;

(5) Invite interested persons (including individual consumers, consumer organizations, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, and educational institutions) to participate with the Commission in the development of the standard; and

(6) Describe the method whereby interested persons may participate in the development of the standard, either in person or through correspondence. This shall include an explanation of the availability of Commission financial contributions to participants.

(c) The Commission, for the purpose of providing greater public awareness of its actions, will issue a press release concerning the beginning of the proceeding during which it will itself develop the proposed standard. The press release will summarize the information contained in the Federal Register notice, including the invitation to any interested person or organization to participate with the Commission in the development of the proposed standard.

(d) The Commission will transmit a copy of the Federal Register notice, press release, and other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating with the Commission in the development of standards.

§ 1105.18 CPSC development of proposed standards.

(a) The Commission shall allow the public to participate with it in the development of a proposed standard.

(b) The Commission shall specify in detail in the Federal Register notice beginning each proceeding the method by which interested persons may participate with the Commission in developing the proposed standard.

(c) The procedures, at a minimum, shall provide an opportunity for written comment from participants before the Commission staff submits a draft proposed standard to the Commission. The procedures may also provide participants with the opportunity to participate orally.

(d) The Commission staff shall fully consider all comments timely received

and shall provide an analysis of the comments to the Commission with a recommended proposed standard.

(e) The Commission shall make the final decision on the provisions of any proposed standard.

(f) The Commission shall maintain complete written records of the development of the proposed standard. These records shall include.

(1) The names, addresses, and titles, if any, of all persons contacting the Commission and Commission staff for the purpose of participating in the development of the proposed standard;

(2) All written comments and any other information submitted by any person in connection with the development of the proposed standard, including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the Commission of all of the substantive issues raised during the development of the proposed standard;

(4) A statement of the economic and evironmental factors considered during the development of the proposed standard; and

(5) Records of all other matters relevant to the development and evaluation of the proposed standard. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of its regulations relating to the availability of Commission records (16 CFR Part 1015).

(g) The Comptroller General of the United States or any of its duly authorized representatives shall have access, for the propose of audit and examination to any books, documents, papers, and records relevant to the development of the proposed standard or to the expenditure of any contribution of the Commission for the development of such proposed standard.

§ 1105.19 CPSC contributions to costs of participants in the development of proposed standards.

(a) The purpose of this section is to encourage and insure representation of various viewpoints when the Commission develops a proposed standard itself by providing for Commission contributions to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter "participant") who participates with the Commission in developing standards. The provisions of this section do not apply to and do not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid the Commission in developing proposed standards.

(b) The Commission may, in developing a proposed standard itself, agree to contribute to the cost of a participant who participates with the Commission in developing a proposed standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more statisfactory standard than would be developed without a contribution; and

(2) That the participant to whom a contribution is made is financially responsible.

(c) In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider (i) the need for representation of one or more particular interests, expertise, or points of view in the development proceeding and (ii) the extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

(d) In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information:

(1) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding;

(2) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involves in the proceeding;

(3) An explanation of the economic interest, if any, that the participant has (and individuals or groups comprising the participant have) in any Commission determination related to the proceeding;

(4) A discussion, with supporting documentation, of the reason(s) a participant is unable to participate effectively in the proceeding without a financial contribution;

(5) A description of the participant's employment or organization, as appropriate; and

(6) A specific and itemized estimate of the costs for which the contribution is sought.

(e) Applications must be submitted to the Office of the Secretary, 1111 18th Street, NW., Washington, D.C. 20207, within the time specified by the Commission in its Federal Register notice beginning the development proceeding.

(f) The Commission may authorize a financial contribution only for participants who meet all of the following cirteria:

(1) The participant represents a particular interest, expertise or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(2) The economic interest of the participant in any Commission determination related to the proceeding is small in comparison to the participant's costs of effective participation in the proceeding. If the participant consists of more than one individual or group, the economic interest of each of the individuals or groups comprising the participant shall also be considered, if practicable and appropriate; and

(3) The participant does not have sufficient financial resources available for effective participation in the proceeding, in the absence of a financial contribution.

(g) The Commission may establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and may establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding.

(h) The Commission shall compensate participants only for costs that have been authorized and only for such costs actually incurred for participation in a proceeding.

(i) The participant shall be paid upon submission of an itemized voucher listing each item of expense. Each item of expense exceeding $15 must be substantiated by a copy of a receipt, invoice, or appropriate document evidencing the fact that the cost was incurred.

(j) The Commission shall compensate participants only for costs that it determines are reasonable. As guidelines in these determinations, the commission shall consider market rates and rates normally paid by the Commission for comparable goods and services, as appropriate.

(k) The Commission may compensate participants for any or all of the following costs:

(1) Salaries for participants, or employees of participants;

(2) Fees for consultants, experts, contractual services, and attorneys that are incurred by participants;

(3) Transportation costs;

(4) Travel-related costs such as lodging, meals tipping, telephone calls; and

(5) All other reasonable costs, incurred, such as document reproduction, postage, baby-sitting, and the like.

(l) The Commission may make its contribution in advance upon specific request, and the contribution may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C 529).

(m) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings;

(2) Costs for the payment of items in excess of the participant's actual cost; and

(3) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

(n) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers and records of a participant receiving compensation under this section. The Commission may establish additional guidelines for accounting, recordkeeping, and other administrative procedures with which participants must comply as a condition of receiving a contribution.

§ 1105.20 CPSC publication of proposed standards developed by the Commission.

(a) The Commission will normally publish a proposed standard within 45 days after the development period ends. The development period is the time the Commission allots to develop the provisions of a proposed standard and to prepare the proposed standard for publication. The Commission will specify the time periods in the Federal Register notice beginning a proceeding for a Commission developed standard. The Commission may extend the development period by publishing a notice in the Federal Register announcing the extension(s) and providing reasons for the extension(s).

(b) If the Commission does not publish a proposed standard within 45 days after the specified development period, the Commission shall either (1) publish a Federal Register notice ending the proceeding or (2) publish a Federal Register notice stating the reasons for not publishing the proposed standard and specifying the time period within which the Commission will publish the proposed standard or will publish a notice ending the proceeding. For any good reason, the Commission may extend the time within which it will publish a proposed standard or end the proceeding. The reason may include the fact that the Commission is considering other approaches (such as a voluntary consumer product safety standard) to eliminate or reduce the unreasonable risk of injury that is the subject of the proceeding.

Subpart D—Use of Existing Standards as Proposed Standards

§ 1105.25 Submission of existing standards to CPSC as recommended standards.

(a) Whenever the Commission, under § 1105.5(a)(3), has invited any person or organization to submit to the Commission an existing standard as either the proposed consumer product safety standard or an offer to develop a recommended standard, any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit to the Commission an existing standard that contains safety-related requirements which the person or organization believes would be adequate to prevent or reduce the unreasonable risks of injury associated with the product identified by the Commission.

(b) Any submission of an existing standard should:

(1) To the extent possible, meet the requirements for standards developed by offerors contained in § 1105.9 as specified in each notice of proceeding;

(2) Identify the specific portions which are appropriate for inclusion in the proposed rule; and

(3) Be accompanied, to the extent that such information is available, by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

§ 1105.26 CPSC publication of proposed standards based on existing standards.

(a) The Commission may publish as a proposed consumer product safety standard (i) an existing standard submitted under section 1105.25 in response to a Federal Register notice soliciting the submission of offers to develop a standard or the submission of existing standards for use as a proposed standard or (ii) any standard issued, adopted, or proposed by any Federal department or agency (other than the Commission) or by any other qualified agency, organization, or institution.

(b) The Commission may publish standards described in (a)(ii) as a proposed standard without publishing a Federal Register notice soliciting the submission of existing standards.

(c) In order to publish a standard described in (a) as a proposed rule, the Commission must preliminarily determine that the standard, if issued in whole, in part, or in combination with the whole or part of another such standard, would eliminate or reduce the unreasonable risk(s) of injury associated with a consumer product.

(d) The Commission may publish a standard as a proposed rule under this section either in whole, in part, or in combination with the whole or part of another such standard. The Commission, in publishing such a standard as a proposed rule, may make any nonmaterial modifications it believes are necessary and appropriate.

(e) The Commission may publish a standard as a proposed rule under this section either (i) instead of accepting an offer to develop a standard submitted in response to the notice described in § 1105.5 or (ii) instead of beginning a proceeding described in Subparts B and C of this Part 1105 to develop a standard.

Interested persons are invited to submit written comments on proposed §§ 1105.5(a)(7) and 1105.11 of Subpart B and proposed Subpart C of the regulation on standard development. Comments on other provisions of the regulation will be considered to the extent practicable. Comments and any accompanying material must be received by the Office of the Secretary, no later than July 2, 1979. Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. If possible, please send at least 5 copies. Comments and accompanying material may be seen in, or copies obtained from, the Office of the Secretary, 1111 18th St., NW., Third Floor, Washington, D.C. during working hours, Monday through Friday.

Dated: May 24, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-16886 Filed 5-30-79; 8:45 am]

BILLING CODE 6355-01-M

[16 CFR Part 1201]

Safety Standard for Architectural Glazing Materials; Proposed Partial Revocation of Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed partial revocation of standard.

SUMMARY: In this document, the Commission proposes to revoke the Safety Standard for Architectural Glazing Materials as it applies to "glazed panels," which are items of glazing material located next to doors or between two walking surfaces. The standard would continue to apply to glazing materials used or intended for use in doors, storm doors, sliding glass doors (patio type), bathtub doors and enclosures, and shower doors and enclosures. The Commission also requests public comment on other actions concerning glazed panels which are being considered as alternatives to the proposed partial revocation. The Commission is proposing this partial revocation and is considering other alternative actions because inclusion of glazed panels in the standard and enforcement of the requirements by the Commission may not be "reasonably necessary" to eliminate or reduce an unreasonable risk of injury to consumers.

DATES: (1) Written comments concerning the proposed partial revocation should be submitted by July 30,1979.

(2) There will be an opportunity for interested persons to orally present data, views, or arguments on July 16, 1979 at 9:30 a.m. in the Commission's hearing room. Those wishing to make oral presentations should notify the Office of the Secretary in writing by July 2, 1979. A summary or copy of testimony is to be submitted to the Office of the Secretary by July 9, 1979.

EFFECTIVE DATE: The Commission proposes that the partial revocation become effective on the date of publication of a final rule.

ADDRESS: Comments, notices of appearance for the oral presentation, and summaries or copies of testimony should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received material may be seen in, or copies obtained from, the Office of the Secretary, 1111 18th Street, N.W., Third Floor, Washington, D.C.

HEARING LOCATION: CPSC hearing room, 1111 18th Street, N.W., Third floor (9:30 a.m.), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453; for information on the oral presentation contact Richard Danca, Office of the Secretary, (202) 634-7700.

SUPPLEMENTARY INFORMATION: On January 6, 1977, the Consumer Product Safety Commission issued the Safety Standard for Architectural Glazing Materials to eliminate or reduce unreasonable risks of injury associated with architectural glazing materials and certain products incorporating those materials (42 FR 1428). The standard prescribes tests to ensure that glazing materials used in certain architectural products either do not break when impacted with a specified energy or break with such characteristics that they are less likely than other glazing materials to present an unreasonable risk of injury. The standard became effective on July 6, 1977.

The standard is applicable to glazing materials used in six specific products. Those products are: storm doors, doors, bathtub doors and enclosures, shower doors and enclosures, sliding glass doors (patio-type), and glazed panels. Each of these products is defined by the standard.

Definition of Glazed Panel

Section 1201.2(a)(10) of the standard defines the term "glazed panel" to mean:

1. Any piece of glazing material in a residential building that has a vertical edge within 12 inches of a door and a bottom edge below the top of the door.

2. Any piece of glazing material in a nonresidential building that has a vertical edge within 48 inches of a door and a bottom edge below the top of the door.

3. Any piece of glazing material in a nonresidential building which has walking surfaces on both sides of the glazing material, a bottom edge less than 18 inches above any walking surface, and an area greater than 9 square feet. Both walking surfaces must be within 36 inches of the panel and the planes of each walking surface must be within 12 inches of each other.

Not included in definition 2 above are panels with an intervening interior permanent wall between the door and the panel. Not included in definition 3 above are panels with a horizontal framing member or permanent chair rail of specified dimensions.

As required by law, before issuing the standard presently in effect, the Commission solicited written comments from interested persons and held public hearings in order to receive oral presentation of data, views, and arguments. After considering the substantive issues raised by the written and oral comments, the Commission concluded that an unreasonable risk of injury was associated with certain items of glazing material located next to doors or between two walking surfaces ("glazed panels"). Injury information available to the Commission at that time indicated that consumers had sustained lacerations and other serious injuries after falling against or through such items of glazing material and after walking or running into such items of glazing material mistaken for open space. Accordingly, the Commission determined that the requirements of the standard were " reasonably necessary" to prevent the unreasonable risk of injury and should therefore be applicable to "glazed panels," as that term is defined in the standard.

The standard became effective on July 6, 1977, and generally applies to any item of glazing material used after that date in the manufacture or fabrication of any of the products subject to the requirements of the standard, including glazed panels. Since the standard has been in effect, the Commission has become aware of several practical problems that have arisen from those provisions in the standard which define the term "glazed panel" and that make the standard applicable to glazed panels.

Building Code Provisions

An issue of major concern to the Commission is the effect of the glazed panel provisions of the standard on the enforcement of city, county, and state building codes applicable to glazing materials.

At the time the Commission issued the standard, approximately 4,500 cities and counties were enforcing building codes which contained provisions addressed to risks of injury which could result from breakage of glazing materials by accidental human impact. The provisions of these building codes applied to glazing materials used in specific products or locations. The products and locations covered by most of these building codes were generally the same products and locations covered by the Commission's standard.

However, differences existed among the various building codes as to the precise description of the products and locations covered, and none of the building codes used language identical to the description of "glazed panel" in § 1201.2(a)(10) of the Commission's standard in describing items of glazing material near doors and walking surfaces.

Unlike the Commission's standard, building codes in effect at the time the standard was issued did not contain test procedures or criteria for use in determining whether glazing materials comply with the requirements of the codes. Instead, the building codes provided that glazing materials used in any product or location subject to their provisions must be acceptable when tested in accordance with the "American Standard National Safety Performance Specifications and Methods of Test for Safety Glazing Material Used in Buildings," published by the American National Standards Institute (ANSI), designated ANSI standard Z97.1. The test procedures and criteria of ANSI standard Z97.1 differ somewhat from the procedures and criteria contained in the Commission's standard and will pass some materials which would fail the Commission's standard.

Preemption of Nonidentical Requirements

Section 26(a) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2075(a)) provides that whenever a consumer product safety standard is in effect and applicable to a product, no state or political subdivision of a state may impose any requirements applicable to the same product and intended to address the same risk of injury as the consumer product safety standard unless the state or local requirements are "identical" to those of the applicable consumer product safety standard. Thus, to the extent that the provisions of any city, county, or state building code were applicable to any of the products covered by the standard and were intended to address the same risks of injury, those provisions were made unenforceable by § 26(a) of the CPSA after July 6, 1977, the effective date of the standard.

Discussions With Building Officials

The Commission and its staff have met with representatives of the three major associations of buildings officials (Building Officials and Code Administrators International, International Conference of Building Officials, and Southern Building Code Congress International) to explore the possibility that state and local building codes might be amended to make their performance requirements identical to those of the Commission's standard and applicable to the same items of glazing materials, thereby removing any obstacle to their enforcement arising from the preemption effect of section 26(a) of the CPSA.

From these discussions, the Commission has learned that the principal building officials of most cities, counties, and states would not recommend that their jurisdictions amend their building codes in this manner because those building officials believe that the provisions of the standard concerning glazed panels are not suitable for enforcement at the state or local level. Representatives of the three associations of building officials have expressed particular objection to the absence of any language in any part of the glazed panel definition which allows a building official to exercise some judgment concerning whether a particular item of glazing material in a given location should be required to comply with the standard on the basis that it may actually be subject to accidental human impact. Instead, the language of § 1201.2(a)(10) of the standard defines a "glazed panel" as "any piece" of glazing material which has a vertical edge within a specified distance of a door and as "all panes" of glazing material with walking surface on both sides when all specified dimensions are present. No part of the definition of glazed panel is modified by the phrase "when such product presents a risk of injury to consumers by accidental breakage of the glazing material from human impact" or similar language. Thus, state or local procedures for granting variances or exemptions from safety glazing requirements would not apply to state or local enforcement of the Commission standard's requirements. Further, such modification would likely be inappropriate for a federal standard since it could result in an impermissibly vague standard.

Industry Structure

Because of the preemption of state and local safety glazing requirements by the Commission's standard, protection of consumers from the risk of injury associated with glazing materials depends on the effectiveness of Commission enforcement. The Commission's enforcement capability and the structure of the glazing materials industry, specifically the process by which products are "manufactured" so as to come under the coverage of the standard, have a direct bearing on the effectiveness of the Commission's enforcement program in ensuring that consumers are adequately protected from the risks of injury associated with glazing materials.

Architectural products subject to the standard are assembled or fabricated either at a fixed factory or plant or at the building site during new construction or replacement of glazing materials. Information available to the Commission at this time indicates that five of the six products subject to the standard: doors, storm doors, sliding glass doors (patio-type), bathtub doors and enclosures, and shower doors and enclosures, generally are assembled or fabricated at a fixed factory or plant. Glazed panels, on the other hand, become products subject to the standard when the glazing material is placed in an opening of a building next to a door or between two walking surfaces such that it meets the definition of "glazed panel."

The National Glass Dealers Association (NGDA), a trade association representing installers of architectural glazing materials, in written and oral presentations to individual Commissioners and the staff, has disputed the accuracy of the above information concerning the extent to which products subject to the standard are assembled or fabricated in fixed plants. NGDA asserts that all architectural products subject to the standard, with the possible exception of storm doors, are, in varying degrees, assembled or fabricated at the site of their eventual use and that glazed panels do not present a different enforcement situation than other products subject to the standard. Therefore, NGDA maintains that the process of "manufacture" of glazed panels should not be considered a material factor in the Commission's decision concerning glazed panels. As discussed further below, the Commission believes that this factual issue is material and relates directly to determining the effectiveness of the Commission's standard in protecting consumers.

Effectiveness of Enforcement

Since the standard became effective, Commission investigators have inspected factories and plants of several hundred manufacturers of architectural products other than glazed panels (doors, sliding glass doors (patio-type), storm doors, and bathtub and shower doors and enclosures) and have found a high rate of compliance with the

standard. Because of this degree of compliance, the preemption under § 26(a) of the CPSA of building code provisions covering products other than glazed panels does not have an adverse impact on the Commission's ability to ensure that consumers are adequately protected. The high rate of compliance should, in the Commissions view, provide little oppoortunity for persons engaged in construction to obtain noncomplying products. Thus, the fact that non-identical building code requirements covering these products are presently not enforceable by state or local authorities does not in the Commission's view, create a situation where consumers are exposed to an unreasonable risk of injury. As indicated above, NGDA has disputed the accuracy of the Commission's information concerning the extent to which these products are assembled or fabricated at a fixed plant. The Commission is therefore interested in receiving information on this issue in order to determine the extent to which enforcement of the standard at factories and plants is sufficient to ensure protection of consumers from the unreasonable risks of injury associated with glazing materials used in doors, sliding glass doors (patio-type), storm doors, and bathtub and shower doors and enclosures.

The standard is also applicable to glazed panels. Aside from the glazing material itself, glazed panels are generally not constructed or fabricated at a plant or factory. Instead, an item of glazing material becomes a "glazed panel" under the definition of § 1201.2 (a) (10) when it is placed in an opening of a building next to a door or between two walking surfaces if all the relevant provisions of the glazed panel definition are met. The last stage of the "manufacture" of a glazed panel subject to the standard therefore generally results either from the installation of an item of glazing material by a glazing contractor during the construction of a new building or from the replacement of an item of glazing material in an existing building.

The number of glazing contractors engaged in activities that could result in the manufacture of glazed panels is estimated to be greater than 6,000 firms. Since the effective date of the standard, the provisions on glazed panels have generated a significantly large number of inquiries and complaints about alleged violations of the standard from many of these firms, all of which are potential manufacturers for purposes of the standard. The total number of investigators assigned to all of the Commission's area offices is less than 150 and is not expected to increase significantly in the foreseeable future. Because of both the large number of firms engaged in the installation of glazing materials which may or may not be glazed panels, depending upon their location in any given building, and the large quantities of glazing materials installed by these firms each day, the Commission believes that its ability to ensure a high level of compliance with the standard's glazed panel requirements, given the size of its enforcement staff, would be significantly strengthened through the active cooperation and assistance of state, county, and city agencies responsible for enforcing state and local building codes. Such cooperation would be consistent with section 29 of the CPSA (15 U.S.C. 2078), which calls for a program of Federal-State cooperation, including the acceptance of assistance in the administration and enforcement of the act from states and localities in such areas as investigation and education.

However, as discussed above, since the effective date of the standard, the Commission has learned that most state and local building officials have discontinued enforcement of pre-existing building code requirements applicable to glazing materials because of the preemption provisions of section 26(a) of the CPSA. Thus, the assistance of state, county and city agencies is not now generally available to the Commission in the enforcement of safety requirements for architectural glazing materials.

Unless state and local building codes incorporate requirements for glazed panels identical in all respects to the Commission's standard, the enforcement of state and local requirements will continue to be preempted, thus resulting in little or no state and local involvement in enforcement of safety requirements for architectural glazing materials. As indicated above, state and local jurisdictions have generally declined to enact building code provisions identical to the standard because of the limitation the standard imposes on the ability of state and local authorities to grant variances or exemptions where deemed appropriate.

NGDA, in its presentations to Commissioners and staff, has asserted that the small size of the Commission's field enforcement staff does not significantly impair enforcement of the standard's requirements and that it is not necessary to supplement the Commission's enforcement capability with state, county, and local personnel in order to ensure protection of consumers. NGDA believes that "the mere threat of Federal regulatory enforcement—coupled with awareness and understanding of Federal requirements—has traditionally been more than sufficient" to enforce Federal requirements. In this regard, NGDA claims to have engaged in significant educational efforts to aid its members and others in complying with the Commission's standard.

As discussed further under the section titled "Scope of Glazed Panel Definition" below, NGDA maintains that the enforcement problems associated with the glazed panel provisions are caused chiefly by the lack of clarity in the definition of glazed panels and the resultant difficulty in understanding the scope of coverage of the standard.

In view of the importance of this issue to the Commission's ultimate decision on whether continued coverage of glazed panels is reasonably necessary to protect consumers from unreasonable risk of injury, the Commission solicits public comment on the issue of the effectiveness of enforcement of safety requirements for glazing materials in general, and glazed panels in particular, (1) by the Commission; (2) by state and local agencies through enforcement of building codes; and (3) by industry through self-enforcement and educational activities as a supplement to Federal enforcement.

Scope of Glazed Panel Definition

Experience gained by the Commission in the administration and enforcement of the standard indicates that many of the problems encountered by affected parties in interpreting and understanding the glazed panel provisions of the standard are a result of the complexity of the glazed panel definition. The Commission believes that some of the objections expressed by NGDA and by state and local building officials about the language in the "glazed panel" definition are valid. The Commission has become aware of many instances in which items of glazing material fall within the definition of glazed panel in § 1201.2(a)(10) but do not appear to present the unreasonable risks of injury which the standard was intended to reduce or eliminate. Examples of such items of glazing material that fall within the standard's definition of "glazed panel" include the following:

1. Items of glazing material located within 12 inches of a door in a residential building or within 48 inches of a door in a nonresidential building which are not likely to be broken by

consumers falling against or through them because of their small size or their distance above the ground or floor level.

2. Items of glazing material located within 12 inches of a door in a residential building which are not likely to be mistaken as openings for human passage because of their small size or their height above the ground or floor level.

3. Items of glazing material located within 48 inches of a door in nonresidential buildings which are not likely to be mistaken as openings for human passage because of their small size, their distance from the edge of the door, or their height above the ground or floor level.

4. Items of glazing material located near doors in both residential and nonresidential buildings which are less likely to be subject to accidental human impact because they are not in the same plane as the door.

5. Items of glazing material located near doors in both residential and nonresidential building which are not likely to be mistaken as openings for human passage because of a horizontal framing member or chair rail which gives a visual signal that solid material is present.

Consideration of alternatives

The Commission has considered several alternative solutions to the problems presented by the scope and complexity of the glazed panel definition. One alternative is to revoke the standard as it applies to glazed panels and defer to state and local building code authorities for enforcement of safety requirements for glazed panels. A second alternative is to revise the glazed panel definition to narrow the scope of the standard's coverage of glazed panels. Both the Commission's staff and NGDA have suggested revisions of the glazed panel definition. In considering solutions to the problems discussed above, the Commission has evaluated the extent to which the various alternatives would provide a high level of compliance with safety requirements for glazed panels.

A. Revocation of Glazed Panel Provisions

The Commission believes that while revisions of the glazed panel definition of the standard, as discussd further below, could be expected to improve the degree of compliance with the glazed panel provisions by eliminating some of the more technical violations that may not present any serious danger to the safety of consumers, it does not anticipate that such revisions would lead to the rapid adoption of the revised glazed panel provisions of the standard in identical form by model building code organizations or by cities, counties, and states. Rather, information received from representatives of the three associations of building officials leads the Commission to believe that incorporation of any revision of the glazed panel provisions of the standard into substantial numbers of city, county or state building codes might not occur for several years, if ever. Therefore, based on present information, the Commission does not believe that state and local assistance would be available to the Commission in enforcement of safety glazing requirements for glazed panels even if those provisions were revised.

On the other hand, representatives of the International Conference of Building Officials and the Southern Building Code Congress International have advised the Commission that if the glazed panel provision of the standard were revoked in such a way as to remove the preemptive effect of the Commission's standard on those provisions of state and local building codes covering items of glazing material next to doors and next to walking surfaces, all of those cities and counties which have adopted the model building codes published by those organizations would resume enforcement of existing building code provisions applicable to glazing material next to doors and next to walking surfaces. Representatives of Building Officials and Code Administrators International have informed the Commission that if the Commission takes final action to revoke the glazed panel provisions of the standard, that association would reestablish the provisions in its model building code applicable to glazing materials near doors and near walking surfaces that were in effect before July 6, 1977, and that all of these cities and counties that have adopted that code would resume enforcement of those provisions. Representatives of all three groups of building officials have told the Commission that their members desire to enforce those provisions in their building codes which were applicable to glazing materials near doors and near walking surfaces before the Commission's standard became effective because their members believe enforcement of those provisions is necessary for the protection of their citizens.

Additionally, representatives of all three associations of building officials, acting as the Council of American Building Officials and the Board for Coordinating Model Codes (CABO/BCMC), agreed on January 31, 1979, to recommend the adoption by the model building code organizations of a uniform definition of glazed panel and adoptions of the performance test requirements contained in the Commission's standard. The BCMC has taken this action with the understanding that the Commission is considering a proposal to revoke the standard as it applies to glazed panels, thus removing the preemptive effect of the Commission's standard as to glazed panels.

The Commission believes that the adoption by the model building code organizations, and hence city, county, and state building authorities, of uniform safety glazing requirements for glazed panels, is possible only if the preemptive effect of the standard as to glazed panels is removed. If the standard's present requirements for glazed panels continue in effect, it appears that the active involvement of the state and local authorities in the enforcement of safety glazing requirements will continue to be unavailable.

The Commission has considered the relative effectiveness, in terms of protecting consumers, of continued application of the standard to glazed panels under the circumstances described above compared with the potential effectiveness of active state, county, and city building code enforcement of uniform safety requirements for glazed panels. It preliminarily concludes that the continued application of the standard to galzed panels is not "reasonably necessary" to protect consumers from the unreasonable risk of injury associated with the product. In determining whether application of the standard to glazed panels is "reasonably necessary," the Commission has considered whether the standard provides a "reasonable assurance that the frequency or severity of injuries will be reduced." H.R. Rep. No. 1153, 92d Cong., 2d Sess. 33 (1972); *See* also, *Aqua Slide 'N' Dive Corp.* v. *Consumer Product Safety Commission*, 569 F. 2d 831, 839 (5th Cir. 1978); *Forrester* v. *Consumer Product Safety Commission*, 559 F. 2d 774, 789 (D.C. Cir. 1977). In the Commission's view, the continued application of the standard to glazed panels and the resultant exclusion of active state, county, and city enforcement of safety requirements for glazed panels adversely affects the Commission's ability to provide a reasonable assurance that injuries will be reduced.

By proposing to revoke those provisions of the standard applicable to glazed panels, the Commission wishes to emphasize that it is not in any way reconsidering or rejecting its previous finding that certain items of glazing material located near doors and between two walking surfaces (i.e., glazed panels) present unreasonable risks of lacerations and other serious injuries if the material breaks into sharp, dagger-like shards as a result of accidental human impact. Rather, the Commission has preliminarily concluded, in accordance with § 9(e) of the CPSA (15 U.S.C. 2058(e)), that the requirements covering glazed panels in the standard are no longer reasonably necessary to eliminate or reduce an unreasonable risk of injury because state and local authorities, if not preempted by § 26(a) of the CPSA, may provide better protection of the public through enforcement of building code requirements covering glazed panels than can the Commission alone without involvement of state and local authorities.

NGDA contends that Federal preemption of state and local requirements for glazed panels combined with the large number of potential glazed panel manufacturers and the limited size of the Commission's enforcement staff, does not warrant the conclusion that the glazed panel provisions of the standard are not reasonably necessary to protect consumers from the unreasonable risks of injury associated with glazed panels.

NGDA, in its presentations to the Commission, opposes such a revocation and argues that revocation of the Federal standard in favor of local coverage "risks the adoption and enforcement of either varying city, county and State requirements for those consumer products or possibly, the adoption and enforcement of no requirements at all." Such a result, in NGDA's view would be "contrary to the basic Congressional findings and purposes of the Consumer Product Safety Act," specifically the findings in section 2(a)(4) of that act that "control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers."

As discussed above, the Commission is encouraged by the discussions between the Commission's staff and representatives of model building code organizations and the decision of BCMC. The Commission believes that revocation of the glazed panel provisions of the standard would be likely to lead to adoption by the model building code organizations, and hence State and local building authorities, of uniform requirements for glazed panels consisting of test methods and performance requirements similar to those presently contained in the Commission's standard. This result would appear to address the objections of NGDA that revocation risks adoption of varying and burdensome local requirements. The Commission specifically seeks public comment on this question of the likely result of revocation of the standard's coverage of glazed panels. Of particular interest to the Commission is detailed information on the process of adoption by model code organizations of provisions such as those concerning glazed panels and information on the process and likelihood of adoption by State and local jurisdictions of model code provisions. The Commission believes such information is important to a determination of the likely impact of revocation of the glazed panel provisions on the glazing industry.

While the Commission has preliminarily determined that the glazed panel provisions of the standard are not reasonably necessary to eliminate or reduce an unreasonable risk of injury and has therefore decided to propose for public comment a revocation, the Commission remains open to the alternative of revision of the definition of "glazed panels," discussed below.

B. Revision of Glazed Panel Provisions

The Commission's staff and NGDA in Petition CP78-18 (Sept. 21, 1978) have presented to the Commission suggestions for revision of the glazed panel provisions of the standard to be considered as alternatives to revocation of the glazed panel provisions. The staff's suggestion, originally set forth in its September 20, 1978 briefing package to the Commission and revised in its November 2, 1978 briefing package, is intended to address the problem areas, discussed above under "Scope of Glazed Panel Definition," where an item of glazing material falls within the definition of glazed panel but does not appear to present the unreasonable risks of injury that the standard was intended to reduce or eliminate.

The suggested staff revision of the glazed panel provisions was the result of a general staff re-evaluation of the standard's coverage of glazed panels, including an analysis of injury data. The analysis showed that for 1977, injuries associated with glazed panels, including certain windows falling within the scope of the definition of glazed panels, constituted less than 3 percent of the injuries associated with products within the scope of the standard and, in addition, had the lowest mean severity, and the smallest proportion of child victims when compared to other products within the scope of the standard. Most of the injuries which were the subject of in-depth investigations, reports from consumers and newspaper accounts for the period 1976 through March 1978, involved glazed panels which have one dimension greater than five feet. The most frequently reported injury pattern for this two and one-quarter year period involved accidental human impact by individuals who lost their balance and fell against the glazing material. The second most frequently reported injury pattern involved accidental impact by individuals who walked or ran into the glazing material as a result of mistaking the glazing material for open space or a door. The staff's suggestion for revision of the glazed panel provisions would restrict the applicability of the standard to those glazed panels that could be mistaken for open space for human passage or that because of their size and location present a risk of injury of consumers falling against the glazing material.

The staff's suggested revision introduces the term "sidelite" into the standard and defines the term to include those items of glazing material that are within 12 inches of a door in either a residential or non-residential building and in the same plane as the door. Under the definition, a sidelite is covered by the standard if it has an area greater than nine square feet and a bottom edge less than 18 inches above the floor or ground level. As revised, the term "glazed panel" would be defined to include only items of glazing material (other than sidelites) in non-residential buildings that are between two walking surfaces. Moreover, a "glazed panel" would be covered by the standard if it has an area greater than nine square feet and a bottom edge less than 18 inches above the floor or walking surface. In addition both walking surfaces must be within 36 inches of the panel, and the horizontal planes of each walking surface must be within 12 inches of each other. The suggested revised "glazed panel" definition is thus identical to the portion of the definition at § 1201.2(a)(10)(iii) in the present standard. The revised provisions, like the present definition, would not cover panels where there is a horizontal member such as a piece of the framing or a permanent chair rail of specified dimensions and location. The staff's

suggestion thus distinguishes glazing material near doors (sidelites) from glazing material between walking surfaces (glazed panels). The precise language of the staff's suggested revision and an illustration showing the coverage of the revised sidelite definition are set forth in Appendix A.

NGDA, in its presentations to Commissioners and staff as well as in Petition CP78-18, has also recognized that problems exist with respect to the glazed panel provisions of the standard and has urged the Commission to revise the definition of "glazed panel" to limit the coverage of the standard to architectural glazing materials used in a number of "particularly hazardous" products or installation situations and to eliminate the present broad coverage of the standard. NGDA's specific proposals for revision of the glazed panel provisions, upon which the Commission staff's proposals are based, would, like the staff's suggestion, distinguish between glazing near doors and glazing not located near doors and would make other changes designed to limit the coverage of the standard with respect to glazed panels to situations where, in NGDA's view, a genuine risk of injury to consumers is present. In NGDA's view, at least two important hazards need to be addressed: (1) consumers walking, falling or otherwise accidentally impacting glazed panels and (2) consumers pushing their hands against glazed panels when reaching for a door. NGDA's interpretation of CPSC injury data and observations by NGDA member firms indicate that the first hazard pattern is more acute near doors and that the second hazard pattern exists only near doors. This analysis of hazard patterns differs from that of the CPSC staff and explains the major differences between the revised sidelite definitions suggested by the staff and by NGDA. Unlike the CPSC staff, NGDA does not specify a minimum area (i.e., nine square feet) and includes within the definition of "sidelite" any glazing material with a bottom edge less than 48 inches above the floor or ground level (as opposed to the Commission staff's bottom limit of 18 inches). Thus, NGDA's suggested sidelite definition would create a "zone of protection" within 12 inches of a door and within 48 inches of a floor or ground level where safety glazing would be required. This zone, in NGDA's view, would offer protection against potential hand impact injuries which the staff's sidelite definition would not address. Under the NGDA proposal, items of glazing material in non-residential buildings (other than sidelites) that are between two walking surfaces would continue to be designated as "glazed panels" and would remain substantially as now defined in the standard, with certain wording changes. The precise language of NGDA's suggested revision and an illustration showing the coverage of the revised sidelite definitions are set forth in Appendix B.

The Commission solicits comment on the two alternative suggested revisions discussed above, both as to desirability of adopting a revision of the glazed panel definition rather than revoking the standard as it applies to glazed panels and as to the merits of the respective suggested revisions. [All of the material referred to above, including the Commission staff's September 20, 1978 and November 2, 1978 briefing packages, NGDA's September 21, 1978 petition (SP 78-18), and NGDA's November 9, 1978 submission, is available for inspection in the Commission's Office of the Secretary at the above address.]

Effect of Revocation of Glazed Panel Provisions on Preemption

States and their political subdivisions are presently prevented, by section 26(a) of the CPSA, from imposing safety requirements applicable to glazed panels intended to address the risk of injury from breakage by accidental human impact that are not identical to the requirements in the Commission's standard. By revoking the glazed panel provisions of the Commission's standard, the Commission believes that the preemptive effect of the standard as to products meeting the definition of a glazed panel would be removed. Since the standard would no longer apply to the product, states and their political subdivisions would be free to adopt safety requirements applicable to the product and intended to address the risk of injury from breakage by accidental human impact.

Requirements of the Commission's standard applicable to any item of glazing material used in a door, storm door, sliding glass door (patio type), bathtub door and enclosure, or shower door and enclosure, as those terms are defined in the standard, are not affected by this proposed partial revocation of the standard and will continue to be subject to the standard. Accordingly, section 26(a) of the CPSA would continue to preempt non-identical state and local requirements applicable to glazing materials used in these five categories of products where state or local requirements are intended to address the risk of injury from breakage by accidental human impact.

Petitions

On February 22, 1978, Elwood W. Buck filed a petition with the Commission (CP 78-10) requesting amendment of the glazed panel provisions of the standard to state specifically that the term "glazed panel" is applicable only to those items of glazing material within twelve inches of the movable panel of a sliding glass door in a residential building. In this petition, Mr. Buck stated that, according to his reading of the standard, an item of glazing material in a residential building located within twelve inches of the nonmovable panel of a sliding glass door and below the top of the sliding glass door would be a "glazed panel" and therefore covered by the standard, because the Commission staff interpreted the term "door," as used in the glazed panel definition of the standard, to include all panels of any sliding glass door.

The petitioner stated that after an examination of all information compiled by the Commission at the time the standard was proposed, he was unable to find any injury associated with an item of glazing material located within twelve inches of the fixed panel of a sliding glass door.

After consideration of the information set forth in this petition, the Commission has concluded that the relief requested by the petition should be granted. The partial revocation proposed below would have the effect of removing from the standard's coverage any item of glazing material within 12 inches of either the movable or nonmovable panel of a sliding glass door in a residential building.

Until final action is taken on the proposed revocation or an alternative action concerning glazed panels is taken, the Commission will stay enforcement of the standard in any instance involving an item of glazing material within 12 inches of the nonmovable panel of a sliding glass door in a residential building or within 48 inches of the nonmovable panel of a sliding glass door in a nonresidential building.

On January 15, 1979, a number of manufacturers of jalousie assemblies filed a petition with the Commission (CP 79-6) requesting amendment of the standard to exempt the louvers of jalousie windows from the requirements of the standard. The petitioners believe that the exemption is warranted for the same reasons for which the Commission previously exempted the louvers of jalousie doors from the standard. (See, § 1201.1(c)(2).) The Commission

exempted the louvers of jalousie doors on the basis of its finding that annealed glass appears to be uniquely suited for use in the louvers of jalousie doors. The Commission found that there may be practical problems associated with the use of plastic or laminated, tempered and organic-coated glass in jalousie doors and that to require jalousie doors to comply with the requirements of the standard would increase the cost of the product by 25 to 30 percent. In view of these facts and after reviewing the data on injuries associated with jalousie glass doors, the Commission determined that an exemption was appropriate. (See 42 FR 1431, January 6, 1977 (preamble to the standard).) The Commission did not exempt jalousie louvers used in any products or assemblies other than doors.

While windows, as a separate category of architectural products, are not generally subject to the standard, the louvers of jalousie windows or other jalousie assemblies located within 12 inches of a door in a residential building or within 48 inches of a door in a non-residential building would fall within the scope of the present definition of glazed panel.

After preliminary consideration of Petition CP 79-6, the Commission has concluded that the reasons cited above for exempting the louvers of jalousie doors from the requirements of the standard would appear to be equally applicable to the louvers of jalousie windows. The partial revocation proposed below, if issued as a final rule, would have the effect of removing from the standard's coverage any glazed panel as defined in 16 CFR 1201.2(a)(10), including jalousie windows which are the subject of Petition CP 79-6. In addition, the CPSC staff's suggested revisions of the glazed panel provisions, specifically the suggestion that the provisions apply only to individual items of glazing material with an area greater than nine square feet, would have the effect of exempting the louvers of jalousie windows because none of the individual louvers would have an area greater than nine square feet.

Until final action is taken on the proposed partial revocation or an alternative action concerning glazed panels is taken, the Commission will stay enforcement of the standard as it applies to the louvers of jalousie windows or other assemblies within 12 inches of a door in a residential building or within 48 inches of a door in a non-residential building.

On March 27, 1979, the National Glass Dealers Association (NGDA) filed a petition with the Commission (CP 79-8) requesting the amendment of the standard to postpone, until January 6, 1980, enforcement of the standard as it applies to the use of polished wired glass in doors and glazed panels. On April 25, 1979, NGDA amended the petition to request a two-year postponement of enforcement of the standard. On April 13, 1979, the Flat Glass Marketing Association (FGMA) filed a petition (CP 79-9) requesting a similar two year postponement of enforcement of standard as it applies to polished wired glass in doors and glazed panels.

As discussed further below, the Commission has considered a request from the Flat Glass Association of Japan (FGAJ) for a stay of enforcement of the standard for polished wired glass used in glazed panels adjacent to doors. Since Petitions CP 79-8 and CP 79-9 address similar issues with regard to glazed panels, the Commission has decided to address, on an interim basis, the portions of Petitions CP 79-8 and CP 79-9 involving glazed panels as part of this proceeding to partially revoke the standard. (See the discussion below under "Continuation of Stay of Standard for Polished Wire Glass".)

As indicated above, on September 21, 1978, NGDA filed a petition with the Commission (CP 78-18) requesting, among other things, amendment of the standard by modification of the glazed panel definition. Revocation of the glazed panel provisions of the standard would have the effect of denying the portion of Petition CP 78-18 which proposes revision of the glazed panel provisions of the standard. In this document, the Commission solicits public comment on the various alternatives currently before it, including the proposals of NGDA concerning glazed panels contained in Petition CP 78-18. The other portions of petition CP 78-18 not concerning glazed panels will be addressed in a separate proceeding.

Enforcement

Until the partial revocation proposed below is issued as a final revocation or an alternative action is taken concerning glazed panels, the requirements of the standard will continue to apply to items of glazing material which meet the definition of "glazed panel" in § 1201.2(a)(10). However, in the enforcement of the glazed panel provisions, the Commission will give priority to alleged violations involving glazed panels that present obvious risks of injury from accidental human impact breakage because of the panel's size and shape; their proximity to either a door or a floor or walking surface; their presence in the same plane as the door; or the absence of any visual signal that solid material is present.

In addition, as stated above, until final action on the proposed revocation or an alternative action concerning glazed panels is taken, the Commission will temporarily stay enforcement of the standard as follows:

(1) In response to Petition CP 78-10, enforcement of the standard is temporarily stayed against any item of glazing material located within 12 inches of the nonmovable panel of a sliding glass door in a residential building or within 48 inches of the nonmovable panel of a sliding glass door in a nonresidential building; and (2) in response to petition CP 79-6, enforcement of the standard is temporarily stayed against louvers of jalousie windows or other jalousie assemblies located within 12 inches of a door in a residential building or within 48 inches of a door in a non-residential Building.

Continuation of Stay for Polished Wire Glass in Glazed Panels

As the result of an order issued by the United States Court of Appeals for the District of Columbia Circuit on April 14, 1977, the architectural glazing standard is presently stayed as it applies to wired glass. The stay order was issued by the court pending its consideration of a petition for review of the standard filed by the Flat Glass Association of Japan (FGAJ) and several individual manufacturers of polished wired glass and manufacturers of obscure wired glass. On January 31, 1979, the court issued its decision upholding application of the standard to polished wired glass used in glazed panels adjacent to doors, i.e., glazed panels meeting the definition at § 1201.2(a)(10) (i) and (ii). (*ASG Industries, Inc., et al.* v. *CPSC*, Nos. 77-1216, 77-1238 (D.C. Cir. January 31, 1979.) However, the court remanded for further Commission consideration the portion of the standard applicable to wired glass used where required by fire codes and to wired glass used in glazed panels not adjacent to doors and between two walking surfaces. (16 CFR § 1201.2(a)(10)(iii).) On April 12, 1979, the court denied a petition for rehearing filed by FGAJ. FGAJ, however, has filed a motion with the court requesting a stay of the court's decision pending application to the U.S. Supreme Court for a writ of certiorari. At this time, the court imposed stay issued on April 14, 1977 is still in effect, and the situation remains as it was before the court's decision of January 31. It is likely that this stay will remain in effect until the

Supreme Court acts on the petition for certiorari.*

By letter from its counsel dated February 26, 1979, FGAJ has requested that the Commission continue the stay of enforcement of the standard as it applies to polished wired glass used in glazed panels adjacent to doors after the court proceedings described above are completed. In addition, NGDA and the Flat Glass Marketing Association (FGMA) have filed petitions requesting a two year postponement of enforcement of the standard as it applies to polished wired glass used in glazed panels and doors other than fire doors. The stay is requested to take effect on the date the standard is reinstated (i.e., the date the present court imposed stay is lifted) as to those uses of polished wired glass not covered by the court ordered remand. These requests are prompted by a desire to minimize the expected disruptive effect on industry of an immediate reinstatement of the standard as it applies to polished wired glass. FGAJ believes that a restriction on the use of polished wired glass in glazed panels will significantly diminish the marketability of the product and could affect the ability of customers to obtain polished wired glass for use in fire doors or other assemblies where it is required to retard the passage of fire. According to FGAJ, approximately 50 percent of the total market for polished wired glass is for use in glazed panels other than those intended to retard the passage of fire. FGAJ maintains that if this substantial portion of the market is eliminated, only a small number of the largest distributors of polished wired glass will be in a postion to continue to purchase and stock polished wired glass for fire retardant uses, thus restricting its availability throughout the country. In addition, FGAJ, NGDA, and FGMA all maintain that many glass installers and distributors presently have up to a two year supply of polished wired glass in inventory and that an immediate reinstatement of the standard as to polished wired glass would impose a hardship on these firms.

The Commission has carefully considered the requests for a delay in enforcement of the standard as to polished wired glass in glazed panels and the effect of granting such a delay on the safety of consumers. The Commission has reviewed injury data associated with glazed panels containing polished wired glass and has concluded that continuing to permit the use of polished wired glass in glazed panels would not expose consumers to a significant risk of injury.

Moreover, the partial revocation proposed below, if issued as a final rule, would have the effect of removing from the standard's coverage any glazed panel presently meeting the definition at § 1201.2(a)(10), thus removing any restriction imposed by the standard on the use of polished wired glass in glazed panels.

Accordingly, balancing the effect on the industry of an immediate reinstatement of the standard as it applies to polished wired glass against the potential for injuries as a result of continuing the present court imposed stay, the Commission has concluded that the stay of the standard as it applies to polished wired glass used in glazed panels adjacent to doors should continue in effect once the present court imposed stay is lifted.

Until final action is taken on the proposed partial revocation or an alternative action concerning glazed panels is taken, the Commission will stay enforcement of the standard as it applies to polished wired glass used in glazed panels within 12 inches of a door in a residential building or within 48 inches of a door in a nonresidential building.

Environmental Considerations

The Commission's environmental review procedures, 16 CFR 1021.5(b)(1), provide that an environmental review is generally not required for amendments to an existing standard that do not alter the principal purpose or effect of the standard. The proposed revocation set forth the below would not alter the principal purpose or effect of the standard, which is to reduce or eliminate unreasonable risks of injury associated with breakage by accidental human impact of glazing materials used or intended for use in specified architectural products. The proposed revocation would remove from the coverage of the standard one category of products, glazed panels. If issued as a final revocation, the proposal would remove any preemptive effect of the Commission's standard under section 26(a) of the CPSA on enforcement by cities, counties, and states of existing building code requirements covering certain items of glazing material that are incorporated into buildings and structures. The Commission does not foresee any environmental effects from the issuance of the proposed revocation which would necessitate an environmental review. Consequently, preparation of a draft environmental impact statement is not necessary.

Effective Date

The Commission proposes that the partial revocation proposed below become effective on the date of publication of a final rule.

Proposal

In accordance with section 9(e) of the Consumer Product Safety Act section (9(e), Pub. L. 92-573, 86 Stat. 1215, 15 U.S.C. 2058(e)) and 5 U.S.C. 553, the Commission proposes to revoke the Safety Standard for Architectural Glazing Material as it applies to "glazed panels" by making the following changes in Part 1201 of Title 16, Code of Federal Regulations:

§ 1201.1 [Amended]

1. In 16 CFR 1201.1(a), paragraph (5), consisting of the term "Glazed panels" is revoked and reserved;

2. In 16 CFR 1201.1(b), the fifth sentence is revised to read as follows: "For purposes of this standard, fabricators are considered to be manufacturers of the architectural products listed in paragraph (a) of this section."

§ 1201.2 [Amended]

3. In 16 CFR 1201.2(a), paragraphs (3)(iii), (4)(vi), and (10) are revoked and reserved.

4. In 16 CFR 1201.2(a)(11)(ii), the term "glazed panels" is deleted.

Issues Highlighted for Comment

The Commission specifically solicits written comments and oral presentations of data, views or arguments on the following issues (discussed in more detail above):

1. To what extent are architectural products subject to the standard, other than glazed panels, assembled or fabricated at fixed factories and plants or at the site of installation in a building?

2. What is the relative effectiveness of enforcement of safety requirements for glazing materials, particularly glazed panels, by the Commission; by state and local agencies through enforcement of building codes; and by industry through self enforcement and educational activities as a supplement to Federal enforcement?

3. Would revocation of the Commission standard as it applies to glazed panels result in adoption by model building code organizations, and

* The standard presently contains a temporary exemption for wired glass used in fire doors or other assemblies to retard the passage of fire. This exemption would have expired on January 6, 1980. (See § 1201.1(c)). The question of whether the temporary exemption should be extended or made permanent is one of the issues remanded to the Commission for further consideration.

hence state and local building authorities, of uniform safety requirements for glazed panels? Would these requirements consist of test methods and performance requirements similar to those presently contained in the Commission standard? Of particular interest in connection with this question is information on the process of adoption by code organizations of safety provisions concerning glazing materials and information on the process and likelihood of adoption by state and local jurisdictions of model code provisions.

4. Is either of the suggested revisions of the glazed panel definition, discussed in more detail above, more desirable than revocation of the standard's coverage of glazed panels? If so, which suggested version is preferable, and why?

Interested persons are invited to submit, on or before July 30, 1979, written comments on the issues highlighted above, as well as any other relevant issue. Comments received after this date will be considered to the extent practicable. Written comments should refer to "Glazed Panels" and should be submitted, preferably in five copies, to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

There will be an opportunity for interested persons to orally present data, views, or arguments on July 16, 1979 at 9:30 a.m., in the Commission hearing room, third floor, 1111 18th Street, N.W. Washington, D.C. Those persons wishing to make oral presentations should notify the Office of the Secretary in writing by July 2, 1979. In addition, a summary or copy of the testimony, preferably in five copies, is to be submitted to the Office of the Secretary by July 9, 1979.

The official transcript of the oral presentation of data, views, or arguments, any written comments, and all other material relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, third floor, 1111 18th Street, N.W. Washington D.C. 20207

Dated: May 24, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix A

Set forth below is the text of the CPSC staff's suggested revision to the glazed panel definition and suggested sidelite definition, and an illustration showing the coverage of the suggested sidelite definition.

§ *1201.2 Definitions.*

(a) As used in this Part 1201:

* * * * *

(10) "Glazed panel" means an item of glazing material used in a nonresidential building, other than a sidelite, where:

(i) The lowest edge of the glazing material is less than 18 inches (46 centimeters) above any floor or walking surface; and

(ii) The exposed glazing material in such panel exceeds 9 square feet (0.83 square meters); and

(iii) There are walking surface on both sides, each of which is within 36 inches (92 centimeters) of such panel, and the horizontal planes of such walking surfaces are within 12 inches (31 centimeters) of each other. For purposes of this § 1201.2(a)(10), the term "walking surface" shall include any floor, sidewalk or pathway, or similar surface which has been paved or prepared to accommodate pedestrian traffic.

(iv) Panels described in this paragraph 10 that have a horizontal member such as a piece of the framing or permanent chair rail which is no less than 1½ inches (4 centimeters) in width and located between 24 and 36 inches (61 and 91 centimeters) above either walking surface, are not subject to the requirements of § 1201.3 of this part.

* * * * *

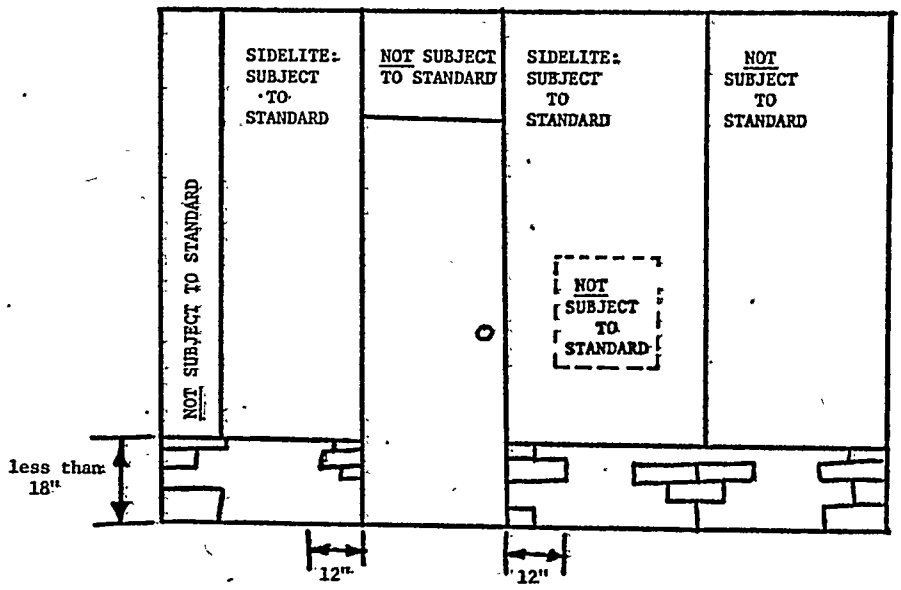
(38) "Sidelite" means an item of glazing material used in any building listed in § 1201.1(b) where:

(i) The glazing material is adjacent to a door and has a vertical edge within 12 inches (31 centimeters) of the door in a closed position and a bottom edge less than 18 inches (46 centimeters) above the level of the bottom of the door; and

(ii) The exposed area of the glazing material exceeds 9 square feet (0.83 square meters); and

(iii) The glazing material is within the same vertical plane as the door in a closed position to which it is adjacent. For purposes of this § 1201.2(a)(38), the term "door" shall include any "door" as defined in § 1201.(a)(7) and the movable portion of any "sliding glass door (patio-type)" as defined in section § 1201.2(a)(31).

CPSC STAFF'S SUGGESTED "SIDELITE" DEFINITION, ILLUSTRATED:



Glazing material has:

- Vertical edge within 12 inches of a door in a closed position and,
- bottom edge less than 18 inches above the level of the bottom of the door and,
- in the same plane as the door and,
- an area greater than 9 square feet.

Appendix B

Set forth below is the text of NGDA's suggested revision to the glazed panel definition and suggested sidelite definition and an illustration showing the coverage of the suggested sidelite definition.

§ *1201.2 Definitions.*

(a) As used in this Part 1201:

* * * * *

(10) "Glazed panel" means any piece of operable or non-operable glazing material used in all buildings other than residential building where:

(i) The lowest edge of the glazing material is less than 18 inches (46 centimeters) above either floor or either walking surface; and

(ii) The exposed glazing material in such panel exceeds 9 square feet (0.83 square meters); and

(iii) There is a walking surface on both sides, each of which is within 36 inches (92 centimeters) of such panel and the horizontal planes of such walking surfaces are within 12 inches (31 centimeters) of each other; and

(iv) Included in the definition of glazed panels and subject to the standard, but exempt from the requirements of § 1201.3, are panels described in this section that have a horizontal member, such as a piece of the framing or permanent chair rail no less than 1½ inches (4 centimeters) in width, which is located between 24 and 36 inches (61 and 91 centimeters) above either walking surface which framing or rail is to serve as a visual signal to consumers. Panels described in this section that also meet the definition of "sidelites" in paragraph (a)(31) of this section do not qualify for the exemption.

* * * * *

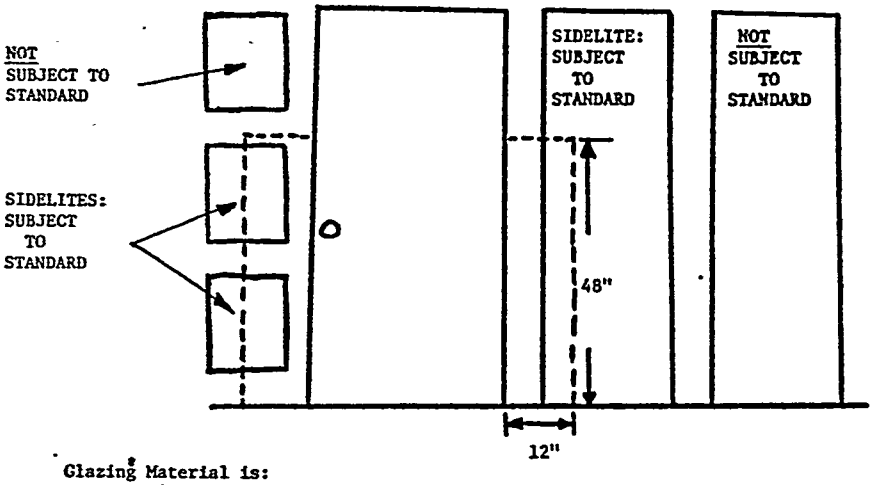
(31) "Sidelite" means any piece of operable or non-operable glazing material used in any building listed in § 1201.1(b) where:

(i) The glazing material is adjacent to a door and within the same wall plane as the door;

(ii) Its nearest vertical edge is within 12 inches (31 centimeters) from the door in a closed position; and

(iii) Its bottom edge is less than 48 inches (1.24 meters) above the floor or walking surface.

NGDA'S SUGGESTED "SIDELITE" DEFINITION, ILLUSTRATED:



Glazing Material is:

- adjacent to a door and,
- within the same wall plane as the door and,
- vertical edge within 12 inches of a door in a closed position and,
- bottom edge less than 48 inches above the floor or walking surface

[FR Doc. 79-16868 Filed 5-30-79; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 200]

[Release Nos. 33-6069; 34-15861; 35-21059; 39-526; IC-10706 IA-676; File No. S7-549]

Withdrawal of Rule Proposal Concerning Commission Records and Information

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposal.

SUMMARY: The Commission is withdrawing a proposed rule concerning the public availability of staff letters of comment and correspondence with the Commission. It has now concluded that a rule applicable to a broader range of materials may be more appropriate.

DATE: May 23, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Schropp, Assistant General Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549 (202) 376-3561.

SUPPLEMENTARY INFORMATION: In January 1975, the Commission published for comment a proposed rule concerning the public availability of staff letters of comment and correspondence with the Commission [Securities Act Release No. 5561, 1/24/75; 40 FR 4944, 2/3/75]. While that proposal, and the comments received in response thereto, have been periodically reviewed by the staff, the Commission has now concluded that a rule applicable to a broader range of materials may be more appropriate. In addition, the recent Supreme Court decision in *Chrysler Corp.* v. *Brown*, —— U.S. —— (No. 77-922; April 18, 1979), has provided some guidance with respect to requests for confidential treatment for records submitted to or obtained by the Commission. The Commission believes that a new rule proposal could be developed which better reflects these procedural concerns.

Accordingly, the Commission has determined to withdraw the rule proposed in Securities Act Release 5561.

Dated: May 23, 1979.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16863 Filed 5-30-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[EE-16-78]

Income Tax; Election To Treat Pre-1974 Plan Participation as Post-1973 Participation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the election to treat no portion of a lump sum distribution from an employee benefit plan as long-term capital gain. Changes in the applicable tax law were made by the Tax Reform Act of 1976. The regulations would provide the public with the guidance needed to comply with that Act and would affect any recipient of a lump sum distribution.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 30, 1979. The amendments are proposed to be effective for distributions received in taxable years of the recipient beginning after December 31, 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-16-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Richard L. Johnson of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3544 (Not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1975, the Federal Register published at 40 FR 18798 proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 402(a), 402(e), 403(a) and other sections of the Internal Revenue Code of 1954, relating to the taxation of lump sum distributions from qualified pension, profit-sharing, stock bonus and annuity plans. A correction notice was published in the Federal Register on May 23, 1975, at 40 FR 22548. The amendments were proposed to conform the regulations to section 2005 of the Employee Retirement Income Security Act of 1974 (88 Stat. 987). Proposed amendments contained in paragraphs 1 and 2 of the appendix to that notice of proposed rulemaking were adopted by Treasury decision 7399 published in the Federal Register on February 3, 1976, at 41 FR 5099. The remainder of the amendments proposed in the appendix to the notice of proposed rulemaking of April 30, 1975, have not yet been adopted.

This document contains further proposed amendments to the Income Tax Regulations (26 CFR Part 1) under Code sections 402(a)(2), 402(e) and 403(a)(2) to conform the regulations to Code section 402(e)(4)(L), as added by section 1512 of the Tax Reform Act of 1976 (90 Stat. 1742). The proposed regulations are to be issued under the authority contained in sections 402(e)(4)(L) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1742, 68A Stat. 917; 26 U.S.C. 402(e)(4)(L), 7805).

Pre-1974 and Post-1973 Plan Participation

Under Code section 402(a)(2) or 403(a)(2), a portion of a lump sum distribution from a qualified pension, profit sharing, stock bonus or annuity plan is taxable as long-term capital gain. If the employee has been a participant in the plan for at least 5 years, and if the recipient is eligible to make the required election, the portion of the distribution not taxable as long-term capital gain is taxable under the 10-year averaging provisions of Code section 402(e). The portion of a lump sum distribution taxable as long-term capital gain is determined by taking into account the number of calendar years of participation by the employee in the plan before January 1, 1974. The portion taxable under Code section 402(e) represents participation in the plan after December 31, 1973.

Ordinary Income Election

Under Code section 402(e)(4)(L), a recipient may elect, under certain circumstances, to treat all calendar years of the employee's participation in all plans before January 1, 1974, as calendar years of participation after December 31, 1973. In such a case, no portion of the lump sum distribution is taxable as long-term capital gain. If the distribution is otherwise eligible for application of Code section 402(e), the total taxable amount of the distribution is taxable under the 10-year averaging provisions.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Richard L. Johnson of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style

Proposed Amendments to the Regulations

The proposed amendments to the regulations are as follows:

PARAGRAPH 1. Section 1.402(a)-1(a)(9), as set forth in paragraph 10 of the appendix to the notice of proposed rulemaking of April 30, 1975, is revised by adding a new sentence at the end thereof to read as follows:

§ 1.402(a)-1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) *In general.* * * *

(9) * * * In the case of a lump sum distribution received by or made available to a recipient in a taxable year of the recipient beginning after December 31, 1975, the recipient may elect, in accordance with section 402(e)(4)(L) and § 1.402(e)-14, to treat all calendar years of an employee's active participation in all plans in which the employee has been an active participant as years of active participation after December 31, 1973. If a recipient makes the election, no portion of any distribution received by or made available to the recipient with respect to the employee (whether in the recipient's taxable year for which the election is made, or thereafter) is taxable to the recipient as long-term capital gain under section 402(a)(2) and this subparagraph.

* * * * *

PAR. 2. Section 1.402(e)-2(d)(3) as set forth in paragraph 12 of the appendix to the notice of proposed rulemaking of April 30, 1975, is revised by adding a new subdivision (iii) to read as follows:

§ 1.402(e)-2 Treatment of certain lump sum distributions made after 1973.

* * * * *

(d) *Definitions.* * * *

(3) *Ordinary income portion.* * * *

(iii) In the case of a lump sum distribution received in a taxable year of the recipient beginning after December 31, 1975, the recipient may elect, in accordance with section 402(e)(4)(L) and § 1.402(e)-14, to treat all calendar years of an employee's active participation in all plans in which the employee has been an active participant as years of active participation after December 31, 1973. If a recipient makes the election, the ordinary income portion of any lump sum distribution received by the recipient with respect to the employee (whether in the recipient's taxable year for which the election is made, or thereafter) is equal to the total taxable amount of the distribution.

* * * * *

Par. 3. The following new section is added in the appropriate place:

§ 1.402(e)-14. Election to treat pre-1974 participation as post-1973 participation (the "402(e)(4)(L) election").

(a) *In general.* Under section 402(e)(4)(L) and this section, the recipient of a lump sum distribution may elect to treat all calendar years of an employee's active participation in all plans in which the employee has been an active participant as years of active participation after December 31, 1973. This election is the "402(e)(4)(L) election." For rules relating to the treatment of distributions made on behalf of an employee with respect to whom the election is made, see § 1.402(a)-1(a)(9) (relating to the capital gains portion of a lump sum distribution) and § 1.402(e)-2(d)(3)(iii) (relating to the ordinary income portion of a lump sum distribution). For purposes of this section the term "lump sum distribution" means a lump sum distribution as defined in section 402(e)(4)(A), without regard to section 402(e)(4)(B).

(b) *Taxpayers not eligible to make the election.* A taxpayer may not make the 402(e)(4)(L) election with respect to a lump sum distribution made on behalf of an employee, if—

(1) The taxpayer received a prior lump sum distribution made on behalf of the employee in a taxable year of the employee (or in a year that would have been a taxable year of the employee, but for the death of the employee) beginning after December 31, 1975, and

(2) A portion of that prior lump sum distribution was treated as long-term capital gain under section 402(a)(2) or 403(a)(2).

(c) *Time and scope of election*—(1) *In general.* The 402(e)(4)(L) election shall be made for the first lump sum distribution made with respect to an employee to which the election is to apply. The election does not apply to a lump sum distribution received by the recipient with respect to another employee. The 402(e)(4)(L) election is irrevocable. A revocation under § 1.402(e)-3 of the election to apply the separate tax to a lump sum distribution will not revoke a 402(e)(4)(L) election.

(2) *Application of separate tax.* Nothing in section 402(e)(4)(L) and this section changes the requirements which must be satisfied in order for a lump sum distribution to be eligible for application of the separate tax under section 402(e). Accordingly, a lump sum distribution is not taxable under section 402(e) merely because the 402(e)(4)(L) election is made with respect to, or otherwise applies to, the distribution.

(3) *Example.* The provisions of subparagraph (2) of this paragraph may be illustrated by the following example:

Example. (i) A, a calendar year taxpayer aged 59 ½, separates from the service of A's employer, the M Corporation, on October 31, 1976. On December 15, 1976, A receives a distribution of the balance to A's credit under the M Corporation qualified profit sharing plan. A has been an active participant in the plan since January 1, 1971. The distribution is a lump sum distribution within the meaning of section 402(e)(4)(A) which satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans, and section 402(e)(4)(H), relating to a minimum period of participation in the plan.

(ii) A makes the 402(e)(4)(L) election with respect to the distribution. Under section 402(e)(4)(L), all years of A's active participation in all plans in which A has been an active participant are treated as years of active participation after December 31, 1973. Accordingly, no portion of the distribution is taxable as long-term capital gain under section 402(a)(2), and the total taxable amount of the distribution is "ordinary income" for purposes of section 402(e). A also makes the section 402(e)(4)(B) election for A's taxable year in which A receives the distribution. Accordingly, the total taxable amount of the distribution is taxable under the 10-year averaging provisions of section 402(e) (the separate tax).

(iii) On January 15, 1977, A receives a distribution of the balance of A's credit under the M Corporation qualified pension plan. A has been an active participant in the plan since January 1, 1958. The distribution is a lump sum distribution within the meaning of section 402 (e)(4)(A) which satisfies the requirements of section 402 (e)(4)(C), relating to the aggregation of certain trusts and plans, and section 402 (e)(4)(H), relating to a minimum period of participation in the plan. No portion of the distribution is taxable as long-term capital gain under section 402 (a)(2) because A made the 402 (e)(4)(L) election with respect to A's 1976 distribution. In addition, no portion of the distribution is taxable under the 10-year averaging provisions of section 402(e) because A made a prior election under section 402 (e)(4)(B) with respect to a distribution made on A's behalf and after A was age 59 ½ (the 1976 distribution).

(d) *Manner of making election.* The 402 (e)(4)(L) election shall be made in the manner indicated on the form filed pursuant to section 402 (e)(4)(B) and § 1.402(e)-3(c)(2) before the expiration of the period prescribed in § 1.402(e)-3 for making the election to apply the separate tax to the ordinary income portion of a lump sum distribution.

(e) *Effective date.* Taxpayers eligible under this section to make the 402 (e)(4)(L) election may make the election with respect to a lump sum distribution received after December 31, 1975, and in a taxable year of the recipient beginning after that date.

Par. 4. Section 1.403(a)-2(e)(3), as set forth in paragraph 15 of the appendix to the notice of proposed rulemaking of April 30, 1975, is revised by adding, immediately after subdivision (ii) thereof, a new sentence to read as follows:

§ 1.403(a)-2 Capital gains treatment for certain distributions.

* * * * *

(e)* * *

(3)* * *

(i)* * *

(ii)* * *

In the case of a lump sum distribution received by or made available to a recipient in a taxable year of the recipient beginning after December 31, 1975, the recipient may elect, in accordance with section 402(e)(4)(L), and § 1.402(e)-14, to treat all calendar years of an employee's active participation in all plans in which the employee has been an active participant as years of active participation after December 31, 1973. If a recipient makes the election, no portion of any distribution received by or made available to the recipient with respect to the employee (whether in the recipient's taxable year for which the election is made, or thereafter) is taxable to the recipient as long-term capital gain under section 403(a)(2) and this subparagraph.

* * * * *

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-16949 Filed 5-30-79; 8:45 am]

BILLING CODE 4830-01-M

[26 CFR Part 1]

[EE-18-78]

Income Tax; Active Participant for Individual Retirement Account Purposes; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that define the term "active participant" for purposes of determining who can make deductible contributions to an individual retirement account.

DATES: The public hearing will be held on July 19, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by July 5, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-18-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTAL INFORMATION: The subject of the public hearing is proposed regulations under section 219 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Friday, March 23, 1979, at page 17754 (44 FR 17754).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by July 5, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Jonathan P. Marget,

Assistant Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 79-16950 Filed 5-30-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 79-020]

Drawbridge Operation Regulations; Ouachita, Black Rivers, La.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Lousiana Department of Transportation and Development, the Coast Guard is considering revising the operation regulations for the drawbridges across the Black River, mile 41.0, and the Ouachita River, mile 57.5 and mile 110.1, to require a one-hour notice at all times. The draws are presently required to open on signal. This proposal is being made because at this time each of those bridges is required to open on an average of less than one time per day. This action would relieve the bridge owner of the burden of having a person available to open the draw at all times.

DATE: Comments must be received on or before July 2, 1979.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (obr), Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri 63103.

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 rule making 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, Second 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 comment 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 Coleman Sachs, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Regulations

Navigation on the Ouachita-Black Waterway is slowly increasing, however, it appears that at present navigation is not sufficient to warrant full-time attendants at these bridges. Last year, the Commander (obr), Second Coast Guard District, issued trial regulations from August 15, 1978 through September 14, 1978, that required one hours' notice before the draws of these bridges were required to open. No objections or comments were received from these trial regulations. The Coast Guard is requesting comments from interested and affected parties regarding this proposal.

In consideration of the foregoing, it is proposed that Part 117 of the Title 33 of the Code of Federal Regulations be amended by adding new subparagraphs (21) and (22) immediately after § 117.560(f)(20) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.560 Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(21) Black River, Louisiana. Louisiana Department of Highways bridge at Jonesville, mile 41.0. The draw shall open on signal if at least one hours' notice is given.

(22) Ouachita River, Louisiana. Louisiana Department of Highways bridges at Harrisonburg, mile 57.5, and

Columbia, mile 110.1. The draws shall open on signal if at least one hours' notice is given.

(23)–(26) [Reserved]

* * * * *

(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: May 23, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-16967 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

[39 CFR Part 10]

International Postal Rates and Fees; Proposed Nonstandard Surcharge

AGENCY: Postal Service.

ACTION: Proposed International Surcharge on Items with Nonstandard Sizes.

SUMMARY: This proposal would amend existing regulations to provide a surcharge on certain items of international mail originating in the United States that are not in compliance with the size standards prescribed for those items.

A surcharge of 7 cents per item shall be added to the applicable postage and fees on all air and surface letters weighing one ounce or less and regular printed matter items weighing two ounces or less that: (1) Do not have a height to length ratio (aspect ratio) between 1:1.3 and 1:2.5, inclusive or (2) exceed any of the following limitations.

Maximum Height—6⅛ inches
Maximum Length—11½ inches
Maximum Thickness—¼ inch

The proposed surcharge referred to above is scheduled to become effective at 12:01 a.m. July 15, 1979.

DATE: Comments must be received on or before June 30, 1979.

ADDRESS: Written comments should be addressed to: Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260. Copies of all comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in room 1610, 475 L'Enfant Plaza West, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marsha Springmann, (202) 245-4518.

SUPPLEMENTARY INFORMATION: The Postal Service, for the purposes described above, is proposing to revise existing sections 221.3, 224.4, and Appendix A, Table 3-3 and Table 3-10 in Publication 42, *International Mail,* which has been incorporated by reference in the Federal Register, see 39 CFR 10.1. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment on the following proposed revisions of Publication 42:

PART 221—CONDITIONS FOR ALL ARTICLES

1. In 221.3, revise .321a(3) to read as follows:

.321 *Envelopes.*

a. * * *

(3) Size: Minimum: 3½ inches (width) x 5½ inches (length).

The use of envelopes exceeding 6⅛ inches in height or 11½ inches in length is not recommended because they do not lend themselves to machine processing and often result in delays or damage to mail. A surcharge is applicable to letters weighing one ounce or less that: (1) Do not have a height to lenght ratio (aspect ratio) between 1:1.3 and 1:2.5, inclusive or (2) exceed any of the following limitations:

Maximum Height—6⅛ inches
Maximum Length—11½ inches
Maximum Thickness—¼ inch

For the applicable *surcharge,* see Table 3-3 in Appendix A.

PART 224—CONDITIONS FOR PRINTED MATTER

2. Revise 224.4 to read as follows:

224.4 Weight and Size Limits.

The use of envelopes exceeding 6⅛ inches in height or 11½ inches in length is not recommended because they do not lend themselves to machine processing and often result in delays or damage to mail. A surcharge is applicable to regular printed matter pieces weighing two ounces or less that: (1) Do not have a height to length ratio (aspect ratio) between 1:1.3 and 1:2.5, inclusive or (2) exceed any of the following limitations:

Maximum Height—6⅛ inches
Maximum Length—11½ inches
Maximum Thickness—¼ inch

For the applicable *surcharge,* see Table 3-10 in Appendix A.

Appendix A, Table 3-3—Summary Conditions, Letters and Letter Packages

3. In item B, Size Limits, add at the end of point 1 the following note:

"Note.—A *surcharge* of 7 cents per item shall be assessed on all air and surface letters weighing one ounce or less that: (1) do not have a height to length ratio (aspect ratio) between 1:1.3 and 1:2.5, inclusive or (2) exceed any of the following limitations:

Maximum Height—6⅛ inches
Maximum Length—11½ inches
Maximum Thickness—¼ inch."

Appendix A, Table 3-10—Summary Conditions, Printed Matter

4. In item B, Size Limits add at the end of point 1 the following note:

"Note.—A *surcharge* of 7 cents per item shall be assessed on all air and surface regular printed matter items weighing two ounces or less that: (1) do not have a height to length ratio (aspect ratio) between 1:1.3 and 1:2.5, inclusive or (2) exceed any of the following limitations:

Maximum Height—6⅛ inches
Maximum Length—11½ inches
Maximum Thickness—¼ inch."

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published if the proposals are adopted.

(39 U.S.C. 401, 407)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-16965 Filed 5-30-79; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[Docket No. DCO-78-13; FRL 1237-6]

Proposed Delayed Compliance Order for Alabama Alloy Corp., Jefferson County, Ala.

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to withdraw prior Federal Register notice proposing a delayed Compliance Order for Alabama Alloy Corporation at Jefferson County, Alabama. This action is being taken because Alabama Alloy Corporation is no longer in violation of the Alabama State Implementation Plan provisions covered by the proposed Order.

EFFECTIVE DATE: May 31, 1979.

FOR FURTHER INFORMATION CONTACT: Robert R. Geddis, U.S. Environmental Protection Agency, Region IV, 345

Courtland Street, N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881-4253.

SUPPLEMENTARY INFORMATION: A Federal Register notice published at 43 FR 155, August 10, 1978, solicited public comments and offered the opportunity to request a public hearing on a proposed Delayed Compliance Order to be issued by EPA to Alabama Alloy Corporation at Jefferson County, Alabama. Alabama Alloy Corporation has subsequently achieved compliance with Alabama State Implementation Plan regulations covered by the Order.

In consideration of the foregoing, the proposal published in the Federal Register 43 FR 155 on Aubust 10, 1978, entitled "Proposed Delayed Compliance Order for Alabama Alloy Corporation, Jefferson County, Alabama," is hereby withdrawn.

Dated: May 18, 1979.

John C. White,

Regional Administrator, Region IV.

[FR Doc. 79-16816 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1232-3]

Delayed Compliance orders; Approval of Delayed Compliance Order Issued by North Dakota State Department of Health to U.S. Noonlite, Ltd.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the North Dakota State Department of Health to U.S. Noonlite, Ltd. The order requires the company to bring air emissions from its lightweight aggregate production facility in Mandan (Morton County), North Dakota into compliance with certain regulations contained in the federally approved North Dakota State Implementation Plan (SIP) by June 30, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by this order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 2, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Loretta Pickerell, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: U.S. Noonlite, Ltd. (Noonlite) operates a lightweight aggregate production plant at Mandan, N.D. The plant has the capacity to mine, crush and dry 18,161 tons of clay annually. The order under consideration was issued as part of a Permit to Operate the Noonlite facility. It addresses emissions from the rotary kiln at the facility, which is subject to Sections 33-15-03-01 and 33-15-05-01 of the North Dakota Air Pollution Control Regulations. These regulations limit visible and particulate matter emissions, and are part of the federally-approved North Dakota State Implementation Plan. The order requires final compliance with the regulation by June 30, 1979, through the installation of emission control equipment and implementation of process modifications in accordance with the schedule provided. Noonlite has consented to the terms of the order. The rotary kiln is the only source unit presently out of compliance with N.D. Air Pollution Control Regulations.

Because this order has been issued to a major source of visible particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has determined that all applicable requirements in Section 113(d) of the Act have been satisfied.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the North Dakota SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

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

Dated: May 15, 1979.

Alan Merson,

Regional Administrator, Region VIII.

1. The text of the Order reads as follows:

Department of Health, North Dakota State Department of Health

Air Pollution Control Permit To Operate

Pursuant to Chapter 23-25 of the North Dakota Century Code, and the Air Pollution Control Regulations of the State of North Dakota, and in reliance on statements and representations heretofore made by the owner designated below, a permit to operate is hereby issued authorizing such owner to operate the source unit(s) at the location designated below. This permit to operate is subject to all applicable rules, regulations and orders now or hereafter in effect of the North Dakota State Department of Health and to any conditions specified below:

1. Owner—A. Name: U.S. Noonlite, Ltd.

B. Address: P.O. Box 117, Mandan, ND 58554.

2. Permit Number: M78001.

3. Installation: Lightweight Aggregate Plant.

4. Installation Location: Mandan, North Dakota, Morton County.

5. Expiration Date: August 1, 1979.

6. Source Unit(s):

A. One (1) Rotary Kiln, with a maximum rated output capacity of 7 tons of lightweight aggregate per hour.

B. One (1) Hammermill, with a maximum rated output of 40 tons per hour.

C. One (1) Eagle Standard Double Row Crusher, Model BM-D9049, with a maximum rated output of 100 tons per hour.

D. Material handling system consisting of three (3) screens and conveyors, with a handling capacity of 18,161 tons per year.

E. Storage piles for the following size material:

(1) Fines—85 tons per pile.

(2) 5/16 inch—243 tons per pile.

(3) 3/4 inch—54 tons per pile.

F. Clay mine and associated haul roads with a capacity of 18,161 tons per year of clay.

7. Notwithstanding the provisions of Section 33-15-01-14 of the North Dakota State Air Pollution Control Regulations, the source unit(s) identified in Item 6 shall be brought into full compliance with the Regulations and/or the compliance status demonstrated in accordance with the following compliance schedule:

A. Source Units B through F are in compliance with the requirements of the North Dakota Air Pollution Control Regulations.

B. Source Unit A, Rotary Kiln shall be brought into compliance with the applicable North Dakota Air Pollution Control Regulations as follows:

Incremental Date and Progress Description

(1) By Oct. 1, 1978—Final plans and specifications for emission control equipment and/or process modification to bring the unit into compliance with Sections 33-15-03-01 and 33-15-05-01 of the Regulations shall be submitted to the Department for review and approval.

(2) By Nov. 30, 1978—Contracts and/or orders will be awarded and/or issued for the purchase and installation of emission control equipment or process modifications.

(3) By March 1, 1979—Initiation of on-site construction or installation of emission control equipment or process modification.

(4) By April 1, 1979—A qualified consultant, approved by the Department, shall be hired to conduct a performance test of the rotary kiln stack.

(5) By May 31, 1979—On-site construction or installation of emission control equipment or process modification shall be completed.

(6) By June 8, 1979—Performance testing of the rotary kiln stack shall be completed.

(7) By June 30, 1979—Performance test results shall be submitted to the Department. Final and complete compliance with all applicable air pollution control rules and regulations shall be achieved.

C. Periodic monthly reports on construction progress shall be filed by the owner with the Department not later than five (5) days after each month. The first report shall begin one month after the issuance of this Permit to Operate. These reports shall contain specific information on the progress toward each incremental progress date of Item 7 of this Permit. If any delay is anticipated in meeting said incremental progress dates, the owner shall immediately notify the Department in writing of the anticipated delay and reasons therefor. Notification to the Department shall not excuse the delay. In addition, the owner shall submit, no later than five (5) days after the deadline for completing each item of incremental progress required by Item 7 of this Permit, certification to the Department whether such incremental progress has been met.

D. Sampling ports shall be located to allow for reliable sampling and shall be adequate for test methods applicable to each source unit to be performance tested. Safe sampling platforms and safe access to the platforms shall be provided. Utilities for sampling and testing equipment shall be provided. Plans and specifications showing the size and location of the ports, platforms, and utilities shall be submitted to the Department for review and approval.

E. Performance test methods used shall be those set forth in the Air Pollution Control Regulations of the State of North Dakota or equivalent methods approved by the Department. Performance test guidelines shall be obtained from the Department prior to developing testing procedures, to ensure they will comply with Department requirements.

F. This Department shall be notified, in writing, not less than thirty (30) days prior to the date of the tests to allow for a pre-test meeting with the Department and to afford the Department the opportunity to have an observer present during the tests. The test results shall be submitted to the Department for review and approval.

8. Emission inventory reports including but not limited to fuel usage, amount and types of material handled, produced and shipped and air contaminant emissions shall be submitted to the Department on forms supplied by the Department, not later than sixty (60) days following the end of each calendar year.

9. This Permit to Operate shall in no way permit or authorize the maintenance of a nuisance or a danger to public health or safety.

10. All reasonable precautions shall be taken by the owner to prevent and/or minimize fugitive dust emissions to the outside air from the operation of the source unit(s) identified under Item (6).

11. Any alteration, rebuilding, repairing, expansion or change of location of existing installations which results in the emission of an additional or greater amount of air contaminants must be reviewed and approved by the Department prior to the start of such alteration, rebuilding, repairing, expansion or change of location.

12. This Permit to Operate shall be effective from the date of its issuance until suspended, revoked or surrendered and shall be subject to all applicable provisions of the Air Pollution Control Regulations of the State of North Dakota. This Permit may not be transferred.

13. This Permit to Operate shall become void upon its expiration date of August 1, 1979. An application for renewal shall be submitted sixty (60) days prior to such anniversary date. The Department shall approve or disapprove such application within sixty (60) days.

14. U.S. Noonlite, Ltd. shall operate the source units identified in Item 6 in accordance with the statements, representations, procedures and supporting data contained in application dated October 14, 1975.

15. This Permit to Operate is issued in reliance upon the accuracy and completeness of the information set forth in the application. The conditions of this permit herein become, upon the effective date of this permit, enforceable by the Department pursuant to any remedies it now has, or may in the future have, under the North Dakota Air Pollution Control Law, NDCC Chapter 23-25. Each and every condition of this permit is a material part thereof, and is not severable.

16. Any violation of a condition issued as a part of this Permit to Operate, as well as any construction or operation which proceeds in variance with any information submitted to the Department, is regarded as a violation of permit authority and is subject to enforcement action.

17. Noncompliance beyond July 1, 1979, shall subject the owner to a Departmentally assessed noncompliance penalty pursuant to the requirements of Section 120 of the Federal Clean Air Act of 1977 (Public Law 95-95) and any rules and regulations promulgated pursuant thereto, unless the owner is exempted by Section 120 (a)(2)(B) or (C) of said Act. In the event of noncompliance after July 1, 1979, the owner shall be formally notified of its noncompliance pursuant to Section 120(b)(3) of said Act.

18. This Permit to Operate supersedes the Air Pollution Control Conditional Permit to Operate and Compliance Schedule No. M75001, issued under date of November 19, 1975.

U.S. Noonlite Ltd. has reviewed the terms and conditions of this Permit to Operate and find them to be reasonable in light of the information and representations that have been made available to the North Dakota State Department of Health.

This Permit to Operate shall be deemed accepted by U.S. Noonlite, Ltd. and becomes fully effective on the date that this Permit to Operate is signed by a corporate official and returned to the North Dakota State Department of Health.

[FR Doc. 79-16817 Filed 5-30-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 65]

[Docket No. VII-79-DCO-9; FRL 1225-7]

Proposed Approval of an Administrative Order Issued By the Kansas Department of Health and Environment to Board of Public Utilities, Kansas City, Kans.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Kansas Department of Health and Environment (KDHE) to Board of Public Utilities (BPU). The order requires the company to bring air emissions from its Kaw Station Units 1 and 2 in Kansas City, Kansas into compliance with certain regulations contained in the federally-approved Kansas State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to

invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 2, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106. The State order, supporting material, and public comments received in response to this notice may be inspected and copies (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kansas City, Missouri 64106, telephone 816/374-2576.

SUPPLEMENTARY INFORMATION: BPU operates an electric generating plant at Kansas City, Kansas. The order under consideration addresses emissions from Kaw Station Units 1 and 2 at the facility, which are subject to Kansas Air Pollution Emission Control Regulation 28-19-31A Emission Limitations—Indirect Heating Equipment. The regulation limits the emissions of particulate, and is part of the federally approved Kansas State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979 through installation of a baghouse.

It should be noted that EPA proposes to approve only the "Notice of Revised Order" issued to BPU by the Kansas Department of Health and Environment on March 22, 1979. This proposed rulemaking does not address the original notification issued by the State of Kansas on May 1, 1977, nor the Kansas "Notice of Revised Order 77-19" issued on January 3, 1978.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Kansas SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

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

Dated: May 4, 1979.

Kathleen Q. Camin,

Regional Administrator, Region VII.

In consideration of the foregoing, it is proposed amend Part 65 of Chapter I, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.211 to reflect approval of the following order: Docket No. VII-79-DCO-9.

2. The text of the order reads as follows:

State of Kansas, Department of Health and Environment

Topeka, Kansas 66620

Notice of Revised Order

March 22, 1979.

Board of Public Utilities, Its Successors or Assigns, 700 Minnesota Avenue, Kansas City, Kansas 66101. Certified Mail Number: 936852, attention: Dennis Wright.

Gentlemen: The Notice of Revised Order 77-19, issued on January 3, 1978, ordered your firm to complete certain actions as necessary on Units K-1 and K-2 at the Kaw Power Plant to achieve final compliance with Regulations 28-19-31A. Emission Limitations-Indirect Heating Equipment by June 1, 1979. On October 24, 1978, your firm requested an extension of your revised Order's compliance dates and submitted new, proposed dates for the completion of onsite construction and final compliance with the regulations to allow additional time to adjust and test the control system.

In consideration of these facts, you are hereby being notified that the corrective order contained in the second paragraph of the May 1, 1977 notification is being revised as follows:

"You are ordered to establish compliance with Regulation 28-19-31A. for Units K-1 and K-2 by July 1, 1979 and complete the intermediate steps as identified in the following schedules:

1. Complete on-site construction of emission control systems by June 1, 1979.

2. Final compliance with the Kansas Air Pollution Emission Control Regulations to be achieved by July 1, 1979.

Until final compliance, as specified, is achieved, you are also ordered to comply with the following interim requirements:

a. During the term of the order there is no reasonable method of emission reduction which can be applied to the units.

b. Source sampling shall be conducted on both units after the completion of the specified plans for demonstrating compliance with Regulation 28-19-31A.

c. As a final condition in establishing compliance with the terms of the order, you are required to notify the Department of the status of these prescribed actions by not later than five days after the dates specified for their completion."

If you wish to appeal this order, you may request an administrative hearing concerning this matter. Any such request must be submitted to this Department, in writing, within fifteen (15) days of receipt of this notification.

You are advised that failure to comply with the requirements of this order will constitute a violation of the order and require the initiation of enforcement proceedings under the provisions of K.S.A. 65-3018.

You are also being further advised, at this time, that the federal Clean Air Act, as amended, now provides that operators of sources which are not brought into compliance with the provisions of the State's regulations by July 1, 1979 will be subject to federally imposed noncompliance penalities, under the provisions of Section 120 of the Act, in addition to any other enforcement actions.

Questions concerning this matter should be referred to John Cotter, Air Pollution Control, Kansas City-Wyandotte County Health Department in Kansas City at (913) 371-6754.

Sincerely,

Melville W. Gray, P.E.,

Director of Environment.

[FR Doc. 79-16821 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1238-3]

Proposed Delayed Compliance for Federal Correctional Institution, Alderson, W. Va.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to issue an administrative order to the Federal Correctional Institution. The order requires the Institution to bring air emissions from its coal boilers in Alderson, West Virginia into compliance with certain regulations contained in the Federally approved West Virginia State Implementation Plan (SIP). Because the Institution is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by June 30, 1979. Source compliance with the order would preclude suits under the Federal

enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

DATES: Written comments must be received on or before July 2, 1979 and requests for a public hearing must be received on or before June 15, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick M. McManus, 3EN12, Air Enforcement Branch, Enforcement Division, Region III, U.S. Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone: (215) 597-9893.

SUPPLEMENTARY INFORMATION: The Federal Correctional Institution operates one oil boiler and two coal boilers at Alderson, West Virginia. The proposed order addresses emissions from the coal boilers at the facility, which are subject to Series II, Regulation 3.01. The regulation limits the emissions of particulate matter and is part of the Federally approved West Virginia State Implementation Plan. The order requires final compliance with the regulation by June 30, 1979 and the source has consented to its terms.

The proposed order satisfies the applicable requirements of Section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA may approve the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

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

Dated: March 28, 1979.

Jack J. Schramm,

Regional Administrator, Region III.

PART 65—DELAYED COMPLIANCE ORDER

1. By amending the table in Title 40 §65.530 to reflect the issuance of the following order: Docket No. III-78-1-DCO.

Findings of Fact and Order for Compliance: Findings, Docket No. III-78-1-DCO

In the matter of: Federal Correctional Institution, Alderson, West Virginia.

1. The Federal Correctional Institution, located two miles west of Alderson in Summers County, State of West Virginia, owns and operates two coal fired boilers.

2. During the operation of these boilers, particulate matter is emitted into the air.

3. On May 31, 1972, the Administrator of the United States Environmental Protection Agency (EPA) approved the State Implementation Plan submitted by the State of West Virginia pursuant to Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410 (the Act). The terms of the original approval (37 Fed. Reg. 10901) as subsequently amended, are codified in 40 CFR § 52.2520.

4. The State Implementation Plan (SIP) for West Virginia includes Series II, Section 3.01 of the Administrative Regulations of the West Virginia Air Pollution Control Commission, which limits the discharge of particulate matter into the open air from all fuel burning units.

5. Particulate emissions from the two coal fired boilers operated by the Federal Correctional Institution at Alderson, West Virginia (the source) exceed the emission limitation for particulates from such sources required by the West Virginia SIP.

6. The Source is therefore in violation of the SIP requirement specifically cited in paragraph four (4) of these FINDINGS.

7. The source is unable to comply with said requirements, without the installation of equipment to control particulate matter emissions from its coal-fired boilers.

8. A schedule of compliance, set forth in the ORDER below, has been prepared which provides for compliance with the SIP requirement cited above by the Source as expeditiously as practicable, by June 30, 1979.

9. Said ORDER, set forth below, also contains interim requirements, monitoring and reporting requirements, and all other provisions necessary to meet the requirements of Section 113(d) of the Act.

10. The State of West Virginia, has been notified of the proposed issuance of this ORDER, and its compliance with the requirements of the Act, and has waived its right to notice under the Act.

11. Public Notice of the proposed issuance of this ORDER, of its contents, and an opportunity for public comment have been provided in accordance with the requirements of the ACT, EPA procedures and other federal statutory requirements.

Order

After a thorough investigation of all relevant facts, including public comment, EPA has determined that the terms of this ORDER, and the procedures followed in connection with its issuance, meet all the requirements of Section 113(d) of the Act. Therefore, pursuant to Section 113(d) of the Act, 42 U.S.C. 7413(d), it is hereby ORDERED that:

I. The Source shall comply with the West Virginia State Implementation Plan requirements specified in Series II, Regulation 3.01 of the Administrative Regulations of West Virginia Air Pollution Control Commission, and cited in paragraph four (4) of the FINDINGS hereinabove, in accordance with the following schedule on or before the dates specified herein:

A. On or before June 15, 1978, award contract(s) for the control device(s);

B. On or before November 1, 1978, initiate on-site construction and installation of control device(s);

C. On or before May 1, 1979, complete on-site construction and installation of control device(s);

D. On or before June 1, 1979, achieve final compliance with Series II, Regulation 3.01 of the Administrative Regulations of the West Virginia Air Pollution Control Commission as approved by EPA, and with all requirements of the West Virginia State Implementation Plan;

E. On or before June 15, 1979, conduct a stack test of the installed control device(s); and

F. On or before June 30, 1979, submit all test data gathered in conjunction with the stack test required by Paragraph I, Section E of this ORDER.

II. The Source shall comply with the following monitoring requirements during the period from the issuance of this ORDER to June 30, 1979:

A. The services of (a) qualified visible emissions reader(s) shall be obtained. Said reader(s) shall take and record daily opacity readings of boiler emissions during the hour of scheduled or anticipated peak operation of boilers.

B. A record of weekly fuel usage shall be kept for each boiler, including any boilers not exempted from the SIP particulate emissions requirement by this ORDER.

C. Fuel analyses shall be conducted after each fuel delivery, on samples taken of the fuels delivered at that time. The analyses shall include the following:

(1) Type of Fuel

(2) Heat Content by weight
(3) Percent ash composition
(4) Percent sulfur composition

D. The records, analyses and any other reports required by this section to be made and kept by the Source shall be submitted to EPA and the State in the following manner:

Copies of all records, analyses and reports for the immediately preceding month shall be submitted on or before the twentieth (20) day of each month to:

Carl G. Beard, II, Director, Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

N. Van Smith, Section Chief, Air Enforcement Branch, Enforcement Division, U.S. EPA, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.

III. The Source shall comply with the following requirements during the interval from the issuance of this ORDER to the date specified herein for final compliance. These requirements satisfy Section 113(d)(7) of the Act, 42 U.S.C. 7413(d)(7), in that they have been determined to be the best practicable interim system of emission reduction, and to prevent and avoid any imminent and substantial endangerment to health of persons, as well as providing for compliance with the SIP insofar as the Source is capable during said interval:

A. The oil-fired boilers at the Source shall be used to the fullest possible extent, in order to minimize use of the coal-fired boilers.

B. For any monthly period in which the oil fuel boiler was not used to its maximum operational capacity, an explanation for such non-use shall be submitted to the State of West Virginia and EPA, in accordance with the procedures specified in paragraph II of this ORDER.

C. During any emergency episode under Series XI of West Virginia Air Pollution Control Commission Administrative Regulations, or any emergency action relating to particulate matter emissions within an Air Quality Control Region pursuant to Section 303 of the Act, 42 U.S.C. 7603, the effect of this ORDER shall be suspended. Full compliance with the SIP, or any more stringent applicable requirement, shall be required.

IV. Nothing herein shall affect the responsibility of the Source to comply with State or local laws or regulations.

V. The Source is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a non-compliance penalty under Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, the Source will be formally notified, pursuant to Section 120(b)(3) of the Act and any regulations promulgated thereunder.

VI. This order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines, on the record, after notice and hearing, that an inability to comply with Series II, Section 3.01 of the Administrative regulations of the West Virginia Air Pollution Control Commission, as approved by EPA, no longer exists.

VII. Violation of any requirement of this ORDER shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to Sections 113 (a), (b) or (c) of the Act, including possible judicial action for an injunction and/or penalties and, in appropriate cases, criminal prosecution.

B. Revocation of this ORDER, after notice and opportunity for a public hearing, and subsequent enforcement of the SIP in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

This ORDER is effective immediately.
Date ——————.

U.S. Environmental Protection Agency

Waiver or Rights to Challenge ORDER

The Federal Correctional Institution at Alderson, West Virginia, by the duly authorized signatory below, hereby waives any and all rights under any provision of the law to challenge this ORDER, and acknowledges the FINDINGS OF FACT recited hereinabove to be true.

Dated: October 2, 1978.

Ken R. Nagle,

Federal Correctional Institution, Alderson, West Virginia.

[FR Doc. 79-16959 Filed 5-30-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1238-2; Docket No. VII-79-DCO-16]

Delayed Compliance Orders; Notice of Proposed Approval of an Administrative Order Issued By the Iowa Department of Environmental Quality To Iowa Public Service Co., Salix, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality to Iowa Public Service Company. The order requires the company to bring air emissions from its Boilers Nos. 1, 2 and 3 in Salix, Iowa into compliance with certain regulations contained in the federally-approved Iowa State Implementation Plan (SIP) by June 30, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 2, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 E. 11th, Kansas City, Missouri. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kansas City, Missouri 64106, telephone 816-374-2756.

SUPPLEMENTARY INFORMATION: Iowa Public Service Company operates an electric generating plant at Salix, Iowa. The order under consideration addresses emissions from Boilers Nos. 1, 2 and 3 at the facility, which are subject to subrule 400—4.3(2)b Iowa Administrative Code, Combustion for indirect heating. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by June 30, 1979, through repair work on the emission control equipment and ash handling systems. The source has consented to the terms of the order.

The source has satisfied increments 1, 2 and 3 contained in the order. Because this order has been issued to a major source of particulates emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

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

Dated: May 17, 1979.

David R. Alexander,

Acting Regional Administrator, Region VII.

In consideration of the foregoing, it is proposed amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.201 to reflect approval of the following order: Docket No. VII-79-DCO-16.

2. The text of the order reads as follows:

Air Quality Commission, Des Moines, Iowa

In the matter of: Iowa Public Service Co., George Neal Station, Salix, Iowa; Order, Docket No. 79-A-001.

WHEREAS employees of the Department of Environmental Quality have reviewed the results of stack tests conducted in June 1977, July 1978, and September 1978 at the Iowa Public Service, George Neal Station, a major source facility in Salix, Iowa, and determined that the emissions from boilers no. 1 and 2 and boilers no. 1, 2, and 3 exceeded the emission standard(s) of subrule 400—4.3(2)b I.A.C.

WHEREAS the said subrule is a part of the federally-approved implementation plan applicable to Air Quality Control Region 086 in which the Iowa Public Service, George Neal Station, in Salix, Iowa, is located;

WHEREAS Iowa Public Service has acknowledged that it is in violation of subrule 400—4.3(2)b I.A.C. and has agreed to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and to waive its rights under section 455B.17 of the Iowa Code;

WHEREAS Iowa Public Service is hereby given notice that in the event it fails to meet any requirement of this order, it will be subject to civil penalties for such noncompliance, and that if it fails to achieve final compliance as specified in Subparagraph A-5 by July 1, 1979, it shall be required to pay a noncompliance penalty under Section 120 of the Clean Air Act as amended (42 USC 7420) or under Iowa Law subsequently enacted to obtain delegation under that section;

WHEREAS after full consideration of relevant facts, including the seriousness of the violation and any good faith efforts to comply the source cannot immediately comply and compliance with the order below is reasonable and expeditious;

THEREFORE, It is Ordered by the Air Quality Commission:

A. That Iowa Public Service complete the following acts with respect to the boilers no. 1 and 2 and boilers no. 1, 2, and 3 at its George Neal Station in Salix, Iowa, on or before the dates specified.

1. February 9, 1979—Submit final control plan. *Completed.*

2. February 1, 1979—Initiate repair work on emission control equipment and ash handling systems. *Completed.*

3. April 15, 1979—Complete repair work on emission control equipment and ash handling systems.

4. May 30, 1979—Complete shakedown operations and performance tests on boilers 2 and 3.

5. June 30, 1979—Submit stack reports and achieve final compliance with subrule 400—4.3(2)b I.A.C.

B. That interim requirements prior to final compliance as specified in Subparagraph A-5 are not feasible.

C. That Iowa Public Service shall monitor such emissions and report such information as required by the Executive Director of the Department of Environmental Quality pursuant to Chapter 400—7 (455B) I.A.C.

D. That Iowa Public Service certify to the Chief of the Surveillance Section of the Air and Land Quality Division of the Department of Environmental Quality no later than seven (7) days after the deadline for completing such increment of progress, whether such increment has been achieved; if an increment has not been achieved by the deadline date, a full report of the reasons why the increment was not achieved and of whether the failure is expected to put the subsequent deadline dates in jeopardy should be submitted.

E. That Iowa Public Service, 15 days prior to conducting the performance tests required by paragraph, give notice of such scheduled test to the Chief of Surveillance Section to afford him an opportunity to have an observer present.

Air Quality Commission:

Hal B. Richerson,

Chairman.

Dated: April 12, 1979.

Iowa Public Service Co.:

G. S. Edwards,

Sr. Vice President, Operations.

Dated: March 1, 1979.

A public notice was published on March 10, 1979 in the Sioux City Journal regarding this order, (and the schedule for compliance contained here in), and a public hearing was held before the Iowa Air Quality Commission on April 12, 1979 at the Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa.

Department of Environmental Quality, Des Moines, Iowa

Waiver

In the matter of: Iowa Public Service Co., George Neal Station, Salix, Iowa.

Iowa Public Service acknowledges that it is in violation of subrule 400—4.3(2)b I.A.C. and agrees to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and its rights under 455B.17 of the Iowa Code. Furthermore, Iowa Public Service has reviewed Order 79-A-001, believes it to be a reasonable means to attain compliance with the applicable regulations in that it accords with the intentions of Iowa Public Service regarding boilers no. 1 and 2 and boilers no. 1, 2, and 3 at its plant in Salix, Iowa, and it consents to the terms of the order. Finally, Iowa Public Service acknowledges that compliance with Order 79-A-001 does not relieve it of the responsibility to comply with the provisions of the Rules of the Air Quality Commission.

Iowa Public Service Co:

G. S. Edwards,

Sr. Vice President, Operations.

Dated: March 1, 1979.

[FR Doc. 79-16657 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-

[40 CFR Part 81]

[FRL 1237-7]

Air Quality Control Regions, Criteria and Control Techniques; Attainment Status Designations, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to change the attainment status for Mahoning and Trumbull Counties in Ohio from nonattainment to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. EPA is soliciting comments on the proposal.

DATES: Public comment received on or before July 2, 1979 will be considered.

ADDRESS: Comments on this designation change should be sent to Steve Rothblatt, Chief, Air Programs Branch, U.S. EPA Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Costello, Paralegal, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 353-2205.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added Section 107(d) to the Clean Air Act which directed each State to submit to the Administrator of the Environmental Protection Agency (EPA) a list of the NAAQS attainment status of all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the Federal Register on March 3, 1978 (43 FR 8962), and invited the public to

comment by May 2, 1978. EPA received 20 comments on designations in Ohio. In response to these comments, EPA made necessary amendments to the Ohio designations and published them in the Federal Register on October 5, 1978 (43 FR 45993). The basis for designations is also explained in the notice of March 3, 1978 (43 FR 8961). As explained in the March 3, 1978 notice area designations, however, are subject to revision whenever sufficient data becomes available to warrant a redesignation.

On November 9, 1978, the Youngstown Sheet and Tube Company petitioned EPA to reclassify Mahoning County as attainment for sulfur dioxide. The request was based on air quality monitoring data for 1977 and 1978 which demonstrate attainment. There has been a significant decrease in sulfur dioxide concentrations in the area, following shutdown of a major portion of Youngtown's Mahoning County facilities in September of 1977. The data were not available when the original nonattainment designation was made.

EPA received Youngstown's petition and asked the State of Ohio for its recommendation. On March 7, 1979, the Ohio EPA recommended that the area be reclassified as attainment based on the additional air monitoring data for 1977 and 1978.

Therefore, based upon the new monitoring data, the information submitted by Youngstown Sheet and Tube, and the State of Ohio's agreement that this is now an attainment area, USEPA is proposing to redesignate those portions of Mahoning and Trumbull Counties which were previously designated nonattainment as areas which are attaining the sulfur dioxide standards.

Interested persons may participate in this rulemaking by submitting written comments to the EPA Region V Office as indicated in the Address section of this notice. All relevant comments received on or before July 2, 1979 will be considered. Final designations will be published in the Federal Register. Comments received will be available for public inspection during normal business hours at the EPA Region V Office.

(Sec. 107(d), 171(2), 301(a) of the Clean Air Act as amended (42 U.S.C. 7407(d), 7501(2), 7601(a))

Dated: May 23, 1979.

John McGuire,

Regional Administrator.

[FR Doc. 79-16822 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 762]

[FRL 1212-3; OTS-066004]

Fully Halogenated Chlorofluoroalkanes; Toxic Substances Control Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant a two year exemption from its chlorofluorocarbon rule for inkless fingerprinting systems.

DATES: All comments and requests for a public hearing must be received by the Record and Hearing Clerk by July 2, 1979. EPA will hold an informal hearing only if requested.

ADDRESSES: The official record of rulemaking is located in room 709, WSME, EPA Headquarters, 401 M Street, SW., Washington, D.C. 20460. The record is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Send comments and requests for a public hearing to Joni T. Repasch, Record and Hearing Clerk at the above address. Telephone: 202-755-6956.

FOR FURTHER INFORMATION CONTACT: James D. Silverman, Office of Toxic Substances (TS-794), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Telephone 202-755-0920.

SUPPLEMENTARY INFORMATION: On March 17, 1978, EPA promulgated a rule which prohibits the manufacture, processing, and distribution of fully halogenated chlorofluoroalkanes (chlorofluorocarbons) for nonessential aerosol propellant uses. (40 CFR Part 762; 43 FR 11318). The manufacturing prohibition became effective on October 15, 1978. The processing and distribution prohibitions became effective on December 15, 1978. This action proposes to grant a temporary exemption for inkless fingerprinting systems.

Inkless fingerprinting systems provide a quick, easy, inexpensive, and clean means for fingerprinting. They provide an advantage over systems requiring printers ink because they do not require time for people to clean off the ink. In addition, one study showed that use of an inkless systems significantly reduces the number of fingerprints which are rejected because of poor quality. This lower rejection rate produces a cost savings to the user. Inkless fingerprinting systems are popular with organizations which fingerprint a large number of personnel for identification purposes. The Department of Defense considers inkless fingerprinting systems to be valuable and has recommended that EPA grant a temporary exemption.

Inkless fingerprinting systems have only recently come on the market and have been regarded as a major technological innovation in the fingerprinting field. Since EPA announced its intent to regulate chlorofluorocarbons, the firm which pioneered this product, Dactek International, Inc., has experimented with using hydrocarbon, carbon dioxide, and nitrous oxide propellants and with using a nonaerosol pump, but none of these methods have yet provided an acceptable substitute.

In keeping with the requirement of Section 6(c) of TSCA to consider the impact on technological innovation of any rules promulgated, and because of EPA's concern that Dactek's innovation not be lost, EPA is proposing to grant an exemption which will last approximately two years. The Agency anticipates that during that two year period Dactek will be able to develop an inkless fingerprinting system that does not utilize a chlorofluorocarbon aerosol propellant.

To the best of EPA's knowledge, Dactek is the only manufacturer of this system. Because Dactek uses less than 3000 pounds of chlorofluorocarbons per year, the exemption will not have a significant adverse impact on the environment. EPA proposes to make the exemption effective upon final promulgation pursuant to 5 U.S.C. 553(d)(1).

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: May 23, 1979.

Douglas M. Costle,

Administrator.

EPA proposes to amend 40 CFR by revising Part 762 as follows:

PART 762—FULLY HALOGENATED CHLOROFLUOROALKANES

By adding § 762.11(a)(3) and § 762.11(b)(3) as follows:

§ 762.11 Manufacture: Prohibitions, exemptions and certification requirements.

(a) * * *

(3) For exempted uses listed in § 762.22.

(b) * * *

(3) For exempted uses listed in § 762.22.

By adding § 762.12(a)(3) and § 762.12(b)(3) as follows:

§ 762.12 Processing: prohibitions and exemptions.

(a) * * *

(3) For exempted uses listed in § 762.22.

(b) * * *

(3) For exempted uses listed in § 762.22.

By adding § 762.13(c) as follows:

§ 762.13 Distribution in commerce: prohibitions and exemptions.

* * * * *

(c) For exempted uses listed in § 762.22.

By adding § 762.22 as follows:

§ 762.22 Special Exemptions.

(a) Inkless fingerprinting systems until August 1, 1981.

[FR Doc. 79-16819 Filed 5-30-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 252]

Operating Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services; Amendment of Trading Restrictions

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Proposed regulation.

SUMMARY: The Maritime Administration (MARAD) proposed to amend its regulations relating to the essential service requirements imposed upon bulk vessel operators contained in their respective operating-differential subsidy agreements (ODSA). Under the proposed amendment, the amount of ODS earned with respect to the operation of a bulk vessel during any period of operation would no longer vary directly with the percentage of total cargo that was actually carried in the U.S. foreign commerce. Rather, 100 percent of subsidy otherwise payable under the ODSA would be paid to the vessel operator. Provision is made for review and approval of charters which exceed or may exceed five years. Approval of such charters shall be based on a determination that it is probable that the vessel will be employed in the carriage of a significant volume of cargo in the U.S. foreign commerce during a substantial part of its economic life. Technical and conforming amendments are being made to other sections of Part 252.

COMMENT DATE: Written comments by interested persons must be received by close of business July 30, 1979.

ADDRESS: Send comments to the Secretary, Maritime Administration, Washington, D.C. 20230. All comments will be made available for inspection during normal business hours in Room 3099A, Department of Commerce Building.

FOR FURTHER INFORMATION CONTACT: Kenneth Willis, Maritime Administration, Office of Subsidy Contracts, Washington, D.C. 20230, Tel. (202) 377-4660.

SUPPLEMENTARY INFORMATION: 46 CFR 252.21 contains an "essential service" requirement, included in each ODSA, that during any period of subsidized service (36 successive calendar months of operation or, at the election of the operator, 12 successive calendar months of operation) the vessel must carry a minimum of 30 percent of all cargo in the U.S. foreign commerce. The amount of ODS otherwise payable (after reduction for carriage in the domestic trade) increases from 40 percent at that minimum level of participation in foreign commerce to full subsidy for carriage at the level of 50 percent or more.

In 1976, a petition was filed with MARAD in behalf of a group of subsidized bulk vessel operators requesting a four year temporary waiver of the trading restrictions included in their respective ODSA. The bulk operators contended that these restrictions effectively limited their foreign-to-foreign operations and made them less competitive with foreign-flag-bulk carriers, since the flexibility to trade anywhere in the world is a requisite for bulk trading. The Assistant Secretary for Maritime Affairs (Assistant Secretary) determined that effective July 8, 1976, and until December 31, 1977, essential service for bulk carriers would be worldwide service, inclusive of foreign-to-foreign trading. The Maritime Subsidy Board (Board) approved amendments to the various ODSA and to 46 CFR 252.21 to reflect the waiver of the foreign commerce percentage carriage requirement.

In December of 1977, a petition was filed with MARAD which included a request for permanent modification of the requirements of 46 CFR 252.21 and of the respective ODSA, and for the extension of the waiver of these requirements beyond the original expiration date of December 31, 1977, pending MARAD consideration of the request for permanent modification. The Board extended the waiver until December 31, 1978, and the Assistant Secretary reaffirmed the determination that worldwide trade would satisfy the essential service requirement for bulk operators during that extended period. Subsequent actions of the Assistant Secretary and the Board extended the waiver until adoption in final form of an amendment to 46 CFR 252.21 and its incorporation in the ODSA.

In considering the request for a permanent modification of 46 CFR 252.21, the MARAD staff has examined the voyage records of bulk operators under long-term ODSA, as reported in the final sailing schedules for voyages terminated in 1977, to determine the level of participation in U.S. foreign commerce. This participation is based on ton-miles of cargo carried or the revenue received, whichever yields the higher percentage. The records relate to 21 vessels and 257 voyages terminated, and disclose that 19 vessels qualified for full payment of ODS through achieving at least a 50 percent level of participation.

This information supports the conclusion that there is a normal tendency for operators of bulk vessels under long-term ODSA to participate substantially in the U.S. foreign commerce and that the trading restrictions provided in 46 CFR 252.21 are not needed to assure such participation at minimum levels. These operators would have greater flexibility and be able to compete more effectively with foreign-flag operators in the foreign-to-foreign trade, as well as the U.S. foreign commerce, under regulations that do not require a reduction in the payment of ODS for any period of subsidized service during which the percentage of total cargo that was carried in the U.S. foreign commerce was below prescribed levels.

Accordingly, MARAD proposes that the right of the operator of a bulk cargo vessel under a long term ODSA to receive full payment of ODS for any period of subsidized service be unrestricted by requirements for the carriage of specified percentages of cargo in the U.S. foreign commerce in order for the vessel to be deemed to be operating in an essential service. With respect to a vessel with a charter that exceeds or may exceed 5 years, the charter shall be submitted to the Assistant Secretary for review and approval at least 30 days prior to

execution. Approval shall be given if a determination is made that during a substantial portion of its economic life the vessel will probably be employed in carrying a significant amount of cargo in the U.S. foreign commerce.

A determination has been made that the proposed amendments to 46 CFR Part 252 do not meet any of the criteria for requiring a regulatory analysis that have been established pursuant to EO 12044 (43 FR 12661) and Department of Commerce Administrative Order 218-7 (44 FR 2082).

Accordingly, it is proposed that Part 252 of Title 46, Code of Federal Regulations be amended as follows:

§ 252.3 [Amended]

1. Section 252.3 is amended as follows:

(a) By substituting the term "Office of Subsidy Contracts" for "Office of Subsidy Administration" in paragraph (f),

(b) By deleting the text of paragraph (s),

(c) By redesignating paragraphs "t", "u" and "v" as paragraphs "s", "t" and "u".

2. Section 252.21 is revised to read as follows:

§ 252.21 Essential service requirement.

(a) *Vessels without long-term charters.* During any period of subsidized service a bulk cargo vessel operating without a charter requiring the consent of the Assistant Secretary pursuant to paragraph (b) of this section shall be deemed to be operating in an essential service, within the meaning of sections 601(a), 603(a) and 211(b) of the Act, and the vessel operator shall be entitled to the full amount of subsidy payable under the ODSA for such period, after any reduction due to the carriage of cargo in the coastwise or intercoastal trade, pursuant to section 605(a) of the Act.

(b) *Approval of charters.* Charters of bulk cargo vessels that exceed 5 years duration or that may be extended beyond 5 years duration by exercise of an option, either by terms of the charter or by provision contained in a separate agreement, shall be submitted to the Assistant Secretary for review and approval at least 30 days prior to execution of such charter. Charters exceeding 5 years shall be approved if the Assistant Secretary determines that the vessel will probably be employed during a substantial portion of its economic life in carrying a significant volume of cargo in the U.S. foreign commerce. When the Assistant Secretary has made this determination with respect to a vessel, its operation during any period of subsidized service while subject to that charter shall be deemed to be operation in an essential service, and the payment of subsidy for such period shall not be reduced because of any amendment to this section made prior to expiration of the charter. ODSA default provisions shall be applicable to noncompliance with this requirement. Charters that do not or may not exceed 5 years do not have to be submitted for approval by the Assistant Secretary unless otherwise specifically required by agreement.

(c) *Modification of requirement.* The Board shall have the authority to modify prospectively the provisions of this § 252.21, as future circumstances may dictate. However, any such modification made by the Board shall apply only to prospective charters, regardless of duration, that are executed on or after the effective date of the Board action. Such modification shall not be applicable to charters existing on the date of the Board's action which—

(1) Do not exceed 5 years duration and which contain no provisions for extension beyond 5 years, including subcharters during such existing charter; or

(2) Do exceed 5 years duration, for which prior approval has been given by the Assistant Secretary.

(d) *Applicability.* This is a general requirement applicable to the payment of ODS to operators of all types of bulk cargo vessels. Any specific requirement set forth in any other Part of Title 46, Code of Federal Regulations, that relates specifically to dry bulk cargo vessels, shall govern where inconsistent with this provision.

§ 252.23 [Deleted]

3. Section 252.23 "Demonstration of adequate financial resources," is deleted in its entirety.

§ 252.24 [Amended]

4. In § 252.24 "Financial and other reporting requirements" subdivisions (v) and (vi) of paragraph (a)(3) are deleted in their entirety.

§ 252.40 [Amended]

5. In § 252.40 "Payment of subsidy"

(a) Delete—paragraphs (d) and (e) in their entirety.

(b) Redesignate paragraph "(f)" as "(d)".

(c) In redesignated paragraph "(d)" "Audit of operator's record," delete the last sentence of subdivision (1) relating to verification of the cargo percentage carriage in U.S. foreign commerce.

§ 252.41 [Amended]

6. Amend § 252.41 "Subsidy billing procedures" as follows:

(a) Delete subdivisions "(ix)" and "(x)" of paragraph (b) in their entirety and redesignate subdivision "(xi)" as subdivision "(ix)".

(b) Delete schedule "E" and "F" in their entirety.

(Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b); Reorganization Plan 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

Dated: May 25, 1979.

By order of the Assistant Secretary of Commerce for Maritime Affairs/Maritime Subsidy Board, Maritime Administration.

Robert J. Patton, Jr.,

Assistant Secretary.

[FR Doc. 79-16954 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-15-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Part 71]

Standard Time Zone Boundary in the State of Alaska, Proposed Relocation

AGENCY: Department of Transportation (D)T.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an additional public hearing to be held in Haines, Alaska, on the Department of Transporation's Notice of Proposed Rulemaking (NPRM) to relocate the boundary between the Pacific Standard and Yukon Time Zones in the State of Alaska. It it anticipated that the hearing will provide an expanded opportunity for the public to comment on the NPRM. The hearing was requested by the City Council of Haines.

DATE: Public Hearing—Wednesday, June 6, 1979, 7 p.m. to 9 p.m. PDT.

ADDRESS: The hearing will be held at the Haines High School Music Room.

FOR FURTHER INFORMATION CONTACT: Jack Lusk, Office of the General Counsel, C-50, Department of Transportation, Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTAL INFORMATION: The Department published a Notice of Proposed Rulemaking in the Federal Register on May 16, 1979. The NPRM was based on a petition from the Assembly of the City and Borough of Juneau, Alaska. In that notice it was announced that a public hearing will be

held in Juneau on June 7, 1979. Based on a request from the City Council of Haines, Alaska, an additional hearing has been scheduled for Wednesday, June 6, 1979; from 7 p.m. to 9 p.m. PDT in Haines. The hearing, which will be electronically recorded, will last approximately two hours; in the interest of providing an opportunity for as many people to speak in that period as wish to, each speaker will be limited to ten minutes in which to present his or her views. Those interested in testifying should submit their name and address to LCDR Douglas Smith, 612 Willoughby Avenue, Juneau, Alaska 99802, (907) 586-7398. Additional speakers will be accommodated if time allows.

Issued in Washington, D.C. on May 23, 1979.

John G. Wofford,

Deputy General Counsel.

[FR Doc. 79-16802 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-01-M

National Highway Traffic Safety Administration

[49 CFR Part 571]

Grant of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Dot.

ACTION: Grant of Petition for Rulemaking.

SUMMARY: This notice announces the granting by the National Highway Traffic Safety Administration (NHTSA) of a petition by a Mr. William Randall to commence rulemaking to amend Federal Motor vehicle Safety Standard (FMVSS) 109, *New Pneumatic Tires—Passenger Cars.* The purpose of the rulemaking would be to upgrade the standard, if necessary, to take account of new tire designs and manufacturing processes.

FMVSS 109 (49 CFR 571.109) specifies tire dimensions and laboratory test requirements for bead unseating resistance, strength, endurance, and high speed performance; defines tire load ratings; and specifies labeling requirements for passenger car tires. The standard is updated periodically to reflect improvements in test methodology and to include new tire design concepts and sizes.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Neill, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-2800.

SUPPLEMENTARY INFORMATION: In his petition of December 15, 1978, Mr. William Randall requested that FMVSS 109 be reexamined and technically reviewed, that the NHTSA hold a public hearing on amendments, which should be made to the standard, and that the agency amend FMVSS 109 as necessary to ensure the safety of steel belted radial tires. Mr. Randall stated that he based his request on his personal experience. He has been in the automobile repair business for 25 years, and for the last 13 years, he has owned and operated a wheel alignment store in Ridgewood, New Jersey.

Since December 3, 1976, Mr. Randall has tabulated a list of all the "present day American manufactured radial tires" which he believes have been defective. In addition to tires with recognized safety problems such as ply separations or broken belts, Mr. Randall's list includes tires that are out of round or exhibit lateral pull. NHTSA does not currently believe there is any safety problem in tires being out of round or exhibiting lateral pull and therefore, does not regulater these characteristics.

The desirability of commencing rulemaking is supported by an August 6, 1978, report of the House Subcommittee on Oversight and Investigation. In that report, the Subcommittee made the following recommendation regarding the safety of Firestone 500 steel belted radial tires.

"* * * neither the Federal Vehicle Safety Standards nor the Federal safety recall systems have served well to protect the public against the hazards of the Firestone 500 Steel Belted Radial. The Subcommittee heard testimony in its May 1978 hearings stating that these tires, which are highly failure prone in actual use, performed extremely well in preproduction tests for compliance with the Federal Motor Vehicle Safety Standard No. 109, the principal tires safety standard. This standard is, therefore, in apparent need of revision or upgrading.

By granting Mr. Randall's petition NHTSA is not indicating that it will eventually issue the requested amendments. The agency will carefuly examine FMVSS 109 and 110 to determine whether amendments are appropriate, and, if the agency determines that they would be appropriate, to issue a notice of proposed rulemaking. This notice would request comments from interested members of the public on NHTSA's proposal. These comments would be considered in the agency's determination of whether to issue a final rule, and, if so, what form the rule should take.

Authority.—Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on May 23, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-16601 Filed 5-24-79; 4:00 pm]

BILLING CODE 4910-59-M

FEDERAL TRADE COMMISSION

[16 CFR Part 450]

Over-the-Counter Drugs; Publication of Staff Report on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of Staff Report.

SUMMARY: On January 4, 1979, Roger J. Fitzpatrick, Presiding Officer, published in the Federal Register, 44 FR 1123, notice of publication of his report on the proposed trade regulation rule on over-the-counter drug advertising.

The Bureau of Consumer Protection's staff report, which summarizes and analyzes the evidence in the rulemaking proceeding on over-the-counter (OTC) drug advertising and makes recommendations as to the final action the Commission should take has now been made public and placed on Public Record No. 215-51.

DATE: The publication of the staff report commences a 60-day comment period on both the staff report and the Presiding Officer's report. Comments will be accepted for inclusion in the rulemaking proceeding if received on or before July 30, 1979.

ADDRESSES: Requests for copies of either the staff report or the Presiding Officer's report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue N.W., Washington, D.C. 20580.

Comments should be sent to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, 202-724-1530, Senior Attorney, Divison of Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580, or John Clewett, 202-724-1561, Attorney, Division of Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTAL INFORMATION: Pursuant to § 1.13(g) of the Commission's Rules of Practice, the staff has made its report on the proposed Trade Regulation rule on Over-the-Counter Drug Advertising, containing its summary and analysis of

the record and its recommendations as to a final rule. In its report, the staff recommends action to ensure consistency between the claims made in advertising and those made in labeling concerning the indications for use of OTC drugs. The Food and Drug Administration (FDA) has determined that to ensure that drugs are safe and effective for their claimed uses, and to effectuate other important public policies, it must review and approve the specific terms that are to be used in making indication-for-use claims in drug labeling. The staff's recommended rule would make the FDA's determinations on indication-for-use claims applicable to advertising as well as labeling, so that only those indication-for-use terms which FDA has approved could be used in OTC drug advertising. The staff believes that the use, in advertising, of indication-for-use terms which FDA has not approved constitutes an unfair and deceptive act or practice, and false advertising, within the meaning of sections five and twelve of the Federal Trade Commission Act.

The staff report, as well as the Presiding Officer's report which was made public on January 4, 1979, are now available for public comment pursuant to § 1.13(h) of the Commission's Rules of Practice. To help stimulate discussion of certain issues, a memorandum from Thomas J. Donegan, Jr., Assistant Director for Food and Drug Advertising, which discusses the staff report and solicits comment on particular issues, is attached to the staff report as Appendix C at page 310. Of course, commenters are not limited to those issues, and may discuss any and all aspects of the staff report and that of the Presiding Officer.

Requests for copies of the staff report, and/or the Presiding Officer's report, should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue N.W., Washington, D.C. 20580. Comments on these reports will be accepted for a period of 60 days ending on July 30, 1979. Comments should be identified as "Comment on OTC Drug Advertising Rule Reports," and addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue N.W., Washington, D.C. 20580. When feasible, five copies of comments should be submitted.

After the comment period is over, the Commission may, pursuant to § 1.13(i) of its Rules of Practice, allow persons who have previously participated in the rulemaking to make oral presentations to it, unless it determines that such presentations would not significantly assist it in its deliberations. Such presentations shall be confined to information already in the rulemaking record. Requests to participate in an oral presentation should be received by the Commission no later than the close of the sixty-day comment period set forth in this notice, and should be sent to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue N.W., Washington, D.C. 20580.

The Commission cautions all concerned that the staff report has not been reviewed or adopted by the Commission, and that its publication should not be interpreted as necessarily reflecting the present views of the Commission or any individual member thereof.

Approved:

Albert H. Kramer,

Director, Bureau of Consumer Protection.

[FR Doc. 79-17191 Filed 5-30-79; 12:01 pm]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Chapter 1]

Informal Air Space Meeting No. 56

AGENCY: Federal Aviation Administration/Dot.

ACTION: Informal Airspace Meeting No. 56, June 15 and 22, 1979.

SUMMARY: Proposed Alteration to Terminal Control Area (TCA), San Francisco International Airport, San Francisco, California.

DATE: June 15 and June 22, 1979; 7 p.m.

ADDRESS: June 15, 1979: College of San Mateo 1700 W. Hillsdale Blvd., San Mateo, CA 94402; June 22, 1979: Pacific High School, 1201 Marina Blvd., San Leandro, CA 94577.

FOR FURTHER INFORMATION CONTACT: John Coppinger, Operations Officer, Bay Approach Control, P.O. Box 2367, Airport Station, Oakland, CA 94614; telephone (415) 273-6005.

SUPPLEMENTARY INFORMATION: No verbatim minutes or transcripts will be taken. However, participants may submit written comments to be made a matter of record if they so desire. This action will not prevent participants from submitting comments later in response to a notice of proposed rule making (NPRM) in the event the item is formally proposed. Public comments are invited at this meeting on development of the proposed TCA configuration.

Issued in Los Angeles, California, on May 16, 1979.

Lawrence C. Fortier, Jr.,

Chief, Airspace and Procedures Branch, AWE-530, Western Region, Federal Aviation Administration.

[FR Doc. 79-17192 Filed 5-30-79; 12:18 pm]

BILLING CODE 4910-13-M

Notices

Federal Register
Vol. 44, No. 106
Thursday, May 31, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

Budget of Expenses of Administrative Committee and Rate of Assessment for the 1979 Crop Year

Pursuant to Marketing Agreement 146, regulating the quality of domestically produced peanuts (30 FR 9402), and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found and determined that the expenses of said Committee and the rate of assessment applicable to peanuts produced in 1979 and for the crop year beginning July 1, 1979, shall be as follows:

(a) *Administrative expenses.* The budget of expenses for the Committee for the crop year beginning July 1, 1979, shall be in the total amount of $600,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee, and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the Terms and Conditions of Indemnification Applicable to 1979 Crop Peanuts, effective July 1, 1979, are estimated at, but may exceed $3.5 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the Peanut Administrative Committee, in accordance with § 48 of the marketing agreement, an assessment of the rate of $2.40 per net ton of farmers stock peanuts received or acquired other than those described in § 31(c) and (d) ($0.40 for administrative expenses and $2.00 for indemnification expenses).

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 48 of the marketing agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate and not expended in providing indemnification on the 1979 crop peanuts shall be placed in such reserve and shall be available to pay indemnification expenses on subsequent crops.

The expenses and rate of assessment are, under the agreement, on a crop year basis and will automatically be applicable to all assessable peanuts from the beginning of such crop year. The handler of peanuts who will be affected hereby have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments, they are represented on the Committee which has submitted the recommendation with respect to such expenses and assessment for approval; and handlers have had knowledge of the foregoing in their recent industry-wide discussions and will be afforded maximum time to plan their operations accordingly.

Dated: May 25, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 79-16963 Filed 5-30-79; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

Grain Standards; Fees for Original Online Grain Inspection Services and Mileage Costs

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Request for Comments.

SUMMARY: The Administrator of FGIS requests comments on two alternative methods of assessing fees for originial online inspection services[1] performed by the FGIS: (1) An hourly fee method, and (2) a unit of grain method. The Administrator also requests comments on two alternative methods of assessing fees for FGIS mileage costs: (1) a mileage method, and (2) an apportionment method.

DATES: Comments must be received on or before July 30, 1979.

FOR FURTHER INFORMATION CONTACT: John W. Marshall, Director, Inspection Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 0624-S, Washington D.C. 20250, (202) 447-8497.

SUPPLEMENTARY INFORMATION: Section 7(j) of the U.S. Grain Standards Act, as amended (7 U.S.C. 79(j)) hereinafter cited as the Act, authorizes the Administrator of the FGIS to charge and collect reasonable fees for the inspection of grain and related services performed by the FGIS. The Act provides that the fees shall, as nearly as practicable, cover the costs to FGIS incident to the performance of the services, excluding administrative and supervisory costs.

FGIS fees for inspection services performed by the FGIS in the United States were published in the Federal Register of November 8, 1978 (43 FR 52019-52020). In publishing the fees, it was stated that further evaluations of the fees would be made with regard to the feasibility of unit and hourly fees for inspection services and the assessment of standby time at export locations where FGIS performs inspection services on a routine basis.

Comments have been received from the grain industry concerning the method of assessing FGIS fees for online inspection services. Many of the comments favor an hourly method. FGIS fees for online inspection services are currently assessed on a unit of grain basis (per 1,000 bushels).

Pursuant to the authority in section 7(j) of the Act, as amended (7 U.S.C. 79(j)) notice is hereby given that the Administrator of the FGIS has under consideration two methods of assessing inspection fees for original online inspection services performed by the FGIS: (1) an hourly method, and (2) a unit of grain method.

Hourly Method: A standard fee would be assessed per hour for each authorized FGIS employee that performs an original online inspection service. The number of authorized FGIS employees per inspection service would be determined by the FGIS. Upon request of an applicant for inspection,

[1] Online inspection services are inspection services performed during the loading or unloading of grain when the sample for inspection is obtained with an approved diverter-type mechanical sampler.

contract service for online and other inspection services would be available at a reduced hourly rate. The contracts would specify the number of authorized FGIS employees, as determined by FGIS, for a specified number of shifts or hours, as determined by the applicant for inspection. The standard hourly fee and the reduced hourly fee for contract service would reflect the use of the FGIS inspection services and FGIS costs as computed on a nationwide basis. Except for contract service, standby time would be assessed for nonproductive time on a per man-hour basis for each authorized FGIS employee. Under a contract service, standby time would not be assessed for nonproductive time during the specified number of shifts. The hourly fee method is similar to the current method of assessing FGIS fees for weighing services performed by the FGIS. Under the hourly fee method, unit fees would continue to be assessed for bargelot, carlot, and trucklot inspections performed by the FGIS.

Unit of Grain Method: A standard fee would be assessed per 1,000 bushels of grain inspected online by the FGIS. The fee would reflect the use of the FGIS inspection services and FGIS costs as computed on a nationwide basis. Contract services would not be available under the unit fee method. Standby time would be assessed for nonproductive time on a per man-hour basis for each authorized FGIS employee. The unit fee method is currently in effect for online, bargelot, carlot, and trucklot inspection services performed by the FGIS.

The Administrator also has under consideration two methods of assessing fees for FGIS mileage costs: (1) A mileage method, and (2) an apportionment method.

Mileage Method: A standard rate per mile would be assessed, in addition to the fees for inspection, for inspection services performed outside a 25-mile radius from the FGIS field office. The standard rate would be based on rates established by the General Services Administration for the Federal Travel Regulations (41 CFR Ch. 101).

Apportionment Method: The FGIS mileage costs would be apportioned nationwide, would reflect FGIS mileage costs, and would be included as part of the FGIS inspection fees. FGIS mileage costs are currently assessed on an apportionment method.

Comment of Public: Interested persons are encouraged to submit written comments regarding the alternative methods of assessing fees for online inspection services performed by the FGIS and the alternative methods for assessing fees for FGIS mileage costs. All comments should be submitted in writing, in duplicate, and mailed on or before 60 days after publication of this notice to: John W. Marshall, Director, Inspection Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 0624-S, Washington, D.C. 20250.

Consideration will be given to the comments filed and to all other information available to the U.S. Department of Agriculture prior to a final determination as to which methods will be used to assess fees for online inspection services performed by the FGIS and fees for FGIS mileage cost. All comments submitted pursuant to this notice will be made available at the previously mentioned address during regular business hours.

(Sec. 7(j), Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79(j)))

Done at Washington, D.C., May 25, 1979.

L. E. Bartelt,

Administrator, FGIS.

[FR Doc. 79-16956 Filed 5-30-79; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Joint Interchange Order Between Department of Defense, Department of the Army; and Department of Agriculture; Interchange of Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

This notice transmits an interchange order which describes the interchange of administrative jurisdiction on lands within the boundaries of the Daniel Boone National Forest, Kentucky. The interchange order describes the tracts briefly; legal descriptions are on file in the Office of the District Engineer, Nashville District, Corps of Engineers, Nashville, Tennessee; and the Office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky. The publication of this order will complete the interchange. Therefore, the Order is published as follows:

Thomas C. Nelson,

Deputy Chief.

Dated: May 24, 1979.

Department of Defense, Department of the Army, Department of Agriculture, Lake Cumberland, Ky.; Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands.

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A attached hereto and made a part hereof, which lands are within the exterior boundaries of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of record and to such continued use by the Corps of Engineers of all of these lands which are necessary for the construction, operation, and maintenance of the Lake Cumberland project for its intended purposes; including, but not limited to, the right to perform timber clearing, flooding of the area, to construct and maintain transmission lines, utilities, access roads, and to make improvements in the aid of navigation. Administration of licenses, permits, and easements for such outgrants of rights-of-way will be transferred to the Secretary of Agriculture.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army, subject to outstanding rights or interests of record.

Pursuant to Section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Lake Cumberland project. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereby subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective May 31, 1979.

Dated: September 18, 1979.

Clifford A. Alexander, Jr.,

Secretary of the Army.

Dated: October 12, 1979.

Bob Bergland,

Secretary of Agriculture.

Exhibit A.—*Lands Transferred From the Secretary of the Army to the Secretary of Agriculture*

Lands under the jurisdiction of the Department of the Army for or in connection with the Lake Cumberland Project located in Pulaski, Laurel,

Whitley and McCreary Counties, Kentucky, as follows:

Segment AA—All of Tracts AA2712-B, AA2750, AA2757, AA2758, and a portion of Tract AA2755.
Segment DD——All of Tracts DD3001, DD3002, DD3004, DD3005, DD3006, DD3007, DD3009-A, DD3009-B, DD3010, DD3012, DD3015-A, DD3015-B, DD3016 and DD3017.
Segment EE—All of Tracts EE3102, EE3103, EE3104, and EE3106.
Segment FF—All of Tracts FF3201, FF3203, FF3204, FF3205-A, FF3205-B, FF3206, and FF3208.
Segment GG—All of Tracts GG3301, GG3304, GG3305, GG3307, GG3309-A, GG3309-B, GG3310, GG3311, GG3312, and GG3314.
Segment HH—All of Tracts HH3402, HH3403, HH3405, HH3407, and HH3409.
Segment II—All of Tracts II3502, II3504, II3505, II3507, II3509, II3510, II3512, and II3513.
Segment JJ—All of Tracts JJ3602, JJ3603, JJ3604, JJ3606, JJ3607, JJ3609, JJ3610, JJ3612, JJ3614, and JJ3616.
Segment KK—All of Tracts KK3701, KK3703, KK3704, KK3706, KK3707, KK3709, KK3712, KK3713, and KK3714.
Segment NN—All of Tract NN4023 and portions of Tracts NN4022, and NN4027.
Segment OO—All of Tracts OO4102-A, OO4102-B, OO4104, OO4107, OO4108, OO4109, OO4110, and OO4112.
Segment PP—All of Tracts PP4201, PP4203, PP4204, PP4206, PP4209, PP4213, PP4214, PP4215, PP4216, and PP4217.

All lands tranferred herein consist of 3,118.54 acres, more or less. Legal decriptions of the transferred tracts and Real Estate Segment Maps depicting their location are on file in the office of the District Engineer, Nashville District, Corps of Engineers, Nashville, Tennessee and the Office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky.

Exhibit B.—*Lands Transferred From the Secretary of Agriculture to the Secretary of the Army*

Lands under the jurisdiction of the Department of Agriculture for or in connection with the Daniel Boone National Forest located in Pulaski, Wayne, and McCreary Counties, Kentucky, as follows:

All of Tracts 1501aII, 1258g, 2954, 1833a, 2809, 1258bXXVII, 1258bXI, and portions of Tracts 1535c, 1535d, 1481a, 1932, 2840, 2947, 1261f, 1258b, 1258bXIII, 1258bXIV, 1258j, 1833 and 1629 containing 566.30 acres, more or less.

A complete legal description of the transferred tracts and survey plats depicting their location are on file in the office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky, and in the office of the District Engineer, Nashville, District, Corps of Engineers, Nashville, Tennessee.

[FR Doc. 79-16859 Filed 5-30-79; 8:45 am]
BILLING CODE 3410-11-M

Western Spruce Budworm Management; Extension of Review Period for an Environmental Statement

As stated in the Federal Register on December 29, 1978, a final Environmental Statement was scheduled for filing in April 1979 covering the Western Spruce Budworm Management on the Kaibab National Forest and Grand Canyon National Park. The review process has been extended with the final Environmental Statement scheduled for filing in January 1980. Suppression activities if warranted would not take place until June 1980.

Comments on the Notice of Extension should be sent to Leonard A. Lindquist, Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona 86046.

Robert A. Cook,
Acting Regional Forester.
May 23, 1979.

[FR Doc. 79-16880 Filed 5-30-79; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 35662]

Direct Sale of Charter Air Transportation

May 24, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Request for Public Comments.

SUMMARY: On May 1, 1979 the CAB submitted a report to Congress recommending that air carriers be allowed to market charter tours to the general public directly or through affiliated charter operators. This issuance requests comments on the report. The comments will be considered in follow-up information that the Board will provide to Congress.

DATES: Comments by: July 30, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable. Requests to be put on the Service List by: June 14, 1979. Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 35662, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Mark Frisbie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: On March 8, 1979 (44 FR 14609, March 13, 1979) the Board issued a request for public comments on whether air carriers should be permitted to sell charter tours directly to the public or through owned or controlled charter operators. The comments were requested to assist the Board in preparing a report to Congress, required by section 108 of the Federal Aviation Act, on whether the current statutory prohibition on such sales should be removed. The report was sent to Congress on May 1, 1979, and is being reprinted in the Federal Register as part of this issuance. We are now asking interested persons to submit data, veiws, and arguments relevant to any issues discussed in the report. We plan to provide Congress with a summary and analysis of all comments received, any additional data or arguments bearing on the issues considered that we learn of or develop, and any changes in our analyses, recommendations, or conclusions.

(Secs. 108, 204 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1710, 72 Stat. 743; 49 U.S.C. 1308, 1324.)

By the Civil Aeronautics Board:
Phyllis T. Kaylor,
Secretary.

REPORT TO CONGRESS ON

The Direct Sale of Charter Air Transportation

To the Congress:

This report of the Civil Aeronautics Board on whether to permit air carriers to sell charter seats directly to the public is respectfully submitted under Section 108 of the Federal Aviation Act of 1958, as amended.

Marvin S. Cohen,
Chairman
Richard J. O'Melia,
Member
Elizabeth E. Bailey,
Member
Gloria Schaffer,
Member
May 1, 1979

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I. Introduction

A. Purpose of Report

Section 5(a) of the Airline Deregulation Act of 1978 (Pub. L. 95-504) amends the Federal Aviation Act by adding a new Section 108 requiring the Board to report to the Congress by May 1, 1979, on the question of whether the Act and the Board's regulations should be amended to permit air carriers to sell "tours" directly to the public and to acquire control of persons authorized to sell such tours. This report is to evaluate the effects that these changes would have on the traveling public, the tour operator industry, the travel agent industry, and the different classes of air carriers.[1]

Such an analysis must consider both the current legal and economic structure of the tour industry and the effects of deregulation of scheduled services on tours. The deep discounts currently available on scheduled airlines have already dramatically changed the nature of the tour industry and the pace of change is likely to accelerate as the competitive climate of the airline industry increases over the next four years. This will occur regardless of whether direct sale of tours and vertical integration are permitted. The issues, then, are whether the direct sale of charter seats and the ability of direct air carriers to integrate vertically with the tour operators: (1) are in the public interest under a deregulated environment; (2) are consistent with the current policy of phased movement to an unregulated airline industry; and (3) will increase or decrease the transition costs of deregulation faced by the various segments of the airline and travel industries.

The organization of this report is as follows. The next section provides background on the reasons for the current prohibitions and a discussion of the legal effects of the proposed changes. This is followed by a section on the current state of the charter industry and the recent effects of deregulation on the use of charter and scheduled service by tour operators. With this information on the current situation and outlook under the present rules in hand, the next section provides a policy analysis of how a direct sales system may be expected to affect the traveling public, the tour operator industry, the travel agent industry, and the different classes of air carriers. A final section then outlines the policy recommendations implied by this analysis. We include as an appendix a summary of the comments of interested parties received on this issue in response to a call for public comments by the Board. The remainder of this introduction provides a brief overview of the sections that follow.

B. Current Prohibitions on Direct Sales

In assessing the effects of allowing the direct sale of "tours" by air carriers, we must first understand exactly what aspects of tour sales are prohited under the current statute and the Board's rules. Tours, broadly defined, are land arrangements sold in conjunction with air transportation (whether scheduled or charter). The original prohibition in the Act against direct sales of tours prohibited the direct sale of inclusive tour charters, which included mandatory land arrangements, by the supplemental (charter) air carriers. The prohibition was designed to prevent charter carriers from diverting traffic from scheduled route carriers by selling individual tickets directly to the public. In order to ensure that one class of carrier did not receive a competivive advantage over another, the Board has prohibited the direct sale of charters not only by the supplemental air carriers but also by the scheduled route carriers. As new types of charters that do not include land arrangements have been developed,[2] the Board has applied the prohibition on direct sales to achieve the same end. Thus, not just inclusive tour charters, but charter air transportation itself, may not be sold directly to the public by air carriers. Instead, direct air carriers are permitted to charter only bulk space on their aircraft (1) to qualifying groups, for their own use or for the use of their members, or (2) to authorized tour operators who may then sell individual seats, on their own behalf, to the public. Direct air carriers are also prohibited from owning or controlling tour operators that operate domestic charter flights or those originating in the United States.[3]

The Board, however, has never prohibited the direct sale of tours by air carriers which sell such tours in connection with seats on their scheduled flights. Thus, numerous scheduled route carriers now sell directly, or sell through tour operators,[4] scheduled tickets such as GIT's (group inclusive tours) along with tour packages.

Section 401(n)(4) of the Act, as amended in 1978, carries forward the prohibition that previously appeared as section 101(36), against any "charter air carrier" (formerly supplemental air carrier) selling an "inclusive tour in air transportation" by selling "individual tickets directly to members of the general public," or by having a control relationship with a person authorized to make such sales. Section 108 of the Act, however, which requires this report, is worded more broadly than section 401(n)(4) or 101(36). Although it is referring to the prohibition when it addresses whether the Act should be amended to permit direct sales, it also questions whether the "regulations of the Board" should be so amended. In addition, it uses the word "tour" unmodified by the work "inclusive", and refers broadly to "air carriers" rather than only to supplemental or charter carriers. Thus, taken literally, section 108 covers the direct sale of anything that could be called a "tour" by any type of air carrier.

In this report, we have taken the scope of section 108 as being more limited. Since the question set forth in section 108 is whether the Act and the Board's regulations "should be amended to permit" these activities, we believe that the Congress was not comtemplating any new restrictions or prohibitions on scheduled service tours, and therefore that charters are what the section is concerned with. Finally, we have assumed that the tours referred to in section 108 are not limited to inclusive tour charters, since the word "inclusive" is not present, and since the word "tour" does not by itself have a clear historical definition in the industry. We, therefore, have focused in this report on the possibility of marketing charters, including both air-only and tour charters, using a a starting point the largely unrestricted Public Charters with which the Board has replaced the various older charter types.

C. Current Status of Charter Industry

In the past few years, the charter industry has been going through a period of rapid change. Prior to the recent proliferation of deep discount fares on both domestic and international routes, charter travel provided the dominant source of low cost travel for the American public. The much lower prices on charter flights resulted not only from the cost

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[1] Specifically, the section states:

Not later than May 1, 1979, the Board shall prepare and submit a report to the Congress which sets forth the recommendations of the Board on whether this Act and regulations of the Board should be amended to permit air carriers to sell tours directly to the public and to acquire control of persons authorized to sell tours to the public. The report shall evaluate the effects on the following groups of allowing air carriers to sell tours:

(1) The traveling public.

(2) The independent tour operator industry.

(3) The travel agent industry.

(4) The different classes of air carriers.

[2] The first charter type available to the general public (as opposed to "affinity" groups) which could be sold on an air only basis, without an underlying tour, was the Travel Group Charter, adopted in 1972 (14 CFR Part 372a, SPR-61, 37 FR 20808, September 27, 1972).

[3] While the Board has never permitted air carriers to control domestic tour operator subsidiaries, it has permitted several carriers to acquire foreign tour operators to market charters inbound to the United States from various foreign countries which permit this type of vertical integration. The Board took this action after finding that U.S. air carriers had been placed at a severe competitive disadvantage in many foreign—originating charter markets because foreign air carriers in those markets were able to vertically integrate into charter tour marketing. See Order 77-11-42, granting this authority to Pan American World Airways, Inc., Trans World Airlines, Inc., World Airways, Inc., Trans International Airways, Inc., and Overseas National Airways, Inc.

[4] These tour operators are not for these purposes, charter operators.

savings due to the higher load factors inherent in charter operations, but also from the legislated absence of fare competition on scheduled flights. Indeed, the history of charter restrictions and scheduled airline fare limitations has been one of government regulators attempting to balance the restrictions on each type of travel so as not to threaten substantially the market share of either.

With the more recent shift toward opening up the airline market to competitive pressures, however, this situation has changed. Deep discount fares have begun to proliferate, both domestically and in a number of foreign markets, notably across the North Atlantic. The large price differences between charter travel and scheduled service have been eliminated to an extent that charter operations have been severely curtailed in many markets. The current aircraft shortage and the opportunities available to scheduled carriers for route expansion have decreased the capacity offered by the scheduled carrires for charter travel, and has increased the cost of those charter aircraft that are available. This decrease in charter capacity may also occur in the near future for charter air carriers as they seek and obtain certificates for scheduled service.

Coincident with the liberalization of rules governing scheduled services has been the removal of many restrictions on charter travel. The Public Charter rule has removed the restrictions, such as advance purchase, minimum group size, and pricing requirements, which had been placed in past charter rules to protect the scheduled carriers from excessive diversion of revenues.[5] Despite this liberalization of the charter regulations, however, the change in the pricing structure of scheduled airlines has resulted in the increased use by many independent tour operators of scheduled flights and the decline in the operation of charter flights.

D. Policy Analysis of the Effects of Direct Sales and Vertical Integration

Permitting both the direct sale of charter seats to individual travelers and the vertical integration of air carriers with tour operators will introduce a set of new competitors into the tour operator industry.[6] The impact of these new competitiors on the industry depends upon the extent of cost savings available from vertical integration, and on the question of whether these new operators will be able to "corner the market" on charter seats because of their direct association with the airlines.

To the extent there are cost savings from vertical integration, the public will benefit as lont as at least part of the cost savings is passed on to the traveler. This will occur if the independent tour operator market remains competitive. The competitiveness of this industry appears to be assured by the large number of air carriers with the potential to offer flights for charter, the availability of seats on scheduled flights with fares competitive with charter prices, and the relative ease of entry into the tour operator and charter industries. Even if the industry remains competitive, however, some of the current tour operators in the industry may be hurt by the influx of economically powerful competitors certain to result from allowing direct sales and vertical integration, just as many were hurt by the lowering of scheduled flight fares to the consumer. But, as in the case of scheduled fares, the more vigorous the competition, with its attendant risks to incumbent tour operators, the greater the public benefits to be derived from the presence of this competition. In addition, the increased flexibility for the charter air carriers in the sale of their charters may increase the likelihood that they will continue to maintain a substantial interest in charter operations as compared with their current and expanding alternative of scheduled operations.

Permitting the direct sale of charter seats to individual travelers would have another effect which will be of no concern in the long run, but which might speed-up excessively the gradual movement toward a deregulated airline industry intended by the Congress. Since the Board eliminated most of the traditional restrictions imposed on charter travel in the Public Charter rulemaking, the principal difference remaining between charters and scheduled service is the use of an intermediary in the sale of charter transportation. With direct sales, a flight could be called a charter by the airlines, but be operated, for all intents and purposes, as a scheduled flight. Because charters are not restricted as to routes and fares, "scheduled" charter service would not be subject to current rules regarding route and fare applications and review by the Board.

It is doubtful that air carriers would use this interpretation of direct sales to dismantle the route system and Board control overnight, because of their own equipment limitations and service opportunities in their currently or soon to be certificated markets. It does offer the potential, however, for a substantial speed-up of the deregulation process. If Congress wishes to make certain a continued transition period, additional restrictions to maintain a distinction between charter and scheduled service could be applied to direct sales. Such restricitons might include route limitations, advance purchase or minimum stay requirements, or ground package requirements. If the public is to receive the benefits of direct sales, however, such restrictions should be held to the minimum sufficient to preserve a marketing distinction between charter and scheduled operations. A short advance purchase requirement probably would best serve this purpose, since it is least likely to impose the burdens of inefficient practices (such as "throwaway" tours) on the carriers and the traveling public.

E. Recommendations

Allowing the direct sale of tours utilizing charter air service and the vertical integration of air carriers with tour operators is likely to benefit some elements of the tour industry and hurt others. On balance, however, we believe that the potential benefits outweigh the potential costs, and that the proposed changes are clearly consistent with the spirit of the Deregulation Act of 1978.

There is no evidence that the public would suffer in any way from the proposed change in the law, and there is reason to believe that many travelers would benefit. It is reasonable to assume that there may be savings to the consumer on some routes, specifically those where the existing demand for charter flights removes the need for substantial marketing efforts and thus removes the value of a middleman. The ability to sell directly should also serve to strengthen the charter industry since it would increase the flexibility of charter air carriers to market their product, just as certificated route carriers may now market tours on scheduled flights. It will also allow some charter programs to be offered in circumstances where the charter carrier is more willing to take the business risks involved than any tour operator. In those cases where tour operators do perform a valuable entrepreneurial service, however, charter carriers will continue to have an incentive to employ them, just as scheduled carriers now do in the case of GIT's offered on their own scheduled flights.

Despite the possible introduction into the tour industry of large firms affiliated with air carriers, or the merger of direct air carriers and tour operators, there is no reason to believe that the tour operator industry would become less competitive. The relative ease of entry into the tour operator business, the substantial number of air carriers available to provide equipment, the availability of inexpensive scheduled flights to many areas, and the large number of travel agents who have entered the tour operator business on a small scale suggest that even if the tour operator industry did become substantially more concentrated, there would be a large number of potential competitors available to enter the market if profit margins for existing firms became excessive.

In most developed countries vertical integration in charter operations is allowed. Despite this, tour operators not affiliated with air carriers have remained competitive. We also observe that a substantial number of tour operators are able to market group inclusive tours on scheduled service, even though scheduled carriers are already permitted to market such tours directly. These facts suggest that the tour operators currently in business would still have a fair chance to compete if direct sales were permitted.

The prohibition against direct sales contained in section 401(n)(4) of the Act automatically terminates (insofar as domestic and overseas transportation is concerned) on December 31, 1981 (see section 1601(a)(1)(E)). In the interim the Congress is faced with the choice of (1) taking no action to remove the

[5] Public Charters (14 CFR Part 380, SPR-149, 43 FR 36604, August 15, 1978) were in effect, ratified by the Deregulation Act (section 401(n)(2)) which states that the Board may not "restrict the marketability, flexibility, accessibility, or variety of charter trips", and shall in no event adopt charter regulations more restrictive than those in effect on October 1, 1978.

[6] It introduces the possibility of new air carriers as well since we would also allow tour operators to own or perform as direct carriers.

prohibition, thus leaving the status quo which would still permit the Board to allow, through exemption, a form of direct sales; or (2) eliminating the prohibition completely and allowing direct sales prior to 1982. As we said, option 1 would allow the Board to use its exemption power to develop a transitional approach whereby some, but not all, of the restrictions against direct sales are eliminated. Based on our analysis of the relevant segments of the air transportation industry, we ordinarily would advocate the second choice. We realize, however, that the complete easing of restrictions could accelerate the deregulatory process to a pace that shortens the three-year transition period that Congress has mandated. Although we are not opposed to this acceleration, we see no reason at this time for the Congress to amend the law to bring it about. However, if Congress wishes to maintain the present law and thus insure itself against any risk to the three-year transition plan established by the Deregulation Act, most of the benefits of a direct sales scheme could still be achieved for the public by Board regulation under a more restricted transitional approach, the implementation of which does not require legislation. A seven-day advance purchase restriction on seats sold directly to the public by air carriers or their tour operator affiliates, combined with the consumer protection and filing requirements now imposed on independent tour operators, would probably prevent directly sold charters from being used as a substitute for certificated route expansion. At the same time, the main benefits of direct sales and vertical integration could be passed on to the existing charter market. Additional restrictions appear unnecessary and would only further limit the benefits to be derived from direct sales.

We are considering implementing the transitional approach to allow restricted direct sales and vertical integration. Congress allowed the Board to exempt persons from the prohibition on direct sales by moving the prohibition from section 101(36) (definition of supplemental air transportation) to section 401(n)(4) of the Act. We have issued a notice of proposed rulemaking suggesting such an exemption, subject to the advance purchase and consumer protection restrictions.

Finally, we do recommend that the Congress act to eliminate by December 31, 1981, the restriction on direct sales and vertical integration as it applies to international air transportation so that as of that date charters, regardless of their destination, may be sold on an individual seat basis by direct air carriers.

II. Review of Current Prohibitions and Legal Effects of a Direct Sales System

This section discusses (1) the reasons for the current legal prohibition against the direct sale of charters and vertical integration of air carriers with tour operators; and (2) the legal distinctions that currently differentiate charter and scheduled services and how these distinctions could be greatly diminished by allowing the direct sale of charter seats to the traveling public.

A. History of the Supplemental Air Carrier Industry and the Prohibition on Individually Ticketed Sales

The Board and the Congress created the supplemental air carrier industry [7] out of a number of nonscheduled (or "irregular") carriers that commenced operations before and shortly after World War II. These carriers operated under a blanket exemption from the certificate requirements of the Act, which the Board had granted in 1938.[8] In granting the exemption, the Board recognized that nonscheduled air transportation was of limited economic importance, and that certification of the then-existing nonscheduled carriers would be overly time-consuming to both the carriers and the Board, which at that time was just beginning its planned development of the certificated air transportation system.

After World War II, however, the availability of qualified pilots and surplus military aircraft caused a large growth in nonscheduled operations. This, in turn, caused the Board to re-examine this segment of the industry to see if some sort of certification program was warranted. In 1955 the Board instituted the *Large Irregular Air Carrier Investigation* to assess the role of the irregulars and to determine Board policy suited to that role (Docket 5132). By Order E-9744, dated November 15, 1955, the Board granted several of the irregulars a blanket interim exemption (pending the outcome of the investigation) to conduct (1) unlimited charter operations on a planeload basis for the carriage of passengers in domestic and overseas operations, and of property only in international operations, (2) charter operations for the carriage of passengers in international operations on an individual exemption basis only, and (3) individually ticketed or individually waybilled operations not to exceed 10 trips per month in the same direction between any single pair of points. In taking this action, the Board found that the public interest required the establishment of a class of carriers to provide transportation services which supplemented those of the certificated scheduled carriers.

This interim exemption was challenged by the scheduled carriers, primarily because of the individual-ticketing rights the Board had given the nonscheduled, "supplemental" carriers. Subsequently, in 1956, the Court of Appeals decided that the Board could not authorize supplemental air transportation by exemption (*American Airlines v. CAB*, 235 F. 2d (D.C. Cir. 1956)).

In two separate orders issued on January 28, 1959 (E-13435 and E-13436), the Board granted temporary certificates of public convenience and necessity to several of the irregular carriers, allowing the same types of operations as it had authorized by exemption in 1955. Again, several certificated route carriers challenged the Board's action. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit found the Board's action in certificating the supplementals deficient because (1) the Board had not specified terminal and intermediate points as required by Section 401 of the Act; (2) the ten flight limitation infringed on the carriers' scheduling freedom, in violation of Section 401(c); and (3) the Board had not made adequate fitness findings for granting such extensive operating authority. (See *United Air Lines v. CAB*, 278 F.2d 446 (D.C. Cir. 1960)).

The Board then came to the Congress for authority to issue limited supplemental certificates. To avoid immediate cessation of the supplemental air carrier industry, the Congress enacted P.L. 86-661, approved July 14, 1960, giving the Board temporary authority to permit the supplemental carriers to conduct operations for 20 months. The Congress then began to consider more permanent legislation (H.R. 7318 and S. 1969) to provide for the formal creation of a class of supplemental carriers.

While there was no dispute about the value of the supplemental carriers to the national defense and other air transportation needs of the nation, there was much dispute about the scope of authority that should be awarded to them. The Board recommended continuing and expanding the supplementals' authority to sell individual tickets. The Senate proposed to allow the Board to authorize the supplementals (by exemptions) to provide individually ticketed service on a temporary basis in situations where the scheduled carriers were not able to meet air transportation needs. The House proposal did not include individually ticketed or individually waybilled services.

The conference committee decided to adopt the prohibition on individual sales recommended by the House but, in order to permit an orderly phasing out of the supplementals' individually ticketed operations, allowed the Board to permit individual sales for a period of two years, subject to limitations on the amount performed. At the end of that time, all supplemental operations were to be charter. P.L. 87-528 enacted July 10, 1962, amended the Federal Aviation Act to authorize the Board to grant certificates to the supplemental carriers under section 401(d)(3).

Review of the legislative history of P.L. 87-528 offers several reasons for the adoption of the prohibition on individually ticketed sales:

(1) The scheduled carriers were experiencing continued yearly declines in operating revenues, part of which was thought to be attributable to competition by the supplementals' individually ticketed operations. The Congress decided that it would not be sound regulatory policy to pay subsidy to the suffering scheduled carriers which, under the terms of their certificates, were required to serve certain unprofitable routes, while allowing their revenues to be diverted to the supplementals.[9]

[7] We shall refer to charter air carriers as "supplementals" in this part of the report, since this was the name given at that time to this class of carriers.

[8] See Part 291 of the Board's Economic Regulations, (3 FR 2516, October 18, 1938), and Amendment No. 2 to Part 291 (11 FR 6584, June 15, 1946).

[9] Hearings before a Subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 7318, 7512 and 7679 (Limited Air Carrier Certificates), 87th Congress, 1st Session (1961), pp. 203-225.

(2) Four of the supplemental carriers, referred to as the Great Lakes Group, operated individually ticketed flights in excess of the limitations prescribed by the Board. The Congress determined that the supplementals, as a class, might not be responsible enough to warrant receipt of authority which, as noted above, appeared to be undermining the profitability of the scheduled carriers.[10]

(3) In the midst of the discussions about the scope of authority to be awarded to the supplementals, one of them, Imperial Airlines, crashed at Richmond, Virginia, killing 74 army recruits. The Congress determined that the safety fitness of the supplementals, as a class, might not be as high as that of the scheduled carriers and were unwilling to authorize more extensive operations.[11]

These three reasons prompted the Congress to believe that the supplementals should be restricted to charter operations only, with charters being considered a supplementary service to scheduled operations.

After the loss of their individual-ticketing authority, the supplemental carriers were limited to the operation of cargo and passenger charter flights. Passenger charters could be operated only under contracts with "single entity" or "affinity" groups.[12] The supplementals could not sell tickets to individual passengers in these groups or to members of the public at large. This restriction on the availability of a market for their charters limited the supplementals' revenue-generating abilities. In addition, the vast majority of American travelers were not members of qualifying affinity or single entity organizations, and were thus compelled to satisfy their air transportation needs either by traveling on much higher priced scheduled services or by risking participation in charter flights organized in violation of the Board's Regulations.

The Board continued to consider the question of the scope of the supplementals' authority in the *Supplemental Air Service Proceeding* (Docket 13795 *et al.*) and on March 11, 1966, by Order E-23350, adopted regulations that permitted the operation of inclusive tour charters (ITC's).[13] ITC's were charters that could, for the first time, be sold to the general public by the charterer, an independent tour operator which the Board created and classified as an "indirect air carrier." The reasons behind the Board's authorization of the then-revolutionary ITC's were that such tours (1) would meet a substantial public need for low-cost pleasure air travel, (2) would provide an additional source of revenue to strengthen the supplemental air carriers, and (3) would not have any real adverse effect on the certificated route carriers.[14] The Board found that this action was consistent with the purpose of the 1962 amendments to the Act, which it concluded was to establish a stable and viable role for the supplemental carriers in the air transportation system. The Board concluded that it had the authority to permit the supplementals to conduct inclusive tours because (1) the language of the legislation did not define "charter trips", and (2) the Supreme Court had held previously that inclusive tour charters fell within the definition of charter services in the surface transportation field.

Again, the Board's action was challenged by the certificated route carriers. In *World Airways, Inc., et al. vs. Pan American World Airways*, 391 U.S. 461, the Supreme Court let stand a Second Circuit decision which held that the Board did not have authority under Pub. L. 87-528 to authorize supplemental air carriers to conduct inclusive tour charter trips in international air transportation. Another case involving the domestic authority of the supplementals to conduct this type of charter trip was pending when this decision was reached.

The issue in the court cases centered around the intent of Congress when it enacted Pub. L. 87-528.[15] As a result, the Senate introduced legislation (S. 3566) to allow the supplementals to conduct inclusive tour charters. The bill was opposed by the scheduled carriers essentially on the grounds that it authorized individually ticketed services by the supplemental air carriers.

The House bill, H.R. 17685, proposed to allow the supplementals to market inclusive tours themselves rather than through tour operators. The supplementals, realizing that they were faced with the possibility of losing their authority to operate inclusive tours altogether, did not argue in support of the possibility of marketing inclusive tours directly but instead concentrated on trying to persuade the legislators that inclusive tours, as authorized by the Board, did not involve individually-ticketed sales.

The resulting amendment to the Act, P.L. 90-514, enacted September 28, 1968, specifically authorized the supplementals to operate inclusive tours, but also prohibited individual ticketing as well as control of charter operators by the supplemental carriers. Prohibitions against direct sales of charter seats and the control of charter operators by supplemental carriers have remained in place since that time.

B. Differences Between Scheduled and Charter Air Service Under Current Rules and Under a Direct Sales System

Since the enactment of P.L. 90-514, and especially in the last few years, there have been dramatic changes in the regulatory framework. The trend toward permissive route authority, the recent route awards to charter air carriers, and the adoption of less-restrictive charter regulations have blurred the distinction between charter and scheduled service. Because of these changes in the air transportation system, the original rationale for the prohibition of direct sales has, to a large extent, lost its meaning. The scheduled carriers no longer need to be protected from competition by the charter air carriers. If any thing, the opposite appears true.[16]

In addition, charter service has evolved to a point where it plays a role far different from that originally envisioned for it. Rather than filling in the gaps as "supplemental service" in markets where scheduled carriers are unable to provide sufficient service, charters now operate, as a low-cost alternative, in many markets where there is ample scheduled service. Thus, the role of the charter air carriers has changed from that of a segment of the industry offering a completely different product from that of the scheduled carriers, to one where the charter carriers' product has become an increasingly closer substitute for that of the scheduled carriers.

The Public Charter rule which the Board adopted last year liberalized dramatically the restrictions on charters and allowed charters to become a much closer substitute for scheduled service. While Public Charters still must be arranged and sold by an independent tour operator, they may, as with scheduled service, be sold on a one-way or round-trip basis, as an air-only flight or in conjunction with a ground package. There are no advance purchase, minimum pirce, or minimum stay requirements imposed on such charters, as have been imposed on previous types of charter flights. The only other restriction imposed is that tour operators must contract with the air carrier for a minimum of 20 seats on each flight and that the entire aircraft must be chartered by one or more operators before a flight can be operated.

Allowing direct sales would continue the reduction of regulatory distinctions between charter and scheduled service. If, as we assume, direct sales means individual sales, then there would no longer be a minimum contract size within the meaning of the Public Charter rules—the minimum contract size would be one, the same on a scheduled

[10] Hearings before the Aviation Subcommittee of the Senate Committee on Commerce on S. 1969 (Supplemental Air Carriers), 87th Congress, 1st Session (1961), pp. 45-46.

[11] See the introduction of amendments to S. 1969, February 26, 1962, Congressional Record-Senate, p. 2609.

[12] A single entity charter is one in which a person charters an aircraft for his own use, and the passengers pay nothing directly or indirectly for their transportation (this type is used, for example, by businesses to transport their employees to conventions or branch offices). An affinity charter is one in which an organization, such as a Lions Club or a university alumni association, charters an aircraft on behalf of its members who pay a pro rata share of the air transportation cost. Only members of the chartering organization are eligible to participate in an affinity charter.

[13] Part 378 of the Board's Special Regulation (14 CFR Part 378, SPR-14, 31 FR 4779, May 13, 1966).

[14] To protect the scheduled carriers from diversion of revenues by ITC's, the Board required that ITC's be sold as a package tour consisting of round-trip air transportation plus a land package including hotel accommodations at three points at least 50 air miles apart. The rule also required that the tour price charged be at least ten percent higher than the lowest comparable scheduled air fare between the points served.

[15] The Senate had proposed to define charter service but finally determined to leave this task to the Board.

[16] The scheduled carriers, as a group, have recently been prospering, while the charter carriers have suffered economic set backs. As an example, the scheduled carriers' operating profit for the first five months of 1978 more than tripled that of the same period in 1977, up $203 million to $298.4 million. In contrast, during the first six months of 1978, the large charter air carriers lost over $2 million (source: carrier reports to the Board, CAB Form 41).

service flight. In addition, as far as the actual operation of scheduled and charter flights is concerned, there is now no requirement that air transportation conducted under a route award under section 401(d)(1)—the activity that is normally known as "scheduled service"—be "scheduled" in any particular way. Conversely, there is no prohibition on conventional charters, such as Public Charters run by tour operators, being conducted according to published schedules. If charter air carriers may sell Public Charters directly to the public, whether or not the services are called "charters", it means that they may at will provide service very similar to that provided by the route carriers under section 401(d)(1) to any market. If the same permission to sell charters directly is granted to scheduled carriers, they also will be able to operate these services subject only to the off-route charter limitations.[17] In addition, under direct sales, carriers could easily eliminate the remaining significant differences between the two types of service. Carriers could sell charter tickets that have a lenient refund policy in the event the purchaser does not take the flight. They could run charters on a regular schedule and charge fares high enough to support, say, a 65 percent load factor, which is about the average on scheduled service today. There would remain, to be sure, minor differences between the two types of service (for example, directly sold charters would be subject to the prospectus filing, financial security and participant contract requirements of the Public Charter rule, and scheduled "route" flights would be subject to denied boarding compensation, no smoking and tariff rules), but the differences would not be very great in the public's mind. Therefore, it appears that allowing the unrestricted direct sale of Public Charters by air carriers could bring about a virtually complete deregulation of entry by U.S. carriers in domestic markets, and, to the extent permitted by foreign governments, could broaden U.S. carrier entry into international markets.

As a practical matter, however, we do not believe that such an effect will result. In the past year the scheduled carriers have had new opportunities to enter and leave routes, particularly in domestic markets, with a minimum of regulatory obstruction. In addition, the charter carriers' acquisition of scheduled service authority has been greatly facilitated by the exemption and certification policies of the Board. Because of this relative ease of market entry and exit in the scheduled service sector, the carriers may see little incentive to use direct sales authority as a substitute for route certification proceedings.[18] Instead, we would expect that direct sales would be used to expand the discretionary travel opportunities of the public.

III. Current Status of Charter Industry

This section provides a brief overview of the current economic situation of the charter and tour operator industries at home and aboard. In the previous sections we noted that charter service, far from being a mere ancillary to scheduled service, has developed into a major source of low-cost travel for the public. Both scheduled and charter service have recently undergone drastic changes. Restrictions on the use of charters have been eased by the Public Charter concept. The deeply discounted fares available on scheduled flights have expanded scheduled travel, often at the expense of charters. This section examines how the deregulation of scheduled service has affected the charter market in the last few years. It also provides information on the experience of the tour operators, and their perceptions of the effects of deregulation on the tour operator business. We conclude this section with some notes on experience of the tour operator industry in foreign countries where the vertical integration of air carriers and tour operators is permitted.

A. Charter Service and Charter Carriers

In considering the current state of the charter industry it is helpful first to review trends in charter traffic over the past several years.

Table I[19] shows nonscheduled Revenue Passenger Miles (RPM's) for the period 1974–1978. To put these figures in perspective, a single line showing total system scheduled RPM's for the certificated route air carriers is also shown. This line demonstrates that until 1978, nonscheduled and scheduled services have had similar patterns of growth and contraction. In 1978, charter RPM's declined over 11 percent while scheduled RPM's increased more than 17 percent, as compared with 1977. These figures reflect the diversionary impact of new discount traffic on charter services, especially in the European market, where in the fall of 1977 the "Skytrain" service, and the Super-Apex, Standby, and Budget fares were introduced.[20] The decline in charter traffic may be somewhat misleading, however, because most of the decline apparently involves "self-diversion" from scheduled carriers' charter services to their own scheduled flights. Charter air carrier traffic actually increased a little, if only because increased military traffic neutralized a slight civilian decline.

Table I also indicates that military passenger charter traffic has remained comparatively steady after a heavy drop from 1974 to 1975, the period of military retrenchment from Vietnam. Military RPM's in 1978 amounted to 15.3 percent of the total charter passenger traffic, helping to stabilize charter traffic during this period.

Though discussion here is limited to passenger traffic, it should be noted that cargo charters also provide a significant amount of revenue to the charter industry. Cargo traffic is unevenly distributed by carrier. Of the cargo traffic enplaned in 1977 by the charter carriers, Evergreen had the lion's share at 55 percent, and Trans International was next with 38 percent. The Board authorized charter carriers to carry mail in January 1979, and, therefore, it may be expected that both the amount of cargo and the number of carriers working with cargo charters will grow.

Further examination of Table I yields two additional observations: first, swings in nonscheduled traffic are more pronounced for the scheduled carriers than for the charter carriers; second, the changes in patterns of growth/contraction for scheduled carriers' charter traffic seem to lead the same trends for charter carriers. The primary reason for these trends appears to be that scheduled carriers are quick to transfer their aircraft from charter to scheduled service when the opportunity offers. Charter load factors for scheduled carriers dropped only a little in 1978, from 90.8 to 90.6, which strongly suggests this substitution of scheduled capacity for charters. The largest charter market area, U.S.-Europe, shows a similar pattern. Charter load factors for scheduled carriers in this market declined by only 0.8 points from 1977 to 1978, also indicating transfer of capacity.

The charter carriers have adjusted to the growth of discount traffic in different ways. First, as *Table II* shows, there have been significant declines in charter traffic matched with heavy increases in deep-discount traffic. The major impact of discount traffic on charters has been in the European markets. In 1978, U.S.-Europe traffic for charter carriers dropped 11 percent from 1977. This traffic loss resulted in a decline of revenue of $15.3 million. In contrast, the loss of U.S.-Europe traffic was slightly more than offset by a gain in U.S.-Caribbean traffic. Because of the shorter average trip length, however, additional revenue generated was only $10.5 million. Nonetheless, a 9.2 percent increase in the domestic passenger market yielded the charter carriers an additional $7.4 million which, together with the Caribbean increase, more than covered the revenue loss in the U.S.-Europe market.

A final note may be in order. Much of this discussion implicitly assumes that the charter carriers are and will remain charter carriers. This, of course, is not true. In November 1978, World Airways and Trans International Airlines were granted exemptions to serve certain U.S.-Europe markets with scheduled service, and early this year, Capitol International Airways, World and TIA received transcontinental scheduled authority. At this point the charter air carriers obviously have more flexibility than they did a year ago in competing with discount fares. Indeed, charter carriers as such are becoming a thing of the past. In the coming months, the former charter-only air carriers are likely to receive new scheduled authority and substitute scheduled for charter operations. A lack of direct marketing opportunities of their charter flights may cause them to quicken

[17] Scheduled air carriers which do not also hold a charter air carrier certificate are limited in their operation of charters over routes which they do not serve on a scheduled basis. Such operations are limited in any one year to no more than 10 percent of the total number of plane miles (or seat miles) which that carrier flew the previous year.

[18] In addition, the present industry equipment shortage places a practical limitation on any massive expansion of service by air carriers. Any expanded operations in international markets would also be subject to foreign government approval.

[19] The tables are included at the end of this section.

[20] While the new discount fares were introduced at the end of 1977, they were after the peak of the charter season. Thus, the major effects of the deep discounts on charter traffic were not felt until 1978.

this process, further reducing the availability of charters to the traveling public.

B. Tour Operators

Table III presents data on the traffic for those charter types that can be sold by U.S. tour operators. This traffic has been contrasted with the traffic moving on those charters directly contracted with the carrier by a given group of the traveling public (*i.e.*, affinity or single-entity groups). The most important information revealed by Table III is that the passengers in the charter types marketed by tour operators increased by 3.4 percent from 1977 to 1978. This increase runs counter to what many tour operators have stated in Board surveys and through their trade associations. The increase gains significance when one considers that tour operators are also free to market scheduled fare tour packages, an opportunity not available to charter carriers.

For the purpose of this report, a small survey of tour operators was carried out in late March of 1979, to provide information on the general situation of the tour industry.[21] The survey questions were meant to indicate how dependent the operators are on charters. They were asked whether they were also in the retail business, their total dollar volume form all sources in 1978, how much of this was from scheduled and how much from nonscheduled air operations, how many air passengers did they have in 1978, how many of those were on charters and what portion of their air passengers had a ground package. Finally they were invited to comment in any way on the outlook for their tour business.

Statistical Highlights.—Of the 40 respondents among the tour operators:

27 were also retail travel agents.
22 used scheduled service for 25 percent or more of their volume.
17 used scheduled service for 50 percent or more of their volume.
33 had ground packages for 25 percent or more of their passengers.
28 had ground packages for 50 percent or more of their passengers.

Total volume of business in 1978, for the 35 who reported it, varied from over $100 million down to less than $100 thousand. Fourteen reported $10 million or more, and 30 reported $1 million or more.

Those not in the retail business tend to be the largest operators, although there are exceptions.

Total number of air passengers, for the 37 reporting it, varied from 208,000 down to 1,000.

Arranging the tour operators by 1978 dollar volume in groups of five, we have:

Group	Median volume ($ million)	Also retail?	Median percent Scheduled	Median passenger (000's)	Median percent ground package
Top 5	42	3 yes	21	84	95
Next 5	20	2 yes	16	62	90
Next 5	11	2 yes	20	19	65
Next 5	8.3	4 yes	43	21	85
Next 5	3	3 yes	29	10	90
Next 5	1.6	5 yes	63	6	20
Next 5	0.7	4 yes	70	5	70
Last 5	N/A	4 yes	40	18	50

While the small sample and other limitations of the survey, noted above, suggest extreme care should be used when interpreting these figures, it is clear that the tour operators do a highly variegated business, with most relying on both scheduled and charter flights.

Finally, we summarize the tour operators' comments on their views of the future outlook for their tour business.

Comment	Number of respondents
The charter outlook is dim because of deep discount fares	14
The charter tour outlook is good	12
Fuel availability is of concern	9
Direct sales or vertical integration would be bad for tour operators	9
Charter markets are good where not competing with deep discount fares	8
Groupfares on scheduled service are helping and will help	8
Aircraft for charters are in short supply	6
Retail business is very good	3
Will drop charters and use scheduled service	1
Tour operators need part charters	1
CAB does not understand the travel agent business	1
CAB's present policies will wipe out the small tour operator	1
Cancelled flights by air carriers are unfair—the tour operator takes the loss	1
New rules for scheduled service and charters are confusing	1
No comment	4

C. Experience in Other Countries

In its comments on whether to permit direct sales and vertical integration,[22] the National Air Carrier Association presented a study by Tranportation Analysis International Ltd. (TAI), of Shannon, Ireland, on behalf of its members. The study is substantial, if expeditious. Conditions were studied in the United Kingdom, in Scandinavia, and in West Germany, by interviews with knowledgeable staff in the airlines, the tour operators, and the regulators. From this study, the following points are worth noting.

In the United Kingdom vertical integration has existed for more than 20 years. In Scandinava, where vertical integration is also permitted, and is widespread, the two major Scandinavian tour operators formed their own associated air carriers.[23] German tour operators have been mostly independent of direct air carriers until recently. There has, however, been a recent movement toward vertical integration in Germany. It is of interest that the German tour industry, which is very concentrated, became concentrated before vertical integration occurred. The current trend toward vertical integration in Germany appears to be occurring in both directions, with direct carriers acquiring tour operators and with the larger tour operators acquiring direct carriers. It is therefore not apparent that the presence of vertical integration has had any effect on the structure of the industry or the ability of previously independent operators or carriers to compete.

The TAI study also argues that those areas where vertical integration occurred early, the United Kingdon and Scandinavia, experienced the most dramatic increases in charter travel throughout this period. While the study tends to attribute such factors to vertical integration, other factors may equally well explain the higher expansion of low-cost charter travel in the United Kingdom and Scandinavia relative to Germany and, especially, France, where restrictions on vertical integration appear more substantial. What does seem clear is that low-cost charter travel has flourished in those countries with vertically integrated firms, independent tour operators have remained competitive, and vertical integration has been accomplished both by air carriers and tour operators. Also, a large number of small tour operators are able to exist whatever the rules on vertical integration. There are over 450 tour operator license holders in the United Kingdom. In Scandinavia, there are approximately 35 smaller tour operators, plus another hundred or so small specialist tour operators and agencies.

The TAI study also finds that the smaller non-integrated tour operators in the United Kingdom have not had difficulty finding charter capacity. Part of the reason appears to be the increase in capacity generated by those tour operators that acquired direct air carriers. Air carriers appear to have been acquired by some of the larger tour operators to assure an ample supply of charter seats and modern equipment during the peak season. Examples used in the study to emphasize the lack of exclusivity in relationships between affiliated direct carriers and tour operators include Thomson Travel, one of the largest tour operators, which is integrated with Britannia Airlines. Thomson buys 15 percent of its seats from other carriers, and Britannia flies 40 percent of its inclusive tour passengers for other tour operators. The largest U.K. charter air carrier, Dan Air, is unaffiliated with a tour operator. The study also reports that the real (adjusted

[21] Thirty of the largest operators were disignated by the Board's staff and a sample of 30 or more was chosen at random from all others who had filed charter programs for this year. Twenty of the 30 largest responded as did 20 of the 30 others, for a response rate of 67 percent. Six were out of business now and were not in business in 1978. Fourteen said the information was not available or they were too busy to reply. Of the 40 who supplied usable information, five did not reply on total volume of business and three did not have the number of air passengers.

[22] On March 8, 1979, the Board requested public comment on the questions of whether to permit direct sales and vertical integration. A number of comments were filed in response to this request, a complete summary of which appears as an Appendix to this report.

[23] Tjaereborg and Spres are the two carriers. About 80 percent of Scandinavian tour traffic is generated by airline affiliated tour traffic; but a substantial number of independent tour operators still exist.

for inflation) cost of tour packages has decreased over the past seven years.

Comments in opposition to the above views include those of the U.S. Tour Operators Association and Sunflight Holidays.[24] They argue that in Canada since 1973, most carriers have acquired or created tour operators, restricting capacity for independent operators, and providing a stagnant situation with higher prices. On the other hand, it is argued by International Vacations Ltd., another Canadian tour operator, that there are still about 120 tour operators in Canada with the charter market growing about 24 percent a year. Many U.S. operators also are able to operate in Canada without airline affiliation.

The comments show that vertical integration matters less than other legal and geographic factors in determining the vitality of the charter industry. Small independent tour operators exist side by side with affiliated tour operators. Large independent tour operators often find it beneficial to be affiliated with direct carriers. It is reasonable to expect that vertical integration will mean a long-term industry structure with most of the largest operators affiliated with direct carriers, although no convincing evidence was presented to suggest that vertical integration would lead to monopoly power by carriers or tour operators or to higher prices. Given foreign experience, we might also expect that some of the larger operators will remain independent, and that tour operators will acquire as well as be acquired by air carriers. In the short term, vertical integration is not likely to alter the structure of the industry dramatically although some of the larger tour operators may suffer from the entry of large, new entrants into the tour operator industry.

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[24] Sunflight Holidays, which is not affiliated with any direct air carrier, is one of the largest tour operators in Canada.

Table I

Revenue Passenger Miles (In Thousands)
Nonscheduled Service by Major Carrier Group, 1974-1978, and Scheduled Service, 1974-1978

	1978	Percent Change	1977	Percent Change	1976	Percent Change	1975	Percent Change	1974
Certificated Route Air Carriers - Nonscheduled Service									
Civilian RPMs	8,657,652	-22.7	11,205,075	+1.4	11,054,145	+41.8	7,796,065	-7.4	8,417,838
Military RPMs	1,558,514	-6.0	1,657,632	-7.9	1,800,587	-33.8	2,717,883	+0.1	2,714,728
Total RPMs	10,216,166	-20.6	12,862,707	+0.1	12,854,732	+22.3	10,513,948	-5.6	11,132,566
Charter Industry (Charter Carriers)									
Civilian RPMs	8,297,453	-0.7	8,352,086	+25.6	6,647,466	-3.4	6,884,588	-23.6	9,015,555
Military RPMs	1,701,584	+4.3	1,631,318	+5.1	1,551,587	-16.6	1,861,261	+0.6	1,849,425
Total RPMs	9,999,037	+0.2	9,983,404	+21.8	8,199,053	-6.3	8,745,849	-19.5	10,864,980
Total Charter Service									
Civilian RPMs	16,955,105	-13.3	19,557,161	+10.5	17,701,611	+20.6	14,680,653	-15.8	17,433,393
Military RPMs	3,260,098	-0.9	3,288,950	-1.9	3,352,174	-26.8	4,579,144	+0.3	4,564,153
Total RPMs	20,215,203	-11.5	22,846,111	+8.5	21,053,785	+9.3	19,259,797	-12.4	21,997,546
Total RPMs, Scheduled Service, Certificated Route Air Carriers	226,781,368	+17.4	193,218,819	+8.0	178,988,026	+9.9	162,810,160	-0.1	162,917,241

Sources: Supplement to Handbook of Airline Statistics, 1973-1974
Supplement to Handbook of Airline Statistics, 1975-1976
Air Carrier Traffic Statistics (Expedited), December 1978

Civil Aeronautics Board
Office of Economic Analysis
Policy Analysis Division

Charter and Deep Discount Passengers for U.S. Scheduled and U.S. Charter Carriers by Quarter, and Calendar Year for 1978 and 1977

Charter Passengers

System Operations 1/

U.S. Scheduled Carriers	781Q	1119987	782Q	970540	783Q	1021149	784Q	900648	CY78	4012324
	771Q	1192445	772Q	1158220	773Q	1349799	774Q	1149737	CY77	4850201
Change %		- 6.1		- 16.2		- 24.3		- 21.7		- 17.3
U.S. Charter Carriers	781Q	621746	782Q	657610	783Q	750404	784Q	499864	CY78	2529624
	771Q	445561	772Q	649465	773Q	846865	774Q	509206	CY77	2451097
Change %		+ 39.5		+ 1.3		- 11.4		- 1.8		+ 3.2
Total	781Q	1741733	782Q	1628150	783Q	1771553	784Q	1400512	CY78	6541948
	771Q	1638006	772Q	1807685	773Q	2196664	774Q	1658943	CY77	7301298
Change %		+ 6.3		- 9.9		- 19.4		- 15.6		- 10.4

International Operations 2/

U.S. Scheduled Carriers	781Q	353421	782Q	350688	783Q	399667	784Q	280413	CY78	1384189
	771Q	393294	772Q	393397	773Q	499203	774Q	339620	CY77	1625514
Change %		- 10.1		- 10.9		- 19.9		- 17.4		- 14.8
U.S. Charter Carriers	781Q	398361	782Q	469057	783Q	636356	784Q	261834	CY78	1765608
	771Q	249521	772Q	448978	773Q	730326	774Q	244274	CY77	1673099
Change %		+ 59.7		+ 4.5		- 12.9		+ 7.2		+ 5.5
Total	781Q	751782	782Q	819745	783Q	1036023	784Q	542247	CY78	3149797
	771Q	642815	772Q	842375	773Q	1229529	774Q	583894	CY77	3298613
Change %		+ 17.0		- 2.7		- 15.7		- 7.1		- 4.5

Table II
Page 2 of 3

Domestic Operations 3/

U.S. Scheduled Carriers	781Q	737597	782Q	578553	783Q	561333	784Q	599902	CY78	2477385
	771Q	751126	772Q	705178	773Q	796063	774Q	775059	CY77	3027426
Change %		- 1.8		- 18.0		- 29.5		- 22.6		- 18.2
U.S. Charter Carriers	781Q	199691	782Q	177256	783Q	67881	784Q	174833	CY78	619661
	771Q	180258	772Q	186404	773Q	77271	774Q	123504	CY77	567707
Change %		+ 10.6		- 4.9		- 12.2		+ 41.6		+ 9.2
Total	781Q	937288	782Q	755809	783Q	629214	784Q	774735	CY78	3097046
	771Q	931384	772Q	891582	773Q	873334	774Q	898563	CY77	3595133
Change %		+ 0.6		- 15.2		- 28.0		- 13.8		- 13.9

U.S. - Europe

U.S. Scheduled Carriers	781Q	76284	782Q	179473	783Q	218211	784Q	98373	CY78	572341
	771Q	70118	772Q	220680	773Q	353559	774Q	158416	CY77	802773
Change %		+ 8.8		- 18.7		- 38.3		- 37.9		- 28.7
U.S. Charter Carriers	781Q	73541	782Q	338027	783Q	590893	784Q	139518	CY78	1141979
	771Q	69529	772Q	384069	773Q	697106	774Q	133774	CY77	1284478
Change %		+ 5.8		- 12.0		- 15.2		+ 4.3		- 11.1
Total	781Q	149825	782Q	517500	783Q	809104	784Q	237891	CY78	1714320
	771Q	139647	772Q	604749	773Q	1050665	774Q	292190	CY77	2087251
Change %		+ 7.3		- 14.4		- 23.0		- 19.6		- 17.9

Deep Discount Passengers, U.S. Schedules Carriers, U.S.-Europe

Apex	781Q	111757	782Q	336375	783Q	440397	784Q	248911	CY78	1137440
	771Q	42200	772Q	141545	773Q	200969	774Q	141365	CY77	526179
Change %		+164.8		+137.6		+119.1		+ 76.1		+116.2
All Other Non First Class	781Q	491898	782Q	764520	783Q	1067338	784Q	686067	CY78	3009823
	771Q	470985	772Q	703948	773Q	843111	774Q	575961	CY77	2594005
Change %		+ 4.4		+ 8.6		+ 26.6		+ 19.1		+ 16.0
Total Non First Class	781Q	603655	782Q	1100895	783Q	1507735	784Q	934978	CY78	4147263
	771Q	513185	772Q	845493	773Q	1044080	774Q	717326	CY77	3120084
		+17.6		+ 30.2		+ 44.4		+ 30.3		+ 32.9

1/ System data defined as civilian passenger traffic for domestic, international and "fifth freedom" traffic.

2/ International defined as involving a U.S. and foreign point. "Fifth freedom" traffic is excluded.

3/ Domestic traffic defined as involving traffic between two points in the 50 U.S. states.

Sources: Form 41, Schedule T-6
Special Deep Discount Reports filed by Scheduled Carriers

Civil Aeronautics Board
Office of Economic Analysis
Policy Analysis Division

Table III

Charter Passengers By Major
Market Area, By Type of Charter
Sold By Tour Operators and Direct
Air Carriers for Calendar Years 1978 and 1977

Total-All Carriers		Passengers on Charter Types Sold by Tour Operators 1/	Passengers on Charter Types Directly Contracted With Carriers 2/	Other 3/	Total
U.S.-All Cities	1978	4,523,452	1,662,845	60,546	6,246,843
	1977	4,369,510	2,488,355	35,881	6,893,746
Change %		+3.5%	-33.2%	+68.7%	-9.4%
Domestic	1978	2,194,467	902,579	-	3,097,046
	1977	2,145,717	1,449,392	24	3,595,133
Change %		+2.3%	-37.7%	-100.0%	-13.9%
International 4/	1978	2,328,985	760,266	60,546	3,149,797
	1977	2,223,793	1,038,963	35,857	3,298,613
Change %		+4.7%	-26.8%	+68.9%	-4.5%
International Adjusted to Delete Foreign Originating Traffic 5/	1978	2,053,364	670,293	69	2,723,726
	1977	1,960,621	916,008	166	2,876,795
Change %		+4.7%	-26.8%	-58.4%	-5.3%
Total Domestic and International Adjusted	1978	4,247,831	1,572,872	69	5,820,772
	1977	4,106,338	2,365,400	190	6,471,928
Change %		+3.4%	-33.5%	-63.7%	-10.1%

1/ Includes the following charter types: Advance Booking, Inclusive Tour, Overseas Military Personnel, One-Stop Inclusive Tour, Public, Special Event, Study Group, and Travel Group.
2/ Includes Single Entity and Pro Rata (Prior Affinity) Charters.
3/ Includes Common Purpose (originating in Canada or Yugoslavia) Charters, Foreign-Rule Inclusive Tour Charters, and unknown types.
4/ Includes foreign originating traffic.
5/ International traffic allocated between U.S. and foreign originations based on 1977 experience. 1978 data is not yet available indicating this split.

1977	International Passengers	Percent
	U.S. Originating	88.2
	Foreign Originating	11.8

Source: CAB Form 41, Schedule T-6.

Civil Aeronautics Board
Office of Economic Analysis
Policy Analysis Division

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IV. Effects of Direct Sales and Vertical Integration

As part of this report, Congress has directed the Board to investigate how an amendment permitting direct sales or vertical integration would affect the traveling public, the independent tour operator industry, the travel agent industry, and the different classes of air carriers.

The changes brought about by a direct sales amendment would be in two areas. First, direct sales of charters could lead carriers to offer "scheduled" charter service in order to gain immediate access to new markets without having to apply and wait for new route authority. Second, carriers might decide to expand their operations by developing and selling special vacation charters and package tours. The likelihood of either response and the impact it would have is not to any great extent dependent upon the other response taking place. We have discussed the possibility of "scheduled" charter service in section II. This section examines the potential effects of allowing air carriers to enter the tour industry.

The effect direct sales would have on air carriers, travel agents, and tour operators depends, in large part, on the current degree of competition within these industries, and on whether vertical integration will substantially alter the industries' competitive structure.

Before one can determine the importance of changes resulting from a direct sales amendment, the structure of the firms in each industry must be evaluated. If, for example, the cost structure of firms in an industry make that industry basically competitive (*i.e.*, firms do not experience declining production costs over the range of industry output) and entry of new firms is easy, then the loss of a few competitors among many should not seriously threaten the competitive nature of the industry. On the other hand, if entry into the industry is difficult and some change in regulation would force out three of, say, six firms in the industry, then the anticompetitive effects of the change should be examined very carefully.

It is possible, however, that even very competitive industries, such as the tour industry, could become monopolistic if, for example, the dynamics effected by allowing direct sales resulted in the elimination of all but a few large operators who, by their control of all available charter seats, were able to restrict new entry into the industry. Thus, the expected effects of direct sales on the competitive nature of the industry also must be analyzed.

A. The Airline Industry

The commercial airline industry includes three sectors: Scheduled Route Carriers, Charter Air Carriers, and Commuter Air Carriers and Air Taxi Operators. The peculiar characteristic of all three sectors is that, although there are a large number of competitors in each sector, only a few firms produce the same product, such as air travel between Minneapolis and New York City. Furthermore, the different products sold by firms in each sector are usually not good substitutes for each other in the public's mind (*e.g.*, for the traveler who wants to go from New York to Minneapolis, the New York to Los Angeles flight is not a good substitute). In addition, the services offered by one sector are frequently not comparable to the services offered by another. Thus, a passenger interested in highspeed coast-to-coast transportation on a wide-bodied jet aircraft may not be willing to accept a multi-stop flight over the same routing on a small, unpressurized air taxi aircraft. Similarly, a business traveler planning a last minute, short duration trip may not be able to take advantage of a charter flight that has been sold with a ground package for a two-week vacation.

In order for the firms in a particular market to be prevented from exercising their market power by raising fares or providing an inferior service, it must be relatively easy for other existing airlines or for new entrants to begin serving the same market. The Airline Deregulation Act of 1978 is predicated on the belief that this is, in fact, the case. Recent actions by firms in the industry have supported this belief. So long as there are for each market a number of firms who can enter quickly and relatively costlessly, the industry will be competitive.

Scheduled Carriers.—In the scheduled service sector, fare competition and new route entry have become widespread in the last year. The fare cutting began in March 1977 with the introduction of deep-discount scheduled fares and has now begun to spread to the standard coach fares. The carriers' tremendous response to the availability of dormant authority and the many applications for new route authority show how eager the airlines are to enter new routes. Thus, for example, Braniff Airways expanded its route miles by more than a third in last December alone.[25] Another carrier, World Airways, which had never before offered scheduled service, has entered the transcontinental market and has forced many transcontinental fares on other airlines down to or near its $100 one-way price.

Some have expressed fears that despite the ease of entry into the scheduled airline industry[26] the sector could become concentrated because the largest carriers may be able to operate more cheaply. Empirical studies on this question, which are suspect in any event because they examined the industry when it was heavily regulated, are inconclusive. The only evidence we have so far under a less regulated regime is that, over the last six months since the Deregulation Act was passed, the number of scheduled interstate carriers has grown as new carriers have been certificated under streamlined procedures. Furthermore, the local service carriers, which are generally much smaller than the trunk airlines, have experienced the largest traffic growth.[27] If large carriers do, in fact, have the ability to drive out the smaller ones, this strength has clearly not been evident to date. The scheduled carriers currently operating ensure a competitive sector with no firm able to charge a price much above that necessary to earn a normal return.

Charter Carriers.—The charter service sector is very similar to the scheduled service sector in structure. All carriers that hold scheduled service certificates are also allowed to fly charters, although such carriers are subject to the off-route charter limitations explained earlier. In addition, there are four carriers[28] which hold certificates for passenger service as charter air carriers authorizing them to perform only charter flights (although, as mentioned earlier, these carriers have all recently been awarded some scheduled authority by certificate and/or exemption). The economic performance of the charter air carriers has never been as good as that of the scheduled carriers, and, as a result, a number have ceased operations, three in the last two years alone.[29]

Commuters and Air Taxis.—The commuter and air taxi sector of the industry always has been the most competitive. In fact, the Board has never even regulated the routes these small airlines fly or the fares they charge. As long as the equipment they use is below the size limitation which the Board has established for these classes,[30] commuters and air taxis need only comply with FAA safety regulations and insurance requirements set by the Board. There are currently over 200 commuter airlines and over 4,000 air taxis in the U.S. Entry for new firms is very easy, with low capital requirements and far less personnel training than is necessary for those operating larger aircraft.

Effects of a Direct Sales System.—Vertical integration into the tour industry, even if it were to be widespread, would not significantly affect the competitive structure of the airline industry.[31] Total passenger travel on charter flights in 1978 was one-tenth of the traffic airlines carried on scheduled flights. This represents a small proportion of the airline industry, especially considering that the increase in the number of scheduled service passengers in 1978 alone was greater than the total number of passengers who took charter flights.[32]

There is one sense in which direct sales would more greatly affect the charter air carriers than the scheduled route carriers.

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[25] *Business Week*, March 19, 1979, p. 131.

[26] A number of charter air carriers and commuter air carriers have received authority as scheduled air carriers in recently completed route proceedings or under the dormant authority provisions of the Act.

[27] In the first quarter of 1979, local service traffic grew 26.5 percent over first quarter 1978 traffic. This compares to the growth of the trunk carriers' traffic for the same period of 17.2 percent. See Aviation Daily, April 23, 1979, p. 298.

[28] Capitol International Airways, Evergreen International Airlines, Trans International Airlines, and World Airways.

[29] Modern Air Transport, McCulloch International Airlines, and Overseas National Airways.

[30] Air taxis and commuters are permitted to operate aircraft in passenger service with up to 55 seats and in cargo service with a payload capacity of up to 18,000 pounds (see section 416(b)(4) of the Act).

[31] We are limiting our discussion of the effects of direct sales on the airline industry to the scheduled and charter carrier sectors. Air taxis and commuters are *not* now prohibited from the direct sale of charter seats (since they are not subject to any of the Board's regulations on charters), so any liberalization of the law would have no effect on their operations.

[32] See Table I of Section III of this report, p. 40.

Part of the efficiency enjoyed by the scheduled carriers is that they have a scheduled base of operations, and can use their scheduled aircraft during off-peak to operate charters. Thus they can combine the scheduling of their scheduled and charter operations to maintain an efficient utilization of aircraft time, and can also arrange charters to reposition their aircraft where necessary.

Charter air carriers, on the other hand, except for the limited scheduled authority which has only recently been granted them by the Board, have traditionally had no scheduled base on which to rely. The lack of such a base has hurt them in two ways. First, since passenger charters are primarily arranged as vacation flights (business travelers preferring scheduled flights which have fewer restrictions, predetermined times of departure and arrival, and mush less chance of cancellation), the charter air carriers' operations have been much more susceptible to upturns and downswings in the economy than the scheduled carriers. Second, it is difficult for charter air carriers to utilize their fleets efficiently in charter-only operations. Although charter operators generally plan and contract for their programs months in advance of operation, and often arrange back-to-back series of flights eliminating the carriers' flying empty positioning flights, the charter air carriers are, to a large extent, at the mercy of the charter operators as far as the number of flights to be operated, the number of seats needed and the specific markets they will serve,[33] and also because charter operators often unexpectedly cancel flights close to the date of departure if sales prove disappointing.

This lack of complete control over markets combined with disruptive, last minute contract cancellations, make truly cost efficient scheduling of the charter air carriers' aircraft resources difficult if not impossible. By using direct sales authority to build a base "system" of operations, the charter air carriers could protect themselves from these inefficiencies as the scheduled carriers now do, and thus could place themselves in a more equal competitive footing with the scheduled carriers.

B. The Travel Agent Industry

The U.S. travel agent industry is characterized by a large number of small, highly competitive firms. Of the over 14,000 agencies in the country, the largest 2,000 firms share less than 42 percent of the industry's sales. The median annual commission revenue in the industry is less than $80,000.[34]

The agencies cannot compete by changing the prices of most services they sell, but they do compete vigorously in other ways. Five percent of the average agency's costs are direct advertising expense, primarily for newspaper ads. Since the majority of their sales come from repeat business, most agencies maintain mailing lists of past customers and solicit these customers with new vacation ideas.[35] Finally, besides competing against other travel agents, agencies compete for sales with the airlines. In order to attract business, the agent must offer a service at least comparable to the airlines' information, reservations, and ticketing services.

Despite the competition, small travel agencies survive, perhaps because of the absence of price competition, but also because the minimum efficient firm size seems to be relatively small in this industry. According to a 1977 study done by Touche-Ross and Co., agencies experience no significant decline in their per-customer costs once they reach what is currently slightly below the median firm size—five employees and about $700,000 annual sales.[36] Beyond this size, bigness does not appear to be a significant advantage.

The cost equality of small agencies with the larger competitors also makes it easier for new firms to enter the industry. The initial costs of establishing a new agency of minimum efficient size (large enough to employ five travel agents) is very small in comparison with other industries. Nor do there seem to be any other significant barriers to entering the agency business. The Air Traffic Conference [37] licenses agencies, but the requirements for approval are not very stringent and most applications are acted upon quickly. The expertise needed to manage a travel agency does not appear to be so great that an experienced agent at one firm cannot easily start up a successful agency of his own. Perhaps, the best indicator of the ease of entering is the actual increase in the number of agencies over the last few years—the more than 14,000 agencies that now do business compares with 8,000 that were operating in 1972. The absence of entry barriers along with the large number of existing firms and the competition of direct airline sales make the travel agent industry as competitive as nearly any other retailing sector of the economy.

Effects of a Direct Sales System.—Travel agents could be hurt somewhat if the tour industry becomes heavily integrated. Airlines have more effective marketing systems of their own than most independent tour operators have, so they can rely less on travel agents than tour operators do. If their own systems are more cost-efficient, the airlines will choose to use them as much as possible, at the expense of travel agents' revenues. This change probably would be small, however, since airlines today still do rely heavily on travel agents to market a much simpler product—point-to-point scheduled service.

To the extent that airlines would use marketing methods other than travel agencies or pay a lower commission to agents, the size of the travel agent industry would decrease. The experience so far has been that the new scheduled carriers have, in fact, looked to new methods of retailing and have paid lower commissions in order to cut costs. World Airways is selling its tickets through Ticketron, a computerized ticket agency that offers no other travel services. When Laker Airways began its Skytrain service, the company paid no commissions to travel agents. They now pay three percent, still well below the compensation offered by the trunk airlines. Thus, in order to compete successfully, new entrants might very well look to less costly ways of marketing their product and travel agents' business may decline.

The competitive structure of this industry, however, would be unchanged. Entry into the industry would still be inexpensive in comparison with other retailing businesses. Each agency would see its revenues decrease slightly, but with more than half of the 14,000 firms above minimum efficient size, the overall effect of direct sales on travel agents should be minimal.

C. The Tour Operator Industry

The variety of participants in the tour industry is indicative of its highly competitive nature and of the ease with which new operators can get into the business. Besides the at least 350 independent tour operators in the U.S., many travel agents spend part of their time arranging tours. As we noted earlier, even the airlines participate by marketing ground packages which, though sold independently of air travel, are arranged to coordinate well with the carrier's scheduled service.

The tour industry is competitive on a national basis. Tour operators acting as wholesalers generally market their product through the thousands of travel agents located all over the country. Through this network, an operator whose offices are in Beaumont, Texas, can reach the same potential customers as one located in New York City. If the operator in Beaumont chooses to lower the prices of his tours significantly, the move will probably have a noticeable effect on the sales of the New York City operator.

According to a 1975 study, independent tour operators receive the travel dollars of 52 percent of tour passengers.[38] Travel agents get the business of 27 percent and airlines handle the remaining 21 percent. The ten largest independent tour operators make less than 20 percent of the industry sales. By normal standards, this industry is not concentrated to any significant extent.

Sales in the industry are so dispersed because (1) new firms find it easy to enter the industry and (2) larger firms do not appear to possess a significant cost advantage over smaller firms. There is no licensing of tour operators. Nor is there a large start-up cost which confronts new firms.[39] The Board requires that each tour operator which arranges Public Charter flights post a surety bond and establish an escrow account for passenger funds, but these requirements are

[33] It is the charter operators, not the charter air carriers, who, based upon their perception of the public's demand for charters, determine which markets they want to serve, and obtain aircraft from the charter air carriers accordingly.

[34] Touche-Ross and Co., *Joint Travel Agent/Airline Economic Value Study*, May 24, 1978, p. 44.

[35] *Ibid*, p. 85 and p. 95.

[36] Ibid. pp. 45–48.

[37] The Air Traffic Conference is part of the Air Transport Association, a trade association of U.S. scheduled airlines.

[38] Touche-Ross and Co., *Tour Wholesaler Industry Study*, 1975, Exhibit 5.

[39] Ibid., p. 27.

not very costly and are generally not viewed as a barrier to entry.[40]

The absence of economies of scale in this industry is best exemplified by the stable composition of an industry with more than 350 competitors. The number of independent tour wholesalers grew to 350 during the 60's and held steady at this figure through most of the 70's. This number has declined over the last year. This decline, however, has resulted not from the dominance of the larger firms, but from the fierce competition tours are experiencing from discount fares on scheduled flights. In fact, one of the operators that recently went out of business was the nation's largest, Nationwide Leisure Corporation.

Effects of a Direct Sales System.—A firm will vertically integrate downstream (*i.e.*, will enter, with its own firm or a subsidiary, an industry which relies upon the upstream firm's product in its own production process) for one of two reasons. The company might possess significant market power to the downstream sector. Alternatively, the management might believe that there would be some economies of integration so that the consolidated firm could produce the final output (*i.e.*, the downstream firm's output) more cheaply. These economies could be the result of better coordination of production processes that involve perishable goods (*e.g.*, aircraft use) or more flexible and efficient allocation of labor between the two production processes.

If direct air carriers were to integrate vertically into the tour operator industry, there is no reason to believe that such an action would seriously disrupt the competitive structure of the tour industry or result in increased market power. As noted earlier, the entire airline deregulation effort is predicated on the belief that, on domestic routes at least, no carrier possesses sufficient market power to earn above-normal profits for a significant period of time. This belief has been largely borne out for both scheduled and charter service within the U.S. If a carrier that owned a tour operator tried to restrict the supply of the input, air travel, to competing operators, a competing airline could quickly fill the gap. The large number of current and potential air carriers makes collusion to restrict sales to competing tour operators infeasible.

Allowing vertical integration would give carriers who feel they can produce package tours more cheaply than tour operators a chance to do so. If they were successful, then they might indeed underprice non-integrated tour operators and cut into their business. Any time a firm discovers how to make and sell a product in a less costly way, it will hurt the competing firms in the industry. But the public gains from this action.

It seems unlikely, however, that vertical integration by airlines, even if it were widespread, could eliminate independent tour operators. A substantial portion of the tours arranged by independent tour operators travel on scheduled service flights. Since carriers now offer Group Inclusive Tours (GIT's), which allow discounts on scheduled flights to group bookings, independent operators have turned increasingly toward this service for transporting their tour passengers. The carriers, however, also sell GIT's directly to the public and the proposed amendment would not affect this competition. Thus, a substantial portion of tour operators' business would be unaffected by the direct sales amendment.

If there are economies of vertical integration, the price of charter tours should go down. All air carriers would have the opportunity to enter the tour business, and, in the process, to compete tour prices down to the lower production costs that vertical integration allows. On the other hand, if there are no cost savings, prices will not fall, and non-affiliated tour operators will not be at a competitive disadvantage. As noted in Section III, foreign experience suggests that when a trend toward vertical integration is observed, tour operators have been able to acquire direct air carriers, just as the air carriers have acquired tour operators. Furthermore, nonaffiliated tour operators also remain a substantial factor in such markets. In the United Kingdom, for instance, most of the 450 tour operators in that country are not under the control of a direct air carrier. While many of the independent operators are relatively small, similar to the many U.S. travel agents who are also small tour operators, a few are among the largest in the U.K. They compete quite successfully with the carrier-controlled operators.

Opponents of a direct sales amendment have argued that the direct carriers would not have lower costs, but would still charge lower prices, taking losses in order to drive out non-integrated tour operators. If, in fact, the integrated operator did not have lower costs, it would be irrational and probably very costly for a carrier to adopt this strategy. The carrier could lose money on each sale and would have to increase capacity tremendously in order to take away the business of all the other tour operators. Even if it could withstand these losses, it would still have all the other direct carriers as competitors. Thus, the carrier trying to drive out competition would suffer major losses in the process of eliminating the independent tour operators as competitors and would get little, if anything, in return for its efforts. Given the number of competing airlines, the carrier would then be unable to raise prices above the level they were before the competitors were eliminated.

Another argument which has been offered against direct sales is that independent operators would only be able to charter aircraft during times of excess capacity. when demand is high, air carriers will be willing to sell capacity to a tour operator only at a premium reflecting the higher opportunity cost of that capacity that the carrier faces during equipment shortages. The capacity is worth more in other uses during peak times (such as for scheduled services) so independent operators must pay more to lure the aircraft away from the alternative uses. This argument advocates that air carriers not be given the choice of using their aircraft for alternative purposes, so that operators will not have to pay as much to procure the capacity for their uses.

The result of such a restriction is likely to be a misallocation of the nation's aircraft resources. If a carrier can earn a higher return on its investment in equipment by using the equipment for its own operations (either scheduled or charter), then, provided that the airline industry is competitive, it follows that consumers must value the aircraft more highly when it is put to the carrier's "own" use. If on the other hand, the public values more highly a service offered by an independent tour operator, the tour operator would be willing to pay more for the use of the aircraft in this service than the carrier could earn employing the aircraft for its own use. Thus, the market forces of demand and supply will most efficiently allocate the aircraft resources, and any protection independent tour operators might receive from restrictions on aircraft use by the carrier would be inefficent and uneconomic.

An additional argument often presented is that the airlines will find the use of subsidiary tour operators more profitable than independent operators solely because they do not fully allocate indirect costs to their own tour operations. But, as noted above, the large number of potential competitors in the tour industry, even when one only considers the direct air carriers, makes predatory pricing tactics unprofitable to the airlines both in the short and long run. It is true that airlines will prefer to use their own tour operators when it is profitable to do so on marginal costs rather than fully allocated costs when these cost calculations differ. However, as long as the tour operator industry remains competitive, and there is no evidence from U.S. or foreign experience to suggest that direct sales will destroy the competitive nature of the industry, the lower tour prices implied by such marginal cost calculations would be in the public as well as the airlines' interests.

It may be reasonably argued that some air carriers, due to a desire for growth or other nonprofit objectives, might favor internal tour operations even if they produced less profit than that obtained by chartering to independent tour operators. However, the number of air carriers and the ease with which competitors can enter new markets is sufficient to assure that tour operators offering profitable (relative to the alternatives) contracts to airlines will find charter seats available.

The foregoing considerations suggest that the likelihood that a direct sales system would lead to a complete domination of the industry by vertically integrated firms depends upon whether or not integration would lower production costs. Whether or not such economies exist is debatable given the facts at hand, but in either case, the public can only benefit from the additional competition provided by allowing direct tour sales.

If there are very significant economies of integration, the lowest cost operators would be those affiliated with carriers. In such a case, the industry still would be competitive, but would be dominated by 20 or 30 firms. Unless an unaffiliated operator can be

[40] We estimate that, on the average, compliance with the bond/escrow requirements costs less than $2.00 per passenger.

extraordinarily efficient or keenly innovative, he will lose business to the lower cost operators. Perhaps the most efficient and innovative of the independent operators will stay in business. If they do not, it will possibly be because these are the tour operators which the carriers will be most interested in acquiring and integrating into their own firms. In either case the successful tour operators will be recognized and will continue to work in the business.

There is no reason to believe that, if the tour industry were to become heavily integrated into the airline industry, innovation in the tour industry would suffer. First, since the airline have faced competition and have had an opportunity to be innovative, they have done so. The large air carriers are not just experimenting with new fares and classes of service, they are also changing their route structures. These are by no means sure pay-off ventures, but the carriers are showing that they are willing to take risks in order to survive and expand in this competitive environment. Second, if the carriers overlook or choose not to be innovative in some service or geographical area, then there will be a profitable niche for smaller tour operators to exploit. If, in fact, tour operators are much more innovative, then they should be able to stay one step ahead of the integrated operations and survive in this way.

D. Traveling public

The likelihood that consumers would be harmed if the Board were to allow direct sales is very slight, while the possible benefits from vertical integration are great.

Opponents of vertical integration have argued consumers would suffer, because carriers would drive out independent operators and then collude, at least tacitly, to raise prices and limit the selection of available tours. Unless the integrated firms are, in fact, more efficient, carriers would have to charge a below-cost price to drive out independent operators. We have shown that this strategy would be neither rational nor successful due to the competitive nature of the airline industry. The experience since the Airline Deregulation Act was passed demonstrates that collusion and restricting of new entrants are very unlikely in a deregulated airline industry. Competition in the tour industry, even if all non-integrated tour operators were eliminated, would still insure a wide variety of tours, a constant pressure for innovation in the industry, and the absence of long-run excess profits.

On the other hand, the benefits to consumers from vertical integration could be quite significant. In producing certain types of services, the integrated firms could be more cost efficient than non-integrated firms. If this is the case, competition among the airlines' tour operators would force prices down to the level of the lower costs. Thus, the savings from efficient firms would be passed along to consumers.

Besides the possibility of simple cost savings, the public could benefit because larger firms (in this case, the airlines), are generally more capable of entering into risky ventures. Firms with a large equity base can more easily absorb losses from new products that fail, while searching for products that will be marketable. If developing some new tour destinations and packages is expensive relative to the size of most independent tour operators, then those markets, because development is risky, might not be explored. Entry of airlines could therefore widen the choice of tours that are available to consumers. The contrary argument that the airlines are lethargic in innovating has been disproven in the recent past by carriers which have offered numerous and innovative discount fares and types of service, including the Super Saver fares and the no-reservation "Skytrain" type operation. A similar contention, that carriers do not have the expertise to develop new markets, ignores the fact that carriers could merge with successful independent tour operators in order to combine financial strength and experience in tour production. Cost efficiences from integration and a greater ability to absorb risk in the tour industry, along with the benefits consumers would reap from these changes are far more likely than the prospect of all integrated tour operators colluding successfully to raise prices and prevent new entry into the industry.

International Flights.—The number of charters flying between the U.S. and another country depends, in large part, on the bilateral aviation agreement the U.S. has with the other country. A few countries have agreed that operators can choose to adhere to either country's rules. Others have negotiated for country-of-origin rules. With most other countries, charters are accepted or rejected on a case-by-case basis. Some countries set, at least tacitly, a maximum number of charters they will allow from the U.S. In no case, however, does the U.S. designate certain carriers to fly the charters to a foreign country.

Because there is no designation of which U.S. direct carriers will fly charters to certain foreign destinations, the competition in this area is as great as it is in the U.S. domestic market. If one direct carrier tries to charge the tour operator a monopoly-level price, another carrier can easily offer the same charter at a lower price. Just as in the domestic market, all direct carriers are potential suppliers of the air travel portion of the tour package.

If air carriers were allowed to sell international tours directly to the public, the competitive situation would be analagous to the domestic market. The integrated operators would dominate the market only if their costs were lower. The claims that carriers will withhold capacity in order to eliminate competition are no more convincing here than they are in the domestic market discussion. Although the number of charter flights into certain countries may be limited, any U.S. carrier can supply those flights. When a tour operator contracts with a carrier for foreign charter air transportation, the carrier then applies to the foreign country for the right to land in that country. Generally speaking, the only carriers which occasionally receive preference in these dealings are the national carriers of the foreign countries. Some foreign countries give their own national airline the right of first refusal on all charters flown into or out of their country.

Direct sales, however, would have no effect on this preference and would not affect a foreign carrier's ability to integrate vertically into the tour industry. Carriers from the U.S. would still have equal access to foreign landing rights, even if the total access is limited. If one carrier refused to negotiate for landing rights for flights which serve independently arranged tours, the independent operator would buy its air transportation from one of the other U.S. carriers. The airline that had refused to sell would find itself with a lost charter prospect and no less competition in the tour industry.

In the consideration of direct sales of charters, the international market should not be treated differently from the domestic markets.

V. Recommendations

The statutory prohibition against direct sales for domestic and overseas flights will expire at the end of 1981.[41] The question that needs to be answered in this report is whether this prohibition should be removed before that date. The possible costs of allowing direct sales appear to fall entirely on firms currently in the tour operator industry. Some individual tour operators may be affected adversely by the additional competition injected by direct sales and the vertical integration of direct carriers into the tour operator business. On the other hand, there is little evidence that unaffiliated, independent tour operators as a group cannot coexist and be successful in such an environment. The potential benefits from permitting direct sales argue for removing the prohibition against them immediately both domestically and internationally. Absent any external considerations, the Board, therefore, would recommend that an amendment to permit direct sales and vertical integration be enacted.

This recommendation is based upon the following considerations. We have not been persuaded by any of the arguments presented that the tour operator industry will become less competitive if vertical integration is allowed. Even if the industry were limited to vertically integrated operators, there coud be 30 to 40 tour operator firms (*i.e.*, the number of carriers holding scheduled or charter certificates from the Board) competing in this industry. Foreign experience supports the notion that not only is competition consistent with a tour operator industry that permits vertical integration, but also that independent tour operators can compete in such an industry.[42]

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[41] Under section 1601(a)(1)(E) of the Act, the prohibition automatically terminates, for domestic and oversea flights, on December 31, 1981. As we have discussed in Section IV of this report, we see no reason to treat international operations differently from domestic and overseas flights. We therefore recommend that any action that the Congress takes to eliminate the prohibition on direct sales, including the automatic termination in section 1601, apply to international operations, as well.

[42] In particular, the small tour operators and tour operator components of travel agents still exist in large numbers in the United Kingdom, Scandinavia, and Canada, all of which have substantial experience under vertical integration.

On the basis of this foreign experience and our economic analysis, there is little reason to believe that prices will be higher or the variety and quality of tours less if direct sales are allowed. To the extent that vertically integrated firms do not provide s sufficient variety of tours at low prices, independent tour operator will continue to have a market for innovative tours. Because of the competitive nature of the industry, both in the short and long run, no firm can expect to gain monopoly power through predatory pricing. There are simply too many air carriers, with entry into the charter airline industry too unrestricted, for any one airline to be able to corner the market on the supply of charter seats.

Vertical integration may, however, result in economies of scale in marketing, reservations equipment, or some other factor which will cause a trend to integrated firms. Given the competitive nature of the industry, such economies of integration may be expected to be passed on to the consumer in the form of lower tour prices or a preferred tour for a given tour price. What is more likely is that vertically integrated operators will perform some of the simpler tour services better, but not be as good at providing more complex tour services. This would result in a specialization of tour services by the different operators. Whatever the relative cost advantages and entrepreneurial incentives of affiliated and independent tour operators may be, the traveling public will surely benefit if both types of firm are allowed to compete for their tour dollars.

Deregulation has presented opportunities to the charter air carriers to fly scheduled routes, which do not have restrictions on the direct sale of tours. Permitting these carriers the opportunity to compete on an equally favorable basis in the charter industry should increase the likelihood that the sale of charters will remain an attractive alternative to scheduled flights, both for those currently in the industry and the many who have currently filed for charter certification. This is an important consideration at the current time when a short-run shortage of equipment heightens each firm's consideration of the alternatives available in the use of its airplanes.

We have noted, however, that there are external considerations to consider in deciding whether to immediately remove the statutory prohibitions on direct sales. Unrestricted direct sales would permit carriers to offer a close substitute for scheduled service between any two points in their authorized area of operation, without going through formal route certification procedures. Although the successful experience to date under the Deregulation Act of 1978 leads the Board to conclude that increased entry by new firms into existing and new routes would provide a competitive spur that would be in the public interest, and, therefore, we would not at this time oppose legislation to allow unrestricted direct sales of charters and vertical integration with tour operators, the Congress recently decided that an immediate route deregulation was not in the public interest. Therefore, we are not at this time recommending that the Congress amend the law to allow unrestricted direct sales. However, during the transition and with no legislative change, a form of direct sales could be allowed by Board exemption, *i.e.*, limitations could be imposed on direct sale authority that would reduce the potential impact on the route structure while still allowing most of the economic benefits under such a system.[43]

There are a number of limitations from which to choose: limits on routes served or the volume of flights operated, requirements for land packages, minimum pricing restrictions, and advance purchase requirements. All would limit the carriers' flexibility in marketing directly-sold charters and thus increase the carriers' incentive to acquire new authority via the certification process. Most of the potential restrictions, however, could not be applied equitably. Minimum pricing requirements, are, of course, antithetic to the concept of allowing competition to determine the fair market price of transportation. Limits on routes or volume would hurt certain localities[44] and carriers more than others.[45] A requirement that a land package be included would disadvantage those members of the public desiring to make their own hotel arrangements or to take a one-way flight, and in any event could easily be circumvented by a carrier.[46]

Of the group of possible limitations, we believe that a short advance purchase requirement, seven days, would be the most equitable, while at the same time preserving a fundamental distinction between directly-sold Public Charters and scheduled service.[47] Scheduled service offers the flexibility of last-minute booking and frequent operation so that the spur-of-the-moment traveler generally can be accommodated on a flight to his desired destination with a minimum of delay. If travelers are required to book a week before the flight, this flexibility is lost and the product's appeal to the last minute traveler diminishes dramatically. Charters, however, appeal to vacation travelers who usually make their travel plans well in advance of their intended departure date. Thus, an advance purchase requirement would not be burdensome to those travelers, but would prevent the carriers from offering a service that is essentially the same product as acheduled service. Of course, if last minute sales were important to a carrier in a particular market (for example, to lure business traffic), then we would expect that carrier to seek formal route authority in the market.

We are considering implementing this transitional approach to permit direct sales and vertical integration. As we noted in Section I, Congress allowed the Board to exempt persons from the prohibition on direct sales by moving the prohibition from section 101(36) (defintition of supplemental air transportation) to section 401(n)(4) of the Act. We are issuing a notice of proposed rulemaking suggesting such an exemption, subject to the advance purchase and consumer protection restrictions. Before any such exemption would be enacted, we would, of course, seek and evaluate public comments on the proposal. In addition, we are also asking for public comment on this report itself and will report back to the Congress concerning the comments we receive.

Appendix—Request for Public CommentII21In order to enlist the expertise of the industry and the public in preparing the analysis for this report, the Board, on March 8, 1979, formally requested public comment on the questions of direct sales and tour operator control posed by section 108. In the notice, we asked the commenters, in addition to providing their overall views on these issues, to focus on several questions in their comments, These were:

(1) How will allowing unlimited direct sales, or air carrier control of tour operators, affect charter service? Will it disappear? Is there any public policy need for special protection of charter tour operators?

(2) How will direct sales affect charter prices, if at all? If direct carriers assume the costs of marketing and of unsold seats, will it affect charter prices? Will elimination of the charter operator middleman result in lower charter prices?

(3) If direct sales are allowed, what changes if any should the Board make in its charter regulations (14 CFR Parts 207, 208, 212, 214, 372, 380)? What restrictions, alone or in combination, should be imposed on such charters that do not now apply to Public Charters? Should directly-sold service be considered charter service for any purposes? Should carriers offering directly-sold service ever be required to file prospectuses, post performance bonds, and enter into participant contracts? Should such requirements be applied to carriers below a certain size, or in other defined categories?

(4) How will direct sales affect the incentive to experiment in new markets and offer a variety of charter services to consumers?

[43] No such restrictions are, of course, necessary on sales of charter seats made by independent tour operators under the Public Charter rules.

[44] A restriction on markets would unfairly limit the economic benefits of direct sales to those markets where it was premitted. In addition, the process of deciding which routes would be open to direct sale charters could end up requiring show-cause orders and comment periods, or even administrative hearings. Thus, the authority would be virtually the same as scheduled service authority and the process for awarding that authority would duplicate route application processes.

[45] Volume restrictions, that is, a numerical limit on directly-sold flights based on the total operations of a carrier in some previous base year, would hurt small carriers and new entrants, whose base would be much smaller than that of the large route carriers.

[46] A carrier could, for example, offer a "throwaway" land package, of insignificant value, at a price comparable to what it would charge if there were no land package requirement.

[47] We would also propose that directly sold Public Charters be subject to the same consumer protection and filing requirements as those imposed on independent tour operators. This particular requirement is not intended to inhibit the marketing flexibility of directly sold charters; rather, its purpose is to assure that passengers on direct sale flights receive the same consumer benefits now afforded participants on conventional Public Charter flights.

(5) If direct sales are allowed, the charter air carriers may wish to set up marketing counters at airports and the scheduled carriers may wish to expand their existing counters. Is any Board involvement in this process needed?

(6) Are there any antitrust problems that need special consideration? What economic or other advantages, and what disadvantages, might result from vertical integration? Will the proposal lead to a substantial reduction in competition or to unfair or deceptive practices?

(7) What implications, if any, will allowing direct charter sales have for international markets in particular?

(8) What impact, if any, would direct sales of charters have on the regularity, dependability, availability, and price of scheduled service?

In addition, at the request of several charter air carriers, the Board held an oral argument on April 2, 1979, in which representatives of scheduled and charter air carriers, tour operators, and travel agents debated the useful and harmful aspects of direct sales.

A summary of the comments we received is set forth below.

Summary of Comments

Tour Operators and Tour Operator Associations

Comments in opposition to direct sales and vertical integration were filed by three independent tour operators, Adventure Tours, U.S.A., Ltd., Lake Region Travel Service, Inc. and Sunflight Holidays and two tour operator associations, Air Charter Tour Operators of America (ACTOA) and United States Tour Operators Association (USTOA). *Adventure Tours* contends that it would be unlawful for the Board to authorize either direct sales or vertical integration in the United States. Moreover, even if such authority were lawful, Adventure argues that there is insufficient time for the Board to conduct a meaningful experiment this year, and if such an "experiment" were permitted for an extended period it would have a devastating impact on tour operators. *Lake Region Travel*, a small tour operator whose charter operations are adjunct to the retail services it provides in northern Minnesota, asks that direct air carriers be foreclosed from marketing tours until after the Deregulation Act is in full effect. *Sunflight* doubts that the Board is sufficiently informed as to the structure of the tour operator industry at this time to make meaningful recommendations to Congress and therefore asks that the Board not recommend grant of liberalized tour marketing authority. *ACTOA* contends that direct sales would lead to a reduction in the number of independent tour operators, higher prices and poorer service. It also submits that the Board cannot rely on new entry to compensate for those independent operators it asserts will be forced out of business. *USTOA* holds similar concerns.

On the other hand, three tour operators, International Vacations, Ltd. (a Canadian company), Davis Airlines, Inc. and Davis Agency, Inc., and MTI Vacations, Inc., filed comments endorsing the concept. However, *MTI* believes that non-preference conditions should be imposed prohibiting vertically integrated carriers from favoring affiliated tour operators. *International Vacations* contends that the experience in the Canadian international charter market demonstrates that direct sales and vertical integration are not anticompetitive; that the charter market there has experienced substantial growth; that there has been an abundance of charter operators; and that price competition has flourished. *Davis* also argues that direct sales and vertical integration would enhance rather than diminish competition.

Scheduled Air Carriers

Four scheduled air carriers filed comments. *American Airlines* contends that allowing tour operators to maintain sole control over direct sales is inconsistent with the spirit of deregulation. It also argues that by permitting direct sales, increased efficiencies and lower costs will result, and, that further, new markets will be developed. American rejects the contention that direct sales would be anticompetitive and asks that all direct air carriers (both charter and scheduled) be granted liberalized charter marketing authority. *Trans World Airlines'* comments are similar.

Allegheny Airlines, on the other hand, argues, that grant of liberalized charter marketing authority would virtually obliterate all distinctions between charter and scheduled air transportation and would result in immediate deregulation of certificated route authority in contravention of Congress' intent to deregulate air transportation gradually. Should the Board recommend to Congress that direct sales be permitted, Allegheny asks that the Board recommend that advance purchase, minimum stay, and round-trip restrictions be imposed in order to retain a minimal distinction between the charter and scheduled mode.

Aeroamerica, Inc. sees both benefits and drawbacks to direct air carrier integration into tour marketing. As a small carrier, Aeroamerica indicates that it will continue to be dependent on tour operators for the bulk of its charter business. It suggests, however, that the Board could experiment with direct sales by imposing volume limitations on direct charter sales similar to presently applicable off-route limitations. Aeroamerica believes such experimentation would shed light on the ultimate desirability of direct sales and vertical control.

Foreign Air Carriers

Five foreign air carriers filed comments. *British Airways* contends that the restrictions imposed by section 401(n)(4) are necessary to maintain the distinctions between charter and scheduled service, and that in the event direct sales are permitted, foreign air carriers should not be discriminated against, and should be given similar authority. *Swissair*, *Balair*, and *Alitalia* filed similar comments. *Laker Airways*, on the other hand, filed comments in support of direct sales and vertical control. Laker points out that direct sales and tour operator affiliations are permitted in every other country with a charter industry and that carrier-affiliated tour operators have not monopolized the industry in those countries. Moreover, it notes that the Board has permitted carrier-affiliated tour operators to operate charters inbound to the United States, as well as scheduled tours, all with no apparent anticompetitive effects. Laker argues that the continued exclusion of carrier-affiliated charter operators in the United States is contrary to the intent of deregulation and should be ended. It asks that the Board grant immediate exemptions to permit such affiliations.

Travel Agents and Travel Agent Associations

Comments in opposition to direct sales and vertical control were filed by two travel agencies, Grand Circle Tours, Inc. and the American Automobile Association (AAA), and one travel agent association, the American Society of Travel Agents (ASTA). *Grand Circle* states that if direct sales and vertical integration are permitted, many independent tour operators will be put out of business. It contends further that grant of any interim relief by the Board until Congress acts would be unlawful. *AAA* (which is also a tour operator) sees adverse effects to both tour operators and the public resulting from direct sales in terms of increased prices, increased industry concentration and a lower variety of tour offerings. AAA also fears that retail travel agencies will become captive to powerful direct air carriers that market tours. *ASTA* states that the unrestricted entry of direct air carriers into tour packaging would result in the "eventual elimination of all but the largest, if not all, independent tour operators". Although conceding that vertical integration will result in scale economies and lower priced tour packages, ASTA, like AAA, submits that there would be a reduction in the variety of tour offerings available to the public. ASTA also contends that the threat of new entry will not effectively check unwarranted price increases because of aircraft capacity constraints.

Charter Air Carriers and Charter Air Carrier Association

Comments in support of vertical control were filed by four charter air carriers, World Airways, Trans International Airlines (TIA), Evergreen International Airlines and Capitol International Airways, as well as their trade associations, the National Air Carrier Association (NACA). Most also support direct sales. *World* contends that the Board has legal authority to permit direct air carrier control of tour operators; that the independent tour operator industry's present monopoly should not be perpetuated; that foreign experience with vertical integration (notably in the United Kingdom) demonstrates that it has been successful; and that if vertical integration presents a problem adequate remedies exist under section 411 and the antitrust laws. World also contends that the consumer protection restrictions imposed on public charters are sufficient to maintain a distinction between charter and scheduled service. World also requests that immediate, interim exemptions be granted. *TIA* considers the present restraints against vertical control to be protectionistic, and

argues that the restraints imposed on charter air carriers' marketing charters should be no greater than those imposed on scheduled air carriers marketing scheduled tours. TIA contends that there is no legal barrier to direct carriers controlling tour operators marketing U.S.-originating charters and asks that the Board act expeditiously on its pending application for such authority. TIA is not asking that it be permitted to engage in direct sales, only that it be permitted to control a U.S. tour operator to market public charters. *Evergreen* views the present restrictions against vertical integration as anachronistic and contends that full vertical integration rights should be granted to charter air carriers. To do otherwise, it asserts, would contravene the intent of Congress and the recent procompetitive policy initiative of the Board. It also contends that evidence from abroad indicates that vertical integration has been successful. It, too, has asked for interim exemptions. *Capitol* supports both direct sales and vertical control. It contends that the Board has authority now to allow charter air carriers to market air-only charters through controlled subsidiaries. *NACA's* comments, filed on behalf of its member carriers, consist of a report by a transportation consulting firm in Shannon, Ireland, on the effects of vertical integration into charter tour marketing in Europe. The report concludes, *inter alia*, that vertical integration in Europe has had little direct effect on the viability of the independent tour operator industry and that this vertical integration has been beneficial to the consumer.

[FR Doc. 79-16840 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

Boston/Philadelphia/Pittsburgh-Tampa Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-5-175) *Boston/Philadelphia/Pittsburgh-Tampa Show-Cause Proceeding*, Docket 35658.

SUMMARY: The Board is proposing to grant Boston/Philadelphia/Pittsburgh-Tampa authority to Allegheny Airlines (Docket 35100) and any other fit, willing and able applicant the fitness of which can be established by officially noticeable material. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by June 29, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 35658, which we have entitled the *Boston/Philadelphia/Pittsburgh-Tampa Show-Cause Proceeding.*

In addition, copies of such filings should be served on Allegheny Airlines.

FOR FURTHER INFORMATION CONTACT: Charles Stohr, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5348.

SUPPLEMENTARY INFORMATION: The complete test of Order 79-5-175 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-5-175 to that address.

By the Civil Aeronautics Board; May 24, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16924 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

Jetsave Ltd. (United Kingdom)

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79-5-170.

SUMMARY: The Board proposes to approve in part and defer in part the following application:

Applicant: Jetsave LTD. (United Kingdom).

Application Date: January 12, 1979; Docket: 34459.

Authority Sought: Renewal and amendment of foreign indirect air carrier permit to engage in foreign indirect air transportation of persons between the U.S. and the United Kingdon.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall no later than June 21, 1979 file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Great Britain and Northern Ireland. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 34459, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Jetsave, Ltd., c/o Lester M. Bridgeman, Bridgeman and Nerenberg, 1750 New York Avenue, NW., Washington, D.C. 20006.

TO GET A COPY OF THE COMPLETE ORDER: Request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION: Contact the Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; 202-673-5880.

By the Civil Aeronautics Board: May 24, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16928 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

KLM Royal Dutch Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79-5-169.

SUMMARY: The Board proposes to approve the following application:

Applicant: KLM Royal Dutch Airlines.

Application Date: February 8, 1979; Docket: 34783.

Authority Sought: Amendment of foreign air carrier permit to reflect authority for which it has been designated pursuant to Protocol dated March 31, 1978.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than June 21, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of the Netherlands in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 34783, Docket Section, Civil Aeronautics, Washington, D.C. 20428.

KLM Royal Dutch Airlines, Attn: Paul V. Mifsud, Attorney, 437 Madison Ave., New York, N.Y. 10022.

TO GET A COPY OF THE COMPLETE ORDER: Request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION: Contact the Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; 202-673-5880.

By the Civil Aeronautics Board: May 24, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16928 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

Nashville-West/Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Show Cause Order 79-5-173, Nashville-West/Show-Cause Proceeding, Docket 35656.

SUMMARY: The Board is proposing to grant Denver-Little Rock-Memphis-Naskville nonstop authority to Continental Air Lines and Ozark Air Lines, Nashville-Memphis/Little Rock/Ft. Smith/Tulsa/Oklahoma City/Amarillo/Colorado Springs/Denver authority to Braniff Airways, and Kansas City-Memphis-Nashville authority to Continental Air Lines, Braniff Airways, Ozark Air Lines and Trans World Airlines, and to grant any of this authority to any other fit, willing and able applicants whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATE: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than June 29, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 14, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Julien Schrenk, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., NW., Washington, D.C. 20428, 202-673-5149.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Continental, Braniff, Ozark and Trans World and the Little Rock Municipal Airport Commission.

The complete text of Order 79-5-173 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area must send a postcard request for Order 79-5-173 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: May 24, 1979.

Phyllis T. Kaylor.

Secretary.

[FR Doc. 79-16927 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

Norfolk-Washington Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-5-178), Norfolk-Washington Show-Cause Proceeding, Docket 35659.

SUMMARY: The Board is proposing to award new and improved authority to Allegheny Airlines and any other applicant whose fitness, willingness and ability can be established, between the Norfolk and Washington, D.C. (Docket 34800).

In addition, the Board is awarding interim exemption authority to Allegheny to permit it to provide nonstop service between Norfolk-Washington.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by July 2, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below. Persons having objections to the award of the interim exemption authority described above shall file with the Board and serve on the same parties, no later than July 12, 1979, answers indicating the reasons for the objections.

ADDRESSES: Objections to the issuance of a final order, or answers to the exemption award, should be filed in Docket 35659, Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428.

In addition, copies of such filings should be served on Allegheny Airlines, Piedmont Aviation, National Airlines, United Air Lines, the Mayor of Norfolk, the Governor of Virginia, the Norfolk Port and Industrial Authority, the Mayor of Washington, D.C., the Manager of Washington National Airport.

FOR FURTHER INFORMATION CONTACT: Michael G. Forde, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., 20428, 202-673-5348.

SUPPLEMENTARY INFORMATION: The interim exemption award is effective until 60 days after final Board decision in this proceeding; however, the Board may amend or revoke the exemption authority at any time in its discretion without hearing.

The complete text of Order 79-5-178 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., 20428. Persons outside the metropolitan area may send a postcard request for Order 79-5-178 to that address.

By the Civil Aeronautics Board: May 24, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16925 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

Phoenix-Tucson Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show-Cause (Order 79-5-174, Phoenix-Tucson Show-Cause Proceeding, Docket 35657.

SUMMARY: The Board is proposing to award new authority to Allegheny Airlines and any other fit, willing and able applicant in the Phoenix-Tucson market.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file by, June 29, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order, or answers to the show-cause order, should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428, in Docket 35657, which we have entitled the Phoenix-Tucson Show-Cause Proceeding.

In addition, copies of such filings should be served on Allegheny Airlines, American Airlines, Cochise Airlines, Continental Air Lines, Delta Air Lines, Frontier Airlines, Hughes Airwest, North Central Airlines, Nevada Airlines, Scenic Airlines, Trans World Airlines, the Mayor of the City of Phoenix, the Mayor of the City of Tucson, the Governor of the State of Arizona, the Phoenix Metropolitan Chamber of Commerce, the Aviation Director of the Phoenix Sky Harbor International Airport and the General Manager of the Tucson Airport Authority.

FOR FURTHER INFORMATION CONTACT: James F. Ransom, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., 20428, 202-673-5197.

SUPPLEMENTARY INFORMATION: In the event no objections are filed, the Secretary of the Board will enter an order making final the tentative findings and conclusions contained in the show-cause order.

The complete text of Order 79-5-174 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., 20428. Persons outside the metropolitan area may send a postcard request for Order 79-5-174 to that address.

By the Civil Aeronautics Board: May 24, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16929 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01

Portland-Seattle-Hawaii Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-5-184, Portland-Seattle-Hawaii Show-Cause Proceeding, Docket 35660.

SUMMARY: The Board is instituting the Portland-Seattle-Hawaii Show-Cause Proceeding and is proposing to grant Portland-Seattle-Hawaii nonstop authority to Braniff Airways, Hawaiian Airlines, United Air Lines, Aeroamerica and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 2, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 15, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35660, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Donna Kaylor, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C. 20428, 202-673-5380.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Braniff, Hawaiian, United, Aeroamerica, Continental and Northwest.

The complete text of Order 79-5-184 is available from our Distribution Section, Room 516, 1925 Connecticut Avenue NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-5-184 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: May 24, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16918 Filed 5-30-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

National Aeronautics and Space Administration, et al.; For Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before June 20, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, at 666 11th Street, NW. (Room 735), Washington, D.C.

Docket Number 79-00220. Applicant: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, BC27/Shuttle Equipment Procurement Section, Houston, TX 77058. Article: Remote Manipulator Systems and Accessories. Manufacturer: SPAR Aerospace Ltd., Canada. Intended use of article: The article is intended to be used in space research experiments requiring multiple position sensor exposure without free-flying deployment, such as; the Induced Environment Contamination Monitor (IECM) and Plasma Diagnostic Probe (PNP). The article will provide various space orientations and then return the IECM and PNP to the payload area. Application received by Commissioner of Customs: April 2, 1979.

Docket Number 79-00228. Applicant: Indiana University School of Medicine, Department of Anatomy, 1100 West Michigan, Indianapolis, Indiana 46223. Article: Electron Microscope, Model EM 400 and Accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used by faculty, post-doctoral fellows, graduate students and trained technicians to study ultrastructural features of human and experimental animal tissues in the following research projects:

(1) Mechanisms of myelination and demyelination with respect to the position of PNS myelin proteins,

(2) Ultrastructual organization of monoaminergic dendrite bundles in medullary raphe nuclei and locus coeruleus of developing mammalian brains,

(3) Mobility of lecithin receptors and agglutination in developing intestinal absorptive cells,

(4) Cytoskeletal and functional interactions between pulmonary endothelial cells and alveolar

macrophages in response to varying states of hyperoxia,

(5) Comparison and correlation of the effects of diabetic neuropathy vs. crush injury on peripheral nerves in experiments, to suggest new pathogenic mechanisms.

Assessment of the role of synovial joints as highly sophisticated sensory devices through ultrastructural analysis of articular nerves,

(7) Ultrastructural analysis of the effects of diabetes on microvascular supply to skeletal muscle,

(8) Ultrastructural changes in capillary permeability, correlated with microelectrode studies of K^+ ion exchange,

(9) The regulation of Ca^{2+} in relation to axoplasmic transport,

(10) Ultrastructural studies of norman and otosclerotic middle ear ossicles, and

(11) Ultrastructural evaluation of a new water-soluble embedment medium for electron microscopy.

In addition, the article will be used to train graduate students in techniques of electron microscopy sufficient to enable them to understand and to professionally perform all aspects of electron microscopy, including preparation of tissues, operation of the microscope, and interpretation of scientific data revealed by electron micrographs. Application received by Commissioner of Customs: April 2, 1979.

Docket Number: 79-00229. Applicant: State University of New York at Buffalo, Biology Department, c/o Capital Equipment Division, Purchasing, 418 Crofts Hall, Amherst, New York 14260. Article: Gammacell 220 High Dose Rate Laboratory Irradiator and Accessories, Manufacturer: Atomic Energy of Canada, Canada. Intended use of article:

The article is intended to be used for studies on the biological effects of radiation in microbial systems. Such systems include those responsible for energy production in the cell which are required to drive specific repair systems, as well as studies of particular ions, such as Manganese and Iron, which have been demonstrated to alter the ability of cells to repair radiation-induced damage. Experiments to be conducted include:

(a) Dosage-survival response of the bacterium *Micrococcus radiodurans grown under a variety of conditions involving alteration of growth medium components in Fe and Mn concentration.*

(b) The measurement of ability of the cells to utilize oxygen and derive energy after irradiation when grown under these conditions.

(c) Study of radiation-induced changes in specific cellular systems such as (i) superoxide desmutase, (ii) various cytochromes, (iii) catalase, (iv) glutathione, (v) and assessment of immediate effects versus effects that develop as a result of metabolic alterations brought about by primary events.

The article will also be used in the courses Biology 466/666—Microbial Radiobiology Laboratory, Biology 463/663—Radiation Protection; Bio 409—Problems in Biology, Bio 600—Problems in Biology for Graduates and Bio 680—Graduate Research, Bio 641 and 465/665 to present state-of-the art experience in methodology associated with the subject of the course. Application received by Commissioner of Customs: April 2, 1979.

Docket Number: 79-00230. Applicant: U.S. Department of Energy, EG&G Idaho, Inc., P.O. Box 1625, Idaho Falls, ID 83401. Article: Micro-Metallograph, Model MM5RT and Accessories. Manufacturer: E. Leitz Inc., West Germany. Intended Use of Article: The article is intended to be used for the study of radiation effects, mechanical stress, the microstructural properties and parameters of materials and their relationship to temperature and other factors. Experiments will be conducted to improve the performance and understanding of experimental and power burst reactor fuel elements through the quantitative analysis of their microstructure and correlation with the reactor environment factors and variables. Application received by Commissioner of Customs: April 2, 1979.

Docket Number: 79-00231. Applicant: University of Louisville, 2301 S. Third Street, Louisville, KY 40208. Article: Therac 20/Saturne Medical Linear Accelerator and Accessories. Manufacturer: Atomic Energy of Canada Ltd., Canada. Intended use of article: The article is intended to be used to evaluate the effects of the 18 MeV beam on the tumor and the normal tissues of cancer patients over a period of five years. During this period of time, patient survival as the result of use of this radiation modality on tumor cells, and the deleterious effect of the beam on normal tissue expressed as complications, will be carefully researched. These parameters will then be compared with those found utilizing the conventional beam energies. The article will also be used to teach dosimetric and clinical procedures to those persons in a 3-4 year Radiation Therapy Residency Program. Application received by Commissioner of Customs: April 2, 1979.

Docket Number: 79-00234. Applicant: Edward W. Sparrow Hospital, 1215 E. Michigan Avenue, P.O. Box 30480, Lansing, Michigan 48909. Article: Electron Microscope, Model H-300 and Accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used to educate residents and rotating junior and senior medical students in the medical and diagnostic uses of electron microscopy. Emphasis will be placed on both applications of transmission electron microscopy and scanning microscopy. TEM applications will be primarily concerned with ultrastructural classification of neoplasms and fine structural classification of renal disease. SEM will be used in correlation with TEM in evaluating surfaces and interiors of neoplasms as well as correlative use in various hematologic conditions. Special emphasis will be placed on the forensic application of SEM. The specimens to be studied will include a wide variety of specimens from human patients. These will include a large proportion of neoplasms, as well as renal and liver and other biopsy specimens. Application received by Commissioner of Customs: April 4, 1979.

Docket Number: 79-00235. Applicant: Washington University School of Medicine, Department of Physiology and Biophysics, 660 South Euclid, St. Louis, Missouri 63110. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for electron microscopic studies of various biological materials. The research uses of the article are as follows:

(1) Sensory receptors especially muscle spindles.

(2) Fine structure of synapses, of muscle and of epithelial cells in lamprey.

(3) Electron microscopic studies in conjunction with research on the mechanism determining the establishment and maintenance of synapses in sympathetic neurons.

(4) Research on the mechanisms of uptake of lysosomal enzymes by Macrophages utilizing ferritin-coupled 125 I-ligands as probes for transmission and radioautographic electron microscopy.

Application received by Commissioner of customs: April 4, 1979.

Docket Number: 79-00236. Applicant: Veterans Administration Hospital, 50 Irving Street, N.W., Washington, D.C. 20422. Article: Electron Microscope, Model JEM-100CX/SEG and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The

article is intended to be used for studies of biological materials including whole and ultrasectioned cells and their consititutent organelles and their components with particular focus on centrioles and their microtubular architecture. Experiments will be conducted to determine the spatial distribution of centrioles and the elemental character of serial ultrafine centriolar sections in the cells of normal human and experimental animal tissues, the abnormal cells of human malignancy and the cells of experimental animals subjected to artificial magnetic fields. Application received by Commissioner of Customs: April 4, 1979.

Docket Number: 79-00237. Applicant: University of Toledo, 2801 West Bancroft, Toledo, Ohio 43606. Article: Nuclear Magnetic Resonance Spectrometer, Model FX 90Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for varied research projects in the Department of Chemistry. Representative research activities include:

(1) Isolation and identification of individual pure compounds from crude preparations of a bush, xanthoxylum americanum, used for medicinal purpose by American Indians.

(2) Research into the use of liquid SO_2 as a means for removal of sulfur compounds from coal and into interactions responsible for modification of the redox or photochemistry of SO_2.

(3) Studies of the organosilicon hydride-boron trifluoride system as a means of reducing a wide variety of oxygen-containing organic compounds (vix. aldehydes, ketones, alcohols, epoxides, quinones).

(4) Study of the changes in membrane fluidity occurring as a result of lipid peroxidation.

(5) Studies of chiral hydrogene aluminate complexes prepared from derivatives of (s, SO-1-phenyl-2-amino-1,3-propanediol.

(6) NMR investigation into compounds containing an octahedral or tetragonally-distorted octahedral nickel ion in which the nickel is coordinated to a large number (4-5) of water molecules as well as the nitrogen-containing ligand.

The article will also be used for graduate and undergraduate educational research activities in the courses Qualitative Organic Analysis and Physical Chemistry Laboratory. Application received by Commissioner of Customs: April 4, 1979.

Docket Number: 79-00238. Applicant: Purdue University, West Lafayette, Indiana 47909. Article: Three (3) Model HI-100 Loading Frames, Three (3) HI-100-1 Weights, and Three (3) 1-200 Consolidometers. Manufacturer: Geonor A/S, Norway. Intended use of article: The article is intended to be used for teaching purposes in the courses CE 383 Geotechnical Engineering I, CE 582 Soil Properties and their Measurement and CE 681 Engineering Properties of Soil. Students will use the equipment for standard and quasi standard incremental loading consolidation tests. The article will also be used for the study of the consolidation properties of soft clay soil (compression index, coefficient of compressibility, and other parameters) for supplemental usage when not scheduled for teaching purposes. Application received by Commissioner of Customs: April 4, 1979.

Docket Number: 79-00239. Applicant: U.S. Environmental Protection Agency, Environmental Sciences Research Laboratory, Environmental Research Center, Research Triangle Park, N.C. 27711. Article: Piezo-electric Aerosol Centrifuge. Manufacturer: Fraunhofer-gesellschaft Institute for Aerobiology, West Germany. Intended use of article: the article is intended to be used for studies fo airborne pollution particles. Experiments will be carried out to study particles emitted from stationary sources (e.g., power plants) and mobile sources (e.g., diesel-powered vehicles) as well as particles in the ambient air. These experiments will be conducted to determine variations in airborne particle size distributions and their dependence on source operating and atmospheric conditions. Application received by Commissioner of Customs: April 4, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16842 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

National Radio Astronomy Observatory—Tucson; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street NW. (Room 735) Washington, D.C.

Docket Number: 79-00138. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, Arizona 85705. Article: Repair of Varian Klystron Type VRT2124B6. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a frequency in the range between 140-148 gigahertz. The National Bureau of Standards (NBS) advises in its memorandum dated April 25, 1979 that (1) the capability of the article described above is pertinent to the applicant's research purposes and (2) it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16847 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

North Carolina State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00137. Applicant: North Carolina State University, Dept. of Marine Science, 218 Withers Hall, Raleigh, N.C. 27650. Article: Temperature Profile Recording Unit, Model TR-1. Manufacturer: Aanderaa Instrument Co., Norway. Intended use of Article: The article is intended to be used for studies of Gulf Stream eddies along the continental slope off North Carolina in an effort to understand the cause(s) of eddy or wave like disturbances of the Gulf Stream.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides multichannel (eleven channels) self-contained recording for monitoring temperature fluctuations as a function of depth. The National Oceanic and Atmospheric Administration advises in its memorandum dated March 27, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16848 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

Northwestern University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. at 666 11th Street, NW. (Room 735), Washington, D.C.

Docket Number: 79-00109. Applicant: Northwestern University, Chemistry Dept., Evanston, Illinois 60201. Article: Multigas Laser Kit, Model K-203-2 and Accessories. Manufacturer: Lumonics Research, Canada. Intended use of article: The article is intended to be used for research involving the vibrational excitation of polyatomic organic organometallic, and inorganic molecules. The goal is to induce new kinds of chemical reactions (including those which are isotopically selective) and to elucidate the chemical and photophysical mechanisms by which they take place. Molecules will be excited (usually in the gas phase) under a variety of conditions, including at various pressures, laser energies and power levels, as well as in the presence of various reactants. Products of the ensuing chemical reactions will be studied by a range of physichemical (mass infrared, and fluorescence spectroscopy) and more classical (gas chromatography, wet chemistry) analysis techniques. This research will be carried out by graduate students as part of their Ph.D. thesis research.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides multimode operation with carbon monoxide, carbon dioxide or hydrogen fluoride/deuterium fluoride. The National Bureau of Standards (NBS) advises in its memorandum dated April 9, 1979 that (1) the capability of the article described above is pertinent to the applicant's research purposes and (2) it knows of no domestic intrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16845 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

State of Florida, Department of Citrus; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00066. Applicant: State of Florida, Department of Citrus, Scientific Research Department, c/o University of Florida, Institute of Food and Agricultural Sciences, Agricultural Research and Education Center, P.O. Box 1088, Lake Alfred, FL 33850. Article: LKB 2127-001 Tachophor complete, with Power Supply Unit, Analyzer Unit and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological molecules (including metabolites from plant tissue). Investigation will include studies on *in vitro* and/or *in vivo* reactions between molecules following increase, decrease, or absence of one or all of the reacting molecules. The objective pursued in the course of these investigations is to understand the interrelationship between biological molecules and to correlate these changes with chemical alterations observed in organic acid levels in fruit.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the capability for counter flow isotachrophoresis. The Department Health, Education, and Welfare advises in its memorandum dated March 22, 1979 that (1) the capability of the article described above is pertinent to the applicant's intended research and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purposes.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16843 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

U.S. Geological Survey/Reston; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 3010).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00105. Applicant: Department of the Interior, U.S. Geological Survey, Topographic Division, National Center (#526), 12201 Sunrise Valley Drive, Reston, VA 22092. Article: Steroscopic Plotting System, Model G-6. Manufacturer: Officine Galileo, Italy.

Intended Use of Article: The article is intended to be used for studies of aerial photographs of the earth's surface used in stereopairs which permit accurate measurements of the earth's features. Investigations will be conducted to obtain information to permit compilation of data which may be combined to produce accurate topographic maps.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides accurately read rotational and linear motions (±0.1 millimeters) in the x and y planes. The National Bureau of Standards advises in its memorandum dated April 25, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16844 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

U.S. Geological Survey—Reston, Decision on Application for Duty-Free Entry Of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735), Washington, D.C.

Docket Number: 79-00119. Applicant: Department of the Interior, U.S. Geological Survey, Topographic Division, 12201 Sunrise Valley Dr., National Center (No. 525), Reston VA 22092. Article: Stereoscopic Plotting Systems Model PG-2 with Automatic Coordinatograph Table and Accessories. Manufacturer: Kern and Co. Ltd., Switzerland. Intended use of article: The article is intended to be used for studies of aerial photographs of the earth's surface used in stereopairs which permit accurate measurement of the earth's features. The objectives pursued in the course of the investigation are obtaining information permitting compilation of data which may be combined to produce accurate topographic maps.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides accurately read rotational and linear motions (±0.1 millimeters) in the X and Y planes. The National Bureau of Standards advises in its memorandum date May 3, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16846 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision or an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, NW. (Room 735) Washington, D.C.

Docket Number: 79-00106. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Illinios 60439. Article: Danfysik Model 262, Electrostatic Deflector System. Manufacturer: Danfysik, Denmark. Intended use of article: The article is intended to be used for studies of radiation and ion implantation effects on specimens placed in a high voltage microscope. The article will be part of ion beam transport system between accelerator and high voltage microscope.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the capability to deflect two million electron volt singly charged particles through an angle of 57 degrees. The National Bureau of Standards advises in its memorandum dated April 23, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientifc value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as the article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientifc Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16854 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

University of Wisconsin, Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00147. Applicant: University of Wisconsin, Dept. of Physics, Chamberlin Hall, 1150 University Avenue, Madison, Wisconsin 53706. Article: Two (2) Millimeter Reflex Klystrons and Accessories. Manufacturer: Varian Associates, Canada. Intended use of article: The article is intended to be used for studies of magnetic confinement of the high temperature ionized gas, i.e., plasma. Experiments to be conducted include magnetic confinement characteristics in the presence of different stabilizing mechanisms, i.e., density variations caused by application of auxiliary heating and trapping schemes and with different fueling mechanisms.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or appartus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a frequency range of 69 gigahertz with a guaranteed power output of 150 milliwatts. The National Bureau of Standards advises in its memorandum dated April 5, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or appartus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or appartus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-16849 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

Construction of One MA Design C7-S-133a, Roll-On/Roll-Off Containership, Recomputation of Foreign Cost; Intent

Notice is hereby given of the intent of the Maritime Subsidy Board (Board) pursuant to the provisions of Section 501(a) of the Merchant Marine Act, 1936, as amended, to recompute the estimated foreign cost of the construction of one additional roll-on/roll-off containership designated MA Design C7-S-133a. On October 31, 1978 and on November 21, 1978 the Board established the foreign price for the construction in Japan for each of three and for each of two roll-on/roll-off containerships, respectively, of the identical design. In consideration of significant changes that have occurred in shipbuilding market conditions, it is necessary that a recomputation be made for one additional ship of the series.

Any person, firm or corporation having any interest (within the meaning of Section 501(a)) in such computations may file written statements by the close of business on June 15, 1979, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets, NW., Washington, D.C. 20230.

Dated: May 25, 1979.

By Order of the Maritime Subsidy Board, Maritime Administration.

James S. Dawson, Jr.,

Secretary.

[FR Doc. 79-16835 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-15-M

Office of Minority Business Enterprise

Financial Assistance Application Announcement

The Office of Minority Business Enterprise (OMBE) announces that it is seeking applications for six projects under its Client Services Program which will provide, at no cost to the public, direct general business services to minority individuals and firms seeking business information, counseling, financial packaging assistance and assistance in identifying and exploiting business opportunities in new and/or expanded markets.

Project Information: In the event an applicant decides to apply for more than one project, it must submit individual applications for each project. The six Client Services projects are as follows:

1. A project which is designed to operate in the Rochester, New York area for a 12-month period with a minimum professional staff effort of 5 manyears and a maximum funding level of $125,000. The number for this project is 02-10-45100-00.

2. A project which is designed to operate in the borough of Manhattan in New York for a 12-month period with a minimum professional staff effort of 11 manyears and a maximum funding level of $349,115. The number for this project is 02-10-45080-00.

3. A project which is designed to operate in Westchester County, New York for a 12-month period with a minimum professional staff effort of 4 manyears and a maximum funding level of $120,000. The number for this project is 02-10-22431-00.

4. A project which is designed to operate in the Camden, New Jersey area for a 12-month period with a minimum professional staff effort of 4 manyears and a maximum funding level of $125,000. The number for this project is 02-10-45190-00.

5. A project which is designed to operate in the Perth Amboy, New Jersey area for a 12-month period with a minimum professional staff effort of 4 manyears and a maximum funding level of $120,000. The number for this project is 02-10-22371-00.

6. A project which is designed to operate in the counties of Nassau and Suffolk in New York for a 12-month period with a minimum professional staff effort of 3 manyears and a maximum funding level of $105,000. The number for this project is 02-10-45160-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Eligibility Requirements: Any for-profit firm or not-for-profit institution which has been operating for the previous year in the area to be served by a project is eligible to submit an application for that project.

Application Materials: An application kit for each of the six projects may be requested by phone by calling (202) 377-3343 or it may be obtained at the following address: U.S. Department of Commerce, Office of Minority Business Enterprise, Program Support Staff, Room 5713, Box FR-1, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

In requesting an application kit, specify both the project number and the area the project will serve. In addition, the request should specify if the applicant is either a State or Local Government, Federally recognized Indian Tribunal Unit, Educational Institution, Hospital, or other nonprofit organization, or if the applicant is a for-profit firm. This information is necessary to enable OMBE to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period of one year beginning August 1, 1979. Continuation awards may be made on a noncompetitive basis when determined by the Awards Officer to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of June 24, 1979. Detailed submission procedures are outlined in each application kit.

1,800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: May 25, 1979.

Allan A. Stephenson,

Acting Director.

[FR Doc. 79-16973 5-30-79; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of Korea, Effective January 1, 1979; Correction

May 25, 1979.

On January 4, 1979, there was published in the Federal Register (44 FR 1209) a letter dated December 28, 1978, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs establishing, among others, a level of restraint of 1,852 dozen for wool skirts in Category 442, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1979. The level of restraint for Category 442 was incorrectly stated and should have been 5,556 dozen.

The letter published below corrects the directive of December 28, 1978 to the Commissioner of Customs.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements.

Commissioner of Customs,

Department of the Treasury,

Washington, D.C. 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, it would be appreciated if you would correct the level of restraint established in the directive of December 28, 1978 for wool textile products in Category 442. The level should be 5,556 dozen for the agreement period which began on January 1, 1979.

This letter will be published in the Federal Register.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-17004 Filed 5-30-79; 8:45 am]

BILLING CODE 3510-25-M

Clarifying Exempt Status of Certain Wool and Man-Made Fiber Textile Products Exported from India

May 30, 1979.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India, provides for the extension to wool and man-made fiber textiles and apparel of the visa, elephant certification, and exempt certification mechanism established for certain cotton textiles and cotton textile products by directive of May 13, 1975, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs (See 40 FR 22025). The Commissioner of Customs is implementing this aspect of the agreement.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-17159 Filed 5-30-79; 10:34 am]

BILLING CODE 3510-25-M

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration Reorganization

This notice sets forth the Headquarters and Regional Office Organization and functions as approved by the Director, Community Services Administration, on July 29, 1977. Organizational changes through December 1978 are included in this announcement.

Notice is hereby given that:

1. The Community Services Administration (CSA) is located at 1200 19th Street, NW., Washington, D.C., 20506, Phone 202-254-5000; TTY: 202-254-6218.

2. CSA will have the organization and functions shown in the accompanying chart.

3. CSA will have the following Regional Offices (areas included within each region are the standard federal regions shown in Appendix D, U.S. Government Manual):

Region I

John F. Kennedy Federal Bldg., Boston, Mass. 02203. Phone: 617-223-4080.

Region II

26 Federal Plaza, 32nd Floor, New York, N.Y. 10007. Phone: 212-264-1900.

Region III

Gateway Building, 3535 Market St., Philadelphia, Pa. 19104. Phone: 215-596-1000.

Region IV

101 Marietta St. NW., Atlanta, Ga. 30303. Phone: 404-221-2717.

Region V

300 S. Wacker Drive, 24th Fl. Chicago, Ill. 60606. Phone: 312-353-5562.

Region VI

1200 Main St., Dallas, Tex. 75202. Phone: 214-767-6125.

Region VII

911 Walnut St., Kansas City, Mo. 64106. Phone: 816-374-3761.

Region VIII

Federal Office Bldg., 1961 Stout St., Denver, Colo. 80294. Phone: 303-837-4767.

Region IX

450 Golden Gate Ave., San Francisco, Calif. 94102. Phone: 415-556-5400.

Region X

Arcade Plaza Bldg., 1321 Second Ave., Seattle, Wash. 98101. Phone: 206-442-4910.

4. Pub. L. 93-644, January 4, 1975, "Community Services Act of 1974" established within the executive branch an agency known as the "Community Services Administration." The Community Services Administration." The Community Services Administration (CSA) hereby adopts and ratifies, until modified or otherwise abrogated, the former Office of Economic Opportunity (OEO) internal operating instructions and procedures.

The CSA Organization Manual and current Delegations of Authority may be requested by using the mailing address or phone number cited in paragraph 1 of this Notice.

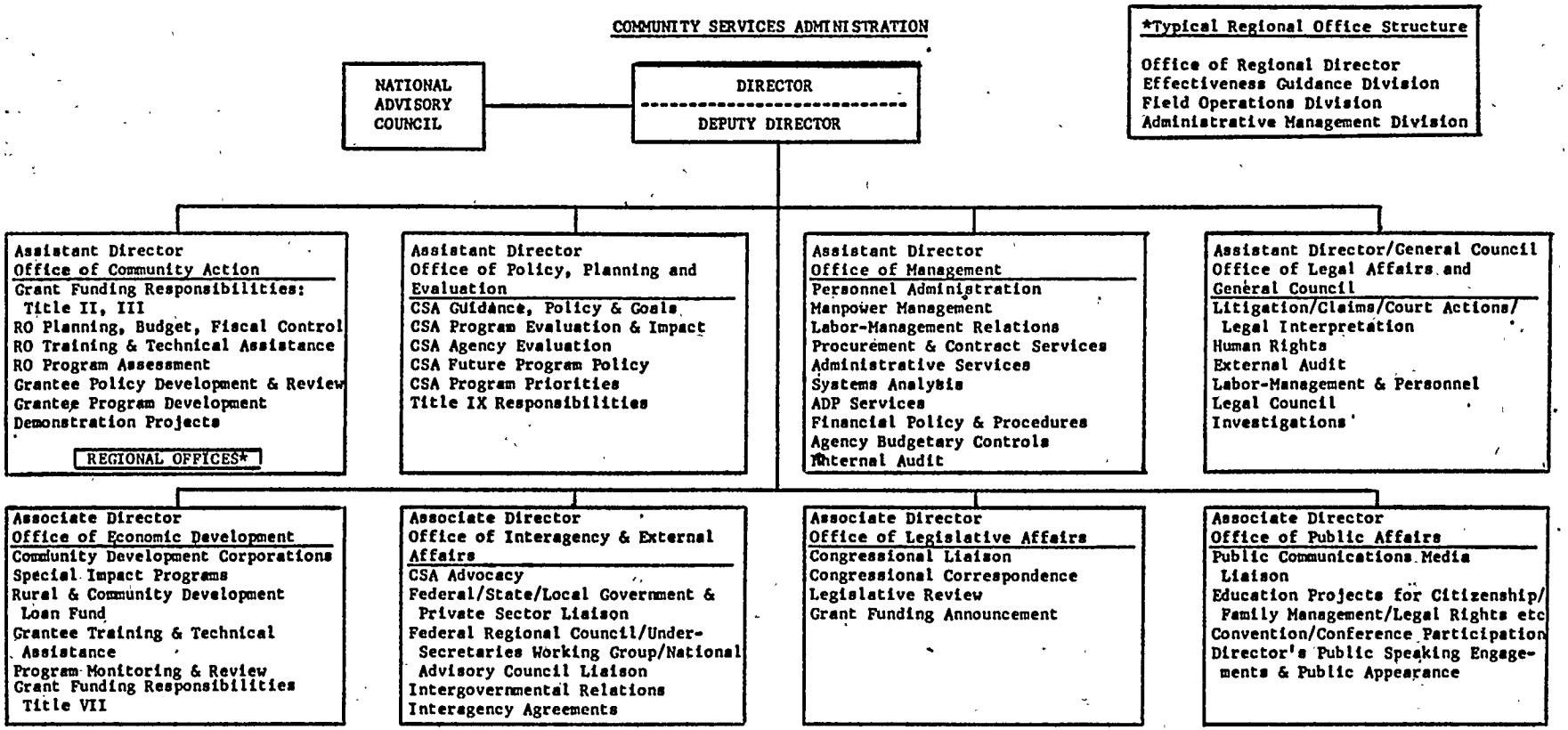
For further information contact:

Mr. Jack Stoehr, Office of Management Information, Management and Systems Staff, phone 202-254-5300

Graciela (Grace) Olivarez,

Director.

BILLING CODE 6315-01-M



[FR Doc. 79-16838 Filed 5-30-79; 8:45 am]

BILLING CODE 6315-01-C

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Toxicological Advisory Board.

SUMMARY: This notice announces the first meeting of the newly-created Toxicological Advisory Board on Monday, June 18, 1979, from 9:30 A.M. to 4:30 P.M. and Tuesday, June 19, 1979, from 9:00 A.M. to 4:00 P.M. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Catherine Bolger, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207 (202) 634-7700.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is a newly-established nine-member advisory committee which will advise the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid treatment labeling. In addition, the Board will review labeling requirements that have been issued under the Federal Hazardous Substances Act and recommend revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978 under the authority of Section 10 of the 1978 CPSC Authorization Act (Pub. L. 95-631).

This first meeting of the Board is primarily intended as an organizational and priority-setting meeting. On Monday, June 18, 1979, the meeting will include discussions on the purpose and scope of the Board, background information on and labeling requirements of the Federal Hazardous Substances Act, and special issues referred by the Commission to the Board. On Tuesday, June 19, 1979, the meeting will be devoted to discussions of the CPSC Labeling Guide and the scheduling of work assignments and future agendas under the direction of the Board Chairman.

The two-day meeting is open to the public; however, space is limited. Normally, members of the public may be permitted to make oral presentations to the members of the Commission's advisory committees. However, the purpose of this meeting is an orientation for the Board members and is basically an organizational meeting. The time available for such presentations may be severely limited. Persons who wish to make oral or written presentations to the Board should notify the Office of the Secretary (see address above) by June 13, 1979. The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requesters will be informed of the decision before the meeting.

Dated: May 24, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-16852 Filed 5-30-79; 8:45 am]

BILLING CODE 6355-01-M

McArthur Enterprises, Inc., et al.; Publication of Complaint

[CPSC Docket No. 79-2]

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a Complaint under the Flammable Fabrics Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR 1025), the Consumer Product Safety Commission must publish in the Federal Register complaints which it issues under the Flammable Fabrics Act. Printed below is a Complaint in the matter of McArthur Enterprises, Inc., and David A. McArthur, individually and as an officer, and William H. McArthur, individually and as an officer, issued April 26, 1979.

SUPPLEMENTARY INFORMATION: [attached].

Nature of Proceedings

The Consumer Product Safety Commission (hereinafter, the "Commission") has reason to believe that McARTHUR ENTERPRISES, INC., doing business as M & M Carpets, a corporation; DAVID A. McARTHUR, individually and as an officer of the corporation; and WILLIAM H. McARTHUR, individually and as an officer of the corporation (hereinafter, collectively, "Respondents"), are subject to, and have violated, provisions of the Flammable Fabrics Act, as amended (hereinafter, the "FFA") 15 U.S.C. 1191 *et seq.;* the Federal Trade Commission Act, as amended (hereinafter, the "FTCA") 15 U.S.C. 41 *et seq.;* the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70) (hereinafter the "Standard"), 16 CFR Part 1630, Subpart A.

It appears to the Commission, from the factual information available to staff, that it is in the public interest to issue this Complaint to commence an Adjudicative Proceeding in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025. Therefore, by virtue of the authority vested in the Commission by Section 30(b) of the Consumer Products Safety Act, as amended, 15 U.S.C. 2051, 2079(b), the Commission, pursuant to Section 5 of the FFA, 15 U.S.C. 1194, and Section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, hereby issues this Complaint, and states its charges as follows:

Charges

1. Respondent McARTHUR ENTERPRISES, INC., doing business as M & M Carpets (hereinafter, "M & M"), is a corporation organized and doing business under the laws of the State of Georgia; and is engaged in the manufacture and sale of carpets and rugs, with its principal place of business at 2308 Chattanooga Road, Dalton, Georgia 30720.

2. Respondent DAVID A. McARTHUR is an officer of M & M. He formulates, directs, and controls the acts, practices and policies of the corporation.

3. Respondent WILLIAM H. McARTHUR is an officer of M & M and takes part in controlling the manufacture of the carpet made by the corporation.

4. At the times the infractions and violations charged herein occurred, Respondents were engaged in the manufacture and sale of "carpet" "in commerce" as these terms are defined in the Standard, 16 CFR 1630.1(c), and in Section 2(b) of the FFA, 15 U.S.C. § 1191(b), respectively.

5. Carpet is a "product" and an "interior furnishing" consisting of "fabric" and "related materials" as those terms are defined in Sections 2(h), (e), (f), and (g) of the FFA, 15 U.S.C. 1191(h), (e), (f), and (g), respectively. Carpet is therefore, subject to the FFA and to the Standard and Rules and Regulations promulgated pursuant to that Act.

6. Respondents have engaged in the manufacture for sale, sale or offering for sale in commerce, and the introduction, delivery for introduction, transportation and causing to be transported in commerce, and the sale or delivery after sale or shipment in commerce of carpet style "Gold Coast" (foam rubber-back),

which fails to conform to the acceptance criterion of the Standard, as defined and set forth in 16 CFR 1630.1(a), 1630.3(c) and 1630.4(f) respectively, in violation of Section 3(a) of the FFA, 15 U.S.C. 1192(a).

7. Pursuant to Section 3(a) of the FFA, 15 U.S.C. 1192(a), the aforesaid violative acts and practices of Respondents are unlawful and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the FTCA.

Relief Requested in the Public Interest by Staff

The Commission staff believes that the public interest requires (1) a finding that Respondents have engaged in the violative acts and practices enumerated in paragraph 6 of the charges in this Complaint, and (2) the issuance of the cease and desist order set forth below. If, however, the Commission concludes from the record in this Adjudicative Proceeding that this Order would not be appropriate or adequate to fully protect the consuming public, the Commission may order such other relief as it deems necessary and appropriate.

Order

I. IT IS ORDERED that McArthur Enterprises, Inc., doing business as M & M Carpets, (hereinafter the "Corporation"), and David A. McArthur and William H. McArthur, individually and as officers of the corporation, and their agents, assigns, successors, representatives and employees directly or through any corporation, subsidiary, division or other instrumentality, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act (FFA), as amended (15 U.S.C. 1191 *et seq.*), which product, fabric or related material fails to conform to the requirements of the Standard for the Surface Flammability of Carpets and Rugs (FF 1–70), 16 CFR Part 1630.

II. IT IS FURTHER ORDERED, that the Corporation, David A. McArthur and William H. McArthur, their agents, representatives, employees and successors and assigns, directly or through any corporation, subsidiary, division or other instrumentality, shall confrom to all provisions of the FFA, and the standards, rules, and regulations issued thereunder, in the manufacture for sale, sale or offering for sale, in commerce, or importation into the United States, or introduction, delivery for introduction, transportation, or causing to be transported in commerce, or the sale or delivery after sale or shipment in commerce, of any product, fabric or related material subject to the Standard.

III. IT IS FURTHER ORDERED, that the Corporation, David A. McArthur and William H. McArthur, shall, within fifteen (15) days after service upon them of this Order, file with the Commission a special report in writing setting forth the manner in which they intend to comply with this Order. They shall submit with their report a complete description of each style of carpet or rug currently in inventory or production.

IV. IT IS FURTHER ORDERED, that for a period of 10 years from the date of this Order the Corporation, David A. McArthur and William H. McArthur, shall notify the Commission at least 30 days prior to any proposed change in the Corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsididaries or any other change in the Corporation which may affect compliance obligations arising out of this Order.

V. IT IS FURTHER ORDERED, that for a period of 10 years from the date of this Order that David A. McArthur and William H. McArthur promptly shall notify the Commission of their discontinuance of their present business or employment and of their affiliation with a new business and shall submit to the Commission a statement as to the nature of the business or employment in which they are newly engaged as well as a description of their duties and responsibilities in the new business.

VI. IT IS FURTHER ORDERED, that the Corporation shall destribute a copy of this Order to each and all of its operating divisions.

VII. IT IS FURTHER ORDERED, that the Corporation, David A. McArthur and William H. McArthur, (1) shall permit the Commission to conduct inspections of the Corporation, to examine the Corporation's books, records, and accounts relating to the manufacture, sale, and distribution of carpet, and to collect samples of carpet manufactured and distributed by the Corporation; and (2) shall, upon the request of the Commission, submit written reports, verified copies and the Corporation's books, records and accounts, and samples of carpet manufactured and distributed by the Corporation, to enable the Commission to determine their compliance with this Order.

WHEREFORE, the premises considered, the Commission, hereby issues this complaint on this 26th day of April 1979.

By the Commission:

Dated: May 24, 1979.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-16853 Filed 5-30-79; 8:45 am]

BILLING CODE 6355-01-M

Residential Water Heaters; Investigation of Petition (CP 78–15)

AGENCY: Consumer Product Safety Commission.

ACTION: Investigation of petition through request for technical information.

SUMMARY: In this document the Commission solicits public comment, including any available technical information, concerning appropriate operating temperatures for water heaters that will reduce the risk of scald injuries without compromising adequate hot water supplies in the home. The Commission is taking this action in response to a petition on residential water heaters from the Department of Lighting, City of Seattle (CP 78–15).

DATE: Comments must be submitted by July 30, 1979.

ADDRESS: Comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments and other information on this proceeding may be viewed in the Office of the Secretary, Consumer Product Safety Commission, 1111 18th St., N.W., Third Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harry I. Cohen, Program Manager, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 301–492–6453.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1978 the Commission received a petition (CP 78–15) from Your Seattle City Light (the Department of Lighting, City of Seattle) requesting the issuance of a consumer product safety rule for new gas, oil, and electric residential water heaters requiring the heaters to have a maximum thermostat

setting of 130°F and to display warning labels describing the hazards of hot water and instructions for setting water heater temperatures. The petition states that lower temperature settings on residential water heaters will reduce or eliminate tap water scald injuries. In this regard the petition points out that a 130°F water temperature permits contact of approximately 30 seconds before full thickness scalding occurs on adult skin, while at a water temperature of 150°F full thickness scalding of adult skin takes place in two seconds.

In response to the petition, Commission staff briefed the Commission on two occasions on issues relevant to the petition. (The staff also prepared two briefing packages for Commission consideration, one dated October 20, 1978 and the other dated February 7, 1979, containing available injury, economic, and other information. Copies of these packages may be reviewed in or obtained from the Office of the Secretary of the Commission.) While the Commission voted on March 15, 1979 to defer decision on the petition, the Commission indicated serious concern over the scald hazard identified by the petitioner and the injury information gathered by the staff (see below).

The Commission voted on March 15 to defer decision on the petition because of the conflicting data surrounding the issue of appropriate operating temperatures for water heaters. (The conflicting data are discussed in detail below.) At the same time, in order to resolve the question of an appropriate temperature setting for water heaters, the Commission voted to conduct an investigation under the authority of section 10(c) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) by publishing a Federal Register notice inviting outside opinion and expertise directed to the temperature issue. (Section 10(c) permits the Commission to conduct such investigation or proceeding as it deems appropriate in order to determine whether a petition should be granted.)

The Commission believes resolution of the temperature setting issue is crucial to a decision on whether to impose a specified mandatory maximum thermostat setting and may be significant for a decision on the content of any mandatory warning labels, especially if the labels are to suggest an appropriate range of temperature settings.

In addition, instead of a mandatory maximum thermostat setting which does not allow a consumer to adjust the setting upward, the Commission is considering the regulatory option of requiring residential water heaters to be pre-set at the factory at a specified temperature. (This option would allow a consumer to adjust his or her thermostat setting to meet household needs.) Obviously, information on appropriate operating temperatures is critical to this regulatory option as well. Furthermore, on March 15 the Commission decided to encourage the gas and electric water heater industries to continue their ongoing efforts to develop voluntary safety standards for warning labels and for lowering the factory pre-set temperatures on hot water heaters. Information on water heater temperatures will assist industry in these efforts.

Accordingly, this notice solicits public comment, including any available technical information, concerning operating temperatures for gas, electric, or oil water heaters that will reduce the risk of scald injuries without compromising adequate hot water supplies in the home. The Commission notes that gas water heaters have thermostats that are connected to external adjustment controls and that it is usually a simple task to adjust the temperature setting. The majority of electric water heaters do not have thermostats that are externally adjustable.

The information on scald injuries and on residential hot water needs that the Commission has at present is summarized in the following two sections of this notice. The discussions below should assist commenters in directing their submissions to the specific areas where public input will be useful.

The Risk of Injury

A September, 1978 Special Report entitled "Accidents and Injuries Involving Scald Burns from Tap Water Sources" prepared by the Commission's directorate for Hazard Identification and Analysis estimates that 2,615 tap water scald injuries are treated annually in hospital emergency rooms. The Report also notes that the population under the age of 5 and over the age of 65, accounting for about 18 percent of the total United States population, sustains approximately 61 percent of the total number of tap water scald injuries. further, scald burns from tap water sources apparently show a greater severity than other scald burns. Nearly one-fourth of those treated in hospital emergency rooms for hot waterburns were hospitalized, while only about 6 percent of all other scald victims were admitted.

The Report goes on to note that many of the scald injuries seem to occur because the victim (or those supervising the victim) was either unaware of the hazard or was unable to react quickly to it. In most reported instances, infants and children fell or climbed into a bathtub filled with hot water. In other instances, children were in the bathtub at the time it was being filled with scalding water or were playing with the faucet while in the tub. Elderly persons frequently slipped or fell into a bathtub filled with scalding water.

An analysis in the Special Report of 159 death certificates, on file at the Commission and compiled betweeen July, 1973 and October, 1977, reveals that infants and children under age 5 and adults over the age of 65 are disproportionately affected by tap water scalds. Of the 149 deaths from water scalds, 116 (73%) involved the two age groups.

Commission staff reviewed in detail 39 in-depth investigations for 1977 and 1978 associated with tub, shower or sink scald burns. Twenty-two of these accidents involved children aged 5 months to 6 years who were generally scalded by turning the water on themselves, having another child turn the water on them, climbing or falling into the tub, or being placed in the tub by another person. The lack of the presence of an adult at the time of the accident was noted in many of the infant and child accident sequences. The staff also noted that it seemed characteristic of the younger child (those under 4) to remain in the water and scream until rescued. As for the adult victims, a significant percentage had some type of disability which prevented their getting away from the water fast enough to prevent scalding. (See September 14, 1978 memorandum from Warren Mathers to Irwin Greif on "Petition to Reduce Tap Water Scalding (CP 78-15).")

The amount of time many scald victims require to get out of the water is important in determining what temperature settings will reduce or eliminate scald injuries. (A study prepared in January, 1977 for the Commission by Arthur D. Little, Inc. entitled "The Feasibility of Lowering Water Heater Temperature as a Means of Reducing Scald Hazards" examined the accident pattern of scald incidents involving unattended children and concluded that 30 seconds was a reasonable amount of time to prevent such injuries.) While the petitioner stated that a 130°F water temperature would provide about thirty seconds before full thickness scalding occurs on

adult skin, the commission notes that this temperature may be too high to prevent many partial thickness scald burns. For example, according to a study by Moritz and Henriques,[1] the approximate threshold at which the first evidence of epidermal damage occurs in adult males is: less than 1 second at 140 degrees Fahrenheit; 2.6 seconds at 140 degrees Fahrenheit; 5.5 seconds at 135 degrees Fahrenheit; 15 seconds at 130 degrees Fahrenheit; 50 seconds at 125 degrees Fahrenheit; 290 seconds at 120 degrees Fahrenheit.

Based on this information, the Commission notes that a 120°F–125°F water temperature may be necessaryt to reduce or eliminate most scald injuries.

Residential Hot Water Needs

While, according to the time—temperature—scald table, 120°–125°F water would greatly reduce the risk of scald injuries, the Commission has received information that such temperatures might not result in a satisfactory hot water supply in certain homes. The Commission also has received conflicting data as to whether such temperatures would interfere with an adequate hot water supply. The information is summarized below:

1. The Commission does not have conclusive data concerning the minimum terperature for effective clothes washing and automatic dishwashing. The Association of Home Appliance Manufacturers (AHAM), for example, has taken the position that a 140°F thermostat setting on water heaters may be needed to assure satisfactory performance of clothes washers and dishwashers. (February 13, 1979 letter from Walter Blanck, Technical Director, AHAM, to Donald Mackay, Director, Voluntary Standards, CPSC.)

As to clothes washers specifically, AHAM has stated that although cooler water (about 100°F) may be satisfactory for the majority of clothes loads currently being washed, certain types of soils, generally the oily or sooty types, still require 140°F water. Diapers and articles exposed to disease, according to AHAM, also require the higher temperatures.

Dr. Mary Purchase, Professor, Department of Design and Environmental Analysis, Cornell University, agrees with the industry position as to both clothes washers and automatic dishwashers, and supplied the Commission with supporting data. (November 30, 1978 letter from Dr. Purchase to Donald Mackay of CPSC.)

As to automatic dishwashers, the A. D. Little study cited earlier indicates that dishwasher effectiveness becomes marginal at 130°F with detergents currently available. The study also states that the problem with dishwashing at lower temperatures is not sanitation but spotting and filming on glassware and silverware. The study notes that while dishwashers with boost heaters (a separate heating source in dishwashers to elevate the wash water temperature) would not be significantly affected by lower temperatures, few models currently in use have such a feature.

2. In contrast to portions of the above information, Dr. Kenneth Feldman, associated with the Odessa Brown Children's Clinic in Seattle, Washington and one of the signers of the petition, states that the limited studies on dishwashing suggest that there is no increase in bacterial contamination of dishes until wash temperatures are reduced to the 100–110°F range. Dr. Feldman notes, however, that spots may be present on dishes at temperatures below 130°F.

Dr. Seymour Goldwasser, a professional chemist with experience working for a major detergent manufacturer, has written in a report for the Commission that all principal foods could be removed from dishes at temperatures above 120°F, but that the closer the temperature approaches 120°F, the longer thorough cleaning could take. (Goldwasser, "Detergents for Use in Household Cleansing Systems at Temperatures Significantly Below the Usual 140–150°F," July 1976.) Anthony Schwartz, also a chemist with experience in the field of detergents, in another report to the Commission, agrees with Goldwasser's findings but concludes that dishwasher performance would become noticeably inferior at temperatures of 130°F or below. (Schwartz, "Household Cleaning and Dishwashing at Reduced Water Supply Temperatures," July 1976.)

A recent study by Messrs. Thomas M. Kaneko and J. W. Compton of BASF Wyandotte Corp. indicates that automatic dishwashing is feasible in 120°F water using selected major brand name detergents. ("Low Temperature Home Machine Dishwashing" in *Soap/Cosmetic/Chemical Specialists,* August 1978.) This finding, however, has been disputed by the appliance industry on the basis that Mr. Kaneko did not test dishes with caked-on animal fat. According to AHAM, it is necessary to have water temperatures higher than 133°F to keep animal fats suspended in solution from redepositing on dishware. (December 1, 1978 memorandum of phone conversation between Peter Armstrong, CPSC, and Walter Blanck, Technical Director, AHAM.)

3. Another variable affecting appropriate operating temperatures for water heaters is the relationship between the temperature setting on the heater and the temperature of the water at the faucet. The A. D. Little report cited earlier notes that in most cases the drop in temperature from the heater to the tap ranges from a low of less than 1°F to a high of approximately 4°F. In the case of a gas heater exibiting what is known as the "stacking effect,"[2] the water temperature can even be 20°–30°F higher than the set point. In addition, the accuracy of the thermostat itself may be another variable affecting the relationship between the temperature setting and the temperature at the tap.

4. The Commission has information indicating that at lower temperatures, a larger volume of hot water would need to be stored in certain homes to insure adequate quantities of hot water. This is because consumers would mix less cold water with the hot to attain water temperatures suitable for bathing and would deplete the supply of hot water sooner. Also, the temperature of water at the tap remains at approximately the thermostat-set temperature for only a limited time and then decreases as the hot water supply in the heater is used up. (This reduction in water temperature is a function of age, capacity, and the "recovery rate" of the water heater.) The term "recovery rate" is used to describe the ability of the water heater to increase the temperature of the water to the pre-set temperature after a large amount of hot water is drawn from the tank.) Therefore, if lower temperature settings on water heaters are mandated or voluntarily adopted, certain families may need to purchase larger water heaters. However, even if homeowners change to larger water heaters set at

[1] "Studies of Thermal Injury, II, The Relative Importance of Time and Surface Temperature In the Causation of Cutaneous Burns," A.R. Moritz and F.C. Henriques, American Journal of Pathology, 23:695–720, 1947 and V, "The Predictability and the Significance of Thermally Induced Rate Processes Leading to Irreversible Epidermal Injury" F.c. Henriques, American Journal of pathology, 23:489–502, 1947.

[2] Stacking occurs in this fashion: A draw of hot water at the top of the tank is replaced by cold water in the bottom of tank. The water heater thermostat then cycles to heat the cold water. A portion of the water above the thermostat is still heated at or about the temperature setting from the previous cycle. Heat transfer occurs from the cold water being heated and the flue products being released up the flue. The water above the thermostat gets hotter. A subsequent small draw will cause the water that is already hotter than the thermosat setting to get even hotter. In an electric water heater, there is generally no water that is not sensed by the thermostat; and therefore, there is generally no stacking.

lower temperatures, the A. D. Little study concludes, a net energy savings will result.

The extent to which various low temperature settings necessitate the use of greater capacity water heaters may affect any Commission decision on what is an appropriate operating temperature for heaters. Therefore, commenters should include with their submissions any relevant information on this question.

Request for Information

All the technical articles and reports and other information referred to in this document may be seen in or copies obtained from the Office of the Secretary, Consumer Product Safety Commission, 1111 18th St., N.W., Third Floor, Washington, D.C. 20207.

In order to aid the Commission in obtaining the most complete and accurate information before making a decsision on the petition, the Commission is particularly interested in receiving data, views, and arguments as to the following:

1. Commenters' overall recommendations for temperature settings on water heaters;
2. The water temperature(s) which will reduce or eliminate most scald injuries;
3. The minimum water temperature for effective clothes washing of various types of clothing loads;
4. The minimum water temperature for effective automatic dishwashing;
5. The practicality of boost heaters as a solution for inadequate hot water temperature for satisfactory automatic dishwashing and clothes washing;
6. The feasibility of developing or the availability of dishwashing detergents which will compensate for lower water temperatures;
7. The correlation between water heater setting and water temperature at the faucet;
8. The possible need for larger water heaters at various low temperature settings (i.e., 135°F, 130°F, 125°F, and 120°F);
9. The practicality of external adjustment controls on electric water heaters; and
10. The accuracy of dial settings on water heaters.

Interested persons are invited to submit written data, views, or arguments on or before July 30, 1979. Submissions received after this date will only be considered to the extent practicable.

Comments should be accompanied by supporting data or documentation. Requests for confidentiality of documentation will be handled in accordance with the Freedom of Information Act as amended (5 U.S.C. 552), the Commission's regulations under that act (16 CFR Part 1015, February 22, 1977) and the provisions of section 6(a)(2) of the CPSA (15 U.S.C. 2055(a)(2)).

Written submissions and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

All written comments that are received may be seen in or copies obtained from the Office of the Secretary, Third Floor, 1111 18th St. NW., Washington, D.C. 20207.

(Sec. 10(c), Pub. L. 92-573, 86 Stat. 1217 (15 U.S.C. 2059)).

Dated: May 25, 1979.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 79-16879 Filed 5-30-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 14, 1979.

The USAF Scientific Advisory Board Ad Hoc Committee on Remotely Piloted Vehicles will hold a meeting in the Pentagon, Washington, D.C. on June 18, 1979. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m.

The Ad Hoc Committee will review Remotely Piloted vehicle technology options. The discussions will be classified and closed to the public in accordance with section 552b(c), Title 5, U.S.C., specifically subparagraph (1).

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-16830 Filed 5-30-79; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 14, 1979.

The USAF Scientific Advisory Board Aeronautics Panel Subcommittee on Aeropropulsion System Test Facility will meet on June 27-28, 1979 at the Arnold Engineering Development Center Facility, Arnold AFS, TN. The purpose of the meeting is to review the technical design and installation plans of the Aeropropulsion System Test Facility. The Subcommittee will meet from 8:00 a.m. to 5:00 p.m. on June 27 and from 8:00 a.m. to 3:00 p.m. on June 28.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 79-16831 Filed 5-30-79; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Notice to Federal Agencies of the Powerplant and Industrial Fuel Use Act in Effect as of May 8, 1979

The Department of Energy hereby gives notice to all Federal agencies that the Powerplant and Industrial Fuel Use Act of 1978 (FUA) is in effect as of May 8, 1979, and is applicable to Federal facilities to the same extent as would be the case if such powerplant, installation, or unit were owned or operated by a non-governmental person.

The FUA prohibits new powerplants and major fuel burning installations (*MFBI*) with heat input rate capacities of 100 MMBty/hr. or greater from using natural gas or petroleum as a primary energy source unless exempted upon petition to the Department of Energy. It also provides the Department of Energy with the authority to issue orders to existing coal and alternate fuel capable powerplants and MFBI's prohibiting them from using natural gas or oil.

FOR FURTHER INFORMATION CONTACT: Robert L. Davies, Deputy Assistant Administrator for Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 7202, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-3910.

Issued in Washington, D.C., May 24, 1979.

Barton R. House,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 79-16878 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

T-C Oil Co.; Supplemental Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Supplemental Remedial Order which was issued to T-C Oil Company, 711 National Bank of

Commerce Building, San Antonio, Texas 78205. This Supplemental Remedial Order charges T–C Oil Company with pricing violations in the amount of $1,158,852.95 caused by T–C having made sales of crude oil at prices in excess of those permitted under the Federal Energy Administration (now the DOE) price rule in 10 CFR 212.73. ERA maintained that the overcharges were the result of T–C's characterization of certain "old" crude oil as "new" and "released" crude oil based upon T–C's interpretation of the term "property."

A copy of the Supplemental Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 15, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 22nd day of May, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-16975 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Ex Parte and Separation of Functions Meeting

May 25, 1979

Pursuant to provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given that the Subcommittee on Ex Parte and Separation of Functions of the Advisory Committee on Revision of Rules of Practice and Procedure will meet on Friday, June 1, 1979 from 1 p.m., at the Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Hearing Room G, Washington, D.C. The urgency of the subject matter of the Subcommittee's work as well as the unavailability of Subcommittee members after June 8, 1979 requires scheduling of this meeting on June 1, 1979 notwithstanding the abbreviated notice period.

The purpose of the meeting is to prepare a report of the Subcommittee's recommendations concerning *ex parte* and separation of function matters. It is anticipated that the Subcommittee Report will be presented to the full Advisory Committee at a meeting which has been scheduled for June 8, 1979.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Office of Public Information, Room 1000, 825 N. Capitol St., N.E., between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday except Federal Holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16983 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-123 et al.]

Alaskan Northwest Natural Gas Transportation Co.—Pipeline Design and Capacity; Notice of Delegate Report and Order Inviting Comments

Issued May 17, 1979.

The Commission is issuing for comment a report submitted to it by its Alaskan Delegate. The report discusses the pipeline size and operating pressure for that segment of the Alaska Natural Gas Transportation System (ANGTS) which is to be constructed in Alaska by the Alaskan Northwest Natural Gas Transportation Company. In addition to other applicable law, this order is issued pursuant to the mandate of Section 9 of the Alaska Natural Gas Transportation Act, 15 U.S.C. § 719(g), and the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System (Decision),* which mandates expeditious resolution of the matters discussed in the Delegate's report.

A. Background

On March 2, 1979 the Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest) filed with the Commission an application for an order to approve design specifications and initial system capacity for that portion of the ANGTS which is to be built by the applicant.[1]

Pursuant to Commission regulations, notice of the application was issued on March 16, 1979. Alaskan Northwest requests prompt action on its application so that it may proceed with steps necessary to financing and constructing the portion of the ANGTS for which it is responsible.

The Alaskan Delegate has submitted to the Commission a report concerning the diameter and maximum allowable operating pressure of the pipeline which is the subject of Alaskan Northwest's application. With respect to the design of the gas pipeline, the Delegate's report states that a 48-inch diameter was determined under the terms of the *Decision.* The Delegate's report states that with respect to the issue of what the maximum allowable operating pressure of the pipeline should be there is a threshold question: given the extensive record already compiled in this proceeding,[2] whether significant new evidence is available on likely throughput volumes from the North slope which would be served by this system since the time of the *Decision* that would suggest that an operating pressure of greater than 1260 psig should be authorized. The Delegate states that he believes there is no new information and that the Commission should authorize a maximum allowable operating pressure of 1260 psig for the pipeline.

The Commission is issuing the Delegate's Report for comment by all parties of record in this proceeding.[3] Comments should be filed by July 2, 1979. The parties may also file comments on Alaskan Northwest's application of March 2, 1979. Any party of record perceiving the need for a hearing to determine either the diameter or the maximum allowable operating pressure of the gas pipeline which is the subject of Alaskan Northwest's application should file a request to that end, by July 2, 1979, specifying the issues to be presented for determination and a brief summary of the evidence which the requesting party would present. The request should include a statement of all issues of material fact allegedly in dispute, and provide a reasonable justification as to why these issues cannot be fairly and adequately resolved on the basis of the record compiled before Judge Litt, the President's *Decision,* and the Delegate's Report.

Finally, the Commission notes that the sole issues that it intends to resolve through the procedures set forth below are: (a) the pipe diameter, and (b) the operating pressure, of the Alaska

[1] The portion involved is that segment of the ANGTS described in the President's *Decision* as lying within the State of Alaska. *Decision* at 6–7

[2] That record includes the *Initial Decision* of the Commission, *In re El Paso Alaskan Co., et al.,* Docket No. CP75-96, *et al.* (Feb. 1, 1977); FPC, *Recommendation to the President* (May 1, 1977); and the *Decision.*

[3] A copy of the Delegate's report is attached to this order. The views expressed therein do not necessarily reflect the views of the Commission.

pipeline segment discussed herein. In particular, the Commission does not intend to decide, on the basis of comments filed in response to this order, the issue of the appropriate CO_2 standard for the gas transported through the ANGTS.

The Commission orders: (1) The Alaskan Delegate will serve copies of this Order, and of his report, on all parties to Docket Nos. CP78-123, *et al.*

(2) Parties of record in Docket Nos. CP78-123, *et al.* may submit comments on the Alaskan Delegate's report, and on the March 2, 1979 application filed by Alaskan Northwest Natural Gas Transportation Company. Such comments may be filed on or before July 2, 1979, and should be served on all parties of record in Docket Nos. CP78-123, *et al.* The comments may address any issue of fact, law or policy pertinent to the matters raised in the report and the application.

(3) Any party of record in Docket No. CP78-123, *et al.* may file, on or before July 2, 1979, a request for an evidentiary hearing to determine the diameter or maximum allowable operating pressure of the gas pipeline described in Alaskan Northwest's March 2, 1979 application. Such request must specify the issues to be presented for determination at such a hearing, including a statement of all issues of material fact allegedly in dispute; a brief summary of the evidence that the requesting party would present; and a reasonable justification as to why such a hearing is necessary and why the issues cannot be fairly and adequately resolved on the basis of the record compiled before Judge Litt, the President's *Decision*, and the Delegate's Report. Copies of the request should be served on all parties to Docket Nos. CP78-123, *et al.*

By the Commission.

Kenneth F. Plumb,

Secretary.

Report of the Alaskan Delegate on the System Design Inquiry

I. Introduction

In his *Decision and Report to Congress on the Alaska Natural Gas Transportation System* the President said, "[t]he gas transportation system will utilize a 48-inch diameter pipeline from Prudhoe Bay to James River, Alberta * * *"[1] except as "* * * modifications to those facilities are required by the Agreement on Principles between the U.S. and Canada * * *."[2]

The *Decision* also said, "[the] facilities * * * are those in the U.S. which are adequate for a throughput of up to 2.4 [billion cubic feet per day] bcfd and are included in the revised Alcan filing submitted to the Federal Power Commission (FPC) in [sic] March 8, 1977."[3]

The report which accompanied the *Decision* went on to say, however, that—

> * * * Alcan should consider increasing the operating pressure and wall thickness of its 48-inch diameter pipeline in order to allow for more efficient increases in throughput rate for additional reserves which might be committed to the system from either Alaska or Canadian sources.[4]

The report also noted that—

> Overall, considering the arctic construction, inflationary impacts and environmental impacts, the ultimate cost to consumers of providing capacity for increased gas throughput would be much lower if the capacity is provided initially by increasing the diameter or working pressure of the pipe, than if it is provided later by adding compressor horsepower or looping the pipeline.[5]

After observing that the Agreement with Canada provides for use by Canada of the main line at a throughput up to 1.2 bcfd, the report concluded "* * * redesign of the system to enable inexpensive expansibility up to 3.9 to 4.0 bcfd south of Whitehorse, Yukon Territory, is essential."[6]

Accordingly, the Agreement on Principles provided for installation of a higher capacity system than that which had been proposed by the project sponsors for the segment which is to carry both U.S. and Canadian gas volumes, to be installed between Whitehorse, in the Yukon Territory, and the bifurcation point at James River, Alberta. The Agreement also provided for a technical study group to evaluate the alternative higher capacity systems which had been discussed by negotiators for the two countries in the course of reaching the Agreement.

U.S. and Canadian government technical representatives began meeting soon after the U.S. Congress approved the *Decision*. U.S. representatives favored a 48-inch pipeline system with a higher maximum allowable operating pressure, 1680 pounds per square inch guage (psig). They thought that the higher pressure system would require an increased investment, but would be more fuel-efficient than one of lower pressure.[7] For their part, Canadian representatives consistently expressed reservations about safety and reliability aspects of the higher pressure system, and the accuracy of the capital cost estimates for it, since it represented a greater technological step away from the present level of maximum operating pressures, which is about 1100 psig. Their preference was always for a larger diameter alternative with the same or slightly lower operating pressure.[8]

Due to the nature of their reservations and the risk of possible delays associated with testing the higher pressure system, the Canadian National Energy Board (NEB) chose a 56-inch diameter, 1080-psig system for the joint-use section. Consistent with all prior statements, their Statement of Position evidenced considerable concern over the safety and reliability aspects of the high-pressure design, plus concern over the adequacy of cost estimates and construction schedules for that system due to increased technological risks.

The Canadian decision also had the effect of narrowing somewhat the options for system design north of the joint-use section, compared to what the options might have been at the time of the *Decision*.[9] The options for the segment north of the Whitehorse then became the 1260-psig system proposed by the sponsoring companies, or a thicker walled 48-inch pipeline which would operate at a higher pressure.[10] The higher pressure choices seem to be the 1680-psig system, which had been the design of one of the competing proposals and has been favored by two of the three principal North Slope gas producers, and (2) an intermediate design which would operate at between

[1] *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, p.13. Herein referred to as "the *Decision*."

[2] *Ibid.*

[3] *Ibid.*

[4] Report accompanying *Decision* at 193.

[5] *Ibid.*, p. 194.

[6] *Ibid.*, p. 196, "The system" in this context refers to Alcan's March 8, 1977, proposal; the redesign south of Whitehorse refers to the agreement with the Canadian Government to use a higher capacity system between Whitehorse and the bifurcation point.

[7] At higher throughput volumes, the fuel savings more than offsets the increased investment costs of the higher pressure system, resulting in lower unit transportation charges.

[8] Increasing the diameter of the pipeline system for a given operating pressure and throughput rate also increases operating efficiency. However, for the alternative systems evaluated by the technical study group, the larger diameter systems were consistently less fuel-efficient than the higher pressure system. Furthermore, the capacity of the larger diameter systems to carry natural gas liquids (NGL's) is less than that of the higher pressure one for any given operating temperature.

[9] The ability of the 56-inch system to transport NGL's limits the NGL's content in the gas stream delivered to it. Thus, increasing system pressure to increase NGL's carrying capacity is pointless beyond the limit imposed by the 56-inch system.

[10] Section 3 of the *Decision*, "Identification of facilities included within 'Construction and Initial Operation'", specifically references a 48-inch diameter pipeline from Prudhoe Bay to James River, Alberta except a modifications are required pursuant to the Agreement on Principles Between the U.S. and Canada.

1400 and 1440 psig. As the lead time associated with full evaluation of either of these higher pressure alternatives could also affect the schedule for project implementation in this country, the Alaska Gas Project Office (AGPO) undertook this inquiry in an effort to facilitate a final FERC decision on the maximum allowable operating pressure.

Our process for studying the pressure question was to discuss it with interested parties and to prepare independent calculations of the expected transportation costs at different throughput rates, utilizing the alternative system configurations. We issued a draft report on the system design on September 27, 1978. We then provided a period for comments on the draft report and held an on-the-record conference among interested parties on December 15, 1978. At that conference I developed a proposition for resolution of the pressure question which served as the basis for the project sponsors' filing of March 2, 1979.[11]

This report summarizes the positions of the parties as expressed in our discussions with them, their comments on our draft report, and their remarks at the conference. It then presents the AGPO's findings and relevant findings in the *Initial Decision* in *El Paso Alaska Company, et al.*, Docket No. CP75-96, *et al.* (hereinafter referred to as the *Initial Decision*), the FPC *Recommendation to the President*, and the *Decision*.[12]

After my draft report had been circulated and comments initially solicited, a study of the required sales gas conditioning facility,[13] sponsored by a group of producers and pipeline companies, was made available to me. This study has not been formally filed with the Commission, nor evaluated by other experts. However, I believe it to be the most authoritative and accurate compilation and analysis of information available on the requirements for processing and conditioning the Prudhoe Bay gas, and on the characteristics of the sales gas stream. As the report was made available to me in my capacity as the Commission's Alaskan Delegate, it appears in my public file and is available for inspection by any interested party or member of the general public in the Commission's office of Public Information.

The results of the study clarified certain concerns, and obviated others, particularly with respect to the dispostion of the natural gas liquids (NGL's). I have maintained my description of the concerns expressed to me, but have tried to note the impact of the study results on those concerns as appropriate. I have also added a section to this report which applies the results of the study to the questions being considered here.

II. Positions of Interested Parties [14]

1. *State of Alaska.* Alaska conditionally supports a pipeline with a maximum operating pressure of 1260 psig.[15] Its support is conditioned upon the validity of certain assumptions mentioned in its comments on the project sponsors' March 2, 1979, application, all of which I believe to be true.

The State's principal objectives as expressed to us concerned the developing of an in-state manufacturing base to smooth out the "boom-or-bust" cycles of raw materials production industries. In the case of its Prudhoe Bay hydrocarbon resources, the State would like to develop a capability to convert some of those hydrocarbon resources into semi-finished and finished products. The State has previously used agreements for the sale of its royalty oil to encourage construction of additional refinery capacity in Alaska. An idea being discussed by State officials was development of a capability to manufacture various petrochemicals, utilizing produced NGL's as feedstocks.

The State contracted with the consulting firm of Bonner and Moore for an analysis of the possibility of a world-scale petrochemicals plant to be located in Fairbanks. The petrochemicals facility chosen for study would use ethane as a feedstock. At the time we talked with State officials, the State had no specific plans for utilization of propane and heavier NGL's but expressed a willingness to develop such plans if required to achieve their objectives with respect to in-state use of some of the Prudhoe Bay resources.

Additionally, State authorities expressed an interest in maximizing recovery of the total energy resources of the Prudhoe Bay deposit. The modes of disposition of produced hydrocarbons are:

(1) Transportation through the oil pipeline or a new NGL's pipeline,

(2) Transportation through the gas pipeline,

(3) Use within the field as fuel for production and processing and conditioning facilities,

(4) Fuel use for pump stations on the oil line and compressor stations on the gas line,

(5) Reinjection, and

(6) Some combination of the above.

The distribution of the NGL's among these various dispositions is a function of the designs of the oil pipeline and the gas pipeline, and of production and processing and conditioning facilities on the North Slope. It will not be completely settled until the designs for all of these facilities have been finalized. State officials expressed an interest in transportation of the NGL's away from the North Slope in order to deliver them to higher value uses. State officials were also concerned that any disposition of gas or NGL's by reinjection involves some loss of ultimate recovery of that which is reinjected.[16]

Although the increased ability of the higher pressure alternatives to transport NGL's might make Alaska favor higher pressure, another aspect of the State's overall concerns might incline them toward the 1260-psig system.

This concern is over the impact of gas production on oil recovery. The State conservation authority now expects that there will be sufficient gas available for sale from the Prudhoe Bay Main Pool Reservoir to support gas sales of 2.0 bcfd. However, there is a small possibility that actual production history of the reservoir will require a reduction in the level of gas sales. As this possibility is small, and would occur through circumstances which cannot

[11] See "Application of Alaskan Northwest Natural Gas Transportation Company For An Order Approving the Design Specifications and Initial System Capacity of the Alaska Segment of the Alaska Highway Pipeline Project," filed in Alaska Northwest Natural Gas Transportation Company, Docket No. CP78-123, *et al.* on March 2, 1979. This application was noticed by the Commission on March 16, 1979.

[12] These discussions and the present report are a part of the AGPO's effort to "expeditiously and yet comprehensively gather the necessary information which the Commission will require before it can intelligently analyze and rule upon the future applications for permanent certification", as required by the Commission by order of December 16, 1977.

[13] "Sales Gas Conditioning Facilities, Prudhoe Bay, Alaska"; The Ralph M. Parsons Company; September, 1978 Study Report. The sponsors were 7 producing companies and 11 natural gas transmission companies. The study is referred to herein as "the Parsons study."

[14] During the course of our meetings with interested parties, most submitted written materials, usually in response to our requests. All of these materials were attached to the draft of this report, which was circulated to all parties in Docket No. CP78-123, *et al.*, in late September 1978. Those materials have not been attached here in order to prevent repetition, but have been made part of the Alaskan Delegate's public file, required to be maintained by Commission Order of December 16, 1977.

[15] See "Comments of the State of Alaska on the Design Specifications and Initial System Capacity of the Alaskan Segment of the Alaska Highway Pipeline Project", filed in Alaska Northwest Natural Gas Transportation Company, Docket Nos. CP78-123, *et al.*

[16] Gas reinjection could increase oil recovery slightly, but reservoir studies to date suggest that approximately the same amount of energy could be consumed in the reinjection process as would be provided by the additional oil recovered.

now be foreseen, State authorities cannot say with precision what allowable gas production might be in the event that production experience requires reduced gas sales. Reduced availability of gas would argue for a lower capacity transmission system.

Our principal discussions on these issues with Alaska State officials took place in early February, 1978, before the Canadian Government's decision to utilize the 56-inch, 1080-psig system for the Whitehorse-to-James River segment. Prior to that decision, some consideration was given to a very high pressure (2150 psig) system proposed by Exxon in order to eliminate the need for any gas processing and conditioning facility at the producing area on the North Slope. Moving the processing and conditioning facility to somewhere south of Prudhoe Bay was suggested so as to locate it where costs were less than at Prudhoe Bay. Colocation of such a facility with a petrochemicals manufacturing facility was thought possibly to yield some economies of scale for construction of both. As the State's economic analysis of petrochemicals development was observed to be very sensitive to feedstock costs, we thought that any colocation economies might improve the State's prospects for petrochemicals development. Because of this interest, we discussed the possibility of moving the processing and conditioning facility away from the North Slope with representatives of the North Slope producing companies. These discussions are summarized below.

Alaska observed that a 1400-psig or 1680-psig system can carry a higher percentage of the butanes in the gas phase than a 1260-psig system, other things being equal. Butanes raise the Btu value and, thus, the heating value of the gas. With respect to the disposition of the butanes through the oil pipeline, Alaska noted that California air quality regulations restricting the vapor pressure of crude oil could limit the butane content of crude oil. Because of the potential for air pollution, the vapor pressure of all crude oil entering California must be held to a very low level unless vapor recovery systems are installed for oil storage facilities. Injecting butane into the North Slope crude oil has the effect of increasing its vapor pressure at any given temperature. Keeping the vapor pressure down after butane injection requires cooling the oil which, in turn, could cause wax formation problems in the oil pipeline.

2. *Standard Oil of Ohio (Sohio).* Sohio believes that the maximum operating pressure should be 1260 psig.

At the time of our discussions with Sohio (March 15, 1978), the Canadian Government had made its decision to utilize the 56-inch, 1080-psig system for the Whitehorse-to-James River segment. Due to the hydrocarbon dew point characteristics of the gas stream at those operating conditions, the Canadian decision imposed a requirement for some NGL's removal prior to introduction of the raw gas stream into that Canadian portion of the system. The requirement for some processing and conditioning north of Whitehorse limits the question of where all processing and conditioning should take place.

The Sohio representatives maintained that, although construction costs on the North Slope are high, they are probably lower there than anywhere in inland Alaska, and probably also lower than anywhere in the Yukon Territory. The difference is that coastal locations can be served by barges transporting any large facility in modules, whereas an inland location requires transporting much smaller components with a concomitant requirement for much more extensive onsite assembly.[17] According to Sohio, very large processing and conditioning facilities can be constructed and loaded onto barges in the lower-48 states, where complete fabrication facilities are available and assembly costs are much lower. Any inland Alaska or Yukon location would preclude the use of large modules and would require construction from components small enough to be loaded onto railroad cars or trucks for transportation to the inland location. Assembly of the small components would then have to be done in remote locations of Alaska or the Yukon. The difficulty of extensive assembly in remote locations makes inland locations less competitive with coastal locations. Sohio concluded that, because of the ability to make full use of economies of scale in designing the facility and modularizing it for transportation, the cost of facilities would probably be less for Prudhoe Bay or another coastal location than for any inland location.

Having concluded that Prudhoe Bay is the optimal location for any facility required to be located along the pipeline route north of Whitehorse, the next question was how much of the processing and conditioning should be done there. Except for the very high pressure (2150 psig) alternative proposed earlier by Exxon, transportation of the CO_2, which comprises about 12 percent by volume of the unconditioned gas, is not cost effective according to Sohio.[18] The savings in gas conditioning costs made possible by leaving the CO_2 in the gas is more than offset by the reduced transportation efficiency for the other components of the gas caused by the presence of the CO_2. As the very high pressure system (2150 psig) had been ruled out by the Canadian Government's decision for the Whitehorse-to-James River segment, CO_2 removal is required north of Whitehorse and consequently should be done at Prudhoe Bay.

Once the CO_2 is removed, the ability of the gas stream to transport NGL's is reduced. Thus, operating the gas pipeline system without condensation would require some NGL's removal as a consequence of the decision to remove the CO_2, regardless of whether the 1260 psig or one of the higher pressure alternatives is utilized. The difference between the required processing and conditioning for the 1260 psig and 1680 psig alternatives is in the degree of NGL's removal. The requirement for the 1440 psig system is between those of the 1260 psig and the 1680 psig systems.

The advantages of modular construction suggest that, since some processing is required on the North Slope, it is most cost-effective to do all of it there. The CO_2 produced in the course of conditioning the gas may be able to be utilized in combination with extracted NGL's as a low-Btu fuel to power field production operations, processing and conditioning plant operations, or perhaps pumping or compressor stations.[19]

The Sohio representatives saw little to be gained by increasing the operating pressure of the gas pipeline to 1680 psig. They saw no major processing and conditioning savings projected for the 1680-psig system, but additional compression costs would be substantial. Although it is possible that compression

[17] Modular construction not only allows assembly of a facility at a location where costs are lower, but also allows the use of very large processing vessels, enabling realization of considerable economies of scale in facility design and operation. The Parsons study provides some further discussion of the benefits of modular construction.

[18] In its comments on the draft report Alaska argued that it is cost effective to leave at least 3 percent of the CO_2 in the gas stream. A 3 percent standard, according to Alaska, would save 10 percent of the capital costs of the conditioning plant and could result in a reduction of the cost of service to the consumer by noticeable amounts. See also Notice of Proposed Rulemaking and Statement of Policy, Docket No. RM79-19, issued February 2, 1979, wherein the Commission proposes a policy by which producers shall bear the costs of conditioning facilities, rather than consumers.

[19] This possibility is developed in some detail in the Parsons study.

facilities other than those currently used as part of oil production would not be required for operations at 1260 psig,[20] additional compression capacity would have to be installed to attain the higher pressure, and operating costs would be significantly increased.

On the other hand, the Sohio representatives felt that the 1260-psig gas pipeline design, plus slight alterations to the oil pipeline, if required, were the most cost-effective solutions to the problem of moving the NGL's. The pentanes and heavier hydrocarbons could be moved through the oil pipeline essentially without alterations; the propanes and lighter hydrocarbons would go through the gas pipeline at 1260 psig. Sohio maintained that between 62 and 75 percent of the butane could be moved through the gas pipeline with the 1260-psig design.[21] Cooling the oil line would be the only alteration required to move the rest of the butane.

Some cooling of the oil line is expected to be required when its throughput capacity is increased from 1.2 million to 1.5 million barrels per day. Sohio argued that the relatively small additional capital investment for additional cooling to allow transporting butanes, plus the very low operating cost of the cooling facilities, would make transportation through the oil line the more cost-effective solution for the remaining butane, particularly when compared to the high investment and operating cost for extra compression to 1680 psig. The extra cooling required to accomodate the butane would be less costly if installed at the time of the increase in oil line throughput capacity.

3. *Atlantic Richfield Company (ARCO).* Arco representatives confirmed what we had heard from Sohio regarding the possibility of moving some or all of the required gas processing facilities away from Prudhoe Bay. It was their view that the decision in Canada to use larger diameter pipe for the Whitehorse-to-James River segment precluded the use of the very high pressure alternative, for which the North Slope processing and conditioning facilities could have been eliminated. Thus, moving any of the required processing and conditioning steps south of Prudhoe Bay would result in some duplication of facilities, as removal of both CO_2 and most NGL's would be required somewhere north of Whitehorse. Arco representatives also concurred with Sohio's judgment that the savings available through modular construction would overwhelm any potential savings in moving facilities to inland locations with slightly more hospitable climates. Their estimate was that construction costs in Fairbanks or Haines, Alaska, would be as much as 50 percent higher than those at the North Slope because of the impact of modular construction.

The Arco representatives were concerned about the ability to dispose of the produced butanes if the lower pressure gas pipeline system were utilized. Their concerns were in the following three areas:

(1) Crude oil vapor pressure limitations in California. (See p. 8 *Supra.*)

(2) The west coast market for petroleum products cannot use additional large quantities of butane.

(3) In considering use of a blend of CO_2 and NGL for field fuel, the Arco representatives suggested that propane was a much better blending stock for the CO_2 than butane. Extremely close Btu control is required for efficient turbine operation, and Arco technical personnel expressed concern over possible problems with condensation in fuel lines and burner orifices if butane were to be used.[22]

The Arco representatives also had some different figures on the ability of the alternative gas pipeline systems to carry butane. Their figures showed the 1260-psig system would carry 25 to 60 percent of the available butane, while the 1680-psig system would carry 50 to 98 percent of the available butane.[23]

We asked some questions about alternative investment costs under different possible gasline system configurations. The figures we received suggested that a reduction in system operating pressure from 1680 psig to 1260 psig would require an additional investment on the order of $100 million (in 1978 dollars), consisting of $30 million in increased processing and conditioning facilities, and $37 to $75 million for some combination of cooling for the oil pipeline, modifications to field fuel facilities, and reinjection facilities if required.[24]

Arco argued in its comments on the draft of this report that the increased natural gas liquid carrying capability of the higher pressure systems would benefit the consumer. Arco argued that even if the transportation costs are lower for a pipeline with a 48 inch diameter which operates at a maximum pressure of 1260 psig and which transports 2 bcfd of gas, a pipeline operating at a maximum pressure of 1440 psig would carry more butanes which would have the dual benefit of providing more Btu's to the gas consumer and reducing the volumes of butanes which would have to be disposed of less economically. Use of butane as a field fuel on the other hand, would require expensive conversion of existing fuel equipment; reservoir injection of liquid butanes could result in the ultimate loss of a significant quantity of these liquids; and transporting butane in the oil pipeline would require cooling the crude oil. Moreover, Arco argued that as long as the oil pipeline is operating at capacity, the transportation of butanes would require a reduction of crude oil shipments or an expansion of the capacity of the oil pipeline.

4. *Exxon.* Exxon has argued that the pipeleine should have a maximum operating pressure of at least 1680 psig. Exxon representatives concurred with the opinions of the other two producers that an inland location for any processing and conditioning facility would likely be more costly than locating it at Prudhoe Bay. They also confirmed that the constraint on the butane content of the crude oil is the restriction on crude oil vapor pressure for reasons of air pollution control in southern California.

Representatives of Exxon were involved in the testing associated with the evaluation of safety and design aspects of alternative pipeline system designs which was carried out by the Arctic Gas Study Group. They suggested

[20] Both Arco and Sohio pointed out in comments on this report in draft form that the raw gas compression facilities currently being utilized as part of oil production operations may continue to be required to maintain oil production even after gas sales commence. Thus, the availability of existing compression equipment for service in connection with gas sales is not assured.

[21] At the sales gas composition contemplated by the Parsons study, this proportion is even higher. See the discussion below of certain results of the Parsons study.

[22] In fact, the Parsons study concludes that propane injection into the fuel gas mixture is the optimal solution for Btu control of that stream. The sales gas mixture projected by Parsons has more capacity to transport butane than assumed by Arco, however, because of the reduced amount of propane required to be transported.

[23] See the discussion below of the Parsons study for further information on the NGL's carrying capacity of the sales gas stream.

[24] In comments on my draft report, Sohio noted that Arco's $100 million figure must not have taken into account the reduced requirement for investment in sales boost compression facilities if the lower pressure gas pipeline system were utilized. Sohio's comments state:

"The net differential investment which would be required in the gas conditioning facilities and in various Prudhoe Bay field facilities to be compatible with a 1260 psig pipeline system is expected to add considerably less than the $100 MM (in 1978 dollars) estimated by ARCO, even when all butanes recovered are transported in the TAPS line in preference to blending them with the sales gas. Operating costs of oil coolers are also expected to be less than those related to additional gas compression. Sohio's Comments, page 2, October 27, 1978."

to us that there was little real safety difference between the 1260-psig and 1680-psig systems. The real safety question from their perspective is the proximity of either system to the oil pipline. The principal safety issue is what would happen to the oil pipeline in the event of a natural gas explosion and fire.

Exxon's concern in the comparison between 1260-psig and 1680-psig systems was the cost-of-service advantage of the higher pressure system. They had previously advocated a very high pressure (2150 psig) system to increase the cost-of-service advantage even further.

In our discussion with them, they emphasized the highly prospective nature of the Beaufort Sea area and its potential for discovery of additional gas reserves. They favor higher pressure generally because it will result in a more fuel-efficient system at all levels of throughput, and will have a higher throughput capacity with a lower cost-of-service at higher throughput volumes.

5. *Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest).* Alaskan Northwest is opposed to a pipeline with a maximum allowable operating pressure of either 1440 or 1680-psig. A major source of concern is its belief that a delay of up to 2 years could result from choosing a higher pressure system due to a need for extensive testing of the various components of such a system. The testing program required would include burst tests, test of crack arrestor designs, testing programs to validate valve designs, and lead times associated with high pressure compressor development. A delay of up to 2 years was estimated by the project sponsors to result in additional carrying charges of up to $1 billion.

Alaskan Northwest also shows a cost of service advantage for the lower pressure system at the throughput volumes they expect. The 1680-psig system does not become superior in performance until the throughput rate passes 3.6 bcfd according to its figures. In its recent application,[25] Alaskan Northwest maintained that the point at which the 48-inch, 1260-psig system is equivalent in cost-of-service to the 48-inch, 1440-psig system is approximately 3.3 bcfd. Thus, the company concludes that the proposed system is the best economic selection up to a volume of approximately 3.3 bcfd prior to any consideration of potential delays. In its petition, Alaskan Northwest, citing findings in the *Decision* and the FPC *Recommendation to the President,* argues that 2.0–2.5 bcfd of gas will initially be available to the system and that the system should be capable of expansion by 1.0 to 1.5 bcfd, to an ultimate system capacity in the range of 3.0 to 4.0 bcfd. In the application, Alaskan Northwest suggests that Alaska's interest in the development of a petrochemical industry should not dictate a decision in favor of a higher pressure line. Alaskan Northwest argues that the primary raw material for such a plant is ethane and that a 1260-psig system can transport all the ethane that could be available from Prudhoe Bay almost irrespective of the final configuration of any processing and conditioning plant, and therefore does not offer any impediment to the State's plans.

Alaskan Northwest maintains that the oil pipeline represents the most cost-effective way to move any available quantities of excess butane. Although an investment of up to $100 million (in 1978 dollars) could be required for additional processing and conditioning plant investment and cooling, fuel conversion or reinjection facilities, relative to what would be required for the 1260-psig system, a 1680-psig pipeline system would require $237 million more capital investment (expressed in 1975 dollars) than the 1260-psig system.

Alaskan Northwest also maintains that there is plenty of room in the California market for additional butane. Its figures show that California refineries produced about 100,000 barrels per day of butane in 1975. The extra butane left on the North Slope after that which can be transported in the 1260-psig gas pipeline system would be something less than 22,000 barrels per day at a gas sales rate of 2.0 bcfd depending on the components of the sales gas stream,[26] before any allowance for field fuel uses.

Another concern expressed by the project sponsors is the additional safety hazard associated with a higher pressure system. Higher pressure causes higher potential energy to be stored in the pipe, resulting in increased likelihood of damage to the oil pipeline in the event of a gas pipeline rupture. The project sponsors maintain that crack arrestors will be required for the 1440-psig or 1680-psig system, whereas they may not be required for the 1260-psig system.

The project sponsors are also concerned about the vulnerability of the higher pressure system to cost overruns. Their submissions includes a risk analysis of various factors which are likely to cause additional cost overruns with the higher pressure system. They feel that the risk of cost overrun is greatly reduced by staying closer to existing and proven lower-48 states pipeline technology.

Finally, Alaskan Northwest reacted negatively to my proposal discussed at the conference to build a pipeline which would operate initially at a pressure of 1260 psig but whose operating pressure could be increased to 1440-psig if there were an increase in gas volumes available for transporting. It argued that a pipeline should be operated at its maximum design pressure. It also noted that delay would be caused by the need to test such a system.

6. *The U.S. Department of Transportation.* Noting that it is a basic tenet of transportation system planning that a system should be designed to accommodate future growth, the Department of Transportation (DOT) argued that all the technical and economic data appear to them to support building a 1680-psig system. Moreover, the availability of capacity resulting from the construction of a 1680-psig system would encourage development and exploration in the total North Slope area. Citing a February, 1978 Technical Study Group evaluation of the 1680-psig system,[27] DOT argued the system could be built and operated safely and reliably.

As noted above, a proposal was considered at the conference to build a pipeline the operating pressure for which would initially be 1260 psig and would be capable of expansion to 1440 psig if there were an increase in gas volumes available for throughput. The concept was to alter the compressors and the spacing of the compressor stations in order not to foreclose the possibility of increasing the operating pressure later on. DOT indicated that its safety regulations required a thicker pipe wall for a pipeline operating at 1440 psig than for a pipeline operating at 1260

[25] "Application of Alaskan Northwest Natural Gas Transportation Company for an Order Approving the Design Specifications and Initial System Capacity of the Alaskan Segment of the Alaska Highway Pipeline." *op. cit.*

[26] The extra butane would be only about 4500 barrels per day at the sales composition projected by the Parsons study. See the discussion of the results of that study presented below. The Parsons study notes that the capacity of the system to transport butane could be increased by leaving more CO_2 in the sales gas, and recommends further study of the most cost-effective sales gas composition.

[27] "U.S. Government Safety and Reliability Evaluation of Different Pipe Size and Pressure Combinations for Alaska Gas Pipeline" attached to February 13, 1978, letter from Don S. Smith, Vice-Chairman of the FERC, to J. G. Stabback, Chairman of the National Energy Board of Canada, transmitting the U.S. Government's views regarding pipe size selection for the Whitehorse-to-James River segment.

psig, and that it would be reluctant to waive these regulations where the pipeline was built along the Alyeska haul road. A substantial portion of the pipeline in Alaska will be built along the haul road.

III. Results of the Parsons Study

The Parsons study was undertaken by a group of gas producing and transmission companies [28] in order to develop a preliminary design for the facilities necessary to process and condition gas produced from the Prudhoe Bay Unit for transportation through the ANGTS. The principal tasks performed in the course of the study were:

Screening the processes available and selecting processes to recommend for CO_2 removal and hydrocarbon dewpoint control, respectively, and

Developing a process design for processing and conditioning the gas to meet an assumed set of pipeline delivery conditions and quantity and quality specifications.

The study represents a careful evaluation by a consultant to a group composed of both producers and transporters of the optimal distribution of the components of the raw gas stream, for conditions as they currently exist or are expected to exist, among field and process fuel uses on the one hand, and the sales gas stream on the other. The relevance of the study to this inquiry is in the study's indicated resolutions of questions regarding the optimal allocation of the NGL's and the impact of those resolutions on the requirement to transport NGL's away from the North Slope.The study team concluded that a physical solvent process is best for CO_2 removal. A characteristic of physical solvent processes is absorption of a significant quantity of hydrocarbons along with the CO_2. Much of the heavier hydrocarbon content is liquefied during the solvent regeneration process, and can thus be recovered. Significant amounts of ethane and propane remain in a gaseous phase, however, mixed with the extracted CO_2.

Because of its hydrocarbon content, the waste stream from the CO_2 removal process has useable fuel value. The study recommends that this CO_2/hydrocarbons mixture be used as fuel for the processing and conditioning facility itself. Any excess of this mixture over the requirements of the conditioning facility would be utilized in the other facilities at the Prudhoe Bay Unit after appropriate blending with other fuels (particularly propane) for heating value control.

Gas delivery and quality specifications assumed for purposes of the study were:

Delivery volume (nominal), 2.0 bcf.
Delivery Pressure, 1440 psig.
Delivery Temperature (max.), 25°F.
CO_2 content (max.), 1.0 Volume percent.
H_2S content (max.), 1.0 grain/100 SCF.
Hydrocarbon Dewpoint (max.), −10°F at 1,100 psia.
Water dewpoint (max.)., −35°F at 1,100 psia.

These specifications are similar to those which were part of the Alcan filing of March 8, 1977, except for the delivery pressure. The 1260 psig delivery pressure in that filing requires a more stringent hydrocarbon dewpoint standard, −10°F at 1,000 psia.

The results of the Parsons study with respect to allocation of recovered NGL's between fuel uses and addition to the sales gas stream is given in the following table, taken from the study itself:

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[28] Amerada Hess Corporation, Atlantic Richfield, Exxon Company U.S.A., Getty Oil Company, Mobil Oil Corporation, Natural Gas Corporation of California, Northern Natural Gas Company, Northwest Pipeline Corporation, Pacific Interstate Transmission Company (Arctic), Panhandle Eastern Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Pipeline Corporation, United Gas Pipeline Company.

	Propane	Butanes		Pentanes-plus
Net Extracted				
BPD	52,350	31,290		28,700
MMSCFD (1)	80.3	41.3		--
Disposition		Min.	Max.	
To Pipeline Gas				
BPD	24,270	-0-	30,602	-0-
MMSCFD (1)	37.2	-0-	40.4	-0-
To Fuel Gas Systems				
BPD	28,080	-0-	-0-	-0-
MMSCFD (1)	43.1	-0-	-0-	-0-
To Crude				
BPD	-0-	688	31,290	28,700

(1) Standard conditions - 14.5 psia and 60°F.
MMSCFD = million standard cubic feet per day.

Source: Table 6-3 from Volume I, p. 6-4.

When combined with the NGL's not recovered from the gas mixture produced by the CO_2 removal process, the total allocation of NGL's between fuel uses and sales gas is estimated as follows:

Input	(Billion Btu per day)	Sales Gas	Sales Liquids	Sales Total	Field Fuel	Fuel Use as percent of Input
C1	2101.7	1909.0	0	1909.0	192.7	9.2
C2	323.1	163.3	0	163.3	159.8	49.5
C3	249.2	91.4	0	91.4	157.8	63.3
C4	156.2	136.1	9.5	145.6	10.6	6.8
C5-plus	125.4	5.0	119.9	124.9	0.5	0.4
	2955.6	2304.8	129.4	2434.2	521.4	17.6

Source: AGPO estimate from material balances in Parsons study

As can be seen from the table reproduced from the study, the sales gas stream will accommodate almost 98 percent of the recovered butane under the conditions assumed for the study. References to figure 2-1 from volume II of the study, reproduced on the next page, indicates that the 1260-psig system will accommodate 86 percent of the recovered butane, leaving only about 4500 barrels per day of butane for reinjection or transmission through the oil pipeline.

In a section entitled "Future Design Considerations" (Volume I, Section 12), the study recommended that the cost impact of possible alternative specifications for CO_2 content and gas pipeline pressure be evaluated for the overall conditioning and gas transmission system. The study observed that a higher allowable CO_2 content of the delivered gas will have a "significant" impact on the facilities costs. The State of Alaska has estimated that relaxing the CO_2 standard from 1 percent to 3 percent would save 10 percent of the capital costs of the conditioning plant (see footnote 18, supra.). Our reading of the Parsons study would confirm this estimate.

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Case	Base (Max. Field Fuel)				Alt. (Min. Field Fuel)			
D.P. Curve	1	2	3	4	5	6	7	8
DeC_3 Ovhd, M/H	4075	4075	4075	4075	5475	5475	5475	5475
DeC_4 Ovhd, M/H	0	2259	3388	4517	0	2115	3173	4231
DeC_4 Ovhd, %	0	50	75	100	0	50	75	100

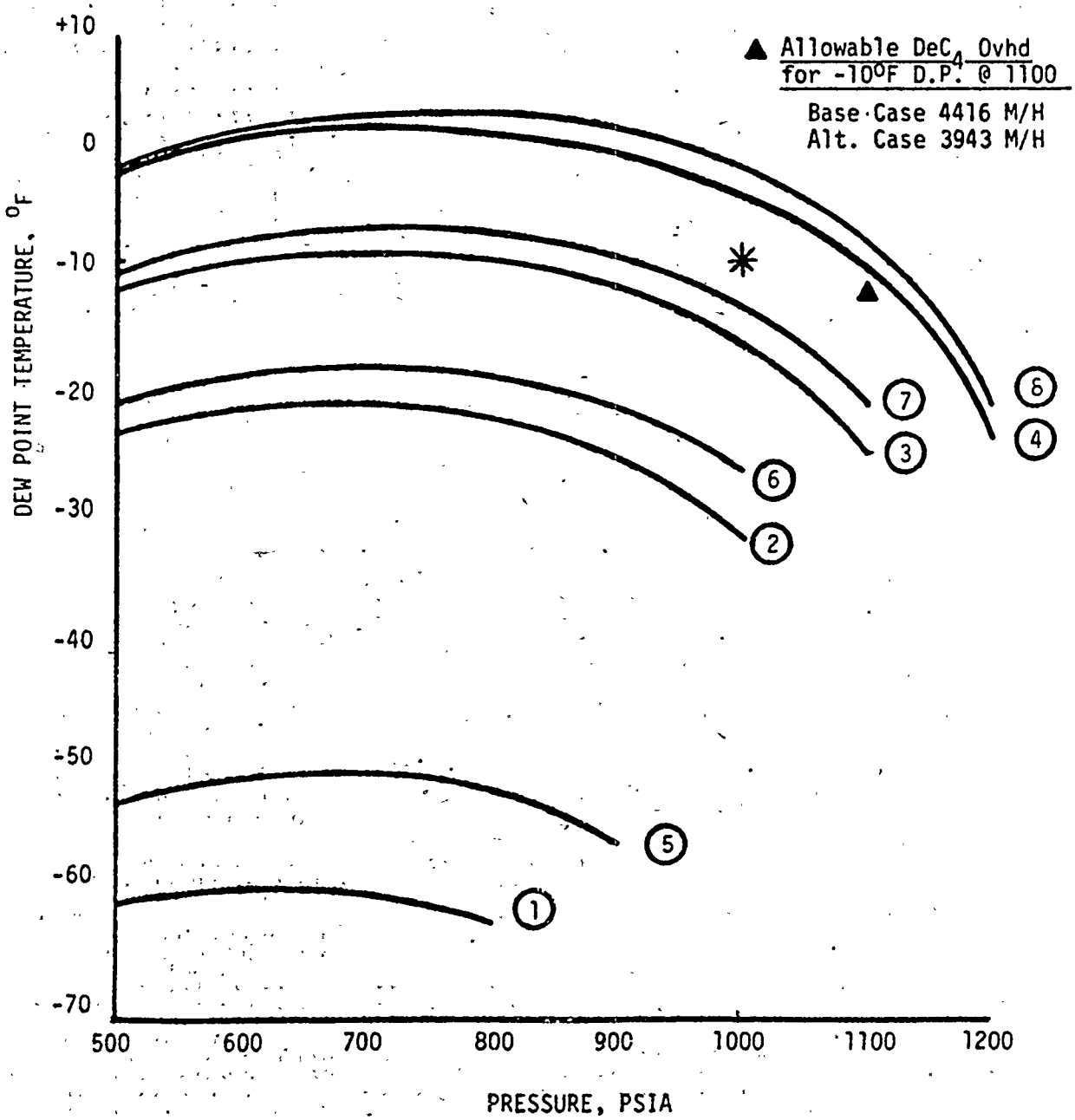

FIGURE 2-1

2-95

✳ - 10°F dewpoint at 1000 psia

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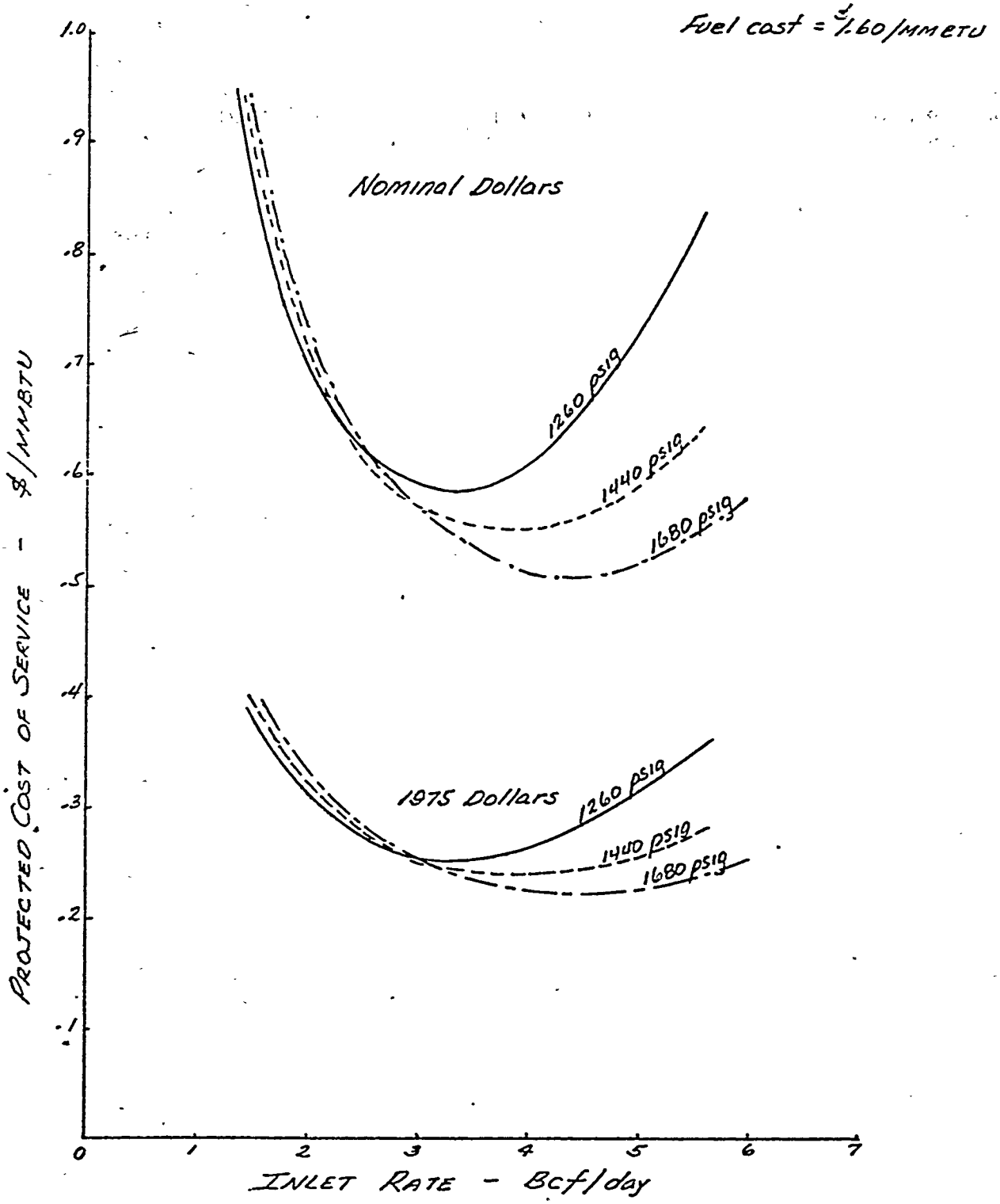
Fuel cost = $1.60/MMBTU
Nominal Dollars
1260 psig
1440 psig
1680 psig
1975 Dollars
1260 psig
1440 psig
1680 psig
PROJECTED COST OF SERVICE - $/MMBTU
INLET RATE - Bcf/day
1.0
.9
.8
.7
.6
.5
.4
.3
.2
.1
0
1
2
3
4
5
6
7

TABLE 1

PROJECTED COST OF SERVICE,

$/MMBTU

Fuel Cost, $/MMBtu	$1.00			$1.60			$2.62		
Pressure, psig	1260	1440	1680	1260	1440	1680	1260	1440	1680
PRUDHOE BAY TO ALASKA-CANADIAN BORDER (Including only the additional processing and conditioning costs required at lower-pressure)									
(1) Nominal Dollars									
Throughput, bcfd									
1.6	.792	.818	.844	.825	.849	.874	.881	.902	.924
2.4	.590	.591	.611	.631	.627	.646	.700	.689	.705
3.2	.531	.515	.510	.589	.563	.552	.687	.645	.623
4.0	.530	.491	.462	.610	.554	.514	.746	.662	.602
4.8	.593	.497	.449	.703	.580	.513	.891	.721	.621
5.6	.693	.544	.474	.843	.650	.553	1.097	.830	.687
(2) 1975 Dollars									
Throughput, bcfd									
1.6	.354	.367	.379	.367	.379	.390	.389	.399	.410
2.4	.262	.263	.273	.278	.277	.286	.305	.302	.309
3.2	.234	.228	.226	.257	.247	.243	.295	.279	.271
4.0	.232	.216	.203	.263	.240	.224	.316	.282	.258
4.8	.257	.216	.197	.300	.249	.222	.373	.304	.264
5.6	.299	.235	.207	.357	.277	.237	.476	.347	.290
PRUDHOE BAY TO WHITEHORSE, YUKON, CANADA (Including only the additional processing and conditioning costs required at lower pressure)									
(3) Nominal Dollars									
Throughput, bcfd									
1.6	.973	.997	1.034	1.009	1.029	1.065	1.071	1.085	1.118
2.4	.726	.727	.741	.774	.768	.779	.855	.838	.842
3.2	.637	.634	.625	.696	.691	.672	.797	.787	.753
4.0	.681	.620	.573	.782	.700	.635	.953	.834	.740
4.8	.765	.659	.567	.910	.767	.644	1.157	.952	.777
5.6	.909	.708	.615	1.109	.847	.716	1.448	1.083	.888
(4) 1975 Dollars									
Throughput, bcfd									
1.6	.436	.448	.465	.451	.460	.477	.475	.482	.498
2.4	.323	.325	.332	.342	.341	.346	.374	.368	.371
3.2	.282	.281	.278	.305	.303	.296	.345	.341	.328
4.0	.298	.273	.253	.337	.304	.277	.404	.356	.318
4.8	.331	.287	.249	.388	.330	.279	.484	.401	.331
5.6	.392	.307	.268	.469	.361	.308	.601	.453	.375

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IV. Alaska Gas Project Office Analysis of Alternative Systems

The staff of the Alaska Gas Project Office prepared independent estimates of the capital costs and cost-of-service for the higher pressure systems for comparison with those submitted by Alaskan Northwest. Our results are plotted in figure 1 for a fuel cost of $1.60 (1975 dollars) per million British thermal units (mmBtu). Table 1 presents cost-of-service calculations for fuel prices of $1.00, $1.60 and $2.62 per mmBtu. The computed costs-of-service reflect the different heating values of the gas mixtures which would be transported at the different operating pressures.[29]

As can be seen on figure 1, higher throughput volumes favor one of the higher pressure alternatives. Likewise, table 1 shows that higher fuel costs reduce the threshold throughput rates at which the higher pressure systems have lower costs-of-service than the lower pressure alternatives.

Our method for preparing the capital cost estimates on which the cost-of-service estimates are based was to start with Alaskan Northwest's March 1977 estimates and adjust those estimates for the cost items which would change as a result of utilizing heavier pipe and higher operating pressures. This is essentially the same method utilized by Alaskan Northwest in preparing its capital cost estimates for the alternative systems. The explanatory material at the end of this section presents our capital cost estimates along with a discussion of how they were determined.

Table 2 presents a comparison of our constant-dollar capital cost estimates (excluding compression) for the 1260-psig and 1680-psig systems with Alaskan Northwest's.[30] As the table indicates, the largest difference in the constant dollar capital cost estimates for the 1680-psig system is only about 2 percent of the total estimate. Thus, the two sets of capital cost estimates must be considered very close.

Figure 2 is a plot of the cost-of-service for the 1260–psig and 1680–psig systems utilizing Alaskan Northwest's capital cost estimates, rather than ours. For a fuel cost of $1.60 per mmBtu, us of their capital cost estimates moves the nominal-dollar threshold for crossing over from the 1260 psig to the 1680 psig as the least-cost system to 2.9 bcfd from our 2.65 bcfd. In constant dollars, the respective crossover points are closer, both being just under 3.0 bcfd.

Alaskan Northwest has expressed considerable concern over the possibility of delay inherent in a decision to utilize a higher pressure system. Alaskan Northwest has stated that a decision to utilize a higher pressure system would likely result in a delay of 2 years, resulting in an increase in nominal dollar capital costs of at least $1 billion.

U.S. Government technical experts considered this problem when the Canadian Government solicited our comments as input to its decision on pipe size for the Whitehorse-to-James River segment. At that time our experts concluded that some delay for requisite safety and reliability testing was possible, but could likely be avoided. Their conclusion was:

> We are in agreement that testing all three, or even two, pipe designs will delay completion of construction, perhaps for as long as the two years which the Canadians have predicted. Selection of any one of the size and pressure combinations to the exclusion of all others now or within the near future will permit the pipeline applicants to conduct burst test verification and initiate purchase of the pipe earlier in order to complete the pipeline within the time frame described in the U.S./Canadian agreement.[31]

That report went on to say that, although our experts believe that a confirmatory testing program could be designed for the higher pressure alternative which would have very little likelihood of failure, there was more risk of failure for a higher pressure alternative than for a lower pressure one. Specifically, the experts said:

> We recognize that the possibility of delays associated with testing of the 48-inch 1680 psig pipe may be slightly greater because of the higher pressure.[32]

The impact of delay, as well as the impact of a possibly higher tendency toward cost overrun for the higher pressure systems, is illustrated in figure 3. For a nominal dollar case, we have plotted the cost-of-service for a 1680-psig system with capital costs $1 billion higher than anticipated.[33]

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[29] The assumed heating value of the gas stream for these calculations was 1135 Btu/cubic foot at 1260 psig, 1146 Btu/cubic foot at 1440 psig, and 1154 Btu/cubic foot at 1680 psig. These values differ from those subsequently arrived at in the Parsons study, and would tend to make our cost-of-service calculations lower than they would be if we had used heating values closer to Parsons'.

The comparisons shown on Figures 1, 2 and 3 in Tables 1, 2 and 3 include differences in gas conditioning plant costs for different pressure systems. Including such differences provides a more precise economic comparison of the various systems. The comparisons shown, however, may not represent true cost differences from the point of view of consumers since the cost of gas conditioning may be borne by the gas producers rather than the consumers. (See the Commission's Notice of Proposed Rulemaking in RM79–19, February 2, 1979.) However, as shown in Table 3, such differences in estimated gas conditioning costs resulting from a change in pressure represent only a very small portion of total costs. The effect of eliminating gas conditioning cost differences would be to move the curves slightly closer together, but would not change any conclusions resulting from analysis of Figures 1, 2 and 3 Tables 1, 2 and 3.

[30] As show in table 2, we have reallocated some capital costs for the 1260-psig system among the cost categories, although our total capital costs are the same except for the extra costs of processing and conditioning. We have discussed this reallocation with Alaskan Northwest and they do not object.

[31] "U.S. Government Safety and Reliability Evaluation of Different Pipe Size and Pressure Combinations for Alaska Gas Pipeline," *Op. Cit.*, Executive Summary, pp. 1–2.

[32] *Ibid.*, p. 5. In comments on the draft of this report, DOT added, "Realistically, the expected 'failure' that could occur relates to the effectiveness of pipe toughness alone to stop ductile fractures. The alternative simply is to add mechanical crack arrestors or rerun the tests with tougher pipe. The latter may mean a 3–6 month delay at worst." (October 26, 1978, Comments, p. 2)

[33] The choice of $1 billion as additional capital cost due to either delay or cost overrun is purely illustrative. Use of this example is not meant to imply that choice of the 1680 psig system would result in a $1 billion cost overrun. We do not now know whether choice of the 1680-psig system would result in any greater cost overruns than for the 1260-psig system.

TABLE 2

COMPARISON OF PIPELINE COST ESTIMATES
1975 Base Costs - $ Millions

	1260 PSIG		1680 PSIG		Difference	
	NAP	FERC	NAP	FERC	NAP	FERC
Changeable Costs						
Pipe cost - delivered	529.1	475.4	704.1	650.4	175.0	175.0
Welding	21.5	25.4	41.6	36.1	20.1	10.7
Double Jointing	14.1	9.7	26.9	13.7	12.8	4.0
Weights	25.1	25.1	18.8	18.8	-6.3	-6.3
VFF, Installed	24.7	24.7	39.4	34.6	14.7	9.9
Bending	4.8	4.8	6.5	6.5	1.7	1.7
Short tie-ins	3.9	3.9	5.4	5.4	1.5	1.5
Tie-ins	9.5	9.5	18.5	14.2	9.0	4.7
Set Up and Alignment	20.3	20.3	28.0	28.0	7.7	7.7
Special Construction	7.3	7.3	9.6	9.6	2.3	2.3
Crack Arrestors	0	0	12.7	12.7	12.7	12.7
Add'l Side booms, labor	—	—	37.5	10.0	37.5	10.0
Add'l fuel	—	—	5.7	2.0	5.7	2.0
Add'l testing	—	—	10.0	10.0	10.0	10.0
River Crossings	13.0	—*	17.3	—*	4.3	0
	673.3	606.1	982.0	852.0	308.7	245.9
Add'l Prudhoe Bay Processing	0	30.0	0	0	0	-30.0
Other Costs (non-variable)**	991.2	1180.7	991.2	1180.7	0	0
E & S Contingency	183.3	60.6**	193.0	85.2***	9.7	24.6
Total Pipeline Capital Costs (excluding compression)	1847.8	1877.4	2166.2	2117.9	318.4	240.5

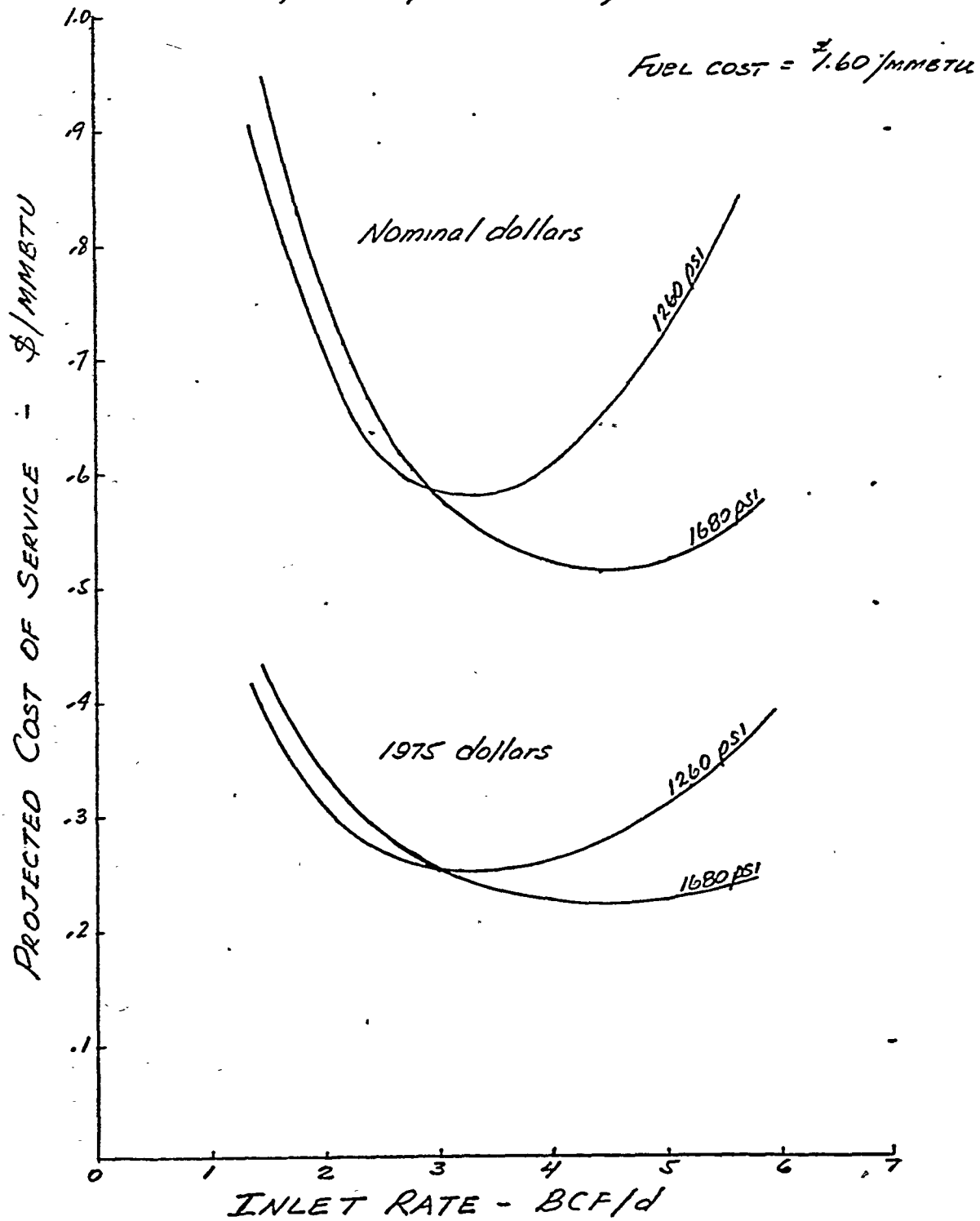
* No change in cost assumed - included in other costs
** Derived from subtracting changeable costs from total.
*** Amount on changeable cost items only - add'l amounts included in other costs.

FIGURE 2

-29-

COST OF SERVICE - ALASKA

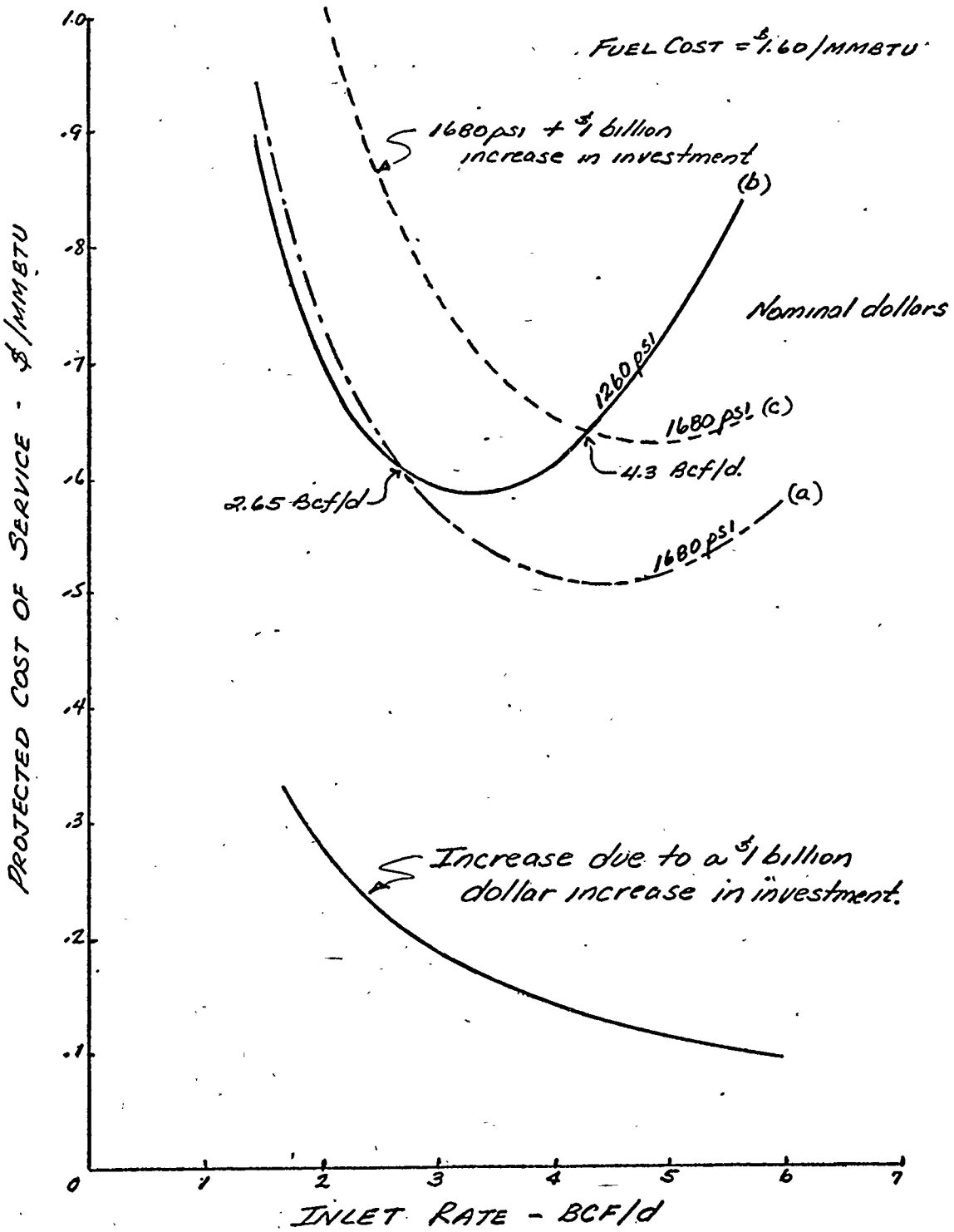
(Utilizing applicant's cost data except for compressor costs)



-31-

FIGURE 3

IMPACT OF AN INCREASE IN INVESTMENT UPON THE COST OF SERVICE



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As can be seen from figure 3, increased capital costs for the high-pressure systems relative to the low-pressure ones, whether due to time delays for testing or relatively higher cost overruns, would have the effect of moving upward the crossover point in throughput volume for going from the lower pressure system to a higher pressure one as the least-cost system. Our calculations show that the spread in unit cost of service, (constant 1975 dollars, fuel cost $1.60 per mmBtu) among the three systems amounts to less than 10 percent of the lowest one for throughput volumes up to about 3.5 bcfd. At higher throughput volumes, the cost of service plots for the three systems start to diverge more rapidly. Alaskan Northwest would put the throughput point at which the cost-of-service plots start to diverge closer to 4.0 bcfd.

The comparison of cost of service plots using our capital cost estimates with those using Alaskan Northwest's illustrates that small differences in assumptions or expectations about capital costs or other parameters can shift the crossover points noticeably.[34] Thus, I conclude that the precise crossover points are less significant for decisionmaking than the points where the cost-of-service plots start to diverge.

Our cost-of-service plot for the 1260-psig system includes the effect of the additional cost of the conditioning facilities to meet the pipeline quality specification at that pressure. This assumption provides an indication of the total system—pipeline plus conditioning facility—cost consequences of the 1260-psig decision. This difference partially explains the difference between our results and Alaskan Northwest's. Other likely sources of difference include:

Heating value of gas streams;

Computation of fuel use for compression and chilling; and

Our simplified cost-of-service computation methodology.

Explanation of Cost Differences for Various Size Systems

Table A–1 presents estimated investment cost for systems designed to operate at 1260, 1440 and 1680 psig.

Table A–2 summarizes the horsepower (hp) and fuel requirements for the three systems.

Methodology. Total capital costs for the 1260-psig base case system at a 2.4 bcfd throughput rate were taken from the capital cost data filed with the FPC by Alcan Pipeline Company in March 1977. Independent cost estimates were made for all items where costs should change materially as a result of utilizing heavier pipe with a greater wall thickness. These cost estimates are shown in table A–1. The estimated costs of all other (nonvariable) items were assumed to be equal to the difference between filed costs and the total cost of the variable items for the 1260 psig, 2.4 bcfd base case.

Compressor and fuel costs were calculated based upon computed requirements for the three systems for flow rates of 1.6, 2.4, 3.2, 4.0, 4.8 and 5.6 bcfd. An FERC computer model based upon American Gas Association (AGA) pipeline flow equations was used to determine compression and chilling hp and fuel requirements. The additional gas processing and conditioning plant costs relative to those for the 1680-psig system were added to the capital costs of the 1260-psig and 1440-psig systems as that difference could have been reflected in an increment to any gathering and conditioning allowance, if allowed by the Commission. Plant cost differences are based on cost differences included in the materials supplied by Arco, adjusted to 1975 dollars. All other capital costs are expressed in 1975 dollars.

As a result of the above methodology, total costs shown are expected to be only roughly correct. However, cost differences should be reasonably accurate.

Capital cost data from table A–1 and fuel requirements shown in table A–2 were used in an FERC cost-of-service model to compute an expected cost-of-service for each case. As noted above, cost-of-service differences should be more meaningful than cost-of-service values for individual cases.

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[34] A difference of $77.9 million in relative capital costs, which amounts to 4.2 percent of Alaskan Northwest's estimate for the 1260-psig system and a smaller proportion of the estimates for other systems, shifted the crossover point from 2.65 to 2.9 bcfd in the example given above.

TABLE A 1

PIPELINE CAPITAL COST ESTIMATES - FERC

All Costs in Millions of 1975 Dollars

1. Pipeline

		To Canadian Border			To Whitehorse, Yukon		
Pressure	PSIG	1260	1440	1680	1260	1440	1680
Length	Miles	731.4	731.4	731.4	1000	1000	1000
Weight of Pipe	M Tons	646	738	860	859	982	1145
Pipe Cost (Delivered)	MM $	475.4	550.3	650.4	640.9	741.9	876.5
Welding	MM $	25.4	30.1	36.1	34.7	41.0	49.0
Double Jointing	"	9.7	11.3	13.7	12.1	14.2	17.2
Weights	"	25.1	22.0	18.8	36.1	31.6	27.1
Valves, Fittings, Installation	"	24.7	29.6	34.6	33.7	40.5	47.3
Short tie-ins	"	3.9	4.6	5.4	5.3	6.3	7.4
Tie-ins	"	9.5	11.4	14.2	13.0	15.6	19.4
Set Up & Alignment	"	20.3	23.8	28.0	27.8	32.3	38.3
Special Construction	"	7.3	8.4	9.6	10.0	11.5	13.1
Bending	"	4.8	5.5	6.5	6.6	7.5	8.9
Crack Arrestors	"	0	12.7	12.7	0	17.4	17.4
Add'l Sidebooms, labor	"	0	5.0	10.0	0	6.8	13.7
Add'l Fuel	"	0	1.0	2.0	0	1.3	2.6
Test Programs-add'l	"	0	10.0	10.0	0	10.0	10.0
Subtotal		130.7	175.2	201.6	179.3	236.0	271.4
Add'l Contingencies, Engineering & Supervision	"	60.0	72.6	85.2	82.0	97.8	114.8
Subtotal-Variable Items	"	666.7	798.1	937.2	902.2	1075.7	1262.7
Other Costs		1180.7	1180.7	1180.7	1393.2	1393.2	1393.2
Subtotal-	MM $	1847.4*	1978.8	2117.9	2295.4**	2468.9	2655.9
Difference		--	131.4	270.5	--	173.5	360.5
North Slope Costs (Ex Compression) Processing Plant Additions	MM $	30.0	20.0	0	30	20	0
Subtotal (Ex Compression)	MM $	1877.4	1998.8	2117.9	2325.4	2488.9	2655.9

* From Alcan March 1977 filing (Total Cost - AFUDC - Compressor Costs)

** 49.5 percent of Foothills filed costed for the Yukon, minus compressor costs, plus Alaskan costs

TABLE A-1 (Continued)

PIPELINE CAPITAL COST ESTIMATES - VARIOUS SYSTEMS & THROUGHPUT RATES

2. Compression and Cooling

		Alaska			To Whitehorse, Yukon		
	PSIG	1260	1440	1680	1260	1440	1680
Compression & Cooling, Prudhoe Bay Inlet	1.6	16.0	24.0	24.0	16.0	24.0	24.0
	2.4	24.0	32.0	48.0	24.0	32.0	48.0
	3.2	48.0	72.0	80.0	48.0	72.0	80.0
	4.0	72.0	96.0	120.0	72.0	96.0	120.0
	4.8	96.0	120.0	152.0	96.0	120.0	152.0
	5.6	112.0	144.0	192.0	112.0	144.0	192.0
Compression & Cooling, Compressor Stations	1.6	80.0	60.0	40.0	120.0	80.0	60.0
	2.4	180.0	120.0	100.0	240.0	180.0	120.0
	3.2	354.0	260.0	189.0	472.0	354.0	260.0
	4.0	607.0	449.0	283.0	884.0	647.0	410.0
	4.8	1120.0	682.0	475.0	1467.0	1096.0	693.0
	5.6	1815.0	1155.0	840.0	2388.0	1581.0	1235.0
Engineering, Supervision and contingencies for compressor stations	1.6	9.6	8.4	6.4	13.6	10.4	8.4
	2.4	20.4	15.2	14.8	26.4	21.2	16.8
	3.2	40.2	33.2	26.9	52.0	42.6	34.0
	4.0	68.1	54.5	40.3	95.6	74.3	53.0
	4.8	116.2	80.2	62.7	156.3	121.6	84.5
	5.6	192.7	129.9	103.2	250.0	172.0	142.7
Add Pipeline Cost (Less compression and AFUDC)		1877.4	1998.8	2117.9	2325.4	2488.9	2655.9

3. Total Direct Capital Cost

(Less AFUDC but including Prudhoe Bay extra Processing & Compression)	1.6	1983.0	2091.2	2188.3	2475.0	2603.3	2748.3
	2.4	2101.8	2166.0	2280.7	2615.8	2722.1	2840.7
	3.2	2319.6	2364.0	2413.8	2897.4	2957.5	3029.9
	4.0	2624.5	2598.3	2561.2	3377.0	3306.2	3238.9
	4.8	3209.6	2881.0	2807.6	4044.7	3826.5	3585.4
	5.6	3997.1	3427.6	3253.1	5075.4	4386.4	4225.6

Table A-2
Calculated Power and Fuel Requirements
at Different Operating Pressures and Throughput Rates

Throughput rate, bcfd \ Operating Pressure, psig	1260 Compression	1260 Chilling	1260 Total	1440 Compression	1440 Chilling	1440 Total	1680 Compression	1680 Chilling	1680 Total
1. Prudhoe Bay Inlet									
Summer power requirements (in thousands of HP)									
1.6	64	18	81*	74	22	96	86	27	113
2.4	95	26	122	115	33	148	130	41	170
3.2	127	35	162	149	44	193	173	54	227
4.0	159	44	203	186	55	241	216	68	284
4.8	191	53	244	223	66	289	259	81	340
5.6	222	61	283	260	77	337	303	95	397
Average (summer and winter) Fuel requirements (in mmcfd)									
1.6			17.0			19.1			21.5
2.4			22.4			26.8			30.8
3.2			29.4			35.0			41.2
4.0			36.8			43.7			51.5
4.8			44.3			52.4			61.7
5.6			51.3			61.1			72.0
2. Prudhoe Bay to Canadian Border									
Summer power requirements (in thousands of HP)									
1.6	51	21	72	37	16	53	25	11	37
2.4	155	49	204	109	37	146	78	30	108
3.2	350	97	447	246	72	318	169	52	221
4.0	675	178	853	476	129	605	324	90	415
4.8	1158	297	1456	819	214	1033	557	147	704
5.6	1832	464	2296	1303	334	1637	882	227	1110
Average (summer and winter) Fuel requirements (in mmcfd)									
1.6			16.6			12.6			8.9
2.4			39.5			28.6			22.1
3.2			86.3			61.8			43.8
4.0			160.9			114.9			79.5
4.8			276.8			193.1			128.4
5.6			444.6			299.0			201.2
3. Prudhoe Bay to Whitehorse									
Summer power requirements (in thousands of HP)									
1.6	70	19	89	51	14	65	35	9	44
2.4	214	49	263	154	32	187	106	29	135
3.2	467	96	593	351	69	420	237	50	287
4.0	988	177	1165	703	125	828	473	85	557
4.8	1716	293	2008	1238	207	1446	821	145	966
5.6	2681	462	3143	1956	332	2287	1336	224	1560
Average (summer and winter) Fuel requirements (in mmcfd)									
1.6			20.0			14.4			10.0
2.4			50.2			35.6			26.0
3.2			109.4			78.2			54.5
4.0			212.7			151.8			103.1
4.8			369.6*			263.6			169.5
5.6			591.0			402.5			273.7

* Totals may not equal sum of parts due to rounding.

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Alaska Gas Project Office Capital Cost Estimates

Items for Which Differences in Pipe Weight and Operating Pressure Result in Minimal Differences in Cost

The following activities during pipeline construction were assumed to have the same cost (or only minor cost differences) regardless of the pipe's weight or pressure rating:

1. Right-of-way procurement.
2. Clearing and grading.
3. Workpad and access roads.
4. Ditching.
5. Pipe alignment.
6. Field storage of pipe and materials.
7. Coat and wrap pipe.
8. Pipe inspection.
9. Padding and backfill.
10. Cleanup.
11. Resod.
12. Metering equipment.
13. Automation and telecommunications.
14. River crossings.

In actual practice, increasing the operating pressure should result in only minor differences in actual engineering and supervision costs. However, since these items are frequently considered as add-on items and are usually expressed as a percentage of other items, they were treated as a variable cost in this report.

Items Where Differences in Pipe Weight and Operating Pressure Will Change Costs

Pipe Costs. Pipe costs were computed assuming a 1975 base mill price of $550 per ton for 0.6-inch wall thickness, internally coated pipe, plus the following charges:

1. $10/ton additional cost for 0.686-inch wall thickness pipe.
2. $20/ton additional cost for 0.80-inch wall thickness pipe.
3. $50/ton additional cost for increased pipe toughness.
4. $30/ton increased mill cost-Canadian pipe.
5. $20/ton Yukon tax.

To compute tonnage requirements for pipe it was assumed that the heavier wall thickness required in Class II and III construction locations would increase requirements by 10 percent compared to the tonnage required if the entire line was considered no Class I construction.

Pipe Transportation. It was assumed that the pipe would be shipped from the mill to delivery points in Alaska by intercoastal vessels. The following delivery costs were assumed.

Dollar per ton (1975)

Baytown, Texas, to Anchorage, Alaska	90
Baytown, Texas, to Prudhoe Bay, Alaska	140
Wellman, Ontario, to Skagway, Alaska	100

Pipe delivered to Anchorage (or Seward), Alaska, that will be further shipped to Fairbanks, Alaska, via the Alaska railroad, was assumed to incure an additional charge of $20 per ton. Rail charges from Skagway, Alaska, to Whitehorse, Yukon, were assumed to be $10 per ton.

It was assumed that the pipe would be strung from pipe storage points in Prudhoe Bay, Fairbanks, Anchorage (or Valdez), Alaska, and Whitehorse, Yukon. The following pipe stringing costs were assumed:

Stringing Costs, Dollar Per Ton (1975)

	Wall thickness, inches		
	0.6	0.686	0.80
From:			
Prudhoe Bay	21.60	19.80	24.30
Fairbanks—North	18.80	17.40	21.20
Fairbanks—East	15.10	14.20	17.00
Anchorage (Valdez)	15.10	14.20	17.00
Whitehorse	15.10	14.20	17.00

Higher costs were assumed north of the Yukon River. Stringing costs varied because of assumed truck weight limitations. For instance, it was assumed that only two double joints of 0.8-inch wall thickness pipe could be delivered per load compared to three double joints of 0.6-inch thickness pipe. The weight limitations assumed are probably conservative.

Welding. Alaskan Northwest has stated that increasing pipe weight and wall thickness reduces construction speed, due to increased welding requirements. They maintain that such reduced construction rate increases costs significantly more than just the increased welding costs, since a slower pace increases the cost of most construction activities. In contrast, others have stated that increasing wall thickness should not slow down construction.

Our knowledge of the welding procedure is that the stringer bead (the initial weld) is made by a stringer bead crew, which for 48-inch diameter pipe would likely consist of four welders. Upon finishing the stringer bead, the stringer bead crew moves forward to the next joint. Immediately following completion of the stringer bead, the hot pass bead is placed by the hot pass crew. Since the hot pass bead is applied at a slightly higher speed than the stringer bead, the hot pass crew usually has no trouble keeping up with the stringer crew. The filler and cap bead are made by separate crews. Normally, a filler and cap crew will stay with a weld until it is finished. Since more weld material must be placed by the filler and cap welders, there may be several filler and cap crews per stringer crew. When thicker wall pipe is welded, it is only necessary to add more filler and cap welders.

According to our understanding of the process, the only welding problem with thicker wall pipe is that 0.8-inch wall thickness pipe would add about 100,000 to 120,000 man-hours of additional welder time compared to that required for 0.6-inch wall thickness pipe. Assuming a 2-year construction period and 1600 man-hours per year per welder, this additional welding would require adding about 38 welders. There should be no changes in nondestructive testing requirements, and only minor increases in inspection and supervisory personnel.

Construction speed is determined by the speed of the stringer crew. Since the time to make the stringer pass is independent of wall thickness, welding speed, expressed as joints per day or miles per day, should not be a function of wall thickness. As a consequence, increasing the wall thickness of the pipe should not materially reduce construction speed.

Welding costs shown in table A-1 assume manual welding; automatic or semi-automatic machines could probably reduce costs and improve weld quality. Welding time is based upon a theoretical arc time assuming deposition of 0.8 pounds of weld material per minute; changing electrodes is allowed for by adding one-third again to the time spent depositing weld material. We then assume that 50 percent of welders' working time is spent on activities other than these two.

Double Jointing. It was assumed that automatic or semi-automatic welding machines would be utilized for doublejointing under controlled, indoor conditions. The principal differences in doublejointing costs for thicker wall pipe compared to thinner pipe would be an increase in machine and operator time.

Bending. It was assumed that bending costs for the 0.8-inch wall thickness pipe would be 10 percent greater than for pipe with 0.6-inch wall thickness, or about $0.25/foor increase.

Sidebooms—Support Tractors. It was assumed that the heavier pipe would necessitate heavier lifting equipment, with a resultant increase in fuel and amortization costs. No increase in operating personnel was assumed.

Concrete Weights. March 1977 filed costs were assumed for the base case. Costs for the heavier pipe were computed assuming that total costs for weights would be proportional to the

pipeline negative bouyancy without weights.

Valves and Fittings. Block valve costs of $90,000, $96,000 and $105,000 each were assumed for 1260 psig, 1440 psig and 1680 psig valves, respectively. Installed costs of valves and fittings were assumed to be seven times the valve costs. All costs are based upon 1975 prices.

Compression and Cooling. The high-pressure systems will increase compression and cooling requirements at Prudhoe Bay, but will reduce them at pipeline compressor stations. Computed horsepower requirements are shown on table A-2.

Compressors are now used to reinject produced gas. Existing first stage compressors compress the gas from about 550 psig at flow station discharge points to about 1700 psig. These compressors possibly would not need to be duplicated.[35]

V. Estimates of Throughput Volumes

As is apparent from the plots of transportation costs versus throughput volume, expected throughput volume is an important parameter in determining which of the alternative systems is the most cost-effective design. This section reviews the available information for guidance on this point.

1. *Findings in the Initial Decision.* The quantity of gas reserves on the North Slope of Alaska and the deliverability of these reserves was explorted in detail during the hearing before FPC Administrative Law Judge Litt in *El Paso Alaska Company, et al.,* Docket No. CP75-96, *et al.* Judge Litt concluded in the *Initial Decision* that, although the uncertainty of reservoir performance and the possible necessity of water injection precluded exact estimates as to the daily deliveries to be expected from the Prudhoe Bay Field, the weight of the evidence supported a finding that 2.0-2.5 bcfd of gas will initially be available from the Prudhoe Bay Field. (*Initial Decision* at 33.) The proven reserves in the Prudhoe Bay Oil Pool support this finding. If one includes additional reserves from the Sadlerochit, Lisburne, and Kuparuk resevoirs, this estimate may be conservative. Judge Litt noted in connection with the Lisburne and Kuparuk reserves that future development of complete disclosure of past drilling would be necessary to establish the producing capabilities of these formations. (*Initital Decision* at 31.)

Judge Litt also found that the evidence suggested that deliveries above the 2.0-2.5. bcfd level might be available from the North Slope region because of reserves other than in the Prudhoe Bay Field. (*Initial Decision* at 33.) However, he found that the evidence regarding such reserves was unclear and made no specific findings as to the volunes of gas which might be delivered from such reserves.

2. *Findings in the FPC Recommendation to the President.* The FPC stated in the *Recommendation to the President:*

"Thus, we conclude that it is reasonable to assume 2.0 to 2.5 Bcfd from Prudhoe Bay Oil Pool within five years after the commencement of oil production. There exists some possibility of increased delivery from the North Slope of perhaps as much as an additional 1.5 Bcfd from NPR-4 (Naval Petroleum Reserve No. 4), ANWR (The Arctic National Wildlife Range), and the Beaufort Sea, as well as other reservoirs in or near the Prudhoe Bay Oil Field. Thus, we find the system should be designed to carry initiatlly 2.0-2.5 Bcfd, and be capable of expansion to an additional 1.0-1.5 Bcfd." (p. I-17)

3. *Findings in the Decision.* The report which accompanies the Decision notes that the increase in the nation's supply of natural gas from an Alaskan gas project is estimated to be 0.7 trillion cubic feet (tcf) per year (2.0 bcfd) by 1985. By 1990, a volume greater than 0.9 tcf per year (2.4 bcfd) might be produced, according to the report.

4. *State of Alaska.* The Prudhoe Bay Field is located on lands owned by the State of Alaska. Detailed information on the production potential of that field has been made available to the State in its capacity as royalty owner and conservation authority. At our request, the State's Department of Natural Resources prepared estimates of reserves and deliverability of gas from State lands in the North Slope region based on all information available to them. Those estimates suggest a deliverability range after 1988 of 2.0 to 4.2 bcfd from State lands (including the Prudhoe Bay Field) with the median estimate at 2.8 bcfd.

5. *U.S. Geological Survey.* As part of the July 1, 1977, reports to the President prepared under the terms of the Alaska Natural Gas Transportation Act (ANGTA), the U.S. Geological survey (USGS) compiled estimates of reserves and deliverability for all North Slope areas.[36] The USGS discussion cites three separate analyses of North Slope potential—its own, that of the Potential Gas Committee of the Colorado School of Mines, and that of the Division of Geological Survey of the State of Alaska—to conclude that there is very high probability of substantial additional recoverable gas reserves in the North Slope area.

Converting potential reserve estimates into proven reserves dedicated to pipeline transportation is a demanding exercise in expectation. However, using the USGS figure of 19 tcf of potential reserves outside the Prudhoe Bay geologic structure, in conjunction with a rule of thumb for deliverability (1 bcfd of production for 20 years requires at least 20 tcf of potential reserves), plus the State's figure for the Prudhoe Bay Field itself, these estimates suggest there is a 95 percent probability that deliverability from all North Slope producing areas will be at least 2.5 bcfd if production from all of those reserves overlaps through some period in the future, as seems highly likely. There is a small probability of North Slope deliverability going as high as 7.5 bcfd.

VI. Additional Considerations

Our discussions with interested parties suggested that considerations other than design costs and estimated throughput volumes are important to the choice of system operating pressure. This section presents short discussions of the most important of those considerations as we understand them.

1. *Vulnerability to Cost Overruns.* The project sponsors have expressed the concern that a higher pressure system is more vulnerable to cost overruns. Some support for their concern can be found in the work of Professor Walter Mead of the University of California at Santa Barbara. In a recent study published by the American Enterprise Institute,[37] Professor Mead reported in a chapter on cost overruns (chapter 6) that an econometric analysis of past Defense Department projects "* * * indicated that cost overruns were significantly related to the length of time required for the development program and the extent

[35] Sohio noted in its comments on our draft report that whether the compressors will need to be duplicated will depend on whether Prudhoe Bay working interest owners agree to release any of these facilities for gas sales service.

Arco also addressed this point in its comments on the draft report. It noted that the Prudhoe Bay owners installed compressors to reinject gas which is produced with crude oil. At the time gas sales commence the volume of gas which will have to be reinjected will be reduced by the volume of gas sales. However, these compressors may still be required for reinjecting a portion of the gas production in order to maintain crude oil production.

[36] *Report of the Working Group on Supply, Demand and Energy Policy Impacts of Alaska Gas;* Federal Energy Administration; Department of Commerce; Department of the Interior-U.S. Geological Survey; Department of Transportation; Department of the Treasury; Energy Research and Development Administration; July 1, 1977.

[37] *Transporting Natural Gas from the Arctic: The Alternative Systems;* Walter J. Mead, with George W. Rogers and Rufus Z. Smith; American Enterprise Institute for Public Policy Research, Washington, D.C.; August 1977.

of technological advance involved in the project." (p. 86) The implication is that the closer to known technology a project is, or more specifically, the more like a previously constructed project a succeeding one is, the better the cost estimates for the successor project and the less its tendency to cost overruns. To the extent that the 1260-psig system can be considered closer to known technology than either of the higher pressure alternatives, its tendency to cost overrun should be less if an analogy to Professor Mead's analysis of Defense Department projects is appropriate.

Any difference in their respective tendencies toward cost overrun between the 1260-psig system and the higher pressure alternatives would have the effect of raising the crossover point where increased throughput volume makes a higher pressure system result in lower unit transportation charges. Figure 3 in the section which presented the results of our calculations (section IV, *supra*) shows the effect on the crossover point of an increase in capital costs for a high-pressure system. A similar effect on the crossover point would be realized if cost overruns had the effect of increasing the costs of a higher pressure system relatively more than those of the 1260-psig alternative.

2. *Impact on Financing.* The *Decision* requires that the Alaskan Natural Gas Transportation System be privately financed. Therefore, the impact of a decision to utilize a higher pressure system on the ability of the sponsors to obtain private financing is a major concern.

The risk of major cost overruns creates whatever risk there is of project non-completion, and presents the largest single financing problem for the project. Thus, if the lower pressure system is closer to current gas pipeline industry practices, the analysis referred to by Professor Mead would suggest that utilizing the lower pressure alternative reduces the likelihood of major cost overruns and thereby facilitates financing. The effect of technological advances on the reliability of cost estimates was alluded to by the NEB in its February 19, 1978, "Statement of Position."[38]

In response to our request for more definitive information on the significance of the pressure question for financing, the project sponsors' principal financial advisers prepared a letter explaining the effect of a decision to utilize a higher pressure system on the financing proposals of the pipeline project. The gist of their concern is that a higher pressure system involves technological risks that lenders and potential equity investors simply will not accept.

3. *The Gas Consumers' Interest.* The interest of the gas consumer in the low-pressure/high-pressure decision is not obvious. Although a higher pressure system should result in lower transportation charges at higher levels of throughput, it is not assured that such reductions in transportation cost will accrue directly to the benefit to gas consumers.

The means by which delivered price is set for the gas to be transported by ANGTS does not lead to a clear-cut showing of consumer benefit. For the initial throughput volume, an expected 2.0 bcfd from the Main Pool Reservoir of the Prudhoe Bay Field, the deliverd price will be the sum of the transportation charge and a wellhead price, plus an allowance for gathering and conditioning if allowed by the Commission. In this case, reduced transportation charges should be passed on to gas consumers as reductions in delivered prices.

In the next few years, however, high-priced sources of gas such as the Prudhoe Bay gas could rapidly exhaust the implicit subsidies provided by allowing the price of this gas to be averaged in with lower cost gas from conventional supply sources. As soon as the use of "rolled-in" pricing has raised the average price of all gas to approximate parity with the delivered price of alternate fuels, incremental gas sales are likely to be made only at prices set by competition with those of alternative fuels. At that point reductions in transportation charges would likely accrue to producers.[39]

Depending on the relationship of the netback to the field price from the market value of this gas on the one hand, and the maximum lawful ceiling price set by the NGPA on the other, possible Commission use of rolled-in pricing for other gas supply projects, and changes in the delivered prices of competing fuels, prices for North Slope gas sales after the initial 2.0 bcfd from the Main Pool Reservoir could be set by a netback from the delivered prices of competing fuels. In that event, reduced transportation charges for these incremental volumes would benefit the gas producers.

An efficient natural gas transportation system which encourages the development of additional supply through higher field prices is not without some consumer benefit. The point here is that an analysis of that benefit is not as simple as might be implied by a comparative evaluation of transporation cost curves.

4. *Alternative Investment Requirements.* Cooling the oil pipeline to move the butane which cannot be transported by the 1260-psig gas pipeline system appears to require a smaller capital investment than increasing the operating pressure of the gas pipeline. The figures provided by the gas pipeline project sponsors show an increased investment requirement of $237 million (in 1975 dollars) to go to the 1680-psig system. Using the oil pipeline would require (in 1978 dollars):[40]

[In million of dollars]	
Increased investment in gas conditioning plant	30
Cooling facilities for oil pipeline	37-70
Total	67-100

Alternatively, if the reduction in gas pipeline pressure results in the use of butane as field fuel and/or disposition by reinjection, the following investments (in 19878 dollars) would be required:[40]

[In millions of dollars]	
Increased investment in gas conditioning plant	30
Field fuel system investment	50
Injection investment	25
Total	105

As the likely outcome of decision to use the 1260-psig system would be a

[38] "Until sufficient field welding tests and production trials are done to establish suitable procedures and the manpower and equipment requirements to achieve progress rates compatible with other crews, the National Energy Board feels the present cost comparisons (between standard-pressure and high-pressure alternatives) based on normal procedures may not be valid." NEB Statement of Position, *op. cit.*, Technical Review, pp. 3-4.

[39] A limitation on such a potential benefit to producers will be the ceiling price on natural gas produced from Prudhoe Bay Unit established by § 109 of the Natural Gas Policy Act of 1978 (NGPA). The price of competing fuels may only determine the price of gas from the Prudhoe Bay Unit to the extent such a price is equal to or less than the ceiling price.

[40] All of these estimates are my interpretations of certain investment figures supplies by Arco. Arco did not provide any comment on this comparison as it appeared in my draft report.

Sohio pointed out in comments on my draft report that crude oil cooling costs were estimated by the R. M. Parsons Company to be about $55 million in 1978 dollars for the case of maximum volume of butanes (31,290 barrels/day) in the TAPS line, assumed to be operating at 1.5 million barrels/day throughput (maximum cooling required). Sohio also noted that oil cooling costs could be partly offset by the lower investment in sales boost compression facilities required for 1260 psig operation, as compared to 1440 or 1680 psig. Sohio concludes:

"The net differential investment which would be required in the conditioning facilities and in various Prudhoe Bay Field facilitis to be compatible with a 1260 psig pipeline system is expected to add considerably less than the $100 million (in 1978 dollars) estimated by Arco, event when all butanes recovered are transported in the TAPS lines in preference to blending them with the sales gas. Operating costs of oil coolers are also expected to be less than those related to additional gas compression." (Sohio comments, October 27, 1978, p. 2)

combination of cooling the oil pipeline, use of the extra butane in the field, and reinjection, we believed approximately $100 million (in 1978 dollars), including the $30 million required for additional investment in the processing and conditioning facility, is a representative requirement for comparison with the $237 milllion (in 1975 dollars) additional investment requirement to increase the system operating pressure to 1680 psig. None of these figures consider operating costs, so any comparisons are necessarily incomplete.

The gas consumer would see the increased investment requirement in the form of increased transportation charges for gas delivered by a higher pressure system, at least for the first 2.0 bcfd of throughput. Although the increase in unit transportation charges would be tempered by the delivery of higher Btu gas, the additional Btu's per unit volume would not be enought to offset the higher tranportation charges until throughput volumes get higher than just those from the Main Pool Reservoir of the Prudhoe Bay Field.[41]

On the other had, the oil consumer would not likely be directly affected by a requirement for additional investment in oil pipeline facilities. North Slope oil prices are effectively set through competition with imported oil, and can not be increased to consumers in order to recover additional transportation costs. Additional investment in the Trans-Alaska Pipeline System (TAPS) simply reduces the netback to the oil producers at the field. The consumer price impact of using the oil pipeline to carry the butane would only be felt as an increase in any processing and conditioning allowance which might have been allowed by the Commission to cover the $30 million extra investment required for the processing and conditioning plant.

The investment requirement not touched on in the preceding discussion is that which might be required for vapor recovery systems on storage tanks in areas where the higher vapor pressure caused by adding butane to the North Slope crude would cause unacceptable air pollution problems. Such ancillary investment requirements highlight the importance of the gas pipeline system design question for the North Slope gas producers, as well as for the gas pipeline project sponsors, and the degree of interest the producers should have in optimizing the design of all facilities involved in producing and transporting Prudhoe Bay hydrocarbon resources.

VII. Requirements for Resoultion

I believe that the *Decision* creates a predisposition that the 1260-psig system is the one authorized by the President and the Congress by its reference to "the facilities * * * included in the revised Alcan filing submitted to the Federal Power Commission (FPC) on March 8, 1977."[42] Additional NGL's carrying capability of a higher pressure system might be a desirable feature, all other things being equal. However, a technical report filed with the State of Alaska by the major interest owners in the Prudhoe Bay Field (Arco, BP, Exxon and Sohio) in support of their proposed reservoir management plan states:

> Gas pipeline specifications are not currently known and final specifications may increase or decrease the volume of liquids which must be extracted from the gas to prevent condensation in the pipeline. Regardless of the final gas conditioning requirements, all liquids extracted will be used without waste, either to displace fuel gas or to be transported through the oil pipeline.[43]

I believe that the language in the Report accompanying the *Decision* suggesting that:

> * * * Alcan should consider increasing the operating pressure and wall thickness of its 48-inch diameter pipeline in order to allow for more efficient increases in throughput rate for additional reserves which might be committed to the system from either Alaska or Canadian sources * * *."[44]

would make the predisposition a rebuttable one on appropriate showings in a final authorization proceeding for these facilities. The discussion below highlights the principal factors which should be evaluated in such proceeding, should one be required to fix this parameter. I believe that favorable findings in all three areas would be required to support a decision to increase the operating pressure of the Alaskan segment.

1. *Concurrence of the Canadian Government.* The Government of Canada, across whose territory some length of any of the 48-inch alternatives would have to pass,[45] has previously expressed severe reservations about the 1680-psig alternative on safety and reliability grounds. The Canadian project sponsors share those reservations. The U.S. project sponsors, while concerned about safety and reliability problems (particularly those associated with proximity to the Alyeska oil pipeline), are primarily concerned that uncertainties associated with the 1680-psig system would create significantly higher risks of construction delay and cost overrun than the 1260-psig alternative.

The hearing record on the safety and reliability aspects of the 1680-psig system was more extensively developed in Canada than in the U.S. proceedings before the FPC. Accordingly, although U.S. technical representatives continue to believe that the 1680-psig system can be constructed and operated safely and reliably,[46] Canadian authorities still have reservations about the high-pressure alternative based on the evidence presented to them.[47]

The U.S. project sponsors have also expressed concern about additional hazards of a higher pressure system because of proximity to the TAPS. The additional potential energy in a higher pressure system is thought to represent more of a threat to the structural integrity of the oil pipeline in the event of a gas pipeline rupture. On the other hand, technical representatives of Exxon, one of the principal owners of TAPS, did not feel there was any significant difference in hazard to the oil pipeline between the 1260-psig and 1680-psig alternatives.

A testing program involving the project sponsors, the owners of the oil pipeline and the Canadian Government

[41] Future gas volumes made available for shipment could have less NGL's content than the Prudhoe Bay accumulation, in which case the "drier" composite gas stream would have more capacity for Prudhoe Bay NGL's without increasing system operating pressure.

[42] *Decision, op. cit.*, p. 13.

[43] Exhibit ALA-33 filed in proceedings before FPC, p. 16. Cited in *Comments on the "Decision and Report to Congress on the Alaska Natural Gas Trasnportation System"*, Federal Energy Regulatory Commission, October, 1977.

[44] *Decision, op. cit.*, p. 193.

[45] On February 17, 1978, the Canadian National Energy Board chose a large-diameter (56-inch) alternative for the segment of the system through which both Canadian and U.S. gas volumes will flow, to be installed between Whitehorse, in the Yukon Territory, and the bifurcation point near James River in Alberta. Although the operating pressure of the 56-inch system will be 1080 psig, its NGL's carrying capacity is not less than that of a 1680-psig system installed farther north. The reason is the difference in operating temperature: the 56-inch system will operate at a minimum of 40° F, while the northern portions of the system will have to be chilled to below the freezing point of water (32° F) to avoid thaw settlement problems in permafrost soils.

Permafrost soils, and consequently the need for operating the pipeline at or below 32° F, extend less than 100 miles into Canada. The operating temperature can be increased south of that point, allowing the operating pressure to be gradually lowered without losing significant NGL's carrying capacity. The 1080-psig system is, however, incompatible with the very high pressure (2150 psig) system advocated at one point by Exxon.

Thus, Canada would have to approve the use of a higher pressure system for a short distance from the Alaska/Yukon border if such a system is to be used in Alaska.

[46] "U.S. Government Safety and Reliability Evaluation of Different Pipe Size and Pressure Combinations for Alaska Gas Pipeline", *Op. Cit.*

[47] Their "Statement of Position" has previously been referenced. See page 4.

would seem to be required prior to any decision to increase the operating pressure of the gas pipeline. Exxon representatives in particular have suggested that the required testing program would not be extensive, but we doubt they have tried to convince the Canadian Government or the Canadian projece sponsors, both of whom would have to be satisfied with the testing program and its results before a decision to utilize a higher pressure system could be made.

2. *Satisfactory Distribution of Costs and Benefits.* In the preceding section, I discussed my concern that consumers might not be the primary beneficiaries of a decision to utilize a higher pressure system for the Alaska segment. Here I suggest briefly what types of analysis would be required to support a conclusion that consumers would benefit from higher pressure.

The first consideration is expectations about throughput volumes which would suggest that lower transportation costs are likely with higher pressure. A positive finding in this area would have to involve not only conclusions about ultimate throughput, but also the timing of throughput increases, as a decision to ask consumers to pay more now in order to pay less later would have to pass a present value test.

The North Slope producers either now have or will have the geophysical and drilling information which might support increased capacity in the delivery system. Much of this information may have been supplied by them to the State of Alaska and the USGS, but under confidentiality arrangements which effectively deny access to any parties not specifically granted permission by the producers. I believe that the burden of proof that a higher capacity system is required is on the producers.

A second consideration is the possibility of a differential tendency to cost overrun between the 1260-psig system and the higher pressure alternatives. As discussed in a previous section, such a tendency would displace upward the throughput volume threshold where a higher pressure alternative has a lower unit cost-of-service than the 1260-psig system. Further studies of the cost overrun problem are currently in progress,[48] and should be available for evaluation in the event that an initial burden of proof regarding volumes available for throughput had been satisfied.

3. *Resolution of Extraordinary Financing Problems.* I believe that requiring the chosen system to be privately financed in an integral part of an elaborate framework set out in the President's *Decision* to ensure that construction of the selected system is in the public interest. I also feel that it would be inappropriate for the Commission to make any decision which would undermine a component of that framework. I believe that a showing that any extraordinary financing problems associated with choosing a higher pressure system had been resolved would be an essential element in any such choice by the Commission.

VIII. Results of Conference

An earlier draft of this report was circulated for comment in late September 1978, to the parties with whom we had discussed this matter. The same draft was sent to all parties in Docket No. CP78-123, *et al.*, during November, 1978.

The comments I received indicated a number of corrections to be made which have been incorporated as appropriate but did not alter my basic assessment of the difficulties involved in reaching a determination to increase the operating pressure from the level which had been approved as part of the President's *Decision.*[49]

An on-the-record conference of interested parties was held on December 15, 1978. At that conference I presented a proposition, which had been suggested in the comments of the State of Alaska on my draft report, for consideration by the project sponsors and any other interested parties. That proposition was to first construct and operate the pipeline at 1260 psig, and then to increase operating pressure of the pipeline *if* sufficient throughput volumes became available during the operating life of the pipeline to warrant the increase. The State of Alaska suggested that it might be

> * * * possible to achieve operating pressures approaching 1440 psig by relaxation of the "design factor" for the pipe Northwest proposes to use from .72 to .8. See 49 CFR 192.111. This would not be a substantial change because the "relaxation" is only to the established Canadian standard. A waiver request would have to be presented to the Office of Pipeline Safety [Department of Transportation] but a good case would be made that safety concerns would be satisfied by the relaxed design factor based on the record in Canada. (November 17, 1978, Comments, p. 7)

The Department of Transportation (DOT) and its Office of Pipeline Safety were represented at my conference. Their representatives were not encouraging about the prospects for a waiver because of the proximity of the pipeline to the haul road which serves the North Slope producing area. DOT safety requirements are more stringent for gas pipelines which operate near highways;[50] thus, sufficient relaxation of the standard to accommodate an increase in operating pressure would likely require a double waiver. The DOT representatives advised use of thicker-wall pipe if higher operating pressures were to be attempted.

I closed the conference by requesting that the project sponsors present their views on the operating pressure question in detail to the State of Alaska and the DOT, both of whom appeared to favor a higher capacity system.[51] The sponsors were then to report to the Commission on their views regarding the possibility of increasing the system capacity, and on the results of their discussions of this matter with other interested parties. The sponsors' filing of March 2, 1979, requesting a Commission order finalizing the selection of 1260 psig as the operating pressure for the Alaska segment, is in compliance with my request. A copy of that filing is attached to this report.

IX. Conclusions and Recommendations

Relevant Considerations. As discussed in section IV above, the primary method of analysis to determine the appropriate throughput capacity for a gas pipeline is the comparison of plots of unit transportation cost vs. throughput volume for alternative system configurations. The project sponsors have attached such plots for the principal alternative systems as Exhibits Z-4 and Z-5 in their filing. Similar computations are also included in section IV of this report.

In my judgement, there are two factors in these comparisons which should be considered:

The least-cost system at expected levels of throughput, and

Expectations about the throughput levels for which fuel penalties start to

[48] For example, the Rand Corporation has been studying this problem applied to coal gasification plants for the Department of Energy.

[49] The U.S. Department of Transportation expressed some concern over perverse incentives inherent in the way natural gas pipeline projects are regulated. I took note of their concerns but advised them that the Commission would likely be unable to resolve them.

[50] Whether the haul road is properly classified as a "highway", and thus imposes the more stringent safety standard on the gas pipeline, is a matter which I believe is still at issue.

[51] Arco representatives, both in their comments on my draft report and in their remarks at my conference, favored increasing the operating pressure but reducing the diameter of the gas pipeline system. Exhibit Z-5, attached to the project sponsors' March 2, 1979, filing, indicates that the operating efficiency characteristics of the 1680-psig, 42-inch system which Arco favors are essentially the same as those for a 1260-psig, 48-inch system.

significantly increase the unit transportation cost.

For expected levels of throughput up to 3.3 bcfd, the 1,260-psig system is indicated by the project sponsors' analysis. Although our analysis puts the crossover point from the 1,260-psig system to the 1,440-psig system slightly lower than the project sponsors',[52] our analysis also supports the 1,260-psig system if the expected levels are in the 2.8- to 2.9-bcfd range.

Perhaps more important, in my judgement, is an assessment of the likelihood that throughput levels will exceed the range of efficient operation for the recommended system. For the three systems which appear to be feasible for the Alaska segment—1,260, 1,440 and 1,680 psig systems—there is a considerable range of throughput volumes for which there is probably sufficient uncertainty the capital cost estimates upon which the cost of service calculations are based to prevent a definitive conclusion that one will have a lower unit cost of service than another. For example, if I arbitrarily pick a difference of 10 percent between the cost of service of the lowest and highest cost systems for a given throughput level as a difference which is significant, then the unit cost of service for all three systems would be essentially the same from a throughput of about 2.6 bcfd to almost 4.0 bcfd, according to Alaskan Northwest's Exhibit Z-4. Above 4.0 bcfd and below 2.6 bcfd, the three curves diverge more rapidly.

Our computations in section IV illustrate better the divergence of the "J-Curves" at higher throughput volumes because we have plotted them for a larger range of throughput. On the next page, I have used the data from my Figure 1 to plot the difference between the lowest and highest cost systems as a percent of the lowest cost system for various levels of throughput. Notice that because of differences in our respective capital cost figures, our 10-percent difference point is closer to 3.5 bcfd than Alaskan Northwest's 4.0 bcfd. However, the plot illustrates that, although the differences are small over a range of throughput, they increase rapidly as the upper end of the range of efficient operation for the 1,260-psig system is approached.

In section VII of this report, I discussed the difficult problems which would have to be resolved to reach a determination to increase the operating pressure of the Alaskan segment. I believe that the Commission need not address these problems unless there is a significant change in expectations about gas volumes available from the producing areas to be served by the ANGTS. In view of the difficulties discussed in my report and in view of the relatively small differences in unit costs of service over the range of at least 2.6 to 3.5 bcfd, I would recommend that you reaffirm the 1,260-psig system for the Alaskan segment unless you are provided with new information which demonstrates that there is a significant probability of volumes in excess of 4.0 bcfd in the area to be served by the ANGTS.

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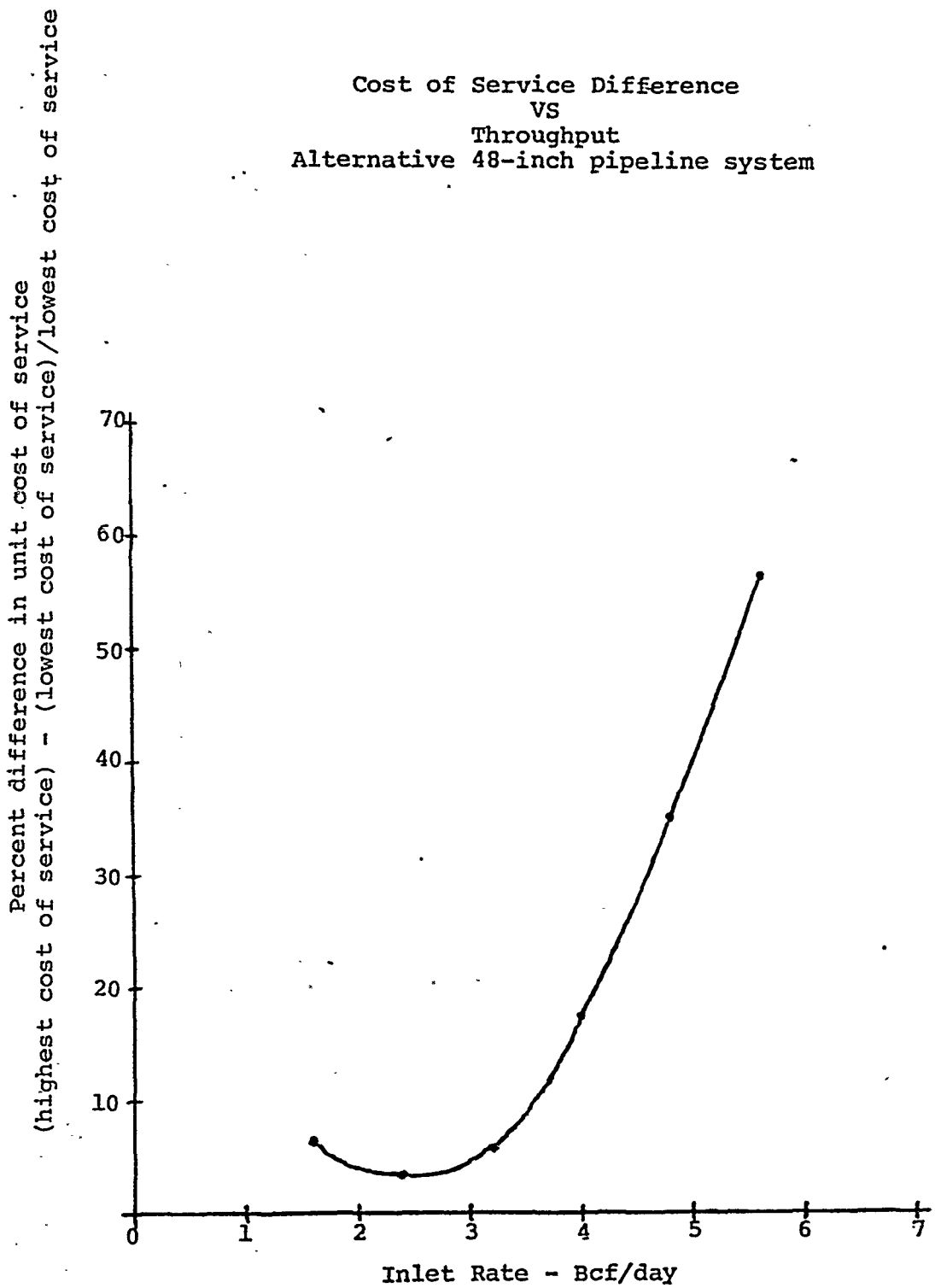
[52] Our results put the crossover point at 2.65 to 2.9 bcfd, depending on certain assumptions about capital costs other than for compression. The remainder of the difference between our analysis and Alaskan Northwest's is in the installed cost of compression and chilling facilities. I would caution against assigning undue precision to the exact crossover points from one system to another. The differences between Northwest's capital cost estimates and ours for the 1,680-psig system is $48.3 million, or less than 3 percent of the base 1,260-psig estimate, whereas the expected cost overrun for the 1,260 psig case is about 30 percent of that estimate.

Cost of Service Difference
VS
Throughput
Alternative 48-inch pipeline system



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Status of Information. The information available at the time of the *Decision,* the results of the extensive analysis by the FPC and the July 1, 1977, *Report to the President of the Working Group on Supply, Demand and Energy Policy Impacts of Alaska Gas,* are cited in the project sponsor's filing. They cite the relevant conclusion the the *Decision* as the following:

> Peak-day capacity utilizing nine compressor stations will be 2.6 bcfd, with an average daily volume of 2.4 bcfd. By installation of intermediate compressor stations, the system could be increased to 3.4 bcfd peak capacity, with an average day capacity of 3.2 bcfd. The system capacity could be further increased by addition to the compressor horsepower at each station. (*Decision,* p. 17.)

I also note in the report accompanying the *Decision* the following passage:

> The routing of the Alcan system provides future access to reserves which might be discovered in the Beaufort Sea or elsewhere on the North Slope. Alcan similarly could transport gas from other areas of Alaska or even from the Gulf of Alaska by means or even from the Gulf of Alaska by means of somewhat longer supply laterals. Further, the agreement with Canada provides for the use by Canada of the Alcan main line at a throughout up to 1.2 bcfd. Therefore, redesign of the system to enable inexpensive expansibility up to 3.9 to 4.0 bcfd south of Whitehorse, Yukon Territory, is essential. (*Decision,* p. 198.)

I infer from this passage that the throughout volume anticipated at that time from sources in Alaska which might be connected to the ANGTS was in the range of 2.7 to 2.8 bcfd (3.9 to 4.0 bcfd less 1.2 bcfd).

Interestingly, the principal concern about throughput volume at the time of Congressional consideration of the *Decision* was that Prudhoe Bay Field production might not come up to expectations, and thus the system selected by the President might be too large for the available volumes.[53] Some perspective on the possibility that available volumes will be either higher or lower than expected was provided to us in the course of this inquiry by the State of Alaska. As both a royalty owner and the conservation authority for the primary prospective areas on the North Slope, the State's information on these areas must be presumed to be as complete as anyone's. I have reproduced on the next two pages a series of tables of expected reserves and deliverability, along with a map of the area covered by the estimates. As you can see from the tables, the estimated probability that available throughput volumes will be 4.2 bcfd is about the same as the probability that throughput will be only 2.0 bcfd. I don't see any basis in this information for changing from the 1260 psig system.

The CO_2 Standard. A matter which I feel ought to be considered further is the CO_2 standard for gas delivered to the pipeline. I mentioned above (p. 22) that the Parsons study recommends further study of possible alternative specifications for CO_2 content and gas pipeline pressure. Increasing the system operating pressure is difficult for all the reasons discussed above, but I believe changing the CO_2 specification is separable and should considered. The potential benefits to be derived from transporting more CO_2 include reduced conditioning costs, increased capacity for transporting NGL's, and possibly increased availability of NGL's (particularly propane) due to reduced fuel requirements of a less intensive processing and conditioning plant operation. The State of Alaska and Arco [54] raised the CO_2 issue in comments on the project sponsor's March 2, 1979 filing regarding system operating pressure. Sohio [55] has raised the subject of standards for "pipeline quality gas" in the Commission's omnibus rulemaking proceeding on tariff and rate of return issues in Docket No. RM78-12.

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[53] See the very extensive discussions of this matter during the Senate consideration of the *Decision.* Hearings before the committee on Energy and Natural Resources, United States Senate, on S.J. Res. 82, Joint Resolution to Approve the Presidential Decision on an Alaska Natural Gas Transportation System, September 26, 27, October 11, 12 and 25, 1977. Publication No. 95-73.

[54] "Comments of the State of Alaska on the Design Specifications and Initial System Capacity of the Alaskan Segment of the Alaska Highway Pipeline Project", and "Motion of Atlantic Richfield Company for Clarification," both filed in Alaska Northwest Natural Transportation Company, Docket No. CP78-123, *et. al.* on April 5, 1979.

[55] "Comments of Sohio Natural Resources Company on Notice of Proposed Rulemaking Issued April 6, 1979", filed in Determination of Incentive Rate of Return, Tariff and Related Issues, Docket, No. RM78-12, on May 7, 1979.

North Slope
Original Gas In Place
Trillion Cubic Feet

	Confidence Level		
	95	50	5
Prudhoe Bay	←	40.4	→
All Other	0.5	13.4	30.5

Recoverable Reserves *
Trillion Cubic Feet

	Confidence Level		
	95	50	5
Prudhoe Bay	←	21.0	→
All Other	0.3	8.0	18.3

Deliverability
Billion Cubic Feet Per Day

	Confidence Level		
	95	50	5
Mid 1984			
Prudhoe Bay	1.5	2.0	2.5
All Other	0	0.3	0.5
Mid 1988 and Beyond			
Prudhoe Bay	1.5	2.0	2.5
All Other	0.5	0.8	1.7

* takes into account recovery factor, gas conditioning and fuel useage.

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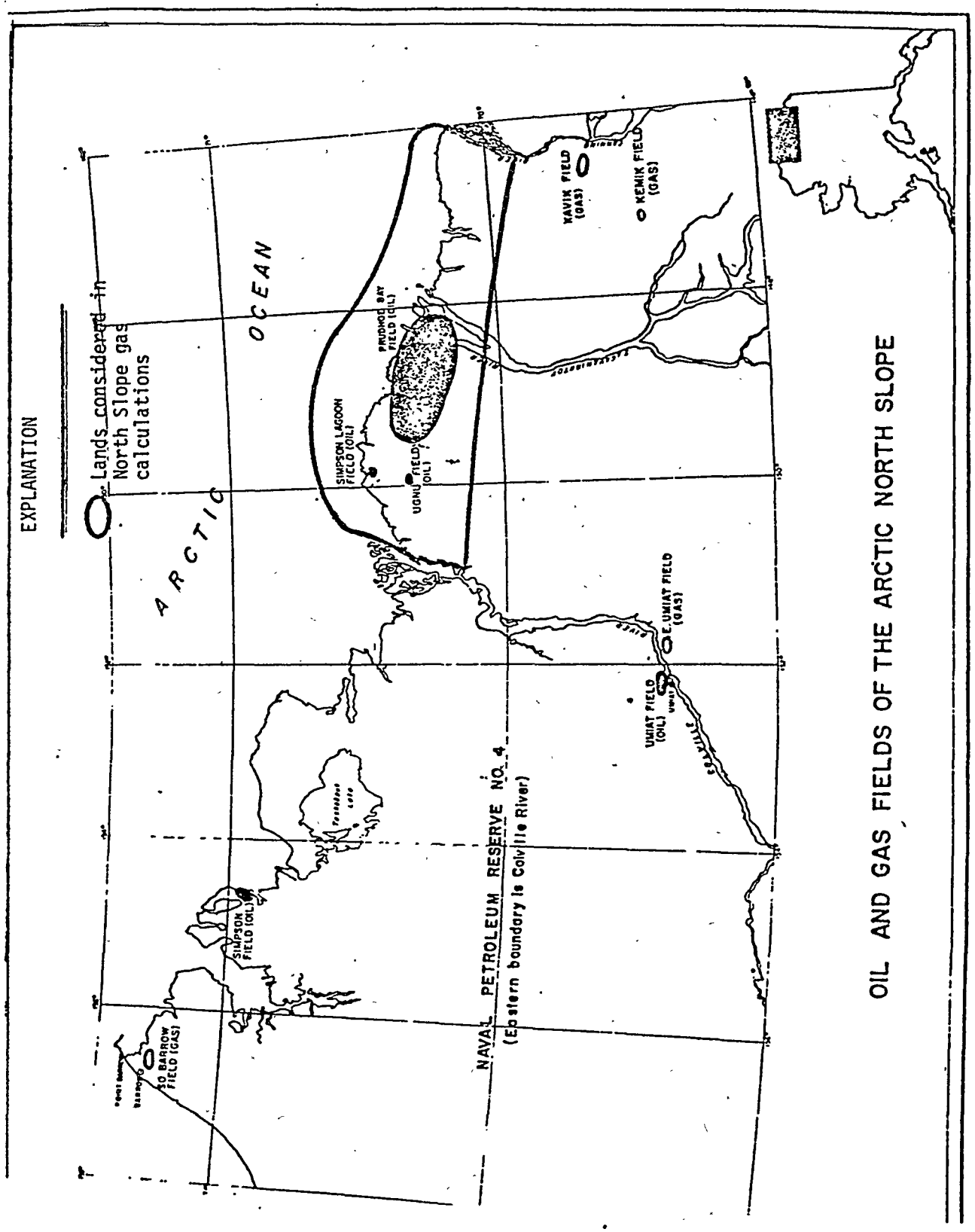
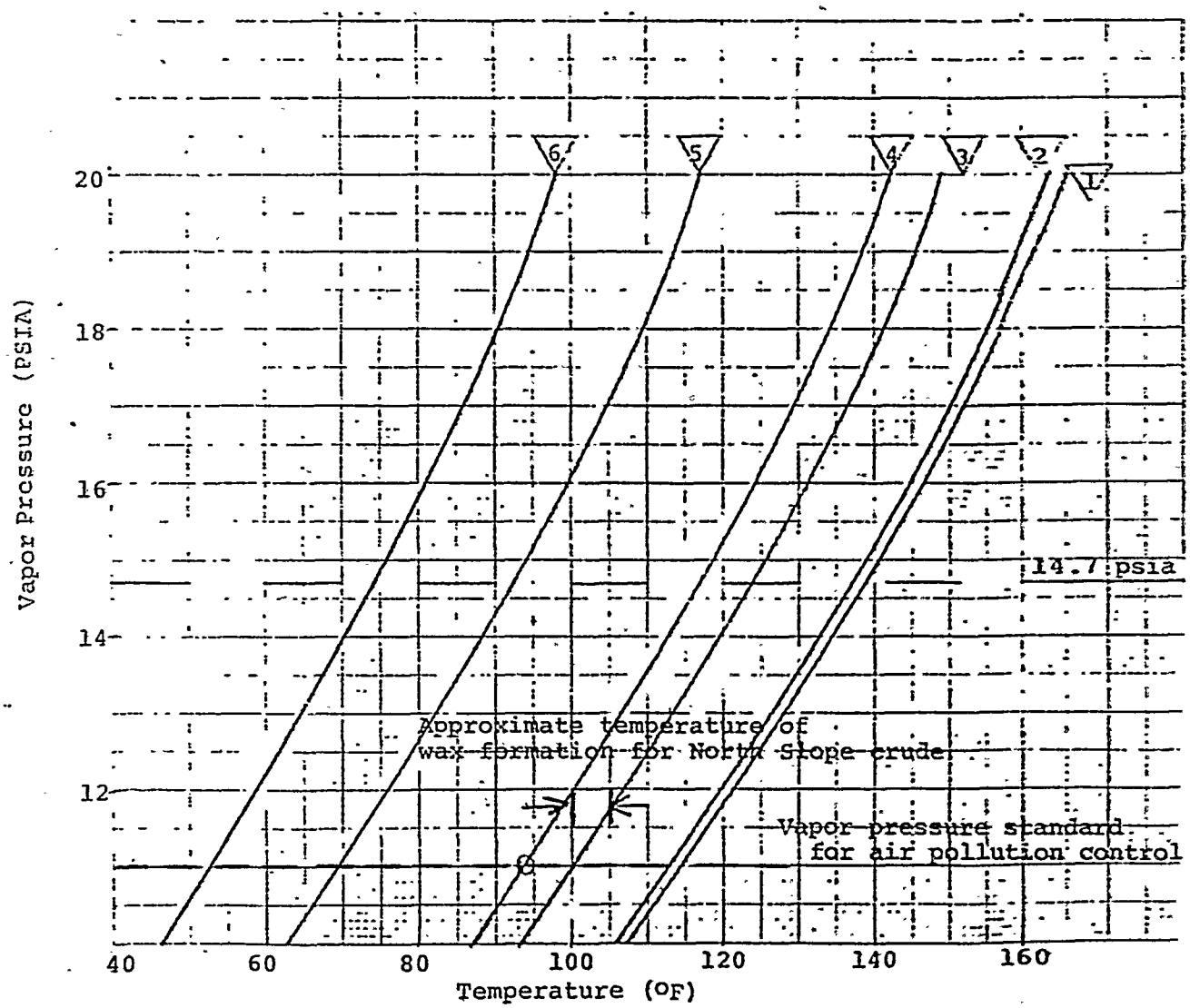


OIL AND GAS FIELDS OF THE ARCTIC NORTH SLOPE

FIGURE 1 -65-

PRUDHOE BAY CRUDE + NGL VAPOR PRESSURE

Bbl.NGL/Bbl.Crude		Mixture
0	1	Crude
.0154	2	Crude + iC5+
.0301	3	Crude + NC4+
.0367	4	Crude + iC4+
.0470	5	Crude + 25% C3, iC4+
.0573	6	Crude + 50% C3, iC4+



The North Slope producers and the State of Alaska have an additional interest in this matter because of the impact of butane blending on the vapor pressure of North Slope crude. Exxon had furnished the plot of vapor pressures verses temperature for North Slope crude containing various amounts of NGL's which appears on the following page. I have super-imposed on that plot the approximate temperature range at which wax formation starts to be problem with the North Slope crude, and the vapor pressure standard for air pollution control in Southern California.

Wax formation limits the use of cooling as a technique for vapor pressure control. If cooling cannot be used, then vapor recovery systems must be installed on storage facilities to control emissions. Addition of any butane at all to the crude stream moves the vapor pressure at a given temperature from curve 2 toward curves 3 and 4. Because of the temperature limit imposed by wax formation, addition of any butane at all increases the likelihood that vapor recovery systems will be required, particularly if the vapor pressure standards is made more stringent. Thus, the North Slope producers have an interest in the CO_2 standard not only because of its impact on the cost of the conditioning facility, but also because of its impact on the capacity of the sales gas stream to transport NGL's particularly butane.

Increasing the CO_2 content of the gas stream may be cost-effective for the consumer also. Without pre-judging how additional NGL's might be charged for transportation through the ANGTS, i.e., whether transportation charges would be on a cents per mmBtu basis or on some other basis, transportation of more of the Prudhoe Bay hydrocarbon reserve through the ANGTS offers the prospect of increased utilization of the factility, and, hence, lower, overall costs to consumers.

Increasing the CO_2 content of the sales gas stream would have the effect of shifting to consumers certain costs or processing the conditioning the Prudhoe Bay gas, an outcome which the Commission has expressed its intention to prohibit with its proposed policy regarding the recovery of certain "production-related" costs as defined in the Natural Gas Policy Act.[56] However, it is possible that some cost-shifting through relaxation of the CO_2 standard would be the optimal solution for the overall conditioning and gas transmission system.

Increasing the CO_2 content of the sales gas stream would pre-empt some of the ANGTS throughput capacity, but additional processing and conditioning facilities could be installed to remove the extra CO_2 if the additional capacity were required. This could be done without any loss of NGL's carrying capability if incremental volumes of natural gas have a lower NGL's content than the Prudhoe Bay gas.

The State of Alaska and Arco, in their above referenced comments on Alaskan Northwest's March 2 filing, have requested a Commission statement regarding the appropriate proceeding for resolution of the CO_2 content issue. I believe this issue is separable from the throughput capacity issue, because any capacity committed to CO_2 transportation when operations begin can be retrieved by installation of additional conditioning facilities if sufficient quantities of natural gas become available to require that capacity. Thus, I believe that the maximum allowable operating pressure question should be resolved independent of the CO_2 question, the latter being better addressed in RM78-12, wherein the Commission is considering the project company tariffs, or perhaps as an ancillary issue in RM79-19, regarding the responsibility for production-related costs. It is the former proceeding in which the issue of appropriate standards for "pipeline quality gas" seems to me to be most directly before the Commission.

[FR Doc. 79-16824 Filed 5-30-79; 8:45 am]
BILLING CODE 6450-01-M

[56] See the Commission's Notice of Proposed Rulemaking in RM79-19, February 2, 1979.

[Docket Nos. G-4308, et al.]

Cities Service Co., et al.; Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

May 22, 1979.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 15, 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 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
G-4308, C, Apr. 2, 1979	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Panhandle Eastern Pipe Line Co., Tucker "C" No. 1 Well, Morton County, Kans.	[1]	14.65
G-4579, D, Apr. 16, 1979	Cities Service Co.	Lone Star Gas Co., northwest quarter of the southeast quarter of sec. 36-2N2W, Garvin County, Okla.	[2]	
CI70-126, G, May 11, 1979	Columbia Gas Development Corp., P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Transmission Corp., blocks 255 and 256, Vermilion area, offshore Louisiana.	[3]	15.025
CI72-519, D, Mar. 30, 1979	Cities Service Co.	El Paso Natural Gas Co., certain acreage situated in the Washington Ranch field, Eddy County, N. Mex.	[4]	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI75-559, D, Apr. 16, 1979	McCulloch Oil & Gas Corp., Suite 1600, 10880 Wilshire Blvd., Los Angeles, Calif. 90024.	Northern Natural Gas Co., Olson field, sec. 3-T18N-R23W and sec. 33-T19N-R23W, Ellis County, Okla.	[5]	
CI77-620, C, Apr. 23, 1979	Diamond Shamrock Corp. (successor to the Shamrock Oil & Gas Corp.) P.O. Box 631, Amarillo, Tex. 79173.	Southern Natural Gas Co., SE¼ of the SE¼ and the NE¼ of the SE¼ of block 289, main pass area, east addition, offshore Louisiana.	[6]	15.025
CI78-426, D, Apr. 2, 1979	Continental Oil Co., P.B. Box 2197, Houston, Tex. 77001.	Northwest Pipeline Corp., East San Juan field, Rio Arriba County, N. Mex.	Uneconomical, plugged and abandoned and lease expired under its own terms for lack of production on Apr. 30, 1978.	
CI78-588, C, Apr. 27, 1979	Cities Service Co.	El Paso Natural Gas Co., State "CX" No. 1 well in sec. 28-19S-28E, Morrow formation, in Eddy County, N. Mex.	[7]	14.65
CI78-1282, E, Sept. 25, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the H. Green Lawford field, Ritchie County, W. Va.	[8]	14.65
CI79-347, E, Apr. 9, 1979	Gulf Oil Corporation (successor in interest to Kewanee Oil Co.).	Natural Gas Pipeline Co. of America certain acreage located in the Lockridge field, Ward County, Tex.	[9]	14.65
CI79-348, A, Apr. 6, 1979	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., South Bayou Pigeon field, Iberia Parish, La.	[10]	15.025
CI79-349, A, Apr. 9, 1979	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Northern Natural Gas Co., Mississippi Canyon block 194 field, offshore Louisiana.	[11]	15.025
CI79-354, A, Mar. 30, 1979	Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052.	Texas Gas Transmission Corp., "A" platform, block 296, ship shoal area, offshore Louisiana.	[12]	14.73
CI79-356 (CI75-46), B, Apr. 2, 1979.	J. M. Huber Corp., 2000 West Loop South, Houston, Tex. 77027.	El Paso Natural Gas Co., Huber-Superior USA No. 1 Washington Ranch field, Eddy County, N. Mex.	[13]	
CI79-357, A, Apr. 10, 1979	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Texas Eastern Transmission Corp., West Cameron block 522, West Cameron block 543 field, offshore Louisiana.	[14]	14.73
CI79-358, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.), P.O. Box 2511, Houston, Tex. 77001.	Cimarron Transmission Co., Marietta North field, Love County, Okla.	[15]	14.65
CI79-359, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Cities Service Gas Co., Aetna field, Barber County, Kans.	[15]	14.65
CI79-360, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Cities Service Gas Co., Hugoton field, Finney County, Kans.	[15]	14.65
CI79-361, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Arkansas Louisiana Gas Co., Cameron field, Leflore County, Okla.	[15]	14.65
CI79-362, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Colorado Interstate Gas Co., Keyes field, Cimarron and Texas Counties, Okla.	[15]	14.65
CI79-363, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	El Paso Natural Gas Co., Moscano-Laverne area, Beaver County, Okla.	[15]	14.65
CI79-364, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Kansas Nebraska Natural Gas Co., Lorena and Lorena S.E. fields, Beaver County, Okla.	[15]	14.65
CI79-365, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Lone Star Gas Co., Kate Field, Garvin County, Okla.	[15]	14.65
CI79-366, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Woodward North field, Woodward County, Okla.	[15]	14.65
CI79-367, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.) P.O. Box 2511, Houston, Tex. 77001.	Michigan Wisconsin Pipeline Co., Campbell east field, Major County, Okla.	[16]	14.65
CI79-368, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Campbell N.W. Field, Major County, Okla.	[15]	14.65
CI79-369, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Moscano-Laverne gas area, Beaver County, Okla.	[15]	14.65
CI79-370, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Moscano-Laverne field, Harper County, Okla.	[15]	14.65
CI79-371, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Moscano-Laverne field, Harper County, Okla.	[15]	14.65
CI79-372, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Logan field, Beaver County, Okla.	[15]	14.65
CI79-373, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Salem S.E. field, Ellis County, Okla.	[15]	14.65
CI79-374, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Gage S.E. field, Ellis County, Okla.	[15]	14.65
CI79-375, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Tyrone field, Texas County, Okla.	[15]	14.65
CI79-376, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Tyrone field, Texas County, Okla.	[15]	14.65
CI79-377, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Hansford North, Hansford County, Tex.	[15]	14.65
CI79-378, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Riley and Ups fields, Roberts County, Tex.	[15]	14.65
CI79-379, E, April 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Natural Gas Pipeline Co. of America, Putman field, Dewey and Custer Counties, Okla.	[15]	14.65
CI79-380, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.) P.O. Box 2511, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Hansford field, Hansford County, Tex.	[15]	14.65
CI79-381, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Natural Gas Pipeline Co., Midway field, Baca County, Colo.	[15]	15.025
CI79-382, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Natural Gas Pipeline Co., Lorena field, Beaver County, Okla.	[15]	14.65
CI79-383, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Panhandle Eastern Pipeline Co., Keyes field, Cimarron County, Okla.	[15]	14.65
CI79-384, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Panhandle Eastern Pipeline Co., Sampsel N.E. field, Cimarron County, Okla.	[15]	14.65
CI79-385, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Panhandle Eastern Pipeline Co., Carthage field, Texas County, Okla.	[15]	14.65
CI79-386, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Lovedale N.W. field, Harper County, Okla.	[15]	14.65
CI79-387, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Panhandle Eastern Pipeline Co., S.E. Freedom field, Woods County, Okla.	[15]	14.65
CI79-388, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Cities Service Gas Co., Greendyke field, Barber County, Kans.	[15]	14.65

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI79-389, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Mocane-Laverne field, Beaver County, Okla.	[15]	14.65
CI79-390, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Michigan Wisconsin Pipeline Co., Mocane-Laverne field, Ellis County, Okla.	[15]	14.65
CI79-391, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Gooch field, Stevens County, Kans.	[15]	14.65
CI79-392, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Mocane-Laverne field, Beaver County, Okla.	[15]	14.65
CI79-393, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.), P.O. Box 2511, Houston, Tex. 77001.	Northern Natural Gas Co., Mocane-Laverne field, Beaver County, Okla.	[15]	14.65
CI79-394, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Dembey and Lorena fields, Beaver County, Okla.	[15]	14.65
CI79-395, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Mocane-Laverne field, Beaver County, Okla.	[15]	14.65
CI79-396, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Mocane-Laverne Gas area, Beaver County, Okla.	[15]	14.65
CI79-397, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Northern Natural Gas Co., Mocane-Laverne field, Beaver County, Okla.	[15]	14.65
CI79-398, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Panhandle Eastern Pipeline Co., Salon S.E. field, Ellis and Woodward Counties, Okla.	[15]	14.65
CI79-399, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Panhandle Eastern Pipeline Co., Waynoka N.E. field, Woods County, Okla.	[15]	14.65
CI79-400, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.).	Transwestern Pipeline Co., Mendota N.S. field, Hemphill County, Tex.	[15]	14.65
CI79-402, A, Apr. 3, 1979	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	El Paso Natural Gas Co., certain acreage in the Langlie Deep area, Lea County, N. Mex.	[14]	14.65
CI79-403, A, Apr. 3, 1979	Columbia Gas Development Corp.[16] P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Transmission Corp., block 99 platform "B", Eugene Island area, offshore Louisiana.	[17]	15.025
CI79-404, A, Apr. 10, 1979	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	Michigan Wisconsin Pipe Line Co., High Island area, block A-317, offshore Texas.	[18]	14.65
CI79-405, A, Apr. 12, 1979	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Texas Eastern Transmission Corp., South Marsh Island area, blocks 136 and 137, offshore Louisiana.	[19]	15.025
CI79-408, A, Apr. 9, 1979	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Northern Natural Gas Co., High Island block A-537 Field, offshore Tex.	[19]	15.025
CI79-411 (CI66-1347) B, Apr. 13, 1979.	Sohio Natural Resources Co., 50 Penn Place, suite 1100, Oklahoma City, Okla. 73118.	Natural Gas Pipeline Co., of America, Camrick field, Beaver County, Okla.	Depleted, plugged and abandoned on April 1, 1979, and lease terminated.	
CI79-412, B, Apr. 13, 1979	HBOP, Ltd., 2800 Liberty Tower, Oklahoma City, Okla. 73102.	El Paso Natural Gas Co., sec. 11, block A-1, H&GN Railway Co., survey, Hemphill County, Tex.	Well had never produced in paying quantities and recoverable reserves in such well are negligible.	
CI79-413, A, Apr. 16, 1979	Amerada Hess Corp., 1200 Milam, 6th floor, Houston, Tex. 77002.	United Gas Pipe Line Co., block A-480, High Island area, offshore Tex.	[19]	14.73
CI79-414, A, Apr. 16, 1979	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	Transcontinental Gas Pipe Line Corp., Vermilion area, block 25 field, Gulf of Mexico.	[19]	15.025
CI79-416, A, May 1, 1979	Diamond Shamrock Corp., (succesor to The Shamrock Oil and Gas Corp.), P.O. Box 631, Amarillo, Tex. 79173.	Colorado Interstate Gas Co., certain acreage in Sweetwater County, Wyo.	[18]	15.025
CI79-417, A, Apr. 19, 1979	Marathon Oil Co. (operator), 539 South Main St., Findlay, Ohio 45840.	United Gas Pipe Line Co., High Island area, High Island block A-279 field, offshore Tex.	[14]	14.73
CI79-418, A, Apr. 19, 1979	Felmont Oil Corp., P.O. Box 2266, Midland, Tex. 79702.	Texas Eastern Transmission Corp., block 522 (north portion), West Cameron area, offshore Louisiana.	[20]	15.025
CI79-419, A, Apr. 19, 1979	Case-Pomeroy Oil Corp., P.O. Box 2266, Midland, Tex. 79702.	Texas Eastern Transmission Corp., block 522 (north Portion), West Cameron area, offshore Louisiana.	[17]	15.025
CI79-420, A, Apr. 20, 1979	Diamond Shamrock Corp., (successor to The Shamrock Oil and Gas Corp.).	Trunkline Gas Co., block A-511, High Island area, south addition, offshore Tex.	[21]	14.65
CI79-421, A, Apr. 20, 1979	Marathon Oil Co., (operator)	Texas Eastern Transmission Corp., East Cameron area, block 294 field, offshore Louisiana.	[14]	15.025
CI79-422, A, Apr. 19, 1979	Hamilton Bros. Exploration Co., suite 2730, 1100 Milam Bldg., Houston, Tex. 77002.	Trunkline Gas Co., block 281, South Marsh Island area, north addition, offshore Louisiana.	[22]	15.025
CI79-423, A, Apr. 19, 1979	Hamilton Bros. Exploration Co., Suite 2730, 1100 Milam Bldg., Houston, Tex. 77002.	Trunkline Gas Co., blocks 268 and 269, South Marsh Island area, north addition, offshore Louisiana.	[23]	15.025
CI79-424, A, Apr. 19, 1979	Hamilton Bros. Oil Co., Suite 2730, 1100 Milam Bldg., Houston, Tex. 77002.	Trunkline Gas Co., blocks 268, 269 and 281, South Marsh Island area, north addition, offshore Louisiana.	[22]	15.025
CI79-425, A, Apr. 19, 1979	Hamilton Bros. Oil & Gas Corp., Suite 2730, 1100 Milam Bldg., Houston, Tex. 77002.	Trunkline Gas Co., block 281, South Marsh Island area, north addition, offshore Louisiana.	[22]	15.025
CI79-426, A, Apr. 25, 1979	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	El Paso Natural Gas Co., Moncrief-Masten No. 1 Devonian Well, Cochran County, Tex.	[18]	14.65
CI79-427, A, Apr. 20, 1979	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Sands Ranch field, Eddy County, N. Mex.	[24]	14.65
CI79-428, A, Apr. 25, 1979	Diamond Shamrock Corp., (successor to The Shamrock Oil and Gas Corp) P.O. Box 631, Amarillo, Tex. 79173.	Texas Gas Transmisson Corp., certain acreage in Lafayette Parish, La.	[23]	15.025
CI79-429, A, Apr. 24, 1979	Pennzoil Oil & Gas, Inc., c/o Pennzoil Co., P.O. Box 2967, Houston, Tex. 77001.	Sea Robin Pipeline Co., West Cameron block 352, west addition, offshore Louisiana.	[19]	15.025
CI79-430, A, Apr. 24, 1979	POGO Producing Co., c/o Pennzoil Co., P.O. Box 2967, Houston, Tex. 77001.	Sea Robin Pipeline Co., West Cameron block 352, west addition, offshore Louisiana.	[19]	15.025
CI79-431, A, Apr. 30, 1979	Mesa Petroleum Co., 1 Mesa Square, P.O. Box 2009, Amarillo, Tex 79189.	Tennessee Gas Pipeline Co., block A-349, High Island, east addition, south extension area, offshore Texas, and blocks 612 and 613, West Cameron, south addition area, offshore Louisiana.	[19]	14.73
CI79-433, A, Apr. 30, 1979	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., West Hicksbaugh Field, Tyler County, Tex.	[18]	14.65
CI79-434 (CI76-602), B, May 1, 1979.	JFD, Inc., 2200 South Post Oak Rd., Suite 700, Houston, Tex. 77056.	Trunkline Gas Co., South Timbalier—block 140 field, offshore Louisiana.	Well was shut in after cessation of gas flow and unsuccessful maintenance program during February 1979.	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
CI79-435, A, Apr. 30, 1979	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Transco Gas Supply Co., certain acreage in the West Cameron area blocks 402 and 405, offshore Louisiana.	[14]	14.73
CI79-437, A, May 7, 1979	Getty Oil Co.,	Sea Robin Pipeline Co., certain acreage in the Vermilion area, block 242, offshore Louisiana.	[14]	14.73
CI79-438, A, May 7, 1979	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex. 75206.	Sea Robin Pipeline Co., blocks 234 and 235, South Marsh Island area, north addition, Gulf of Mexico.	[19]	14.73
CI79-439, E, May 1, 1979	Gulf Oil Corp. (Successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Texas Gas Transmission Corp., certain acreage located in the Lewisburg field, Arcadia Parish, La.	[26]	15.025
CI79-440, E, May 1, 1979	Gulf Oil Corp. (Successor in interest to Kewanee Oil Co.).	Northern Natural Gas Co., certain acreage located in the Mocane N.E. field, Beaver County, Okla.	[27]	14.65
CI79-441, A, May 7, 1979	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Northern Natural Gas Co., East Grand Valley field, Beaver County, Okla.	[14]	14.73
CI79-444 (CI69-779) B, Apr. 30, 1979.	Sohio Natural Resources Co., 50 Penn Place, suite 1100, Oklahoma City, Okla. 73118.	Northern Natural Gas Co., Northwest Woodward field, Woodward County, Okla.	[28]	
CI79-445, A, May 14, 1979	Texaco Inc., P.O. Box 60252, New Orleans, La. 70160.	Texas Gas Transmission Corp., Tiger Shoal and Lighthouse Point fields, offshore Louisiana.	[29]	15.025
CI79-446, A, May 9, 1979	Pan Eastern Exploration Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., High Island area, east addition, south extension, block A-317, offshore Texas.	[12]	14.65
CI79-447, A, May 10, 1979	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline co., south March Island block 116, South Marsh Island 116 area, offshore Louisiana.	[30]	15.025

[1] Effective February 1, 1978, Cities Service Company acquired an additional 12.5% interest in acreage attributable to said acreage from Paul J. Otis, *et al.* The Otis, *et al.*, interest is subject to that certain Gas Purchase Agreement dated November 19, 1953, between Cities Service Company, *et al.*, and Panhandle Eastern Pipe Line Company, by virtue of Ratification of Gas Purchase Agreement dated July 3, 1956, as amended.

[2] Cities sold the last well on the lease to C&Y Casing Pulling Company for plugging only and the well was plugged on March 9, 1969. The lease expired in April 1975 and was released at that time.

[3] By assignments dated October 9, 1973 and August 13, 1974, Forest Oil Corporation assigned to Applicant an additional 20% interest in the acreage. Applicant is filing under Gas Purchase and Sales Agreement dated August 1, 1969.

[4] By Purchase and Sale Agreement dated March 12, 1979, ("Agreement"), Cities has agreed to sell certain leasehold interests in the properties described to El Paso for El Paso's use in its Washington Ranch Storage Project.

[5] Dickson No. 1-3 Well located in Section 3 was depleted in April, 1977 and plugged and abandoned on March 14, 1978. Section 33, the Berryman No. 1-33 Well was plugged and abandoned as a dry hole on February 17, 1976.

[6] Applicant is filing under Gas Purchase Contract dated June 13, 1977, amended by amendment dated January 16, 1979.

[7] Applicant is filing under Section 103 of the Natural Gas Policy Act of 1978.

[8] Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated October 3, 1956, as amended.

[9] Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated August 21, 1967, as amended.

[10] Applicant is filing under Section 102(c)(1)(c) of the Natural Gas Policy Act of 1978.

[11] Applicant is filing under Gas Purchase Contract dated March 29, 1978.

[12] Applicant is willing to accept the rates set forth in Sections 102 and 104 of Title I of the Natural Gas Policy Act of 1978 and as more fully set forth in Subparts B & D of Part 271 of the Commission's Interim Regulations Implementing the Natural Gas Policy Act of 1978.

[13] Commercial quantities of gas are no longer available for delivery. Water production prevented this well from producing on a normal basis and gas lift equipment was installed on the well; however, water continued to inhibit gas production and the well was subsequently plugged and abandoned.

[14] Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended.

[15] Multistate is acquiring this property from Shenandoah as of March 26, 1979 and requests that both temporary and permanent certificates be effective as of March 26, 1979, to continue the service previously rendered by Shenandoah under Docket No. CS71-354.

[16] Applicant and Purchaser are affiliated.

[17] Applicant is filing under Gas Purchase and Sales Agreement dated March 20, 1979.

[18] Applicant is filing under Section 104 of the Natural Gas Policy Act of 1978.

[19] Applicant is willing to accept the applicable maximum lawful price as provided by the Natural Gas Policy Act of 1978.

[20] Applicant is filing under Gas Purchase and Sales Agreement dated March 16, 1978.

[21] Applicant is filing under Gas Purchase Contract dated April 2, 1979.

[22] Applicant is willing to accept a permanent certificate conditioned to the applicable price(s) provided for in the Natural Gas Policy Act of 1978, and applicable to the categories of gas sold under the Gas Purchase Contract dated May 31, 1974, which would qualify under Section 104(b) or 102(d) of the NGPA.

[23] Applicant is willing to accept a permanent certificate conditioned to the applicable price(s) provided for in the Natural Gas Policy Act of 1978, and applicable to the categories of gas sold under the Gas Sale and Purchase Contract dated May 31, 1974 which would qualify under Section 104(b) of the NGPA.

[24] Applicant is filing under Gas Purchase Agreement dated September 15, 1978.

[25] Applicant is filing under Gas Purchase Contract dated March 13, 1968, amended by amendments dated July 10, 1968 and May 4, 1971.

[26] Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated July 11, 1972, as amended.

[27] Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated March 26, 1974, as amended.

[28] There will be no further gas production available from Sohio since Sohio has sold its interest in last producing unit and Sohio's interest in all remaining nonproductive leases has terminated.

[29] Applicant is filing under Section 104(b)(1)(A) and Section 109(a)(1) of the Natural Gas Policy Act of 1978.

[30] Applicant is filing under Section 102(d)(1) of the Natural Gas Policy Act of 1978.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 79-16771 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

Nonconventional Natural Gas Resources: Gas Dissolved In Water

May 24, 1979.

Notice is hereby given that the Federal Energy Regulatory Commission (FERC) has recently published an advisory committee report entitled *Nonconventional Natural Gas Resources: Gas Dissolved In Water* (DOE/FERC-0029). A limited number of free copies are available from the Department's Technical Information Center Publications Request Section, P.O. Box 62, Oak Ridge, Tennessee 37830.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16941 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on V/STOL Aircraft, Phase II; Advisory Committee Meeting

The Defense Science Board Task Force on V/STOL Aircraft, Phase II will meet in closed session on June 25-29, 1979 in Woodshole, Massachusetts.

The mission of the Defense Science Board is to advice the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the DSB Task Force on V/STOL Aircraft, Phase II has been scheduled for June 25-29, 1979 to evaluate the potential of V/STOL technology for future military and naval missions.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c), (1976); and that accordingly this meeting will be closed to the public.

Dated: May 25, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-16920 Filed 5-30-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Direct Fired Biomass Steam/Electric Cogeneration Facility—Maine; Intent To Prepare Draft Environmental Impact Statement

Notice is hereby given that, in accordance with the National Environmental Policy Act, the Department of Energy (DOE) is commencing the preparation of a draft environmental impact statement (EIS) to provide environmental input in connection with future DOE participation, including siting, construction, and operation of, a proposed direct fired biomass steam/electric cogeneration facility in Maine.

The purpose of this notice is to present pertinent background information regarding the proposed scope and content of the statement and to solicit comments and suggestions in its preparation. When completed the draft statement will be circulated for review to Federal, State, and local agencies and interested public organizations and individuals. The comments received on the draft statement will be considered in the preparation of the final statement.

The biomass to be used consists of wood chips from forest trees. A conventional steam generating plant producing 500,000 lb. of steam per hour and a rated generating capacity of 20 MWe is proposed as the biomass conversion unit.

The specific objectives of the demonstration project are:

(a) To establish that there is sufficient biomass at reasonable cost to support and sustain the operation of the plant.
(b) To evaluate process reliability and thermal efficiency.
(c) To determine the costs of the energy products produced by the plant.
(d) To establish a basis for comparing the system to other means of energy production, and
(e) To establish the technologies and economic basis for, and the environmental acceptability of, commercial operation.

It is expected that this facility will require 800,000 tons of green wood chips per year (approximately 300,000 cords). They will be obtained from numerous sources, including lumber mill residues, forest harvesting residues and whole

forest harvesting residues and whole forest harvesting, in the areas being considered for plant location.

A final site for the facility has not been chosen. Twenty-three sites in Maine are being investigated for their engineering, economic and environmental suitability. However, it is currently planned to be co-located with one of several existing industrial sites where cogenerated steam can be used and an existing high tension electric transmission line is available.

The project is planned as four discrete phases: I. Systems Selection and Design; II. System Fabrication, Installation, Startup and Acceptance Testing; III. Demonstration System Operation and Performance Evaluation; and IV. Ownership and Long-Term Operation. The present contract is for demonstration systems selection and design only and is to be completed in 19 months. DOE will finalize and consider this EIS prior to site selection and the award of any contract subsequent to Phase I.

The environmental impacts of the proposed steam/electric cogeneration facility and the cumulative impacts of the associated biomass harvesting system will be assessed in the draft EIS. Alternatives to be examined in addition to siting include alternatives of process and of no action.

Copies of documents to be utilized in the preparation of this draft environmental impact statement will be available for inspection at the Fuels from Biomass Branch of the Division of Distributed Solar Technology, Department of Energy, Room 414, 600 E Street, NW., Washington, DC 20585. A bibliography of documents will also be available at this location.

All interested agencies, organizations, or persons desiring to submit comments or suggestions for consideration in connection with the preparation of the draft EIS should submit them to Robert J. Stern, Mail Station E-201, GTN, Department of Energy, Washington, DC 20545, telephone (301) 353-4241 on or before June 21, 1979.

Those desiring a copy of the draft EIS when it is available should notify Dr. Stern.

Dated this 21st day of May 1979.

For the Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 79-16865 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; May 7 Through May 11, 1979

Notice is hereby given that during the period May 7 through May 11, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this Proposed Decision and Order are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except federal holidays.

Dated: May 23, 1979.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

American Agri-Fuels Corp., Kansas City, Mo., DEE-2179, motor gasoline

American Agri-Fuels Corporation filed an Application for Exception from the provisions of 10 CFR, Part 211. The exception request, if granted, would allow American to receive an assured allocation of unleaded gasoline for use in the firm's production of gasohol. On May 9, 1979 the DOE issued a Proposed Decision and Order which determined that during each of the months listed below, the Amoco Oil Company should supply American with the following volumes of unleaded gasoline, on the condition that American not engage in any gasoline resale operations:

Month and volume (barrels)	
June 1979	7,710
July 1979	7,967
August 1979	7,967
September 1979	83,580
October 1979	86,366
November 1979	83,580
December 1979	199,299
January 1980	199,299
February 1980	186,441
March 1980	199,299
April 1980	192,870
May 1980	199,299

Bright & Co., Dallas, Tex., DEE-2157, crude oil.

Bright & Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be permitted to sell the crude oil produced from the Nolte Lease, located in Gonzales County, Texas, at prevailing market prices. On May 10, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request should be denied.

ECO Petroleum, Inc., Long Beach, Calif., DEE-0967, Crude Oil

Eco Petroleum, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Eco of any obligation to purchase entitlements. On May 8, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Energy Cooperative, Inc., East Chicago, Ind., DEE-2816, Crude Oil

On March 22, 1979, Energy Cooperative, Inc. (ECI) filed an Application for Exception which, if granted, would permit the firm to purchase certain volumes of crude oil through the DOE Buy/Sell Program during the allocation period April 1 through September 30, 1979. In addition, ECI would be issued additional entitlements for each barrel of crude oil which it obtained through the Buy/Sell Program. On May 10, 1979 the DOE issued a Proposed Decision and Order which granted the ECI request in part and permitted the firm to purchase volumes of crude oil through the Buy/Sell Program during the current allocation period. The DOE denied the firm's request with respect to the issuance of additional entitlements.

Louis Kahan, Tulsa, Okla., DEE-2805, Crude Oil

Louis Kahan filed an Application for Exception from the provisions of 10 CFR, Subpart D. The exception request, if granted, would permit Kahan to sell the crude oil produced from the Mose Bean Lease at prices in excess of those permitted by the provisions of 10 CFR, Part 212. On May 8, 1979, the DOE

issued a Proposed Decision and Order which determined that the exception request be granted in part.

Louis Kahan, Tulsa, Okla., DEE-2806, Crude Oil

Louis Kahan filed an Application for Exception from the provisions of 10 CFR, Subpart D. The exception request, if granted, would permit Kahan to sell the crude oil produced from the Polly "B" Lease at prices in excess of those permitted by the provisions of 10 CFR, Part 212. On May 8, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Murray Oil Co., Ash Grove, Mo., DEE-2284, Marcum Oil Co., Savannah, Mo., DEE-2263, Motor Gasoline

The Murray Oil Company and the Marcum Oil Company filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1, which was issued by the Economic Regulatory Administration of the DOE on February 22, 1979. 44 Fed. Reg. 11202 (February 28, 1979). In their applications, the firms requested that the DOE assign alternate suppliers to furnish at competitive prices the volumes of motor gasoline which under the standby regulations the firms were entitled to receive only from the OKC Trading Company. On May 8, 1979, the DOE issued a Proposed Decision and Order which determined that the Murray and Marcum exception requests be granted.

Phillips Petroleum Co., Bartlesville, Okla., DEE-1907, Crude Oil

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at upper tier ceiling price levels the crude oil produced from the Arnston Lease located in Divide County, North Dakota. On May 10, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of May 7 Through May 11, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company name	Case No.	Location
Acree Oil Company, Inc.	DEE-3525	DeLand, Florida.
Beaver Lake Camp Ground	DEE-3272	Quincy, Florida.
Bill's Amoco	DEE-3685	Lima, Pennsylvania.
Kenneth Chapman	DEE-2805	Decatur, Alabama.
Corvo's Service Station	DEE-2730	Scranton, Pennsylvania.
Craig Oil Company	DEE-2466	Macon, Georgia.
Rapid Service Oil Company, Inc.	DEE-2373	Roberts, Wisconsin.
West Side Distributing Company	DEE-2749	Rochester, Minnesota.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of May 7 Through May 11, 1979

The following firms filed Applications for Exception from the provisions of standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Order which determined that the exception requests be denied.

Company name	Case No.	Location
Apollo Oil Company	DEE-2228	Mountain View, California.
Elton L. Culpepper	DEE-3270	Waterboro, South Carolina.
Glover Oil Company, Inc	DEE-2534	Melbourne, Florida.
Vaughn Oil Company	DEE-2358	Omaha, Nebraska.

[FR Doc. 79-16834 Filed 5-30-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; May 14, 1979 through May 18, 1979

Notice is hereby given that during the period May 14, through May 18, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice; whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except federal holidays.

Dated: May 24, 1979.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

Caribbean Gulf Refining Co., Houston, Tex., DPI-0033, petroleum products, crude oil

Caribbean Gulf Refining Company filed an Application for Exception in which it requested permission to import crude oil on a license fee-exempt basis during the 1978-79 allocation period, refunds of all license fees which it had previously paid during this period, and permission to reflect in the price which it charges for products sold in Puerto Rico the actual costs incurred in its Puerto Rican refining and marketing operations (notwithstanding the provisions of the Equal Application Rule). On May 16, 1979, the DOE issued a Proposed Decision and Order in which it tentatively determined to grant Gulf's request with respect to the Equal

Application Rule, and grant the firm refunds of license fees paid during March, 1979 only.

Commonwealth Oil Refining Co., Inc., Penuelas, Puerto Rico, DEE-2245; Phillips Petroleum Co., Bartlesville, Okla., DEE-2317; Union Carbide Caribe, Inc., Hato Rey, Puerto Rico, DEE-3148, DEE-3148

Commonwealth Oil Refining Company, Inc. (Corco) Phillips Petroleum Company, and Union Carbide Caribe, Inc. filed Applications for Exception with the DOE. All three applicants requested exception relief which would enable them to earn additional entitlements for the naphtha they import into the Commonwealth of Puerto Rico. Phillips also requested an exception that would permit it to calculate entitlement values on the basis of its own costs of acquiring imported naphtha rather than on the basis of average costs of naphtha imported into Puerto Rico. In its submission, Corco requested permission to base its selling price for motor gasoline on the cost of the naphtha actually used to produce the gasoline. On May 16, 1979, the DOE issued a Proposed Decision and Order which determined that the applicants should be granted exception relief that would double the entitlements they receive for imported naphtha. The DOE proposed that Phillips' request to base the calculation of entitlements on its own actual costs of imported naphtha be denied. In addition, the DOE determined that Corco's request to use an alternative method to determine maximum permissible selling prices for motor gasoline should be granted. After discussing the general conditions of the refining and petrochemical industries in Puerto Rico, the DOE further determined that it was prepared to approve exception relief that would provide additional entitlements to individual Puerto Rican firms that agree to invest in the construction of downstream petrochemical facilities.

Gulf Oil Corp., Tulsa, Okla., DXE-2809, crude oil

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 51.37 percent of the crude oil which it produces from the Kiefer Unit at upper tier ceiling prices. On May 14, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Gulf Oil Corporation's Kiefer Unit.

Hewit Dougherty, Austin, Tex., DEE-2222, natural gas liquid.

Hewit and Dougherty filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart K. The exception request, if granted, would permit Hewit and Dougherty to utilize the last quarter of 1973 as its base quarter in calculating non-product cost increase pursuant to 10 CFR 212.165(a). On May 18, 1979 the DOE issued a Proposed Decision and Order which determined that prospective exception relief should be granted, but that the firm's request for retroactive exception relief should be denied.

D. C. Latimer, Jackson, Miss., DEE-0613, crude oil.

D. C. Latimer filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Latimer to retroactively determine the maximum permissible selling prices of the crude oil produced from the Vyron Womack No. 1 Well during the period December 1974 through December 1976 without regard to the cumulative deficiency in the base production control level which accrued during the period April through November 1974. On May 14, 1979 the DOE issued a Proposed Decision and Order which determined that the exception request should be denied.

Texaco, Inc., White Plains, N.Y., DEE-1673, motor gasoline

Texaco, Inc. filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. The Texaco request, if granted, would have resulted in the issuance of an Order authorizing the firm to restructure the classes of purchaser for certain of its wholesale-purchaser-consumer motor gasoline accounts and to impute to those classes of purchaser a higher May 15, 1973 weighted average selling price than the price applicable to its present class. On May 14, 1979, the DOE issued a Proposed Decision and Order in which it tentatively determined that the Texaco request be denied.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of May 14, 1979 Through May 18, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. During the week of May 14 through May 18, 1979, the DOE issued Proposed Decisions and Orders which determined that the exception requests be granted:

Company name	Case No.	Location
Black's Shell Service	DEE-2544	Spartanburg, South Carolina.
Colonial Shell Service	DEE-3253	Wallingford, Connecticut.
Charles F. Ellett	DEE-4181	Richmond, California.
Hampton Station	DEE-3828	Brothers, Oregon.
Hondo Oil Co.	DEE-2762	Ventura, California.
Jim's Chevron	DEE-3045	Battle Mountain, Nevada.
Marina Car Wash South	DEE-3476	Redondo, California.
Melvin Olsen	DEE-3227	Woburn, Massachusetts.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of May 14, 1979 Through May 18, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. During the week of May 14 through May 18, 1979, the DOE issued Proposed Decisions and Orders which determined that the exception requests be denied:

Company name	Case No.	Location
Fraser Sales, Inc.	DEE-2355	Lee, Massachusetts.
James Oil Co.	DEE-2912	Golden, Colorado.
I-275	DEE-3124	Plymouth, Michigan.
Lahser & 11 Mile Shell Service	DEE-2438	Southfield, Michigan.
Moody Oil Co.	DEE-2231	Hollywood, South Carolina.
Petco Oil Co., Inc.	DEE-4042	South Royalton, Vermont.
Smith Bros. Petroleum	DEE-2887	Olathe, Kansas.
White's Chevron	DEE-3359	Robertsdale, Alabama.

[FR Doc. 79-16535 Filed 5-30-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1237-8]

State of Maryland; National Pollutant Discharge Elimination System (NPDES) Permit Program

On September 5, 1974, the Administrator of the United States Environmental Protection Agency gave approval to a request from the State of Maryland for authorization to administer the National Pollutant Discharge Elimination System (NPDES) permit program for pollutant discharges within the jurisdiction of the State. This authorization was executed pursuant to Section 402(b) of the Federal Water Pollution Control Act amendments of 1972. The authorization excluded pollutant discharges from facilities which are agencies or instrumentalities of the Federal Government.

Section 313 of the 1977 Amendments to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) provides authority for states to regulate pollutant discharges from agencies or instrumentalities of the Federal Government. The Administrator of the United States Environmental Protection Agency proposes to expand the State of Maryland's NPDES authorization to include Federal facilities by approving the following modification to the NPDES Memorandum of Agreement:

Modification to National Pollutant Discharge Elimination System Memorandum of Agreement Between Maryland Department of Natural Resources and the U.S. Environmental Protection Agency, Region III

The Memorandum of Agreement approved September 5, 1974 by the Administrator of the United States Environmental Protection Agency between the Maryland Department of Natural Resources (hereinafter the "State") and the United States Environmental Protection Agency (hereinafter "USEPA") Region III is hereby modified as follows:

The State will administer the NPDES permit program with respect to Federal facilities and has shown that it has the authority to enter and inspect Federal facilities. The State is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits in Maryland, including permits applicable to Federal facilities.

All references in the Memorandum of Agreement which have the effect of retaining responsibility to USEPA Region III over Federal facilities have no force or effect after the effective date of this Modification. Nothing in this Modification shall be construed to limit the authority of USEPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other sections of the Act.

Maryland Department of Natural Resources

By _____
Title _____
Date _____

U.S. Environmental Protection Agency, Region II

By _____
Title _____
Date _____

Approved:

_____

Assistant Administrator for Enforcement, USEPA

Date _____

All comments or objections received within thirty (30) days of the date of this notice will be considered by EPA before taking final action. If sufficient public interest is expressed a public hearing may be held. Please submit all comments or objections to:

James M. Baker (3EN32), United States Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-3440.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-16953 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2000R]

Pacific Customs Brokers, Stanley Edward Wells, d.b.a., Order Vacating Revocation

By Order served December 18, 1978, and published in the Federal Register on December 20, 1978 (43 FR 20226), Independent Ocean Freight Forwarder License No. 2000R, issued to Pacific Customs Brokers, Stanley Edward Wells, d.b.a., was revoked, effective November 30, 1978, for failure to maintain a valid surety bond on file with the Commission.

Subsequent to the revocation of Independent Ocean Freight Forwarder License No. 2000R, Pacific Customs Brokers, Stanley Edward Wells, d.b.a.,filed a new surety bond effective November 30, 1978. The new bond evidenced continuous coverage in compliance with section 44, Shipping Act, 1916, and section 510.9 of Federal Maritime Commission General Order 4.

Therefore, the November 30, 1978, revocation of Pacific Customs Brokers, Stanley Edward Wells, d.b.a.,FMC No. 2000R, is vacated based upon evidence that the new bond has been in effect from November 30, 1978.

A copy of this Order shall be published in the Federal Register and served upon Pacific Customs Brokers, Stanley Edward Wells, d.b.a.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-16828 Filed 5-30-79; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement Filed

Correction

In FR Doc. 79-16338 appearing on page 30427 in the issue of Friday, May 25, 1979, in the fourteenth line of the second paragraph, the comment deadline date now given as "June 4, 1979" should have been "June 1, 1979".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

County National Bancorporation; Acquisition of Bank

County National Bancorporation, Clayton, Missouri, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with TG Bancshares Co., St. Louis, Missouri, through TGB Co., a wholly owned subsidiary of County National Bancorporation. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 25, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16970 Filed 5-30-79; 8:45 am]

BILLING CODE 6210-01-M

Sanger First National Holding Co., Inc., of Texas; Formation of Bank Holding Company

Sanger First National Holding Co., Inc. of Texas, Sanger, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more (less directors' qualifying shares) of the voting shares of The First National Bank of Sanger, Sanger, Texas. The factors that are considered in acting on the application

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 21, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 21, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16971 Filed 5-30-79; 8:45 am]

BILLING CODE 6210-01

Santa Ana Bancorp., Inc.; Acquisition of Bank

Santa Ana Bancorp., Inc., St. Ann, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Woods Mill-Forty Bank, St. Louis County, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 22, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 24, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16972 Filed 5-30-79; 8:45 am]

BILLING CODE 6210-01-M

TGB Co.; Formation of Bank Holding Company

TGB Company, Clayton, Missouri, as applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of TG Bancshares Co., St. Louis, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than June 25, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16969 Filed 5-30-79; 8:45 am]

BILLING CODE 6210-01-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 May 23, 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 June 18, 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, DC 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 two new, single-time, voluntary surveys: (1) Essential Air Service Survey, and (2) Alaska Essential Air Service Survey. These surveys are part of a program established under Section 419 of the Deregulation Act of 1978 for the guarantee of essential air service to eligible communities throughout the United States. The survey questionnaires will enable CAB to ascertain the actual air service needs of communities. The CAB estimates that respondents will be municipal chief executives and state aeronautics commissions; approximately 700 will receive the Alaska Air Service Survey, and 500 will recieve the Alaska Essential Air Service Survey. Preparation time for each Essential Air Service Survey questionnaire is estimated to average 4 hours and preparation time for each Alaska Essential Air Service Survey is estimated to average 2 hours.

Although the CAB has already transmitted the survey questionnaires to the potential respondents and requested in the cover letters that they be returned by July 15, 1979, this effective date is contingent upon CAB's compliance with 45 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 survey questionnaires are consistent with the provisions of section 3512. This notice represents the beginning of our review.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 79-16922 Filed 5-30-79; 8:45 am]

BILLING CODE 1610-01-M

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 May 22, 1979. See 44 U.S.C. 3412 (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 FTC 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 June 18, 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, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Trade Commission

The FTC requests clearance of a new, voluntary, single-time Vocational Schools Baseline Study Survey. The data collected from this survey will be used to develop information to assist the Commission in making policy decisions related to vocational schools. Survey questionnaires will be sent to proprietary vocational and home study schools to ascertain the types of courses offered, student characteristics and promotional strategies employed. The FTC estimates that potential respondents will number approximately 600 schools randomly selected from a universe of 7,500 schools and that preparation time for each response will average 20 minutes.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 79-16923 Filed 5-30-79; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

Safety and Occupational Health Study Section; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

Name: Safety and Occupational Health Study Section.

Date: June 18-19-20, 1979.

Place: NIOSH Conference Room, Parklawn Building, Rooms 8-03 and 8A-05, 5600 Fishers Lane, Rockville, Md. 20857.

Time: 9 a.m.

Type of Meeting: Open: 9 a.m. to 11 a.m. on June 18, 1979. Closed: Remainder of meeting.

Contact Person: Harvey P. Stein, Ph.D., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8-63 Rockville, Maryland 20857, Telephone: 301-443-4493.

Purpose: The committee is charged with the initial review of research, training, demonstration, and fellowship grant applications for Federal assistance in program areas administered by the National Institute for Occupational Safety and Health, and with advising the institute staff on training and research needs.

Agenda: Agenda items for the open portion of the meeting will include consideration of minutes of previous meeting; administrative and staff reports; and discussion of fellowships and conferences, as well as research and training areas in need of special emphasis. Beginning at 11 a.m., June 18, 1979, through adjournment on June 20, 1979, the Study Section will be performing the initial review of research grant and training grant applications for Federal Assistance, and will not be open to the public, in accordance with the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Center for Disease Control, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: May 21, 1979.

William H. Foege,

Director, Center for Disease Control.

[FR Doc. 79-16979 Filed 5-30-79; 8:45 am]

BILLING CODE 4110-87-M

National Institute of Education

Panel for the Review of Laboratory and Center Operations; Meeting

Notice is hereby given that the next meeting of the Panel for the Review of Laboratory and Center Operations will be held on June 23-24, in the Conference Center of the One Washington Circle Hotel, One Washington Circle, N.W., Washington, D.C. The Panel will meet from 9:00 a.m. until 5:00 p.m. on Saturday, June 23 and from 9:00 a.m. until 12:30 p.m. on Sunday, June 24.

The Panel for the Review of Laboratory and Center Operations is established under section 405 of the General Education Provisions Act, as amended by section 403(d) of the Education Amendments Act of 1976, 20 U.S.C. 122e. Its functions include: (a) the review of long range plans submitted by the 17 existing regional educational laboratories and research and development centers to the National Institute of Education; (b) the review of the operations of the laboratories and centers; and (c) making recommendations for the improvement and continuation of individual laboratories and centers and for the support of new laboratories and centers.

The entire meeting will be open to the public. Although the agenda is still tentative it will consist primarily of (1) a progress report from the National Institute of Education on plans for providing regional R&D service nationwide and (2) discussion of selected issues regarding the implementation of long-term relationships with the laboratories and centers, including the role of institutional monitors.

Interested persons are invited to attend these sessions. Written statements relevant to an agenda item on any topic deemed of interest to the Panel may be submitted to the Panel staff at the address below.

Copies of the records of all Panel proceedings may be obtained through the office of the Panel staff. Minutes require approval by the Panel at a subsequent meeting and are available to the public two weeks following their approval.

In order to verify the tentative agenda, or assure adequate seating arrangements, persons likely to attend the Panel meeting may contact the Panel staff office as indicated below:

Panel for the Review of Laboratory and Center Operations, National Institute of Education, Washington, D.C. 20208, (202) 254-5510.

Grady McGonagill,

Staff Director, Panel for the Review of Laboratory and Center Operations.

[FR Doc. 79-16863 Filed 5-30-79; 8:45 am]

BILLING CODE 4110-39-M

National Institutes of Health

National Institute of Dental Research; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the National Institutes of Health announces the establishment of the National Institute of Dental Research Programs Advisory Committee by the Secretary, HEW.

This committee shall advice the Secretary, the Assistant Secretary for Health, the Director, National Institutes

of Health and the Institute Director on the scientific and other aspects of research programs on the causes, nature, diagnosis, treatment, and prevention of periodontal diseases and dental caries.

Authority for this committee shall expire on May 5, 1981, unless the Secretary, HEW, formally determines that continuance is in the public interest.

Dated: May 22, 1979.

Leon M. Schwartz,

Acting Director, National Institutes of Health.

[FR Doc. 79-16378 Filed 5-30-79; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service

Research and Investigation; Delegations of Authority

Notice is hereby given of delegations by the Secretary of Health, Education, and Welfare to the Assistant Secretary for Health, with authority to redelegate, of the following authorities under Part A, "Research and Investiation," of Title III, "General Powers and Duties of Public Health Service," of the Public Health Service Act:

(1) Authority under section 301 (42 U.S.C. 241), as amended by Pub. L. 95-622, relative to research, investigation, and testing functions. This includes the authority to promulgate regulations pertaining to the functions assigned to the Food and Drug Administration. Otherwise, the authority to promulgate regulations is excluded.

(2) Authority under Section 303 (42 U.S.C. 242a), as amended by Pub. L. 93-348, relative to mental health, excluding the authority to promulgate regulations.

The authorities under Sections 301 and 303 regarding alcohol abuse, alcoholism, drug abuse, and mental health are required to be redelegated to the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration for further redelegation to (1) the Director of the National Institute on Alcohol Abuse and Alcoholism pursuant to Section 101 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4551), as amended by Pub. L. 93-282; (2) the Director of the National Institute on Drug Abuse pursuant to Section 501 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1191), as amended by Pub. L. 93-282; and (3) the Director of the National Institute of Mental Health Pursuant to Section 455 of the Public Health Service Act (42 U.S.C. 289k-1), as amended by Pub. L. 93-282.

The previous delegation to the Assistant Secretary for Health of authorities under Sections 301 and 303 has been superseded. Previous delegations and redelegations to other officials in the Public Health Service of authorities under Sections 301 and 303 have been authorized to continue in effect pending further redelegation.

The above delegations became effective on May 19, 1979.

Dated: May 22, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

[FR Doc. 79-16304 Filed 5-30-79; 8:45 am]

BILLING CODE 4110-88-M

Office of Education

Advisory Council on Financial Aid to Students—Subcommittee on Federal and State Insured Programs; Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 463), that the next meeting of the Advisory Council on Financial Aid to Students Subcommittee on Federal and State Insured Programs will be held at the University of Rhode Island, Kingston, Rhode Island on June 28 and 29, 1979, from 9:00 a.m. to 5:00 p.m. on the 28th and from 9:00 a.m. to 1:00 p.m. on the 29th.

The Advisory Council on Financial Aid to Students is established under section 499(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089). The Council shall advise the Commissioner on matters of general policy arising in the administration by the Commissioner of programs relating to financial assistance to students and on the evaluation of the effectiveness of these programs.

All meetings shall be open to the public. The agenda of this meeting shall include review of the annual report draft, review of the recommendations of the Carnegie Council on Policy Studies in Higher Education, and plans for Council activity during the ensuing year.

Records shall be kept of all Council proceedings and will be available for public inspection at the Council's Office, located in Room 3661 of Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C. 20202.

Signed in Washington, D.C. on May 22, 1979.

Warren T. Troutman,

Delegate, U.S. Office of Education.

[FR Doc. 79-16832 Filed 5-30-79; 8:45 am]

BILLING CODE 4110-89-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-79-918]

Swiss Village East; Order of Suspension

AGENCY: Office of Interstate Land Sales Registration.

ACTION: Order of suspension.

SUMMARY: In the matter of Swiss Village East, Antrim County, Midwest Resort Properties, Inc. and Paul T. Lahti, Jr., President, Respondent; OILSR No. 0-02263-26-32 and (A); Land Sales Enforcement Division No. 78-50-IS.

Notice is hereby given that: on or about October 17, 1978, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon Paul T. Lahti, Jr., President, Midwest Resort Properties, Inc., East Torchlake Drive, Route 1, Bellaire, Michigan 49615, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not possible since the addressee could not be located. On April 3, 1979, the Department published the Notice of Proceedings and Opportunity for Hearing in the Federal Register (44 FR 19542) pursuant to 44 U.S.C. 1508. The developer has failed to respond or to request a hearing pursuant to 24 CFR 1720.160 within 15 days of the service by publication of the said Notice of Proceedings and Opportunity for Hearing. Accordingly, an Order of Suspension is being issued pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1).

DATES: Order of Suspension is effective May 31, 1979.

ADDRESSES: Send comments to Mr. Christopher Peterson, Director, Land Sales Enforcement Division, Office of Interstate Land Sales Registration, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Peterson, Director, Land Sales Enforcement Division Office of Interstate Land Sales Registration, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-5989.

SUPPLEMENTARY INFORMATION: An Order of Suspension is being issued pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), as follows:

Order of Suspension

1. The Developer being subject to the provisions of the Interstate Land Sales

Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701 *et seq.*) and the Rules and Regulations lawfully promulgated thereto pursuant to 15 U.S.C. 1718, has filed a Statement of Record and Property Report for Swiss Village East, Units I-III located in Antrim County, Michigan, which became effective on June 12, 1972 and remains effective, and a consolidated Statement of Record for Swiss Village East Unit IV, which became effective on February 1, 1973 and remains effective.

2. Pursuant to lawful delegation, as authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or her designee.

3. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or her designee at any time that a Statement of Record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statement therein not misleading, the Secretary or her designee may, after notice, and after an opportunity for a hearing requested within 15 days of receipt of such notice, issue an order suspending the Statement of Record.

4. On or about October 17, 1978, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon Paul T. Lahti, Jr., President, Midwest Resort Properties, Inc., East Torchlake Drive, Route 1, Bellaire, Michigan 49615, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not achieved since the addressee could not be located. On April 3, 1979, a Notice of Proceedings and Opportunity for Hearing was served upon the Developer by publication in the Federal Register (44 FR 19542). The Notice informed the Developer of information obtained by the Office of Interstate Land Sales Registration showing a change occurred affecting a material fact contained in the above-specified Statement of Record and Property Report. The Developer has failed to answer or to request a hearing pursuant to 24 CFR 1720.220 within 15 days of receipt of said Notice of Proceedings and Opportunity for Hearing.

Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) the Statement of Record filed by the Developer covering its subdivision is hereby suspended, effective as of the date of the publication of this Order of Suspension in the Federal Register. This Order of Suspension shall remain in full force and effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and the implementing Regulations.

This Order shall be served upon the Developer by publication in the Federal Register pursuant to 44 U.S.C. 1508.

Any sales or offers to sell made by the Developer or its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of said Act.

Issued in Washington, D.C., May 24, 1979.

Patricia M. Worthy,

Administrator, Interstate Land Sales Registration.

[FR Doc. 79-16881 Filed 5-30-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79—567]

Attesting Officers

AGENCY: Department of Housing and Urban Development.

ACTION: Delegation of authority.

SUMMARY: This Notice amends the prior delegation of authority to include microfilmed records in the list of Department records to which the designated attesting officers may affix to seal of the Department and which they may authenticate. It also expands the list of officials designated as attesting officers, to provide attesting officers in each major division within the Department.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administration Law, Department of Housing and Urban Development, 451 7th St., SW., Washington, D.C. 20410, 202-755-7137.

SUPPLEMENTARY INFORMATION: The designation and delegation of authority published at 36, FR 23835 (December 15, 1971), as amended at 37 FR 23468 (November 3, 1972), and further amended at 39 FR 40186 (November 14, 1974) and 43 FR 24144 (June 2, 1978) list the employees of the Department of Housing and Urban Development who are designated as attesting officers and who are authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, or other document is a true copy of that in the files of the Department. This notice amends the listing of documents to which such officers may attest to include those records of the Department which are preserved on microfilm. It also expands the list of attesting officers to provide such officers in each major division within the Department of Housing and Urban Development.

Accordingly, the delegation of authority published at 36 FR 23835 is amended to read as follows:

Section A.—Authority Delegated. Each of the following employees of the Department of Housing and Urban Development is designated an attesting Officer and is authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department:

1. Assistant Secretary for Housing-Federal Housing Commissioner.
2. Assistant Secretary for Legislation and Intergovernmental Relations.
3. Assistant Secretary for Administration.
4. Assistant Secretary for Neighborhoods, Voluntary Associations, and Consumer Protection.
5. Assistant Secretary for Policy Development and Research.
6. Assistant Secretary for Community Planning and Development.
7. Administrator, Federal Disaster Assistant Administration.
8. President, Government National Mortgage Association.
9. Inspector General.
10. General Counsel.
11. Legal Assistant to Assistant General Counsel for Administrative Law.
12. Secretary to the General Manager, New Communities Development Corporation.
13. Financial Analyst, Project Financing Staff, Office of Assistant Secretary for Housing-Federal Housing Commissioner.
14. Interstate Land Sales Administrator.
15. Deputy Administrator, Office of Interestate Land Sales Registration.
16. Director, Mortgage Insurance Accounting Group, Office of Finance and Accounting.
17. Chief, Program Liquidation Branch, Assisted Housing Management, Office of Assistant Secretary for Housing-Federal Housing Commissioner.
18. The Secretary to each Regional Administrator, and the Secretary to each Regional Counsel.
19. The Secretary to each Area Manager, and the Secretary to each Area Counsel.
20. Secretary to the Associate Regional Counsel for Private Market Financing, Atlanta Regional Office, Region IV.
21. Assistant for Operations, Office of Assistant Secretary for Fair Housing and Equal Opportunity.

Section B.—Authority to Redelegate. The officials listed as numbers 1 through 10 in Section A as designated attesting officers are authorized to redelegate to any employees of the Department the

authority delegated to them in Section A.

Section C.—Supersedure. This delegation of authority supersedes the delegation of authority published at 36 FR 23835 (December 16, 1971) and amended at 37 FR 23468 (November 3, 1972), and further amended at 39 FR 40186 (November 14, 1974), and 43 FR 24144 (June 2, 1978).

Effective Date. This delegation of authority shall be effective on May 17, 1979. [Sec. 7 (d) and (g), Department of HUD Act, 42 U.S.C. 3535 (d) and (g)] Issued at Washington, D.C.

Issued at Washington, D.C., May 17, 1979.

Patricia Roberts Harris,

Secretary of Housing and Urban Development.

[FR Doc. 79-16856 Filed 5-30-79; 8:45 am]

BILLING CODE 4210-01-M

Microfilming of the Department's Records

[Docket No. D-79-566]

AGENCY: Department of Housing and Urban Development.

ACTION: Delegation of authority.

SUMMARY: This notice designates those officials who are authorized to have books, documents, papers, and all other records of the Department microfilmed as an ordinary business procedure.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-7137.

SUPPLEMENTARY INFORMATION: This delegation lists the employees of the Department of Housing and Urban Development who are authorized to have the Department's books, documents, papers and all other records placed on microfilm as an ordinary business procedure for the preservation and storage of such records. The microfilming is to be done in accordance with the procedures prescribed by § 3303a of the Public Printing and Documents Act, Pub. L. 90-620, 44 U.S.C. § 3301, et seq., the standards promulgated by the Administrator of General Services under § 3302 of the Public Printing and Document Act set forth at 41 CFR 101-11.5, and with the policies and procedures established by the Department of Housing and Urban Development.

Section A.—Authority Delegated. The officials listed below are authorized to exercise the power and authority of the Secretary to have the Department's books, documents, papers and all other records placed on microfilm, as an ordinary business procedure for the preservation and storage of such records, in accordance with the procedures prescribed by 3303a of the Public Printing and Documents Act, Pub. L. 90-620, 44 U.S.C. 3301 et seq., and the standards promulgated by the Administrator of General Services under § 3302 of the Public Printing and Document Act as set forth at 41 CFR 101-11.:

1. Each Assistant Secretary
2. General Counsel
3. Inspector General
4. President, Government National Mortgage Association
5. General Manager, New Communities Development Corporation
6. Administrator, Federal Disaster Assistance Administration

Section B.—Authority to Redelegate. All listed officials are authorized to redelegate to any employee of the Department any of the authority delegated in Section A.

Effective Date. This delegation of authority shall be effective on May 17, 1979.

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

Issued at Washington, D.C. May 17, 1979.

Patricia Roberts Harris,

Secretary of Housing and Urban Development.

[FR Doc. 79-16857 Filed 5-30-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 36727, 36744, 36745, 36755, and 36761]

New Mexico; Applications

May 21, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for five 4½-inch natural gas pipeline rights-of-way across the following lands;

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 9 W.,
Sec. 15, lot 1;
Sec. 21, lot 2 and E½NW¼.
T. 31 N., R. 10 W.,
Sec. 23, lot 8.
T. 31 N., R. 11 W.,
Sec. 18, SE¼NE¼.

These pipelines will convey natural gas across 1.075 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-16850 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36742 and 36759]

New Mexico; Applications

May 21, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has filed for rights-of-way applications for one 6⅝-inch and two 4½-inch pipelines across the following lands:

New Mexico Principal Meridian, New Mexico

T. 22 S., R. 22 E.,
Sec. 3, SW¼NW¼;
Sec. 4, lots 1, 2 and SE¼NE¼.
T. 22 S., R. 23 E.,
Sec. 26, SE¼NW¼, N½SW¼ and SW¼SW¼;
Sec. 34, SE¼NE¼ and E½SE¼;
Sec. 35, W½NW¼.

These pipelines will convey natural gas across 2.284 miles of public lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-16851 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36756, 36781, 36782, 36806 and 36808]

New Mexico; Applications

May 22, 1979

Notice in hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for five 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 8 W.,
Sec. 15, SW¼SE¼;
Sec. 21, SW¼NE¼.
T. 29 N., R. 9 W.,
Sec. 11, N½NW¼ and SE¼NW¼;
Sec. 14, lot 2, SW¼NE¼ and SE¼NW¼.
T. 28 N., R. 13 W.,
Sec. 11.

These pipelines will convey natural gas across 0.716 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico, 87107.

Fred E. Padilla,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-16892 Filed 5-30-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 27214]

New Mexico; Coal Lease Offering by Sealed Bid

May 23, 1979.

U.S. Department of the Interior, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501. Notice is hereby given that certain coal resources in the lands hereinafter described in McKinley County, New Mexico will be offered for lease by sealed bid of $25 per acre minimum to the qualified bidder of the highest cash amount per acre or fraction thereof. The sale will be held at 2:00 p.m., Local time, June 26, 1979, in Room 1-A, Sweeney Convention Center, Corner of Marcy and Grant, Santa Fe, New Mexico. Sealed bids may not be modified or withdrawn unless such modification of withdrawal is received before the date, time and place set for opening of such bids.

Coal Offered

The coal resource to be offered is limited to those reserves recoverable by surfacing mining methods from the Sundance coal bed, "A" seam and "B" seam, in the following described land located approximately five miles southeast of Gallup, McKinley County, New Mexico:

New Mexico Principal Meridian, New Mexico

T. 14 N., R. 17 W.,
Sec. 8: E½.
Containing 320.00 acres

The estimated total strippable reserves are 1.436 million tons. The coal is high volatile C bituminous coal and has an average heating value of approximately 11,200 Btu per pound, an average sulfur content of approximately 0.9 percent and 12.0 percent ash (as-received). The Sundance coal bed averages about 6.0 feet in thickness.

Public Comments

The public is invited to submit written comments concerning fair market value of the offered coal reserves to the Bureau of Land Management and the U.S. Geological Survey. These comments will be reviewed and taken into consideration in the determination of fair market value of the offered lands. Comments should address specific factors related to fair market value including: the quantity and quality of the coal resource, the estimated market value of the coal, the estimated cost of producing the coal, the expected rate of industry return, the value of the surface estate, and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions may also be submitted at this time.

These comments will be considered in the final determination of fair market value as determined in accordance with 30 CFR 211.63. Should any information submitted as comments be considered to be proprietary by the commentor, the information should be labeled as such and stated in the first page of the submission. Comments should be sent to the State Director, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501, to arrive no later than June 20, 1979.

Notice of Availability

All case file documents and written comments submitted by the public on fair market value or royalty rates except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom of Information Act will be available for public inspection at the Bureau of Land Management, Room 3031, on the third floor of the U.S. Post Office and Federal Building located on South Federal Place, Santa Fe, New Mexico. Copies of the detailed statement and proposed coal lease are also available in Room 3031.

The successful bidder is obligated to pay for the newspaper publications of this notice.

Arthur W. Zimmerman,
State Director.

[FR Doc. 79-16893 Filed 5-30-79; 8:45 am]
BILLING CODE 4310-84-M

Arizona and California: Arizona-San Diego 500kV Interconnection Project; Intent To Prepare an Environmental Statement and Scoping Meetings

The Department of the Interior, Bureau of Land Management, Arizona State Office, and the California Public Utilities Commission will jointly be preparing an Environmental Statement on a proposal by Arizona Public Service Company and San Dieigo Gas and Electric Company. The proposal is to construct a 500kV transmission line and ancillary facilities from the Palo Verde Nuclear Generating Station Switchyard near Phoenix, Arizona, through Yuma, Arizona, to the Miguel Substation near San Diego, California. The statement will consider routing alternatives a no-action alternative.

Four public scoping meetings will be held to identify what are and what are not significant issues. Additionally an opportunity to review the corridors tentatively identified for detailed study will be provided. The following meetings will be at 7:00 p.m.

June 25, 1979—Phoenix, Arizona, Granada Royale Hometel, 2333 E. Thomas Road.
June 26, 1979—Yuma, Arizona, Civic and Convention Center (East Wing), 1440 Desert Hill Drive.
June 28, 1979—La Mesa, California (San Diego suburb); La Mesa Recreation Center, 4975 Memorial Drive.
July 5, 1080—El Centro, California, Imperial Irrigation District Auditorium, 1285 Broadway.

Interested parties that cannot attend the meetings are encouraged to submit comments and recommendations in writing.

For information concerning the proposed action and the environmental impact statement, contact: Stan Wagner, Bureau of Land Management, 2400

Valley Bank Center, Phoenix, Arizona, 85073, Telephone 602-261-4127, or Steven Weissman, California Public Utilities Commission, 350 McAllister Street, San Francisco, California 94102, Telephone 415-557-2788.

Dated: May 21, 1979.

Edward F. Spang,

Acting State Director, Arizona.

[FR Doc. 79-16677 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Lowell National Historical Park Lowell, Mass.; Intent To Prepare Environmental Impact Statement and Schedule of Public Meetings

The National Park Service has determined that its action to develop and implement a General management Plan for Lowell National Historical Park will cause significant environmental impacts as a federal action therefore notice is hereby given that the Service is commencing the work of preparing an Evironmental Impact Statement according to the latest procedures set forth by the Council on Environmental Quality.

This General Management plan will deal with all policies and circumstances pertinent to the management of cultural resource preservation and public use and enjoyment of this new Lowell National Historical Park in association with planning and management responsibilities of the Lowell Historic Preservation Commission and by coordination with the Massachusetts Department of Environmental Management. The National Park Service impact analysis will be made primarily applicable to management and development alternatives to be implemented within the authorized boundaries of Lowell National Historical Park with consideration for their impacts on adjoining property as well as adjoining land use impacts on this National Park.

In order to scope or determine the areas of public interest and to assist in identifying alternatives for the General Management Plan for Lowell National Historical Park, notice is hereby given that the National Park Service intends to hold public meetings at the following times and places:

Tuesday, June 12, 1979, 7:30 p.m., Smith Baker Center, Lower Meeting Room 400 Merrimack St., Lowell, MA.

Wednesday, June 13, 1979, 10:00 a.m., Liberty Hall, Lowell Memorial Auditorium, 50 E. Merrimack St., Lowell, MA.

Thursday, June 14, 1979, 7:30 p.m., Liberty Hall, Lowell Memorial Auditorium, 50 E. Merrimack St., Lowell, MA.

Inquiries should be addressed to: Douglas Farris, Planning Team Captain, Lowell National Historical Park, Box 1098, Lowell, MA 01853, Telephone: 617-452-8938.

Dated: May 18, 1979.

Jack E. Stark,

Regional Director, North Atlantic Region.

[FR Doc. 79-16835 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-70-M

National Park Service

Chickamauga and Chattanooga National Military Park; Public Transportation Programs: Public Meetings

In accordance with Title III of Pub. L. 95-344, 92 Stat. 477, 16 U.S.C., Sec. 2301 et seq. (1978), the National Park Service announces its intent to formulate a public transportation plan for Chickamauga and Chattanooga National Military Park.

The Congress, through Pub. L. 95-344, expressed a desire that units of the National Park System be made more accessible by encouraging the use of transportation modes other than personal motor vehicles. It also found that many urban residents in metropolitan areas near units of the National Park System do not have the private motor vehicles to avail themselves of recreational opportunities in such units.

Accordingly, the Service will hold two public meetings to receive citizen opinions and comments on the Superintendent's initial thoughts regarding increased accessibility to Chickamauga and Chattanooga National Military Park for citizens near and within Chattanooga, Tennessee. The first meeting will serve to explain and receive comments on this initial perspective and the general directions proposed for a trial project. The second meeting will serve to explain the complete details of any trial project finalized as a direct result of the first meeting.

The meetings will be held as follows:

Meeting One

Wednesday, June 20, 1979, 1:30 p.m.—Civic Forum, 1001 Market Street, Chattanooga, Tennessee.

Meeting Two

Wednesday, June 27, 1979, 1:30 p.m.—Civic Forum, 1001 Market Street, Chattanooga, Tennessee.

Copies of a study of transportation alternatives relating to Chickamauga and Chattanooga National Military Park are available for review at the office of the park Superintendent and the Southeast Regional Office, National Park Service, 1895 Phoenix Boulevard, Atlanta, Georgia 30349.

Persons desiring further information about the meeting should call or write the Superintendent, Chickamauga and Chattanooga National Military Park, P.O. Box 2126, Fort Oglethorpe, Georgia 30742, (404) 866-9241.

Joe Brown,

Regional Director, Southeast Region, National Park Service.

May 22, 1979.

[FR Doc. 79-16838 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-70-M

De Soto National Memorial; Public Transportation Programs: Public Meetings

In accordance with Title III of Pub. L. 95-344, 92 Stat. 477, 16 U.S.C., Sec. 2301 et seq. (1978), the National Park Service announces its intent to formulate a public transportation plan for De Soto National Memorial.

The Congress, through Pub. L. 95-344, expressed a desire that units of the National Park System be made more accessible by encouraging the use of transportation modes other than personal motor vehicles. It also found that many urban residents in metropolitan areas near units of the National Park System do not have the private motor vehicles to avail themselves of recreational opportunities in such units.

Accordingly, the Service will hold two public meetings to receive citizen opinions and comments on the Superintendent's initial thoughts regarding increased accessibility to De Soto National Memorial for citizens near and within Bradenton, Florida. The first meeting will serve to explain and receive comment on this initial perspective and the general direction proposed for a trial project. The second meeting will serve to explain the complete details of any trial project finalized as a direct result of the first meeting.

The meetings will be held as follows:

Meeting One

Thursday, June 21, 1979, 2:00 p.m.—Kiwanis Hall, 1401 21st Avenue, West, Bradenton, Florida.

Meeting Two

Tuesday, July 3, 1979, 7:00 p.m.—Kiwanis Hall, 1401 21st Avenue, West, Bradenton, Florida.

Persons desiring further information about the meetings should call the Superintendent, De Soto National

Memorial, 75th Street NW, Bradenton, Florida 33505, (813) 792-0458.

Dated: May 22, 1979.

Joe Brown,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 79-16936 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-70-M

Fort Pulaski National Monument; Public Transportation Programs: Public Meetings

In accordance with Title III of Pub. L. 95-344, 92 Stat. 477, 16 U.S.C., Sec. 2301 et seq. (1978), the National Park Service announces its intent to formulate a public transportation plan for Fort Pulaski National Monument.

The Congress, through Pub. L. 95-344, expressed a desire that units of the National Park System be made more accessible by encouraging the use of transportation modes other than personal motor vehicles. It also found that many urban residents in metropolitan areas near units of the National Park System do not have the private motor vehicles to avail themselves of recreational opportunities in such units.

Accordingly, the Service will hold two public meetings to receive citizen opinions and comments on the Superintendent's initial thoughts regarding increased accessibility to Fort Pulaski National Monument for citizens near and within Savannah, Georgia. The first meeting will serve to explain and receive comment on this initial perspective and the general directions proposed for a trial project. The second meeting will serve to explain the complete details of any trial project finalized as a direct result of the first meeting.

The meetings will be held as follows:

Meeting One

Thursday, June 21, 1979, 7:30 p.m.—Civic Center, Freedom Shrine Room, Orleans Square, Savannah, Georgia.

Meeting Two

Thursday, July 5, 1979, 7:30 p.m.—Civic Center, Freedom Shrine Room, Orleans Square, Savannah, Georgia.

Persons desiring further information about the meetings should call or write the Superintendent, Fort Pulaski National Monument, P.O. Box 98, Savannah Beach, Georgia 31328, (912)786-5787.

Dated: May 22, 1979.

Joe Brown,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 79-16937 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

[Int DES 79-28]

Grazing Management Program for the Caliente Area of Nevada; Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Caliente grazing area which encompasses about 3.4 million acreas of public land in Lincoln County, Nevada.

The Caliente grazing proposal involves allocation of 74,293 AUMs of forage to livestock, determination of period-of-use for each kind of livestock, and allocation of forage to meet management goals for wildlife and wild horses (15,104 and 5,956 AUMs, respectively). The proposal includes implementation of intensive grazing management of 65 allotments (27 AMP areas), 12 non-AMP allotments, and nine allotments which will not have domestic livestock grazing allowed. Proper grazing treatments for each allotment, and necessary range improvements needed to fully implement the grazing systems are proposed.

Public hearings on the draft environmental statement will be held at the following locations:

(1) July 10, 1979—7:30 p.m.; Caliente Elementary School, Caliente, Nevada.
(2) July 11, 1979—7:30 p.m.; Washington county Courthouse, St., George, Utah.
(3) July 12, 1979—7:30 p.m.; Humanities Blvd., Rm. 109, University of Nevada, Las Vegas, Las Vegas, Nevada.

Interested individuals, representatives of organizations, and public officials wishing to testify are requested to contact John Boyles, District Manager, Las Vegas District Office in Las Vegas, Nevada, by July 5, 1979, phone (702) 385-6403. Written requests to testify should identify the organization represented, be signed by the prospective witness, and state a phone number for contact purposes. Because of time constraints, oral testimony will be limited to 10 minutes unless additional time is requested in advance.

Oral testimony can be supplemented with written statements at the time oral testimony is presented. Also, speakers with prepared speeches may file their text with the presiding officer whether or not they have been able to finish oral delivery in the allotted time. If time permits, following oral testimony by those who have given advance notice, the hearings office will give others an opportunity to be heard.

Written comments on the draft environmental statement will be accpeted until July 16, 1979, and are being solicited from public agencies and interested citizens. Comments should be addressed to the District Manager, Las Vegas District, Bureau of Land Management, P.O. Box 5400, 4765 West Vegas Drive, Las Vegas, Nevada 89102.

A Limited number of copies are available upon request to the District Manager at the above address.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interoir Building, 18th and C Streets N.W. Washington, D.C. 20240, telephone: (202) 343-5717.
Nevada State Office, Bureau of Land Management, Room 3008 Federal Building, 300 Booth Street, Reno, Nevada 89509, telephone: (702) 784-5311.
Battle Mountain District Office, Bureau of Land Management, North 2nd and South Scott Streets, Battle Mountain, Nevada 89820, telephone: (702) 635-5181
Carson City District Office, Bureau of Land Management, 1050 E. Williams Street, Carson City, Nevada 89701, telephone: (702) 882-1631.
Elko District Office, Bureau of Land Management, 2002 Idaho Street, Elko, Nevada 89801, telephone: (702) 738-4071.
Ely District Office, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301, telephone: (702) 289-4865.
Las Vegas District Office, Bureau of Land Management, P.O. Box 5400, 4765 West Vegas Drive, Las Vegas, Nevada 89102, telephone: (702) 385-6403.
Winnemucca District Office, Bureau of Land Management, 705 East 4th Street, Winnemucca, Nevada 89445, telephone: (702) 623-3676.
Boulder City Library, 539 California Street, Boulder City, Nevada 89005.
Cedar City Public Library, 136 W. Center, Cedar City, Utah 84720.
Clark County Library, 1401 E. Flamingo Road, Las Vegas, Nevada 89109.
Lincoln County Library, Box 248, Pioche, Nevada 89043.
Lincoln County Library, Caliente Branch, Box 306, Caliente, Nevada 89008.
Las Vegas Public Library, 1726 E. Charleston Boulevard, Las Vegas, Nevada 89104.
St. George Public Library, 55 West Tabernacle, St. George, Utah 84770.
University of Nevada, Reno, Getchell Library, Reno, Nevada 89507.
University of Nevada, Las Vegas, Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154.
Washoe County Library, 301 S. Center Street, Reno, Nevada 89505.

White Pine County Library, Courthouse Plaza, Ely, Nevada, 89301.

Comments on the draft environmental statement, whether written or oral, will receive equal consideration in preparation of a final environmental satement.

Dated: May 25, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-16855 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-84-M

National Security Information

This notice is published pursuant to the provisions of Section 5-402 of Executive Order 12065 dated June 28, 1978. The Department of the Interior has issued revised and updated guidelines pertaining to public disclosure and mandatory review for declassification of National Security Information. The revised guidelines have been issued as Chapter 14 of part 442 of the Department of the Interior Manual, and are published in their entirety below. Chapter 14 was issued on April 23, 1979, by Departmental Manual Release Number 2171.

Additional information regarding the Departmental guidelines may be obtained from Mr. Robert A. Smoak, Chief, Division of Enforcement and Security Management, Office of Administrative Services, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-8357.

Dated: May 21, 1979.

William L. Kendig,

Acting Deputy Assistant Secretary of the Interior.

Department of the Interior, Departmental Manual

Security—Part 442 National Security Information. Chapter 14 Public Disclosure, Classification Review, and Enforcement: 442 DM 14.1.

14.1 *Exemption from Public Disclosure.* Official information or material, hereinafter referred to as *classified information* or *material,* which has been properly classified pursuant to Executive Order, is expressly exempt from compulsory disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

14.2 *Mandatory Review for Declassification.* A request by a member of the public, by a Government employee, or by an agency, to declassify and release information will be acted upon within 60 days. This applies to information classified under Executive order 12065 or prior Orders. Upon such a request the information will be reviewed for possible declassification, provided the request reasonably describes the information. After review, the information, or any reasonable segregable portion thereof, no longer requiring protection in the interest of national security will be declassified and released unless withholding is otherwise warranted under applicable law.

14.3 *Procedure.*

A. Any person or agency requesting a declassification review of a document originating in the Department of the Interior prior to June 1, 1972, and containing information classified as National Security Information, should address such request to the Chief, Division of Enforcement and Security Management, Office of Administrative Services, U.S. Department of the Interior, Washington, D.C. 20240. Requests need not be made on any special form, but must include sufficient particularity to identify the document.

B. The Chief, Division of Enforcement and Security Management, will assign the request to the bureau or office having custody of the requested records for action.

14.4 *Appeals.* Persons or agencies who do not agree with a decision made on a request for declassification may appeal the decision to the Department of the Interior Oversight Committee for Security (see 442 DM 15). If the Committee sustains the determination for continued classification, the requestor will be advised in writing of the committee's decision.

14.5 *Ongoing Classification Review.* The head of each Departmental activity in possession of classified material will review all classified documents ten years old or older for downgrading, declassification or destruction. This review will be accomplished at the time of the semi-annual inventory required by 442 DM 5.4.

14.6 *Administrative Enforcement.* The Department Oversight Committee for Security is responsible for recommending to the Secretary of the Interior appropriate administrative action to correct abuse or violations of any provisions of the Order or directives thereunder, including notifications by warning letter, formal reprimand, and to the extent permitted by law, suspension without pay and removal. Upon receipt of such a recommendation the Secretary will act promptly and advise the Departmental Committee of his/her action.

[FR Doc. 79-16978 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-10-M

INTERNATIONAL TRADE COMMISSION

[AA1921-201]

Rayon Staple Fiber; Determination of Injury or Likelihood of Injury

On the basis of its investigation the Commission determines (Vice Chairman Alberger and Commissioner Stern dissenting) that an industry in the United States is being, or is likely to be, injured by reason of the importation of rayon staple fiber [1] from Italy, which is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

On February 22, 1979, the United States International Trade Commission received advice from the Department of the Treasury that rayon staple fiber from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on March 7, 1979, the Commission instituted investigation No. AA1921-201 under section 201(a) of the act to determine whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Notice of the institution of the investigation and of the public hearing to be held in connection therewith was published in the Federal Register of March 12, 1979 (44 FR 13590). On April 5, 1979, a hearing was held in Washington, D.C., at which time all interested persons were provided the opportunity to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information provided by the Department of the Treasury and data obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

Statement of Reasons of Chairman Joseph O. Parker and Commissioners George M. Moore and Catherine Bedell

The present investigation on rayon staple fiber sold at less than fair value (LTFV) is one of six such investigations instituted by the Department of the Treasury in the last 2 years. Treasury discontinued two of these investigations, those with respect to imports from Austria and Sweden, after receiving assurances that the LTFV sales would be discontinued. In each of the other four investigations, Treasury also determined that the imported rayon staple fiber is being, or is likely to be, sold at LTFV and so advised the Commission. Three injury investigations have previously been completed by the Commission, and the Commission made an affirmative determination in each.

From the early 1960's until about 1968, domestic demand for rayon staple fiber increased sharply. Toward the end of this period, however, polyester staple

[1] Commissioner Stern's determination was limited to the importation of "commodity type" rayon staple fiber.

fiber was introduced and began to replace rayon staple fiber in a number of uses. Apparent consumption declined from 840 million pounds in 1968 to 390 million pounds during the recession year 1975. As the result of a combination of several factors including the development of new uses and changes in consumer preference, apparent consumption increased to 475 million pounds in 1976 and remained at about that level through 1978.

In addition to the substitutability of polyester for rayon staple fiber, several other factors make rayon staple a price-sensitive commodity. It is produced according to rigid product specifications, reducing the ability of suppliers to differentiate their particular products by quality or performance characteristics. In addition, it is sold primarily to large textile manufacturers whose buyers are well informed of prevailing market conditions. Thus, price is the primary consideration upon which a decision to purchase is made.

The Department of the Treasury advised the Commission that it had made price comparisons with respect to rayon staple fiber imported from Italy during the period November 1, 1977, through April 30, 1978. Treasury determined that all the imports compared were sold at LTFV, with a weighted average margin of 18.6 percent.

Information gathered during the Commission's investigation established that while all imports found to have been sold at LTFV generally undersold domestically produced rayon staple fiber, the imports from Italy were the lowest priced fiber in the U.S. market.

During the period in which the lower priced imports, including those from Italy, were being sold in the domestic market, the domestic industry was forced to reduce its prices. In March 1977, the largest U.S. producer of rayon staple fiber announced that it would be increasing its list price from 58 cents per pound to 61 cent per pound effective May 1977. A second U.S. producer announced a similar increase in list price. By mid-1977, the average domestic transaction price of a representative type of rayon staple fiber registered about 57.4 cents per pound reflecting a 2 cent per pound increase since October-December 1976. In 1977, imports of rayon staple fiber from Austria, Belgium, France, Finland, Sweden, and Italy, countries Teasury found to be selling rayon staple at LTFV, increased to 45.9 million pounds, or to 42 percent higher than the quantity imported from those countries in 1976. The cumulative impact of this surge in LTFV imports, which were sold at prices approximately 3 cents per pound less than the average net selling prices of U.S. producers, influenced U.S. producers' prices. By October-December 1977, the U.S. producers' list prices were reduced to 58 cents per pound. The average domestic transaction price fell from 57.4 cents per pound in April-June 1977 to 55.7 cents per pound in April-June 1978. The margin of underselling of the Italian fiber was accounted for by the 18.6 percent weighted average LTFV margin found by Treasury.

Nothwithstanding the reduction in prices, the domestic producers continued to be undersold by imports found to be at LTFV as at least one of the two importers of the Italian-made fiber also reduced its prices. This underselling resulted in a loss of sales to LTFV imports, including those from Italy. In each case where a lost sale was established, the information gathered during the Commission's investigation also established that the price of the Italian fiber was significantly below the price of that purchased from domestic sources.

The lost sales and price reductions occurred at a time when the domestic industry was operating at a loss. It had experienced an operating profit to net sales ratio of about 3 percent in 1976; in 1977 and 1978, it incurred losses. The loss ratio in 1978 was 2.1 percent. Although U.S producers' shipments increaed after the low reached in 1975, more than two-thirds of the growth between 1976 and 1978 can be attributed to an increase in exports sold at distress prices in order to reduce large inventory accumulation.

In our judgment, the cumulative impact of LTFV sales of rayon staple fiber, including those from Italy, resulted in injury within the meaning of the antidumping Act. Furthermore, if the same requirement that has been imposed on rayon staple fiber producers in Austria, Belgium, Finland, France, and Sweden to eliminate LTFV sales to the United States is not imposed on the Italian producer, that firm could seriously reduce the positive effects of the prior actions by continuing to sell at LTFV. Such continued sales at LTFV would be likely to continue to cause injury within the meaning of the Antidumping Act.

Views of Commissioner Bill Alberger

On the basis of information obtained in this investigation, I determine that an industry in the United States is not being injured, is not likely to be injured, and is not prevented from being established [1] by reason of the importation of rayon staple fiber from Italy, which the Department of the Treasury (Treasury) has determined is being sold at less than fair value (LTFV).

The Imported Article and the Domestic Industry—Rayon staple fiber is a man-made textile fiber, which resembles raw or unprocessed cotton. It is spun into yarn and then either woven or otherwise processed into a variety of end products. In this investigation, I consider the relevant domestic industry to consist of the facilities in the United States devoted to the production of rayon staple fiber. Three U.S. firms currently produce rayon staple fiber.

LTFV Sales—Treasury made price comparisons on Italian rayon staple exports to the United States for the period November 1, 1977 through April 30, 1978. Treasury found that 100 percent of the Italian exports to the U.S. which it examined were sold at LTFV with a weighted average margin of 18.6 percent.

The Question of Injury or Likelihood Thereof by Reason of LTFV Sales

U.S. imports—From 1974 to 1977, total imports of rayon staple fiber increased from 37.0 million to 54.1 million pounds, but in 1978 imports dropped by nearly a third to 37.2 million pounds. Imports from Italy were small from 1974 through 1978. In 1977, the peak year, Italian imports amounted to 1.1 million pounds and during 1978 imports dropped to 662,000 pounds. This volume from Italy only amounted to 0.2 percent of apparent U.S. consumption in 1977 and 0.1 percent in 1978.

Production and shipments—Production by U.S. producers dropped sharply from 612 million pounds in 1974 to a low of 350 million pounds in 1975 and has increased in each succeeding year to a level of 518 million pounds in 1978. January-February 1979 production figures compared to the same period for 1978 indicate that the upward trend in production is continuing. U.S. producers' shipments have followed a similar pattern for the 1974–78 period and have continued to climb in the first two months of 1979.

Curiously, while imports of rayon staple fiber were almost exclusively of commodity staple (as opposed to specialty staple), the decline in U.S. producers' shipments is greater for specialty staple than for commodity staple. This suggests that declining demand is a rather important ingredient in the difficulties encountered by this domestic industry.

[1] Prevention of the establishment of an industry is not an issue and will not be discussed further.

Capacity utilization—Domestic facilities producing rayon staple fiber operated at 84 percent of capacity in 1973 and 78 percent in 1974, before dropping to 49 percent in 1975. Capacity has dropped about 17 percent since 1974, and the utilization rate, at 80 percent in 1978, has recovered to above the 1974 level.

Exports—Substantial quantities of rayon staple fiber have been exported in recent years. U.S. exports increased from 33.8 million pounds in 1974 to 98.7 million pounds in 1978. This quantity substantially exceeds imports in 1977 and is well more than a hundred times over the volume of LTFV imports from Italy in 1978.

Inventories—The peak level of inventories during the period 1974–1978 was reached at the end of 1974—67.3 million pounds. Inventories had dropped to 24.2 million by the end of 1976, but were up again to 47.3 million pounds on December 31, 1977, before dropping to 24.4 million pounds by the end of 1978.

Consumption—Apparent consumption of rayon staple peaked in 1968 at 840 million pounds, dropped to 578 million pounds in 1974 and then dropped to 390 million pounds in 1975. A great deal of this decline is attributable to competition from polyester and other man-made fibers. In 1976, 1977, and 1978 apparent consumption recovered somewhat to 475, 478, and 479 million pounds, respectively.

Employment—The average number of production and related workers producing rayon staple fiber declined from 3,700 in 1974 to 2,300 in 1975. By 1977, the number had climbed to 2,700 with a further increase to 3,000 workers for 1978. Hours worked increased from 5.7 million hours in 1977 to 6.1 million for 1978.

Profits—Since 1974, when the aggregate net operating profit to net sales ratio was 13.4 percent, losses have been more the rule than profits. Losses for the industry as a whole occurred in both 1975 and 1977, and 1978 figures showed a net operating loss to net sales ratio of 2.1 percent.

Prices—Price competition exists in three different ways in this investigation. Intense competition appears to exist between the three domestic producers, who accounted for between 94 percent and 89 percent of apparent consumption between 1974 and 1978. Obviously, competition also exists between importers and U.S. producers. A third area of price competition involves the interaction of rayon staple, polyesters and other man-made fibers in the marketplace. While prices may appear low and suppressed since late 1974, the competition among substitute fibers appears to be an important factor.

Prices for Italian rayon staple fiber have been at levels below the average domestic selling price in both 1977 and 1978. U.S. producers which had lowered their prices from the second quarter of 1977 through the second quarter of 1978 raised them during the last six months of 1978.

In competition with other man-made fibers, including polyester staple and cotton staple, rayon staple fiber has lost about half its market share in the past ten years. The loss has been to polyester staple which has incurred much lower price increases over the ten-year period than has rayon. For the past three years, the prices of rayon and polyester have paralleled one another, and relative market share of the two have been constant.

In my judgment, competition with other fibers, particularly polyester, is the major restraint on domestic prices of rayon staple and the competition among domestic producers is primarily responsible for the price rollback in 1977. The refusal of one producer to join the increase was certainly a more important restraining force on prices than the prices of imported products from Italy which never even accounted for more than two-tenths of one percent of domestic consumption.

Lost sales—Of the six instances of lost sales cited by U.S. producers and investigated by the Commission, two were sales made to French and Finnish imports rather than the Italian product. Four U.S. textile mills were verified by the Commission as having purchasing LTFV imports from Italy.

One alleged lost sale involved a customer whose total purchases of rayon staple fiber declined significantly from 1976 through 1978. Purchases of imports from Italy were a small percentage of total purchases in all three years. Basicially the same amount of Italian fiber was purchased in 1976 and 1978—the 1977 level was double, but still a small percentage of total purchases. Quality was given as the primary reason for the purchase of Italian fiber.

A second alleged lost sale had substantial increases in purchases, and while the quantity of imports from Italy increased slightly in 1977 before falling below 1976 levels in 1978, the precentage of imports purchased declined each year.

The other two alleged lost sales claimed they were cut off by their previous domestic supplier during shortages in 1974. One merely supplemented purchases from another domestic supplier with imports from Italy. The other met its small needs with imports from Italy in 1976 and 1977 and switched back to domestic suppliers in mid–1978.

Summary—This is an industry which has faced some serious problems in the last few years, losing considerable market share to polyester fibers in the early and mid–1970's and fighting to hold its remaining share in the late 1970's. Currently, most of the trends in economic factors are positive. Consumption may increase again, production, shipments, exports and capacity utilization are up, employment has increased, and prices are again going up. Inventories are down, and profits, while still not present, are likely to return with the upswing in prices. Since I didn't find injury by reason of either LTFV imports from Belgium, France, or Finland, cumulation arguments are not open to me. However, imports from Italy are so insubstantial that they could not have caused or contributed to injury to this industry. As far as the capacity of the Italian producer is concerned, my information is that one of the two Italvicosa plants has closed, and capacity has thus been reduced to levels of previous total production. Thus, additional exportation to the U.S. seems highly unlikely. In addition, the recent Occupational Safety and Health Administration (OSHA) regulations regarding cotton dust will apparently cause a shift to rayon staple as a substitute for cotton. This increase in demand should result in further improvement in the performance of the domestic rayon staple industry.

Therefore, based on the factors I have discussed, I conclude that the domestic rayon staple industry is not being injured and is not likely to be injured by LTFV imports from Italy.

Views of Commissioner Paula Stern

Having considered all of the information before me in this investigation, I determine pursuant to Section 201 of the Antidumping Act of 1921, as amended, that an industry in the United States is not being, and is not likely to be, injured by reason of the importation into the United States from Italy of commodity rayon staple fiber at less than fair value.

The Domestic Industry—A complete analysis of the composition of the domestic industry is contained in my determination in *Rayon Staple Fiber from France and Finland* (Inv. Nos. AA1921–190 and AA1921–191). As was the case in the above-referenced investigations, my determination in this

investigation is limited to the less-than-fair-value imports of *commodity* rayon staple fiber.

Imports—Imports of commodity rayon staple fiber from Italy have been negligible from 1974 through 1978. In 1974, 1976 and 1977, Italian imports accounted for only 0.2 percent of apparent domestic consumption. In 1975 and 1978, Italian imports dropped to 0.1 percent. Treasury Department price comparisions made on all sales of Italian commodity rayon staple for the period November 1, 1977 through April 30, 1978, revealed that 100 percent of the commodity rayon staple fiber exported to the United States from Italy was sold at a less-than-fair-value margin averaging 18.6 percent.

Injury—As noted in my determination with respect to commodity rayon staple fiber from France and Finland, the domestic industry has been buffeted for several years by less-than-fair-value imports from a number of countries and in 1978 was struggling to recover its economic health. On the basis of complete 1978 data and data for the first two months of 1979, it appears that the domestic industry's economic health is improving but has still not succeeded in its struggle. Except for profits, every traditional indicator considered by the Commission in an antidumping case showed substantial improvement in 1978 and continued improvement in January and February of 1979. Capacity utilization, producers' domestic shipments and exports, employment and hours worked by production and related workers are all up. In addition, inventories have steadily decreased. Apparent domestic consumption is steady.

Profitability of the domestic industry in 1978 continued to deteriorate. However in the last six months of 1978, the pricing structure within the rayon staple market firmed significantly, and by the end of 1978 the price of rayon staple fiber showed an increase of 7 percent. These price increases may result in improved profitability for the domestic industry.

Due to improvement in most of the industry's economic indicators, I believe the case for finding that the industry is injured is less conclusive than in the preceding rayon staple fiber investigations. However, because the industry is still experiencing extremely poor profitability, I believe that a finding of injury is still merited. In any event, it is clear that any remaining sign of unhealth in the industry is not "by reason of" the less-than-fair-value imports from Italy.

Injury or Likelihood of Injury by Reason of Less-Than-Fair-Value Sales

In analyzing injury and causation linkages in the context of the Antidumping Act, the Senate Finance Committee noted that "* * * the [Antidumping Act] will not recognize trifling, immaterial, insignificant or inconsequential injury." [2] In view of the fact that imports of commodity rayon staple fiber from Italy constitute such a miniscule amount of domestic consumption, injury caused by such imports does not fall within the scope of injury which the law will recognize. Accordingly, I believe that the injury suffered by the domestic rayon staple fiber industry is not by reason of the less-than-fair-value sales of commodity rayon staple fiber by Italy.

I also believe that there is no likelihood of injury to the domestic industry. This conclusion is based essentially on information received by the Commission indicating that the Italian producer has reduced its capacity and is currently producing at near its new capacity levels.

By order of the Commission.

Issued: May 22, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-16881 Filed 5-30-79; 8:45 am]

BILLING CODE 7020-02-M

[2] Senate Comm. on Finance, Trade Reform Act of 1974, S. Rep. No. 93-1298, 93rd Cong., 2d Sess., 180.

LEGAL SERVICES CORPORATION

Grants and Contracts

May 31, 1979

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Aid Western Oklahoma in Oklahoma City, Oklahoma to serve Logan, Payne, Cleveland, McClain, and Garvin Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Service Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, CO 80202.

Alice Daniel,

Acting President.

[FR Doc. 79-16867 Filed 5-30-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal-State Partnership Advisory Panel; Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Federal-State Partnership Advisory Panel to the National Council on the Arts will be held June 28 and 29, 1979, from 9:00 a.m. to 5:00 p.m., in room 1422, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be Guidelines and Planning and Policy development.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 23, 1979.

[FR Doc. 79-16890 Filed 5-30-79; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Subcommittee on Glaciology of the Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommitte on Glaciology of the Advisory Committee for Polar Programs.

Date and time: June 13 and 14, 1979; 9 a.m. to 4:30 p.m. both days.

Place: Room 643, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Richard L. Cameron, Program Manager, Room 620, National Science Foundation, Washington, D.C. 20550, telephone 202/632-4164.

Purpose of subcommittee: To advise the Division of Polar Programs on such things as the development of specialized ice drilling equipment and on other techniques for ice sheet sounding such as thermal

probes and remote sensing methods, required to obtain data for basic research on the internal characteristics and properties of the large ice sheet on Greenland and in Antarctica.

Agenda: To review the NSF Glaciology Program documentation as part of the program oversight function.

Reason for closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination is made by the Director, NSF, pursuant to provisions of Section 10(d) of the Federal Advisory Committee Act.

Reason for delay: The meeting had been scheduled tentatively. Final confirmation was not certain until the chairman of the oversight committee was selected and he agreed to serve as chairman.

John E. Kirsch,

Committee Management Coordinator.

May 25, 1979.

[FR Doc. 79-16919 Filed 5-30-79; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-22]

Accident Report, Safety Recommendations and Responses; Availability

Aircraft Accident Report

Rocky Mountain Airways, Inc., DeHavilland DHC-6 Twin Otter, N25RM, near Steamboat Springs, Colo., December 4, 1978 (NTSB-AAR-79-6).—The National Transportation Safety Board's formal investigation report, released May 22, concerning this accident shows that the DHC-6, operating as Flight 217, crashed on a mountain about 8 nmi east-northeast of Steamboat Springs—departure point of a scheduled flight to Denver. Flight 217 was returning to Steamboat Springs after encountering severe icing conditions when it crashed at the 10,530-ft level. Of the 22 persons aboard, 2 died of injuries received in the crash. The aircraft was destroyed.

According to official observations, the weather at Steamboat Springs about 25 min before the accident consisted of an estimated 2,000-ft overcast ceiling and 6-mi visibility in freezing rain. According to surviving passengers, after the accident, snow was falling at the crash site and a strong wind was blowing and gusting from the west.

The Safety Board determined that the probable cause of this accident was severe icing and strong downdrafts associated with a mountain wave which combined to exceed the aircraft's capability to maintain flight. Contributing to the accident was the captain's decision to fly into probable icing conditions that exceeded the conditions authorized by company directive.

As a result of its investigation of this accident, the Safety Board is considering recommendations in the following areas:

1. Survival training for crewmembers who fly commuter air carriers in mountainous areas.

2. Mandatory installation of shoulder harnesses, without exception, by June 1, 1979, on flightcrew seats of aircraft used in Part 135 operations.

Highway Safety Recommendation Letter

H-79-32.—At 6:50 a.m. last November 30 two left rear tires of an 8,000-gallon semitrailer caught fire and burned while the truck was stopped in the eastbound right curb lane of Interstate 95 on the Woodrow Wilson Memorial Bridge over the Potomac River between Maryland and Virginia. The driver of the fully loaded tractor/semitrailer had departed Fairfax, Va., and had traveled 15 miles when he noted smoke coming from the left rear tires of the trailer tandem and stopped the vehicle. By the time he got out of the cab, the left rear tires had begun to burn. He unsuccessfully attempted to extinguish the fire with a 10-pound class A:B:C fire extinguisher. Another truckdriver stopped and assisted with another 10-pound extinguisher. At 7:01 a.m., firefighting equipment from Prince George's County, Md., arrived and extinguished the fire.

The Safety Board noted that the flames from the tires burned through a 3/32-inch-thick aluminum fender and an aluminum vent tube. The fire also burned a hole in an aluminum hose storage tube. There was soot on the outside surface of the cargo tank shell; however, it was not breached. If the fire department had not arrived quickly, the aluminum tank would have been heated, causing fumes to escape through the tank vent system, or the tank shell above the level of the liquid could have melted, exposing the cargo to the flames. The resulting fire would have created a hazard to the bridge and nearby vehicles.

The Safety Board observed that tire and brake fires, while few in number, do occur and can lead to destruction of the entire vehicle. It is important to contain tire fires to allow for time to control the emergency through either the removal of the tire or the application of large quantities of water. This containment can be accomplished by providing fenders or wheelwell units that are fire resistant or that have a higher melting point than the 1,100° F of aluminum.

Accordingly, the Safety Board on May 25 recommended that the Federal Highway Administration and the National Highway Traffic Safety Administration:

Cooperate in the promulgation of vehicle safety regulations to require, over the wheels of trailers transporting hazardous materials subject to adverse actions of heat or fire, fenders or other devices that are fabricated of fire-resistant materials and that are designed in such a way so as to resist any wheel or tire fire. (Class II, Priority Action) (H-79-32)

Responses to Safety Recommendations

Aviation

A-79-4 and 5.—Letter of May 15 from the Federal Aviation Administration is responsive to recommendations issued March 8 reflecting the Safety Board's concern about general aviation engine-starter system failures that sometimes result in complete failure of the airplane's electrical system. (See 44 FR 15814, March 15, 1979.)

FAA reports developing an advisory circular (AC) to provide pilot and maintenance personnel with awareness of the problem and measures for dealing with it. Because several types of aircraft have experienced this problem, FAA is conducting a study to assure inclusive applicability of the AC, action to be completed by September 1.

Recommendation A-79-5 asked FAA to amend 14 CFR Parts 23 and 27 to require indication by which a pilot can be advised whenever an electric engine starter is operating. FAA notes that a recent engine starter relay failure and subsequent loss of all electrical power occurred on a Beech Model 76. FAA has initiated an airworthiness directive project which proposes a flight manual revision containing procedures for preflight inspection to detect a malfunctioning engine starter relay and an inflight procedure for restoring electric power should power loss occur. FAA is also studying the problem as it relates to other makes and models and expects to complete the study by September 30, action with respect to all relays by December 31, and any necessary regulatory action by December 31.

A-79-6.—FAA's letter of May 22 responds to an urgent recommendation developed during investigation of the

crash of a Learjet near Vickery, Ohio, last October 20. The accident occurred during a copilot proficiency flight check. The recommendation asked that FAA issue an Alert Bulletin recommending that all operators of Learjets review their requirement to practice a runaway trim and, if practice runaway pitch trim exercises are deemed necessary, recommending that the exercise be performed in a manner which will not allow an excessive nosedown attitude or high airspeeds to develop. (See 44 FR 15815, March 15, 1979.)

FAA believes that training in runaway pitch trim is an essential element of pilot training in all high-performance airplanes. Proper technique and good judgment are, of course, necessary, FAA said. FAA is preparing bulletins for air carrier and general aviation operations which will direct all principal operations inspectors to discuss proper techniques in performing simulated runaway pitch trim maneuvers with all instructor and examining personnel, and to request that these procedures be included in the written material used in pilot training programs. FAA expects to issue these bulletins by June 1, 1979.

Highway

H-78-61.—The Federal Highway Administration on May 8 responded to the Safety Board's March 28 letter which provided comments on FHWA's initial response dated February 5. (See 44 FR 15817, March 15, 1979.) This recommendation was developed during investigation of a tractor-semitrailer/multiple-vehicle collision near Atlanta, Ga., June 20, 1977, and asked for increased FHWA oversight of the Georgia Department of Transportation in the area of construction zone safety.

The Safety Board's March 28 letter notes the work that is taking place on a national level to insure greater safety in areas of highway maintenance and construction but expresses concern that the intense "national" program may not be implemented by all the States, individually. With respect to taking the national program, outlined in FHPM 6-4-2-12, to the States, the Board is interested in the followup, enforcement, and evaluation procedures envisioned by FHWA. The Board is very concerned at the apparent lack of program criteria for use by FHWA field offices in enforcing or evaluating the program, and asked these questions:

Will the FHWA Regional Offices be required to report on how many States elect to develop project by project Traffic Control Plans (TCP's) and which elect to provide a standard in a highway agency manual?

Will a report be made as to how many projects were turned back due to inadequate TCP's?

Will there be an evaluation of the State training programs developed under paragraph 6d. of the FHPM issuance?

Will the results of the individual procedural effectiveness reviews be compiled and published in greater detail than in paragraph 3c. of FHWA Notice N5000.7, October 13, 1978? These reports would indicate the value and effectiveness of the national program.

In response, FHWA reports on the status of construction zone safety after 6 months of using the new regulation, FHPM 6-4-2-12: 47 States have adopted the use of TCP's; 41 States have agreed to designate a responsible person at the project level to be responsible for work zone safety; and 29 States have adopted some individual work items for traffic control rather than the lump sum pricing technique. Also, FHWA reports that a questionnaire has been sent to the FHWA Regional Offices requesting a response to reflect conditions as of August 1, 1979.

FHWA notes that its field offices review and comment on projects in order to make them acceptable and to insure effective TCP's. No reports will be published on the procedural effectiveness reviews. FHWA also reports that the Georgia Department of Transportation has adopted a policy of using TCP's and assigning a person responsible for traffic safety on each Federal-aid project. Approximately 300 employees of Georgia DOT have been trained in work zone traffic safety.

H-79-20 through 24.—Letter of May 18 from the Missouri State Highway Commission concerns recommendations issued April 5 following investigation of the accident involving a tractor-semitrailer penetration of the median barrier and collision with an automobile on I-70, in St. Louis, Mo., September 25, 1977. (See 44 FR 21908, April 12, 1979.) The recommendations called for closing the on-ramp where the accident occurred and for establishing a new wet pavement surface improvement policy.

The Commission expresses concern that the report (NTSB-HAR-79-3, reported at 44 FR 24655, April 26, 1979) "failed to emphasize the simple but significant cause of this accident—namely that the truck was traveling too fast for the conditions existing, and that the driver was a local resident and frequent user of I-70 who had to be familiar with that section of I-70 and the potential hazard which existed in driving his unladen vehicle at excessive speed for the conditions existing." The Safety Board's formal determination of probable cause stated: "Contributing to the severity of the accident were the barrier impact speed and attack angle of the tractor-semitrailer which may have only slightly exceeded the design limits of the functional 'New Jersey' concrete barrier."

H-79-25 and 26.—The Kansas Turnpike Authority on May 10 responded to recommendations issued April 13 following investigation of the head-on collision between a pickup truck and an automobile which occurred last November 5 on the Kansas Turnpipe (I-70) near Lawrence, Kans. (See 44 FR 23393, April 19, 1979.)

In answer to H-79-25, which called for an engineering study of the accident site and all similar locations to fully evaluate the skid-resistance properties of the pavement compared with recommended skid values of the Highway Safety Program Standard No. 12, the Turnpike Authority reports that it is immediately investigating available equipment for measuring and evaluating skid resistant properties of pavements. As the Authority is a tollroad Authority subject to requirements of the Trust Indenture regarding expenditures, it is not in a position to purchase such equipment.

With reference to H-79-26, which called for a survey of the existing superelevation on the curves of the Kansas Turnpike and a comparison of findings to currently accepted American Association of State Highway and Transportation Officials standards to determine needed corrective treatment, the Authority said it would review the design plans for the 236-mile highway to determine the number of curves that have superelevation less than current standards. The Authority believes there will be a substantial number of curves because:

1. The enabling legislation required that the toll road be constructed in accord with "Design Standards for the National System of Interstate Highways" adopted August 1, 1945, which were the best standards at the time of construction. These standards required all curves sharper than 1° to be superelevated. Standards for the Kansas Turnpike required superelevation for all curves sharper than 0° 45'. Hence, the highway was designed for higher standards than required by law.

2. Since the toll road was financed by private revenue bonds and additional funding was not available, it was imperative to design the most economical highway consistent with accepted safety standards. Hence 0° 45' curves were used, if possible, in order to minimize the cost of the facility.

Since the Authority relies on toll revenues for operation and maintenance and has a rather small engineering staff,

clarification of these points, raised in the Safety Board's recommendation letter, is sought:

1. The fog seal has been found to be effective in prolonging pavement life. Will future Federal regulations prohibit this type of preventive maintenance on all U.S. highways?

2. How does the statistic quoted, that 12 percent of the accidents occurred on wet pavement, compare with national experience on all highways with comparable annual rainfall?

3. Revising the negative superelevation to positive will be very expensive and, based on present projected revenues, the funding required for this construction will probably not be available. As the Kansas Turnpike is designated I-70 from Kansas City to Topeka and I-35 from Emporia to the Oklahoma border, is there any indication that Federal assistance would be available for this betterment?

Marine

M-79-8.—Letter of May 3 from the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, responds to a recommendation issued following investigation of the capsizing of the charter fishing boat DIXIE LEE II during a severe thunderstorm in Chesapeake Bay on June 6, 1977. The recommendation asked NOAA to provide sufficient information in its severe weather statements to indicate the severe weather condition, such as wind speed, for which the statement is valid. (See 44 FR 10647, February 22, 1979.)

NOAA states that it has reviewed the weather situation leading up to the capsizing of the DIXIE LEE II and believes that existing National Weather Service (NWS) procedures adequately address the warning problem. NOAA's severe thunderstorm warning form, WS Form C-8, has space for including wind speed reports in the warning message. Marine warning messages will also include very strong *observed* wind speeds. However, NOAA said, more often than not NWS doesn't know the actual winds associated with potentially severe thunderstorms, so many warnings are based on radar signatures or reports of "wind damage" or large hail.

Further, NOAA states that warnings are not given out lightly and, by their very nature, imply some abnormal and/or dangerous event. Since mariners and other users of weather information may not always know what NOAA's words of warning mean, education becomes paramount. To be effective, warnings have to be rapidly disseminated and immediately heeded. NOAA would slow down the dissemination process by *routinely* including a definition of a severe thunderstorm in *every* warning message. So, NOAA plans to encourage its forecasters to mention wind speed thresholds in their warnings, if possible. NOAA feels that its active public awareness program developed during the past decade is the best way to ensure that those who receive warning messages know what the warnings mean and what they should do to minimize danger. NOAA plans to continue to work with other organizations such as the Coast Guard in this educational program.

Railroad

R-72-5.—On May 17 the Federal Railroad Administration reported on progress in implementing this recommendation, issued as a result of the investigation of the accident at Soundview, Conn., October 8, 1970. The recommendation asked FRA to continue to a conclusion its efforts to improve the design of locomotive operator compartments to resist crash damage, and, in conjunction with the Association of American Railroads, to undertake a review of modern design crashworthiness concepts to identify areas of applicability in the railroad industry.

FRA reports that through its participation with the Locomotive Control Compartment Committee (a group of Government, railroad industry, and labor representatives), FRA has research improved design of locomotive operator compartments to resist crash damage. Full-scale impact tests have identified many problems leading to development of current guidelines and concepts incorporated in locomotives now being constructed. A mockup was built of a cab incorporating improved structural features including anticlimbers, a sloping front, and collision posts with increased strength. FRA says that the Amtrak LRC presently under construction will incorporate many of these features. Also, the research efforts have been broadened to include other improvements for providing a quick egress from the engineer's compartment in commuter type by the rearrangement of the seats.

In the next 24 months, FRA will complete the crashworthiness studies to improve structural guidelines and anticlimb protection to minimize injuries sustained by occupants of the locomotive cab. After tests are completed and analyzed, FRA will work with industry to prepare guidelines to improve locomotive compartment crashworthiness. FRA notes that the results of earlier tests sponsored by the Locomotive Control Compartment Committee have been furnished to locomotive manufacturers and users. Numerous changes have been made to the interior design of the locomotive cab. FRA does not plan to issue interior cab regulations.

R-76-52 through 55.—FRA's letter of April 6 is a followup response to recommendations issued November 19, 1976, following investigation of an autotrain derailment near Jarratt, Va., May 5, 1976. The probable cause of this derailment was determined to be an overheated fractured wheel, and the recommendations sought to improve railroad car wheel safety.

FRA refers to its previous response dated July 5, 1978, which discussed the wheel safety research being conducted in FRA's Office of Research and Development. (See 43 FR 32477, July 27, 1978.) At present, research is being directed at establishing critical conditions for wheels including temperature and loads. FRA is also developing a better understanding of the temperature and forces generated on the wheel during braking operations which will lead to safety guidelines that will hopefully reduce railroad wheel abuse. Further, research is being conducted to develop concepts which can be used to detect defective wheels either through wayside inspections or inspections prior to installation. FRA is also investigating concepts for derailment detectors to either automatically stop the train or signal the train crew prior to catastrophic damage.

According to FRA, actual wheel failures can be caused by a change in rim stress from compression to tension, due to stress risers on the wheel surfaces. When compression is lost, the markings on the wheel may themselves be instrumental in the generation of a crack. FRA says this phenomenon of stress is understood to an extent that no further research is required to permit appropriate action to be taken, but further work is continuing on identifying the state of compression of the wheel rim to establish criteria for removal of wheels from service. FRA says this research will require extensive testing, commitment of funds and several years before completion can be realized. Preliminary results of car wheel safety research, including early detection of in-service failures, temperature and load force generation, are not anticipated until late 1980. FRA states that its research priorities preclude the expedition of either studies in this area or the promulgation of regulations.

R-77-9 and 10.—FRA's May 17 response addresses the Safety Board's comments of March 12 concerning recommendation R-77-10 and related FRA letter of December 15 (43 FR 60677, December 28, 1978). The recommendations were developed following investigation of the freight train derailments and collision at Glen Ellyn, Ill, May 16, 1976. Recommendation R-77-10 asked FRA to require the Chicago and North Western Transportation Company to maintain its tracks to the specifications of the Federal Track Standards for each class and not increase train speeds until it is determined that the track is adequate for such speeds.

In response to the Safety Board's request for assurance that the Chicago and North Western Transportation Company (CNW) has taken appropriate remedial action to maintain their trackage commensurate with the requirements of the track classes and authorized maximum train speeds, FRA states that it achieves compliance with the Federal Track Safety Standards (49 CFR Part 213, promulgated in 1971) on the CNW and on other railroads, through its track monitoring program. FRA track inspectors review carrier inspection reports and conduct on-the-ground observations at selected locations to determine the degree of compliance. If items of noncompliance are found, legal action is taken. Such action may take the form of fines, reduction in operating speeds, emergency orders and compliance orders. FRA believes this is now the most effective way of requiring the carrier's track to meet the standards.

In its March 12 letter, the Safety Board advised FRA that recommendation R-77-9, which sought to establish a ready means to communicate hazardous material emergency handling procedures to rescue personnel, is now classified as "closed, no longer applicable." The Safety Board provided the following rationale:

Establishment of a communication link between accident-scene officials and technical experts was a recurring problem in railroad accidents involving hazardous materials. Thus recommendation R-77-12 was directed to the Manufacturing Chemists Association to utilize their Chemical Transportation Emergency Center (CHEMTREC) facilities to assist in establishing the described communications link.

CHEMTREC's review group concluded that although this objective was conceptually sound, it was not achievable under existing operating procedures—findings similar to the conclusions drawn from the Safety Board's Hazardous Materials hearings, April 4-6, 1978. On June 28, 1978, the Board directed recommendation I-78-10 to the Secretary, Department of Transportation, to "Supply the leadership required to establish an adequate nationwide hazardous materials emergency response network to meet all facets of hazardous materials emergency response needs, using existing State and private resources whenever possible."

The Safety Board was recently advised by DOT that the U.S. Coast Guard has been directed to develop an implementation plan for expanding its present National Response Center and integrating the Coast Guard response system with other systems in the private industry sector. When fully implemented, the plan will provide the appropriate mechanism for a "single telephone number" response system.

DOT's response also notes that their study of existing response mechanisms and information systems indicated that necessary resources are already in place in CHEMTREC, Coast Guard's Chemical Hazards Response Information System (CHRIS), the Hazard Assessment Computer System (HACS), and other data bases.

R-78-53.—Letter of May 2 from the Association of American Railroads (AAR) concerns a recommendation developed as a result of investigation of the autotrain derailment at Florence, S.C., February 24, 1978. The recommendation asked the Association to amend procedures for testing and inspecting used locomotive unit axles before they are remounted to insure that internal defects can be detected. (See 43 FR 48742, October 19, 1978.)

On February 12 the Safety Board, having received no response, made inquiry. The Board recognized that final action requires considerable deliberation prior to AAR's amending its Manual of Standards and Recommended Practices, but wanted to be apprised of any interim remedial efforts, such as the issuance of "Early Warning" letters to carriers and manufacturers, or other appropriate steps.

AAR takes issue with the Safety Board's findings as provided in report NTSB-RAR-78-6. AAR states in its May 2 letter: "From the information shown in the report the Committee is unable to conclude that the axle failed before the support bearing; rather, they are confident that this incident is a typical locomotive traction motor support bearing failure." AAR further states, "The Committee does agree, in principle, in your recommendation on automatic detection of failed equipment recognizing that it must be cost effective; however, they do not agree with your other recommendations because your conclusions are in error." Other recommendations, Nos. R-78-54 through 56, were issued as a result of this investigation to the Federal Railroad Administration. These recommendations sought regulatory action on testing of locomotive axles to insure detection of internal defects before being placed in service.

AAR asked for a meeting with the Safety Board's technical staff to discuss the comments contained in the May 2 letter.

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of the recommendation letters issued by the Board, response letters and related correspondence are also available free of charge. 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.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. 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)).)

Dated: May 25, 1979.

Margaret L. Fisher,

Federal Register Liaison Officer.

[FR Doc. 79-16932 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-58-M

POSTAL RATE COMMISSION

[Docket No. A79-20]

Balsam Grove; Notice and Order of Filing of Appeal

Issued May 24, 1979.

In the Matter of: Balsam Grove, North Carolina 28709 (Mr. and Mrs. H. H. Clar, *et al.*, Petitioners), Docket No. A79-20.

On May 18, 1979, the Commission received a handwritten letter from Mr. and Mrs. H. H. Clark (hereinafter "Petitioners"), concerning alleged United States Postal Service plans to close the Balsam Grove, North Carolina, post office.[1] Although the letter makes no explicit reference to the Postal Reorganization Act, we believe it should be liberally construed as a petition for review pursuant to section 404(b) of the Act (39 U.S.C. 404(b)), so as to preserve Petitioners' right to appeal which is subject to a 30-day time limit.[2] Since the petition was apparently not written by an attorney, it does not conform

[1] On May 21, 1979, appeal letters were received from Mr. and Mrs. Edward J. Flath, and Mrs. Marion Owen. We are consolidating all these appeal letters into this docket.

[2] 39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-1311. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

perfectly with the Commission's rules of practice which also require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[3] However, section 1 of the Commission's rules of practice calls for a liberal construction of the rules to secure just and speedy determination of issues.[4]

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "* * * ensure that such persons will have an opportunity to present their views.[5] The petition requests that the decision to close the Balsam Grove post office be reversed. From the face of the petition it is unclear whether the Postal Service provided 60 days' notice, whether any hearings were held, and whether a determination has been made under 39 U.S.C. 403(b)(3). (Petitioners failed to supply a copy of the Postal Service's Final Determination, if one is in existence.) The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[6]

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[7]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to consolidate post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act. The Petitioners state that the proposed alternative service would be inconvenient.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the discontinuance of post offices.[8]

Upon preliminary inspection, the petitions appear to raise the following issues of law:

1. Is the Postal Service's proposed alternative of rural carrier service for this community consistent with the "maximum degree of effective and regular postal services" standard of section 404(b)(2)(C)?

2. As part of its consideration of the effect on the community standard of section 404(b)(2)(A), did the Postal Service correctly gauge the size and growth of the community?

3. As part of the effect on the community standard of section 404(b)(2)(A), must the Postal Service consider the level of service given by the employee at the Balsam Grove post office as compared to that given by employees at larger offices?

4. As part of the effect on the community standard of section 404(b)(2)(A), must the Postal Service consider that the post office provides employment for someone living in the community?

5. Must the Postal Service consider that it is a 20-mile round trip to the alternative post office as part of its treatment of the "maximum degree of effective and regular postal services" standard of section 404(b)(2)(C)?

Other issues of law may become apparent when the Commission has had the opportunity to examine the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in *Lone Grove, Texas, et al.*, Docket Nos. A79-1, *et al.* (May 7, 1979). Conversely, the determination may be found to resolve adequately one or more of the issues described above.

In view of the above, and in the interest of expedition of this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above, and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the Determination and record pursuant to section 113 of the rules of practice (39 CFR 3001.113), make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on Petitioners by the Service.

In briefing the case, or in filing any motion to dismiss for want of prosecution, in appropriate circumstances, the Service may incorporate by reference all or any portion of a legal memorandum pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases, and none is being appointed.[9]

The Commission Orders: (A) The letter of May 18, 1979, from Mr. and Mrs. H. H. Clark shall be construed as a petition for review pursuant to § 404(b) of the Act (39 U.S.C. 404(b)).

(B) The Secretary of the Commission shall publish this Notice and Order in the Federal Register.

(C) The Postal Service shall file the administrative record in this case on or before June 4, 1979, pursuant to the Commission's rules of practice [39 CFR § 3001.113(a)].

By the Commission.

David F. Harris,

Secretary.

Appendix

May 18, 1979—Filing of Petition.
May 24, 1979—Notice and Order of Filing of Appeal.
June 4, 1979—Filing of record by Postal Service (*see* 39 CFR 3001.113(a)).
June 7, 1979—Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
June 18, 1979—Petitioners' initial brief (*see* 39 CFR 3001.115(a)).
July 3, 1979—Postal Service answering brief (*see* 39 CFR 3001.115(a)).
July 18, 1979—(1) Petitioners' reply brief, if petitioners choose to file such brief (*see* 39 CFR 3001.115(c)). (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
September 17, 1979—Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 79-1[illegible] Filed 5-30-79; 8:45 am]
BILLING CODE 7715-01-M

[3] 39 CFR 3001.111(a).

[4] 39 CFR 3001.1.

[5] 39 U.S.C. 404(b)(1).

[6] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Servie of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

[7] 39 U.S.C. 101(b).

[8] 42 FR 59079–59085 (11/17/77); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

[9] In the Matter of Gresham, S.C., Route #1, Docket No. A78-1 (May 11, 1978).

PRESIDENT'S COMMISSION ON THE HOLOCAUST

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee

Act that a meeting of the President's Commission on the Holocaust will be held at 10 a.m. on Thursday, June 7, 1979, in Room 2118, Rayburn House Office Building, Capitol Hill, Washington, D.C. 20515.

The Commission was established by Executive Order 12093, november 1, 1978, to submit a report to the President and the Secretary of the Interior containing its recommendations with respect to the establishment and maintenance of an appropriate memorial to those who perished in the Holocaust. Also, the Commission's report shall examine the feasibility of obtaining funds for creation and maintenane of the Memorial through contributions by the American people. Furthermore, the Commission meeting shall include a report on "Days of Remembrance of the Victims of the Holocaust," proclaimed by Congress through a Joint Resolution (Pub. L. 95-371, September 18, 1978), for which commemorative events were held throughout the country during the week of April 22-29, 1979.

The meeting is open to the public. However, facilities and space for accommodating members of the public are limited. Those wishing to attend on a first-come, first-serve basis should notify in writing no later than June 5, 1979, Dr. Michael Berenbaum, Deputy Director, President's Commission on the Holocaust, Suite 7233, 726 Jackson Place, N.W., Washington, D.C. 20503 of their intention to attend. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Dr. Berenbaum at (202) 395-7343. The proceeding will be transcribed and the transcripts will be available for public inspection two weeks after the meeting.

Dated: May 24, 1979.

Michael Berenbaum,

Deputy Director.

[FR Doc. 79-16894 Filed 5-30-79; 8:45 am]

BILLING CODE 4310-70-M

PRESIDENT'S COMMISSION ON PENSION POLICY

Open Meeting

The second meeting of the President's Commission on Pension Policy has been scheduled for 9:00 a.m. on Friday, June 22, 1979, in Room 2008 of the New Executive Office Building, 726 Jackson Place, NW: Washington, DC.

The Commission was established by Executive Order 12071 dated July 12, 1978, and was continued by enactment of authorizing legislation signed by the President on May 24, 1979.

The purpose of the meeting is to discuss the items listed below.

Study Group Reports
Approval of Schedule of Public Hearings of the Commission
Staff Report

The meeting will be open for observation by the public. Persons interested in attending should address a letter to the President's Commission on Pension Policy, 736 Jackson Place, NW; Washington, DC 20006. The Commission's phone number is (202) 395-5132. Admission of observers will be on the basis of earliest notification and to the extent space is available.

Members of the public may file a written statement concerning one of the topics on the above agenda by making a written request to the Executive Director no later than Friday, June 8, 1979. The request should outline the nature of the testimony to be presented and it should summarize the contents of the statement to be made.

Thirty (30) copies of the formal statement to be made (not to exceed 15 minutes in length) must be received by the Commission by Friday, June 15, 1979.

Signed at Washington, this 25th day of May, 1979.

Thomas C. Woodruff,

Executive Director.

[FR Doc. 79-16933 Filed 5-30-79; 8:45 am]

BILLING CODE 6820-99-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each man-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1979, shall be at the rate of twelve and one-half cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1979, 17.9 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 82.1 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 21, 1979.

By Authority of the Board.

R. F. Butler,

Secretary of the Board.

[FR Doc. 79-16829 Filed 5-30-79; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Advisory Committee on Oil and Gas Accounting; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of the Securities and Exchange Commission Advisory Committee on Oil and Gas Accounting.

SUMMARY: The next meeting of the Securities and Exchange Commission Advisory Committee on Oil and Gas Accounting will be held on Tuesday, June 19, 1979 at the Commission's headquarters in Washington, D.C., beginning at 9:30 a.m., and will be open to the public.

FOR FURTHER INFORMATION CONTACT: James D. Hall, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-222).

SUPPLEMENTARY INFORMATION: The next meeting of the Securities and Exchange Commission Advisory Committee on Oil and Gas Accounting has been scheduled to be held in Room 776 of the Commission's headquarters office at 500 North Capitol Street, Washington, D.C. on Tuesday, June 19, 1979, beginning at 9:30 a.m. The summarized agenda for this meeting is as follows:

1. Discussion of accounting measurement questions related to the implementation of reserve recognition accounting.
2. Discussion of issues raised in comment letters on Securities Act Release No. 33-5969, "Proposed Supplemental Earnings Summary."
3. Consideration of other matters coming to the committee's attention.

George A. Fitzsimmons,

Secretary.

May 24, 1979.

[FR Doc. 79-16872 Filed 5-30-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-15860]

Philadelphia Depository Trust Co.; Filing of an Application for Registration of a Clearing Agency

May 23, 1979.

The Philadelphia Depository Trust Company has filed an application to become a registered clearing agency under Sections 17A and 19(a) of the Securities Exchange Act of 1934 (the "Act") and pursuant to subparagraph (c)(1) of Rule 17Ab2-1 under the Act (17 CFR 240.17Ab2-1(c)(1)). The Philadelphia Depository Trust Company intends to engage in the business of holding, receiving and delivering securities and of making book entry movements with respect to the delivery and/or pledge of securities.

On or before August 29, 1979, or within such longer period as to which the applicant consents, the Commission will, in accordance with Section 19(a) of the Act:

(A) By order grant such registration, or

(B) Institute proceedings to determine whether registration should be denied.

Pursuant to subparagraph (c)(1) of Rule 17Ab2-1 under the Act, if requested by an applicant, the Commission may grant the applicant registration as a clearing agency in accordance with Sections 17A(b) and 19(a)(1) of the Act, but exempt the applicant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to subparagraphs (A)-(I) of Section 17A(b)(3) of the Act. Registration pursuant to subparagraph (c)(1) of Rule 17Ab2-1 shall not be effective for more than eighteen (18) months from the date on which registration is made effective by the Commission.

Subparagraph (c)(2) of Rule 17Ab2-1 requires that, in the case of any clearing agency registered in accordance with subparagraph (c)(1) of Rule 17Ab2-1, the Commission, not later than nine months from the date such registration is made effective, will either grant registration without exempting the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to subparagraphs (A)-(I) of Section 17A(b)(3) of the Act or will institute proceedings to determine whether registration should be denied at the expiration of 18 months.

Interested persons are invited to submit written data, views and arguments concerning the foregoing applications with six weeks from the date of publication of this notice in the Federal Register. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a) of the Act and subparagraph (c)(2) of Rule 17Ab2-1. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File Number 600-17.

Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16371 Filed 5-29-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6070; 18-40]

Filing of Application Exemption from the Provisions of the Act Interests or Participations Issued in Connection with the Webster & Sheffield Partner's and Employee's Retirement Plan

May 24, 1979.

Notice is hereby given that Webster & Sheffield, a New York partnership engaged in the practice of law (the "Applicant" or the "Firm"), on March 5, 1979, filed an application for an exemption from the registration requirements of the Securities Act of 1933 (the "Act"), for participations or interests issued in connection with the Webster & Sheffield Partners' and Employees' Retirement Plan (the "Plan"), 1 Rockefeller Plaza, New York, NY 10020. All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

Applicant states that the Plan covers certain partners, associate attorneys and staff members who are not attorneys. As of December 31, 1978, there were 24 partners, 14 associates and 29 non-legal staff members participating in the Plan. The Plan is of a type commonly referred to as a "Keogh" plan, which covers persons (in this case the Firm's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). Therefore, the Plan is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in employee benefit plans of certain employers.

Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant states that the Plan was established on January 1, 1971 and was amended and restated in its entirety, effective as of January 1, 1976, in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). On February 22, 1977, the Internal Revenue Service (the "IRS") issued a ruling to the effect that the Plan, as so amended and restated, is a "qualified plan" within the meaning of Section 401(a) of the Code. Effective as of January 1, 1979, the Plan has been amended further to provide an increase in the rate of contributions made by the Firm and to eliminate voluntary contributions to the Plan by Plan participants. Applicant represents that the 1979 Amendments do not affect the tax qualification of the Plan. As the Plan is an "employee pension benefit plan," it is subject to the fiduciary standards and to the full reporting and disclosure requirements of ERISA.

Applicant states that under the Plan, any individual who has attained age 25 and completed three years of service with the Firm automatically becomes a participant in the Plan, unless such individual elects not to participate. If an associate or a non-legal staff member elects not to participate in the Plan, the contributions the Firm would have made to the Plan on behalf of such employee are not given instead to the employee.

Applicant states that effective as of January 1, 1979, the Firm contributes to

the Plan on behalf of each participant an amount equal to 2.1 per cent of the participant's earnings subject to Federal Insurance Contributions Act taxes plus 9.1 per cent of such participant's earnings in excess thereof up to $100,000 ot total earnings. In no event may the Firm's contribution on behalf of any participant exceed $7,500 for any Plan year. The contributions made by the Firm on behalf of any partner are charged to, and deducted from, a partner's distributable share of the Firm's net income. Thus, if a partner elects not to participate in the Plan, no deduction for Plan contributions is made from his or her share of the Firm's net income.

Prior to December 31, 1978, each participant under the Plan was permitted, at his or her option, to make voluntary contributions to the Plan in an amount not in excess of 10 per cent of such participant's aggregate earnings for all years during which he or she was a participant in the Plan. All contributions made by or on behalf of a participant are at all times fully vested and nonforfeitable. Applicant states that since the establishment of the Plan, only four partners and two non-legal staff members have elected to make voluntary contributions to the Plan. No one has made a voluntary contribution to the Plan in the past three years. Effective as of January 1, 1979, the Plan provides that no participant may make voluntary contributions to the Plan. All participants who have made voluntary contributions to the Plan may withdraw the voluntary contributions, but not the earnings thereon.

The Plan is funded through a single trust. The Bank of New York is trustee (the "Trustee") for the Plan under an Amended Trust Agreement (the "Trust Agreement"). Under the Trust Agreement, the Trustee has exclusive authority and discretion to manage, invest and control the Plan assets. The Plan provides for the appointment of a Retirement Plan Committee (the "Committee"), consisting of no more than five partners. The Committee has overall responsibility and authority for administration of the Plan. The Plan also provides for the appointment of a Plan Administrator (the "Administrator") to administer the Plan in accordance with the guidelines and instructions of the Committee. Subject to the approval of the Managing Partner, the Committee and the Administrator may engage such clerical, financial or other services as they may deem necessary to carry out their responsibilities. The Plan is subject to ERISA, and Applicant states that it intends to comply with all of the applicable ERISA reporting and disclosure requirements.

III. Discussion

Applicant contends that were the Firm a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. The mere fact that the Firm conducts its business as a partnership rather than as a corporation should not result in requirement that interests in the Plan be registered under the Act.

Applicant also maintains that were the Firm's partners not permitted to participate in the Plan, the interests or participations issued in connection with the Plan would be exempt under Section 3(a)(2) since no other persons covered by the Plan would be "employees" within the meaning of Section 401(c)(1) of the Code. Applicant contends that there is no valid basis for a contrary result merely because the Plan also covers partners in the Firm.

Applicant contends that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a0(2) of the Act does not suggest an intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Rather, Congress excluded interests issued in connection with Keogh plans from the Section 3(a)(2) exemption primarily out of concern over interests or participations in commingled or collective Keogh funds which might be marketed by sponsoring financial institutions to self-employed persons who were unsophisticated in the securities field. Applicant asserts that the Plan covers partners and employees of a single firm and is not a uniform prototype plan of a type designed to be marketed by a sponsoring financial institution or promotor to numerous unrelated self-employed persons. Applicant also states that assets of the Plan have not commingled with assets of any other plans or collective funds, and that the Plan, like similar plans of large corporations, has been specifically tailored to meet Applicant's own particular requirements.

Applicant states that it is engaged in furnishing legal services of a type necessarily involving financially sophisticated and complex matters and, for that reason as well as the extensive administrative control over the Plan maintained by the Firm, it is able to represent adequately its interests and the interests of its employees who are participants in the Plan.

Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan (other than such material as Applicant is required under ERISA to distribute to participants or to employees) and has not made and does not intend to make any solicitation of voluntary contributions under the Plan.

Finally, Applicant states that the disclosures required by ERISA and other disclosures to be made to Plan participants are additional grounds for granting the requested exemption.

Applicant concludes that for the foregoing reasons, granting the requested exemption would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 18, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or such person may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following June 18, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16870 Filed 5-30-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #1637]

Alabama; Declaration of Disaster Loan Area

Mobile County and adjacent counties within the State of Alabama constitutes a disaster area as a result of damage caused by flooding which occurred on April 22, 1979 through April 28, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 16, 1979, and for economic injury until the close of business on February 18, 1980, at:

Small Business Administration, District Office, 908 South 20th Street, Birmingham, Alabama 35205

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 17, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-16941 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1630; Amdt No. 1]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration (See 44 FR No. 98 is amended in accordance with the President's declaration of April 30, 1979, to include Alexander, DeWitt, Jackson, Madison, Monroe, Pulaski, Randolph, Rock Island, St. Clair and Union Counties in the State of Illinois. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named counties and adjacent counties within the State of Illinois. All other information remains the same, i.e., the termination dates for filing applications for physical damage is close of business on June 29, 1979, and for economic injury until the close of business on January 30, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-16943 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1558]

Kansas; Declaration of Disaster Loan Area

The following 20 counties and adjacent counties within the State of Kansas constitute a disaster area as a result of natural disasters as indicated:

County	Natural disaster(s)	Date(s)
Allen	Drought	6/01/78-12/31/78
Anderson	Drought	6/01/78-12/31/78
Bourbon	Drought	6/01/78-12/31/78
Chase	Drought	6/20/78-12/31/78
Chautauqua	Drought	6/10/78-12/31/78
Cherokee	Drought	6/01/78-12/31/78
Coffey	Drought	6/01/78-12/31/78
Crawford	Drought	6/01/78-12/31/78
Elk	Drought	6/19/78-12/31/78
Franklin	Drought	6/01/78-12/31/78
Greenwood	Drought	6/19/78-12/31/78
Labette	Drought	6/01/78-12/31/78
Linn	Drought	6/01/78-12/31/78
Lyon	Drought	6/20/78-12/31/78
Montgomery	Drought	6/01/78-12/31/78
Morris	Drought	6/20/78-12/31/78
Neosho	Drought	6/01/78-12/31/78
Osage	Drought	6/01/78-12/31/78
Wilson	Drought	6/01/78-12/31/78
Woodson	Drought	6/01/78-12/31/78

Applications will be processed under the provisions of Pub. L. 95-89.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 1, 1979, and for economic injury until the close of business on November 1, 1979, at:

Small Business Administration, 12 Grand Bldg.—5th Floor, 1150 Grand Avenue, Kansas City, Missouri 64106.

Small Business Administration, Main Place Bldg., 110 East Waterman Street, Wichita, Kansas 67202.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008.)

Dated: February 1, 1979.

Harold A. Theiste,

Acting Administrator.

[FR Doc. 79-16942 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1616; Amdt. #4]

Mississippi; Declaraton of Disaster Loan Area

The above numbered Declaration (See 44 FR 24179), amendment #1 (See FR 26232) and amendment #2 (See 44 FR 27782), and amendment #3 (See FR 29169), are amended in accordance with the President's declaration of April 16, 1979, to include Adams County in the State of Mississippi. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named county, and adjacent counties within the State of Mississippi. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on June 15, 1979, and for economic injury until the close of business on January 15, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59003)

Dated: May 1, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-16944 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1622; Amdt #2]

Missouri; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 26232), and amendment #1 (See 44 FR #98) are amended in accordance with the President's declaration of April 21, 1979, to include Pike County in the State of Missouri. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named county, and adjacent counties within the State of Missouri. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on June 22, 1979, and for economic injury until the close of business on January 22, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59003)

Dated: May 11, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-16945 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 02/02-0372]

Preferential Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), under the name of Preferential Capital Corporation (Applicant), for a license to

operate as a Small Business Investment Company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of New York, and it will commence operations with a capitalization of $422,635, which will be raised to $500,000 on or before June 30, 1980. The initial capitalization will result from a reconveyance by Gold Coast Capital Corporation to the Applicant of certain assets and liabilities of Preferred Capital for Small Business, Inc. which was merged into Gold Coast Capital Corporation. Said merger was approved by SBA on November 9, 1976.

The Applicant will have its place of business at 16 Court Street, New York, New York 11241, and it intends to conduct operations primarily in the State of New York.

The Officers and Directors of the Applicant will be:

Bernard Madovoy, 820 Shore Boulevard, Brooklyn, New York 11235, President, Director, 33⅓% shareholder.

Samuel J. Burger, Fleischman, New York 11235, Vice President and Director, 33⅓% shareholder.

Bruce Bayroff, 300 Hampton Avenue, Brooklyn, New York 11235, Secretary, Director, 33⅓% shareholder.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and SBA Regulations.

Notice is hereby given that any persons may not later than June 15, 1979 submit written comments on the Applicant to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice shall be published by the Applicant in a newspaper of general circulation in New York, New York and Miami, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 25, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-16940 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis, Minnesota, will hold a public meeting on Tuesday, July 24, 1979, at Control Data Corporation, Business and Technology Center, 245 East 6th Street, St. Paul, Minnesota, to discuss such business as may be presented by members, staff of the Small Business Administation, or others present.

For further information, write or call Paul W. Jansen, District Director, U.S. Small Business Administration, Plymouth Building—Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402 (612)725-2928.

Dated: May 24, 1979.

K Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-16939 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1633; Amdt. No. 1]

Tennessee; Declaration of Disaster Loan Area

The above numbered Declaration (see 44 FR 98) is amended in accordance with the President's delcaration of May 7, 1979, to include Lauderdale, Dryer, Gibson and Maury Counties in the State of Tennessee. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named counties, and adjacent counties within the State of Tennessee. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on July 6, 1979, and for economic injury until the close of business on February 7, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 17, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-16946 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1639]

Texas; Declaration of Disaster Loan Area

Dallas, Ellis, Johnson, Kaufman and Tarrant Counties and adjacent counties within the State of Texas constitute a disaster area as a result of damage caused by tornado, accompanied by excessive winds, hail and flooding which occurred on May 3, 1979. Applications will be processed under the provisions of Public Law 94-305. Interest rate is 7⅝ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 23, 1979, and for economic injury until the close of business on Feb. 22, 1980, at: Small Business Administration, District Office, 1100 Commerce Street, Dallas, Texas 75242, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 22, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-16947 Filed 5-30-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-79-7]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 14, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a

copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 25, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
19168	Warren C. Wilkerson	14 CFR 121.383(c)	To permit petitioner to serve as a pilot for Trans World Airlines after he has reached his 60th birthday.
19167	Rockwell International	CAR 4b.362(H)	To permit certification of the Model NA-265-65 with a 9-inch aisle width up to 25 inches from the floor and a 12-inch aisle width above 25 inches from the floor, instead of the required 12 and 18-inch widths, respectively.
19155	Dallas/Fort Worth Regional Airport Board.	14 CFR 107.17(a)(2)	To allow a permanent exemption from that portion of the FAR Part 107 which requires law enforcement officers, *inter alia*, to wear uniforms while on duty at the Dallas/Fort Worth Regional Airport.
18698	Texas International Airlines, Inc	14 CFR 121.391(a)(3)	To permit operation of DC-9-30 aircraft with 115 passenger seats using two flight attendants and blocking 15 seats in certain situations.
18867	Frontier Airlines, Inc	14 CFR 121.391	To permit operation of B-737 aircraft with 115 passenger seats using two flingt attendants amd blocking 6 seats in certain situations.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
Amdt. 39-1202	Cryolab	14 CFR 39.13	To adjust compliance time for repetitive inspections per AD 71-9-7 up to 10 hours maximum to allow compliance concurrent with other scheduled maintenance on Cessna Model T210, N761KT, S/N 21062323. Granted April 19, 1979.
Amdt. 39-2843; Amended by 39-3357.	Air Kentucky Airlines	14 CFR 39.13	Request 1,000-hour extension in time for compliance with paragraph IV of AD 77-05-01 Amdt 39-2843 as amended by Amdt. 39-3357 for Beech Model 99, S/N U-105, N4099A. Denied April 27, 1979.

[FR Doc. 79-16921 Filed 5-30-79; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

[Notice 79-9]

Procedures for Considering Environmental Impacts; Policies and Procedures

AGENCY: Department of Transportation (DOT).

ACTION: Request for public comment.

SUMMARY: The Department of Transportation proposes to revise its procedures for considering environmental impacts in accordance with the regulations for implementing the National environmental Policy Act issued by the Council on Environmental Quality (CEQ) on November 29, 1978. Public comments are invited on the proposed DOT Order.

COMMENT CLOSING DATE: June 30, 1979.

ADDRESS: Written comments should reference this Notice and be addressed to: Director, Office of Environment and Safety, P-20, U.S. Department of Transportation, Washington, D.C. 20590. Comments received will be available for public inspection during normal working hours in Room 9422, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Camille Cleveland, Office of Environment and Safety, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-4396.

SUPPLEMENTARY INFORMATION:

1. Background

On November 29, 1978, the Council on environmental Quality (CEQ) published regulations on the implementation of the National Environmental Policy Act (NEPA) (43 FR 55978). The regulations direct Federal agencies to adopt procedures to implement the regulations (40 CFR § 1507.3). The proposed DOT order would set forth policies and procedures that supplement the CEQ regulations and apply them to DOT programs. References to relevant sections of the CEQ regulations are included in the proposed DOT Order.

The proposed DOT order, which would be designated DOT Order 5610.1C, would be an internal directive and would apply to all elements of DOT. In addition to this directive, most operating Administrations of the Department will adopt their own implementing procedures or issue regulations consistent with the DOT Order and the CEQ regulations which will provide more specific guidance on applying NEPA to their programs.

2. Regional and Transportation System Environmental Studies

Comments are particularly invited on paragraph 7.g of the proposed DOT order. This paragraph encourages the preparation of environmental impact statements (EISs) and environmental assessments of regional transportation plans or other related transportation actions. This proposed paragraph has been the subject of considerable discussion within DOT and with outside interests. The argument for encouraging or requiring environmental review at a system level is that this is the most appropriate level at which to deal with such questions as cumulative impacts, choice of modal alternative, and broad air quality and land use impacts of transportation plans. Circulation of an EIS or environmental assessment would give the public and other agencies an opportunity to comment on these concerns. On the other hand, it is argued that there is no major Federal action at the regional plan level—for example, the transportation planning process of

metropolitan planning organizations is certified by the Federal Highway Administration and the Urban Mass Transportation Administration, but the plan itself is not approved by the Federal government. Environmental studies are generally conducted at a system planning level, but there is not a requirement for formal circulation of the results of environmental studies. The language in the proposed order encourages, but does not require, preparation of environmental impact statements at the transportation system level.

3. Form and Content of Environmental Impact Statements

DOT is also considering the need to revise Attachment 2 of the Department's order, Form and content of Environmental Impact Statements. This attachment provides current guidance on incorporating findings related to environmental statutes, executive orders, and regulations into EISs. In any revision of Attachment 2, DOT will include guidance for consideration of impacts related to the Administration's urban policy objectives, and additional guidance on considering energy impacts. The unrevised version of Attachment 2, which is currently in effect, is included with this document. The public is invited to suggest items for inclusion in the revisions to Attachment 2, or to suggest any other changes which may be appropriate.

4. Comments

The Department is interested in receiving comments on these procedures from all interested parties. CEQ regulations require that these procedures be effective July 30, 1979. We will consider all comments received on or before June 30, and will consider any comments received after the closing date to the maximum extent practicable.

Issued in Washington, D.C. on May 24, 1979.

John J. Fearnsides,

Deputy Under Secretary of Transportation.

Department of Transportation

Office of the Secretary, Washington, D.C.

Order—DOT 5610.1C [Draft]

SUBJECT: Procedures for Considering Environmental Impacts.

Introduction.

1. *Purpose.* This Order establishes procedures for consideration of environmental impacts in decision making on proposed DOT actions. The Order provides that information on environmental impacts of proposed actions will be made available to public officials and citizens through environmental impact statements, environmental assessments or findings of no significant impact. These documents serve as the single vehicle for environmental findings and coordination.

2. *Cancellation.* DOT 5610.1B, *Procedures for Considering Environmental Impacts,* dated September 30, 1974.

3. *Authority.* This Order provides instructions for implementing Section 102(2) of the National Environmental Policy Act of 1969 (P.L. 91–190, hereinafter "NEPA") and the Regulations for Implementing NEPA issued by the Council on Environmental Quality, 11–29–79; Sections 2(b) and 4(f) of the Department of Transportation Act of 1966 (P.L. 89–670, hereinafter "the DOT Act"); Sections 309 and 176 of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.); Section 106 of the National Historic Preservation Act of 1966 (P.L. 89–665, hereinafter "the Historic Preservation Act"); Sections 303 and 307 of the Coastal Zone Management Act of 1972 (P.L. 92–583); Section 2 of the Fish and Wildlife Coordination Act (P.L. 85–624); Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1533); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1314 et seq.); and various Executive Orders relating to environmental impacts. In addition, the Order provides instructions for implementing, where environmental statements are required, Sections 138 and 109 of Federal-aid highway legislation (Title 23, United States Code, hereinafter "the Highway Act"), Sections 16 and 18(a) of the Airport and Airway Development Act of 1970 (P.L. 91–258), hereinafter "the Airport Act"), and Section 14 of the Urban Mass Transportation Act of 1964 (49 U.S.C. Section 1601 et seq., hereinafter "the Mass Transportation Act").

DISTRIBUTION: All Secretarial Offices; All Operating administration; National Transportation Safety Board (Info).

OPI: Office of Environment and Safety.

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Attachment 1—*State and Localities With EIS Requirements*

Attachment 2—*Form and Content of Environmental Impact Statements*

1. Background

The National Environmental Policy Act (NEPA) establishes a broad national policy to promote efforts to improve the relationship between man and his environment. NEPA sets out certain policies and goals concerning the environment and requires that to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with those policies and goals.

Section 102 of NEPA is designed to insure that environemntal considerations are given careful attention and approprite weight in all decisions of the Federal Government. Section 102(2)(C) requires that all agencies of the Federal Government shall—

"include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alterntives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Section 102(2)(A) requires all agencies of the Federal Government to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment * * *"

The Council on Environmental Quality (CEQ) issued regulations for implementation of the procedural provisions of NEPA on November 29, 1978. The CEQ regulations apply uniformly and are binding on all Federal agencies, and direct agencies to adopt implementing procedures which relate the CEQ regulations to the specific needs of each agency's programs and operating procedures.

This Order implements NEPA and the CEQ regulations within the Department of Transportation and replaces Order DOT 5610.1B, of 9–30–74. The CEQ regulations (Section 1507.3(a)) direct agencies not to paraphrase the regulations in agency implementing procedres. Accordingly, the CEQ regulations are reprinted in Order 5610.1C; where special instructions are needed for preparing and processing DOT environmental documents, paragraphs have

been juxtaposed with the appropriate section of the CEQ regulations. All operating administrations and Secretarial offices shall comply with the CEQ regulations and the provisions of this Order.

This Order provides instructions for implementation of relevant environmental laws and executive orders in addition to NEPA. The environmental process defined in this Order is intended to implement the Department's policy objective of one-stop environmental processing. To the maximum extent possible, a single process shall be used to meet requirements for environmental studies, consultations, and reviews.

2. Policy and Intent

a. It is the policy of the Department of Transportation to integrate national environmental objectives into the missions and programs of the Department and to:

- avoid or minimize adverse effects wherever possible;
- restore or enhance environmental qualtiy to the fullest extent practicable;
- preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sities;
- preserve, restore and improve wetlands;
- improve the urban physical, social and economic environment;
- increase access to opportunities for disadvantaged persons; and
- utilize a systematic, interdisciplinary approach in planning and decision making which may have an impact on the environment.

b. The purpose of the environmental procedures in this Order is to provide Department officials, other decision makers, and the public, as part of the decision making process, with an understanding of the potential effects of proposed actions significantly affecting the quality of the human environment. The environmental review process is to be used to explore and document alternative actions that will avoid or minimize adverse impacts.

c. The environmental impact statement (EIS), finding of no signifant impact (FONSI, formerly "negative declaration") and determination that a proposed action is categorically excluded serve as the record of compliance with the policy and procedures of NEPA and the policy and procedures of other environmental statutes and executive orders. To the maximum extent possible, all environmental studies, reviews and consultations shall be coordinated into a single process, and compliance with all applicable environmental requirements shall be reflected in the EIS or FONSI. Where compliance with other environmental statutes requires more detailed information than is available at the time of final EIS preparation, the final EIS shall contain as much information as possible to show that the requirements will be met satisfactorily.

3. Planning and Early Coordination

a. The identification and evaluation of the social, economic and environmental effects of a proposed action and the identification of all reasonable measures to mitigate adverse impacts shall be initiated in the early planning stages of the action, and shall be considered along with technical and economic studies. Assessment of impacts of regional plans and broad programs is encouraged.

General criteria for identification of social, economic, and environmental impacts in DOT planning programs are set forth in subparagraph 10.e., DOT 1130.4, Intermodal Planning Groups and Unified Planning Work Programs, of 2-12-79. Other guidance may be identified in the implementing procedures of the administrations.

b. Where the DOT action is initiated by a state or local agency or a private applicant, the responsible operating administration shall assure that the applicant is advised of environmental assessment and review requirements and that consultation with appropriate agencies and interested parties is initiated at the earliest possible time. (See paragraph 20.b. below.)

c. Existing administration procedures for early consultation and citizen participation shall be modified to incorporate the scoping process (CEQ 1501.7). Implementing procedures shall assure that significant issues are identified and that all interested parties have an opportunity to participate in the scoping and early consultation process.

d. The draft EIS should reflect the results of the scoping/early consultation process.

4. Environmental Processing Choice

a. *Actions covered.* Except as provided in subparagraph c below, the requirements of this Order apply to, but are not limited to, the following: all grants, loans, loan guarantees, construction, research activities, rulemaking and regulatory actions, certifications, licenses, permits, approval of policies and plans (including those submitted to the Department by State or local agencies), adoption or implementation of programs, legislation proposed by DOT, and any renewals or reapprovals of the foregoing. (CEQ 1508.18(b).)

b. *Environmental Impact Statements.* An EIS shall be prepared for any proposed major Federal action significantly affecting the environment. (See also: CEQ 1508.27, paragraph 7 and paragraph 20.)

c. *Categorical Exclusions.* The following actions are not major Federal actions with a signficant impact on the environment, and do not require either an environmental assessment or an environmental impact statement:

(1) Administrative procurements (e.g. general supplies) and contracts for personal services;

(2) Personnel actions (e.g. promotions, hirings);

(3) Project amendments (e.g. increases in costs) which do not significantly alter the environmental impact of the action;

(4) Operating or maintenance subsidies when the subsidy will not result in a change in the effect on the environment; and

(5) Other actions identified by the administrations as categorical exclusions pursuant to paragraph 20.

d. *Environmental Assessment.* An environmental assessment is a document concisely describing the environmental impacts of a proposed action and its alternatives. If a decision has not been made to prepare an EIS and a proposed action has not been classified as a categorial exclusion, an environmental assessment shall be prepared. The results of an environmental assessment shall be used to determine whether an EIS or FONSI shall be prepared. (See CEQ 1508.9 and 1506.5(b).)

e. *Finding of No Significant Impact (FONSI).* If it is determined following preparation of the environment assessment that the proposed action will not have a significant impact on the environment, a FONSI shall be prepared. (See paragraph 5.)

5. Finding of No Significant Impact

a. The FONSI may ba attached to an environmental assessment or the environmental assessment and FONSI may be combined into a single document.

b. Except as provided in paragraph (c) below, a FONSI need not be coordinated outside the originating office, but must be made available to the public upon request. Notice of availability shall be provided as suggested in CEQ 1501.4(e). In all cases, notice shall be provided to State and areawide clearinghouses.

c. In the circumstances defined in CEQ 1501.4(e)(2), a copy of the proposed finding of no significant impact and the environmental assessment shall be provided to the Assistant Secretary for Policy and International Affairs, P, and the documents should be made available to the public for a period not less than 30 days before the finding of no significant impact is made and the action is implemented. Consultation with other Federal agencies concerning section 4(f) of the DOT Act, the Historic Preservation Act, section 404 permits, and other Federal requirements should be accomplished during this period.

6. Lead Agencies and Cooperating Agencies

a. The appropriate operating administration or Secretarial office should serve as the lead agency or joint lead agency for preparing and processing environmental documents when that element has the primary Federal responsibility for the action.

b. An applicant shall to the fullest extent possible serve as a joint lead agency if the applicant is a State agency with state-wide jurisdiction or is a State or local agency, and the proposed action is subject to State requirements comparable to NEPA. (See CEQ 1506.2.)

c. P should be notified if it is necessary to request CEQ resolution of lead agency designation, pursuant to CEQ 1501.5(e).

d. Coordination with cooperating agencies shall be initiated early in project planning and shall be continued through all stages of development of the appropriate environmental document.

e. If an agency requested to be a cooperating agency replies pursuant to CEQ 1501.5(c), that it will not participate, the responsible DOT official shall provide a copy of this reply to P. The agency shall be provided a copy of the draft EIS. If the agency makes adverse comments on the draft EIS

(including the adequacy of the EIS or consideration of alternatives or of mitigating measures), or if the agency indicates that it may delay or withhold action on some aspect of the proposal, the matter shall be referred to P for discussion with CEQ.

f. Where a DOT element is requested to be a cooperating agency, it should make every effort to participate.

7. Preparation and Processing of Draft Environmental Statements

a. *Scope of Statement.* The action covered by the statement should have independent significance, and must be broad enough in scope to avoid segmentation of projects and to insure meaningful consideration of alternatives. The scope of the statement should be decided upon during the scoping process. (See also CEQ 1502.20 and paragraph 7.g. below.) A general class of actions may be covered in a single EIS when the environmental impacts of all the actions are similar.

b. *Timing of Preparation of Draft Statements.* Draft statements shall be prepared at the earliest practical time prior to the first significant point of decision in the program or project development process. They should be prepared early enough in the process so that the analysis of the environmental effects and the exploration of alternatives are meaningful inputs to the decision making process. The implementing guidance (see paragraph 19) shall specify the point at which draft statements should be prepared for each type of action.

c. *Interdisciplinary Approach and Responsibilities for EIS Preparation.* An interdisciplinary approach should be used throughout planning and preparation of environmental documents to help assure a systematic evaluation of reasonable alternative course of action and their potential social, economic, and environmental consequences. At a minimum, operating administrations should have staff capabilities adequate to evaluate environmental assessments and environmental documents so that DOT can take responsibility for their content. If the necessary disciplines are not represented on the staff of the Administration, the responsible official shall obtain professional services from other Federal, State or local agencies, universities, or consulting firms.

d. *Preparation of Draft.* Draft EISs shall be prepared concurrently with and integrated with environmental analyses required by other environmental review laws and executive orders. To the maximum extent possible, the EIS process shall be used to coordinate all studies, reviews and consultations. For further guidance on the format and content of EISs and compliance with the various environmental statutes, see Attachment 2, Format and Content of EISs. See also CEQ 1502.25.

2. *Format and Content.* Further guidance on the format and content of EISs is provided in Attachment 2.

f. *Circulation of the Draft Environmental Impact Statement.*

(1) The originating operating administration or Secretarial Office shall circulate the draft environmental statement or summary to the parties indicated in paragraph 8 below. Copies of the draft EIS should be filed with EPA. (See also CEQ 1506.9 and 1506.10.)

(2) If a State agency with statewide jurisdiction is functioning as a joint lead agency and has prepared the draft EIS, the draft statement may be circulated by the State agency after the operating administration has approved it.

g. *Tiering.* Tiering of EISs as discussed in CEQ 1502.20 should be used when it will impove or simplify the environmental processing of proposed DOT actions. Preparation of EISs or environmental assessments for Federal decisions on regional transportation plans and transportation systems (e.g. approval of a fixed guideway transit system or approval of an airport master plan or layout plan) is encouraged. A broad scale EIS or environmental assessment should also be considered where a number of discreet but related actions to implement a plan or program (such as a regional freeway system) are anticipated, even though formal Federal approval of the plan or program may not be required. These broad EISs/environmental assessments should focus on issues such as modal choice alternatives, air quality and land use implications of alternative transportation systems or plans. EISs or environmental assessments on these plans should utilize information from studies performed as a part of any regional transportation planning process, such as that conducted under Section 134 of the Federal-Aid Highway Act. System EISs would normally be appropriate only in conjunction with new or major revisions of plans or programs, not for annual adjustments or revisions. Impact statements on site specific actions be implement a previously approved plan or program should address the full range of impacts of the specific action. If a regional EIS/environmental assessment has been prepared and the analysis is still valid, information from the regional document shall be referenced and summarized in the site specific EIS.

8. Inviting Comments on the Draft EIS

The draft EIS shall be circulated with an invitation to comment to (1) all agencies having jurisdiction by law or special expertise with respect to the environmental impact involved; (2) interested parties; (3) EPA Office of Federal Activities; (4) P; and (5) other elements of DOT, where appropriate. A reasonable number of copies shall be provided to permit agencies and interested parties to comment expeditiously.

a. *State and Local Review.*

(1) Review of the proposed action by State and local agencies, when appropriate, shall be obtained as follows:

(a) Where review of draft Federal development projects, and of projects assisted under programs listed in Attachment D to revised OMB Circular A-95 (as implemented by DOT 4600.4C, "Evaluation, Review and Coordination of DOT Assistance Programs and Projects," dated April 12, 1976), takes place prior to preparation of a draft environmental statement, comments of the reviewing agencies on the environmental effects of the proposed project shall be attached to the environmental statement. Copies of the draft and final environmental statements shall be sent to clearinghouses and to the applicant whose project is the subject of the statement.

(b) Project applicants or administrations shall obtain comments directly from appropriate State and local agencies, except where review is secured by agreement through A-95 clearinghouses. Comments shall be solicited from municipalities and counties on all projects located therein.

(2) At the time a draft or final environmental statement is filed with EPA, the availability of the statement should be announced through advertisements in local newspapers and other effective methods. Copies of EISs shall be provided to the public upon request and made available at appropriate public places.

b. *Review of EISs Prepared Pursuant to Section 102(2)(D) of NEPA.* If the draft EIS prepared by a State agency with statewide jurisdiction, and the proposed action will affect another State or Federal land management entity, the draft EIS shall be circulated to the affected State or land management entity.

9. Review of Environmental Statements Prepared by Other Agencies

The purpose of DOT review and comment on environmental statements drafted by other agencies is to provide a competent and cooperative advisory and consultative service.

a. Comments should be limited to the impacts on areas within the Department's functional responsibility, jurisdiction by law and expertise.

b. DOT projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that inter-relationships can be discussed in the final statement. In such cases, the DOT agency should consider serving as a joint lead agency or cooperating agency.

c. Other agencies will generally be requested to forward their draft environmental statements directly to the appropriate regional offices of the Department. There are several types of proposals, however, that should be referred by regional offices to Departmental headquarters for comment. These generally include the following:

(1) Actions with national policy implications;

(2) Projects that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance.

(3) Legislation, regulations having national impacts, or national program proposals.

Draft EISs in these categories are to be referred to P for preparation of DOT comments and, where appropriate, to the headquarters of the operating administrations. In referring these matters to headquarters, the regional office is encouraged to prepare a proposed Departmental response.

d. Draft EIS's for actions which have impact on only one region or which do not fall within subparagraph c. above should be reviewed by regional offices of DOT

administrations. Comments should be forwarded directly to the office designated by the originating agency. If the receiving office believes that another DOT office is in a better position to respond, it should send the statement to that office. If more than one administration is commenting at the regional level, the comments shall be coordinated by the Regional Representative or a designee.

e. When appropriate, the commenting office should coordinate a response with other Departmental offices having special expertise in the subject matter. For example, comments on projects affecting the transportation of hazardous materials or natural gas and liquid-products pipelines should be coordinated with Research and Special Programs Administration, and water resources projects should be coordinated with the Coast Guard Ports and Waterways Planning Staff (G-WS/73).

f. Comments shall be distributed as follows: the original and one copy to the requesting agency; one copy to P; five copies to EPA; one copy to the Regional Representative if the comment is prepared by a regional office.

10. Predecision Referrals to the Council on Environmental Quality

The following specific procedures apply to referrals involving DOT elements:

a. *DOT Lead Agency Proposals.*

(1) An operating administration or Secretarial Office receiving a notice of intended referral from another agency with respect to a proposed DOT action shall provide P with a copy of the notice. The final EIS involved shall be submitted to P for concurrence, unless, prior to processing the final EIS, the referring agency notifies the lead agency in writing that its objections are resolved. Every effort should be made to resolve the issues raised by the referring agency prior to processing the final EIS. These efforts should be documented in the EIS. P will be available to assist in any such resolution, and should be notified of the results.

(2) In the event of an actual referral, the lead agency shall obtain P concurrence in the response to CEQ.

b. *DOT Referrals to CEQ on other Agencies' Proposals.*

(1) If upon reviewing a draft from another Federal agency, an operating administration or Secretarial Office believes a referral will be necessary, it should so advise P. If P agrees, it will advise the lead agency that DOT intends to refer the proposal to CEQ unless the proposal is changed. P will coordinate DOT comments on the draft EIS, including the notice of intended referral.

(2) Environmental referrals should be avoided, where possible, through efforts to resolve the issues, after providing notice of intent to refer and prior to the lead agency's filing the final EIS.

(3) In the event that the issues have not been resolved prior to filing of the final EIS with EPA, P will deliver a referral to CEQ not later than 25 calendar days after the final EIS is made available to EPA, commenting agencies, and the public.

(a) Operating administrations and Secretarial Offices should submit proposed referrals to P at least 5 days prior to the 25-day deadline. The proposed referral should include the information specified in section 1504.3(c) of the CEQ regulations.

(b) P will inform the lead agency of the referral and the reasons for it, including a copy of the detailed statement developed pursuant to section 1504.3(c).

11. Final Environmental Impact Statement

a. *Preparation.* The final EIS shall identify the preferred alternative, including measures to mitigate adverse impacts. In identifying the preferred alternative, the DOT element should consider the policies stated in paagraph 1 above. Every effort should be made to resolve significant issues raised through circulation of the draft EIS, the community involvement process and consultation with cooperating agencies before the EIS is put into final form for approval by the responsible official. The final statement shall reflect such issues, consultation and efforts to resolve the issues, including an explanation of why any remaining issues have not been resolved.

b. *Compliance with other Requirements.* The final EIS should reflect that there has been compliance with the requirements of all applicable environmental laws and executive orders, e.g. section 4(f) of the DOT Act, Section 106 of the Historic Preservation Act, Section 404 of the Clean Water Act, and Section 7 of the Endangered Species Act. If such compliance is not possible by the time of final EIS preparation, the EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met.

c. *Legal Review.* All final environmental statements shall be reviewed for legal sufficiency by the Chief Counsel of the operating administration concerned, or by a designee. Final environmental statements prepared in OST shall be reviewed for legal sufficiency by the General Counsel (C). Statements which require concurrence at the OST level pursuant to paragraph 11.d. below shall be reviewed for legal sufficiency by counsel at the headquarters of the operating administration.

d. *Internal Processing.* Final environmental impact statements will be processed pursuant to this subparagraph.

(1) *Grants for Highway Construction Projects.* Final environmental impact statements for all grants for highway construction projects may be approved by the Federal Highway Administrator or a designee. For projects in the following categories, that approval may be given only after concurrence of P:

(a) Any highway project located on a new alignment in a standard metropolitan statistical area of over 100,000 population;

(b) Any new controlled access freeway;

(c) Any project to which a Federal, State, or local government agency has expressed opposition on environmental grounds;

(d) Any project for which P requests an opportunity to review and concur in the final statement.

(2) *Grants for Airport Development Projects.* Final environmental impact statements for all airport development grants may be approved by the Federal Aviation Administrator or a designee. For projects in the following categories, that approval may be given only after concurrence of P:

(a) Any new airport serving a metropolitan area;

(b) Any new runway or runway extension for an airport located in whole or in part within a metropolitan area and either certificated under Section 612 of the Federal Aviation Act of 1958, as amended, or used by large aircraft (except helicopters) of commercial operators;

(c) Any project to which a Federal, State, or local governmental agency has expressed opposition on environmental grounds;

(d) Any project for which P requests an opportunity to review and concur in the final statement.

(3) *Bridge Permits.* Final environmental impact statements for all bridge permits issued under Section 9 of the Act of March 3, 1899, 33 U.S.C. 401; the Bridge Act of 1906, as amended, 33 U.S.C. 491 et seq.; or the General Bridge Act of 1946, as amended, 33 U.S.C. 525 et seq.; may be approved by the Commandant of the Coast Guard or a designee. For bridge permits in the following categories, that approval may be given only after concurrence of P:

(a) Any bridge that would be part of a road located on a new alignment in a metropolitan area.

(b) Any bridge that would be part of a new controlled access freeway;

(c) Any bridge to which a Federal, State, or local governmental agency has expressed opposition on environmental grounds;

(d) Any bridge for which P requests an opportunity to review and concur in the final statement.

(4) *Other Final Environmental Impact Statements.* Final environmental impact statements on actions not dealt with in subparagraphs (1) through (3) above may be approved by the Administrator or Secretarial Officer or a designee originating the action, but only after concurrence of P.

(5) For final EISs which require P concurrence pursuant to subparagraphs (1)–(4) above and which also involve a section 4(f) determination, concurrence in the section 4(f) determination is required by both P and the General Counsel (C).

(6) After review of a draft EIS for a proposed action normally requiring P concurrence, as described in subparagraphs (1) through (4) above, P may decide that the final EIS may be processed without prior concurrence. This decision will include consideration of the following:

(a) adequacy of early coordination with other Federal, State, and local government agencies, and

(b) adequacy of the draft EIS in identifying the environmental impacts of and the reasonable alternatives to the proposed action.

Any decision made under this subparagraph is subject to review and withdrawal at any time prior to the date the final EIS is approved.

e. *Final Processing.* Where P concurrence is required, the administrations shall submit to P two copies of the final environmental statement, together with all comments received on the draft from the responsible Federal, State, and local agencies and private organizations. The final statement may be deemed to be concurred in by P unless, within two weeks after its receipt, P notifies the administration to the contrary or requests an extension of the review period; or unless it is a statement including a section 4(f) determination. In the case of section 4(f) involvement, the final statement may be deemed to be concurred in by P and C after 30 days, unless P notifies the administration to the contrary or requests an extension of the review period. Where warranted, P may request formal concurrence from other Secretarial Officers. For such statements, P shall transmit the coordinated decisions of the Secretarial Offices to the Originating adminstration or office. A final statement requiring P concurrence may not be formally transmitted to EPA until that concurrence has been secured. When P does not concur, the final statement shall be returned to the originating administration or office with a statement of the reasons for nonconcurrence.

f. *Availability Pending Approval.* Proposed final statements should normally be made available for inspection by the public and Federal, State or local agencies prior to final approval and filing with EPA. Such statements should carry a notation that the statement is not approved and filed.

g. *Decisions Reserved to the Secretary.* If an action requires the personal approval of the Secretary or Deputy Secretary pursuant to a request by them or by P, C, or the administration or Secretarial Office originating the action, the final environmental statement shall be accompanied by a brief cover memorandum requesting the Secretary's or Deputy Secretary's approval of the action. P, in conjunction with the Executive Secretary, is responsible for informing the Assistant Secretary for Governmental Affairs of the Secretary's decisions so that they, in coordination with the operating administration or other Secretarial Offices involved, may take appropriate notification actions.

h. *Availability of Statements to EPA and the Public.* After approval, the originating office shall transmit copies of each final statement to EPA in accordance with instructions from EPA. The originating office shall send copies of the final statement to the applicant, all Federal, State, and local agencies and private organizations which commented substantively on the draft statement or requested copies of the final statement, and to individuals who requested copies.

i. *Record of Decision.* The office preparing the final EIS shall prepare a draft record of decision which shall accompany the proposed final statement during the internal review prior to EIS approval. The draft record of decision should include a description of the proposed action and the environmental information specified in CEQ 1502.2. It would not necessarily include information relating to funding or other matters not directly related to the environmental impacts of the proposed action. The draft record of decision shall include proposed findings pursuant to section 4(f), the DOT Wetlands Order (DOT 5600.1A), and the DOT Floodplain Order (5610.5), as appropriate. The EIS and other environmental documents shall be included in the administrative record and made available to the decision maker. If the decision maker wishes to take an action which was not identified as the preferred action in the final EIS or proposes to make substantial changes to the mitigation measures or findings discussed in the draft record of decision, the revised record of decision shall be processed internally in the same manner as EIS approval, pursuant to subparagraph 11.d.

j. *Implementation of Representations in Environmental Statements.* The administrations shall assure, through funding agreements and project review procedures, that applicants carry out any actions to minimize adverse environmental effects set forth in the approved statement. Any significant deviation from prescribed action that may reduce protection to the environment must be submitted to P for concurrence, if the approved statement was concurred in by P.

k. *Supplemental Statements.* The responsible official shall supplement a draft EIS whenever it is determined that a reasonable alternative, which was not considered in the draft EIS, exists and will be considered, or when environmental conditions or data change significantly from those presented in the statement. A final EIS shall be supplemented when substantial changes are made in the proposed action, when conditions or data change significantly from that presented in the statement, or if the responsible official determines that a supplement is necessary for some other reason. A supplemental EIS may be prepared to address detailed information which was not available at the time an EIS was prepared and approved, for example site or project specific impacts which have been discussed only in general terms in a corridor or program EIS. (See also CEQ 1502.20 and paragraph 7.g.) a supplemental statement should be prepared, circulated and approved in accordance with the provisions of the CEQ regulations and paragraphs 7, 8, and 11 of this Order, unless the responsible official believes there are compelling reasons to do otherwise. In such cases, the operating administration or Secretarial office should consult with CEQ through P on alternative procedures.

12. Determinations Under Section 4(f) of the DOT Act

a. Any action having more than a minimal effect on lands protected under section 4(f) of the DOT Act will normally require the preparation of an environmental statement. In these cases, the environmental statement shall include the material required by paragraph 4 of Attachment 2. If in the preparation of the final EIS, it is concluded that there is no feasible and prudent alternative to the use of section 4(f) lands, the final EIS shall support a specific determination to that effect, including that there has been all possible planning to minimize harm to the protected lands. For actions which require concurrence by P in the final EIS, P and C concurrence is required in the section 4(f) determination. For other actions, the section 4(f) determination shall be approved as provided in administration implementing instructions.

b. If an environmental statement is not required, the material called for in paragraph 4 of Attachment 2 shall be set forth in a separate document, accompanied by a FONSI or a determination that the section 4(f) involvement is minimal and that the action is categorically excluded. The section 4(f) determination shall be reviewed for legal sufficiency by the Chief Counsel of the operating administration involved, or by a designee. The document must reflect consultation with the Department of the Interior, and where appropriate, the Departments of Agriculture or Housing and Urban Development.

13. Responsibility

Where an operating administration or Secretarial Office serves as lead agency or joint lead agency, it shall be responsible for the scope, objectivity, accuracy and content of EISs and environmental assessments. The EIS or environmental assessment shall be prepared by the operating administration or secretarial office, by a contractor selected by DOT, or by the applicant, pursuant to the provisions of CEQ 1506.2 and 1506.5. In developing implementing instructions, administrations shall note the distinctions made in the CEQ regulations between State agencies with statewide jurisdiction, State and local agencies which must comply with State or local requirements comparable to NEPA, and other applicants. State and local governments with requirements comparable to NEPA are listed in Attachment 1.

14 Citizen Involvement Procedures

a. Citizen involvement in the environmental assessment of Departmental actions is encouraged at each appropriate stage of development of the proposed action and should be sought as early as possible. Citizen involvement in the environmental process should be integrated with other citizen involvement procedures to the maximum extent possible. Attempts should be made to solicit the views of the public through hearings, personal contact, press releases, advertisements or notices in newspapers, including minority or foreign language papers, if appropriate, and other methods. A summary of citizen involvement and any environmental issues raised should be documented in the EIS.

b. The administrations' implementing instructions shall provide (1) that interested parties and Federal, State, and local agencies receive early notification of the decision to prepare an environmental impact statement, including publication of a notice of intent in the Federal Register, and (2) that their comments on the environmental effects of the proposed Federal action are solicited at an early stage in the preparation of the draft impact statement.

c. Administrations are encouraged to develop lists of interested parties at the national, State and local levels. These would include individuals and community, environmental, conservation, public service, education, labor, or business organizations, who are affected by or known to have an interest in the project, or who can speak knowledgeably on the environmental impact of the proposed action.

d. Under OMB Circular A-95, (Revised) "Evaluation, Review, and Coordination of Federal Assistance Programs and Projects," and DOT 4600.4C, "Evaluation, Review and Coordination of DOT Assistance Programs and Projects," dated April 12, 1976, a grant applicant must notify the clearinghouse of its intention to apply for Federal program assistance. The administrations' implementing instructions should provide for the solicitation of comments from the clearinghouse on the environmental consequences of the proposed action.

e. Hearings.

(1) In several instances, a public hearing is required by statute as a condition to Federal approval of a proposed action. Even where not required by statute, an informational hearing or meeting may serve as a useful forum for public involvement.

(2) If a public hearing is to be held, the draft EIS or environmental assessment (or environmental analysis where the hearing is held by an applicant which is not a joint lead agency) should be made available to the public at least 30 days prior to the hearing.

f. Interested persons can get information on the DOT environmental process and on the status of EISs issued by the Office of the Secretary from: Director, Office of Environment and Safety (P-20), Department of Transportation, Washington, D.C. 20590, telephone 202-426-4357.

Each administration shall indicate in its implementing instructions where interested persons can get information or status reports on EISs and other elements of the NEPA process.

15. Proposals for Legislation

a. *Preparation.* An EIS shall be prepared and circulated for any legislative proposals or favorable report on proposed legislation for which DOT is primarily responsible. The administration or secretarial office originating the legislation or developing the Departmental position on the report shall prepare the environmental document.

b. *Processing.* The draft EIS shall be cleared with P and submitted by C-40 to the Office of Management and Budget for circulation in the normal legislative clearance process. The EIS shall be transmitted to Congress no later than 30 days after transmittal of the legislative proposal, and must be available in time for Congressional hearings. Any comments received on the EIS shall be transmitted to Congress. Except as provided by CEQ 1506.8(b)(2), there need not be a final EIS.

16. International Actions

Pursuant to Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, the requirements of this Order apply to:

(1) Major Federal actions affecting the environment of the global commons outside the jurisdiction of any nation (e.g. the oceans and Antarctica).

(2) Major Federal actions affecting the environment of a foreign nation not participating in the action or otherwise involved in the action.

(3) Major Federal actions affecting the environment of a foreign nation which provide a product or a project producing a toxic emission or effluent, which is prohibited or strictly regulated in the U.S. by Federal law.

(4) Major Federal actions outside the U.S., its territories and possessions which affect natural resources of global importance designated for protection by the President or by international agreement.

17. Timing of Agency Action

A decision on the proposed action may not be made sooner than the times specified in CEQ 1506.10(b).

a. Requests for reasonable extensions of the review period for the draft EISs shall be granted whenever possible, and particularly when warranted by the magnitude and complexity of the statement or the extent of citizen interest.

b. If an administration or secretarial office believes it is necessary to reduce the prescribed time periods for EIS processing, the request to EPA should be made through P.

c. Where emergency circumstances make it necessary to take an action with significant environmental impacts without observing the provisions of this Order and the CEQ regulations, the administration or Secretarial Office should consult with CEQ through P.

18. Effective Date

a. This Order and attachments apply to all draft statements filed by DOT with EPA after 7-30-79, except as provided in paragraph 1506.12 of the CEQ regulations.

b. For final statements whose drafts are filed by 7-30-79, paragraph 11 of this Order applies after 7-30-80. DOT Order 5610.1B applies in the interim.

c. Supplements to final EISs filed with EPA after 7-30-79 must comply with the CEQ regulations and this Order.

19. Time in Effect of Statements

a. The draft EIS may be assumed valid for a period of three years. If the proposed final EIS is not submitted to the approving official within three years from the date of the draft EIS circulation, a written reevaluation of the draft shall be prepared by the responsible Federal official to determine whether the consideration of alternatives, impacts, existing environment and mitigation measures set forth in the draft EIS remain applicable, accurate and valid. If there have been changes in these factors which would be significant in the consideration of the proposed action, a supplement to the draft EIS or a new draft statement shall be prepared and circulated.

b. If major steps toward implementation of the proposed action (such as the start of construction or substantial acquisition and relocation activities) have not commenced within three years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy and validity of the EIS shall be prepared unless tiering of EISs (as discussed in subparagraph 7.g.) is being used. If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated. If the proposed action is to be implemented in stages, or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy and validity of the EIS shall be made at each major approval point which occurs more than three years after approval of the final EIS, and a new or supplemental EIS prepared, if necessary.

c. If major steps toward implementation of the proposed action have not occurred within the time frame (if any) set forth in the final EIS, or within five years from the date of approval of the final EIS, the final EIS will be assumed to be no longer valid and a new assessment or new EIS will be required. If the proposed action has been restrained or enjoined by court order after approval of the final EIS, the five-year period may be extended by an additional time equal to the duration of the injunction or restraining order. The provisions of this subparagraph apply to all actions for which a final EIS is approved after 7-30-79, and apply effective 7-30-82, to actions of the Department for which a final EIS was approved prior to 7-30-79.

20. Implementing Instructions

a. Operating administration shall issue instructions implementing this Order using one of the following options:

(1) An operating administration may issue detailed instructions or regulations which incorporate the points of this Order and the CEQ regulations and provide guidance on applying the environmental process to the administration's programs or

(2) An operating administration may rely on this Order as its implementing procedures, provided it issues supplementary guidance which at a minimum applies the environmental process to the administration's programs, as described in the following subparagraph.

b. Implementing instructions shall include the following information:

(1) A list of actions which normally require preparation of an EIS.

(2) A list of actions which are not normally major Federal actions significantly affecting the environment and as such do not normally require an environmental assessment or an environmental impact statement (categorical exclusions). These actions may include, but are not limited to, funding or authorizing: maintenance and modernization of existing facilities; minor safety improvements; equipment purchase; operating expenses; and planning grants which do not imply a project commitment. Instructions should provide for preparation of environmental assessments for actions normally classified as a categorical exclusion which are likely to involve significant impacts on the environment.

substantial controversy, impacts which are more than minimal on properties protected by section 4(f) and section 106 of the Historic Preservatioin Act or are inconsistent with any Federal, State, or local law or administrative determination relating to the environment.

(3) Identification of the decision making process, including timing for preparation of a draft and final environmental statement or a FONSI and designation of officials responsible for providing information on the administration's preparation, review and approval of environmental documents.

(4) A description of the public participation process or reference to other administration guidance on the public participation process. (See paragraph 14, public participation.)

(5) A description of the processes to be used to insure early involvement of DOT, other agencies and the public in the environmental review of actions proposed by nonfederal applicants (CEQ 1501.2(d)).

c. Proposed implementing instructions and any substantial amendments thereto shall be submitted to P for review and concurrence. Consultation with CEQ will be assisted by P. Proposed and final implementing instructions shall be published in the Federal Register for public comment.

Attachment 1. States and Localities With EIS Requirements

1. States with Comprehensive Statutory Requirements: California, Connecticut, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, New Jersey, North Carolina, South Dakota, Virginia, Washington, Wisconsin, and Puerto Rico.

2. States with Comprehensive Executive or Administrative Orders: Michigan, New Jersey, Texas, and Utah.

3. Local EIS requirements: Bowie, Maryland; and New York, New York.

Source: Memorandum for NEPA Liaisons from the Council on Environmental Quality, on agency implementing procedures under CEQ's NEPA regulations, dated January 19, 1979. (Appendix D)

Attachment 2. Form and Content of Statement

1. *Form:*

a. Each statement will be headed as follows:

Department of Transportation

.....

(operating administration)

(Draft) Environmental Impact Statement Pursuant to Section 102(2)(C), P.L. 91-190.

b. The heading specified in paragraph a. above shall be modified to indicate that the statement also covers Section 4(f), Section 14, Section 106 and/or Sections 16 and 18(4) requirements, as appropriate.

c. Each statement will, as a minimum, contain sections corresponding to paragraph 3 herein, supplemented as necessary to cover other matters provided in Attachment 2.

d. The format for the summary to accompany draft and final environmental statements is as follows:

Summary

(Check one) ( ) Draft ( ) Final

Department of Transportation (with name of operating administration where appropriate). Name, address, and telephone number of individual who can be contacted for additional information about the proposed action or the statement.

1. Name of Action. (Check one) ( ) Administrative Action. ( ) Legislative Action.

(2) Brief description of action indicating what States (and counties) are particularly affected.

(3) Summary of environmental impact and adverse environmental effects.

(4) List alternatives considered.

(5)(a) (For draft statements) List all Federal, State, and local agencies from which comments have been requested.

(b) (For final statements) List all Federal, State, and local agencies and other sources from which written comments have been received.

(6) Dates the draft statement and the final statement if issue were made available to the Council on Environmental Quality and the public.

2. *Guidance as to Content of Statements.* The following paragraphs of Attachment 2 are intended to be considered, where relevant, as guidance regarding the content of environmental statements. The guidance is expected to be supplemented by research reports, guidance on methodology, and other material from the literature as may be pertinent to evaluation of relevant environmental factors.

3. *General Content.* The following points are to be covered:

a. *A description of the proposed Federal action* (e.g., "The proposed Federal action is approval of location of highway . . ." or "The proposed Federal action is approval of a grant application to construct . . ."), a statement of its purpose, and a description of the environment affected, including information, summary technical data, and maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact by commenting offices and the public.

(1) Highly technical and specialized analyses and data should generally be avoided in the body of the draft impact statement. Such materials should be appropriately summarized in the body of the environmental statement and attached as appendices or footnoted with adequate bibliographic references.

(2) The statement should succinctly describe the environment of the area affected as it exists prior to a proposed action, including other related Federal activities in the area, their interrelationships, and cumulative environmental impact. The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decision making (planning, feasibility, design, etc.). In order to insure accurate descriptions and environmental assessments, site visits should be made where appropriate.

(3) The statement should identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives (see paragraph 3c(2)). In discussing these population aspects, the statement should give consideration to using the rates of growth in the region of the project contained in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture (the OBERS projection).

(4) The sources of data used to identify, quantify, or evaluate any or all environmental consequences must be expressly noted.

b. *The relationship of the proposed action* and how it may conform to or conflict with adopted or proposed land use plans, policies, controls, and goals and objectives as have been promulgated by affected communities. Where a conflict or inconsistency exists, the statement should describe the extent of reconciliation and the reasons for proceeding notwithstanding the absence of full reconciliation.

c. *The probable impact of the proposed action on the environment.* (1) This requires assessment of the positive and negative effects of the proposed action as it affects both national and international human environment. The attention given to different environmental factors will vary according to the nature, scale, and location of proposed actions. Among factors to be considered should be the potential effect of the action on such aspects of the environment as those listed in Attachment 4. Primary attention should be given in the statement to discussing those factors most evidently impacted by the proposed action.

(2) Secondary and other foreseeable effects, as well as primary consequences for the environment, should be included in the analysis. Secondary effects, such as impacts on existing community facilities and activities inducing new facilities and activities, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated and an assessment made on their effects upon the resource base, including land use, water, and public services, of the area in question.

d. *Alternatives to the proposed action,* including, where relevant, those not within the existing authority of the responsible preparing office. Section 102(2)(D) of NEPA requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." A rigorous exploration and an objective evaluation of

the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, are essential. Sufficient analysis of such alternatives and their environmental benefits, costs, and risks should accompany the proposed action through the review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of not taking any action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts, e.g. low capital intensive improvements, mass transit alternatives to highway construction; alternatives related to different locations or design or details of the proposed action which would present different environmental impacts. In each case, the analysis should be sufficiently detailed to reveal comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. Where an existing impact statement already contains such an analysis its treatment of alternatives may be incorporated, provided such treatment is current and relevant to the precise purpose of the proposed action.

e. *Any probable adverse environmental effects which cannot be avoided* (such as water or air pollution, noise, undesirable land use patterns, or impacts on public parks and recreation areas, wildlife and waterfowl refuges, or on historic sites, damage to life systems, traffic congestion, threats to health, or other consequences adverse to the environmental goals set out in Section 101(b) of NEPA). This should be a brief section summarizing in one place those effects discussed in paragraph 3c that are adverse and unavoidable under the proposed action. Included for purposes of contrast should be a clear statement of how all adverse effects will be mitigated.

f. *The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* This section should contain a brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

g. *Any irreversible and irretrievable commitments of resources* that would be involved in the proposed action should it be implemented. This requires identification of unavoidable impacts and the extent to which the action irreversibly curtails the range of potential uses of the environment. "Resources" means not only the labor and materials devoted to an action but also the natural and cultural resources lost or destroyed.

h. *An indication of what other interests and considerations of Federal policy* are thought to offset the adverse environmental effects of the proposed action identified pursuant to subparagraphs (c) and (e) of this paragraph. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action (as identified in subparagraph (d) of this paragraph) that would avoid some or all of the adverse environmental effects. In this connection, cost-benefit analyses of proposed actions, if prepared, should be attached, or summaries thereof, to the environmental impact statement, and should clearly indicate the extent to which environmental costs have not been reflected in such analyses.

i. *A discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process,* and the disposition of the issues involved and the reasons therefor. (This section may be added to the final environmental statement at the end of the review process.)

(1) The draft and final statements should document issues raised through consultations with Federal, State, and local agencies with jurisdiction or special expertise and with citizens, of actions taken in response to comments, public hearings, and other citizen involvement proceedings.

(2) Any unresolved environmental issues and efforts to resolve them, through further consultations or otherwise, should be identified in the final statement. For instance, where an agency comments that the statement has inadequate analysis or that the agency has reservations concerning the impacts, or believes that the impacts are too adverse for approval, either the issue should be resolved or the final statement should reflect efforts to resolve the issue and set forth any action that will result.

(3) The statement should reflect that every effort was made to discover and discuss all major points of view on the environmental effects of the proposed action and alternatives in the draft statement. However, where opposing professional views and responsible opinion have been overlooked in the draft statement and are raised through the commenting process, the environmental effects of the action should be reviewed in light of those views. A meaningful reference should be made in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement indicating responses to the issues raised.

(4) All substantive comments received on the draft (or summaries of responses from the public which have been exceptionally voluminous) should be attached to the final statement, whether or not each such comment is thought to merit individual discussion in the text of the statement.

j. *Draft statements should indicate at appropriate points in the text* any underlying studies, reports, and other information obtained and considered in preparing the statement, including any cost-benefit analyses prepared. In the case of documents not likely to be easily accessible (such as internal studies or reports), the statement should indicate how such information may be obtained. If such information is attached to the statement, care should be taken to insure that the statement remains an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference.

4. *Publicly Owned Parklands, Recreational Areas, Wildlife and Waterfowl Refuges and Historic Sites.* The following points are to be covered:

a. Description of "any publicly owned land from a public park, recreational area or wildlife and waterfowl refuge" or "any land from an historic site" affected or taken by the project. This includes its size, available activities, use, patronage, unique or irreplaceable qualities, relationship to other similarly used lands in the vicinity of the project, maps, plans, slides, photographs, and drawings showing in sufficient scale and detail the project. This also includes its impact on park, recreation, wildlife, or historic areas, and changes in vehicular or pedestrian access.

b. Statement of the "national, State or local significance" of the entire park, recreation area, refuge, or historic site "as determined by the Federal, State or local officials having jurisdiction thereof."

(1) In the absence of such a statement lands will be presumed to be significant. Any statement of "insignificance" by the official having jurisdiction is subject to review by the Department as to whether such statement is capricious.

(2) Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes.

c. Similar data, as appropriate, for alternative designs and locations, including detailed cost estimates (with figures showing percentage differences in total project costs) and technical feasibility, and appropriate analysis of the alternatives, including any unique problems present and evidence that the cost or community disruptions resulting from alternative routes reach extraordinary magnitudes. This portion of the statement should demonstrate compliance with the Supreme Court's statement in the *Overton Park* case, as follows:

"The very existence of the statute indicates that the protection of parklands was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that the alternative routes present unique problems."

d. If there is no feasible and prudent alternative, description of all planning undertaken to minimize harm to the protected area and statement of actions taken or to be taken to implement this planning, including measures to maintain or enhance the natural beauty of the lands traversed.

(1) Measures to minimize harm may include replacement of land and facilities, providing land or facilities, provision for functional

replacement of the facility (see 49 CFR 25.267).

(2) Design measures to minimize harm; e.g., tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths and noise mitigation measures all reflecting utilization of appropriate interdisciplinary design personnel.

e. Evidence of concurrence or description of efforts to obtain concurrence of Federal, State or local officials having jurisdiction over the Section 4(f) property regarding the action proposed and the measures planned to minimize harm.

f. If Federally-owned properties are involved in highway projects, the final statement shall include the action taken or an indication of the expected action after filing a map of the proposed use of the land or other appropriate documentation with the Secretary of the Department supervising the land (23 U.S.C. 317).

g. If land acquired with Federal grant money (Department of Housing and Urban Development open space or Bureau of Outdoor Recreation land and water conservation funds) is involved, the final statement shall include appropriate communications with the grantor agency.

h. TGC will determine application of Section 4(f) to public interests in lands, such as easements, reversions, etc.

i. A specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the "4(f) area" involved.

5. *Properties and Sites of Historic and Cultural Significance.* The statement should document actions taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, architectural, archeological, or cultural significance affected by the action.

a. Draft environmental statements should include identification, through consulting the National Register and applying the National Register Criteria (36 C.F.R. Part 800), of properties that are included in or eligible for inclusion in the National Register of Historic Places that may be affected by the project. The National Register is published in its entirety each February in the Federal Register. Monthly additions and listings of eligible properties are published in the Federal Register the first Tuesday of each month. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register.

b. If application of the Advisory Council on Historic Preservation's (ACHP) Criteria of Effect (36 C.F.R. Part 800) indicates that the project will have an effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the draft environmental statement should document the effect. Evaluation of the effect should be made in consultation with the State Historic Preservation Officer (SHPO) and in accordance with the ACHP's Criteria of Adverse Effect (36 C.F.R. Part 800).

c. Determinations of no adverse effect should be documented in the draft statement with evidence of the application of the ACHP's Criteria of Adverse Effect, the views of the appropriate State Historic Preservation Officer, and submission of the determination to the ACHP for review.

d. If the project will have an adverse effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the final environmental statement should include either an executed Memorandum of Agreement or comments from the Council after consideration of the project at a meeting of the ACHP and an account of actions to be taken in response to the comments of the ACHP. Procedures for obtaining a Memorandum of Agreement and the comments of the Council are found in 36 C.F.R. Part 800.

e. To determine whether the project will have an effect on properties of State or local historical, architectural, archaeological, or cultural significance not included in or eligible for inclusion in the National Register, the responsible official should consult with the State Historic Preservation Officer, with the local official having jurisdiction of the property, and where appropriate, with historical societies, museums, or academic institutions having expertise with regard to the property. Use of land from historic properties of Federal, State and local significance as determined by the official having jurisdiction thereof involves Section 4(f) of the DOT Act and documentation should include information necessary to consider a 4(f) determination (see paragraph 4).

6. *Impacts of the Proposed Action on the Human Environment Involving Community Disruption and Relocation.*

a. The statement should include a description of probable impact sufficient to enable an understanding of the extent of the environmental and social impact of the project alternatives and to consider whether relocation problems can be properly handled. This would include the following information obtainable by visual inspection of the proposed affected area and from secondary sources and community sources when available.

(1) An estimate of the households to be displaced including the family characteristics (e.g., minorities, and income levels, tenure, the elderly, large families).

(2) Impact on the human environment of an action which divides or disrupts an established community, including, where pertinent, the effect of displacement on types of families and individuals affected, effect of streets cut off, separation of residences from community facilities, separation of residential areas.

(3) Impact on the neighborhood and housing to which relocation is likely to take place (e.g., lack of sufficient housing for large families, doublings up).

(4) An estimate of the businesses to be displaced, and the general effect of business dislocation on the economy of the community.

(5) A discussion of relocation housing in the area and the ability to provide adequate relocation housing for the types of families to be displaced. If the resources are insufficient to meet the estimated displacement needs, a description of the actions proposed to remedy this situation including, if necessary, use of housing of last resort.

(6) Results of consultation with local officials and community groups regarding the impacts to the community affected. Relocation agencies and staff and other social agencies can help to describe probable social impacts of this proposed action.

(7) Where necessary, special relocation advisory services to be provided the elderly, handicapped and illiterate regarding interpretations of benefits, assistance in selecting replacement housing, and consultation with respect to acquiring, leasing, and occuping replacement housing.

b. This data should provide the preliminary basis for assurance of the availability of relocation housing as required by DOT 5602.1, Replacement Housing Policy, dated June 24, 1970, and 49 C.F.R. 25.53.

7. *Considerations Relating to Pedestrians and Bicyclists.* Where appropriate, the statement should dicuss impacts on and consideration to be given in the development of the project to pedestrain and bicycle access, movement and safety within the affected area, particularly in medium and high density commercial and residential areas.

8. *Other Social Impacts.* The general social groups specially benefitted or harmed by the proposed action should be identified in the statement, including the following:

a. Particular effects of a proposal on the elderly, handicapped, non-drivers, transit dependent, or minorities should be described to the extent reasonably predictable.

b. How the proposal will facilitate or inhibit their acess to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian movement facilities, and public transit services.

9. *Standards as to Noise, Air, and Water Pollution.* The statement shall reflect sufficient analysis of the effects of the proposed action on attainment and maintenance of any environmental standards established by law or administrative determination (e.g., noise, ambient air quality, water quality) including the following documentation:

a. With respect to water quality, there should be consultation with the agency responsible for the State water pollution control program as to conformity with standards and regulations regarding storm sewer discharge sedimentation control, and other non-point source discharges.

b. The comments or determinations of the offices charged with administration of the State's implementation plan for air quality as to the consistency of the project with State plans for the implementation of ambient air quality standards.

c. Conformity to adopted noise standards, compatible, if appropriate, with different land uses.

10. *Energy Supply and Natural Resources Development.* Where applicable, the statement should reflect consideration of whether the project or program will have any effect on either the production or consumption of energy and other natural

resources, and discuss such effects if they are significant.

11. *Flood Hazard Evaluation.* When an alternative under consideration encroaches on a flood plain, the statement should include evidence that studies have been made and evidence of consultations with agencies with expertise have been carried out. Necessary measures to handle flood hazard problems should be described, in compliance with Executive Order 11296 and Flood Harzard Guidelines for Federal Executive Agencies, promulgated by the Water Resources Council, or how such requirements can be met during project development.

12. *Considerations Relating to Wetlands or Coastal Zones.* Where wetlands or coastal zones are involved, the statement should include:

a. Information on location, types, and extent of wetlands areas which might be affected by the proposed action.

b. An assessment of the impacts resulting from both construction and operation of the project on the wetlands and associated wildlife, and measures to minimize adverse impacts.

c. A statement by the local representative of the Department of the Interior, and any other responsible officials with special expertise, setting forth his views on the impacts of the project on the wetlands, the worth of the particular wetlands areas involved to the community and to the Nation, and recommendations as to whether the proposed action should proceed, and, if applicable, along what alternative route.

d. Where applicable, a discussion of how the proposed project relates to the State coastal zone management program for the particular State in which the project is to take place.

13. *Construction Impacts.* In general, adverse impacts during construction will be of less importance than long-term impacts of a proposal. Nonetheless, statements should appropriately address such matters as the following identifying any special problem areas:

a. Noise impacts from construction and any specifications setting maximum noise levels.

b. Disposal of spoil and effect on borrow areas and disposal sites (include specifications where special problems are involved).

c. Measures to minimize effects on traffic and pedestrians.

14. *Land Use and Urban Growth.* The statement should include, to the extent relevant and predictable:

a. The effect of the project on land use, development patterns, and urban growth.

b. Where significant land use and development impacts are anticipated, identify public facilities needed to serve the new development and any problems or issues which would arise in connection with these facilities, and the comments of agencies that would provide these facilties.

15. *Projects under Section 16 of the Airport Act: New Airports, Runways, and Runway Extensions.*

a. Identification of communities in or near which the project is located.

b. Identification of steps taken by the applicant to determine the interests of those communities, including economic, environmental, and social interests, as well as transportation interests.

c. Statement of the specific actions taken in planning the project to recognize and to meet the communities' interests.

d. For identified community interests which are in conflict with the project, a statement explaining why the interests have not been met, what alternatives have been investigated to meet the community interests, estimated costs of the alternatives and the reasons for not adopting the alternatives.

e. Consistency of the project with plans (existing at the time of approval of the project) of planning agencies for development of the area in which the airport is located.

f. Identification of existing land uses and location and nature of nearby noise sensitive public or private facilities, with noise contour describing cumulative impact on existing and planned land uses.

g. Assurances that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and take-off of aircraft.

h. For any project found to have an adverse effect on the environment, and for which no feasible and prudent alternative exists, identify all steps taken to minimize such adverse effect.

i. Statement that the public hearings required by Section 16(d) of the Airport Act have been held.

j. Statement by appropriate local planning officials that the project is consistent with the goals and objectives of such urban planning as has been carried out by the community.

k. Where relevant, certification by the Governor or appropriate Federal official that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

16. *Projects under Section 14 of the Mass Transportation Act: Mass Transit Projects with a Significant Impact on the Quality of the Human Environment:*

a. Evidence of the opportunity that was afforded for the presentation of views by all parties with a significant economic, social or environmental interest.

b. Evidence that fair consideration has been given to the preservation and enhancement of the environment and to the interests of the community in which the project is located.

c. If there is an adverse environmental effect and there is no feasible and prudent alternative, description of all planning undertaken to minimize such adverse environmental effect and statement of actions taken or to be taken to implement the planning; or a specific statement that there is no adverse environmental effect.

[FR Doc. 79-16974 Filed 5-30-79; 8:45 am]
BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

120-Bed Nursing Home Care Unit VAMC, Coatesville, Pa., Finding of No Significant Impact

The project proposes to construct a new 120-Bed NHCU off the northeast corner of the existing buildings, outside the loop road. The NHCU will be a 2 story building of 48,000 to 50,000 S.F.

Development of the project would have impacts on the human and natural environment as it affects surface runoff, erosion and landscaping. Additionally, construction noise, fumes, dust and visual impacts will exist during construction of the project. Design must also be compatible with the existing historic structures.

Mitigating actions include landscaping, control of erosion, dust and fumes, and noise abatement measures, and compatible architectural design.

An analysis of all environmental factors related to the project indicates a Finding of No Significant Impact.

This assessment is being placed for public examination in the Veterans Asministration office of Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. (202/389-2526).

All questions and requests for single copies of the Environmental Assessment should be addressed to:

Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: May 24, 1979.

By direction of the Administrator:

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-16002 Filed 5-30-79; 8:45 am]
BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[Volume No. 23]

PERMANENT AUTHORITY DECISIONS; Decision-Notice

Correction

In FR Doc. 79-9504 appearing at page 18782 in the issue for Thursday, March 29, 1979, make the following corrections:

(1) On page 18784, in the third column, "MC 95305 (Sub-28F)" should read "MC 95304 (Sub-28F)".

(2) On page 18786, in the third column, in MC 113434 (Sub-121F), in the 12th

line, "Hooland, MI" should read "Holland, MI".

BILLING CODE 1505-01-M

[Finance Docket No. 26115 (Sub-No. 10F)]

Boston & Maine Corp. Reorganization Compensation Petition of the Group of Institutional Bondholders for Allowance of Proceeding Expenses

Howard C. Westwood, Lewis H. Weinstein, and Charles C. Shannon seek compensation for allowance of Expenses incurred in connection with this proceeding, represented by the firm of Foley, Hoag & Eliot, Ten Post Office Square, Boston, Massachusetts 02109, hereby give notice that on March 26, 1979, they filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 77(c)(12) of the Bankruptcy Act, requesting Compensation for expenditures of the group in connection with this proceeding for the period from March 1, 1970 through January 3, 1973, for which it seeks reimbursement of the Group's counsel and of its transportation consultants. These services are fully described in the affidavits of Mr. Howard C. Westwood of Covington & Burlington, of Mr. Lewis H. Weinstein of Foley, Hoag & Eliot, and of Mr. Charles C. Shannon of Wyler, Dick & Company. The expenditures set forth in each of such affidavits were paid for by the Group in the amounts stated. Those expenditures amount, in all, to $655,101.98.

Interested persons may participate as parties in the hearing to be held before the Commission required by section 77(c)(12) of the Bankruptcy Act. In order to be considered a party, a written statement should be submitted which shall include the person's position, e.g. party protestant, or party in support, of the requested authorization, the interest of the person in the reorganization proceeding, and a request for oral hearing if one is desired. Such submissions shall indicate the proceeding designation Finance Docket No. 26115 (Sub-No. 10F) and an original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 30 days after the date notice of the filing of the application is published in the Federal Register. Persons submitting written statements to the Commission shall, at the same time serve copies of such statements upon the applicant and upon the Clerk, United States District Court, 1525 Federal Building, Boston, Massachusetts 02109.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-16903 Filed 5-30-79; 8:45 am]

BILLING CODE 7035-01-M

Finance Applications

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 July 2, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.249) 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-13934F. Authority sought for purchase by HORN TRANSPORTATION, INC., 3008 East 4th Street, Pueblo, CO 81001, of a portion of the operating rights of B & B TRUCKING COMPANY, INC., Box 4158 Santa Fe Station, 1548-6th Street, Denver, Co 80204, and for acquisition of control of such rights by JOHN B. THOMPSON, 344 Mead, Pueblo, CO 81001, through the purchase. Applicants' representative: H. James Maxwell, Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Operating rights sought to be purchased: Livestock and agricultural commodities, from Scottsbluff, NE, to Denver, Greeley, and Sterling, CO, and Cheyenne, WY, with no transportation for compensation on return except as otherwise authorized; livestock, agricultural commodities, coal, feed, lumber, building materials, wire, binder twine, and farm machinery and parts, between points in Kimbell, Banner and Cheyenne Counties, NE, on the one hand, and, on the other, points in WY and CO as described in Certificate MC-65105. Vendee is authorized to operate pursuant to Certificate No. MC-106194 as a common carrier in the States of TX, NM, UT, CO, KS, MO, NE, WY, ID, MT, SD, ND and MN. Application has been filed for temporary authority under Section 210a(b). A directly related elimination of gateway application is being filed concurrently.

Note.—No. MC-106194 (Sub-No. 37F) is a directly related matter.

MC-F-13952F. Authority sought for purchase by C. H. HOOKER TRUCKING CO., 1475 Roanoke Avenue, Uhrichsville, OH 44683, of a portion of the operating rights of EDGAR W. LONG, INC., Route No. 4, Zanesville, OH 43701, and for acquisition by CARL E. HOOKER, C. H. HOOKER, JR., DEAN R. HOOKER, and JIMMY D. HOOKER, 1475 Roanoke Avenue, Uhrichsville, OH 44683, of control of such rights through the purchase. Applicants' attorneys: Boyd B. Ferris, Muldoon, Pemberton & Ferris, 50 West Broad Street, Columbus, OH 43215 and Richard H. Brandon, Sanborn, Brandon & Duvall, P.O. Box 97, 220 West Bridge Street, Dublin, OH 43017. Operating rights sought to be transferred: To operate as a common carrier over irregular routes, in the transportation of: (1) Clay building tile and material used in the installation of clay building tile, from points in Stark County, OH, and points in Tuscarawas, County, OH, within 2 miles of East Sparta, OH to points in AL, AZ, AR, CA, CO, DE, GA, ID, IA, KS, KY, LA, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, VA, WA, WY, and DC: and materials used in the manufacture of clay building tile, from the destination States specified next above, to points in Stark County, OH, and points in Tuscarawas County, OH, within 2 miles of East Sparta, OH. Restriction: The operations authorized under the two commodity descriptions next above are restricted against the transportation of clay building tile and materials used in the installation of clay building tile, and materials used in the manufacture of clay building tile, between Birmingham, AL, and points in AL within 65 miles thereof, on the one hand, and, on the other, points in that part of Stark County, OH, and on and north of U.S. Highway 62. (2) Clay flower pots, from South Rockwood, MI, to Roseville, Crooksville, and Zanesville, OH, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized above are restricted to the transportation of shipments destined to the named points in OH. (3) Clay products, from South Rockwood, MI, to points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, MN, MO, MT,

NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY, with no transportation for compensation on return except as otherwise authorized. (4) Clay pottery, from South Rockwood, MI to points in AL FL, MS, LA, and TN, with no transportation for compensation on return except as otherwise authorized. (5) Clay products (except commodities in bulk and clay construction panels), from Summitville and Pekin, OH, to points in AL, AR, CA, CO, FL, GA, IA, ID, KY, LA, MS, MO, MT, NE, NM, ND, OK, OR, SC, SD, TN, TX, UT, WA, and WY, with no transportation for compensation on return except as otherwise authorized. From Minerva, OH to points in FL, with no transportation for compensation on return except as otherwise authorized. (6) Clay products and materials and supplies used in the installation thereof, from Houston, MS to Canton, OH, with no transportation for compensation on return except as otherwise authorized. (7) Materials used in the manufacture of clay products, from Gouveneur, NY and Paris, KY to Houston, MS, with no transportation for compensation on return except as otherwise authorized. (8) Canned dog food, from Corwin, OH, to points in AR, AZ, CA, CO, CT, FL, ID, IA, KS, LA, ME, MA, MN, MO, MT, NE, NV, NH, NM, NY, ND, OK, OR, RI, SD, TX, UT, VT, WA, WY, and DC, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein is restricted to the transportation of traffic originating at the plant site and warehouse facilities of the Thorobred Company, Ind., at Corwin, OH, and destined to points in the above-named destination territories. (9) Canned dog food, from Corwin, OH to points in AL, DE, GA, IL, IN, KY, MD, MI, MS, NJ, NC, PA, SC, TN, VA, WI, and WV, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are restricted to the transportation of shipments originating at the plant site of the Thorobred Company, Inc., at Corwin, OH. Vendee is authorized to operate as a common carrier in the States of OH, AL, CO, CT, DE, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, NC, NJ, NY, OK, PA, TN, TX, UT, VA, and WV and as a contract carrier in all the States in the United States including Alaska excluding Hawaii. Application has been filed for temporary authority under section 210a(b) of the Act.

Note.—No. MC-87379 (Sub-No. 21F) is a directly related matter.

MC-F-13959F. Authority sought by C. T. TRANSPORT, INC., 34200 Mount Road, Sterling Heights, MI 48077, for purchase of all of the operating rights of LAKE SHORE DELIVERY, INC., 219 Brigham Road, Dunkirk, NY 14048, and for acquisition of control of such rights by CENTRA, INC., and in turn control of such rights by T. J. MOROUN and M. H. MOROUN, all of 34200 Mound Road, Sterling Heights, MI 48077, through the purchase. Applicants' attorneys: for transferee, Jack Goodman of Axelrod, Goodman, Steiner & Bazelon, 39 So. LaSalle St., Chicago, IL 60603; for transferor, Richard E. Centner, Lake Shore Delivery, Inc., 219 Brigham Road, Dunkirk, NY 14048. Operating rights sought to be transferred are contained in Certificate of Registration MC-57455 Sub-No. 1, authorizing the transportation (A) over regular routes of general commodities between Jamestown, NY and Niagara Falls, NY, serving all intermediate and off-route points in Chautauqua County, NY, as follows: From Jamestown over New York Highways 17 and 394 (formerly New York Highway 17J) to Westfield, NY, then over U.S. Highway 20 and New York Highway 5 to junction U.S. Highway 62, then over U.S. Highway 62 to Niagara Falls, and return over the same route; from Jamestown over New York Highway 60 to Fredonia, and return over the same route; from Jamestown over New York Highway 17 to junction U.S Highway 62, then over U.S. Highway 62 to Niagara Falls, and return over the same route; (B) over irregular routes (1) New Furniture from Buffalo, NY to Rochester, NY; from Jamestown, NY to Buffalo, NY; from Randolph, Mayville, Celoron and Frewsburg, NY to Niagara Falls, Dunkirk, Tonawanda, North Tonawanda, Silver Creek, Westfield, Brockton, Fredonia, Springville, Hamburg, Orchard Park, East Aurora, Gowanda, Grand Island and Buffalo, NY; (2) Household Goods between points in Chautauqua County, NY; from points in Chautauqua County, NY to points in Erie County, NY; from points in Monroe County, NY to points in Chautauqua County, NY; (3) Garnetted cotton between Jamestown, NY and DePew, NY. Vendee is authorized to operate as a common carrier in Canada and the State of New York. Application has been filed for temporary authority under Section 210a(b) and a conversion application has been filed under Section 207.

Note.—MC 141609 (Sub-3F) is a directly related matter.

MC-F-13965F. Transferee: F FREIGHTWAYS, INC., 619 Medford Avenue, Patchogue, NY 11772. Transferor: J. B. Williams Express, Inc., P.O. Box V, Williamsburgh Station, Brooklyn, NY 11211. Transferee's and Transferor's Representative: Piken & Piken, Esqs., One Lefrak City Plaza, Flushing, NY 11368. Authority sought for purchase by F. Freightways, Inc., of 619 Medford Avenue, Patchogue, NY 11772, of a portion of the operating rights of J. B. Williams Express, Inc., of P.O. Box V, Williamsburgh Station, Brooklyn, NY 11211, contained in Certificate MC-95336, Sub 1, and for the acquisition by Theodore Funaro, Jr., 619 Medford Avenue, Patchogue, NY 11772, of control of such rights through the purchase. Operating rights sought to be transferred: General commodities, except those of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between points in Essex, Hudson and Union Counties, NJ, and those in that part of Middlesex County, NJ, on and north of a line drawn through New Brunswick, South River, Parlin and South Amboy, NJ, on the one hand, and, on the other, New York and Yonkers, NY, and points in Nassau County, NY. Any repetition in the statement of the authority granted herein shall not be construed as conferring more than one operating right. Vendee is authorized to operate as a common carrier solely within the State of NY. Application has not been filed for temporary authority under section 210a(b).

Note.—MC 120933 (Sub-3F) is a directly related matter.

MC-F-13966F. Transferee: J. B. WILLIAMS EXPRESS, INC., P.O. Box V. Williamsburgh Station, Brooklyn, NY 11211. Tranferor: NATIONAL TRANSPORT 101, c/o Edgar H. Booth, Esq., 405 Park Avenue, New York, NY 10022. Transferee's representative: Piken & Piken, Esqs., One Lefrak City Plaza, Flushing, NY 11368. Transferor's representative: William W. Becker, Suite 950, 1819 8th Street N.W., Washington, DC 20006. Authority sought for purchase by J. B. Williams Express, Inc., of P.O. Box V, Williamsbough Station, Brooklyn, New York 11211, of a portion of the operating rights of National Transportation Co., a corporation acting by the Trustee in Bankruptcy of Eastern Freightways, Inc., parent company, d.b.a. National Transport 101, c/o Edgar H. Booth, Esq., 405 Park Avenue, New York, New York 10022, contained in Certificate MC 9876 and MC9876 (Sub-19) for the acquisition by Bernard

Kerner, P.O. Box V, Williamsburgh Station, Brooklyn, New York 11211 of control of such rights through the purchase. Operating rights sought to be transferred: General commodities, except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment. Between junction Pennsylvania Highway 516 and unnumbered highway (formerly U.S. Highway 111), and junction U.S. Highways 1 and 9 near Woodbridge, NJ, serving the intermediate points of Camden, NJ and Baltimore, MD; From junction Pennsylvania Highway 516 and unnumbered highway (formerly U.S. Highway 111) over unnumbered highway to the Pennsylvania Maryland State line, thence over Maryland Highway 45 (formerly U.S. HIghway 111) to Baltimore, MD, thence over U.S. Highway 40 across the Delaware River via the Delaware Memorial Bridge to junction U.S. Highway 130 (formerly via ferry across the Delaware River between New Castle, DE, and Pennsville, NJ), thence over U.S. Highway 130 to junction U.S. Highway 1, thence over U.S. Highway 1 to junction U.S. Highway 9, and return over the same route. Restriction: Service over the routes specified under the commodity description next above shall be limited to the transportaton of traffic moving in said carrier's vehicles to or from points in CT or MA on, or authorized to be served in connection with, said carrier's routes authorized hereinabove. Regular routes: General commodities, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading. Between Baltimore, MD and Alexandria, VA, serving all intermediate points; and the off route points of Fort Meade, MD and those in Arlington and Fairfax Counties, VA; From Baltimore over U.S. Highway 1 to Alexandria, and return over the same route. Restriction: Service over the above specified route, and the service to and from all intermediate points, and the off route points of Fort Meade, MD, and those in Arlington and Fairfax Counties, VA, shall be limited to the transportation of traffic moving in said carrier's vehicles to or from points in CT, MA, and RI, on, or authorized to be served in connection with said carrier's presently authorized routes. The authority granted herein to the extent that it duplicate any authority heretofore granted to or now held by carrier, shall not be construed as conferring more than one operating right. Vendee is authorized to operate as a common carrier in the states of NY, NJ, CT, PA, and MA. Application has been filed for temporary authority under section 210a(b) of the Act. (Hearing site: New York, N.Y., or Washington, D.C.)

Note.—MC 95336 (Sub-10F) is a directly related matter.

MC-F-13968F. Applicants: Transferee: GAINES MOTOR LINES, INC., P.O. Box 1549, Hickory, NC 28609. Transferor: THE NEILSON TRANSPORTATION COMPANY, 18 Oak Ridge Gate, Danbury, CT 06810. Applicants' Representative for Transferee and Transferor: David M. Marshall, Esq., Marshall and Marshall, 101 State Street—Suite 304, Springfield, MA 01103. Authority sought for purchase by Gaines Motor Lines, Inc. of the operating rights of The Neilson Transportation Company and for acquisition by Forest M. Gaines of control of such rights through the purchase. Operating rights sought to be purchased: General commodities, other than household goods and office furniture and equipment and other than commodities which necessitate the use of tank trucks, dump trucks or special equipment between points in the following towns on the one hand: Bethel, Brookfield, Danbury, New Fairfield, New Milford, Newtown, Ridgefield, Sherman, and, on the other, points in Connecticut within a 40 mile radius of Danbury as shown in Commission's Docket 6770, Official Mileage and general commodities (other than household goods and office furniture and equipment and other than commodities which necessitates the use of tank trucks, dump trucks or special equipment) for hire as a motor common carrier from its headquarters in Danbury and, upon call received at its headquarters, between any points within this state, * * *, over such routes and highways within this state as may be necessary in the performance of its common carrier service, subject to such regulations and conditions as the Commission may from time to time prescribe with respect to the conduct of its business. *Condition:* Certificate holder shall permit Newtown shippers and receivers to telephone their headquarters at Danbury without charge. Vendee is authorized to operate as a common carrier in SC, NC, NY, MD, PA, MA, CT, NJ, and DC. The Applicant has requested authority to tack its existing authority with the authority being acquired at points in CT within the commercial zone of New York City, NY and at New Haven, CT. Application has been filed for temporary authority under Section 210a(b).

Note.—MC 93649 (Sub-29F) is a directly related matter.

MC-F-13972F. Authority sought for purchase by J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, Pa. 15220 of a portion of the operating rights of REED LINES, INC., P.O. Box 807, Defiance, Ohio 43512, and for acquisition by WALTER ENICK, 962 Greentree Road, Pittsburgh, Pa. 15220 of control of such rights through the purchase. Applicant's representatives: Henry M. Wick, Jr., Stanley E. Levine, 2310 Grant Building, Pittsburgh, Pa. 15219 for Vendee; John P. McMahon, Columbus Center, Suite 1800, 100 Broad Street, Columbus, Ohio 43215 for Vendor. Operating rights sought to be transferred: That portion of Certificate MC 119632 which authorizes the transportation of *steel articles,* between Wheeling, WV on the one hand, and, on the other Chicago, IL. Vendee is authorized to operate as a common carrier in all states in the continental United States. No application has been filed for temporary authority under Section 11349. Hearing site: Washington, DC or Pittsburgh, PA.

Note.—MC 78228 (Sub-120F) is a directly related matter.

MC-F-13977F. Authority is sought for the purchase by WALSH BROS., INC., 33 Brill Street, Newark, NJ 07105 of the operating authorities of NORTHEAST HEAVY HAULING, INC., 115 Great Plains Road, Danbury, CT 06810. Applicants' representative Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Operating rights to be purchased: MC 142752, Irregular routes, Heavy machinery and equipment and steel, Between points in Connecticut on the one hand, and, on the other, points in MA, NJ, NY, and RI. Restriction: The operations authorized herein are restricted to the transportation of heavy machinery and equipment and steel which because of size or weight requires the use of special equipment. Transferee is authorized to operate as a common carrier in the States of CT, MA, NJ, NY, PA and RI. An application has been filed for temporary control under Section 210a(b).

Note.—MC 30803 (Sub-5F) is a directly related matter.

Motor Carrier of Passengers

MC-F-14010F. Authority sought for purchase by SUBURBAN TRANSIT CORP., 750 Somerset Street, New Brunswick, NJ 08901, of a portion of the operating rights of TRANSPORT OF NEW JERSEY, 180 Boyden Avenue,

Maplewood, NJ 07040, and for acquisition by L.E.R. TRANSPORTATION COMPANY, ROSLYN KUCHIN and SIDNEY KUCHIN of 750 Somerset Street, New Brunswick, NJ 08901, of control of the rights through the puchase. Applicant's attorneys: Michael J. Marzano, 99 Kinderkamack Road, Westwood, NJ 07675, and John F. Ward, 180 Boyden Avenue, Maplewood, NJ 07040. Operating rights sought to be purchased: Passengers and their baggage, and express and newspapers in the same vehicle with passengers, as a common carrier, over regular routes, between the New Brunswick, NJ-Franklin Township, NJ boundary line and Mansville, NJ, serving all intermediate points, as more fully described in Certificate MC 3647 (Sub-237). Vendor's right to serve New Brunswick, NJ under Certificate MC 3647 (Sub-237) is to be cancelled. Operating rights in Vendor's Certificate MC 3647 (Sub-2), MC 3647 (Sub-287), and MC 3647 (Sub-329) are to be restricted. Remaining operating rights in Vendor's Certificate MC 3647 (Sub-303) are to be cancelled. Vendee is authorized to operate as a common carrier of passengers and their baggage and express and newspapers in the same vehicle with passengers over regular route between NJ and New York, NY as more fully described in Certificate issued in Docket MC 115116 and sub numbers thereunder. Vendee intends to tack or join the operating rights sought to be purchased with Vendee's existing authorized routes in order to provide service to and from New York, NY. Vendee is also authorized to operate as a common carrier over irregular routes transporting passengers and their baggage in the same vehicle with passengers, in special operations, in round-trip sightseeing and pleasure tours, from certain points in NJ to all points in the United States (including AK but excluding HI) as more fully described in Certificate MC 115116 (Sub-19), and MC 115116 (Sub-25). Approval of the proposed transaction will result in Vendee acquiring duplicating authority for approximately one block in Franklin Township, NJ. Application has been filed for temporary authority under 49 U.S.C. 11349.

MC-F-14013F. Authority sought for purchase by CLARK TRANSFER, INC., P.O. Box 190 (Dulty Lane), Burlington, NJ 08016, of a portion of the operating rights of DRAKE MOTOR LINES, INC., bankrupt, 20 Olney Avenue, Cherry Hill, NJ 08002. Applicant's representatives: David A. Sutherlund, Fulbright & Jaworski, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20036, Attorney for Transferee, and James F. Maher, Blank, Rome, Comisky & McCauley, 1100 Four Penn Center Plaza, Philadelphia, PA, Attorney for Transferor. Operating rights sought to be transferred: (1) *General commodities* (except explosives and inflammable commodities), moving on a through air bill of lading of direct air carriers or air freight forwarders, as a common carrier, over irregular routes, between New York, NY, and points in Nassau, Suffolk, Westchester and Rockland Counties, NY; Newark, NJ, and points in Hunterdon, Mercer, Middlesex, Burlington, Camden, Gloucester, Salem, Monmouth, Somerset, Morris, Passaic, Bergen, Essex and Union Counties, NJ; Philadephia, PA, and points in Bucks, Montgomery, Chester and Delaware Counties, PA; points in New Castle County, DE; points in Fairfield County, CT; Boston, MA, and points in Middlesex, Plymouth, Essex, Bristol, Suffolk and Norfolk Counties, MA; and Providence, RI, on the one hand, and, on the other, Chicago, IL, and points in Will, Kankakee, Cook, Kendall, Kane, Du Page, Lake and McHenry Counties, IL, and points in Lake and Porter Counties, IN; and (2) *General commodities* (except explosives, inflammable commodities and motor vehicles requiring special equipment), moving on a through air bill of lading of direct air carriers or air freight forwarders, as a common carrier over irregular routes, between New York, NY, and points in Nassau, Suffolk, Westchester and Rockland Counties, NY; Newark, NJ, and points in Hunterdon, Mercer, Middlesex, Burlington, Camden, Gloucester, Salem, Monmouth, Somerset, Morris, Passaic, Bergen, Essex and Union Counties, NJ; Philadelphia, PA; and points in Bucks, Montgomery, Chester and Delaware Counties, PA; Wilmington, DE, and points in New Castle County, DE; points in Fairfield County, CT; Boston, MA, and points in Middlesex, Plymouth, Essex, Bristol, Suffolk and Norfolk Counties, MA; points in Providence County, RI; Baltimore, MD, and points in Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, Charles, Montgomery and Prince Georges Counties, MD; Washington, DC, and points in Fairfax, Prince William and Loudoun Counties, VA; on the one hand, and, on the other, Detroit, MI, and points in Macomb, Monroe, Oakland, Washtenaw, Wayne and Livingston Counties, MI. Vendee is authorized to operate as a common carrier within all the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 11349 (formerly 210a(b) of the Act).

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16710 Filed 5-30-79; 8:45 am]
BILLING CODE 4335-01-M

[Notice No. 58]

Motor Carrier Temporary Authority Applications

May 18, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinenance of the protestant's information.

Except as otherwise specifiy noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 2202 (Sub-589TA), filed May 2, 1979. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44310. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, D.C.

20014. Common, regular, *general commodities, except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* serving all points in Sullivan and Hawkins counties, TN as off-route points in connection with applicant's present authority, for 180 days. Applicant intends to tack the authority here applied for to another authority held by it and applicant intends to interline with other carriers. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are (9) shippers. Their statements may be examined at the office named below or at ICC Headquarters in Washington, D.C. Send protests to: Mary Wehner,D/S, ICC 731 Federal Bldg., Cleveland, OH 44199.

MC 2392 (Sub-122TA), filed April 5, 1979. Applicant: WHEELER TRANSPORT SERVICE, INC., 7722 F St., Omaha, NE 68127. Representative: Keith D. Wheeler, same address as applicant. *Anhydrous ammonia, in bulk, in tank vehicles,* from Aurora, NE to points in IA, KS, and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sue Johnson, Land O'Lakes, Agricultural Services Division, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 2473 (Sub-19TA), filed April 26, 1979. Applicant: BILLINGS TRANSFER CORP., INC., Green Needles Road, Lexington, NC 27292. Representative: Irvin W. Albert (same as applicant). *Clothing, display racks, advertising matter, and such merchandise as is dealt in by department stores,* from Dover, DE to Charlotte, NC for 180 days. An underlying ETA seeks 90 days of authority. Supporting shipper(s): Belk Stores Services, Inc., 209 East Fifth St., P.O. Box 2727, Charlotte, NC 28234. Charlotte Freight Association, Inc., P.O. Box 8825, Charlotte, NC 28208. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC-516, Charlotte, NC 28205.

MC 4963 (Sub-65TA), filed March 20, 1979. Applicant: JONES MOTOR CO., INC., Bridge St. and Schuylkill Rd., Spring City, PA 19475. Representative: William H. Peiffer (same as applicant). *Auto parts and related articles,* between Adrian, MI and Keokuk, IO for 180 days. An underlying ETA seeks 90 days of authority. Supporting shipper(s): Chevrolet Motor Div., GMC Adrian Plant, P.O. Box 688, Adrian, MI 49221. Sheller Globe Corp., 3200 Main St., Keokuk, IO 52632. Send protests to: T. M. Esposito, TA, 600 Arch St., Room 3238, Phila., PA 19106.

MC 4963 (Sub-66TA), filed April 10, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Representative: William H. Peiffer (same as above). *Iron or steel articles, metals, and commodities the transportation of which, because of their size or weight, require the use of special equipment,* between points in PA, NY, OH, WV, KY, IN, IL, MI, WI and MD for 180 days. An underlying ETA seeks 90 days authority. NOTE: Applicant intends to tack with MC-4963. Supporting shipper(s): There are 25 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Room 620, Philadelphia, PA 19106.

MC 14252 (Sub-57TA), filed April 4, 1979. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, OH 43227. Representative: William C. Buckham, 3400 Refugee Road, Columbus, OH 43227. Common-Regular. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)* service between (1) Ft. Wayne, IN and Kentland, IN via U.S. Highway 24 (2) Lawrenceburg, IN and Vincennes, IN via U.S. Highway 50 (3) all points in IN as off route points from the routes requested in (1) and (2) above, as well as from currently authorized regular routes, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): "There are (154) supporting shippers. Their statements may be examined at the office listed below and Headquarters." Send protests to: ICC, WM Jr. Green Jr., Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

MC 24583 (Sub-20TA), filed April 18, 1979. Applicant: FRED STEWART COMPANY, P.O. Box 665, Magnolia, AR 71753. Representative: James M. Duckett, 927 Pyramid Life Building, Little Rock, AR 72201. *Asphalt and asphalt products,* in packages, from points in Union County, AR, to all points in LA, TX, OK, MS, TN, MO, and KY, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tosco Corporation, Lion Oil Building, El Dorado, AR 71730. MacMillan Ring-Free Oil Co., Inc., 200 Petroleum Building, El Dorado, AR 71730. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 25823 (Sub-9TA), filed April 26, 1979. Applicant: WERCH TRUCKING COMPANY, INC., Rt. 2, Box 113, Berlin, WI 54923. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. *Foundry and metal products and materials, equipment and supplies* used or *useful in the manufacture, sale or distribution of foundry and metal products* between Berlin, WI on the one hand, and, on the other, points in AR, MI, IN, IA, IL and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): McQuay Perfex, Inc., 242 Pearl St., Berlin, WI 54923. Send protests to: Gail Daugherty, TA, Interstate Commerce Commission, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 44523 (Sub-3TA), filed April 27, 1979. Applicant: RED ARROW TRUCKING CO., 611 Tonnele Avenue, Jersey City, NJ 07307. Representative: Benjamin Coppola, Jr., 611 Tonnele Avenue, Jersey City, NJ 07307. Such merchandise as is dealt in by wholesale & retail grocery houses. Retail chain department stores and drug stores: Advertising and display materials and materials and supplies used in the manufacture, assembly, packaging & distribution of such merchandise. Cranford, NJ on the one hand, and, on the other, Philadelphia, PA and its commercial zone (as defined by the Commission), for 180 days. Supporting shipper(s): Boyle-Midway, Division of American Home Prod., 685 Third Avenue, New York, NY 10017. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 64373 (Sub-10TA), filed April 16, 1979. Applicant: CLARKSON BROS. MACHINERY HAULERS, INC., P.O. Box 25, Cowpens, SC 29330. Representative: Paul F. Sullivan, 711 Washington, Building, Washington, DC 20005. (1) *Machinery, machinery parts, machine tools, iron and steel articles and related commodities* from the facilities of Rockwell-Draper Corp., Hopedale, MA to the facilities of Rockwell-Draper Corp., at or near Spartanburg and Marion, SC; Greensboro, NC and Beebe River, NH, and (2) *Steel castings* from Spartanburg, SC to Hopedale, MA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clarkson Brothers, Inc., Box 788, Cowpens, SC 29330. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens St., Columbia, SC 29201.

MC 69492 (Sub-71TA), filed April 3, 1979. Applicant: HENRY EDWARDS

d.b.a. HENRY EDWARDS TRUCKING COMPANY, P.O. Box 97, Clinton, KY 42031. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. *Scrap paper and scrap cardboard,* from Hopkinsville, KY and its commercial zone to St. Louis, MO and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kentucky Waste Paper, P.O. Box 163, Hopkinsville, KY 42240. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 80653 (Sub-17TA), filed April 16, 1979. Applicant: DAVID GRAHAM COMPANY, P.O. Box 254, Old Route 13, Levittown, PA 19059. Representative: Lois T. Philipkosky, same as above. *Structural and plate steel up to and including but not limited to 70' in length and 12' in width,* between Saddle Brook, Harrison and Elmwood Park, NJ, on the one hand, and, on the other, points in NY, NJ, PA, MD, DE, DC, CT, MA, RI, NH, ME, VT, OH, IN, IL, MI, KY, TN, VA, WV, NC and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Azco Steel Company, 100 Midland Avenue, Saddle Brook, NJ 07662. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Room 620 Phila., PA 19106.

MC 87103 (Sub-33TA), filed March 1, 1979, and published in the Federal Register issue of April 24, 1979, and republished as corrected this issue. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 6077, Akron, OH 44312. Representative: Edward P. Bocko (same address as applicant). Tractors (except truck tractors), from the plant site of Ford Motor Company at Romeo, MI, to points in CT, DE, KY, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC, for 180 days. Restriction: The operations authorized herein are restricted to the transportation of traffic (a) originating at the above named origin points, and (b) destined to points in the named destination states, except that restriction (b) above shall not apply to traffic moving in foreign commerce. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ford Motor Co., Ford Tractor Operations, 2500 East Maple Road, Troy, MI 48084. Send protests to: Mary Wehner, DS, ICC, 731 Federal Office Bldg., Cleveland, OH 44199. The purpose of this republication is to correctly show the destination state of "ME" in lieu of "MS" as previously published.

MC 89693 (Sub-44TA), filed March 13, 1979. Applicant: HARMS PACIFIC TRANSPORT, INC., 1206 E. Lytle, Pasco, WA 99301. Representative: Boyd Hartman, 10655 N.E. 4th St., Suite 210, Bellevue, WA 98004. (1) *Tallow, in bulk,* from the facilities of Iowa Beef Processors, Inc., at or near Wallula, WA to points in ID, OR and to Seattle, WA for export; (2) *Liquid and dry fertilizer,* between points in WA in and east of the western boundary of Okanogan, Chelan, Kittitas, Yakima and Klickitat Counties in OR in and east of the western boundary of Wasco, Jefferson, Deschutes and Klamath Counties, in ID in and north of the northern boundary of Idaho County, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): (1) Iowa Beef Processors, Inc., Dakota City, NE (2) Palouse Producers, Inc., P.O. Box 9, Pullman, WA 99163; The McGregor Company, P.O. Box, Colfax, WA 99111; George F. Brocke & Sons, Inc., P.O. Box F, Kendrick, ID 83537; Pacifex, Inc., 1900 Fowler Street, Richland, WA 99352; Agri-Chem, P.O. Box 39, Adams, OR 97810. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 98952 (Sub-65TA), filed April 9, 1979. Applicant: GENERAL TRANSFER COMPANY, 2880 North Woodford Street, Decatur, Illinois 62526. Representative: Paul E. Steinhour, 918 Capitol Avenue, Springfield, Illinois 62701. Common, irregular, *canned food products, and related commodities except in bulk* from the facilities of Campbell Soup Company, Napoleon, OH to points in IL, IN, IA, MI, TN, KY, MO, and WI. Restricted to shipments originating at named origin and destined to named destinations, for 180 days, and underlying ETA seeks 90 days authority. Supporting shipper(s): Campbell Soup Company, East Maumee Avenue, Napoleon, OH 43545. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Room 414, Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 98952 (Sub-66TA), filed April 11, 1979. Applicant: GENERAL TRANSFER COMPANY, 2880 North Woodford Street, Decatur, Illinois 62526. Representative: Paul E. Steinhour, 918 East Capitol Avenue, Springfield, Illinois 62701. Common, irregular, *foodstuffs* (except in bulk) from the facilities of Commercial Distribution Center at or near Kansas City, MO, to points in KY, IN, IA, IL, MN, MI, TN, WI and OH. Restricted to shipments originating at named origin and destined to named destinations, for 180 days. An underlying EPA seeks 90 days authority. Supporting shipper(s): Commercial Distribution Center, Inc., P.O. Box 477, Independence, MO 64051. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Room 414, Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 104523 (Sub-76TA), filed April 25, 1979. Applicant: HUSTON TRUCK LINE, INC., P.O. Box 427, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. *Carpet padding,* from the facilities of General Felt Industries, Inc., at or near Dallas, TX to points in AR, LA, and NM, for 180 days. Supporting shipper(s): General Felt Industries, Inc., Park 80, Plaza West, Saddle Brook, NJ. Send protests to: Max H. Johnston, ICC, 285 Federal Bldg., 100 Centennial Mall North, Lincoln, NE 68508.

MC 104683 (Sub-47TA), filed April 26, 1979. Applicant: TRANSPORT, INC., P.O. Box 1524, Hattiesburg, MS 39401. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *Pulpmill liquid and/or liquor skimmings,* in bulk, in tank vehicles between Natchez, MS on the one hand, and, on the other, Mobile, AL and Pineville, LA, for 180 days. Supporting shipper(s): International Paper Company, P.O. Box 160707, Mobile, AL 36616. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 107002 (Sub-549TA), filed April 9, 1979. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth (same as applicant). *Animal feed additives, in bulk, in tank vehicles,* from Theodore, AL to Westville, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Degussa Corp./AL Group, P.O. Box 606, Theodore, AL 36582. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 107002 (Sub-550TA), filed April 9, 1979. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth (same as applicant). *Chemicals,* in bulk, in tank vehicles, from Memphis, TN to AZ, CO, and NM, for 180 days. Supporting shipper(s): Commercial Chemical Co., Div. Osmose Wood Preserving Co., 1172 N. Thomas St., P.O. Box 7275, Memphis, TN 38107. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 107103 (Sub-16TA), filed March 30, 1979. Applicant: ROBINSON CARTAGE CO., 2712 Chicago Drive SW., Grand Rapids, MI 49509. Representative: Ronald J. Mastej, 900 Guardian Building, Detroit, MI 48226. *Lumber, lumber products, forest products and lumber mill products,* from the international boundary between the United States and Canada at Sault Ste. Marie, MI to points in MI, IN, IL, OH, WI and MN. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Pacific Lumber Company, Ontario, Canada; Levesque Lumber Limited, Hearst, Ontario; Deep Forest Products Co., LTD, Hearst, Ontario. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 107403 (Sub-1193TA), filed March 9, 1979. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same as applicant). *Magnesium oxide,* in bulk, in tank vehilces, from Freeport, TX to Whippany, NJ & St. Louis, MO for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Apollo Chemical Corp., 35 S. Jefferson Rd., Whippany, NJ 07981. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 107403 (Sub-1194TA), filed March 13, 1979. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Nitric acid, in bulk, in tank vehicles,* from Lake Charles, LA to points in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olin Corp., 120 Long Ridge Rd., Stamford, CT 06904. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 107403 (Sub-1195TA), filed March 15, 1979. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same as applicant). *Refrigerant or dispersant gases, in bulk, in tank vehicles,* from Danville, IL to Baton Rouge, LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Allied Chemical Corp., P. O. B. 1087-R, Morristown, NJ 07960. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 107403 (Sub-1196TA), filed March 27, 1979. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same as applicant). *Liquid yeast,* in bulk, in tank vehicles, from Syracuse, NY to Norfolk, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champale Products Corp., Box 1148, 710 Washington Ave., Norfolk, VA 23504. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 107403 (Sub-1197TA), filed April 23, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same as above). *Printing ink,* in bulk, in shipper-owned trailers, from New Albany, IN to Atglen, PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Flint Ink Corporation, 25111 Glendale Ave., Detroit, MI 48239. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh St., Phila., PA 19106.

MC 107403 (Sub-1198TA), filed April 23, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as above). *Coke Breeze,* in bulk, in dump vehicles, from Cynthiana, KY to Ironton, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ironton Coke Corporation, 11750 Chesterdale Road, Cincinnati, OH 45246. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh St., Phila., PA 19106.

MC 107403 (Sub-1199TA), filed April 23, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as above). *silica sand,* in bulk, from Klevenville, WI to Rooseveltown, NY for 180 days. Supporting shipper(s): Great Lakes Minerals Compnay, 2855 Coolidge Hwy., Suite 202, Troy, MI 48084. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh St., Phila., PA 19106.

MC 108382 (Sub-38TA), filed April 17, 1979. Applicant: SHORT FREIGHT LINES, INC., 459 South River Road, Bay City, MI 48707. Representative: Richard L. Poirer, 459 South River Road, Bay City, MI 48707. *Paper and paper products and materials, equipment and supplies* used in the manufacture or distribution of paper and paper products, between Fond du Lac and Marinette, WI, on the one hand, and on the other, points in MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 108382 (Sub-39TA), filed April 30, 1979. Applicant: SHORT FREIGHT LINES, INC. 459 South River Road, Bay City, MI 48706. Representative: Ronald J. Mastej, 900 Guardian Building, Detroit, MI 48226. *Metal pipe casing, metal pipe and tubing,* between the facilities of Algoma Tube Corporation at or near Dafter, MI, on the one hand, and, on the other, points in OH, PA, IN, IL, and WI., for 180 days. Supporting shipper(s): Algoma Tube Corporation, Saulte Ste. Marie, Ontario, Canada P6A 5P2. Send protests to: C. R. Flemming, DS, ICC, 225 Federal Building, Lansing, MI 48933.

MC 110563 (Sub-275TA), filed April 30, 1979. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 N, Sidney, OH 45365. Representative: Victor J. Tambascia (same address as applicant). *Meats, meat products, meat by-products and articles distributed by meat packing houses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61, M.C.C. 209 and 766, (except hides and commodities in bulk)* from the facilities of Zemco Foods, Inc., located at or near Buffalo, NY to points in AR, LA, OK & TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Zemco Foods, Inc., 665 Perry St., Buffalo, NY 14210. Send protests to: ICC, Fed. Res. Bank, Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 110563 (Sub-276TA), filed April 26, 1979. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 N, Sidney, OH 45365. Representative: John L. Maurer (same address as applicant). *Foodstuffs,* from the plantsite and facilities of Anderson Clayton Foods located at Jacksonville, IL to points in the states of AL, FL, GA, IN, KY, MI, MS, NC, OH, SC, TN, & WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anderson Clayton Foods, Inc., P.O. Box 226165, Dallas, TX 75266. Send protests to: ICC, Fed. Res. Bank, Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 111812 (Sub-630TA), filed April 13, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same as applicant). *Salad dressings, NOI* from the facilities of Western Dressing, Inc. located at or near Grundy Center, IA to points in CA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Western Dressing, Inc., 7th Street and "A" Avenue, Grundy Center, IA 50638. Send protests to: J. L. Hammond, DS,

ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 111812 (Sub-631TA), filed April 19, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant's). *Pharmaceutical drugs* from Philadelphia, PA and its commercial zone to Los Angeles, CA, Chicago, IL and Atlanta, GA and their commercial zones for 180 days. Supporting shipper(s): McNeil Laboratories, 500 Office Center Drive, Fort Washington, PA 19034. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 112893 (Sub-58TA), filed April 12, 1979. Applicant: BULK TRANSPORT COMPANY, P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004. *Jet Fuel, Type A,* in bulk, in tank vehicles, from Green Bay, WI to points in IL, IN, MI, MN, NE, ND & OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Air Wisconsin, Inc., Outagamie County Airport, Appleton, WI 54911. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 113843 (Sub-259TA), filed May 3, 1979. Applicant: Refrigerated Food Express, Inc., 31 Summer Street, Boston, MA 02110. Representative: Lawrence T. Sheils (same address as applicant). *General Commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) from points in MA and VT to points in CO, IL, IN, MI, MN, MO, OH, OK, TX and WI for 180 days, restricted to the transportation of traffic originating at facilities of New England Shipping Association Cooperative or at facilities of its members originating at named origins and destined to indicated destinations. Supporting shipper(s): New England Shipping Association Cooperative, 1029 Pearl Street, Brockton, MA 02403. Send protests to: District Supervisor John B. Thomas, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 124673 (Sub-31TA), filed April 16, 1979. Applicant: FEED TRANSPORTS, INC., P.O. Box 2167, Amarillo, TX 79105. Representative: Gail Johnson (same as above). *Dry fertilizer,* in bulk, from Chaves, Lea, and Eddy Counties, NM and Hale and Brazoria Counties in TX, to points in OK, north of I-40 and west of I-35, and points in KS, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Collingwood Grain, Inc., Box 728, Hutchinson, KS 67501. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 129712 (Sub-19TA), filed March 28, 1979. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract carrier, irregular routes: Agricultural implements, other than hand,* from the facilities of Avco New Idea Farm Equipment Division, The Paul Revere Corporation, at Coldwater, OH, to all points in AL, AR, FL, GA, LA, MS, NC, SC, TN, and VA, for 180 days. Restriction: The operations authorized herein are restricted to the transportation of traffic (a) originating at the above-named origin point, and (b) destined to points in the named destination states, except that restriction (b) above shall not apply to traffic moving in foreign commerce. This service is to be performed under a continuing contract, or contracts, with Ford Motor Company. An underlying ETA seeks 90 days authority. Supporting shipper(s) Ford Motor Co., Ford Tractor Operations, 2500 East Maple, Troy, MI 48084. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 134783 (Sub-52TA), filed April 16, 1979. Applicant: DIRECT SERVICE, INC., P.O. Box 2491, Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Foodstuffs* (except in bulk), from the facilities of Fisher Cheese Company at or near Wapakoneta, OH, to points in PA, NJ, NY, MD, DE, DC, WV, VA, NC, SC, FL, GA, AL, TN, MS, AR, LA, OK, and KY, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Fisher Cheese Company, P.O Box 409, Wapakoneta, OH 45895. Send protests to: Haskell E. Ballard, District Supervisor, Box F-13206 Federal Building, Amarillo, TX 79101. Supporting shipper(s): Fisher Cheese Company, P.O. Box 409, Wapakoneta, OH 45895. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box F-13206 Federal; Building, Amarillo, TX 79101.

MC 135033 (Sub-10TA), filed March 16, 1979. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 7000 West Center Road Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same address as applicant). *Such commodities as are dealt in by retail department stores (except foodstuffs),* from Omaha, NE to Sioux City, IA under a continuing contract or contracts with Richman Gordman, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): William G. O'Brien, Richman Gordman Stores, Inc., 9202 "F" St., Omaha, NE 68127. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 135633 (Sub-16TA), filed April 4, 1979. Applicant: NATIONWIDE AUTO TRANSPORTERS, INC., 140 Sylvan Avenue, Englewood Cliffs, NJ 07632. Representative: Harold G. Hernly, Jr., 110 South Columbus St., Alexandria, VA 22314. Trucks, in secondary movements, in driveaway service. Between the facilities of J.B. Olsen Corp., A.K.A. Olsen Body, at Athens, NY & Mayfield, PA on the one hand, and on the other, Salsbury & Baltimore, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): G.M.C. Truck & Coach, 7667 Pulaski St., Baltimore, MD. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 135843 (Sub-5TA), filed April 6, 1979. Applicant: IOWA GATEWAY, INC., d.b.a. IOWA GATEWAY TERMINAL, River Rd., Keokuk, IA 52632. Representative: Wm. L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Railway car wheels* from Keokuk, IA to AR, FL, IL, IN, KS, MO, NE, OH, PA, TN and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Griffin Wheel Company, Division of Amsted Industries, Inc., 200 West Monroe, Chicago, IL 60606. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 136782 (Sub-13TA), filed April 17, 1979. Applicant: R.A.N. TRUCKING COMPANY, P.O. Box 128, Eau Claire, PA 16030. Representative: Daniel C. Sullivan, Sullivan & Associates, Ltd., 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. *General commodities,* except those of unusual value, Classes A and B explosives household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other landing from points in PA in and west of Fulton, Huntingdon, Mifflin, Centre,

Clinton, and Potter Counties and those in OH east of a line beginning at Cleveland, OH and extending along U.S. Hwy 21 to jct unnumbered Hwy (formerly portion of U.S. Hwy 21), then along unnumbered highway through Montrose, Clinton and Canal Fulton, OH to Jct U.S. Hwy 21 at or near Massillan, then along U.S. Hwy 21 to Jct U.S. Hwy 40 at or near Cambridge, OH, and north of U.S. Hwy 40 from Cambridge to the OH–WV State line including points on the indicated portions of the highways specified, to Ft. Wayne and South Bend, IN; Cincinnati, and Lorain, OH; Wheeling, WV; Irvington, Newark and Mahwah, NJ and New York City, NY Commercial Zone for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Ohio Fast Freight Corporation, 700 Carroll Street, Akron, OH 44305. Send protests to: J. J. England, DS., ICC, 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 136952 (Sub-7TA), filed April 2, 1979. Applicant: ADAMIC TRUCKING, INC., 15522 Rider Rd., Burton, OH 44021. Representative: Lewis S. Witherspoon, Esq., Suite 1940, 88 East Broad St., Columbus, OH 43215. Contract carrier, irregular routes, *plastic articles* from Middlefield, OH, to Cheshire, CT; Chicago and Compton, IL; Chicapee, MA; Detroit, MI; St. Louis, MO; Trenton, NJ; Syracuse, NY; Elkhorn, WI; and Millsboro, DE, for 180 days, under a continuing contract(s) with Sajar Plastics, Inc., Middlefield, OH. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sajar Plastics, Inc., P.O. Box 37, Middlefield, OH 44062. Send protests to: Mary A. Wehner, D/S, ICC, 731 Federal Building, Cleveland, OH 44199.

MC 138213 (Sub-1TA), filed April 13, 1979. Applicant: ROADHOUND TRUCK COMPANY, 811 W. Hale Street, Osceola, AR 72370. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. Plastic articles, paper, paper products, and such other articles as dealt in by paper manufacturers or distributors, from the facilities of Champion Paper Co. at or near Canton, NC and Pasadena, TX to Osceola, AR and St. Louis, MO, as a contract carrier over irregular routes, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jim Walter Papers, Inc., P.O. Box 6519, Jacksonville, FL 32205. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 139482 (Sub-116TA), filed April 10, 1979. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Foodstuffs (except commodities in bulk)* from Secaucus and South Hackensack, NJ and points in their commercial zones to points in the U.S. (except points in CT, ME, MD, MA, NE, NJ, NH, NM, VT, and DC), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Buitoni Foods Corporation, Manager, Physical Distribution, 450 Huyler Street, South Hackensack, NJ 07606. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 140612 (Sub-66TA), filed April 19, 1979. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour (same as applicant). *Plastic articles, expanded cellular plastic products and materials and supplies used in the manufacture, sale and distribution of plastic articles, expanded cellular plastic products* (except commodities in bulk in tank vehicles), between the facilities used by Polycell Industries, Inc. located at or near Marion, IA, on the one hand and on the other, points in and West of MI, OH, KY, TN, and NC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Polycell Industries, Inc., 4601 8th Ave., Marion, IA 52302. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 142423 (Sub-6TA), filed March 27, 1979. Applicant: BIG D CARTAGE, INC., 20891 Kingsberry Drive, Mt. Clemens, MI 48045. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. *Malt beverages*, from Columbus, OH to the Detroit, MI commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Petitpren, Inc., 42834 N. Walnut, Mt. Clemens, MI 48043. Send protests to: C. R. FLemming, D/S, ICC 225 Federal Building, Lansing, MI 48933.

MC 143032 (Sub-14TA), filed April 18, 1979. Applicant: THOMAS J. WALCZYNSKI, d.b.a. WALCO TRANSPORT, 3112 Truck Center Drive, Suite 101, Duluth, MN 55806. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. (1) *Iron and steel articles* from the facilities of North Star Steel Co., at or near St. Paul, MN to points in KS, IA, MO, NE, AR, IL, IN, OK, CO, TX, MI, OH, ND, SD, KY, TN, WI, PA and MD; and (2) *Materials and supplies used in the manufacture of iron and steel articles* in the reverse direction, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Star Steel Co., Box 43189, St. Paul, MN 55101. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143032 (Sub-15TA), filed April 12, 1979. Applicant: THOMAS J. WALCZYNSKI, d.b.a. WALCO TRANSPORT, 3112 Truck Center Drive, Duluth, MN 55806. Representative: William J. Gambucci, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58107. *Iron and steel articles* from the Duluth, MN Commercial Zone to points in CO, ND, KS, NE, IA, MN, WI, MO, IL, IN, OH, MI, KY, PA, OK, AR, TX and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hallett Wire Products Co., Manager, P.O. Box 6447, Duluth, MN 55806. North Central Terminal Operators, Chief Clerk, 1200 Port Terminal Drive, Duluth, MN 55806. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143503 (Sub-18TA), filed April 9, 1979. Applicant: MERCHANTS HOME DELIVERY SERVICE, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. *New furniture and furnishings*, from Sioux City, IA to points in Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, Howard, Merrick, Nance, Boone, Antelope, Knox, Cedar, Pierce, Wayne, Madison, Stanton, Platte, Colfax, Polk, Butler, Saunders, Sarpy, Thurston, Dixon, and Dakota Counties, NE; and points in Lake, Moody, Hanson, McCook, Minnehaha, Lincoln, Turner, Hucthinson, Douglas, Charles Mix, Bon Homme, Yankton, Clay and Union Counties, SD, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Krigsten Furniture, Inc., Highway 20 East, Sioux City, IA 51106. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 144622 (Sub-65TA), filed April 13, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip G. Glenn (same as applicant), Theodore Polydoroff, 1307 Dolley Madison Blvd., Suite 301, McLean, VA 22101. Canned and preserved foodstuffs, from the facilities of Heinz USA at or near Pittsburgh, PA; Holland, MI; Fremont

and Toledo, OH, to points in AL, AR, FL, GA, LA, MS, OK, SC, TN and TX, restricted to traffic originating at the named facilities and destined to the named states, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144622 (Sub-66TA), filed April 24, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip G. Glenn, (same as applicant). Theodore Polydoroff, 1307 Dolley Madison Blvd., Suite 301, McLean, VA 22101. (1) *Such merchandise* as is dealt in by wholesale, retain, chain grocery and feed business houses; *soy products, paste, flour products, dairy based products;* (2) *Materials, ingredients and supplies* used in the manufacture, distribution and sale of products as listed in part (1), between all points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities of or used by Ralston Purina Company, for 180 days as a common carrier over irregular routes. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: William H. Land, Jr., D/S 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145043 (Sub-1TA), filed February 6, 1979. Applicant: MICHIGAN CONTRACT CARRIER, INC., 7746 S. Division Ave., Grand Rapids, MI 49508. Representative: James R. Neal, 1200 Bank of Lansing Building, Lansing, MI 49508. *Frozen pies and cakes,* in refrigerated equipment, from the facilities of Lloyd J. Harriss Pie Company located at Saugatuck, MI and Holland, MI to pts in AL, AZ, AR, CA, CO, CT, FL, GA, IL, IN, KY, LA, ME, MA, MS, NV, NH, NJ, NY, OH, OR, PA, RI, TN, TX, UT, VT, WA for 180 days. An underlying ETA has been granted for 90 days. Supporting shipper(s): Lloyd J. Harriss Pie Company, 350 Culver, Saugatuck, MI 49453. Send protests to: TA Annie Booker, 219 S. Dearborn St., Chicago, IL 60604.

Note.—Carrier holds contract MC 143151.

MC 145152 (Sub-71TA), filed April 13, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. Petroleum Products (except in bulk) From Toledo, OH to the facilities of Siegel Oil Company, at or near Denver, CO. 180 days, common, irregular, an underlying ETA seeks 90 days authority. Supporting shipper(s): Siegel Oil Company, 1380 Zuni Street, Denver, CO 80204. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145213 (Sub-3TA), filed April 6, 1979. Applicant: DEEP SOUTH TRUCKING, INC., Hwy. 11 N., P.O. Box 304, Purvis, MS 39475. Representative: Kent F. Hudson, 202 Main St., Purvis, MS 39475. Contract carrier: irregular routes; *Lumber* from plant site of Newman Lumber Co., Gulfport, MS to points in WI, MI, IL, IN, OH, PA, VA, KY, MO, and NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Newman Lumber Co., Inc., P.O. Box 2580, Gulfport, MS 39503. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 East Amite Bldg., Jackson, MS 39201.

MC 145323 (Sub-1TA), filed April 11, 1979. Applicant: J. L. N. DISTRIBUTING, INC., 7305 North Loop Road, El Paso, TX 79915. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. (1) *building materials,* including cement in sacks and in bulk; (2) *lumber, lumber products* and *wastepaper,* (1)(a) from International Border at El Paso, TX, and El Paso, TX to points in NM and AZ; (2)(a) from points in AZ and NM to International Border at El Paso, TX and El Paso, TX, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Cashway Building Materials, Inc., 7360 Stiles Road, El Paso, TX 79915; Flintkote Supply Co., 7155 Merchant, El Paso, TX 79926; Cementos de Chihuahua S.A., Apdo. Postal 2135 Cd. Juarez Chih. Send protests to: District Supervisor Haskell E. Ballard, P.O. Box F-13206 Federal Building, Amarillo, TX 79101. Supporting Shipper(s): cashway Building Materials, Inc., 7360 Stiles Road, El Paso, TX 79915. Flintkote Supply Co., 7155 Merchant, El Paso, TX 79926. Cementos de Chihuahua S.A., Apdo. Postal 2135 Cd., Juarez Chih. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 145373 (Sub-1TA), filed March 12, 1979. Applicant: LAGRANGE TRANSPORTERS, 9124 West Ogden Avenue, Brookfield, IL 60513. Representative: Robert J. Gill, 29 South LaSalle Street, Suite 740, Chicago, IL 60603. (1) *Pipe insulation,* from the facilities of Celotex Corp. within the Cincinnati, OH commercial zone to points in TX, LA, KA and MO, (2) *Scrap paper and rags* from TX and LA to the facilities of Celotex Corporation, Camden, AK. (3) *Roofing and roofing materials* (except in bulk) from the facilities of Celotex Corporation at Camden, AK to Celotex Corporation within the Cincinnati, OH commerical zone, for 180 days. Supporting shipper(s): the Celotex Corporation, 1500 North Dale Mabry, Tampa, FL 33622. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145912 (Sub-2TA), filed March 30, 1979. Applicant: TRUCK SERVICE, INC., 303 Vance St., Forest City, NC 28043. Representative: George W. Clapp, PO Box 836, Taylors, SC 29687. *Contract* carrier—Irregular routes; *Plastic containers and plastic container lids from* the facilities of Polysar Packaging, Division of Polysar Plastics, Inc., at or near Forest City, NC to points in AL, AR, DE, FL, GA, IL, IN, KY, LA, MD, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Polysar Packaging, Div. of Polysar Plastics, Inc., 5 Main St., So. Glens Falls, NY 12801. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 146163 (Sub-1TA), filed March 20, 1979. Applicant: E. FEDDELER & SONS, INC., 21827 Austin Street, Lowell, IN 46356. Representative: James R. Madler, 120 West Madison Street, Chicago, IL 60602. *Sand,* in bulk, from Bridgman, MI to points in IN and IL for 180 days. Supporting shippers(s): Manley Bros., P.O. Box 538, Chesterton, IN 46304. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, Illinois 60604.

MC 146183 (Sub-1TA), filed April 13, 1979. Applicant: NORTHSTATE TRANSIT, INC., Box 40, Troy Grove, IL 61372. Representative: James R. Madler, 120 West Madison Street, Chicago, IL 60602. *Sand,* in bulk, from the facilities of Manley Bros., at/near Troy Grove, IL and Bridgman, MI to points in IL, IN and MI for 180 days. Supporting shippers(s): Manley Bros., P.O. Box 538, Chesterton, IN 46304. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 146322 (Sub-1TA), filed April 11, 1979. Applicant: METRO LIQUID CARRIERS LTD, 4545 Lavoie Blvd., St-Vincent-de-Paul, Laval, Quebec, Canada

H7C 1A1. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. *Liquid asphalt, in tank vehicles,* from ports of entry on the International Boundary Line between the US and Canada in NY and VT to points in NY and VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): N. J. Brunell & Son, Inc., RFD 3, Box 885, Plattsburgh, NY 12901. All States Asphalt, Inc., Amherst Road, Route 116, Sunderland, MA 01375. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 146513 (Sub-1TA), filed March 14, 1979. Applicant: BILL'S TRUCKING, INC., 149 Nichol Avenue, McKees Rocks, PA 15136. Representative: Robert J. Walshak, c/o Fiore Trucking and Contracting, 601 Ann Street, Homestead, PA 15120. *Iron and steel articles and products used in the manufacturing thereof* from the facilities of United States Steel Corp. in Clairton, Braddock, McKeesport, Dravosburg, Rankin, Homestead, Vandergrift, Pittsburgh, Ambridge, PA to points in Ohio North of Route No. 76 and East of Route No. 71 and visa versa for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): United States Steel Corporation, 600 Grant Street, Room 568, Pittsburgh, PA 15230. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 146583 (Sub-1TA), filed March 22, 1979. Applicant: TERRAIN TAMERS, INC., INTERSTATE TRANSPORT, 17 Clark Branch Road, Myrtle Creek, Oregon 97370. Representative: Thomas Y. Higashi, 2075 S.W. First Ave., Suite 2 N, Portland, OR 97201. A. *Lumber, lumber mill products, wood products and pitchstick* from points and places in OR to points and places in CA B. *Building materials, contractors materials and supplies and steel strapping in coils* from points and places in CA to points and places in OR for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are five shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: A. E. Odoms, D.S., I.C.C., 114 Pioneer Courthouse, Portland, OR 97204.

MC 146693 (Sub-1TA), filed March 27, 1979. Applicant: JAMES ALBAUGH, d.b.a. M. & C. CARTAGE, 29644 Mayfair, Farmington Hills, MI 48018. Representative: Robert D. Schuler, 100 West Long Lake Road-Suite 102, Bloomfield Hills, MI 48013. *Contract carrier,* irregular routes, *Banking and office machinery and equipment; fixtures, parts and assembles thereof; and materials, supplies, and equipment used in the manufacture thereof.* Between Detroit, MI and its commercial zone, on the one hand, and, on the other, points in IN and OH, under continuing contract with Diebold, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Diebold, Inc., 12215 Market St., Livonia, MI 48150. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 146773 (Sub-1TA), filed April 12, 1979. Applicant: CON-EX, INC., 369 Mast Rd. Manchester, NH 03102. Representative: Peter Vetrone (same address as applicant). *General commodities (except commodities of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment,* from Manchester, NH, to points in the United States (except AL, CT, DE, HI, NE, MD, MA, NH, NJ, NY, PA, RI, VA, WV, and the DC), restricted to the transportation of traffic originating at the warehouse facilities of N.H. Shippers Cooperative, Inc. at Manchester, NH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): N. H. Shippers Cooperative, Inc., Cove St., Manchester, NH 03101. Send protests to: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd., Concord, NH 03301.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16909 Filed 5-30-79; 8:45 am]

BILLING CODE 7035-01-M

Operating Rights Applications(s) Directly Related to Finance Proceedings

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 July 2, 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 141609 (Sub-3F), filed March 9, 1979. Applicant: C. T. TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Jack Goodman, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a common carrier by motor vehicle, as follows: *Regular Routes: General commodities* (except those of unusual value, and Classes A and B explosives, commodities in bulk and those requiring special equipment), between Jamestown, NY, and Niagara Falls, NY, serving all intermediate points and off-route points in Chautauqua County: From Jamestown over New York Highways 17 and 394 (formerly New York Highway 17J) to Westfield, NY, then over U.S. Highway 20 and New York Highway 5 to junction U.S. Highway 62, then over U.S. Highway 62 to Niagara Falls, and return over the same route; from Jamestown over New York Highway 60 to Fredonia, and return over the same route; from Jamestown over New York Highway 17 to junction U.S. Highway 62, then over U.S. Highway 62 to Niagara Falls, and return over the same route. *Irregular Routes:* (A) New Furniture: From Buffalo, NY to Rochester, NY; from Jamestown, NY to Buffalo, NY; from Randolph (Cattaraugus County), Mayville (Chautauqua County), Celoron (Chautauqua County) and Frewsburg (Chautauqua County) NY to Niagara Falls, Dunkirk, Tonawanda, North Tonawanda, Silver Creek (Chautauqua County), Westfield (Chautauqua County), Brocton (Chautauqua County), Fredonia (Chautauqua County), Springville (Erie County), Hamburg (Erie County), Orchard Park (Erie County), East Aurora (Erie County), Gowanda (Cattaraugus County), Grand Island and Buffalo, NY; (B) Household Goods as Defined by the Commission: Between points in Chautauqua County, NY; from points in Chautauqua County, NY to points in Erie County, NY; from points in Monroe County, NY to points in Chautauqua County, NY; (C) Garnetted Cotton: Between Jamestown, NY and DePew (Erie County), NY. This application is directly related to the Section 5 application of C. T. Transport, Inc. to acquire all of the operating rights of Lake Shore Delivery, Inc. The purpose of this application is to convert the

Certificate of Registration of Lake Shore Delivery, Inc. to a Certificate of Public Convenience and Necessity. Authority is sought to tack the proposed authority with existing regular routes of Applicant. An application under Section 210a(b) has been filed. Hearing site Cleveland, OH.

Note.—This application is directly related to MC-F-13959F, published in a previous section of this Federal Register.

MC 52932 (Sub-33F), filed March 13, 1979. Applicant: NORTH PENN TRANSFER, INC., Box 230, Routes 63 and 202, Lansdale, PA 19446. Representative: John W. Frame, ICC Practitioner, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Authority sought as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *regular routes*, transporting: (1) *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New Freedom, PA and junction US Hwys 1 and 9 near Woodbridge, NJ, serving all intermediate points in PA from New Freedom over PA Hwy 516 to junction unnumbered hwy (formerly US Hwy 111), then over unnumbered hwy via Loganville to junction I-83 (formerly US Hwy 111), then over I-83 to York, PA, then over US Hwy 30 to junction Business Route Hwy 30 (formerly portion of US Hwy 30), then over Business Route US Hwy 30 via Coatesville, Pa, to junction US Hwy 30, then over US Hwy 30 to Philadelphia, PA, and then over US Hwy 1 to junction US Hwy 9, and return over the same route. (2) *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 P. H. Glatfelter Company at Spring Grove, PA, as an off-route point in connection with carrier's otherwise authorized regular-route operations between New Freedom, PA, and junction US Hwys 1 and 9 near Woodbridge, NJ. (3) *General commodities* (except those of unusual value, those requiring special equipment, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those injurious or contaminating to other lading), between Newark, NJ and Lancaster, PA, in connection with carrier's presently authorized regular-route operations between Lancaster, PA, and Newark, NJ, over US Hwys 30, 1 and 9, serving no intermediate points. From Newark over US Hwy 22 to Allentown, PA, then over US Hwy 222 to Lancaster, and return over the same route.

The purpose of this application is to remove the restriction contained in transferor's certificate to permit the transferee to use the authority in connection with carrier's otherwise authorized regular-route operations.

Note.—MC-F-13050 is a directly related matter.

Note.—This application is directly related to North Penn Transfer Inc.—Purchase (Portion)—National Transportation Company, Inc., d.b.a. National Transport 101, (MC-F-13954F), published in the May 2, 1979, issue of the Federal Register.

MC 87379 (Sub21F), Filed March 1, 1979. Applicant: C. H. HOOKER TRUCKING COMPANY, 1475 Roanoke Avene, Uhrichvsville, Ohio 44683. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, Ohio 43215. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: materials used in the manufacture of clay building tile (1) from points in WA, OR, ID, MT, WY, AZ, CA, NV, UT, CO, NM, TX, OK, AR, LA, MO, IA, KS, NE, SD, and ND; to points in OH, PA, WV, NY, NJ, MD, DE, VA, CT, NY, VT, NH, MA, RI, and ME; (2) from points in MS, DE, KY, VA, TN, NC, SC, GA, and AL, to points in OH and MI; (3) from points in DE, VA, NC, and SC, to points in and west of IN, KY, TN, and MS; (4) from points in MS, AL, GA, TN, and KY to points in PA, NY, CT, RI, MA, NH, VT, ME, and NJ; clay building tile and materials used in the installation of clay building tile from points in Tuscarawas County, OH to points in DE, VA, KY, AR, LA, MS, TN, AL, GA, NC, SC, MO, IA, ND, SD, NE, WY, MT, ID, OR, WA, CA, NV, UT, CO, KS, OK, TX, NM, and AZ; clay and building tile and materials used in the installation of clay building tile (1) from points in WA, OR, ID, MT, WY, AZ, CA, NV, UT, CO, NM, TX, OK, AR, LA, MO, IA, KS, NE, SD, and ND, to points in OH, PA, WV, NY, NJ, MD, DE, VA, CT, NY, VT, NH, MA, RI, and ME; (2) from points in MS, DE, KY, VA, TN, NC, SC, GA, and AL, to points in OH and MI; (3) from points in DE, VA, NC, and SC, to points in and west of IN, KY, TN, and MS; (4) from points in MS, AL, GA, TN, and KY, to points in PA, NY, CT, RI, MA, NH, VT, ME, and NJ; (5) from points in ME, NH, VT, MA, CT, RI, NJ, NY, PA, MD, DE, VA, WV, and the DC, to points in and west of OH, KY, TN, and AL; clay products (except earthenware, pottery, stoneware, and chinaware), from points in Tuscarawas County, OH, to points in NC, SC, GA, and FL; clay products from Houston, MS, to points in ME, PA, NJ, NY, MA, CT, RI, VT, NH, and ME; and materials used in the manufacture of clay building tile from points in and west of IA, MO, AR, and LA, to points in OH; clay products used in the manufacture and distribution of clay products, from points in OH, to points in WA, OR, CA, NV, ID, UT, AR, MO, WY, CO, NM, ND, SD, NE, KS, OK, TX, IA, MO, AK, LA, KY, TN, MS, AL, GA, SC, NC, VA, and DE. (Hearing Site: Columbus, OH and Cleveland, OH)

Note.—The purpose of this application is to eliminate the points in Tuscarawas County, OH. This matter is directly related to a finance proceeding docketed MC-F-13952F, published in a previous section of this Federal Register issue.

MC 93649 (Sub-29F), filed March 14, 1979. Applicant: GAINES MOTOR LINES, INC., P.O. Box 1549, Hickory, NC 28601. Representative: David M. Marshall, Esq., Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, in the transportation of (1) general commodities, other than household goods and office furniture and equipment and other than commodities which necessitate the use of tank trucks, dump trucks or special equipment between points in the following towns on the one hand: Bethel, Brookfield, Danbury, New Fairfield, New Milford, Newtown, Ridgefield, Sherman, and, on the other hand: points in Connecticut within a 40 mile radius of Danbury as shown in Commission's Docket 6770, Official Mileage and (2) general commodities (other than household goods and office furniture and equipment and other than commodities which necessitates the use of tank trucks, dump trucks or special equipment) for hire as a motor common carrier from its headquarters, in Danbury and, upon call received at its headquarters, between any points within this state, * * *, over such routes and highways within this state as may be necessary in the performance of its common carrier service, subject to such regulation and conditions as the Commission may from time to time prescribe with respect to the conduct of its business. *Condition:* Certificate holder shall permit Newtown shippers and receivers to telephone their headquarters at Danbury without charge.

Note.—Hearing site: Washington, D.C. This is a Conversion Application directly related to the Finance Proceeding entitled Gaines Motor Lines, Inc.—Purchase—The Neilson Transportation Company, MC-F-13968F. As pertinent to this Application the Vendee is

authorized serve points in SC, NC, NY, MD, PA, NJ, VA, MA, CT and DC. The Applicant has requested authority to tack its existing authority with the authority being acquired at points in CT within the commercial zone of New York City, NY and at New Haven, CT. No. MC-F-13968F is published in a previous section of this Federal Register issue.

MC 78228 (Sub-120F), filed: March 14, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, Pa. 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a common carrier by motor vehicle, over irregular routes transporting: Iron and steel articles, between Chicago, IL, on the one hand, and, on the other, Ashland, KY, points in OH, those in that part of NY west of a line beginning at Lake Ontario and extending along U.S. Hwy. 15 to Lakeville, NY then along Alternate U.S. Hwy. 20 to Geneseo, NY, then along NY Hwy. 63 to junction NY Hwy. 408, then along NY Hwy. 408 to junction NY Hwy. 16, then along NY Hwy. 16 to Olean, NY, then along NY Hwy. 16A to the NY-PA State line, including points on the indicated portions of the highways specified, those in that part of PA on and west of U.S. Hwy. 219, and those in WV on and north of U.S. Hwy. 50 from the MD-WV State line to the WV-OH State line.

Note.—This is directly related to an application published in a previous section of this Federal Register bearing Docket No. MC-F-13972F. The purpose of this application is to eliminate the gateway of Wheeling, WV.

MC 120988 (Sub-3F), filed March 13, 1979. Applicant: F. FREIGHTWAYS, INC., 619 Medford Avenue, Patchogue, NY 11772. Representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, NY 11368. Requested authority: General commodities (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). (1) Between points in Suffolk County, NY; (2) Between points in Suffolk County, NY, on the one hand, and, on the other, New York, NY; (3) Between points in Suffolk County, NY, and points in Nassau County, NY; (4) Between points in Nassau County, NY, on the one hand, and, on the other, New York, NY. Household goods as defined by the Commission. (1) Between points in Suffolk County, NY; (2) Between points in Suffolk County, NY, on the one hand, and, on the other, New York, NY, and points in Nassau and Orange Counties, NY. (Hearing site: New York or Washington, D.C.)

Note.—The purpose of this application is to convert applicant's Certificate of Registration to Certificate of Public Convenience and Necessity. This matter is directly related to a finance proceeding docketed as MC-F-13965F, published in a previous section of this Federal Register issue.

MC 106194 (Sub-37F), filed March 2, 1979. Applicant: HORN TRANSPORTATION, INC., 3008 East 4th Street, Pueblo, CO 81001. Representative: H. James Maxwell, Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Building materials, farm machinery and parts, wire, coal, lumber and livestock*, between points in MO located in the Kansas City, MO-Kansas City, KS, Commercial Zone, as defined by the Commission, and points in KS, on the one hand, and, on the other, points in CO and WY (The gateway eliminated is Kimball, Banner and Cheyenne Counties, NE.); (2) *iron and steel articles* (except articles which, because of size or weight require the use of special equipment), from Pueblo County, CO, to points in WY and CO (The gateway eliminated is Kimball, Banner and Cheyenne Counties, NE.); (3) *iron and steel articles* (except articles which, because of size or weight require the use of special equipment), from points Kimball, Banner, and Cheyenne Counties, NE, to points in NE and OK (The gateway eliminated is Pueblo County, CO.); (4) *iron and steel articles* (except articles which, because of size or weight require the use of special equipment, when used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products and when used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main pipelines), from points in Kimball, Banner and Cheyenne Counties, NE, to points in TX (The gateway eliminated is Pueblo County, CO.); (5) *iron and steel articles, agricultural machinery and parts therefor*; and *materials, incidental to or used in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum; contractor's equipment, materials, and supplies, and petroleum products other than in bulk in tank vehicles*, when used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and when used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof (except the stringing or picking up of pipe in connection with main pipelines), between points in CO and WY, on the one hand, and, on the other, points in KS, OK and TX (The gateway eliminated is Kimball, Banner and Cheyenne Counties, NE.); (6) *iron and steel articles used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products*, and *iron and steel articles when used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines*, including the stringing and picking up thereof (except the stringing or picking up of pipe in connection with main pipelines), from points in KS, OK and TX to points in Kimball, Banner and Cheyenne Counties, NE (The gateway eliminated is Pueblo County, CO.); (7) *iron and steel articles*, from the facilities of Armco, Inc. near Sand Springs, OK, to points in Kimball, Banner and Cheyenne Counties, NE (The gateway eliminated is points in CO on and west of Interstate Hwy 25.); (8) *iron and steel articles*, (except commodities which, because of size or weight, require the use of special equipment, and oilfield and pipeline commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in that part of OK on and within a line beginning at the KS-OK State line, then along U.S. Hwy 81 to junction OK Hwy 51, then along OK Hwy 51 to junction U.S. Hwy 77, then along U.S. Hwy 77 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 177, then along U.S. Hwy 177 to junction U.S. Hwy 77, then along U.S. Hwy 77 to the OK-KS State line, to points in WY and CO (The gateway eliminated is Kimball, Banner and Cheyenne Counties, NE.); (9) *iron and steel articles* (except commodities which, because of size or weight, require the use of special equipment, and oilfield and pipeline commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in Kimball, Banner and Cheyenne Counties, NE, to points in that part of NE on and east of a line beginning at the NE-IA State line, then along U.S. Hwy 73 to LaPlatte, NE (The gateway eliminated is points in CO on and east of Interstate Hwy 25 and on

and south of U.S. Hwy 50.); (10) *iron and steel articles* (except commodities which, because of size or weight, require the use of special equipment, and oilfield and pipeline commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in Kimball, Banner and Cheyenne Counties, NE, to points in that part of SD on and east of a line beginning at the NE-SD State line, then along the western boundary of Union County to junction U.S. Hwy 77, then along U.S. Hwy 77 to junction U.S. Hwy 14, then along U.S. Hwy 14 to junction U.S. Hwy 81, then along U.S. Hwy 81 to junction SD Hwy 15, then along SD Hwy 15 to the SD-ND State line (The gateway eliminated is points in CO on and east of Interstate Hwy 25 and on and south of U.S. Hwy 50.); (11) *iron and steel articles* (except commodities which, because of size or weight, require the use of special equipment, and oilfield and pipeline commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in Kimball, Banner and Cheyenne Counties, NE, to points in Kimball, Banner and Cheyenne Counties, NE, to points in that part of MN on, north and east of a line beginning at the U.S.-Canada International Boundary Line, then along U.S. Hwy 71 to junction MN Hwy 6, then along MN Hwy 6 to junction U.S. Hwy 2, then along U.S. Hwy 2 to Duluth (The gateway eliminated is points in CO on and east of Interstate Hwy 25 and on and south of U.S. Hwy 50.); (12) *iron and steel articles* (except commodities which, because of size or weight, require the use of special equipment, and oilfield and pipeline commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in Kimball, Banner and Cheyenne Counties, NE, to points in that part of ND on and east of a line beginning at the ND-SD State line, then along ND Hwy 18 to junction ND Hwy 46, then along ND Hwy 46 to junction ND Hwy 32, then along ND Hwy 32 to junction Interstate Hwy 94, then along Interstate Hwy 94 to junction ND Hwy 1, then along ND Hwy 1 to the U.S.-Canada International Boundary Line (The gateway eliminated is points in CO on and east of Interstate Hwy 25 and on and south of U.S. Hwy 50.); (13) *iron and steel articles* (except commodities which, because of size or weight, require the use of special equipment, and oilfield and pipeline commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in that part of OK on and bounded by a line beginning at the KS-OK State line, then along OK Hwy 132 to junction OK Hwy 51, then along OK Hwy 51 to junction OK Hwy 77, then along OK Hwy 77 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction OK Hwy 99, then along OK Hwy 99 to junction U.S. Hwy 60, then along U.S. Hwy 60 to junction U.S. Hwy 75, then along U.S. Hwy 75 to the OK-KS State Line, then along the OK-KS State line to point of beginning, to points in Kimball, Banner and Cheyenne Counties, NE (The gateway eliminated is points in CO on and west of Interstate Hwy 25.); (14) *iron and steel articles* (except commodities as defined by the Commission in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), from points in that part of NE on and south of a line beginning at the NE-IA State line, then along the North Platte River to junction NE Hwy 50, then along NE Hwy 50 to junction U.S. Hwy 34, then along U.S. Hwy 34 to junction U.S. Hwy 77, then along U.S. Hwy 77 to the KS-NE State line, to points in Kimball, Banner and Cheyenne Counties, NE (The gateway eliminated is points in CO west of Interstate Hwy 25 and south of U.S. Hwy 50.).

(Hearing site: Denver, CO)

Note.—The purpose of this application is to eliminate the gateways specified above. This matter is directly related to a finance proceeding docketed MC-F-13934F. Published in a previous section of this Federal Register issue.

MC 95336 (Sub-10F), filed March 13, 1979. Applicant: J. B. WILLIAMS EXPRESS, INC., P.O. Box V, Williamsburgh Station, Brooklyn, NY 11211. Representative: Piken & Piken, Esqs., One Lefrak City Plaza, Flushing, NY 11368. Requested authority: General commodities, except Clases A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment. Between Junction Pennsylvania Highway 516 and unnumbered Highway (formerly U.S. Highway 111), and junction U.S. Highways 1 and 9 near Woodbridge, NJ, serving the intermediate points of Camden, NJ and Baltimore, MD; from junction Pennsylvania Highway 516 and unnumbered Highway (formerly U.S. Highway 111) over unnumbered Highway to the Pennsylvania Maryland State line, thence over Maryland Highway 45 (formerly U.S. Highway 111) to Baltimore, MD, thence over U.S. Highway 40 across the Delaware River via the Delaware Memorial Bridge to junction U.S. Highway 130 (formerly via ferry across the Delaware River between New Castle, DE and Pennsville, NJ), thence over U.S. Highway 130 to junction U.S. Highway 1, thence over U.S. Highway 1 to junction U.S. Highway 9, and return over the same route. *Regular routes:* General commodities, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading. Between Baltimore, MD and Alexandria, VA, serving all intermediate points; and the off route points of Fort Meade, MD, and those in Arlington and Fairfax Counties, VA; from Baltimore over U.S. Highway 1 to Alexandria, and return over the same route. The authority herein granted to the extent that it duplicates any authority heretofore granted to or now held by carrier, shall not be construed as conferring more than one operating right.

Note.—The purpose of this application is to modify and eliminate restrictions in the purchased operating rights. This matter is directly related to MC-F-13966F, published in a previous section of this Federal Register issue.

MC 30803 (Sub-5F), filed March 28, 1979. Applicant: WALSH BROS., INC., 33 Brill Street, Newark, NJ 07105. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting Machinery and equipment and steel, restricted to the transportation of heavy machinery and equipment and steel which because of size or weight requires the use of special equipment (1) Between Newark, NJ, and points in NJ within 25 miles of Newark, on the one hand, and, on the other, points in MA, NJ, NY and RI, and (2) Between CT, on the one hand, and, on the other, points in that part of PA east of a line beginning at the NY State line and extending south along U.S. Hwy 11 to Harrisburg, PA, thence along U.S. Hwy 111 to the PA-MD State line, including points on the indicated portions of the highways specified (eliminating Newark, NJ and Greenwich, CT as gateway points). (Hearing site: Newark, N.J.)

Note.—The purpose of this application is to eliminate the gateways as noted above, and is a directly related application to a finance proceeding docketed MC-F-13977F, published in a previous section of the Federal Register.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16908 Filed 5-30-79; 8:45]

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[Decisions Volume No. 56]

Permanent Authority Applications; Decision-Notice

Decided: May 9, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules 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.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

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.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

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 date of this publication.*

Any authority granted may reflect administatively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each 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 transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action sigificantly 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 transportation policy of 49 U.S.C. § 10101 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(a) (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 3, Members Parker, Fortier and Hill.

H. G. Homme, Jr.,

Secretary.

MC 4405 (Sub-590F), filed February 14, 1979. Applicant: DEALERS TRANSIT, INC., 4221 South 68th East Ave., Tulsa, OK 74101. Representative: Michael E. Miller, 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 (1) *commodities* the transportation of which because of size or weight requires the use of special equipment or handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more on trailers, (a) between points in LA, on the one hand, and, on the other, points in CO, NE, KS, OK, MO, AR, MS, AL, GA, FL, SC, NC, TN, KY, WV, VA, OH, IN, and MI, and (b) between points in CO, NE, KS, OK, and MO, on the one hand, and, on the other, points in AR, MS, AL, GA, FL, SC, NC, TN, KY, WV, and VA (except between points in NE and CO, on the one hand, and, on the other, points in WV). (Hearing site: New Orleans, LA.)

Note—Applicant states the purpose of this application is to seek the substitution of single-line service for joint line service.

MC 56244 (Sub-74F), filed February 9, 1979. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. #2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. 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), from the facilities of (a) Musselman Fruit Products Division of Pet, Inc., at points in Berkeley and Jefferson Counties, WV, and (b) Musselman Fruit Products

Division of Pet, Inc., and Knouse Foods, Inc., at points in Adams, Cumberland, Dauphin, Franklin and York Counties, PA, to New York, NY, and Baltimore, MD, and points in IL, IN, IA, KY, MI, MO, OH, PA, and those in WV on and north of U.S. Hwy 50, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 56244 (Sub-75F), filed February 9, 1979. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. #2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, (except commodities in bulk and frozen foods), from the facilities of Lawry's Foods, Inc., at Des Plaines, IL, to those points in PA on and east of U.S. Hwy 219, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 60014 (Sub-101F), filed February 14, 1979. Applicant: AERO TRUCKING INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel joists*, and *accessories* for steel joists, from the facilities of Socar, Inc., at or near Florence, SC, to points in AL, CT, DE, GA, FL, IL, IN, KY, ME, MD, MA, MI, MS, NH, NY, NC, OH, PA, RI, TN, VT, VA, WV, WI, and DC. (Hearing site: Washington, DC.)

MC 85934 (Sub-93F), filed February 12, 1979. Applicant: MICHIGAN TRANSPORTATION CO., a Corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *propane, butane, isobutane, and propylene*, in bulk, in tank vehicles, from the international boundary line between the United States and Canada, at or near Port Huron, MI, to points in MI, OH, and IN. (Hearing site: Chicago, IL, or Washington, DC.)

MC 85934 (Sub-95F), filed February 12, 1979. Applicant: MICHIGAN TRANSPORTATION CO., a Corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquified petroleum gas*, in bulk, in tank vehicles, from Milford, IN, to points in MI and OH. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—The certificate granted in this proceeding shall expire 5 years from the date of issuance.

MC 85934 (Sub-96F), filed February 12, 1979. Applicant: MICHIGAN TRANSPORTATION CO., a Corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coke breeze*, in bulk, from the facilities of Hickman-Williams & Co., at or near Monroe, MI, to points in IN and OH. (Hearing site: Chicago, IL, or Washington, DC.)

MC 105984 (Sub-23F), filed February 21, 1979. Applicant: JOHN B. BARBOUR TRUCKING COMPANY, a corporation, P.O. Box 577, Iowa Park, TX 76367. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles and pipe*, from the facilities of Fort Worth Pipe and Supply Co., at or near Conroe, TX, to points in the United States (including AK but excluding HI); and (2) *materials, equipment, and supplies*, used in the production, manufacture, and distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Fort Worth or Dallas, TX.)

MC 106674 (Sub-365F), filed February 16, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *prefabricated metal building products*, and (b) *materials and supplies* used in the manufacture of prefabricated metal building products, between the facilities of H. H. Robertson Company, at Ambridge, PA, and Connersville, IN, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA, and (2)(a) *ventilators, ventilator parts, air louvers, and prefabricated building metal work*, and (b) *materials and supplies* used in the manufacture of the commodities named in (2)(a) above, between the facilities of H. H. Robertson Company, at Batavia, OH, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA, restricted in (1) and (2) above, to the transportation of traffic originating at or destined to the above-named facilities. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 109294 (Sub-26F), filed January 23, 1979. Applicant: COMMERCIAL TRUCK CO., LTD., 90 Leeder Ave., Coquitlam, British Columbia, Canada, V3J6Z9. Representative: Michael B. Crutcher, 2000 IBM Building, Seattle, WA 98101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *heavy machinery, building materials, and iron and steel article*, between ports of entry on the international boundary line between the United States and Canada in WA, ID, and MI, on the one hand, and, on the other, points in WA and OR. (Hearing site: Seattle, WA.)

MC 109584 (Sub-191F), filed February 12, 1979. Applicant: ARIZONA-PACIFIC TANK LINES, a corporation, 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *Sodium hydrosulfide* and *ammonium sulfide*, in bulk, in tank vehicles, from Artesia, NM, and Big Lake, TX, to Sahuarita, AZ. (Hearing site: Phoenix, AZ, or Los Angeles, CA.)

MC 110325 (Sub-96F), filed February 13, 1979. Applicant: TRANSCON LINES, a corporation, P. O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, *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 Magma Copper at or near San Manuel, AZ, as an off-route point in connection with carrier's otherwise-authorized regular-route operations. (Hearing site: Phoenix, AZ, or Los Angeles, CA.)

MC 110325 (Sub-97F), filed February 21, 1979. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. To operate as a

common carrier, by motor vehicle, in interstate or foreign commerce, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), serving the facilities of the General Motors Corporation, at or near Constantine and Three Rivers, MI, as off-route points in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Detroit, MI.)

MC 111545 (Sub-273F), filed February 16, 1979. 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) *fabricated steel products, agricultural implements, trailers*, and *buildings*, and (2) *parts and accessories* for the commodities named in (1) above, from the facilities of The Binkley Company in Montgomery and Warren Counties, MO, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origin. (Hearing site: Washington, DC, or Kansas City, MO.)

MC 113855 (Sub-469F), filed February 16, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., SE, Rochester, MN 55901. Representative: Thomas J. VanOsdel, 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 (1) *tractors, construction machinery, mining machinery, road building machinery, coal handling machinery, and land reclamation machinery*, (2) *parts and accessories* for the commodities named in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) and (2) above (except commodities in bulk), between points in Boulder County, CO, on the one hand, and, on the other, points in the United States (including AK but excluding HI). (Hearing site: Denver, CO.)

MC 113855 (Sub-471F), filed February 16, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., SE, Rochester, MN 55901. Representative: Michael E. Miller, 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 *water heaters* and *parts* for water heaters, from Santa Monica, CA, to points in the United States (including AK but excluding HI). (Hearing site: Los Angeles, CA.)

MC 114334 (Sub-49F), filed February 15, 1979. Applicant: BUILDERS TRANSPORTATION COMPANY, a corporation, 3710 Tulane, Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pre-cast and pre-stressed concrete*, and *pre-cast and pre-stressed concrete products*, from Memphis, TN, to points in LA. (Hearing site: Memphis, TN.)

MC 116254 (Sub-255F), filed February 13, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Hampton M. Mills (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum and aluminum articles*, and (2) *materials, equipment and supplies* used in the manufacture of aluminum and aluminum articles, between points in Hancock County, Ky on the one hand, and on the other, points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, the Lower Pennisula of MI, and DC. (Hearing site: Washington, DC.)

MC 116254 (Sub-256F), filed February 13, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Hampton M. Mills (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel footwalks, steel structural forms, and steel area grating*, from Blawnox, PA, and Jackson, MS, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 117165 (Sub-52F), filed February 13, 1979. Applicant: ST. LOUIS FREIGHT LINES, INC., P.O. Box 2140, Michigan City, IN 46360. Representative: James M. Hodge, 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 (1) *building materials, asbestos fibre, and cement pipe*, from the facilities of Johns-Manville Sales Corporation, at or near Waukegan, IL, to points in KY, MD, NJ, NY, NC, PA, SC, TN and WV; (2) *insulation board*, from the facilities of Johns-Manville Perlite Corporation, at or near Rockdale, IL, to points in KY, MD, NJ, NY, NC, PA, SC, TN, and WV; and (3) *plastic pipe and accessories*, (a) from the facilities of Johns-Manville Sales Corporation, at or near Wilton, IA, to points in KY, MD, NJ, NY, NC, PA, SC, TN and WV, and (b) from the facilities of Johns-Manville Sales Corporation, at or near Jackson, TN, to points in MI and WI. (Hearing site: Chicago, IL.)

MC 117165 (Sub-53F), filed February 16, 1979. Applicant: ST. LOUIS FREIGHT LINES, INC., P.O. Box 2140, Michigan City, IN 46360. Representative: James M. Hodge, 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 (1) *composition board*, from Coldwater, MI, to those points in the United States in and east of MN, IA, MO, AR, and LA; and (2) *materials and supplies* used in the production and distribution of composition board, in the reverse direction. (Hearing site: Chicago, IL.)

MC 119315 (Sub-25F), filed February 12, 1979. Applicant: FREIGHTYWAY CORPORATION, 131 Matzinger Rd., Toledo, OH 43612. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *janitorial supplies, starches, and plastic bottles*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of the commodities named in (1) above (except commodities in bulk), between Toledo, OH, on the one hand, and, on the other, points in IN and MI. (Hearing site: Columbus, OH, or Washington, DC.)

MC 119765 (Sub-72F), filed February 21, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 South 27th St., Omaha, NE 68107. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fresh pork*, from the facilities of Crest Mark Packing Company at Chicago, IL, to points in MA and NY. (Hearing site: Omaha, NE.)

MC 119765 (Sub-73F), filed February 16, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 South 27th St., Omaha, NE 68107. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *health aids, beauty aids, and toilet preparations,* from the facilities of Judith Lynn Sales, Inc., at Bensenville, IL, to points in CO, IN, IA, KS, LA, MI, MN, MO, NE, NJ, NY, OH, PA, TN, and WI. (Hearing site: Omaha, NE.)

MC 121664 (Sub-57F), filed February 7, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35201. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *pipe, fittings, valves, hydrates, castings,* and (2) *accessories and parts* for the commodities in (1) above, from the facilities of Clow Corporation, in Jefferson and Talledga Counties, AL, to points in AL, AR, GA, FL, LA, MS, TN, KY, NC, and SC. (Hearing site: Birmingham or Montgomery, AL.)

MC 121664 (Sub-58F), filed February 7, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35201. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *coil steel,* from the facilities of Polymer Metals at Selma, AL, to points in AL, AR, GA, FL, MS, LA, TX, OH, WI, PA, WV, NC, SC, TN, MI, and NJ, and (2) *materials and supplies* used in the manufacture and distribution of coil steel (except in bulk), in the reverse direction, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Birmingham or Montgomery, AL.)

MC 123685 (Sub-28F), filed February 16, 1979. Applicant: PEOPLES CARTAGE, INC., 8045 Navarre Rd., SW, Massillon, OH 44646. Representative: Boyd B. Ferris, 50 West Broad St., 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 by manufacturers and convertors of paper and paper products, from Chicago, IL, and points in MI, to points in OH. (Hearing site: Cleveland, OH.)

MC 124025 (Sub-13F), filed January 25, 1979. Applicant: GLASS TRUCKING COMPANY, a corporation, 200 Chestnut St., P.O. Box 276, Newkirk, OK 74647. Representative: C. L. Phillips, Room 248-Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. 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 milling companies (except those the transportation of which requires special equipment), (1) from points in KS and TX, to points in AR, OK, MO, and NM, and (2) between points in KS and TX, under continuing contract(s) in (1) and (2) above with Cargill, Inc., of Wichita, KS. (Hearing site: Oklahoma City, OK.)

MC 125254 (Sub-54F), filed February 21, 1979. Applicant: MORGAN TRUCKING CO., P. O. Box 714, Muscatine, IA 52761. 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), from the facilities of Ralston Purina Company at or near Louisville, KY, to points in AL, AR, GA, IA, IL, IN, LA, MI, MN, MO, MS, OH, OK, PA, TN, VA, WI, and WV. (Hearing site: St. Louis, MO.)

MC 126375 (Sub-16F), filed February 9, 1979. Applicant: CEL TRANSPORTATION COMPANY, a corporation, P. O. Box 447, Latrobe, PA 15650. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *animal fats, vegetable oils, and feed supplements,* in bulk, in tank vehicles, between Linville, VA, on the one hand, and, on the other, points in OH, under continuing contract(s) with Jacob Stern & Sons, Inc., of Jenkintown, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 126555 (Sub-65F), filed February 14, 1979. Applicant: UNIVERSAL TRANSPORT, INC., Box 3000, Rapid City, SD 57709. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *minerals,* from points in Pennington, Custer, and Fall River Counties, SD, to points in AL, AK, AZ, CT, DE, FL, GA, ID, IA, KS, KY, LA, ME, MS, MT, NE, NV, NM, NC, ND, OR, RI, SC, TN, UT, VA, WA, WY, and DC. (Hearing site: Rapid City, SC, or Casper, WY.)

Note.—Dual operations may be involved.

MC 129484 (Sub-7F), filed February 15, 1979. Applicant: MELVIN WANG, d.b.a. MELVIN WANG TRUCKING, Route 2, P.O. Box 9, Fertile, MN 56540. Representative: Gene P. Johnson, P. O. Box 2471, Fargo, ND 58108. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid fertilizer,* and *liquid fertilizer ingredients,* in bulk, in tank vehicles, from Sioux City, IA, to points in MN and ND, under contract(s) with Fert-L-Flow, Inc., of Crookston, MN. (Hearing site: Fargo, ND.)

MC 133095 (Sub-2400F), filed February 16, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Mark C. Ellison 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 *printed matter,* and *materials, equipment, and supplies* used in the manufacture, sale, and distribution of printed matter (except commodities in bulk), between the facilities of Rand McNally & Company, at Chicago, Downers Grove, Naperville, and Skokie, IL, Versailles and Lexington, KY, Taunton, MA, Ossining, NY, and Nashville, TN, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL)

MC 133775 (Sub-18F), filed February 13, 1979. Applicant: REEFER TRANSIT LINE, INC., 1977 West 103rd St., Chicago, IL 60643. Representative: Elaine M. Conway, 10 S. LaSalle St., 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-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 commodities in bulk), from Huron, SD, to points in AL, FL, GA, MS, NC, TN, SC, and LA. Condition: The persons or persons who appear to be engaged in common control with another carrier must either file an application under Section 11343(a) (formerly Section 5(2)) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Chicago, IL, or Des Moines, IA)

MC 134105 (Sub-48F), filed February 21, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd St., Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. To operate as a *common carrier,* by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *confectionery* (except in bulk), in vehicles equipped with mechanical refrigeration, *gum dispensing machines, and stands for gum dispensing machines,* from the facilities of Leaf Confectionery, Inc., at Chicago, IL, to points in FL, NC, SC, VA, and WV, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL)

MC 134105 (Sub-49F), filed February 21, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd St., Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Munford Refrigerated Warehouse at Atlanta, GA, to points in AL, FL, IN, KY, LA, MS, NC, SC, VA, and WV. (Hearing site: Atlanta, GA)

MC 134724 (Sub-8F), filed February 21, 1979. Applicant: BIG RIG REFRIGERATION, INC., 6465 South 86th St., Omaha, NE 68127. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, 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 Wilson Foods Corporation at Omaha, NE, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 135895 (Sub-34F), filed February 21, 1979. Applicant: B & R DRAYAGE COMPANY, a corporation, P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Harold H. Mitchell, Jr., 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) *rubber articles, plastic articles, rubber materials, and plastic materials,* from the facilities of Entek Corporation of America at or near Irving, TX, to points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN, and TX; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Dallas, TX, or Jackson, MS.)

MC 136315 (Sub-57F), filed February 16, 1979. 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) *iron and steel articles,* from the facilities of Keystone Consolidated Industries, Inc., at or near Greenville, MS, to points in LA, OK, and TX; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of iron and steel articles (except commodities in bulk) in the reverse direction. (Hearing site: Jackson, MS, or Chicago, IL).

Note.—Dual operations may be involved.

MC 136315 (Sub-58F), filed February 21, 1979. 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) *iron and steel articles,* from the facilities of Keystone Consolidated Industries, Inc., at or near Peoria, IL, to points in AR, LA, MS, and TX; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Jackson, MS, or Chicago, IL).

Note.—Dual operations may be involved.

MC 136384 (Sub-13F), filed February 14, 1979. Applicant: PALMER MOTOR EXPRESS, INC., P.O. BOX 103, Dean Forest Rd., Savannah, GA 31402. Representative: W. W. Palmer, Jr. (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *newsprint paper,* from points in Laurens County, GA, to points in AL, FL, GA, KY, LA, MS, NC, SC, TN, WV, TX, AR, MO, IL, IN, OH, VA, MD, PA, OK, and KS; and (2) *newspapers,* and *materials, equipment and supplies* used in the manufacture of newsprint paper, in the reverse direction. (Hearing site: Atlanta or Savannah, GA.)

MC 136545 (Sub-15F), filed February 14, 1979. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad St., Prentice, WI 54556. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *flat glass* and *glass glazing units,* from the facilities of Guardian Industries Corporation, at or near Carleton, MI, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Detroit, MI, or Chicago, IL.)

MC 138054 (Sub-30F), filed February 12, 1979. Applicant: CONDOR CONTRACT CARRIERS, INC., 656 Wooster Street, Lodi, OH 44254. 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 *electric motors,* from Hayti, Kennett, Ava, and St. Louis, MO, Paragould and Rogers, AR, to points in AZ and CA, under a continuing contract(s) with Emerson Electric Co., of St. Louis, MO. (Hearing site: St. Louis, MO.)

Note.—Dual operations may be involved.

MC 138104 (Sub-69F), filed February 16, 1979. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove St., Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Rd. Fort Worth, TX 76116. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *trailers and trailer chassis* (except those designed to be drawn by passenger automobiles), in initial movements, from the facilities of Bush Hog Loadcraft, at or near Brady, TX, to points in the United States (except AK and HI). (Hearing site: Forth Worth or Dallas, TX.)

MC 138104 (Sub-71F), filed February 16, 1979. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove St., Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles, and pipe* from the facilities of Fort Worth Pipe and Supply Co., at or near Conroe, TX, to points in the United States (including AK but excluding HI); and (2) *materials, equipment, and supplies* used in the manufacture, production, and distribution of iron and steel articles and pipe, in the reverse direction. (Hearing site: Fort Worth or Dallas, TX.)

MC 139615 (Sub-25F), filed February 21, 1979. Applicant: D.R.S. TRANSPORT, INC., P.O. Box 29, Oskaloosa, IA 52577. 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 *lumber and lumber products*, from Ashland, MT, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Kansas City, MO.)

MC 140755 (Sub-59F), filed February 12, 1979. Applicant: BRAY TRANSPORTS, INC., P.O. Box 270, 1401 N. Little Street, 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 *petroleum products*, in bulk, in tank vehicles, from El Dorado, KS, to points in IL and IN. (Hearing site: Oklahoma City, OK, or Kansas City, MO.)

MC 141774 (Sub-19F), filed February 12, 1979. Applicant: R & L TRUCKING CO., INC., 105 Rocket Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *charcoal briquets, wood chips, lighter fluid, sawdust, and wax-impregnated fireplace logs* (except in bulk, in tank vehicles), from the facilities of the Kingsford Company, at or near Dothan, AL, to points in FL, MS, and TN, and (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities in (1) above, in the reverse direction, restricted in (1) and (2) above, to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Louisville, KY, or Washington, D.C.)

MC 141804 (Sub-179F), filed February 16, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (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 foodstuffs, 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, 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 points in CA to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic having a prior movement by water. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142974 (Sub-2F), filed February 16, 1979. Applicant: SURE TRANSPORT, INC., P.O. Box G, Lincoln, RI 02865. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103. 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 drugs, toilet preparations, health products, and beauty products, between Clinton, CT, Jefferson City, MO, Huntsville, AL, Monticello and Lafayette, IN, East Brunswick, NJ, Stone Mountain, GA, Houston, TX, and Los Angeles, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract(s) with Chesebrough-Pond's Inc., of Clinton, CT. (Hearing site: Boston, MA, or New York, NY.)

MC 143414 (Sub-3F), filed February 13, 1979. Applicant: SAVICK TRUCKING SERVICE, INC., 9116 Pawnee Road, Homerville, OH 44235. Representative: Edwin F. Savick (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *animal feed, poultry feed, animal health aids, sanitation products, and dry feed ingredients*, between the facilities of Allied Mills, Inc., at or near Ft. Wayne, IN, on the one hand, and on the other, points in PA and WV, under a continuing contract(s) with Allied Mills, Inc., of Columbus, OH. (Hearing site: Cleveland or Columbus, OH.)

MC 144054 (Sub-6F), filed February 16, 1979. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 E. Vilas Rd., Medford, OR 97501. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *compressed sawdust fireplace logs, hickory chips*, and *barbecue supplies*, from the facilities of Husky Industries, Inc., at or near White City, OR, to points in AZ, CA, ID, CO, MT, NV, UT, WA, and WY. (Hearing site: Portland, OR.)

MC 145125 (Sub-8F), filed February 21, 1979. Applicant: LAUREL MOUNTAIN OVERLAND EXPRESS, INC., P.O. Box 327, Milroy, PA 17063. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *brass products, bronze products, copper products, nickel products, brass and copper and alloys, and copper billets*, and (2) *materials, equipment, and supplies*, used in the manufacture and distribution of the commodities in (1) above, (a) between Reading and Ontelaunee Township (Berks County), PA, on the one hand, and, on the other, the facilities of Reading Industries, Inc., at Pulaski, TN, and (b) from the facilities of Reading Industries, Inc., at Pulaski, TN, to points in AZ, CA, NM, OR, and WA. (Hearing site: New York, NY.)

MC 145324 (Sub-1F), filed February 7, 1979. Applicant: LIBERTY TRANSPORT, INC., 1212 Tierra Luna, Walnut, CA 90096. Representative: Patricia M. Schnegg, 1800 United California Bank Building, 707 Wilshire Boulevard, Los Angeles, CA 90017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastics, vinyls, and upholstery*, and (2) *materials, supplies, and accessories*, for the commodities named in (1) above, from points in MA, NY, NJ, MI, CT, PA, OH, IN, LA, NC, TN, KY, GA, and IL, to Phoenix, AZ, and points in Sacramento, and Los Angeles Counties, CA. (Hearing site: Los Angeles, CA.)

MC 145884 (Sub-2F), filed February 21, 1979. Applicant: INTERLEAGUE CORPORATION, d.b.a. W. T. TRANSPORT CO., 2604 Texas Ave. Rear, P.O. Box 3964, Lubbock, TX 79452. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *Fabricated steel for building construction and parts* for fabricated steel for building construction, from Lubbock, TX, to points in AZ, CO, and NM; and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: Lubbock or Dallas, TX.)

MC 145904 (Sub-4F), filed February 7, 1979. Applicant: SOUTH WEST LEASING INC., P.O. Box 152, Waterloo, IA 50704. 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 *meats, meat products, 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 skins and commodities in bulk) from the facilities of John Morrell & Co., at or near Sioux Falls, SD, and Estherville and Sioux City, IA, to points in IL, MO, and WI, restricted to the transportation of traffic originating at the named origin. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 1464444F, Filed February 13, 1979. Applicant: JAMES T. BROWN, d.b.a. PIONEER TRANSPORT COMPANY, 239 East Dale St., South St. Paul, MN 55075. Representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum* and *petroleum products* (except gasoline and liquified petroleum gas), from Minneapolis-St. Paul, MN, to points in ND, SD, IA, and WI. (Hearing site: Minneapolis-St. Paul, MN.)

MC 146485F, filed February 16, 1979. Applicant: MARBURGER REFRIGERATED EXPRESS, INC., P.O. Box 387, Peru, IN 46970. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. To operate as a *Common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen fruits, frozen vegetables, frozen potatoes, and frozen meats,* from Caldwell and Heyburn, ID, to points in IN. (Hearing site: Indianapolis, IN.)

Passengers

MC 82965 (Sub-5F), filed February 16, 1979. Applicant: AMADOR STAGE LINES, INC., 213–13th Street, P.O. Box 15707, Sacramento, CA 95813. Representative: Raymond A Greene, Jr., 100 Pine St., Suite 2550, San Francisco, CA 94111. 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 vehicles specially equipped to accommodate wheelchairs, in special and charter operations, beginning and ending at points in CA, and extending to points in the United States (including AK but excluding HI). (Hearing site: San Francisco, CA.)

Broker

MC 130555F, filed February 16, 1979. Applicant: INSTITUTIONAL FINANCIAL SERVICES INC., d.b.a. NANCY & UDEAN CHRISTIAN TOURS, 21 Audubon Dr., Asheville, NC 28804. Representative; Udean Burke (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker,* at Asheville, NC, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in charter operations, beginning and ending at points in NC, and extending to points in the United States (including AK but excluding HI). (Hearing site: Asheville, or Charlotte, NC.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, NY,* 54 M.C.C. 291(1952).

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[DECISIONS VOLUME NO. 61]

Permanent Authority Applications; Decision-Notice

Decided: May 16, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules 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.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

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.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each 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 transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the qualify 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 transportation policy of 49 U.S.C. § 10101 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(a) [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 Liberman, Eaton, and Boyle.

H. G. Homme, Jr.,

Secretary.

MC 19013 (Sub-10F), filed February 22, 1979. Applicant: GEORGE HILLMAN TRUCKING CO., 285 Highland Cross, Rutherford, NJ 07000. Representative: Robert A. Russell, Esq., 300 Main Street, Hackettstown, NJ 07840. To operate as a *contract carrier,* by motor vehicle in interstate or foreign commerce, over irregular routes, transporting (1) *electrical cable, insulating tape, cable splicing kits,* and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, from Passaic, Paterson and North Brunswick, NJ, Phillipsdale and Ashton, RI, Worcester, MA, Richmond, KY, Birmingham, AL, Cleveland, OH, and Downers Grove, IL, to those points in 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 international boundary line between the United States and Canada, and (3) *materials and supplies* used in the manufacture of electrical cable, and empty reels in the reverse direction. (Hearing site: New York, NY, or Newark, NJ.)

MC 67403 (Sub-11F), filed February 28, 1979. Applicant: BROES TRUCKING CO., INC., Interstate Hwy 295 & Dominick Lane, Paulsboro, NJ 08066. Representative: Ira G. Megdal, Esq. 499 Cooper Landing Road, Cherry Hill, NJ 08002. To operate as a *common carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles* (1) from the facilities of Ferro Suppliers, Ltd., at (a) Philadelphia, PA, (b) Camden, NJ, and (c) Gloucester City, NJ, to Windber, Souderton, Greentown, York, Devault, Topton, Williamsport, Dubois, Phillipsburg, Wilkes Barre, Carbondale, Allentown, Easton, Reading, Pottsville, Pottstown, Lancaster, Lebanon, Harrisburg, Hanover, Shamokin, and Berwick, PA, and Baltimore, Hyattsville, Frederick, Gaithersburg, Hagerstown, and Hampstead, MD, points in Suffolk and Westchester Counties, NY, and New York, Albany, Utica, Ithaca, and Binghampton, NY, and (2) from New York, NY, to the facilities of Ferro Suppliers, Ltd., at (a) Philadelphia, PA, (b) Camden and (c) Gloucester City, NJ. (Hearing site: Philadelphia, PA or Camden, NJ.)

MC 107012 (Sub-347F), filed February 22, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gary M. Crist (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *kitchen cabinets,* in cartons, from the facilities of Boise Cascade Corporation, in Frederick, Clarke, and Shenandoah Counties, VA, to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN. (Hearing site: Richmond, VA, or Washington, DC.)

MC 109823 (Sub-4F), filed February 28, 1979. Applicant: MCGAUGHEY BROS., INC., Third & Center Streets, Leetsdale, PA 15056. Representative: Arthur J. Diskin, 806 Frick Building, Pittsburgh, PA 15219. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *refractories,* from the facilities of the Corhart Refractories, division of Corning Glass Works, at Buckhannon, WV, to points in IN, MD, MI, NY, OH, and PA. (Hearing site: Pittsburgh, PA, or Washington DC.)

MC 110563 (Sub-263F), filed February 26, 1979. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, St. Rt. 29 N., Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting alcholic beverages, from St. Louis, MO, to points in AL, CT, DE, FL, GA, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC. (Hearing site: St. Louis, MO.)

MC 112713 (Sub-250F), filed February 26, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: Robert E. DeLand (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), between Northfield, MA, and Keene, NH: from Northfield over MA Hwy 63 to the MA–NH state line, then over NH Hwy 10 to Keene and return over the same route, as an alternate route for operating convenience only, serving no intermediate points. 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: Kansas City, MO, or Chicago, IL.)

MC 112713 (Sub-244F), filed January 31, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records (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), (1) Between Marietta, GA, and Miami, FL: From Marietta over Interstate Hwy 75 to junction U.S. Hwy 319, then over U.S. Hwy 319 to junction U.S. Hwys 19 and 27, then over U.S. Hwys 19 and 27 to junction U.S. Hwy 19, then over U.S. Hwy 19 to junction U.S. Hwy 41, then over U.S. Hwy 41, to Miami, and return over the same route, serving all intermediate points in FL; (2) Between Marietta, GA and Key West, FL: From Marietta over Interstate Hwy 75 to junction Interstate Hwy 10, then over

Interstate Hwy 10 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction U.S. Hwy 1 at Coral Gables, FL, then over U.S. Hwy 1 to Key West, and return over the same routes, serving all intermediate points in FL; (3) Between Lake City and Miami, FL: from Lake City over Interstate Hwy 75 to junction U.S. Hwy 27, then over U.S. Hwy 27 to Miami, and return over the same route, serving all intermediate points; (4) Between Fort Myers and West Palm Beach, FL: from Fort Myers over FL Hwy 80 to junction U.S. Hwy 441, then over U.S. Hwy 441 to West Palm Beach, and return over the same route, serving all intermediate points; (5) Between Tampa and Daytona Beach, FL over Interstate Hwy 4, serving all intermediate points; (6) Between Tallahassee, FL, and the junction of Interstate Hwys 10 and 75; From Tallahassee over Interstate Hwy 10 to junction Interstate Hwy 75, and return over the same route, serving all intermediate points; (7) between Marietta, GA, and Pensacola, FL; From Marietta over Interstate Hwy 75 to junction Interstate Hwy 85, then over Interstate Hwy 85 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction U.S. Hwy 31, then over U.S. Hwy 31 to junction U.S. Hwy 29, then over U.S. Hwy 29 to Pensacola, and return over the same route, serving all intermeditate points in FL; (8) Between Mobile, AL, and Tallahassee, FL, over Interstate Hwy 10, serving all intermeditate points in FL; (9) Between Pensacola, FL, and the junction of U.S. Hwy 231 and Interstate Hwy 10; From Pensacola over U.S. Hwy 98 to junction U.S. Hwy 231, then over U.S. Hwy 231 to junction Interstate Hwy 10, and return over the same route, serving all intermediate points; (10) Between Marietta, GA and Jacksonville, FL; From Marietta over Interstate Hwy 75 to junction Interstate Hwy 16, then over Interstate Hwy 16 to junction U.S. Hwy 17, then over U.S. Hwy 17 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Jacksonville, and return over the same route, serving Savannah, GA as an intermediate point and serving all intermediate points in FL; (11) between Richmond, VA, and Savannah, GA, over Interstate Hwy 95, serving no intermediate points. (Hearing site: Kansas City, MO, or Chicago, IL).

Note.—Common control may be involved. The person or persons who appear to be engaged in common control of applicant and other regulated carriers 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 114552 (Sub-203F), filed February 21, 1979. Applicant: SENN TRUCKING COMPANY, A Corporation, P.O. Box 220, Newberry, SC 29108. 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 *piling, and construction equipment and supplies*, between those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: St. Louis, MO, or Washington, DC).

MC 115162 (Sub-460F), filed February 26, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interestate of foreign commerce, over irregular routes, transporting (1) *plastic articles* from points in McDonough County, IL, to points in IN, IA, KS, MI, MN, MO, NE, OH and WI, and (2) *equipment, materials and supplies* used in the manufacture or distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Chicago, IL, or Atlanta, GA).

MC 115162 (Sub-461F), filed February 26, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, transporting (1) *panels*, and (2) *equipment, materials and supplies* used in the installation of the commodities in (1) above, (except commodities in bulk, in tank vehicles), from points in Greenville County, SC and Dallas County, TX, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Dallas or Houston, TX).

MC 116273 (Sub-222F), filed February 28, 1979. Applicant: D & L TRANSPORT, INC., 3800 South Laramie Avenue, Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting lubricants, and rust prevention *compound hydraulic system fluid* (except petroleum products, in bulk, in tank vehicles, from Detroit, MI, to points in AL, GA, IL, IN, KY, OH, PA, WI, and MN. (Hearing site: Chicago, IL, or Detroit, MI).

MC 125533 (Sub-35F), filed February 27, 1979. Applicant: GEORGE W. KUGLER, INC., 2800 East Waterloo Road, Akron, OH 44312. 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 *plastic articles and polystyrene products*, from the facilities of U. C. Industries, at Tallmadge, OH to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site; Columbus, OH).

MC 125813 (Sub-20F), filed February 14, 1979. Applicant: CRESSLER TRUCKING, INC., 153 West Orange Street, Shippensburg, PA 17257. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., 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 *foundry supplies* and *ferrous alloys*, between Sheffield, AL, Milwaukee, WI, Philadelphia, PA, and points in OH and WV, on the one hand, and, on the other, points in CT, DE, MD, MA, NJ, NY, and PA. (Hearing site: Philadelphia, PA).

MC 128273 (Sub-317F), filed September 1, 1978, and previously published in the Federal Register on November 14, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper boxes, knocked down* (except corrugated), (1) between the facilities of Potlatch Corporation, at or near (a) Fort Wayne, IN, and (b) Sikeston, MO, restricted to the transportation of traffic originating at and destined to the named points, and (2) from the facilities of Potlatch Corporation, at or near (a) Fort Wayne, IN, and (b) Sikeston, MO, to points in AZ, CA, NV, and UT, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Seattle, WA).

Note.—The purpose of this republication is to correct the commodity description and clarify the territorial descriptions and restrictions.

MC 129032 (Sub-76F), filed February 27, 1979. Applicant: TOM INMAN TRUCKING, INC., 6015 South 49th West Ave., 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) *bicycles, and tricycles,* (2) *accessories* and *parts* for bicycles and tricycles, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of the Huffy Corporation, at or near Ponca City, OK, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, and WY, restricted to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Akron, OH or Washington, DC).

MC 134813 (Sub-8F), filed February 27, 1979. Applicant: WESTERN CARTAGE, INC., 2921 Dawson Road, Tulsa, OK 74110. Representative: Michael R. Vanderburg, 5200 South Yale, Suite 400, Tulsa, OK 74135. To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *tissue and tissue paper,* (2) *wood pulp,* and (3) *equipment, materials, and supplies* used in the manufacturing and distribution of the commodities in (1) and (2) above (except commodities in bulk, and commodities, the transportation of which because of size or weight require the use of special equipment), between the facilities of Belco Tissue Mills or Robel Tissue Mills, at Pryor, OK, on the one hand, and, on the other, points in AR, CO, IL, IN, IA, KS, KY, LA, MS, MO, NE, NM, OH, OK, TN, and TX, under continuing contract(s) with Robel Tissue Company, of Pryor, OK. (Hearing site: Tulsa or Pryor, OK.)

Note.—Dual operations may be involved.

MC 135033 (Sub-7F), filed February 12, 1979. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 7000 West Center Road, Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same address as applicant). To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *air conditioning, dishwashing, drying, heating, air cleaning, and humidifying equipment,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Fedders Corporation, at or near (a) Edison, NJ (b) Elkton and Frederick, MD (c) Effingham and Herrin, IL, and (d) Muskegon, MI, on the one hand, and, on the other, points in AR, IL, IN, IA, KS, KY, MI, MN, MO, NE, NJ, NY, OH, PA, SD, TN, WV, and WI, under continuing contracts with Fedders Corporation, of Edison, NJ. (Hearing site: Newark, NJ.)

MC 139973 (Sub-64F), filed February 27, 1979. Applicant: J. H. WARE TRUCKING, INC., 909 Brown Street, P.O. Box 398, Fulton, MO 65251. 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 (1) *electrical appliances, electrical equipment, poleline hardware, and parts for electrical appliances and equipment,* and (2) *materials and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above (except commodities in bulk), between Chattanooga, TN, Madisonville, KY, and Albion, MI, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Mc-Graw-Edison Co. (Hearing site: Kansas City, MO, or Chicago, IL.)

MC 143183 (Sub-8F), filed January 18, 1979, and previously published in the Federal Register on March 29, 1979. Applicant: L. M. ROACH, d/b/a/ D & L TRUCKING COMPANY, P.O. Box 1741, 145 Sampson Road, Wilmington, NC 28401. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ammonium nitrate and dry fertilizer,* from Wilmington and Statesville, NC, to points in TN and WV. (Hearing site: Wilmington or Raleigh, NC.)

Note.—The purpose of this republication is to add ammonium nitrate to the commodity description.

MC 143233 (Sub-4F), filed February 26, 1979. Applicant: DENNY TRANSPORT, INC., 3405 Industrial Parkway, Jeffersonville, IN 47130. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *prepared foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of The Pillsbury Co., at or near New Albany, IN, to points in AL, AR, FL, GA, IL, IN, IA, MN, MS, MO, ND, and WI, under continuing contract(s) with The Pillsbury Co., of New Albany, IN. (Hearing site: Louisville, KY.)

Note.—Dual operations may be involved.

MC 144162 (Sub-8F), filed February 9, 1979. Applicant: TIME CONTRACT CARRIERS, INC., 17734 Sierra Hwy, Canyon Country, CA 91351. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *unplated iron pipe fittings,* from the facilities of Pittsburgh Nipple Works, Inc., at Pittsburgh, PA, to Los Angeles and San Francisco, CA, Denver, CO, Portland, OR, Jackson, MS, Salt Lake City, UT, and Houston, and Dallas, TX, under continuing contract(s) with Pittsburgh Nipple Works, Inc., of Pittsburgh, PA. (Hearing site: Los Angeles, CA.)

Note.—Dual operations may be involved.

MC 145172 (Sub-1F), filed February 16, 1979. Applicant: ROBERT L. WELBORN AND WANDA SUE WELBORN, A Co-Partnership, d/b/a ORIENT EXPRESS, 4322 West Greenway Road, Glendale, AZ 85306. Representative: A. Michael Bernstein, 1441 E. Thomas Road, Phoenix, AZ 85014. 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, between points in Los Angeles and Orange Counties, CA, on the one hand, and, on the other, points in Maricopa County, AZ. (Hearing site: Phoenix, AZ.)

Note.—Dual operations may be involved.

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[Volume No. 65]

Permanent Authority Decisions; Decision-Notice

Decided: May 16, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest, on or before July 2, 1979, 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 particularly 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 met the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

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.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitnes 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 transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are nor 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 transportation policy of 49 U.S.C. 10101 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(a) (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 3, Members Parker, Foriter, and Hill.

H. G. Homme, Jr.,

Secretary.

MC 106373 (Sub-38F), filed November 17, 1978. Applicant: THE SERVICE TRANSPORT CO., 114½ East Main Street, Ravenna, OH 55266. 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) *iron and steel articles,* (a) from Blissfield, Detroit, Marine City, and Monroe, MI, and Akron, Amherst, Ashtabula, Avon, Birmingham, Bowling Green, Brilliant, Bucyrus, Calcutta, Canton, Cleveland, Columbiana, Conneaut, Costonia, East Liverpool, East Palestine, Elyria, Empire, Fremont, Fostoria, Knoxville, Lodi, Lorain, Lowellville, McDonald, Mansfield, Martins Ferry, Massillon, Mingo Junction, Newton Falls, New Washington, Niles, North Jackson, Painesville, Port Clinton, Port Homer, Ravenna, Salem, Sandusky, Steubenville, Stratton, Struthers, Toledo, Toronto, Vermilion, Warren, Wellsville, Willard, Wooster, Yorkville, and Youngstown, OH, to points in MD, NJ, NY, PA, and WV, and (b) from Beechbottom, Benwood, Bethany, Chester, Follansbee, Hancock, Newell, New Cumberland, Wheeling, Weirton, Wellsburg, and West Liberty, WV, to points in MD, NJ, NY, OH, and PA; (2) *iron and steel, and iron and steel products* (except commodities the transportation of which by reason of size or weight the use of special equipment), (a) between Blissfield, Detroit, Marine City, and Monroe, MI, on the one hand, and, on the other, points in PA, OH, those in WV on and north of U.S. Hwy 50, and those in NY on and west of a line beginning at Oswego, NY, and extending along NY Hwy to Syracuse, NY, then along U.S. Hwy 11 to the NY–PA State line, (b) between Akron, Amherst, Ashtabula, Avon, Birmingham, Bowling Green, Brilliant, Bucyrus, Calcutta, Canton, Cleveland, Columbiana, Conneaut, Costonia, East Liverpool, East Palestine, Elyria, Empire, Fremont, Fostoria, Knoxville, Lodi, Lorain, Lowellville, McDonald, Mansfield, Martins Ferry, Massillon, Mingo Junction, Newton Falls, New Washington, Niles, North Jackson, Painesville, Port Clinton, Port Homer, Ravenna, Salem, Sandusky, Steubenville, Stratton, Struthers, Toledo, Toronto, Vermilion, Warren, Wellsville, Willard, Wooster, Yorkville, and Youngstown, OH, on the one hand, and, on the other, points in PA, those in WV on and north of U.S. Hwy 50, and those in NY on and west of a line beginning at Oswego, NY, and extending along NY Hwy 57 to Syracuse, NY, and then along U.S. Hwy 11 to the NY–PA State line; (c) between Black Rock, Brockton, Buffalo, Clarence Center, Depew, Dunkirk, Fredonia, Hamburg, Jamestown, Lancaster, Lockport, Middleport, Niagara Falls, North Tonawanda, Rochester, Tonawanda, and Wilson, NY, on the one hand, and, on the other, points in PA, OH, and those in WV on and north of U.S. Hwy 50; (d) between Ellwood City, Erie, New Castle, and Pittsburgh, PA, and points with 30 miles

of Pittsburgh, on the one hand, and, on the other, points in OH, those in WV on and north of U.S. Hwy 50, those in NY on and west of a line beginning at Oswego, NY, and extending along NY Hwy 57 to Syracuse, NY, and then along U.S. Hwy 11 to the NY–PA State line; (e) between Beechbottom, Benwood, Bethany, Chester, Follansbee, Hancock, Newell, New Cumberland, Wheeling, Weirton, Wellsburg, and West Liberty, WV, on the one hand, and, on the other, points in PA, OH, and those in NY on and west of a line beginning at Oswego, NY, and extending along NY Hwy to Syracuse, NY, and then along U.S. Hwy 11 to the the NY–PA State line, and (f) from points in PA, OH, those in WV on and north of U.S. Hwy 50, and those in NY on and west of a line beginning at Oswego, NY, and extending along NY Hwy 57 to Syracuse, NY, and then along U.S. Hwy 11 to the NY–PA State line, to Flint, Jackson, Lansing, Pontiac, and Saginaw, MI. Condition: Issuance of a certificate is subject to the prior submission by applicant of a verified statement stating details of applicant's existing authority and traffic studies reflecting past and existing services performed by applicant. (Hearing site: Washington, DC.)

Note.—The purpose of this application is to eliminate existing gateways which result from a combination of regular and irregular route authorities. Part (1)(a) seeks to eliminate the Canton, OH, gateway, Part (1)(b) seeks to eliminate the gateways of Canton, OH, and Sharon, PA. Part (2)(a) seeks to eliminate the Youngstown, OH, and Sharon, PA, gateways. Part (2)(b) seeks to eliminate the gateways of Youngstown, OH, and Sharon, PA. Part (2)(c) seeks to eliminate the gateway of Sharon, PA. Part (2)(d) seeks to eliminate the gateway of Sharon, PA. Part (2)(e) seeks to eliminate of Sharon, PA. Part (2)(f) seeks to eliminate the gateways of Sharon, PA, and Youngstown, OH.

MC 114552 (Sub-204F), filed February 26, 1979. Applicant: SENN TRUCKING COMPANY, a corporation, Post Office Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, 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) *aluminum and aluminum products*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, or installation of commodities in (1) above, between the facilities of V.A.W. of America, Inc., in St. Johns County, FL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Jacksonville, FL.)

MC 117883 (Sub-243F), filed February 8, 1979. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan (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 Duffy-Mott Co., Inc., at (1) Hamlin, (2) Holley, and (3) Williamson, NY, to points in IL, IN, IA, KS, KY, MI, MN, MO, NE, OH, and WI, restricted to the transportation of traffic originating at named origins and destined to the indicated destinations. (Hearing site: New York, NY, or Washington, DC.)

MC 119872 (Sub-16F), filed February 15, 1979. Applicant: GULF TRANSPORT LIMITED, 16 Exhibition Drive, Charlottetown, P.E.I., Canada. Representative: Kenneth B. Williams, 84 State Street, Boston, MA 02109. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *frozen foods and frozen food products*, and (2) *meats and meat products*, (except commodities in bulk), between the ports of entry on the international boundary line between the United States and Canada in ME, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, and VT. (Hearing site: Boston, MA, or Portland, ME.)

MC 134552 (Sub-9F), filed February 23, 1979. Applicant: TRANSAMERICAN CARRIER CO., a corporation, Route 1, Box 28, Winthrop, MN 55396. 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 *fertilizer and fertilizer materials*, (except anhydrous ammonia), (1) from Pine Bend, MN, to points in IA, NE, NC, SD, and WI, and those in the Upper Peninsula of MI, and (2) from the facilities of N-ReN Corporation, at or near East Dubuque, IL, to points in IA, MN, and WI. (Hearing site: Minneapolis, MN.)

MC 135082 (Sub-83F), filed January 2, 1979, and previously published in the Federal Register on March 15, 1979. Applicant: ROADRUNNER TRUCKING, INC., Post Office Box 26748, 415 Rankin Road, N.E., Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *refractories, brick, tile, and commodities* used in the installation of refractories, brick, and tile (except commodities in bulk), (a) between points in AZ, CO, and NM, (b) from points in AZ, CO, and NM to points in AR, CA, KS, LA, NV, MT, OK, OR, TX, UT, WA, WY, MO, and ID, (c) from Memphis, TN, and points in AR, LA, MO, OK, and TX to points in AZ, CO, and NM, and (d) from points in CA, ID, MT, NV, OR, UT, WA, and WY to points in AZ, CO, and NM; and (2) *brick, tile, and commodities* used in the installation of brick and tile, (except commodities in bulk), from points in Los Angeles and Orange Counties, CA, to those points in the United States in and east of ND, SD, NE, IA, IL, KY, TN, and MS. (Hearing site: Albuquerque, NM, or Houston, TX.)

Note.—Applicant intends to tack the separate authorities in (1) above under (a), (b), (c), and (d) at points in the common gateway States of AZ, CO, and NM in order to provide a through service from the origin States specified in (c) and (d) to points in the destination States specified in (b). The purpose of this republication is to add the tacking information.

MC 140193 (Sub-4F), filed January 5, 1979. Applicant: RICH GRANT, INC., 910 West 24th Street, Ogden, UT 84401. 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, transporting *cheese, cheese products, and synthetic cheese*, from points in MN and WI, to the facilities of L. D. Schreiber Cheese Company, Inc., at or near Logan, UT, under a continuing contract(s) with L. D. Schreiber Cheese Company, Inc., at or near Logan, UT. (Hearing site: Washington, DC.)

MC 141362 (Sub-12F), filed January 22, 1979, and previously published in the Federal Register on March 22, 1979. Applicant: SOUTHWEST BULK TRANSPORT, 1046–C Commerce Street, San Marcos, CA 92069. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *dry feed supplements*, in bulk, and (b) *dry feed supplements*, in bags, when moving in mixed loads with dry feed supplements, in bulk, from points in Orange County, CA, to points in Pima County, AZ, and (2) *dry feed supplements*, from points in Orange County, CA, to points in Cochise County, AZ. (Hearing site: Los Angeles, CA.)

Note.—The purpose of this republication is to clarify the commodity description in (1) above.

MC 141532 (Sub-37F), filed February 16, 1979. Applicant: PACIFIC STATES TRANSPORT, INC., 35433 16th Avenue South, Federal Way, WA 98003. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *lumber, lumber mill products, millwork, and wood products*, from points in CA, ID, MT, OR, and WA to points in AR, IL, IN, IA, KS, MI, MN, MO, NE, OH, OK, PA, TX, and WI; and (2)(a) *commodities*, the transportation of which, because of size or weight, requires the use of special equipment or special handling, (b) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), when transported in mixed loads with the commodities in (2)(a) above, (c) *self-propelled articles*, (d) *farm equipment*, (e) *construction materials, construction equipment*, and *construction supplies*, (f) *metal articles and pipe*, (except iron and steel pipe), (i) from points in AR, IL, IN, IA, KS, MI, MN, MO, NE, OH, OK, PA, TX, and WI to points in AZ, CA, ID, NV, OR, and WA, and (ii) from points in CA, OR, and WA to points in AR, IL, IN, IA, KS, MI, MN, MO, NE, OH, OK, PA, TX, and WI. (Hearing site: Portland, OR, or San Francisco, CA.)

MC 145152 (Sub-27F), filed December 18, 1978, and previously published in the Federal Register on February 15, 1979. 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 *such commodities* as are dealt in or used by wholesale and retail discount and variety stores, from points in AZ, CA, CO, CT, DE, FL, GA, IL, IN, LA, MA, MD, ME, MS, NC, NJ, NY, OH, OR, PA, RI, SC, TX, VA, VT, WA, and WV, to the facilities of Wal-Mart Stores, Inc., at or near Bentonville, Ft. Smith, and Searcy, AR. (Hearing site: Tulsa, OK, or Little Rock, AR.)

Note.—The purpose of this republicaton is to change the territorial description.

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[Volume No. 66]

Permanent Authority Decisions; Decision-Notice

Decided: May 16, 1979.

The following applications, filed on or after March 1, 1979, 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 petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979), *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, and has the necessary equipment and facilities for performing that service, and (2) has either performed service within the scope of the application or has solicited business which is controlled by those supporting the application and which would have involved transportation performed within the scope of the application.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably by expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

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.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exception 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 present and future 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 transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before July 2, 1979 (or, if the application later becomes unopposed), appropriate authority will be issued to each

applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall 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 No. 3, Members Parker, Fortier, and Hill.

H. G. Homme, Jr.,

Secretary.

MC 1263 (Sub-32F), filed March 1, 1979. Applicant: McCARTY TRUCK LINE, INC., 17th and Harris Avenue, Trenton, MO 64683. Representative: James M. McCarty (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *furnaces, stoves, pipe, brushes, motors, and dampers*, and (b) *parts and accessories* for commodities in (1) (a) above, from Gallatin, MO; and the facilities of Longwood Furnace Company at or near Gallatin, MO, to points in IL, IN, IA, MI, MN, OH, PA, and WI; (2) (a) *dampers, castings, stove pipe, chimneys, air filters, and controls*, (b) *accessories* for the commodities in (2) (a) above, and (c) *materials, equipment, and supplies* used in the manufacture of furnaces and stoves, from points in IL,IN, OH, and WI; to Gallatin, MO, and the facilities of Longwood Furnace Company at or near Gallatin, MO, and (3) *pallets, lumber, nails, and metal clamps*, from South Gifford and Trenton, MO, and the facilities of Green Hill's Pallet at or near Trenton, MO, to points in IL, IN, MN, and WI. (Hearing site: Kansas City, MO.)

MC 2202 (Sub-586F), filed March 2, 1979. Applicant: ROADWAY EXPRESS, Inc., P.O. Box 471, 1077 Gorge Blvd., 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), (1) between Elizabeth, GA, and Cleveland, TN: from Elizabeth over GA Hwy 5 to the GA-TN State line, then over TN Hwy 68 to Ducktown, then over U.S. Hwy 64 to Cleveland, and return over the same route, serving all intermediate points between Elizabeth, GA, and Ductown, TN, including Elizabeth and Ductown, and serving Whitestone and Marblehill, GA, as off-route points, (2) between Ellijay and Chatsworth, GA, over U.S. Hwy 76, serving no intermediate points, (3) between Jasper and Fairmount, GA, over GA Hwy 53, serving no intermediate points, (4) between Cisco, GA, and Cleveland, TN: from Cisco over U.S. Hwy 411 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Cleveland, and return over the same route, serving no intermediate points (Hearing site: Atlanta, GA.)

Note.—Applicant intends to tack with existing authority.

MC 3252 (Sub-110F), filed March 2, 1979. Applicant: MERRILL TRANSPORT CO., A Corporation, 1037 Forest Avenue, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *caustic soda*, in bulk, from Searsport, ME, to points in CT, MA, NH, NJ, NY, PA, RI, VT, and the ports of entry on the international boundary line between the United States and Canada in ME. (Hearing site: Portland, ME, or Boston, MA.)

MC 32882 (Sub-106F), filed March 5, 1979. Applicant: MITCHELL BROS. TRUCK LINES, a corporation, 3841 North Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, 3841 N Columbia Blvd., P.O. Box 17039, Portland, OR 97217. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *truck parts and tractor cabs*, from Orrville, OH, to Ogden, UT, and the ports of entry on the international boundary line between the United States and Canada in WA. (Hearing site: Salt Lake City, UT.)

MC 38092 (Sub-4F), filed March 8, 1979. Applicant: EARLE W. NOYES & SONS MOVING SPECIALISTS, a corporation, 127 Oxford Street, Portland, ME 04111. Representative: Lester W. Noyes (same address as applicant) To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household goods*, as defined by the Commission, between points in CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, VA, VT, and DC. (Hearing site: Portland, ME, or Boston, MA.)

MC 39073 (Sub-9F), filed March 9, 1979. Applicant: BUDRECK TRUCK LINES, INC., 9330 South Constance, Chicago, IL 60617. Representative: Richard A. Kerwin, 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 *fruit juices*, from the facilities of Home Juice Company, at Melrose Park, IL, to Louisville, KY, and points in OH and IN; and (2) *glass or plastic bottles*, from Dayton, OH, to the facilities of Home Juice Company, at Melrose Park, IL. (Hearing site: Chicago, IL.)

MC 59352 (Sub-5F), filed March 9, 1979. Applicant: C. L. & A. MOTOR DELIVERY, INC., 4110 Dane Avenue, Cincinnati, OH 45223. Representative: Norbert B. Flick, 715 Executive Bldg., Cincinnati, OH 45202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass containers, accessories* for glass containers, and *cartons*, from the facilities of Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., at Lawrenceburg, IN, to Columbus, OH. (Hearing site: Cincinnati, OH.)

MC 61592 (Sub-437F), filed March 1, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *drainage, sewer, or underground work bituminized fibre pipe*, asphalt or pitch impregnated, *fittings for pipe*, and *testing containers*, from Hartsville, SC, to points in the United States (except AK and HI); and *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Columbia, SC.)

MC 61592 (Sub-438F), filed March 5, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *tractors (except those with vehicle beds, bed frames, and fifth wheels)*, (2) *equipment designed for use in conjunction with tractors*, (3) *agricultural, industrial, and construction equipment*, and (4) *attachments* for the commodities in (2) and (3) above, from

Racine, WI, to points in AR, LA, MS, and TN. (Hearing site: Chicago, IL.)

MC 69833 (Sub-141F), filed March 8, 1979. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Avenue, NW., Grand Rapids, MI 49503. Representative: Harry Pohlad (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 commodities requiring special equipment), serving Reed City, MI, as an intermediate point on applicant's presently authorized route between Grand Rapids, MI, and Ludington, MI, over U.S. Hwy 131 to junction U.S. Hwy 10, then over U.S. Hwy 10 to Ludington, MI. (Hearing site: Lansing, or Detroit, MI)

Note.—The person or persons who appear to be engaged in common control with another carrier must either file an application under 49 U.S.C. 11343(a) (1978) (formerly Section 5(2), of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary.

MC 70832 (Sub-29F), filed March 8, 1979. Applicant: NEW PENN MOTOR EXPRESS, INC., P.O. Box 630, Lebanon, PA 17042. Representative: S. Harrison Kahn, Suite 733 Investment Bldg., 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 *general commodities* (except those of unusual value, classes A and B explosives, houshold goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Lancaster and Philadelphia, PA, over U.S. Hwy 30, as an alternate route for operating convenience only, serving no intermediate points. (Hearing site: Harrisburgh, PA.)

MC 71652 (Sub-30F), filed March 5, 1979. Applicant: BYRNE TRUCKING, INC., P.O. Box 1124, Medford, OR 97501. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum and aluminum articles*, from the facilities of Kaiser Aluminum & Chemical Corporation, Trentwood Mill, at or near Spokane, WA, to points in CA. (Hearing site: San Francisco, CA, or Portland, OR.)

MC 71652 (Sub-31F), filed March 5, 1979. Applicant: BYRNE TRUCKING, INC., P.O. Box 1124, Medford, OR 97501. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, as described in Appendix V to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, from the facilities of Metra Steel, at or near Portland, OR, on the one hand, and, on the other, points in CA. (Hearing site: San Francisco, CA, or Portland, OR.)

Note.—The purpose of this application is to substitute single line service in lieu of existing interline service.

MC 75192 (Sub-5F), filed March 6, 1979. Applicant: CHAS. T. BROWN TRUCK LINES, INCORPORATED, 1208 Buff Street, Greensboro, NC 27406. Representative: Terrell C. C., P.O. Box 25, Stanleytown, VA 24168. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *air conditioners, air pollution control equipment systems, and supplies, contractors equipment, iron and steel articles, iron and steel tanks, cement and steel cargo hoppers*, and *machinery*, between points in NC, on the one hand, and, on the other, points in SC, and VA. (Hearing site: Greensboro, NC, or Raleigh, NC).

MC 78362 (Sub-5F), filed March 1, 1979. Applicant: LINDSTROM BROS. VAN LINES, INC., d.b.a. LINDSTROM BROS., 152 Tremont Street, Melrose, MA 02176. Representative: Chester G. Lindstrom (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household goods*, between points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA, VT, WV, WI, and DC. (Hearing site: Boston, MA.)

MC 103993 (Sub-953F), filed March 5, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: Paul D. Borghesani (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *composition board*, from Jacksonville, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 107012 (Sub-352F), filed March 9, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *carpet*, from the facilities of Mohasco Corporation, at or near (a) Dillon, SC, and (b) East Dublin, GA, to Pittsburgh, PA, and Louisville, KY. (Hearing site: Albany, NY, or Washington, DC.)

MC 107882 (Sub-43F), filed March 1, 1979. Applicant: ARMORED MOTOR SERVICE CORPORATION, 160 Ewingville Road, Trenton, NJ 08638. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coin*, between Denver, CO, Philadelphia, PA, Stateline, Las Vegas, Reno, and Lake Tahoe, NV, and Phoenix, AZ, under continuing contract(s) with General Services Administration, of Washington, DC. (Hearing site: Washington, DC.)

Note:—Dual operations may be involved.

MC 110012 (Sub-53F), filed March 7, 1979. Applicant: ROY WIDENER MOTOR LINES, INC., 707 N. Liberty Hill Road, P.O. Box 68, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, between the facilities of Campbell Soup Company at or near Napoleon, OH, on the one hand, and, on the other, points in KY, PA, WV, NC, SC, and TN. (Hearing site: Washington, DC.)

MC 110683 (Sub-139F), filed March 12, 1979. Applicant: SMITH'S TRANSFER CORPORATION, Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th Street, NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between St. Louis, MO, and Louisville, KY, over Interstate Hwy 64, (2) between St. Louis, MO, and Chattanooga, TN: from St. Louis, over Interstate Hwy 64 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Chattanooga, and return over the same routes, and (3) between St. Louis, MO, and Glasgow, KY: from St. Louis over Interstate Hwy 64 to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction Audubon Parkway, then over Audubon Parkway to junction U.S. Hwy 60

Bypass, then over U.S. Hwy 60 Bypass to junction Green River Parkway, then over Green River Parkway to junction U.S. Hwy 68, then over U.S. Hwy 68 to Glasgow, and return over the same route, in (1), (2), and (3) above as an alternate route for operating convenience only, serving no intermediate points. Condition: Issuance of a certificate in this proceeding is subject to the prior submission of a verified statement by applicant stating further specific details of applicant's existing authority (including specific sub-nos.), and how the applicant can presently perform the above operations. (Hearing site: Washington, DC, or Richmond, VA.)

Notes.—(1) Applicant proposes to support the application by evidence of past traffic and efficiencies and economies. (2) Applicant holds service routes appurtenant to the routes described.

MC 110683 (Sub-140F), filed March 8, 1979. Applicant: SMITH'S TRANSFER CORPORATION, Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th Street, NW., Washington, DC 20036. 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), between Nashville and Chattanooga, TN, over Interstate Hwy 24, as an alternate route for operating convenience, serving no intermediate points, and serving Chattanooga for purposes of joinder only. Condition: Issuance of a certificate is subject to the prior submission by applicant of a verified statement stating specific details of applicant's existing authority and how applicant can presently perform the above operations. (Hearing site: Washington, DC. or Richmond, VA.)

Notes.—(1) Applicant proposes to support the application by evidence of past traffic and efficiencies and economies. (2) Applicant holds service routes appurtenant to the routes described.

MC 111302 (Sub-151F), filed March 8, 1979. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, Knoxville, TN 37919. Representative: David A. Petersen (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals*, in bulk, in tank vehicles, from Chattnooga, TN, to points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Atlanta, GA.)

MC 111812 (Sub-615F), filed March 1, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: R. H. Jinks (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 Holland, Saugatuck, and Benton Harbor, MI, and Louisville, KY, to points in the United States (except AK and HI). Condition: Issuance of a certificate is subject to the coincidental cancellation, as requested by applicant, of the outstanding certificates in MC-111812 (Sub-No. 214) issued June 3, 1964 (Sub-No. 266) issued June 9, 1965, and (Sub-No. 277) issued July 12, 1968. (Hearing site: Chicago, IL.)

MC 112713 (Sub-259F), filed March 5, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, 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 Bristol, WI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 112963 (Sub-84F), filed March 5, 1979. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, MA 01866. Representative: Leonard E. Murphy (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *tanning oils*, in bulk, in tank vehicles, from the facilities of Henkel, Inc., Division of General Mills Corporation, at Saugus, MA, to points in the United States (except AK, HI, MA, NH, and RI); and (2) *commodities* used in the manufacture of tanning oils, in bulk, in tank vehicles, in the reverse direction. (Hearing site: Boston, MA, or Washington, DC.)

MC 113362 (Sub-348F), filed March 8, 1979. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, 1105½ Eighth Avenue NE., P.O. Box 429, Austin, MN 55912. 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) *materials, equipment, and supplies*, used in the manufacture of the commodities in (1) above, (except commodities in bulk), from the facilities of International Paper Company at or near Jay, ME, to points in NJ, points in NY on and east of Interstate Hwy 81, and points in PA on and east of a line beginning at the NY-PA State line, and extending along Interstate Hwy 81 to Harrisburg, PA, then over Interstate Hwy 83 to the PA-MD State line, (except Emigsville, PA). (Hearing site: Washington, DC.)

MC 116763 (Sub-479F), filed March 1, 1979. 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 *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 Roth Boneless Beef, Inc., and the facilities of Home Provision Co., Inc., at or near Denver, CO, to those points in the United States in and east of MN, IA, NE, KS, OK, and TX, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Denver, CO.)

MC 116763 (Sub-480F), filed March 1, 1979. 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 *charcoal briquettes, fireplace logs, barbeque accessories, and charcoal lighter fluid*, from Marion, OH, to points in ME, MA, NH, VT, IA, MN, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 116763 (Sub-481F), filed March 1, 1979. 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 *printed matter*, and *materials, equipment, and supplies* used in the manufacture and distribution of printed matter (except commodities in

bulk, in tank vehicles), between the facilities of Rand McNally & Company, at (a) Chicago, Downers Grove, Naperville, and Skokie, IL, (b) Hammond and Indianapolis, IN, (c) Versailles and Lexington, KY, (d) Taunton, MA, (e) Ossining, NY, and (f) Nashville, TN, 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 of Rand McNally & Company. (Hearing site: Chicago, IL.)

MC 116763 (Sub-482F), filed March 1, 1979. 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 *bakery goods and foodstuffs*, (except frozen and commodities in bulk, in tank vehicles), from the facilities of Bake-Line Products, Inc., at or near Des Plaines, IL, to those points in the United States in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 118142 (Sub-215F), filed March 1, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *prepared flour mixes and frosting mixes*, (except commodities in bulk), from the facilities of Chelsea Milling Company, at or near Chelsea, MI, to points in AR, IA, KS, MO, NE, OK, and TX. (Hearing site: Detroit, MI, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 118142 (Sub-216F), filed March 9, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Bldg., 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 Del Pero Mondon Meat Company at or near Booneville, AR, to points in the United States (except AK and HI). (Hearing site: Kansas City, MO, or New Orleans, LA.)

Note.—Dual operations may be involved.

MC 118803 (Sub-11F), filed March 5, 1979. Applicant: ATLANTIC TRUCK LINES, INC., 100 Hamilton Plaza, Paterson, NJ 07505. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *building materials*, (2) *commodities* used in the installation and sale of building materials, and *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of Certain-Teed Products Corporation, at or near (a) Williamsport, MD, and (b) McPherson, KS, on the one hand, and, on the other, points in the United States (except AK and HI), restricted in (1), (2), and (3) above against the transportation of commodities in bulk, under continuing contract(s) in (1), (2), and (3) above with Revere Aluminum Building Products, Inc., of Hauppauge, NY. (Hearing site: New York, NY.)

MC 124032 (Sub-14F), filed March 5, 1979. Applicant: REED'S FUEL COMPANY, a corporation, 4080 Commercial Avenue, Springfield, OR 97477. 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 *wood residuals*, between points in Linn and Lane Counties, OR, on the one hand, and, on the other, points in Clark and Cowlitz Counties, WA. (Hearing site: Eugene or Portland, OR.)

MC 124692 (Sub-272F), filed March 2, 1979. 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 *iron and steel articles, and machinery parts and attachments*, between the facilities of Esco Corporation, at (a) Portland, OR, (b) Danville, IL, and (c) Newton, MS. (Hearing site: Portland, OR).

MC 124813 (Sub-203F), filed March 5, 1979. Applicant: UMTHUN TRUCKING CO., a corporation, 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 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 *iron and steel articles*, (1) from Chicago, IL, to Moline, IL, and Bettendorf, IA, and (2) from the facilities of Bethlehem Steel Corporation, at Burns Harbor, IN, to points in IA, MN, MO, and NE. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 125433 (Sub-218F), filed March 1, 1979. 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 *label stock* and *equipment, materials, and supplies* used in the manufacture of label stock, (except commodities in bulk and commodities the transportation of which by reason of size or weight require the use of special equipment), between points in the United States (except AK and HI), on the one hand, and, on the other, the facilities of Fasson Graphic Arts, at or near (a) Quakertown and Mill Hall, PA, (b) Painesville, OH, (c) Chicago and Watseka, IL, (d) Atlanta and Peachtree City, GA, (e) Charlotte, NC, (f) Gulfport, MS, (g) Kansas City and St. Louis, MO, (h) St. Petersburg, FL, (i) Kansas City and Topeka, KS, (j) New Orleans, LA (k) Sioux Falls, SD, (l) Dallas, TX, (m) Omaha, NE, and (n) Cucamonga, CA, restricted to the transportation of traffic originating at or destined to the above named facilities of Fasson Graphic Arts. (Hearing site: Los Angeles, CA).

MC 125433 (Sub-219F), filed March 1, 1979. 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)(a) *refined copper*, and (b) *equipment, materials, and supplies* used in the mining and manufacture of refined copper, from the facilities of Kennecott Copper Corporation, at or near (a) Garfield, UT, and (b) Hurley, NM, to points in the United States (including AK, but excluding HI); and (2) *materials, equipment, and supplies* used in the mining and manufacture of copper in the reverse direction, restricted in (1) and (2) above against the transportation of commodities in bulk. (Hearing site: Salt Lake City, UT.)

MC 125952 (Sub-36F), filed March 6, 1979. Applicant: INTERSTATE DISTRIBUTOR CO., a corporation, 8311

Durango SW., P.O. Box 99307, Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned seafoods*, from the facilities of Star-Kist Foods at Terminal Island, CA, to points in OR and WA, under a continuing contract(s) with Star-Kist Foods, Inc., of Terminal Island, CA. (Hearing site: Los Angeles, CA.)

MC 125952 (Sub-37F), filed March 6, 1979. Applicant: INTERSTATE DISTRIBUTOR CO., a corporation, 8311 Durango St. SW., P.O. Box 99307, Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt* (except in bulk), from the facilities of Morton Salt, Division of Morton Norwich Products, at (a) Newark, CA, and (b) Saltair, UT; to points in OR and WA, under a continuing contract(s) with Morton Salt, Division of Morton Norwich Products, of Chicago, IL. (Hearing site: Seattle, WA.)

MC 125952 (Sub-39F), filed March 7, 1979. Applicant: INTERSTATE DISTRIBUTOR CO., a corporation, 8311 Durango St. SW., P.O. Box 99307, Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by wholesale and retail department and grocery stores, from points in CA, ID, NV and UT to points in OR and WA, under a continuing contract(s) with Round-UP Grocery Company and Fred Meyer, Incorporated, of Portland, OR. (Hearing site: Portland, OR.)

MC 126472 (Sub-24F), filed March 5, 1979. Applicant: WILLCOXSON TRANSPORT, INC., RR No. 2, Kahoka, MO 63445. Representative: Kenneth F. Dudley, 611 Church Street, 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 *dry fertilizer and fertilizer materials*, from the facilities of the Brunswick River Terminal, at or near Brunswick, MO, to points in IL and IA. (Hearing site: Chicago, Il, or Kansas City, MO.)

MC 128133 (Sub-25F), filed March 7, 1979. Applicant: H. H. OMPS, INC., Route 7, Box 295, Winchester, VA 22601. Representative: Jeremy Kahn, Suite 733 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 *lime, limestone, and limestone products*, from Strasburg, VA, to points in DE and OH. (Hearing site: Washington, DC.)

MC 133562 (Sub-36F), filed March 1, 1979. Applicant: HOLIDAY EXPRESS CORPORATION, P.O. Box 115, Estherville, IA 51104. 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) *cleaning, washing, water treatment, and polishing compounds and soaps, varnishes, rust preventatives, oils*, and *greases*, (except comodities in bulk, in tank vehicles), from the facilities of Economics Laboratory, Inc., at Avenel, NJ, to points in IL, IN, MI, OH, and PA; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), in the reverse direction, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 134082 (Sub-17F), filed March 7, 1979. Applicant: K. H. TRANSPORT, INC., 4796 Linthicum Road, Dayton, MD 21036. Representative: chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *bananas*, and (2) *agricultural commodities*, the transportation of which is otherwise exempt, when transported in mixed loads with the commodities in (1) above, from New York, NY, Philadelphia, PA, Baltimore, MD, Charleston, SC, and Gulfport, MS, to points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, TN, SC, VA, VT, WV, and WI. (Hearing site: Washington, DC.)

MC 136803 (Sub-10F), filed March 1, 1979. Applicant: SIOUX CITY BULK FEED SERVICE, INC., 3324 Highway 75 North, Sioux City, IA 51105. 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 *sand*, in hopper-type vehicles, from Clayton and Garnavillo, IA, to S. Sioux City, NE, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearings site: Sioux City, IA or Omaha, NE.)

MC 139482 (Sub-98F), filed March 1, 1979. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *turkey, poultry, and hog feeding equipment*, from North Manchester, IN, to South St. Paul, Courtland, and St. Cloud, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 139482 (Sub-99F), filed March 1, 1979. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk, in tank vehicles), from Marshall, MN to points in the United States (except AK and HI). (Hearing site: Minneapolis or St. Paul, MN.)

MC 139482 (Sub-101F), filed March 5, 1979. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *green coffee*, from New Orleans, LA, and Laredo and Houston, TX, to Minneapolis, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 139482 (Sub-102F), filed March 9, 1979. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from Neenah, WI, to points in IL, IN, IA, MI, MN, MO, and OH. (Hearing site: Minneapolis or St. Paul, MN.)

MC 139923 (Sub-59F), filed March 2, 1979. Applicant: MILLER TRUCKING CO., INC., P.O. Box Drawer "D", Stroud, OK 74079. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from the

facilities of Stouffer Foods Corporation, Division of Stouffer Corporation, at Solon and Cleveland, OH, to points in AZ, AR, CA, CO, ID, MT, NV, NM, OK, OR, TX, UT, WA, and WY, restricted to the transportation of traffic originating at the named origins. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 142672 (Sub-52F), filed March 1, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *fencing, fencing materials, wire, and wire products,* (except commodities the transportation of which by reason of size or weight requires the use of special equipment), from the facilities of Bekaert Steel Wire Corporation, at or near Van Buren, AR, to points in AZ, CA, CO, CT, DE, FL, ID, MD, MI, MN, MT, NV, NJ, NM, NY, NC, ND, OR, PA, RI, SC, SD, UT, VA, WA, WV, WI, and WY; (2) *steel rods* (except commodities the transportation of which by reason of size or weight requires the use of special equipment), from the facilities of Georgetown Steel Company, at or near Beaumont, TX, to the facilities of Bekaert Steel Wire Corporation, at or near Van Buren, AR; and (3) *steel wire carriers,* from points in the United States (except AK, AR, and HI), to the facilities of Bekaert Steel Wire Corporation, at or near Van Buren, AR. (Hearing site: Ft. Smith, AR, or Tulsa, OK.)

Note.—Dual operations may be involved.

MC 142672 (Sub-53F), filed March 1, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *food products,* from the facilities of Campbell Soup Company, at or near Napoleon, OH, to Paris, TX. (Hearing site: Toledo, OH, or Tulsa, OK.)

Note.—Dual operations may be involved.

MC 142772 (Sub-4F), filed March 1, 1979. Applicant: HRDLICKA ENTERPRISES, INC., Route 7, Box 59, Chippewa Falls, WI 54729. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building materials,* from Cornell, WI, to points in IL, IN, KY, OH, and the Lower Peninsula of MI. (Hearing site: Minneapolis or St. Paul, MN.)

MC 143603 (Sub-3F), filed March 6, 1979. Applicant: BENJAMIN DI MEDIO, JR., d.b.a. FREIGHT CONSULTANTS COMPANY, 1631 South 7th St., Camden, NJ 08104. Representative: Francis W. McInerny, Esq., 1000 Sixteenth St., NW., Washington, DC 20036. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign, commerce, over irregular routes, transporting *zinc concentrate,* in bulk, in dump-vehicles, from Camden, NJ, to Palmerton, PA, under a continuing contract(s) with G&W Natural Resources, a Division of Gulf & Western Industres, Inc., of Nashville, TN. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 144473 (Sub-7F), filed March 2, 1979. Applicant: DORVAL CORP., 1201 Corbin Street, Elizabeth, NJ 07201. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract 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 decribed in sections A and C of Appendix I to the report in *Descriptions in Motor Certificates,* 61 M.C.C. 209 766, (except hides and commodities in bulk), from New York, NY, Philadelphia, PA, and Wilmington, DE, to points in AL, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, OR, PA, SC, TN, TX, VA, WI, and WV, under continuing contract(s) with United Beef Packers, of Miami, FL. (Hearing site: New York, NY, or Washington, DC.)

MC 144473 (Sub-8F), filed March 2, 1979. Applicant: DORVAL CORP., 1201 Corbin Street, Elizabeth, NJ 07201. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign, commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* as described in section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from Miami and Tampa, FL, and Chrleston, SC, to points in AL, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, OR, PA, SC, TN, TX, VA, WI, and WV, under continuing contract(s) with United Beef Packers, of Miami, FL. (Hearing site: New York, NY, or Washington, DC.)

MC 144622 (Sub-40F), filed March 8, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Ark, AR 72219. Representative: Theodore Polydoroff, Suite 301, 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 *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 Wilson Foods Corporation, at Albert Lea, MN, Cedar Rapids, Cherokee, and Des Moines, IA, and Marshall, MO, to points in CA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Oklahoma City, OK.)

Note.—Dual operations may be involved.

MC 144643 (Sub-2F), filed March 1, 1979. Applicant: VINGI BROTHERS TRUCKING CO., INC., 28 Oakdale Avenue, Johnston, RI 02919, Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs,* (1) from Warwick, RI, to points in AL, FL, GA, IN, IL, LA, MD, MI, NJ, NC, OH, PA, SC, TN, and VA, and (2) from Columbus, OH, to points in CT, ME, MA, NH, NY, PA, RI, and VT, under continuing contract(s) in (1) and (2) above with National Pax Corporation, of Pasadena, CA. (Hearing site: Washington, DC.)

MC 144643 (Sub-3F), filed March 1, 1979. Applicant: VINGI BROTHERS TRUCKING CO., INC., 28 Oakdale Avenue, Johnston, RI 02919. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic and paper products, parts and accessories* for plastic and paper products, and *equipment* used in the manufacture and distribution of plastic and paper products, from the facilities of Nyman Manufacturing Co., at or near East Providence, RI, to points in the United States (except AK, HI, and CA); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of plastic and paper products, from points in the United States (except AK and HI), to the facilities of Nyman Manufacturing Co., at or near East Providence, RI, under continuing contract(s) in (1) and (2) above with Nyman Manufacturing

Co., of East Providence, RI. (Hearing site: Washington, DC.)

MC 144643 (Sub-4F), filed March 1, 1979. Applicant: VINGI-BROTHERS TRUCKING CO., INC., 28 Oakdale Avenue, Johnston, RI 02919. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs, lime juice, grenadine, and cocktail mixes (except alcoholic)*, from Warwick, RI, to points in GA, FL, LA, TX, and TN, under continuing contracts with Cadbury Schweppes USA, Ltd., or its subsidiary, Jefferson Bottling Co., of Warwick, RI. (Hearing site: Washington, DC.)

MC 145072 (Sub-15F), filed March 8, 1979. Applicant: M.S. CARRIERS, INC., 7372 Eastern Avenue, Memphis, TN 38138. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *styrofoam products, expanded plastic articles, cooling boxes, Christmas decorations, tree holders, ornaments and novelties, toilets, lawnmowers, snowthrowers, snowblades, chains, grass trimmers*, from the facilities of Poloron Products at Batesville, MS, to points in the United States (except AK and HI), and (b) *materials, equipment, and supplies* used in the manufacture of the commodities in, (a) above in the reverse direction, (2)(a) *such merchandise* as is dealt in by retail discount stores, and (b) *materials, supplies and equipment*, used in the distribution of the commodities in (2) (a) above, from points in NY, NJ, PA, VA, WV, OH, MA, NC, SC, MD, and IL to the facilities of Baddour, Inc., at or near Memphis, TN. (Hearing site: Memphis, TN.)

MC 14542 (Sub-9F), filed March 5, 1979. Applicant: CASE HEAVY HAULING, INC., P.O. Box 267, Warren OH 44482. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. To operate as a common *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (1) from the facilities of Wheeling-Pittsburgh steel Corporation, at Canfield, Martines Ferry, Mingo Junction, Steubenville, and Yorkville, OH Beechbottom, Benwood, Follansbee, and Wheeling, WV, and Allenport and Monessen, PA, to points in NC, SC, GA, and TN, (2) from the facilities of Weirton Steel, Division of National Steel Corporation, at Weirton, WV, to points in NC, SC, GA, and TN, and (3) from the facilties of Colt Industries-Crucible, Inc., at Midland, PA, to points in NC, SC, GA, and TN. (Hearing site: Columbus, OH.)

MC 145842 (Sub-4F), filed March 5, 1979. Applicant: SUNDERMAN TRANSFER, INC., Box: 63, Windon, MN 56101. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. To operate as a common *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), (1) from the facilities of John Morrel & Co., at or near Sioux Falls, SD, and Estherville and Sioux City, IA, to points in IL, IN, MI, MN, MO, OH, and WI, and (2) from the facilities of John Morrell & Co., at or near East St. Louis, IL, to points in IA IN, MI, MN, MO, NE, OH, SD, and WI, restricted in (1) and (2) above to the transportation of traffic originating at the named origin facilities. (Hearing site: Chicago, IL, or Minneapolis, MN.)

Note.—Dual operations my be involved.

MC 145853 (Sub-2F), filed March 1, 1979. Applicant: VECTOR TRANSPORTATION, INCORPORATED, 157 Maple Street, Methuen, MA 01844. Representative: S. L. Watts, 1050 Waltham Street, Lexington, MA 02173. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel shelving*, and *materials and supplies* used in the manufacture and distribution of steel shelving (except commodities in bulk) between the facilities of Andrew Wilson Company, at Lawrence, MA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Andrew Wilson Company, of Lawrence, MA. (Hearing site: Concord, NH, or Boston, MA.)

MC 146293 (Sub-9F), filed March 8, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial Park, Circle NE, Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. To operate as a common *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *polyethylene sheeting, on rolls*, and *polyethylene bags, on rolls*, (except in bulk), form Senoia, GA to points in the United States on and east of U.S. Hwy 85, and (2) materials and supplies used in the manufacturing of the commodities in (1) above, in the reverse direction. (Hearing site: Atlanta, GA.)

[FR Doc. 79-16307 Filed 5-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 61]

Permanent Authority Applications

Correction

In FR Doc. 79-379 appearing at page 1251 in the issue for Thursday, January 4, 1979 on page 1258 make the following corrections:

(1) In column two line 11 "NM" should appear as "MN".

(2) In column two line 12 "BT" should appear as "VT".

(3) In column two line 12 "BA" should appear as "VA".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 106
Thursday, May 31, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

[M-224; May 25, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 3 p.m., May 29, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 1. Position for Thailand Negotiations. (BIA): 2. Position for Malaysia Negotiations. (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Negotiations with Thailand are scheduled to begin during the week of June 4. The short notice request is necessary because of the imminence of the consultations and because the staff was first informed of the negotiation dates on May 17. Accordingly, the following Board Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

The Malaysia consultations will be held beginning on June 4. The short notice request is necessary because of the imminence of the consultations and because the staff was first informed of the negotiation dates on May 23. Accordingly, the following Board Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

This meeting concerns strategy and positions to be taken by the United States in negotiations with Thailand and Malaysia. Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interests of the United States. Accordingly, the following Members have voted that the meeting on these subjects would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that any meeting on these items should be closed:

Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected To Attend

Board Members.—
Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David M. Kirstein, Mr. James L. Deegan, and Mr. Stephen H. Lachter.
Office of the Managing Director.—Mr. Cressworth Lander.
Executive Assistant to Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine.
Bureau of International Affairs.—Mr. Sanford Rederer, Mr. Rosario J. Scibilia, Mr. David A. Levitt, Mr. Richard M. Loughlin, Mr. Ivars V. Mellups, Mr. Ronald Miller, Mr. Edward Wilbur, and Mr. James S. Horneman.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary Edles, Mr. Peter Schwarzkopf, and Mr. Michael Schopf.
Bureau of Domestic Aviation.—Ms. Barbara A. Clark.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Ms. Patricia Kennedy.
Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Larry Manheim.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that this meeting may be closed to public observation.

Gary J. Edles,
Acting General Counsel.

[S-1074-79 Filed 5-29-79; 2:52 pm]

BILLING CODE 6320-01-M

2

[M-223, Amdt. 1; May 25, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the May 31, 1979, meeting agenda.

TIME AND DATE: 10 a.m., May 31, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 2a. Docket 29198, Alaska Fares Investigation, Memorandum of Issues and Questions for Instruction. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item must be considered at the meeting on May 31, 1979 in order to give the staff guidance on a pending fare increase that must be acted upon by June 1, 1979. Accordingly, the following Members have voted that agency business requires the addition of Item 2a to the May 31, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1075-79 Filed 5-29-79; 2:52 pm]

BILLING CODE 6320-01-M

3

[M-225; May 29, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 2 p.m., June 5, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: Aero-America to make a presentation regarding its present and proposed operations.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-1076-79 Filed 5-29-79; 2:52 pm]

BILLING CODE 6320-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, May 31, 1979.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Common Carrier—1—Lincoln Telephone and Telegraph's Duty to furnish Interconnection facilities to MCI Telecommunications Corporation.

Common Carrier—2—AT&T Rate of Return. (3 items)

Common Carrier—3—Transmittal Nos. 13125 and 13140 Revisions to tariff FCC No. 260 including rates relating to common control switching arrangements (CCSA).

General—1—Revised procedure for the process of contested broadcast applications.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: May 24, 1979.

[S-1072-79 Filed 5-29-79; 10:17 am]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 2 p.m., Thursday, May 31, 1979.

PLACE: Room 856, 1919 M Street, N.W., Washington, D.C.

STATUS: Open Commission meeting.

MATTER TO BE CONSIDERED: Oral presentations to allow parties to the GTE-Telenet merger proceeding to present their views on the conditions imposed on the merger.

Issued: May 24, 1979.

S-1073-79 Filed 5-29-79; 10:17 am]

BILLING CODE 6712-01-M

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, June 5, 1979 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Personnel, including continuation of matters discussed on May 10, 1979.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

Lena L. Stafford,

Acting Secretary to the Commission.

[S-1030-79 Filed 5-29-79; 3:53 pm]

BILLING CODE 6715-01-M

7

FEDERAL HOME LOAN MORTGAGE CORPORATION.

TIME AND DATE: 2:30 p.m., May 30, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Henry Judy, (202-789-4734).

MATTERS TO BE CONSIDERED:

Consideration of Bylaw Amendments.

Consideration of Pension Plan Amendments.

Consideration of Corporation Long Range Plan.

ANNOUNCEMENT IS BEING MADE AT THE EARLIEST PRACTICABLE TIME: No. 243, May 29, 1979.

J. J. Finn,

Secretary.

[S-1077-79 Filed 5-29-79; 2:52 pm]

BILLING CODE 6720-02-M

8

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 24, 1979, 44 FR 30191.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: May 30, 1979, 10 a.m.

CHANGE IN THE MEETING: Addition of the following item to the open session:

4. Interisland Intermodal Lines, Inc., general rate increase of five percent in the Puerto Rico/Virgin Islands trades.

[S-1069-79 Filed 5-29-79; 10:17 am]

BILLING CODE 6730-01-M

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: June 1, 1979, 10:30 a.m.

PLACE: Room 12126, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: Docket No. 76-11—In Re Agreements 150 DR-7 and 3103 DR-7.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

S-1063-79 Filed 5-29-79; 10:17 am]

BILLING CODE 6730-01-M

10

[USITC SE-79-22]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, June 7, 1979.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Parts of this 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. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. (Part) Coke (Docket No. 554)—vote on institution.
5. Carbon steel plate from Poland (Inv. AA1921-203)—briefing and vote.
6. Vietnam Veterans—recognition.
7. Mr. E. C. Wallington—recognition for Government Accounting Executive Award.
8. Any items left over from previous agenda.

Portions closed to the public

4. Petitions and complaints, if necessary: a. (Part) Coke (Docket No. 554)—discussion.
9. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1079-79 Filed 5-29-79; 3:53 pm]

BILLING CODE 7020-02-M

11

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 4, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Monday, June 4, 1:30 p.m.

Discussion of Personnel Matter (Approximately 1½ hours—Tentative—Closed—Exemption 6).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

May 25, 1979.

[S-1076-79 Filed 5-29-79; 2:52 pm]

BILLING CODE 7590-01-M

12

POSTAL SERVICE.

Board of Governors

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Tuesday, June 5, 1979, in Conference Room 290, Main Post Office, 17th and Market Streets, St. Louis, Missouri. Except as indicated in the following paragraphs, the meeting is open to the public. The Board expects to discuss the matters stated on the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On May 9, 1979, the Board of Governors of the United States Postal Service voted to close to public observation a portion of the June 5, 1979, meeting. Each of the members of the Board except Mr. Sullivan, who voted against closure, voted in favor of partially closing the meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Ching, Robertson and Sullivan; Postmaster General Bolger; Deputy Postmaster General Conway; Senior Assistant Postmasters General Finch, Sommerkamp, and Ulsaker; Director of Strategic Planning Edgerton; and Secretary to the Board Cox.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's future planning that will include possible strategies concerning future postal collective bargaining negotiations and concerning future postal ratemaking.

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect of postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Report of the Regional Postmaster General.

(Mr. Doran, Regional Postmaster General, will report on postal conditions in the Central Region.)

4. Report of the Chief Postal Inspector.

(Acting Chief Postal Inspector Fletcher will report on the Postal Inspection Service.)

5. Capital Investment Project.

Modernization of Postal Source Data System.

(Mr. Feemster, Assistant Postmaster General for Management Information Services, will present a proposal for a capital investment to improve the Postal Source Data System.)

6. Update on Postal Mechanization and Research and Development.

(Mr. Sommerkamp, Senior Assistant Postmaster General, Research and Technology Group, will brief the Board on Postal Service prospects for automation in mail processing and will present a general review of the current status of postal R&D programs.)

7. Discussion of Postal Service Planning Involving Long-Range Collective Bargaining and Ratemaking Strategies.

(The Board will discuss Postal Service planning with emphasis on collective bargaining and ratemaking strategies. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter will be closed to the public.)

Louis A. Cox,

Secretary.

[S-1070-79 Filed 5-29-79; 10:17 am]

BILLING CODE 7710-12-M

13

RAILWAY ASSOCIATION.

TIME AND DATES: 1:30 p.m., June 6, 1979, 9:30 a.m., June 7, 1979.

PLACE: 955 L'Enfant Plaza North, SW., Board Room, Room 2–500, Fifth Floor, Washington, D.C.

STATUS: Parts of the meetings will be open to the public. The rest of the meetings will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

Portions Closed to the Public (1:30 p.m., June 6, 1979)

1. Consideration of internal personnel matters.
2. Review of ConRail proprietary and financial information for monitoring and investment purposes.
3. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
4. Litigation report.

Portions Open to the Public (9:30 a.m., June 7, 1979)

1. Election of officers.
2. Approval of minutes of the May 3, 1979 Board of Directors meeting.
3. Consideration of D&H request for deferral of interest payment.
4. Review of Missouri-Kansas-Texas Railroad Company Quarterly financial results.
5. Report on ConRail monitoring.
6. Supplemental Transaction Report.
7. Consideration of ConRail drawdown request for June.
8. Consideration of 211(h) loan program.
9. Contract actions (extensions and approvals).
10. Legislative report.

Portions Closed to the Public (11:00 a.m., June 7, 1979)

11. Review of ConRail proprietary and financial information for monitoring and investment purposes.

[S-1087-79 Filed 5-29-79; 10:17 am]

BILLING CODE 8240-01-M

14

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 1 p.m., Wednesday, May 30, 1979.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTER FOR ACTION: Further consideration of sale of bonds.

CONTACT PERSON FOR MORE INFORMATION: James L. Bentley, Direcor of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–566–1401.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above and that no earlier announcement of the meeting was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: May 29, 1979.

Approved:

S. David Freeman.

Richard M. Freeman.

[S-1071-79 Filed 5-29-79; 10:17 am]

BILLING CODE 8120-01-M

Federal Register

Thursday
May 31, 1979

Part II

Department of Transportation

Office of the Secretary

Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs and Activities Receiving or Benefiting From Federal Financial Assistance

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

49 CFR Part 27

Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs and Activities Receiving or Benefitting From Federal Financial Assistance

AGENCY: Department of Transportation.

ACTION: Final Rule.

SUMMARY: This final rule implements section 504 of the Rehabilitation Act of 1973, which provides that "no otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *." The rule requires recipients of financial assistance from the Department of Transportation to make their existing and future facilities and programs accessible to handicapped persons so that they can effectively use these facilities and programs. In addition, the rule prohibits employment discrimination by recipients against handicapped persons and requires recipients to make reasonable accommodations to the handicaps of otherwise qualified employees so that they may enjoy full access to employment opportunities in programs funded by the Department of Transportation.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. 202/426-4723.

SUPPLEMENTAL INFORMATION:

Synopsis

Introduction

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program receiving Federal assistance. Pursuant to Executive Order 11914, the Department of Health, Education and Welfare (HEW) issued Guidelines concerning the responsibilities of each Federal agency under section 504. In providing generally that the transportation systems which receive financial assistance from the Department of Transportation (DOT, the Department) must be accessible to the handicapped, this rule constitutes DOT's action in accordance with those Guidelines.

HEW Guidelines

In general terms, the Guidelines require that each program or activity receiving Federal financial assistance shall be operated so that, when viewed in its entirety, the program or activity is readily accessible to handicapped persons. If structural changes are necessary to achieve this accessibility, the Guidelines require such changes to be made as soon as practicable, but in no event later than three years after the effective date of this rule. If extraordinarily expensive structural changes to, or replacement of, existing facilities would be necessary to achieve program accessibility, and if other accessible modes of transportation are available, the Guidelines permit DOT to establish, by regulation, a deadline for compliance that is more than three years after the effective date of this rule.

The Guidelines also provide that new facilities and, to the maximum extent feasible, alterations to existing facilities, must be readily accessible to handicapped persons.

Finally, the Guidelines provide generally that no handicapped person shall be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

Highlights of the Rule

This rule is the result of extensive efforts on the part of DOT to design a workable program to meet the transportation needs of the handicapped population as well as the general public. It has been refined since the Notice of Proposed Rulemaking (NPRM) stage on the basis of public comment both from public hearings in five cities and in over 650 written submissions. The commenters included representatives of interested and affected organizations, including groups representing handicapped persons and state and local authorities.

The rule is designed to provide accessibility to all modes of public transportation, as required by the HEW Guidelines, as expeditiously as is feasible. The Department is convinced that the rule responds to the needs of handicapped persons in compliance with the law and in a prudent and financially responsible manner. The rule builds upon earlier Departmental efforts to enhance transportation accessibility.

Recipients are encouraged to undertake additional steps on their own initiative to provide accessibility to handicapped persons, and to seek financial assistance from DOT to carry out those steps in accordance with existing DOT funding procedures. Nothing in these regulations is included to prevent recipients from taking these actions.

Briefly, the new rule requires that:

1. *Public transit buses,* the most widely used means of public transit, for which solicitations are issued after the effective date of the rule, must be wheelchair accessible. While the rule contemplates that Transbus will utlimately become the core of the public transit bus system, it does require that new buses before Transbus be accessible. Within ten years, half the buses used in peak hour service must be wheelchair accessible, and these buses must be utilized before inaccessible buses during off-peak hours so as to maximize the number of accessible buses in service.

2. Under existing regulations all new *rapid rail* facilities must be accessible. This rule would also require that all existing rapid rail systems be made accessible to the handicapped over time, subject only to a limited waiver provision. The rule adopts a system-wide approach to rapid rail and mandates that key stations be made accessible in 30 years if station accessibility involves extraordinary costs, with less costly changes in three years. The rule establishes specific criteria for key stations but would permit a locality to make additional stations accessible. Accessible and inaccessible rail stations would have to be linked by accessible connector service. We expect that at least one-third of the key stations should be made accessible within 12 years, at which time an evaluation of the progress toward accessibility would be made. While it is impossible to calculate with certainty the precise number of stations that would meet the key station criteria for any given system, DOT estimates that as many as 60 percent of the stations in some cities would have to be made accessible, with a national average of about 40 percent.

The key stations include stations where passenger boardings exceed average station boardings by 15 percent, transfer points on a rail line or between rail lines, end stations (unless near another accessible station), stations serving major activity centers (e.g., employment centers, hospitals), stations that are special trip generators for sizeable numbers of handicapped persons, and stations that are major interchange points with other modes of transportation.

A provision of the rule permits the local transit authority, through its Metropolitan Planning Organization

(MPO), to apply for a waiver from the accessibility requirements if it has an alternative proposal which was developed through local consultation, specifically including close coordination with handicapped persons and their organizations. A public hearing is also required. If the alternative will provide service to handicapped persons that is substantially as good as or better than the service under the requirement sought to be waived, a waiver may be granted. The principal rapid rail recipient in the five major cities with older, inaccessible systems must spend, or ensure that other Urban Mass Transportation Administration (UMTA) recipients spend, at least the equivalent of five percent of its area's funds under section 5 of the Urban Mass Transportation Act on the alternative service, if that recipient is granted a waiver.

The rule generally requires that rapid rail vehicles purchased after the effective date of the regulation must be accessible. Further, on a system basis, one vehicle per train must be accessible within three years of the effective date of the rule, whether by purchase of new cars or retrofitting of older cars. However, up to five years would be allowed if extraordinary costs are involved.

3. *Commuter rail* systems must be made accessible, also subject to a limited waiver provision. On the basis of key station criteria similar to those applied to rapid rail, all key stations must be made accessible within three years, with an extension to 30 years if station accessibility involves extraordinary costs.

On a system basis, one vehicle per train must be accessible no later than three years after the effective date of the rule, whether by replacement or retrofit, but up to 10 years is allowed if extraordinary costs are involved.

New vehicles for which solicitations are issued on or after January 1, 1983, must be accessible.

4. *Light rail* (trolley and streetcar) systems must be made accessible, also subject to a limited waiver provision. Using similar key station criteria as apply to rapid rail, all key stations must be made accessible within 20 years, with less costly changes to be made in three years.

On a system basis, within three years after the effective date (up to 20 years may be allowed if extraordinary costs are involved), half the vehicles used in peak hour service must be wheelchair accessible, and these vehicles must be utilized before inaccessible vehicles during off-peak hours so as to maximize the number of accessible vehicles in service. New vehicles for which solicitations are issued on or after January 1, 1983, must be accessible.

5. For Federally-assisted urban mass transportation systems that will not be accessible within three years after the effective date of this rule, *interim accessible transportation* must be provided, until those systems are accessible. Subject to specified spending criteria, this interim service must be available in the normal service area during normal service hours, and must be developed in cooperation with an advisory group of local representatives of handicapped persons. The service, to the extent feasible, must meet a number of criteria as to convenience and comparability to regular mainline service. The recipient must use its best efforts to coordinate special services in the locality to meet the service standards. The recipient must spend an amount equal to two percent of its UMTA section 5 funds on the provision of interim service unless the advisory group agrees with the recipient that lower expenditures will provide an adequate level of service.

6. New *airport terminals* must be accessible with respect to general passenger flow, ticketing areas, baggage check-in and retrieval, aircraft boarding and existing, telephones, vehicular loading and unloading, parking, waiting areas, and public services. Existing air carrier airport terminals must be made accessible within three years. Airports must provide assistance incident to boarding to handicapped passengers, and for air carrier airports, lifts, ramps or other suitable devices not normally used for freight must be provided to enable wheelchair users to board or exit from aircraft.

7. New rest area facilities along federally assisted *highways* must be made accessible. Existing rest area facilities on Interstate highways must be made accessible within three years of the effective date. Other rest areas will be made accessible when the rest area or the adjacent highway is altered or improved with the participation of Federal funds. All crosswalks constructed with Federal financial assistance must have curb cuts or ramps. With certain exceptions, new pedestrian overpasses, underpasses, and ramps constructed with Federal financial assistance can have no gradient in excess of 10 percent.

8. Every new *railroad* station constructed with Federal financial assistance must be accessible with respect to general passenger flow, ticketing areas, baggage check-in and retrieval, boarding platforms, telephones, vehicular loading and unloading, parking, waiting areas and public services. Existing stations must be made accessible within five years for certain stations, and within 10 years for all stations. Railroad car accessibility requirements have been coordinated with the Interstate Commerce Commission (ICC), and require one car per train to be accessible within five years.

9. The rule prohibits *employment discrimination* against the handicapped in relation to programs that receive or benefit from Federal financial assistance from DOT. In addition, Federal fund recipients are required by the rule to make reasonable accommodations to known handicaps of otherwise qualified applicants for employment unless the accommodation would impose an undue hardship upon the operation of the program.

The Department of Transportation considers this rule to be a "significant" regulatory action under the Department's policies and procedures for "Improving Government Regulations," published in the Federal Register on February 26, 1979 (44 FR 11034). The rule is deemed significant because there is widespread public interest in its provisions, because the rule will affect most transportation providers and users in the country, and because the rule has a significant cost impact.

Because of its economic impact, the Department has prepared a Regulatory Analysis of this regulation. The Regulatory Analysis examines the various alternatives that the Department considered in preparing this rule, considers the cost and program implications of the alternatives, and explains the Department's reasons for making the choices resulting in the final rule. A copy of the Regulatory Analysis has been placed in the docket for this rulemaking and is available for public inspection.

Background

This rule is based upon the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 790 et seq.* Section 504 of

*On November 6, 1978, section 504 was amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 to add coverage of any program or activity conducted by an Executive agency or the U.S. Postal Service. Since the amendment occurred after publication of the proposed rule, the specific provisions of that proposed rule were not drafted to apply to the Department's internal programs and activities. While the final rule expresses the Department's general policy concerning those programs and activities, the rule does not strictly apply to them. The Department intends to review its programs and activities to determine what actions to take to implement the amendment to section 504.

this statute states that "no otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *." It is the primary legal basis for the efforts by the Department to ensure that handicapped persons are able to use transportation facilities and programs which receive financial assistance from the Department.

Section 504 provides little guidance concerning the means by which the Department should carry out its mandate. The section's legislative history is very sparse, and does not indicate, even in general terms, what the substance of the requirements of the affected agencies should be. Consequently, following the enactment of section 504, Executive Order 11914 was issued (41 FR 17871, April 28, 1976) to direct the Secretary of Health, Education, and Welfare (HEW) to establish standards, guidelines, and procedures for Federal agency implementation of section 504. The Order also directed other Federal agencies, including DOT, to issue rules consistent with the HEW standards and procedures. HEW issued its standards, guidelines and procedures (the HEW Guidelines) on January 13, 1978 (43 FR 2132). On June 8, 1978, DOT issued an NPRM to implement section 504 (43 FR 25016). The NPRM invited public comment and provided for a 90-day comment period, which was later extended 44 more days until October 20, 1978. In addition to this opportunity for submission of written comments, the Department, realizing the public interest and the complexity of the issues in this rulemaking, held public hearings in New York, Chicago, Denver, San Francisco/Oakland, and Washington, D.C.

About 650 persons and groups provided written comments to the docket, and 220 persons and groups made presentations at the public hearings. The commenters included representatives of groups of handicapped persons, transit operators, local and state governments, and many private individuals. The diversity and depth of these comments have emphasized the importance of this rulemaking for the future of this country's transportation systems and have been invaluable to the Department in making its decisions on the issues.

Analyzing the public response and revising the proposed regulation in light of the many comments has been a time-consuming task which has delayed the issuance of the rule. However, we are convinced that this time has been well spent, and that the changes made to the rule as the result of the Department's analysis of the comments have significantly improved its provisions.

Section-by-Section Analysis

The following portion of the Supplemental Information discusses each section of the final rule. This analysis does not attempt to discuss completely each detailed provision of the regulation. Rather, the discussion pays particular attention to the differences between final rule and the NPRM and provides the Department's response to comments relevant to each section. When cost figures are used, they are expressed in 1978 dollars.

Subpart A—General

Section 27.1 Purpose. This section, about which no comments were received, is substantively unchanged from the NPRM. It simply restates the language of section 504.

Section 27.3 Applicability. This section, also unchanged from the NPRM, states that the rule applies to each recipient of DOT financial assistance and to programs and activities receiving assistance. The only comment on this section suggested that the reference to coverage of programs and activities was redundant. We do not believe that the reference is superfluous, and in any event no problems are created by its inclusion.

While DOT does not intend for this rule to apply retroactively, requirements which become effective on the effective date of this regulation, e.g., certain new contruction or the issuance of solicitations for certain new vehicles, will be subject to this rule even if the construction or vehicles were part of a project or contract approved before the effective date of this part.

Section 27.5 Definitions. Several definitions were changed from the NPRM. The first change results from a provision of the Comprehensive Rehabilitation Services Amendments of 1978, which deleted from the statutory definition of a handicapped person, as it applies to employment, alcoholics or drug abusers whose use of drugs or alcohol prevents them from performing the duties of a given job or makes them a threat to property or other persons. Consequently, the definition of "qualified handicapped person" has been changed to exclude, for purposes of employment, persons subject to the 1978 amendment. This means that employers are not required to hire drug or alcohol abusers whose condition makes them unable to do the job or makes them a threat to persons or property.

One comment pointed out that the definition of "passenger" included rail passengers but not passengers in other types of conveyances. This definition has been changed so that it includes passengers in modes other than rail.

In addition, several new terms have been added to the definitions section. In § 27.67(d) of the NPRM, the word "accessible" referred to the "ANSI standards" for purposes of the regulation. The ANSI standards which are published by ANSI, Inc., are detailed specifications for buildings and other fixed facilities designed to ensure that handicapped persons can enter and use the buildings. Because the ANSI standards do not apply to vehicles and other conveyances, a definition of "accessible" has been added to § 27.5. It provides that the term means conformity with the ANSI standards for new fixed facilities. For existing facilities, and for vehicles and other facilities to which the ANSI standards do not apply, the definition requires facilities to be able to be entered and used by handicapped persons. The ANSI standards will be a general guide to accessibility for existing facilities.

Definitions of light rail, commuter rail, and rapid rail systems have been added to the section, as have definitions of fixed route bus systems and public paratransit systems, air carrier airports, mass or public transportation, transportation improvement programs, and urbanized areas.

Because we decided (see discussion of Subpart F) to replace the designation of the Director of the Office of Environment and Safety with the general term "responsible Departmental official," the definition of "Director" has been deleted.

Numerous comments were received with respect to the definitions. One frequently made was that the definition of "handicapped person" did not spell out specifically what a "transportation handicapped person" was. Some of these comments suggested that separate definitions for "handicapped person" be developed for the transportation services and employment contexts. The Department of Transportation must generally use "handicapped person" (paragraph (1) of the definition in the rule), as that term is defined in section 504 and the HEW Guidelines. With respect to the transportation accessibility portions of the rule, the Department's interest centers on persons whose handicap results in a limited ability to use public means of transportation.

In particular, with respect to the mass transportation sections, the transportation handicapped are defined by statute. Section 12(c)(4) of the Urban Mass Transportation Act of 1964, as amended (UMT Act), defines "handicapped person" as "any individual who by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who is wheelchair bound or has semiambulatory capabilities, is unable without special facilities or special planning or design to utilize public transportation facilities and services effectively." UMTA's regulations contain virtually an identical definition of those who are covered (49 CFR § 609.3). The Department will construe the provisions consistently with the definition in the UMT Act to the extent feasible. However, the entire definition, which derives from the HEW Guidelines, is needed to specify the class of persons whom the rule protects from employment discrimination. Under these circumstances, a change to the definition is not necessary.

Several persons were also concerned with the inclusion of drug and alcohol abusers in this definition. Including these persons is consistent with HEW policy, and most apprehensions about their inclusion are probably addressed by the 1978 amendments discussed above. This rule does not require that alcohol and drug abusers be included among the persons eligible for elderly and handicapped half-fare programs required by DOT as a condition of receiving assistance under section 5(m) of the Urban Mass Transportation Act of 1964, as amended.

Various comments suggested that the regulation should contain additional terms, such as "violation," "comparable service," and so forth. In our view, the definitions section should be limited to basic terms and should not attempt to deal with what, in effect, are substantive questions better left to other parts of a regulation. The existing list of definitions is sufficiently comprehensive to provide the basic "building blocks" for an understanding of the substance of the regulation.

§ *27.7 Discrimination Prohibited.* This section sets forth in general terms the requirements imposed upon recipients to avoid discrimination against handicapped persons. The Department's interpretation of § 27.7 on matters of accessibility to programs is set forth in Subparts C, D and E. It is those subpart that, in general, should by looked to for guidance on this subject. Compliance with those subparts satisfies the requirements of § 27.7 on matters of program accessibility.

This section has been changed from the NPRM in two respects in response to comments. Minor editorial changes were made to subparagraph (b)(1)(vi).

In response to several comments, a new paragraph (c) has been added, incorporating the language of § 85.51(e) of the HEW Guidelines. This language requires recipients to take appropriate steps to ensure that communications with their employees, applicants, and beneficiaries are available to persons with impaired vision or hearing. These steps are likely to be relatively low capital expenditure items which can significantly facilitate the use of public transportation services by hearing and vision impaired persons and improve the employment situation of these persons.

It should be pointed out that the anti-discrimination provisions of this section and § 27.63 not only apply to discrimination between handicapped and non-handicapped persons, but also to discrimination between different classes of handicapped persons. For example, the regulation frequently requires accessibility for wheelchair users. When this standard is used, we intend that the vehicle or facility also be made accessible to persons whose handicap is not severe enough to require the use of a wheelchair (e.g., persons who use crutches or walkers).

One comment questioned the basic statement of § 27.7(a) that no handicapped person, "solely" by reason of handicap, shall be discriminated against under a DOT-assisted program. The commenter pointed out that the parallel provision of the HEW Guidelines does not use the word, "solely," and suggested that the word could lead to abuse. The word "solely" is taken directly from the language of section 504 and is equally appropriate here. Its purpose is to suggest generally that the primary focus of this rule is only upon one type of discrimination; its purpose is clearly not to limit the applicability of this rule to situations in which the discrimination focused upon is the only type of discrimination present.

A few commenters expressed concern that subparagraph (b)(3) was not sufficiently detailed or explicit to prevent denials of regular, mainline service to handicapped persons in situations where special service for handicapped persons also exists. In our view, the existing language is sufficient, and does not need to be expanded.

§ *27.9 Assurances Required.* The few comments that were received on this section, and the Department's own reconsideration of the language of the NPRM, centered on paragraphs (b) and (c), which deal with the "flow-through" of the rule's requirements to transferees of property obtained by a recipient with Federal financial assistance. Paragraph (a) has not been changed.

The purpose of paragraphs (b) and (c) is to ensure that, when a recipient sells or transfers property obtained with Federal financial assistance to another party for the same or similar purposes, the transferee will be bound by the obligations of these rules. If such provisions did not exist, it would be theoretically possible for the purpose of the regulations to be thwarted by a property transaction. The NPRM language implementing this purpose was drawn largely from the HEW implementing rules, which in turn were drawn from agency regulations implementing Title VI of the Civil Rights Act of 1964. To clarify these paragraphs, we decided to rewrite them. With one exception noted below, the rewrite is not intended to affect the substance of NPRM language.

Each of the four subparagraphs of the new paragraph (b) covers one of the types or uses of DOT financial assistance. Respectively, they are the direct transfer of real property from DOT to a recipient (e.g., the Federal Aviation Administration (FAA) gives a small rural airport it owns in Alaska to the state government), the use of Federal aid to help a recipient purchase real property (e.g., the acquisition of highway right-of-way by a state highway department), the use of Federal aid to buy personal property (e.g., the purchase of buses by a local transit authority), and use of Federal aid not involving the acquisition of property by a recipient (e.g., operating assistance to a rapid rail system). Where real property is involved, subsequent transferees of the property, as well as the recipient, are bound by the requirements of the regulations as long as the property is used for the purpose of the original Federal assistance or a similar purpose. In the case of personal property, the recipient is bound by the requirements of the regulations as long as it owns or keeps possession of the property. In addition, we have added language to the provision binding the recipient to follow these regulations as long as a transferee of personal property uses the property for a purpose directly connected with the recipient's operations. For example, if a small airport buys a snowplow with Federal aid, it continues to be bound by these regulations if it sells the snowplow to the county government and the county government, using the same

snowplow, assumes the responsibility for clearing the airport's runways of snow. Finally, assistance not used to obtain property obligates the recipient under these regulations only for so long as the assistance continues to be provided.

As one commenter noted, the NPRM did not include a provision—common to the HEW Guidelines and most Federal agency Title VI regulations—allowing the Department to reclaim the property in the event a recipient or transferee violates its obligations in cases where DOT directly conveys property to a recipient. DOT gives land away only in rare instances, to meet a particular government purpose. Therefore, we decided to delete this provision. Other means better suited to enforce the obligations of recipients and transferees, such as conciliation, administrative fund cutoffs, and other means authorized by law (e.g., court action), are, of course, still available.

§ *27.11 Remedial Action, Voluntary Action, and Compliance Planning.* Subparagraph (c)(2)(3) has been changed to require recipients only to "begin to modify," rather than to "modify" as provided by the NPRM, policies or practices that do not meet the requirements of the rule within the first 180 days of its effective date. This change is intended to make clear that the modifications do not have to be completed within 180 days. The modifications must be completed within one year of the effective date of the rule, however, and this provision has been amended to so state. In addition, in response to a comment, subparagraph (c)(2)(iv) has been clarified by substituting the word "previous" for the word "modified." This change should remove any doubt that the paragraph calls on recipients to eliminate the effects of policies or practices that existed before modifications made to comply with these regulations. Also subparagraph (c)(3) now requires the submission of certain records to the head of the operating administrations only upon request. This change is intended to lessen the administrative requirements of the rule, by eliminating the NPRM's requirement that copies of these records be sent automatically to the Department.

This section drew relatively few comments. One commenter wanted to change the language of subparagraphs (a) (2) and (3) from the responsible Departmental official "may" to the responsible Departmental official "shall" take certain action. Believing that the responsible Departmental official should have discretion in his or her actions under this section, we decided against this change. Other commenters wanted the regulations explicitly to require recipients to consult with handicapped persons, organizations, advisory committees, or the Architectural and Transportation Barriers Compliance Board. The section (subparagraph (c)(2)) already requires consultation with handicapped persons and organizations representing the handicapped. An additional organizational layer such as an advisory committee, while a step that some recipients may want to take, is not something the Department believes is appropriate to demand of all recipients. Finally, the Architectural and Transportation Barriers Compliance Board is a separate Federal organization with a different statutory mandate from that of the Department of Transportation. It would unnecessarily complicate the planning processes of recipients if the Board has to be routinely consulted in every case. However, the Department does intend to consult with the Board, which is an important resource in this area, in matters affecting its accessibility policies.

§ *27.13 Designation of Responsible Employee and Adoption of Grievance Procedure.* This section is essentially unchanged from the NPRM. There were two comments of note. One asked that DOT require smaller recipients to have a grievance procedure, or at least retain the option to require such a procedure for them. The Department does not think that this step would be a good idea. Recipients with 14 or fewer employees are small enough to be able to handle most grievances informally. In keeping with the Federal policy of avoiding over-regulation, we think it appropriate to avoid imposing this kind of administrative burden on small recipients. The second comment expressed concern that this section could be interpreted to require persons to exhaust the administrative grievance procedures established by recipients before making a complaint to the Department under § 27.123. The Department encourages the settlement of local grievances by agreement of the local parties involved, and believes that recipients' grievance procedures will be a useful tool in reaching such settlements. However, persons may make written complaints to the Department under these regulations at any time.

§ *27.15 Notice.* This section is also unchanged from the NPRM. Few commenters discussed this section. One asked for broader distribution of notices under the section. The Department believes the NPRM requirements are sufficient. Another asked for a specific requirement of distribution to vision and hearing impaired people and others whose handicaps may interfere with communications. This concern is handled by the addition of the new § 27.7(c) to the rule, as well as by the language of section 27.15(e) itself.

§ *27.17 Effect of State or Local Law.* This section states that the obligation to comply with this part is not obviated or affected by State or local law. It is unchanged from paragraph (a) of the NPRM. The intent of this provision is to indicate that State or local laws which limit or prohibit the eligibility of certain handicapped persons for jobs or services are not an excuse for noncompliance with this rule. Paragraph (b) of the NPRM version of this section said that the obligation to comply with the rule is not affected by the fact that employment opportunities for handicapped persons in some occupations may be relatively limited. Subpart B of the regulation adequately handles the problem of the employment of handicapped employees. Therefore, paragraph (b) appears to be unnecessary and has been deleted.

Subpart B—Employment Practices

Many commenters on the employment provisions of the NPRM had an initial concern about its scope, arguing that the definition of a handicapped person in § 27.5 of Subpart A, as it applied to employment, was overbroad. The list of impairments conferring protected status on individuals under the regulation should be pared down, in these commenters' view, particularly to exclude drug addicts and alcoholics from the definition. The definition of handicapped persons used in the NPRM is taken directly from the HEW guidelines (45 CFR 85.31). As noted in the discussion of § 27.5, this definition has been modified to take into account the 1978 amendments to the Rehabilitation Act of 1973, which should eliminate the concern of commenters about the employment of drug abusers or alcoholics. Drug abusers or alcoholics whose conditon make them a threat to persons or property or renders them unable to perform their job are not required to be hired. Otherwise, the definition remains as stated in the NPRM.

We emphasize that the prohibition of discrimination against handicapped persons does not mean that people who cannot perform the duties of a job or whose employment is inconsistent with valid safety requirements must be

employed. The Department does want to ensure that organizations to which it provides financial assistance look only at the job-related qualifications of applicants and employees, and do not deny job opportunities to persons because of assumptions or stereotypes about their physical or mental condition or because they are unwilling to make reasonable accommodations to meet the needs of handicapped workers.

Section 27.31 Discrimination Prohibited. The first sentence of subparagraph (a)(1) has been changed by adding the words "for employment or an employee" after the word "applicant." This is a clarification to ensure that readers of the rule understand that present employees, as well as applicants, are covered by the prohibition of discrimination, and to distinguish these applicants from applicants for financial assistance.

A number of commenters suggested that this section include language clearly stating that recipients were not precluded from voluntarily taking "affirmative action" to overcome impediments to the employment of handicapped persons. It is not a purpose of the rule to prohibit such voluntary efforts. Therefore, subparagraph (a)(2) has been amended to state that the regulations do not prohibit the consideration of handicap as a factor in employment decisons when the purpose and effect of this consideration are to overcome or remove impediments, or the present effects of past impediments, to the employment of handicapped people.

One commenter interpreted subparagraph (a)(3) to mean that recipients' contractors (e.g., suppliers, construction contractors) were covered by the employment requirements of the regulation. The intent of this provision is simply to require that when a recipient enters into a contractual or other arrangement with organizations (e.g. labor unions or employment agencies) which directly affects the selection of employees or their working conditions, employees are still not to be subjected to discrimination. The Department does not intend through this provision to impose employment practice requirements on contractors performing work or providing supplies to recipients.

One focus of considerable commenter concern was paragraph (c), which provides that a recipient's obligation to comply with the rule with respect to employment is not affected by any inconsistent term of a collective bargaining agreement. This section is straightforward. The rule establishes certain duties (e.g., to make reasonable accomodations for handicapped workers) which recipients must perform as conditions to receiving Federal financial assistance. Any inconsistency between this requirement and a term of a labor-management agreement does not excuse the recipient from complying with the regulations. To say otherwise would permit recipients and their unions, by collective bargaining agreement, to abridge the rights guaranteed handicapped persons by statute and regulation. While we recognize that this provision may require some adjustments to be made in some labor-management relationships, we believe that the provision is necessary to ensure that the rights of the handicapped under law and regulation are fully respected in all situations.

§ 27.33 Reasonable Accommodation. Many commenters representing the handicapped, and transit authorities, asked for the inclusion of more detail and examples in this section. The comments, collectively, evinced uncertainty about what the Department wanted "reasonable accommodation" to be and sought more definitive guidance. We understand these concerns. There are, however, literally multitudes of different recipients, job requirements and kinds of handicaps. Deciding what may constitute a "reasonable accommodation" in a given situation requires consideration of a great many variables involving the recipient, the job and the handicapped employee. Lists of examples of "reasonable accommodations" cannot do justice to this multiplicity of situations, and are likely to be misperceived as representing the sum total of what the regulation requires. Therefore, we decided to leave the final rule language as it was in the NPRM. After experience with the problems of specific recipients and handicapped employees, the Department or the operating administrations may be able to draft advisory guidance containing the kind of detail which the commenters believe to be desirable.

Considerable concern was expressed about subparagraph (b)(3), which provides that reasonable accommodation includes assigning to an alternative job with comparable pay an employee who becomes handicapped after being hired and is unable to perform his or her original duties. Some commenters said that for safety, personnel, or labor-management reasons, this requirement was impractical. The key point is that placement in an alternative position is required only with respect to "qualified" employees; the rule does not require alternative placement of a handicapped person in a job the employee cannot perform capably or safely. The same point applies to the question of "comparable pay." An employee who is unqualified for a job at the same pay level as his pre-handicap job could be given a new job, for which he or she was qualified, that paid less than the old job. The rule does not require compensation of employees at a level above that which is appropriate for the work they are qualified to do and are doing. Nor does it require the creation of a position which is surplus to the personnel requirements of a recipient, although job restructuring may be a valid response to the needs of handicapped employees in appropriate cases.

Some groups representing handicapped persons, on the other hand, requested that alternative placement be in a position equal to or better than the employee's former job in terms of pay and responsibility. The Department does not think this would be a reasonable requirement.

Some commenters, principally groups representing the handicapped persons, objected to paragraph (c), which sets out factors for the Department to use in determining whether "undue hardship" prevents some kind of reasonable accommodation. These comments viewed this paragraph as a "loophole" in the regulation. The point of this paragraph, which DOT believes to be very important, is that this regulation should not ask a recipient to do what is impossible or unreasonable in a given situation. The regulations forbid discrimination against handicapped employees and require employers to "go the extra mile" of reasonable accommodation to make employment opportunities available. However, the regulation should not forbid employers from taking safety, costs, or operational needs into account in this process.

§ 27.35 Employment criteria. This section, which deals with employment tests and other criteria for employment, contained an editorial error which several commenters mentioned. Paragraph (b) has been corrected to read that tests when administered to an applicant for employment "or an employee" with impaired sensory, manual or speaking skills must nontheless "accurately measure what they purport to measure," i.e., job related skills. Otherwise, this section has not been changed.

Several commenters, principally transit operators, felt that this section put them unfairly into a "guilty until proved innocent" position with respect to employment testing. The criticism is not valid. Under the section, a test or

employment criterion is not questioned so long as it does not adversely affect handicapped persons with respect to employment opportunities. If the test or criterion does have an adverse impact on handicapped persons then the employer must show that the test or criterion is job-related, i.e., actually measures or constitutes a qualification to perform the duties of the position. This process is modeled after the method by which the administrative agencies and courts determine whether an employment test or criterion which disproportionately excludes members of a minority group violates Title VII of the Civil Rights Act of 1964. In each case, the adverse impact on members of a protected group raises a rebuttable presumption of discriminatory treatment. The employer can rebut the presumption by showing that consideration of valid job-related job qualifications is responsible for the disparity in the effect of the test or criterion on the protected group and other people. Turning the presumption around—presuming that a test or criterion which has an adverse effect or excludes handicapped persons is job-related until the handicapped person or the Department shows to the contrary—would be inconsistent with this well-established and important part of equal employment opportunity law.

Two commenters raised a related issue, that of test "validation," asserting that there are no employment tests validated for use by handicapped persons. The concept of validation concerns the relationship of testing materials and job qualifications. A valid test measures an applicant's ability to perform certain duties. (See Uniform Guidelines on Employee Selection Procedures, 43 FR 38290, August 25, 1978). If a recipient's tests are valid and measure only job-related factors, and do not add measures of extraneous factors, then they are valid for blacks, whites, men, women, fully mobile people and persons confined to wheelchairs.

§ *27.37 Preemployment Inquiries.* This section, which is fashioned after the HEW Guidelines (45 CFR 85.55), has not been changed from the NPRM. Several objections to this section were based on fears that it could impede medical examinations and inquiries that are necessary for safety and, in some cases required by other DOT regulations (e.g., 49 CFR Part 391, subpart E, relating to physical examinations for drivers employed by motor carriers). In the case of motor carrier driver positions, all applicants are required by DOT regulations to take physical examinations, and are not considered qualified to drive unless they meet the minimum, criteria specified by Part 391. If a person is not physically qualified to drive, then a recipient's failure to hire the person does not violate this part.

To clarify this point, language was added to the last sentence of paragraph (a) specifying that preemployment medical examinations required by Federal law or regulation are permitted. Other pre-hire inquiries into an applicant's ability to perform job-related functions are also permitted. In any event, an offer of employment may be conditioned on the results of a medical examination conducted before the hired employee reports for work, so long as all similarly situated employees must take such an examination.

Subpart C—Program Accessibility—General

§ *27.61 Applicability.* Language has been added to this section to specify that the provisions of Subpart C should, where possible, be interpreted to be consistent with the provisions of Subparts D and E, which concern the specific modes of transportation receiving financial assistance from the Department. In cases of apparent conflict, however, the section provides that the standards of Subpart D and E shall prevail. This section is otherwise unchanged from the NPRM.

§ *27.63 Discrimination Prohibited.* This section has not been changed from the NPRM.

§ *27.65 Existing Facilities.* This section requires recipient's programs and activities to be accessible, discusses methods for achieving accessibility, sets a three-year deadline for making structural changes needed to ensure accessibility (different deadlines may be provided by subparts D or E), instructs recipients to prepare "transition plans" with respect to making structural changes, and requires recipients to make provision for informing handicapped persons of the availability of accessible facilities and services.

Several changes were made to paragraph (d) of this section. Along with a copy of their transition plans, recipients must now make available to the public a list of the persons and organizations consulted as part of the required public participation process. This addition is intended to permit the public to scrutinize the effectiveness of the recipient's efforts to involve the public, and handicapped persons and their organizations in particular, in the planning process. A new subparagraph (d)(1) adds to the required contents of the transition plan a listing of each facility required to be modified under the regulation. Facilities must be listed even if the recipient contemplates requesting from the Department a waiver of the requirement to modify them. Other parts of the subparagraph require planning for the modification of all listed facilities in the transition plan. These requirements are intended to ensure that recipients plan to modify all facilities required to be modified by the regulations. This planning requirement ceases to apply only if a waiver is granted for a given facility.

Some commenters suggested the discussion of "program accessibility" in paragraph (a) should specify that so long as mobility through use of some of the components of an area's overall transportation system is available to handicapped persons, program accessibility has been achieved. The HEW guidelines require, and DOT's policy supports, making all modes of transportation accessible for all persons, regardless of handicap. Consequently, we did not adopt their suggestion. Another comment, asking that existing facilities not be required to be made accessible, was not adopted for the same reason.

Some comments suggested that the regulation in all instances specify that facilities and programs be "usable by" as well as "accessible to" the handicapped. This change is unnecessary. The rule's definition of "accessible" refers to the ANSI standards for new facilities and requires vehicles and existing facilities to be able to be entered and used by handicapped people. The definition of "accessible" includes the concept of "usability" and the absence of the word "usable" in some places in the regulation does not mean that a facility that handicapped persons can enter but cannot use will be in compliance.

Two commenters suggested that more examples be added to the methods of achieving program accessibility in paragraph (b). We think the existing language, particularly given the proviso calling for use of "any other methods" in appropriate situations, is broad enough. Given the applicability of the ANSI standards, specific inclusion of examples of nonstructural changes in this paragraph is unnecessary.

One commenter added that, consistent with § 84.22(d) of the HEW Guidelines, the regulations should require recipients to make nonstructural changes within 60 days. The § 84.22(d) which the commenter cites is part of HEW's own rules implementing section 504 for HEW-funded programs and is not binding on DOT. Nothing in the HEW Guidelines sets a separate

deadline for nonstructural changes. In addition, as a practical matter, we do not believe that such a short deadline is advisable.

Several comments contended that paragraph (d) should require transition plans to be submitted within 6 months, as HEW requires, rather than a year. The 6-month HEW requirement mentioned is part of HEW's Part 84 implementation rules for its own program. Its Part 85 guidelines for other agencies leave the schedule for transition plans to the discretion of each agency. In our view, a year is a reasonable time to allow most DOT recipients to plan for the often difficult and costly changes that will have to be made; for some recipients an 18-month period is allowed (see § 27.103, transition plans for rapid rail systems).

§ 27.67 New Facilities and Alterations. This section establishes general requirements for accessibility to facilities which are constructed or altered after the regulations go into effect, and applies the ANSI standards to this construction or alteration.

The Department has changed this section from the NPRM in a number of respects. As a clarification, paragraph (a) now states that facilities must be designed, constructed and "operated" in a manner so that they are accessible. This paragraph now also specifies that the accessibility requirement applies to vehicles ordered or leased after the effective date of the regulation, unless otherwise provided in Subpart D or E.

Some clarifications in paragraph (a) suggested by commenters—for example, that all components of a transportation program, train cars as well as station platform, be made accessible—are not needed because other portions of the regulation state the requirement. Objections to the proviso in paragraph (b) that alterations of facilities should be made accessible "to the maximum extent feasible" appear to be based on the assumption that this phrase dilutes the rule's mandate for accessibility. This assumption is incorrect. DOT is committed to the goal of accessibility, but wants to make clear that it is not demanding that recipients make changes which are simply not feasible (e.g., changes for which technology is not available or changes which would cause a dangerous weakening of a structure).

Paragraph (b) requires certain buildings to conform to the requirement of physical accessibility in paragraph (d). If an alteration is made to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway is being altered, the doorway must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration involves ceilings, the provisions of this section do not apply because this alteration cannot be done in a way that affects the accessibility of the building.

Paragraph (b) is based on the belief that alterations present opportunities to design and construct the altered portion or item in an accessible fashion. It should be noted that paragraph (b) applies only to the altered portion or item of a fixed facility. Thus, a stair renovation to meet the ANSI standard does not impose a requirement for elevator installation since an elevator is not within the scope of the stair alteration project. Paragraph (b) does not create the obligation to install an elevator in an existing fixed facility which has no elevator. The basic requirement in paragraph (b) is simply to take the opportunities afforded by the alteration and, to the maximum extent feasible, use the alteration to make the facility accessible. Thus, normal maintenance may take place in practically all cases without generating an accessibility requirement.

In sharp contrast to paragraph (b), the sections on specific mass transportation systems (§§ 27.85–27.93) effectively do require the installation of elevators or other level change mechanisms in fixed facilities which have no elevators. However, because of the transition plan requirement applicable to those sections, all of a system's fixed facilities (for example, all stations in a rapid rail system) are examined at once and a rational phasing can occur.

A new paragraph (c), covering renovations of existing vehicles, has been added. This paragraph was § 27.97(b) of the NPRM, and was relocated from Subpart E to this section because it applies to modes other than those covered by Subpart E.

This paragraph provides that renovating efforts which prolong equipment useful life must include retrofit accessibility efforts. This paragraph recognizes that existing buses, rail cars, and other rolling stock are likely candidates for renovation and upgrading, and that such fleet maintenance investments might preclude the timely replacement of inaccessible equipment by accessible new equipment. Retrofit accessibility is not required for routine maintenance activities or for limited modifications to vehicles that are unrelated to the transportation of passengers (e.g. replacement of roofs, addition of new wheels).

Three commenters noted that some state standards (e.g., the Massachusetts Architectural Barriers regulations) may be more stringent than the ANSI standards applied by subparagraph (c). In order to comply with the rule, recipients must ensure that their facilities meet this regulation's accessibility requirements. Nothing in this regulation, however, would relieve recipients of their obligations to comply with state or local regulations which may be more stringent than the ANSI standards.

The statement "When used in this regulation, 'accessible' refers to these standards" in paragraph (d) has been deleted. Since this sentence states a definition of a term applicable throughout the regulation, it has been replaced by a substantially identical definition of "accessible" in § 27.5 in Subpart A.

The Department believes that it is probable that when the updated and revised ANSI standards are promulgated, the Department will use them as a reference to replace the current ANSI standards in this regulation. However, the Department decided to delete the statement that the new ANSI standards will be adopted from paragraph (d), because a statement of probable future action by the Department is not appropriate in the text of a rule. Also, the statement of the address from which copies of the ANSI standards are obtainable has been deleted from this paragraph; the information may be found in a footnote to the definition of "accessible" in § 27.5.

One commenter expressed concern that the portion of paragraph (d) which permitted departures from particular requirements of the ANSI standards, when equivalent access to the facility involved is provided by alternate means, might encourage recipients arbitrarily to ignore the ANSI standards. Given the wide variety of facilities and modification problems recipients will have to deal with under this regulation, we believe that it is reasonable to permit some flexibility in the choice of means to achieve accessibility. The language of paragraph (d) permits deviation from the ANSI standards only when it is "clearly evident" that equivalent access will be provided. This strong requirement, which will be backed by the Department's enforcement process, should be a sufficient safeguard against arbitrary decisions to deviate from the ANSI standards in situations in which those standards apply.

The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.), directs the General Services Administration (GSA) to prescribe accessibility standards for the design, construction, and alteration of "buildings," a term defined in the statute. GSA has promulgated a regulation (41 CFR Subpart 101-19.6) to carry out its responsibility under the statute. New fixed facilities (e.g. transit stations) and alterations to existing fixed facilities which are funded by a grant or a loan from this Department are generally covered by that regulation.

The Department's section 504 regulation does not supersede GSA's regulation. However, § 27.67 of the section 504 regulation expresses the basic requirement of GSA's regulation, and if a recipient complies with § 27.67, it generally will have satisfied the requirements of the GSA regulation. The Department intends to administer the two regulations as consistently as possible, for we believe that the two are basically consistent.

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

This subpart applies section 504 to the transportation facilities and programs receiving financial assistance from the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA). In the near future, the Department will issue a notice of proposed rulemaking concerning the application of section 504 to programs receiving financial assistance from the National Highway Traffic Safety Administration. Urban mass transit programs are addressed by Subpart E.

Section 27.71 Federal Aviation Administration—Airports. The Department has made a number of substantive and editorial changes in this section. The most significant concerns the use of the term "air carrier airports," which is defined in §27.5 to mean airports served by certificated air carriers, except those airports which are served solely by air carriers using aircraft with a passenger capacity of less than 56 persons or cargo service using solely aircraft with a payload capacity of less than 18,000 pounds. Any airport that receives Federal funds for terminal facilities is deemed to be an air carrier airport.

The portion of this section that requires boarding devices (such as lifts or ramps) that are not ordinarily used for other purposes (such as freight loading) to be reserved for the boarding of handicapped passengers now applies only to air carrier airports. All airports receiving Federal funds must provide boarding assistance to handicapped passengers; airports that are not air carrier airports may do so with lifts, ramps and other devices that are used for other purposes, however.

These requirements replace provisions of the NPRM that limited any requirement for boarding assistance to airports enplaning more than 10,000 passengers a year. In response to comments from handicapped persons and their groups, the Department decided to require assistance incident to boarding at all airports. However, the Department also felt that at very small airports—those outside the "air carrier airport" category—it was reasonable to avoid requiring the purchase of equipment reserved for the use of handicapped persons. In the context of these very small airports, such a requirement would not be cost-effective. Therefore, subparagraphs (a)(2)(v) and (b)(2)(iv) and (v) have been amended to delete the 10,000 enplanement threshold and to insert the new requirements.

Paragraph (a) now provides that terminal facilities constructed "by or for the use of" a recipient of Federal airport aid funds must meet the enumerated accessibility standards. In the NPRM, this provision applied accessibility requirements to terminals constructed "with" Federal funds. The language of the final rule is broader. The Department believes that all terminals constructed by or for airports that receive Federal funds (e.g. for runway improvements), not only terminals actually constructed with Federal funds, should be accessible. Similar changes have also been made for other modes (e.g. intercity rail passenger service).

In paragraph (a)(2)(i), the final regulation adds the word "entrance" to ensure that handicapped persons can readily enter, as well as move around, airport terminals.

In addition to this substantive change, certain editorial changes were made throughout this section. The words "airport terminal" or "terminal" were used to replace the use of the word "station", which we felt to be confusing as applied to airports. The term "wheelchair-confined" was changed to "wheelchair users". This responded to comments that suggested that the term "wheelchair-confined" had unnecessarily negative connotations.

Three of the specific substantive requirements of the section have been changed from the NPRM. Subparagraph (a)(2)(vii), concerning the provision of teletypewriter (TTY) service, has been rewritten. It now provides that each airport shall make available TTY service sufficient to ensure that hearing-impaired persons using TTY equipment are able to communicate readily with airline ticket agents and other personnel. The rewritten provision makes clear that it is the airport which is charged with ensuring that TTY equipment is available. If air carriers have TTY machines which are used, or shared, so as to permit TTY users to communicate readily with ticket agents and other personnel of all carriers, further action by the airport operator may be unnecessary. Where there is not now sufficient TTY capacity, the airport operator is responsible for providing this capacity, either by providing its own equipment or persuading its air carriers to do so. The FAA estimates that in order to provide the capacity required by the rule, 75 large and medium-sized airports will require an average of 4 TTYs; the 94 small airports an average of two; and the 451 smallest airports only one TTY each.

A few comments favored the provision of interpreters at airports instead of the provision of TTY equipment. The use of interpreters would not serve the principal purpose of the TTY provision, which is to provide hearing-impaired people with a substitute for the telephone in order to make reservations and ask for information. A few commenters also wanted greater detail in the provision for passenger assistance, such as requirement for special attendants to help handicapped people with baggage. In our view, the NPRM language is sufficiently explicit. Some commenters also wanted to add detail to the parking facilities provision of the section, such as a requirement of discounted fees for spaces reserved for handicapped persons. Such a requirement, in our view, is outside the scope of this rulemaking aimed at equalizing accessibility.

In response to a comment from a group representing handicapped persons, the last sentence of subparagraph (a)(2)(xi) has been rewritten to say that terminals shall have printed information in a tactile form. Airports may substitute a toll-free information telephone service for this tactile information service. Terminals must also provide information orally, in order to provide information to blind persons. Finally, the NPRM provided that guide dogs must be permitted on all certificated aircraft as well as in terminals. The requirement has been deleted with respect to aircraft for the reason that, as a requirement pertaining

to the accessibility of aircraft interiors, it was more appropriately dealt with by forthcoming rules of the Civil Aeronautics Board.

Many comments from handicapped individuals or groups representing them asked that the rule specifically require airlines to carry handicapped travelers, modify aircraft cabins for greater accessibility, and improve services to handicapped persons. The NPRM contained, and the final rule retains, requirements relating to boarding devices, ticket counters, baggage check-in and retrieval, and teletypewriters, all of which are owned and operated by the airlines at most airports. Following publication of the NPRM, representatives of the DOT, FAA, HEW, and the Civil Aeronautics Board (CAB) met to discuss the respective legal authority and responsibilities for improving the accessibility of air travel to handicapped persons. Following this meeting, the CAB determined that it had statutory authority to issue regulations governing air transportation of handicapped persons, both under section 504 of the Rehabilitation Act and under sections 404 and 411 of the Federal Aviation Act.

Recently, the CAB advised the Department that a rulemaking project was underway to implement these sections. Action by the CAB which would ensure the uniform provision of services and equipment by the airlines, needed to accomplish accessibility to air travel for handicapped persons, could obviate the need for airport operators to provide the same services directly or indirectly, through their leasing arrangements with the airlines.

Accordingly, as CAB rules become final, the Department will review the requirements presently contained, in § 27.71 to determine whether these provisions are duplicative or unnecessary, and if appropriate, will amend the rule to modify or remove such requirements.

Two commenters objected because the NPRM did not change 14 CFR 121.586 and 135.81. These regulations implement section 1111 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1511). Section 1111 provides that subject to FAA regulations, air carriers may refuse transportation to passengers when, in a carrier's opinion, transporting the passenger would or might be inimical to the safety of flight. The CFR sections cited limit the discretion of carriers under this statute and provide that special safety briefings be given to persons who require assistance in entering or leaving aircraft. Section 504 of the Rehabilitation Act does not purport to repeal or modify section 1111, which is exclusively a safety statute.

Comments were received on a number of other specific portions of the terminal standards. Most comments on the waiting area/public space security provision supported the NPRM language, and the language has not been changed. A comment pointed out that the provision on curb cuts erroneously referred to 8.33 "degrees" rather than an incline of 8.33 "percent." The reference has been corrected. Most commenters favored the provision requiring guide dogs to be permitted to accompany their owners in terminals. One commenter thought that the provision might violate state and local health codes. Guide dogs are exempted from virtually all state and local laws or regulations banning animals from public places on health or safety grounds. This provision has not been changed.

Some commenters wanted volume controls attached to all telephones. The provision of the NPRM, which requires at least one volume controlled telephone in all public telephone centers (i.e., groups or clusters of phones) in terminals, should be sufficient to meet the needs of hearing-impaired persons. We have not adopted comments that volume controlled phones should be installed in special locations. Besides being contrary to the goal of integrated service for handicapped persons, carrying out this suggestion would cause the specially equipped phones to be available in fewer locations in the airport and therefore less convenient for hearing-impaired people. One comment suggested that the volume controlled phones be available to wheel chair users. Subparagraph (a)(2)(xii) has been amended to specify that telephones are among the public services that must be made accessible according to the ANSI standards.

The Department expects airports to ensure that these requirements for wheelchair-accessible phones and phones usable by hearing-impaired persons provide service for all handicapped people. Consequently, the wheel-chair-accessible phones should have the hearing assistance features, to serve wheelchair users who have hearing impairments.

Some comments asked whether the provisions of the rule apply to concessionaires and other tenants at airports. The requirements of the rule apply to those parts of airport facilities used by concessionaires and other tenants in the same way they apply to the parts of the airport directly under the airport operator's control. That is, terminal facilities designed or constructed after the regulation becomes effective must be accessible, including the parts of the facility to be used by concessionaires and tenants. With respect to existing facilities, only those portions of the facilities used by tenants which are directly concerned with the provision of air transportation services (e.g. ticketing, baggage handling, or boarding areas) must be made accessible within the three-year period. However, if a terminal reconstruction results in significant renovation of space used or to be used by concessionaires (e.g. restaurants, stores), then this space must be made accessible.

§ 27.73 Federal Railroad Administration—Railroads. This section applies to passenger railroad service receiving Federal financial assistance through the Federal Railroad Administration (principally the National Railroad Passenger Corporation's Amtrak service). Amtrak commented extensively on the section, and other comments were received from state departments of transportation and handicapped individuals and groups representing them.

Subparagraph (a)(1)—New fixed facilities. Relatively few changes have been made to the language of the NPRM in this subparagraph. Most of these changes are purely editorial (e.g., the deletion of the words "referenced in § 27.67(c)" following "ANSI standards" in (a)(1)(i)). There were a few minor substantive changes as well. In (a)(1)(ii)(A), the first sentence was deleted as unnecessary. The subparagraph now begins by saying that "station design and construction" must permit the efficient movement of handicapped persons through the station. In (a)(1)(ii)(B), the word "wheelchair" has been deleted, causing the provision to state that the international accessibility symbol must be displayed at "accessible" entrances. The word "wheelchair" is not needed in this context. The last sentence of (a)(1)(ii)(E) now provides that when level-entry boarding is not provided, lifts, ramps or other suitable devices must be provided to facilitate entry into trains by wheelchair users. This clarifies the meaning of the provision. The provision regarding teletypewriter (TTY) service [(a)(1)(ii)(G)] for the hearing impaired was rewritten to be consistent with the parallel provision in the standards for new airports. It now provides that recipients shall make available a toll-free reservation and information number with TTY capabilities to permit hearing impaired persons using TTY equipment to readily obtain information or make reservations

for any services provided by a recipient. The intent of this requirement is that a person with TTY equipment anywhere in the country should be able to call a reservation number to make reservations for or get information about any service provided by a recipient. The parking spaces required of (a)(1)(ii)(I) has been corrected to refer to an 8.33 "percent" rather than "degree" grade. In the same provision, the term "wheelchair confined" has been changed to the term "wheelchair users." The provisions regarding telephones, station information, and public services have been changed in the same ways, and for the same reasons, as the parallel provisions of the airports section of the subpart. In addition, the language of (a)(1)(ii)(E) has been clarified. The provision now requires lifts, ramps, or other suitable devices "where level-entry boarding is not provided."

This subparagraph was not controversial, and the only comment suggesting change recommended that the reference to giving handicapped people "confidence and security in using the facility" [(a)(1)(ii)(J)] be deleted because it might lead to over-protectiveness of handicapped persons on the part of recipients. We think that this general requirement is not likely to produce any ill effects upon handicapped people, and have decided to retain it.

Subparagraph (a)(2)—Existing Facilities. This subparagraph was the most controversial part of the railroads section of the rule, and has been revised extensively in response to comments. The heart of the subparagraph, (a)(2)(ii), structural changes, has been rewritten. In the NPRM, this provision required all existing stations to be made accessible within five years of the effective date of the section. However, a recipient could request an exemption for up to ten percent of its stations which have the lowest utilization rates.

Amtrak asked for a 10-year compliance period, requested that only one station be required to conform to the regulations within any large urban area, and said that stations outside of urban areas should not have to conform if there is another station appropriately modified within 50 miles. Amtrak also questioned the utility of the provision of the NPRM permitting recipients to ask for an exemption from the accessibility requirement of up to 10 percent of its least used stations, noting that because of route restructuring proposals it is likely that stations and communities served are likely to change. Two state transportation agencies also opposed the 10 percent exemption provision, one of which suggested that it be modified to be based on specific criteria (e.g., low utilization, high costs for modification) rather than tied to a percentage.

The final rule incorporates many of these comments. Subparagraph (a)(2)(ii) now simply states that stations shall be modified to make them accessible. A new subparagraph (a)(2)(iii) sets forth a phased timetable for achieving accessibility. This timetable establishes a system analogous to the key station concept which is used for rapid rail stations, described in Subpart E of the rule. Within five years of the effective date of the section, a recipient must make accessible at least one station in each Standard Metropolitan Statistical Area (SMSA) it serves. An SMSA is an area defined by the Bureau of Census as including a city of 50,000 or more population and its surrounding county or counties. Where there is more than one station in an SMSA, a recipient shall select the most heavily used station, in terms of passenger volume, for this first-phase modification. Within 10 years of the effective date of this section, a recipient shall make the other stations in the SMSA accessible. This provision retains the concept that all stations be made accessible. However, it permits a recipient to spread the costs of modification out over a longer period of time, while also ensuring that the most important station in an urban area will become accessible within a five-year period.

The key station concept used in the final rule also applies to rural stations. Within five years, a recipient must make accessible all stations located outside SMSAs that are not located within 50 highway miles of an accessible station. If there are two or more stations located within 50 highway miles of one another, the recipient is directed to choose the station with the highest passenger volume for the first-stage modification. Remaining stations must be modified within 10 years from the effective date of the section. Again, the intent of the rule is to spread the cost to the recipient of modifying all stations over a longer period of time, while still ensuring that key stations in rural areas are available to handicapped persons within a moderate distance.

The 10 percent exemption provision has been dropped in favor of a new waiver provision ((a)(2)(iv)). The waiver provision permits a recipient to petition for a waiver within six years from the effective date of the section from the requirement of making any "second-stage" station (i.e. one of those stations which does not have to be modified within five years) accessible. A six-year period is allowed because it will permit recipients and consumers at least a year after first-stage modifications have been completed to gather information and views concerning the impact of waiving the requirement of modifying second-stage stations.

In order to get a waiver for a particular station, a recipient will have to submit a written justification to the Federal Railroad Administrator. The justification must include the record of a community consultative process, including a transcript of a public hearing and consultation with handicapped persons and their organizations in the affected area. Before granting a waiver for a particular station, the Administrator and the Interstate Commerce Commission will evaluate the potential for high utilization by handicapped persons, considering, among other factors, the cost of making necessary modifications, the availability of alternative accessible service to transport handicapped persons from the affected area to accessible stations, and other factors which may be pertinent. The record of the community consultative process will also be reviewed as part of the Department decision-making process. The final decision on the petition for waiver, as provided in the NPRM, will be made jointly by representatives of FRA and the Interstate Commerce Commission. If the two agencies do not agree, the waiver request will be denied.

Amtrak also requested that it not be required to modify shops, restaurants and other facilities in stations that are not directly connected with the provision of rail transportation. The rule's provisions for railroad station concessionaires are the same as for concessionaires at airports, which do not require most concession facilities to be made accessible in existing stations. Another Amtrak proposal called for the rule to allocate costs among recipients of federal funds in proportion to the passengers each recipient serves in a jointly used facility. For example, if Amtrak, a commuter rail operation, and a rapid rail system all use the same train station, Amtrak's proposal would prorate the cost of needed modifications among the three recipients of DOT funds based on how many passengers of each entity used the station. The problem of allocating costs and allocating modification responsibilities among recipients jointly using the same facility is a difficult one. The Department of Transportation has decided to defer resolution of this problem, since it was not explicitly raised by the NPRM. We

anticipate taking action in the near future to address this problem.

Paragraph (b)—Rail Vehicles. Amtrak requested that this provision require program accessibility for rail vehicles (i.e. one accessible car per train) to be accomplished in five years rather than in three years, as proposed by the NPRM. It argued that given vehicle orders already made to manufacturers for inaccessible equipment, the three-year deadline would be very difficult and excessively costly to meet through acquisition of new vehicles, and would require the retrofitting of many old vehicles with lifts. We have accepted the five-year suggestion which is consistent with the rule's five-year deadline for key station accessibility. As a general matter, the Department believes it advisable to avoid the necessity for retrofitting old equipment wherever possible. Only two changes have been made in paragraph (b). A sentence in (b)(2)(iii), stating that if a recipient cannot meet the accessibility requirements of the provision it must either retrofit existing equipment or purchase new accessible equipment has been deleted because it is obvious. Subparagraph (b)(3) has been clarified to state that all new rail "passenger" vehicles purchased after the effective date of the section have to be accessible. There is no intention that the rule apply to non-passenger rail vehicles.

There were relatively few comments on this provision. Some commenters suggeted that it would be advisable to require, when a train has an accessible coach and an accessible food service car, that the two accessible cars be adjacent to one another. This arrangement of cars in a train is a sensible idea, which Amtrak should implement where possible.

We also want to emphasize that in making restrooms accessible, and in providing services to handicapped persons generally, recipients should ensure that the dignity and privacy of handicapped persons are respected.

Paragraph (c)—Rail passenger service. There are three substantive changes in this paragraph. One concerns the notice required before "on-call" assistance will be provided to handicapped passengers. Persons requiring the service of an attendant must give 24 hours advance notice in order to receive assistance, compared to the 12 hours required by the NPRM (subparagraphs (c)(3) and (c)(8)(ii)). This change was requested by Amtrak and supported by some state transportation agencies. In our view, the longer period is more reasonable in terms of scheduling personnel to assist handicapped persons. The necessity of notifying Amtrak an extra 12 hours in advance should not prove an unreasonable inconvenience for handicapped persons. Most people make intercity travel plans and reservations at least a day in advance in any event; requests for assistance could easily be made at the same time as reservations. For the same reasons, the advance notice for other handicapped persons requiring assistance has been lengthened from three to twelve hours ((c)(3)).

Subparagraph (c)(2), in the final sentence, provides that persons who need to travel with an attendant include those who cannot take care of "any one" of their fundamental personal needs (e.g. eating, elimination), rather than those who cannot take care of "most" of these needs, as the NPRM provided. The NPRM language might have led to uncertainty as to how many fundamental needs a person could not take care of before an attendant was required. While we agree with a commenter who pointed out that a person who needs an attendant is unlikely to travel without one, we believe this provision should be retained to clarify the obligations of recipients. Though another commenter asserted that the term "fundamental personal needs" is too ambiguous to remain in the regulation, we believe that the intent and meaning of this provision are clear enough to inform both recipients and potential passengers of their responsibilities.

The third change to this paragraph is in (c)(9), where the waiver of recipients' obligation to carry handicapped passengers has been limited to passengers using life support equipment that would depend upon the vehicle's power system. This change recognizes that failure of a vehicle power system, and the consequent failure of the life support system, could pose high risks of liability for the recipient. However, recipients should carry passengers with other kinds of life support equipment that can reasonably be carried onto and suitably placed within a passenger car.

In order to clarify the relationship between subparagraphs (c)(3) and (c)(8)(ii), the requirement of (c)(3) that recipients assist persons confined to bed or a stretcher has been deleted. Subparagraph (c)(8)(ii) is now the only provision governing the carriage of stretcher-bound or bedridden passengers.

Subparagraph (c)(13) of the NPRM, which concerned the effective date of the regulations, has been deleted. The effective date of the intercity rail portion of the rule is now the same as for the rest of the regulation. A new (c)(13) has been added which requires recipients to provide information and training to their employees concerning the proper implementation of the regulation. This provision is designed to ensure that employees of recipients understand their obligations to handicapped passengers and meet these obligations in a well-informed and sensitive manner.

A number of other comments pertained to passenger service. Amtrak requested further elaboration of the "qualifications" of handicapped persons who could not be denied service, suggesting the addition of a criterion such as "able to travel without endangering their own and others' safety." We do not believe that such a criterion is desirable, because it would be difficult to enforce fairly and consistently. Amtrak also suggested that recipients identify in timetables where assistance is not available (e.g. flag stops, closed stations). We think this is a good idea, which Amtrak can implement without a regulatory requirement.

A state transportation agency suggested that the rule address such issues as potential liability to handicapped persons, job descriptions for persons who assist handicapped passengers, and union regulations that may affect assistance to the handicapped. We believe these issues are outside the scope of this rulemaking, and, properly speaking, are not regulatory issues at all. In addition, all these factors are likely to vary considerably among states and localities, and so are not easily susceptible to nationwide rule.

§ 27.75 Federal Highway Administration—Highways. The language of this section has been changed from that of the NPRM in three respects. The reference to § 27.67 in subparagraph (a)(1) and the final sentence of that subparagraph have been deleted, because the term "accessible" is now defined in § 27.5 for new facilities by reference to the ANSI standards. In subparagraph (a)(3)(ii), a minor substantive change has been made. The NPRM permitted exceptions to the requirement of making pedestrian overpasses, underpasses and ramps accessible where it is infeasible for mobility-limited persons to reach the facility because of "terrain" obstacles unrelated to the Federally assisted facility. To be consistent with the language of a January 23, 1979, agreement between the Federal Highway Administration (FHWA) and

the Architectural and Transportation Barriers Compliance Board (A&TBCB) on the subject of pedestrian overpasses, underpasses and ramps, we have substituted for the "terrain obstacles" the words "unusual topographical or architectural obstacles". This language points out that man-made as well as natural obstacles can preclude access to a facility and also emphasizes that, in order to except a facility from the accessibility requirement, the obstacle in question must be beyond the ordinary scope of highway engineering problems. Obstacles able to be overcome with ordinary engineering and construction effort by a state highway department should not form the basis for an exception.

Several state transportation agencies asked for clarification on whether all existing rest area facilities on Federal-aid highways, regardless of the involvement of Federal funds, are required by subparagraph (b)(1) to be made accessible. All existing rest areas on Interstate highways, where the vast majority of rest areas already are accessible, must be made accessible to the handicapped. On other roads, where the patterns of rest area placement and funding are more irregular than on the Interstates, existing rest areas will be made accessible when they are improved using Federal funds, or when the road on which the rest area is located is improved with Federal funds in the area directly in front of the rest area or in the near vicinity (roughly within a mile) of it.

The question of overpasses, underpasses, and ramps for pedestrians was the subject of more comments than any other part of this section. Comments were fairly evenly divided among those who felt that the 10 percent maximum gradient proposed by the NPRM was too steep (principally handicapped persons and groups representing them) and those who felt that a higher gradient was more reasonable (principally transportation agencies). Both concerns are valid. For wheelchair users, particularly those whose arms and upper body are not strong, wheeling a chair up a 10 percent grade, while possible, may be a laborious task. On the other hand, the length of the ramp necessary for maintaining the 8.33 percent gradient set forth in the ANSI standards means that more land may have to be acquired for the facility and that persons other than wheelchair users, unwilling to take the time to use the extended ramps, may simply cross the highway at grade, diminishing the safety advantage for which the pedestrian facility was built. The length of the ramp, in itself, may also constitute a barrier to wheelchair users. Faced with these conflicting interests, we decided to keep the 10 percent gradient proposed by the NPRM. We believe that this is a reasonable compromise which achieves some, though not all, of the legitimate goals expressed by both groups of commenters.

DOT and FHWA will encourage state highway departments to construct pedestrian facilities with an 8.33 percent gradient whenever it is feasible. For example, where there is sufficient space, barriers (e.g., fences around Interstate highway rights-of-way) to prevent pedestrians from crossing at grade, or where there are heavy concentrations of elderly people in an area, we believe that the 8.33 percent gradient is a good idea. This policy is one which we believe it best to implement through the normal highway project planning process, however, rather than through a mandatory, across-the-board regulation.

The regulation does not require existing pedestrian facilities to be made accessible. However, the FHWA-A&TBCB agreement referred to above provides that FHWA will establish a program urging the states to create an inventory of overpasses and underpasses constructed or altered with Federal-aid funds after September 2, 1969. The states will also be urged to pinpoint overpasses and underpasses in need of modification, under criteria to be developed by FHWA and the A&TBCB. FHWA will urge each state to establish a timetable for making needed modifications.

Several commenters raised the question of the meaning of the word "constructed", in subparagraph (a)(2), which requires that all pedestrian crosswalks "constructed" with Federal financial assistance to have curb cuts. This provision expressly relies on 23 U.S.C. 402(b)(1)(F), which requires curbs "constructed or replaced" on or after July 1, 1976 to be accessible to wheelchair users and other physically handicapped persons. In other words, if there is a physical alteration or repair to an existing curb, or a new curb is put in place as a result, for example, of a project to widen a street or remodel an intersection, curb cuts are a required part of the project at crosswalks. Projects not physically affecting the curb itself—such as painting crosswalk lines over the curb—may be carried out without adding curb cuts.

Several groups representing handicapped persons and various individual commenters asked that curb cuts be required in all existing curbs on Federal-aid highways, or at least in proximity to bus or rapid rail stops. As stated above, a specific statutory provision addresses the question of curb cuts. We believe that this provision is sufficient.

One commenter feared that the incorporation of the ANSI standards into this section might require highway departments to follow some highly unconventional engineering practices, such as having a sidewalk gradient of five percent adjoining a street with a gradient of 10 percent. We do not intend to require that sidewalk gradients differ from the gradients of the adjacent roadways.

Organizations representing the blind expressed concern over the impact upon blind people of "right turn on red" programs and what they perceive as the phasing out of audible traffic signals. These concerns were not addressed by the NPRM and are outside the scope of this rulemaking.

Subpart E—Program Accessibility Requirements in Specific Operating Administration Programs: Mass Transportation

§ *27.81 Purpose.* The substance of this section is unchanged from the NPRM, and simply states that the subpart implements section 504 and other statutes applicable to this section. The substance of the NPRM's § 27.83, "Objective," has been merged into this Section. Section 27.85 of the NPRM, "Scope," has been deleted as unnecessary. Section 27.87 of the NPRM, "Definitions," has also been deleted. The definitions it stated have been shifted to § 27.5 in order to consolidate all definitions in one section.

There were very few comments about these introductory sections. Two comments asked for specific mention that the purpose of the regulation included consideration of the needs of the mentally ill. Mentally ill persons are covered by the general definition of handicapped, and further mention appears superfluous. Another commenter asked that the "objectives" section indicate clearly whether existing Urban Mass Transportation Administration (UMTA) regulations on the transportation of elderly and handicapped persons will be withdrawn. This rule supersedes the existing UMTA regulations (49 CFR Part 609, 49 CFR 613.204, and the appendix to 49 CFR Part 613, Subpart B, on 49 CFR 613.204), except that the requirements for Transbus remain separate from this rule (49 CFR 609, 15(a)). The appendix to 23 CFR Part 450, Subpart A, on planning for elderly and handicapped persons under the joint UMTA-Federal Highway

Administration planning regulations will be revised to reflect the requirements of this regulation. Although most of the advisory information in that appendix remains applicable, it will be revised to discuss the new section 504 regulation and the fact that some matters, such as wheelchair accessibility to fixed route bus systems, are no longer matters of local option.

§ *27.83 Fixed Facilities for the Public* (Section 27.95 in the NPRM). The changes to this section, while considerable, are editorial in nature. Paragraphs (a), (c), (d), (e) and (f) have been deleted as repetitive of material contained in subparts A and C of the rule. The remaining provisions have been renumbered accordingly. The titles of the final rule's paragraphs (a) and (b) have been changed to reflect more accurately the contents of the paragraphs. The contents have not been changed from the NPRM, except that a reference to the ANSI standards in paragraph (b) has been changed to refer to § 27.67 rather than to the deleted paragraph (f) of the NPRM version of § 27.95.

Most comments on this portion of the NPRM concerned paragraph (a) of the NPRM, which has been deleted. The comments wanted more specificity in the statements of this paragraph's requirements in some cases, and other comments objected to the paragraph's provision for exceptions to accessibility requirements. The general material in this paragraph is clearly explained elsewhere in general sections of the rule; provisions as to exemptions are found in the program-specific portions of subpart E.

Comments on paragraphs (b) and (c) of the NPRM (paragraph (a) of the final rule) asked for greater specificity, particularly as to schedules for modification of facilities. Some commenters thought DOT should require a particular percentage of modification to be completed each year, for example. We believe that the sections are sufficiently specific as they stand. Given the diversity of modification tasks nationwide, greater specificity in this section of general application on scheduling modifications is not desirable. More specificity is provided in the sections on specific transportation modes.

There were few other comments. One commenter asked for specific mention of curb cuts. We believe those provisions requiring attention to the needs of handicapped persons in loading, unloading, and parking areas are sufficient to cover this concern.

The NPRM's § 27.97, which generally set forth the rule's requirements for vehicles, is applicable generally, not just in subpart E. Therefore, it has been deleted from its place in the NPRM and moved to subpart C.

§ *27.85 Fixed Route Bus Systems* (Section 27.101 in the NPRM). In most communities, bus systems provide the only fixed route means of public transportation. The accessibility of bus systems to the handicapped is crucial if handicapped people in these communities are not to be denied the benefits of Federal aid to urban mass transportation. Even in cities with other modes of mass transit, the bus system—which normally has a much more comprehensive route structure than rail and other means of transportation—is a key to ensuring that handicapped people have an equitable opportunity to use transportation services.

The Department has changed this section from the NPRM in a number of ways. The first of these changes is in subparagraph (a)(1)(ii), where the definition of the accessibility of bus systems has been rewritten. The language of the NPRM—"off-peak frequency service or half of the peak service, whichever is greater, during off-peak hours as well as peak hours"—was confusing. For example, it could be interpreted to require bus systems to increase the frequency of its off-peak runs, something that the Department never meant to require. Therefore, the paragraph now provides that at least one-half of buses in peak hour service must be accessible in order to achieve program accessibility. During off-peak hours, a recipient must deploy all of its available accessible buses before it may place inaccessible buses in service.

In order to limit the need to retrofit existing buses and to permit bus systems, particularly those with newer fleets, to spread the cost of acquiring accessible buses over a longer period of time, thereby easing the short-term expenditures these systems must make, subparagraph (a)(2) has been changed to extend the outer time limit for program accessibility from 6 to 10 years. In addition, a new subparagraph (a)(3) has been added to the section, providing that nothing in the section shall require any recipient to install a lift on any bus for which a solicitation was issued on or before February 15, 1977. Manufacturers have been required by UMTA regulations to offer a wheelchair accessibility option for all new, standard, full-sized urban transit buses for which a solicitation was issued after that date. Together with the 10-year period during which new accessible buses can be purchased to make a fleet accessible by accretion, this provision will also help to limit the need to retrofit existing buses and to keep recipients' costs within reasonable bounds.

Those systems with older fleets will presumably be able to meet this standard in less than 10 years through normal bus replacement. All cities are likely to try to achieve program accessibility as quickly as possible, since § 27.97 requires the provision of interim accessible transportation during the period before program accessibility is reached. However, some systems with relatively new fleets may need the full 10 years in order to avoid large scale retrofitting of existing buses. The vast majority of commenters opposed retrofitting, raising significant questions about its cost—effectiveness and possible effects on the structural integrity of existing buses.

Given the extension to 10 years and the revised version of the program accessibility standard, the Department feels that the former provision about extending the six-year deadline "by one year for each 10 percent above the 50 percent of the buses that would have to be accessible" is unnecessary. Therefore, that provision has been deleted.

The final rule requires that all new buses for which solicitations are issued after the effective date of the part be accessible. In addition, to avoid the risk that a large number of procurement solicitations for inaccessible buses could be issued before the effective date of this regulation, UMTA intends to limit its consideration of bus grants to those that provide for accessible buses. This paragraph's requirement as they pertain to new, standard, full-size urban transit buses, will remain in effect until solicitations for those buses must use UMTA's "Transbus Procurement Requirements."

The requirement that all new buses be accessible will mean that eventually all buses will be accessible. The requirement in paragraph (a) of this section (program accessibility) that half of the peak hour bus service be accessible is a minimum level of accessibility that must be achieved within 10 years.

The bus system accessibility section of the NPRM received numerous comments. We have carefully considered these comments in writing the final rule. The comments, and our thinking in response to them, can be discussed most conveniently in terms of the following categories:

1. *Accessibility in General.* About 180 comments addressed the issue of

whether mainline bus service should be made accessible. About half these comments favored the concept of requiring accessibility. Handicapped individuals and their groups were strongly represented among the comments advocating the requirement; transit operators and state transportation agencies were heavily represented among the comments expressing the opposing view.

The comments favoring the requirement of accessibility cited the goal of incorporating handicapped people into the mainstream of society, providing independent mobility for them, permitting them to use the fruits of their tax dollars, and avoiding what they regarded as the pitfalls of "special service" paratransit (e.g. long lead times for reservations, waiting time, limitations on type and length of trips, unreliability). Opponents of the requirement asserted that the costs of accessibility are not justified by what they viewed as the small population that would probably take advantage of the services. Separate special service would do a better job for handicapped people at a lower cost, in their view, and they point to the difficulty which handicapped persons may have in getting to and from bus stops, particularly in bad weather.

The Department believes that major modes of public transportation should be made accessible. In addition, bus accessibility is a well-settled DOT policy, as evidenced by the Transbus mandate. In connection with his Transbus decision issued on May 19, 1977, Secretary of Transportation Brock Adams considered in depth the arguments for and against requiring buses to be accessible. The Secretary decided then, and in this rulemaking reaffirms, that accessibility of buses is an important part of the Department's urban mass transportation policy.

2. *Costs.* The costs of making bus systems accessible occasioned a great deal of comment. Many transit operators estimated that mainline accessibility would markedly increase their annual operating costs and cause them to incur heavy capital costs. For example, eight California transit systems said their annual operating costs would increase from one to 15 percent, while they would incur additional capital costs from around $500,000 to $16 million. Most figures that were provided simply added the costs of accessible mainline service to present costs. However, a number of comments compared the prospective costs of mainline accessible service to the prospective costs of special paratransit service. Some of these commenters thought the costs of the two systems would be about the same, or that mainline service would cost less. The majority, however, felt that mainline service would be costlier. Summing up the views of these commenters, the American Public Transit Association (APTA) estimated that nationally, annual operating costs for mainline accessible systems would be $300 million, versus $159 million for "dial-a-ride" paratransit service. Some smaller transit authorities asserted that the costs inherent in the requirements of this regulation would cause them to curtail seriously or cease operations.

The Department of Transportation has looked carefully at the costs and has concluded that the costs of bus accessibility are likely to be lower than commenters suggested. Some of the difference may be explained by cost assumptions made by the commenters, who included significant sums for such matters as presumed slowing of service, increased cost for garages (based on presumed need for housing greater numbers of vehicles), increased insurance costs, need for additional personnel, additional training costs, bus stops and shelter modifications, and so forth. In the Department's view, some of these assumptions may not be well founded. The costs assigned to the items may be overstated, and it is likely that many of the costs would be incurred under alternatives other than program accessibility. With respect to cost comparisons between mainline and special services, valid comparisons are possible only if the special services involved are truly comparable (in terms of factors such as trip time, waiting time, trip purpose restrictions, hours of service, etc.) to mainline accessible service. From the comments, it was difficult to determine whether the services proposed as alternatives to mainline accessibility were truly comparable. Comments from handicapped persons about existing special services suggested that existing special services are not truly comparable.

While not denying the reality of increased costs for operators, the Department is not persuaded that the financial impact, in absolute or relative terms, is as high as some commenters assert. Nevertheless, the Department took important steps to mitigate the cost impact of the rule. The stretching out of the compliance period from six to 10 years is one example of a change that should help to mitigate costs. In addition, the provision that a bus for which a solicitation was issued on or before February 15, 1977, need not be retrofitted with lifts will result in some capital savings for recipients. This provision, in conjunction with the longer compliance period, will probably result in very few buses having to be retrofitted with lifts in order to reach program accessibility.

The capital cost impact of this portion of the regulation will therefore consist principally of incremental costs of lift-equipped buses over the costs of inaccessible new buses. This cost appears to be within reasonable bounds. The marginal increase in operating costs is estimated to average about 1.3 percent.

3. *Benefits.* The principal benefit that this portion of the regulation attempts to confer is making it possible for wheelchair users to use mainline buses. A large majority of the comments relevant to this issue suggested that the provision of this benefit may not be meaningful, predicting little or no increase in the use of mainline buses by handicapped persons as the result of the rule. These commenters cited the difficulty of getting from home to the bus, given the presence of other barriers in the community, as the biggest reason for this predicted lack of ridership. Other problems mentioned were the problem of transferring to other routes when not all of the buses during peak hours were accessible, and concern by the handicapped about the safety of accessible equipment. The minority of commenters who believed that accessibility of mainline service would increase ridership alluded to such factors as likelihood of building up a handicapped ridership base when accessible service was actually provided, the probable diversion of handicapped from taxis to less expensive bus service when accessible service became available, and the assistance to bus ridership that could be provided by demand-responsive supplemental service.

Our starting point for estimating the probable benefits to be gained from accessible mainline service is the potential market to be served. The "National Survey of Transportation Handicapped Persons" (1978) performed for the Department indicated that there were about 1.5 million people who live within a half-mile of a bus stop and for whom bus steps are a barrier which would prevent them from using buses. Given the increase in the average age of the population, it is likely that the number and proportion of mobility-handicapped people will increase, because as people age, the likelihood that they may become mobility-handicapped increases. Not all these

people could get to a bus stop, given the existence of other barriers. The Department supports the removal generally of barriers to the mobility of handicapped people, but is only in a position to mandate the removal or barriers in those programs to which it provides financial assistance. However, actions are now being taken to eliminate these barriers, and these measures will enable more handicapped persons to use an accessible system.

We believe that the use of accessible bus service by handicapped people will increase over time. Given the history of almost total inaccessibility, most handicapped people probably do not think first of the city bus when they make transportation plans. It is necessary to create accessible service and educate the public about it before the significant potential market of handicapped users is likely to ride the buses in large numbers. The Department is persuaded that, under this rule, and with the cooperation of transit operators, mainline bus service can be safe, convenient, and attractive for handicapped persons.

4. *The Use of Lifts.* Pending the introduction of Transbus, the only technology for making buses accessible to handicapped people is the lift. After the effective date of the rule, recipients may issue solicitations only for accessible buses. This requirement will not be a major policy change for a number of the nation's largest bus systems, including those serving Los Angeles, Detroit, Washington, Seattle, Houston, and St. Louis, which have already decided to purchase at least some accessible new buses. Given the provisions of the final rule, it should be unnecessary in almost all cases to retrofit previously purchased buses with lifts, an expensive and technically difficult process opposed by the vast majority of commenters who discussed retrofit.

Commenters who opposed the requirement to purchase only accessible new buses focused on three main issues. They stated that the use of lifts would greatly slow bus service; that lifts are unsafe, and the presence of some handicapped persons aboard buses as the result of the use of lifts could pose a hazard in an emergency evacuation situation; and that lift technology is unreliable and lifts do not work properly. The case in point cited by exponents of this final point is the St. Louis bus system, which reports much trouble with its lift-equipped buses.

With respect to the argument that the use of lifts would greatly slow bus service, the Department is somewhat skeptical. While there may be some slowing of service in some circumstances, this problem is not likely to be of the scope or magnitude suggested. Transit systems should, after a time, gain experience concerning the points on their routes where it is most likely that lifts will be used on a regular basis. Any regular delays of this kind can and should be worked into schedules in such a way that service disruptions or undue slowdowns of service will be minimal.

The concerns expressed about safety went first to the fit between the lift and wheelchairs—lifts might not be able to receive and "lock onto" all sizes of chairs, for example—and second to the evacuation of wheelchairs from the bus in an emergency. To the extent that the first problem exists, it can be remedied by the improvements to the design and construction of new lifts and remedial safety devices or warnings on existing lifts. With respect to emergency evaucation, recipients should develop, and train bus operators in, means of expeditiously evacuating wheelchair occupants from buses in emergencies as part of their accessibility programs and policies. We feel that seating in buses can be designed to minimize any obstruction by a wheelchair to the evacuation of other passengers. Obviously, it is desirable in any emergency evacuation situation that the evacuees be as mobile as possible, but this general statement is not a sufficient reason for keeping mobility-limited people off public conveyances.

We are aware that lifts in present use have experienced technical problems. Manufacturers of lifts commented that they were presently working to make needed improvements in lifts. In addition, we believe that a requirement for lifts will create a much stronger demand for lift equipment, which in turn will encourage companies with high engineering skills and production capacity to enter the market. The result should be the availability of good equipment at competitive prices. Moreover, the time lag before lift-equipped buses begin to arrive on the streets in response to the rule's deadline for orders means that it will be about 18 months from the effective date of this rule before the buses are delivered. This allows some additional time for the production of improved lifts. It is the Department's conclusion that lifts are a feasible solution to the problem of making buses accessible.

5. *Comments Regarding the Transbus.* Many commenters saw the docket on the NPRM as a forum to re-open the Secretary of Transportation's May 1977 decision to mandate Transbus. Comments both in favor of the Transbus mandate and against it (or asking for delay in its implementation) were received. The Transbus decision was made well before the section 504 NPRM was published, and stands independently of any of the decisions made as part of the present rulemaking. The Transbus decision is referenced in the general requirement of accessibility made by this rule, and is not subject to modification as part of this rulemaking. Regardless of the timing of the availability of Transbuses, recipients are bound by this final rule to issue solicitations only for accessible buses after the effective date of this rule.

§ *27.87 Rapid and Commuter Rail Systems.* The NPRM's section 27.103, entitled "Fixed guideway systems accessibility," dealt with light rail systems as well as with rapid and commuter rail systems. In the final rule, light rail systems are discussed in a separate section, § 27.89. The provisions of the rapid and commuter rail portion of the rule have been extensively revised.

The new paragraph (a) provides that program accessibility in rapid and commuter rail systems is achieved when a system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. All stations must be accessible to handicapped persons who can use steps (e.g., fully mobile blind or hearing-impaired persons); key stations must also be accessible to wheelchair users.

The rule provides that recipients must treat as key stations those stations which meet any one of several criteria. A station must be made accessible if it is (1) a transfer point on a rail line or between rail lines (e.g., where two subway lines cross), (2) a major interchange point with other modes (e.g., a rapid rail station serving an airport; a subway station adjacent to a stop serving three bus lines; this criterion does not make every rail station adjacent to a bus stop a key station, however), (3) a station at the end of a line (unless the station is close to another accessible station), (4) a station serving major activity centers (employment or government centers, institutions of higher learning, or hospitals or health care facilities), (5) a station that is a special trip generator for sizable numbers of handicapped persons (e.g., a station serving a cluster of high-rise, high-density apartment buildings with a large handicapped population), or (6) in the case of rapid rail, a station where passenger

boardings exceed average station boardings by 15 percent.

The key station concept was suggested during the comment period as an alternative to 100 percent station accessibility. Representatives of the city of New York proposed that 10 percent of the New York City rapid rail stations would be an appropriate level of key stations. These discussions focused the Department's attention on the idea of a key station approach, but further reflection and analysis showed that the service quality from a very low level of key station accessibility as proposed by New York was not adequate. For this reason, the Department has adopted criteria for determining what are key stations to ensure that heavily used stations and those that are trip generators for the handicapped will become accessible. Using these criteria, effective rail transportation service can be provided at a significantly lower cost than would be the case if all stations were required to be accessible.

For commuter rail systems, which serve less densely populated areas and which have stations spread over a wider geographic area than rapid rail systems, application of these criteria alone might well result in the exemption of so many stations that the system, viewed in its entirety, would not be accessible. Therefore, an additional criterion based on distance from other accessible stations has been imposed for commuter rail systems. This criterion would identify any station which is distant from any other accessible station as a key station. "Distant" is not defined, but our intent is that making every third station accessible would generally satisfy this criterion.

The regulation does not specify a percentage of stations that must satisfy these criteria. However, a reasonable estimate is that application of these criteria will result in a nationwide average of about 40 percent of rapid rail stations being made accessible, although this figure may be as much as 60 percent in some cities.

With respect to rail vehicles, the regulation requires all vehicles to be accessible to handicapped persons who can use steps and one vehicle per train to be accessible to wheelchair users. Paragraph (b) generally requires new rapid rail vehicles for which solicitations are issued after the effective date of the regulation to be accessible.

While 49 CFR Part 609, UMTA's regulation governing accessibility of handicapped persons to transportation, is superseded by this 504 regulation, the former §§ 609.15–609.19 should continue to be used by recipients as guidance for determining accessibility features to be incorporated in new equipment until new guidance on what specific accessibility features are required, probably in the form of an UMTA circular, is issued. One accessibility feature in rapid rail systems—a device to close the gap between vehicle exits and station platforms in order to make entering and leaving the vehicles safe and convenient for handicapped people—is not required to be provided, if needed, until January 1, 1983. This delay is intended to permit a reasonable time for further development and testing of gap-closing devices. New commuter rail vehicles for which solicitations are issued on or after January 1, 1983, must be accessible to wheelchair users. This date was selected in order to permit a reasonable time for the development and testing of car-borne lifts which may be necessary to make cars accessible in some systems.

The regulation also requires connector service between accessible and inaccessible rapid rail stations. This service is intended to provide at least a partial substitute for the rapid rail service between stations that is unavailable because some stations are inaccessible. The connector service may be provided by regular bus routes, special bus routes, special service-paratransit, or any other accessible means of transportation provided by a recipient that will transport a handicapped person from an inaccessible rapid rail station to the nearest accessible station in the person's direction of travel, or vice-versa. The connector service, together with accessible rail stations, must provide to handicapped persons a level of service reasonably comparable to that provided by the rapid rail system for a non-handicapped person.

As an indication of this comparability, the service generally should avoid requiring a handicapped person to transfer more than one time more than a non-handicapped person would to get to their destination. This is not a firm, invariable requirement, however. If service of approximately equivalent speed can be provided, variation in the number of transfers permitted may be possible.

It should be pointed out that one way to provide adequate connector service with accessible mainline buses might be route restructing, rather than the addition of new service.

The timing of the connector service requirement parallels that of the rapid rail system program accessibility requirement. Complete connector service must be in place within 30 years from the effective date of the regulation. Within this time period, there must be a steady build-up of connector service that is coordinated with the completion of key stations. No later than 12 years from the rule's effective date, connector service must provide effective and efficient use of key stations that have been made accessible at that time.

Subparagraph (a)(4) sets the time schedule for accomplishing program accessibility in rapid and commuter rail systems. Accessibility must be achieved as soon as practicable, but not later than 3 years after the effective date of the regulation, except that this time limit is extended to 30 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities needed to achieve program accessibility. Changes to accommodate the needs of handicapped persons who can use steps—such as blind or hearing-impaired persons—are expected to be accomplished within three years, since these changes generally involve low-capital expenditure projects and are not "extraordinarily expensive." The Department generally considers elevators and vehicle lifts to be "extraordinarily expensive" and has selected the extended deadlines to permit adequate time for such improvements to be made.

It is the policy of the Department that the most essential key stations (about one-third of all key stations) be made accessible within the first 12 years of the program. However, the Department has decided that a 30-year period for obtaining full program accessibility is justified. This decision was made principally on the basis of the difficulty and high cost of making needed structural changes (e.g., retrofitting existing subway stations in New York City or Philadelphia with elevators).

The Department believes that it is reasonable to spread out the work and cost of these changes over a relatively extended period. However, the Department intends to ensure, through its planning and grant process, that recipients proceed with needed modifications at a reasonable rate. The regulation requires that each recipient make steady progress over the entire 30-year period, in compliance with a required transition plan. After 12 years, the Department intends to require an assessment at the national and local levels of the progress of accessibility work and its impact on ridership.

The time limit for vehicle accessibility is five years from the effective date of the regulation in rapid rail systems and 10 years for commuter rail systems for

extraordinarily expensive changes to, or replacement of, existing vehicles. Less expensive changes in rolling stock, to make the vehicles accessible to and usable by handicapped persons who can use steps, must still be made within three years.

The Department is aware, as many commenters have pointed out, that carrying out this section will be costly. The Department estimates that over the 30-year compliance period, achieving program accessibility in rapid rail systems will cost about $1 billion. This estimate covers capital costs for fixed facilities and vehicles, incremental operating costs, and connector service which does not make any use of mainline accessible bus routes, and assumes that a national average of 40 percent of stations will be made accessible. The actual cost will be lower to the extent that cities are able to use mainline accessible bus lines for connector service, thereby saving some of the cost of a complete, separate connector service system. The 30-year compliance cost for commuter rail systems, also assuming that about 40 percent of stations are made accessible, will be about $290 million. The 30-year compliance period will enable recipients to spread these costs over a long period, so as to make them easier to bear.

Many commenters who discussed accessibility for rapid rail systems favored accessibility. The majority of the comments from handicapped persons and their groups favored a shorter deadline for program accessibility—12 or 20 years—than the 30 year deadline chosen by the Department. The Department understands this view; handicapped people have already waited a long time for the removal of transportation barriers. The Department believes, however, that it must take care to mandate only what can be accomplished practically by recipients and by the Department. The key station concept received support in the comments both from transit operators and groups representing the handicapped.

With respect to rapid rail vehicles, two rapid rail system operators expressed concern about the vehicle/platform gap problem. This problem is addressed by the rule's provision for gap-closing devices in cars for which solicitations are issued on or after January 1, 1983. Other comments mentioned the need for some interior refitting of vehicles; the timing of this refitting will depend on its extensiveness and cost. As the rule provides, accessibility (including interior refitting) that is not extraordinarily expensive must be accomplished within three years.

Most operators commenting on the NPRM supported a "local option" concept, in which each operator or local government would select the mix of transit services best suited to provide mobility for handicapped persons.

There is room for considerable local planning in carrying out this regulation, with respect to planning, connector service, and determination of some key stations. However, the concept of local option as expressed by many commenters is inconsistent with the assurance of providing program accessibility which section 504 and the HEW guidelines require.

As with bus systems, comments questioned the likelihood of significant use of accessible rail systems by handicapped riders. Present experience is scanty. Systems which are partly or wholly accessible, such as San Francisco's BART and Washington, D.C.'s Metro, report relatively small but growing numbers of handicapped users of their station elevators. It is reasonable to believe that these numbers will increase as more accessible buses begin to feed into the rail systems and as other barriers to the movement of handicapped people are eliminated. While it is clear that awareness of the existence of accessible transit must increase and other barriers must decrease before the full potential for handicapped ridership could be realized, it is also clear that there is a currently untapped market for transit service which accessible systems are capable of serving. It should also be pointed out that accessible systems may make the use of public transit more convenient, and consequently more attractive, for many people who are not handicapped.

The range of comments concerning commuter rail was quite similar to that concerning rapid rail. One difference concerned what most transit operators commenting regard as the unique nature of commuter rail, which runs on track also used by other rail traffic. This, the operators said, poses problems for them. Increasing the time a commuter train needs to stay at a station in order to pick up handicapped passengers may disrupt schedules for other trains. Moreover, in high-platform stations, there may be a considerably larger car/platform gap than in rapid rail stations. Also, the fact that commuter rail systems operate in areas of lower population density means that relatively few handicapped riders are likely to use accessible service.

It is probable that the number of handicapped passengers, like the number of passengers in general, is likely to be lower for commuter rail than for rapid rail. However, there are fewer public transportation options for people living in areas served by commuter rail than for people in more densely populated areas. This makes making the accessibility of commuter rail even more important for those people.

The key station provisions of the rule should improve the ratio of costs to benefits for commuter rail operations. As with other modes of transportation, however, the Department's decisions in the commuter rail area cannot be exclusively tied to cost-benefit analysis. The human value of providing accessible transit services to all persons must weigh heavily in the decision. Sophisticated traffic management techniques should permit schedules of commuter trains and freight trains which share relatively few lines to be arranged so that the commuter trains can safely pick up handicapped passengers without unduly delaying other traffic.

Commuter rail systems differ. Some have high platform stations flush with car entry level. Others have entry from ground level. Others have combinations of both. What the rule requires is accessibility, not any particular technique for achieving accessibility. If a system has mostly high platform stations flush with car entry level, it might modify its other stations along the same lines, thus obviating any need to equip its rolling stock or stations with lifts. On the other hand, so long as train entry areas are accessible to handicapped persons, a system may provide access to its vehicles with lifts and avoid modifying most platforms. Platform/train gaps could be closed by automatic equipment extending from cars or by "gangplank" devices either carried on the train or stored in the station and operated by train or station personnel. Where it is most appropriate for commuter rail vehicles to become accessible through the use of lifts, the January 1, 1983, solicitation date plus the approximately two-year period between order and delivery gives recipients and manufacturers sufficient time to develop and deploy new technology.

Other comments on the commuter rail section of the rule paralleled the rapid rail comments concerning the key station concept, the merits of accessibility as a goal, and "local option." The Department's thinking on these issues is the same as in the rapid rail area, with the exception that one of the criteria used for determining which stations are key stations in rapid rail

systems—stations boarding 15 percent more passengers than the system average—is not applicable to commuter rail systems.

§ *27.89 Light Rail Systems.* This section, which treats rail (trolley) systems separately from commuter rail and rapid rail systems, is new. The general accessibility requirement for light rail systems, like that for other modes, is that a system, when viewed in its entirety, must be accessible to handicapped persons, including wheelchair users.

The requirement for station accessibility is similar to that for rapid rail. All stations must be accessible to handicapped persons who can use steps, and key stations must be accessible to wheelchair users. Key stations are generally defined by many of the same criteria used for rapid and commuter rail key stations, and the rationale for the key station concept discussed in connection with rapid and commuter rail systems applies to light rail stations as well. Relatively low-capital changes to be made to stations or vehicles are expected to be made within three years. The three-year general time limit is extended to 20 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities and vehicles necessary to achieve program accessibility.

It is important to note that light rail vehicles stop not only at fixed-facility station, but also at street stops. We intend the key station criteria to apply only to fixed-facility stations. Street stops need not be considered as key stations, because these stops will be accessible in many cases, when lift-equipped vehicles are deployed. Street stops do not need to be changed structurally under this section. However, once light rail vehicles are equipped with lifts, it is likely that wheelchair users will be able to enter and leave the vehicles at many street stops.

The vehicle accessibility requirement for light rail is similar to that for buses. All vehicles must be accessible to handicapped persons who can use steps. At least half of the vehicles in peak-hour service must be accessible to wheelchair users.

During off-peak hours, the accessible vehicles must be used before inaccessible vehicles can be used. The discussion of the rationale for the bus accessibility requirement applies to the light rail vehicle accessibility requirement of this section. New light rail vehicles for which solicitations are issued on or after January 1, 1983, must be accessible to handicapped persons, including wheelchair users.

The final requirement of the section is that after 12 years, light rail operators must submit to the Department a report on the progress, cost and benefits of the accessibility program. As with rapid and commuter rail systems, operators are expected to make steady and reasonable progress throughout the 20-year program period toward the goal of program accessibility, with the most essential work being done first. However, until the Department's study of light and commuter rail accessibility, as mandated by section 321(b) of the Surface Transportation Assistance Act of 1978, is completed, we foresee no need for movement beyond the planning phase. Section 321(b) directs the Secretary to make an evaluation of the light and commuter rail modes to determine ways of making and the desirability of making such modes accessible to handicapped persons. The Secretary is directed to report to Congress the results of this evaluation by January 30, 1980, together with his recommendations for legislation necessary to clarify or change Federal laws or provisions pertaining to light and commuter rail accessibility.

The Department estimates that the capital cost of making light rail systems accessible would be about $47.7 million if all stations were made accessible. If the key station criteria result instead in forty percent of stations being made accessible, the capital cost would be reduced to about $25 million.

As a number of commenters pointed out, the biggest problem in making light rail systems accessible is the present unavailability of lifts for light rail vehicles. UMTA has initiated research to assist in developing a lift for light rail vehicles. Based on present development schedules, the Department expects a prototype lift for light rail vehicles to be developed by the end of 1980. It is probable that another year will be required before a safe and reliable lift can be marketed. It is with this development timetable in mind that the Department does not require recipients to order only new vehicles that are accessible until January 1, 1983. This schedule gives reasonable leeway for development and testing before transit systems must order trolleys with lifts or other accessibility features.

Comment from groups representing handicapped persons favored the accessibility mandate for light rail systems; transit operators, while pointing out problems associated with lift costs, in several cases did not appear to oppose accessibility. Only one comment, which favored the idea, dealt with the key station concept. Some transportation agencies requested that accessibility be a matter of complete local option but, for the same reasons discussed in connection with buses and rapid and commuter rail systems, the Department did not adopt this suggestion.

It should be pointed out that in light rail cities which also have bus systems, it is likely that the bus systems, once they are accessible and given proper routing, should in most cases be able to meet interim accessible transportation requirements until the light rail system becomes accessible.

§ *27.91 Paratransit Systems.* (Section 27.105 in the NPRM). This section requires that where paratransit systems exist, they shall be operated so as to be accessible, when viewed in their entirety. Where new vehicles must be purchased or structural changes made to attain program accessibility, the purchases or changes must be made within three years from the effective date of the regulation. Automobiles may be used by transit operators or other service providers as one form of paratransit vehicle. They are accessible to many handicapped persons, including many wheelchair users. However, automobiles are not accessible to some handicapped persons (for example, persons who use battery-powered wheelchairs that cannot be folded and carried in an automobile trunk or backseat). Thus, the section requires that each paratransit system operate enough accessible paratransit vehicles to provide approximately the same measure of service to handicapped persons who need such vehicles as is provided to other persons. A higher fare may not be charged just because the handicapped person needs a vehicle with a level-change mechanism.

In paragraph (b), the requirement concerning the purchase of new vehicles has been altered somewhat from the NPRM. New vehicles purchased after the effective date of the regulation must be accessible, unless the system will continue to meet the section's general program accessibility standard even though the new vehicle or vehicles purchased are not accessible. For example, if a paratransit system has enough accessible vehicles to meet all demands for service by handicapped persons, and the requirement of generally equal service to handicapped riders is met, all new vehicles purchased for the system need not be accessible.

No part of these regulations is intended to discourage door-to-door paratransit services or programs that help handicapped travelers directly through user subsidies or other methods.

Our intent is to increase overall travel opportunities of handicapped persons by fostering program accessibility in addition to any current or planned specialized services available from a variety of sources. Recipients are encouraged but not required to provide supplemental service to handicapped persons who cannot reach transit facilities, use accessible vehicles, or travel from transit stops to their destinations.

The Department received a great many comments dealing with paratransit as a supplement or alternative to mainline accessibility for handicapped persons. The NPRM, however, did not propose anything with respect to paratransit except that paratransit systems, where they exist, must be accessible. This provision of the NPRM has been retained. Under this section of the final rule, no one is required to provide paratransit service. The cost of making the paratransit service that is provided fully accessible should not be overwhelming, given that much paratransit service is already aimed at serving handicapped persons.

Some commenters suggested the inclusion of specific varieties of paratransit service (e.g., taxis) in the definition of paratransit (which has been moved to the general definitions section, § 27.5). If, through arrangements with taxi operators, recipients are providing paratransit services by taxi, then taxis are included under this section, and the system must achieve program accessibility. Specific schemes for providing paratransit, such as transit agency subsidies of taxi fares, are not mandated by this regulation.

§ 27.93 Systems Not Covered by §§ 27.85–27.91 (Section 27.107 of the NPRM). The substance of this provision has been changed slightly from the NPRM. The Administrator's authority has been clarified to indicate that it relates to the program accessibility requirements of this section. In addition, some service quality criteria for alternative service under subparagraph (b) have been added to ensure that it will be useful to handicapped persons.

There were a variety of comments on this section. One commenter suggested that "trackless trolleys" (e.g., electric buses using overhead wire power sources) be considered as buses rather than dealt with under this section. It is unnecessary to include trackless trolleys explicitly under the bus section. Accessibility requirements for these vehicles, which share many of the characteristics of buses and some of the characteristics of light rail vehicles, are best able to be handled under this section, which gives the UMTA Administrator the flexibility to tailor the timing of program accessibility to the requirements of the vehicles. Trackless trolleys are a relatively rare kind of vehicle in this country; it is better to deal with them through the Administrator's discretion under this section than to attempt to fit them into a section covering another kind of vehicle.

Some commenters asked for more specific treatment of the requirements for ferry boat accessibility. Like trackless trolleys, ferries make up a rather small portion of recipients' transit programs. Under these circumstances, it was not thought advisable to prescribe specific requirements for ferries in this regulation. The general requirement of accessibility and the UMTA Administrator's discretion in applying timing requirement are suitable to the task.

§ 27.95 Program Policies and Practices. (Section 27.99 in the NPRM). The purpose of this section is to identify, for the use of recipients and other organizations involved in transportation planning, key areas of concern affecting the provision of services to handicapped persons. This section reflects the concept that public transportation services require more than facility and vehicle accessibility if they are to be predictably, conveniently, and safely used by handicapped travelers. This section is not intended to prescribe detailed requirements for the results of the planning process. It would be inadvisable for DOT to attempt to formulate uniform, national requirements in each of these program areas. The local planning process should have the flexibility to work out solutions that are consistent with local problems and conditions. At the same time, the identified program areas are important enough everywhere that the Department wants all recipients to deal with them in the planning process.

The activities required by this section are the responsibility of each recipient providing transportation service. Many related activities should be coordinated and conducted jointly by several recipients, MPO's, State, or other institutions. Recipients which have not already done so must start to modify their barrier-related policies and practices on the effective date of this rule. Most changes are expected to be completed while the transition plan is being prepared, as provided in § 27.11 of this part, but three years are provided because of the extent of the possible changes that recipients may identify.

Paragraph (a) has been rewritten to say that program policies and practices that prevent systems from achieving program accessibility must be modified as soon as possible but no later than three years after the effective date of this part. This three-year period prevails over the one-year period of § 27.11(c)(2) with respect to mass transit systems.

Several policy and practice reforms merit illustration to make the meaning clear. Supplemental guidance will be issued later by UMTA, as needed.

Item 1. Safety and emergency policies and procedures should cover the routine transporting of persons with differing disabilities, so that the passengers' safety will be assured.

Item 4. Intermodal coordination should be effectively established among multiple services offered by a single recipient, between each recipient and other transit and paratransit providers, and between recipients and other transportation institutions and modes (e.g., Amtrak, highway departments).

Item 5. Coordination with agencies and institutions that provide or support transportation services on behalf of the disabled should assure effective integration of their facility locations, operations, and transportation services.

Item 6. Comprehensive marketing should be integrated with the required preparation and implementation of the transition plan. Marketing should at least provide public information about accessible transportation services.

Several specific marketing activities should be conducted and described in the transition plan, such as:

(a) An assessment of each operating recipient's management organization and resources to assure effective marketing;

(b) Examinations of the feasibility of concepts such as a local transit broker, or subsidies to users;

(c) Periodic publication of reports (at the regional or State level) describing accessible facilities and services (e.g., housing, education, commerce) and existing and planned accessible transportation services; and

(d) Establishment of mail or telephone systems that provide disabled persons with effectively the same or better information service, ticket purchase service, or other services available to the general public (e.g., TTY for hearing-impaired persons).

Item 7. New or renewed leases and rental agreements for facilities or vehicles should be restricted to vehicles and facilities the use of which is consistent with program accessibility.

Item 8. Recipients should provide for participation of existing private and public operators and public paratransit service providers to assure maximum

feasible opportunities to provide the desired services. Recipients, MPO's, and/or State or regional agencies should seek assistance in their planning from existing public and private operators. Recipients, MPO's, States, or regional agencies should maintain current inventories of existing transit or paratransit providers to assist them in their planning and to be considered in providing the services. The plan for implementing these objectives should be included in the transition plan.

Item 9. Reforms to permit and encourage accessible services should include, but not be limited to, actions which remove or modify unnecessary or inappropriate restrictions on types of taxicab service, insurance coverage, or entry-exit requirements on the providers of accessible transportation services.

The approximately 100 comments discussing this section generally favored its provisions. The bulk of these comments spoke to the 13 specific provisions of paragraph [b], suggesting that DOT mandate various specific requirements under the items. For example, some commenters asked DOT, under subparagraph [b][2], to establish minimum standards for training of recipient personnel. DOT believes that these 13 areas are subjects of concern for the local planning process concerning which the Department's commitment to encouraging flexibility in local planning is best served by avoiding uniform nationwide standards.

Some commenters said that the section should specifically assign certain of the planning tasks to recipients, MPO's, and States, respectively, since many of the tasks seemed to fall into program areas traditionally handled by each of these entities. The Department, however, prefers to encourage flexibility in the planning process. We believe that, in each area, the various parties themselves should divide the labor as best they see fit. This approach is more satisfactory, in our view, than a uniform, national delegation of functions by DOT to different planning bodies.

Other commenters criticized the section for raising problems without suggesting how to solve them. As mentioned above, DOT believes that in order to deal with planning concerns in the context of the many and varied local conditions affecting the provision of services required by this rule, local and regional planning agencies are best served by having more discretion in the planning process.

§ 27.97. *Interim Accessible Transportation* (Section 27.109 in the NPRM). This section has been changed and expanded significantly from the NPRM. The key requirement of the section is that no later than three years after the effective date of the rule, each recipient whose system has not achieved program accessibility shall provide or ensure the provision of interim accessible transportation for handicapped persons who could otherwise use the system if it were accessible. This interim transportation must continue to be provided until program accessibility is achieved.

The standards for interim accessible transportation are to be developed by the recipient in cooperation with the advisory group of representatives of handicapped persons and must be set forth in the recipient's transition plan. The advisory group should be carefully selected to be representative of the local community of handicapped persons. Subject to the funding level available under this section, which was set up to enhance the funds available for permanent accessibility, the interim accessible transportation service must be available within the recipient's normal service area and during normal service hours. To the extent feasible, the service should also be unrestricted as to trip purpose and be comparable to the recipient's mainline service with respect to combined wait and travel time, transfer frequency, and fares. The service must, to the extent feasible, be available to all handicapped persons, including those who cannot transfer from a wheelchair and those who use powered wheelchairs; waiting lists that would consistently exclude handicapped persons who have qualified or registered for the service should not exist.

The standards for interim service derive generally from illustrations of interim accessible transportation contained in Appendix A of the NPRM. Within these general standards, the precise standards for service are required to be developed by the recipient in cooperation with the local advisory group composed of representatives of local handicapped persons and their groups.

In order to ensure an adequate level of financial support for this service, a recipient must spend each year an amount equal to two percent of the financial assistance it receives under section 5 of the Urban Mass Transportation Act of 1964, as amended. If the recipient does not receive section 5 funds, then it must spend two percent of the mass transportation assistance it does receive from the Department. The Department will periodically assess the two percent requirement in light of experience to see if it is adequate to meet the criteria for interim service. Additionally, a recipient may spend a lower amount during any year when UMTA finds that the local advisory committee of representatives of the handicapped established to work with the recipient on interim accessible transportation matters has agreed that the service provided at the lower expenditure is adequate. Expenditures to meet the two percent requirement are in addition to expenditures to make the recipient's fixed route bus system or rail system accessible.

Until these requirements are met, the annual element of the urbanized area's transportation improvement plan (TIP) must exhibit a reasonable level of effort in programming projects or project elements to benefit handicapped persons who cannot otherwise use the recipient's transportation system. Programming projects and project elements involving an expenditure equal to two percent of the urbanized area's section 5 funds (from either UMTA or other sources) will be considered a reasonable level of effort. Where it can be shown that other approaches are equally or more likely to lead to program accessibility and, where needed, to interim accessible transportation, these other approaches may also be acceptable.

In areas served by rail systems, the requirements of this section will be met if the bus system has achieved program accessibility and the bus system serves the inaccessible portions of the rail system.

The recipient, working with the MPO, is responsible for attempting to coordinate all available special services and programs in order to ensure the provision of service meeting the standards of this section. The regulation does not require the recipient to provide the required level of special services entirely on its own; the services it provides, together with the services provided by other organizations and coordinated by the recipient and the MPO, should be used in reaching the standards of this section.

In deciding what types of resources should be devoted to interim service, recipients may want to consider whether the most cost-effective approach may be to achieve program accessibility in their fixed route bus system as soon as possible.

The comments from handicapped persons, their groups, and some transit industry commenters were generally favorable with respect to the standards for interim service proposed in the Appendix to the NPRM. Consequently,

these standards were incorporated into the regulation itself, though without the stipulation, opposed by most handicapped people who commented, that recipients could make "tradeoffs" among them. The concerns of transit operators, who generally favored the "tradeoff" idea, should be lessened by the provision of the final rule that many of the standards must be met "to the extent feasible."

Some commenters favored adding additional criteria, such as equivalent comfort and amenity, but the Department felt that its set of criteria, together with the local standard setting process, would ensure that all local priorities for service were fully considered.

Transit agencies generally favored a requirement that a certain percentage of UMTA funds be spent for interim service, often as a substitute for specific service standards. Groups representing the handicapped generally opposed this idea, at least as a substitute for service standards. The regulation takes a middle ground position, establishing general standards for interim service but providing that the recipient must spend the equivalent of two percent of its section 5 funds for interim services, unless service meeting the locally set standards is provided through coordination from other sources and the local advisory group agrees that such expenditure is unnecessary. In the case of a major rapid rail system recipient which obtains a waiver of its accessibility requirements for wheelchair users, this two percent requirement is in adddition to the five percent of section 5 funds it must agree to spend on alternative accessible transportation in order to obtain the waiver. In such cases, this interim service should be coordinated with the service contemplated under the waiver; a major rapid rail recipient providing an alternative system under the waiver provision where that also meets the standards set for interim service would presumably not need to spend an additional two percent of its section 5 funds on such service. The two percent requirement continues in effect until the recipient's "substantially as good as or better than" alternative service is in place.

One of the most complex issues concerning interim accessible transportation is the problem of phasing out the interim service once program accessibility is achieved. Generally speaking, transit operators feared that because of Departmental action, investment in equipment, labor-management contracts, and local political pressures (including pressure from groups representing the handicapped), interim services, once begun, could not be easily terminated, resulting in a continuing costly and duplicative transportation system. Handicapped individuals and their groups, on the other hand, tended to fear that the provision of interim service would tend to slow down the provision of accessible mainline service and that the provision of accessible mainline service would mean the end of necessary special services, particularly for persons who would have difficulty getting to accessible mainline buses or rail vehicles.

The regulations do not require that special services initiated in or continued through the interim period be maintained after program accessibility is achieved, although the Department requires recipients to continue their coordination efforts and encourages recipients to continue to commit funds toward this service. Nor do the regulations permit recipients to delay the achievement of program accessibility because interim service is provided. Consequently, the Department does not think it necessary to impose, as some commenters requested, a special deadline for the termination of interim services. The Department recognizes that there are likely to be problems for both transit providers and consumers at the time when program accessibility is achieved. Foresight, good planning, and cooperation between transit operators and handicapped persons will be necessary to ensure that the transition from interim to accessible mainline services is smooth.

These problems are likely to emerge some years in the future, and their solutions are likely to vary greatly from area to area. Consequently, the Department believes that this rule should not attempt to propose specific solutions. For the same reason, the Department has not attempted to set forth detailed examples of "acceptable" approaches to interim accessible transportation, believing that it would be a mistake to attempt to prescribe finely-tuned solutions to the wide variety of local problems and conditions.

The costs of interim service received several comments. Because of the wide variety of possible kinds of interim service, the Department has not been able to come up with any overall estimates of interim service costs. In order to construct cost estimates, a number of assumptions about the kind and duration of service provided—assumptions that almost certainly would not hold true on a nationwide basis—would have to be built into the estimate. However, two percent of UMTA's available section 5 funds for the current fiscal year is about $28 million. This figure provides at least a rough idea of the annual level of expenditure that might be required.

§ 27.99 *Waiver for Existing Rapid, Light, and Commuter Rail Systems.* In order to establish regulations which are reasonable, flexible and responsive to local conditions, the Department has created an alternative to the accessibility requirements of §§ 27.87 and 27.89 for wheelchair users. A recipient that, on the effective date of this regulation, operates an existing inaccessible light rail, rapid rail, or commuter rail system may petition the Secretary for a waiver of its obligations under § 27.87 or § 27.89 with respect to making the existing system accessible to wheelchair users. A waiver provision contained in the NPRM (§ 27.111) has been deleted, and this waiver provision applicable to rapid, commuter and light rail has been added.

The conditions for granting a waiver request are stringent. A request may be submitted only after the MPO and handicapped persons and organizations representing handicapped persons in the community, through a consultative process, have developed arrangements for alternative service substantially as good as or better than that which would have been provided in the absence of a waiver. A public hearing at the local level is required. The recipient must submit a record of the consultative process, including the hearing transcript, to the Secretary. The recipient must also submit a completed transition plan for an accessible system. Only if there is an acceptable transition plan for an accessible system, of course, can the Secretary determine whether or not the proposed alternative service would be substantially as good as or better than accessible service. The Secretary must make this determination in order for a waiver to be granted.

The Department will review the consultative process used by the MPO for a waiver to determine whether there has been adequate participation by handicapped persons and organizations representing handicapped persons in the community. In this regard, the recipient should consider methods of fostering a more open, balanced consultative process at which a variety of viewpoints that might otherwise be unrepresented are presented. Among the methods used by the MPO might be the preparation or financing of technical analyses suggested by handicapped persons, or

making available funds to reimburse costs for handicapped persons or their representatives to participate effectively in the consultative process.

Certain recipients with existing inaccessible rapid rail systems—New York City Transit Authority, Chicago Transit Authority, Massachusetts Bay Transportation Authority, Greater Cleveland Regional Transit Authority, and Southeastern Pennsylvania Transportation Authority—are subject to an additional requirement if they are granted a waiver. They must agree to spend each year (or ensure that other UMTA recipients in the urbanized area spend) an amount equal to at least five percent of the urbanized area's capital and operating funds under section 5 of the Urban Mass Transportation Act of 1964, as amended, on the alternative service.

This five percent requirement is designed to guarantee an adequate minimum level of funding for alternative service in those cities with the largest inaccessible existing rapid rail systems. The cost of making these five systems accessible would be higher than in other systems and the cost of providing an alternative service substantially as good as or better than that which would have been provided in the absence of a waiver will probably be higher as well. It should be pointed out that the five percent figure is a floor, not a ceiling. It may be necessary for a recipient to spend more than the equivalent of five percent of its area's section 5 funds to meet the "substantially as good as or better than" standard for alternative service.

On the other hand, this requirement need not apply to relatively small rapid rail systems. It would be impractical to ask a smaller system to spend or ensure the expenditure of five percent of a large urbanized area's section 5 funds because a waiver has been granted. If a smaller system obtains a waiver, it still must make arrangements for alternative service substantially as good as or better than that which would have been provided had the system been made accessible.

The stringent requirements of this section ensure that only meritorious requests for waiver will be granted. It should be noted that the section requires that alternative services "will be" as good as or better than those which would have been provided by the waiver requirement. Recipients do not have to show that the alternative services, at the time the petition is submitted, are equivalent to the services that would have been provided when program accessibility for the rail system in question had been achieved. Rather, the recipient must demonstrate to the Secretary's satisfaction that within the period established for program accessibility, or a shorter time established by the Secretary in his or her reasonable discretion, the appropriate level of service will be established. The required alternative service may be provided by any mode or combination of modes, including accessible mainline buses and special service paratransit.

The Department will judge whether the alternative service is adequate by looking at how the service responds to certain criteria. With respect to the service area, the system must serve at least all stations of the rail system, and it must also be available during the same hours as the accessible system would be available. There must be no restrictions on trip purposes, and fares for the same station-to-station trip must be equivalent to those that would apply if the rail system waiver were not granted. Travel aids and companions of handicapped travelers must be accommodated. Combined wait and travel time, transfer frequency and availability of the service to all handicapped persons who would be served by an accessible system must be made equivalent to the maximum feasible extent, and any differences must be explained in writing in the transition plan. Recipients are strongly encouraged to provide service in a way that allows handicapped and non-handicapped passengers to ride together.

Concerning who must be served by the alternative service, our intention is that the service be available to at least those handicapped persons who would have used the rail system if it had been made accessible but who now will not be able to use that system because of the waiver. Recipients must adopt reasonable and carefully considered methods of estimating the demand for alternative service.

Recipients should begin to provide this alternative service at the earliest possible date, but in any event no later than the date on which accessible service could reasonably have been provided at any two key stations that presented no technological or other significant barriers to completion. The alternative service should show steady improvement in quality over time to reflect the increasingly improved service that would have been offered by an accessible system.

In requesting a waiver, recipients must identify and provide satisfactory evidence from operators and from local sources of funding that will ensure that the alternative service will in fact be available.

§ 27.101 Period After Program Accessibility.

This new section treats the question of recipients' obligations after they have achieved program accessibility in their systems. In addition to complying with other sections of this regulation, mass transit recipients must continue to use their best efforts to coordinate special services.

§ 27.103 Transition Plan. (Section 27.89 in the NPRM). The mass transportation portion of this regulation requires the various modes of urban mass transit to be made accessible to handicapped persons over periods ranging from three to 30 years. In most respects, many systems are not now accessible. Careful planning will be required in order to "get from here to there" in an expeditious and orderly way. The purpose of this section is to provide a tool—the transition plan—which will be useful to recipients, planning agencies, and the public as they decide how to achieve program accessibility.

Several important features of this section should be noted. Only one transition plan in each urbanized or nonurbanized area receiving financial assistance for mass transit must be submitted. This plan will cover all modes in areas having more than one kind of mass transit service. The plan is developed once, and covers the entire period of time leading to program accessibility. However, the plan must be refined and reappraised periodically to ensure that it continues to provide adequately for transportation facilities and services that can be used effectively by handicapped persons. In urbanized areas, the Metropolitan Planning Organization (MPO) is principally responsible for preparing the transition plan, in cooperation with State and local officials and operators of publicly owned mass transportation services. In other areas, local elected officials, in cooperation with transit operators and the State, have this responsibility.

The transition plan for areas which have existing, inaccessible rapid rail systems are due to be submitted to the Urban Mass Transportation Administration (UMTA) 18 months after the effective date of this regulation. All other transition plans are due one year from the effective date of the regulation. However, urbanized areas with inaccessible rail systems other than rapid rail may extend the one-year period to 18 months, upon an adequate

showing of need. Transition plans will be reviewed expeditiously by UMTA and approved or disapproved. The longer period allowed for the submission of transition plans in areas with existing, inaccessible rapid rail systems reflects the greater complexity of the planning process concerning such systems.

The detailed contents of the transition plan are spelled out in paragraph (c) of this section. Generally speaking, the plan must relate which facilities and equipment have to be modified to achieve program accessibility in each transportation mode, what these modifications will be in each case, what schedule will be followed to make the changes, who will be responsible for carrying out the changes, how existing services will be coordinated to improve service to handicapped persons, how much the changes will cost and where the money will come from, how the planners have involved the community in developing the planned changes, and what the planners have to say in response to substantive concerns which arose in public hearings on the plan.

Some commenters said that the content requirements and apparent purposes of the transition plan and the annual status report overlapped. The final rule distinguishes between the purpose of the transition plan as a program for achieving accessibility and the status report as principally a progress report on compliance with the schedule defined in the transition plan.

Commenters, particularly from small cities, indicated that the level of detail in the transition plan should be flexible to account for substantial variations in the magnitude and complexity of local accessibility issues. This comment is acknowledged and resolved with the addition of the concept of "appropriate level of detail" in § 27.103(b)(3). The Department clearly recognizes that the transition plan in a bus-only city of 75,000 will be much less complicated than the plan in a major metropolitan area with several modes of public transportation and numerous and complex route structures.

A number of commenters, particularly from MPOs and transit operators, questioned the respective roles of the MPO and transit operator in developing the transition plan. The respective roles of the MPO and transit operator should be determined locally through the cooperative process (though the MPO has overall "direction" of the planning effort). There is one important difference between the normal planning process and the requirements of this regulation. Section 27.103(b)(5) mandates greater involvement of the recipients in the planning process than 23 CFR Part 450, UMTA'a planning regulation.

In order to clarify the requirements of the transition plan, language had been added to § 27.103(c)(3) stating that the plan should document phasing criteria, indicate which projects or improvements are needed to meet the three-year requirements, and set appropriate benchmarks for longer-term efforts.

The largest number of commenters on the transition plan section of the NPRM addressed the deadline for submission of the plan (July 1, 1980, in the NPRM). Some commenters asked for shorter deadlines while others asked for more time. We believe that the one year or 18 month deadlines provide reasonable periods within which the local planning, decisionmaking and programming can be accomplished to produce an effective transition plan. We have also added the concept of periodic plan refinement (which is similar to that for the overall transportation planning process in 23 CFR Part 450) to allow for appropriate details to be added to the transition plan after the initial deadline (see § 27.103(d)(3)).

§ 27.105 Annual Status Report (Section 27.91 in the NPRM). This section requires the submission of information which will provide a basis for compliance determinations. Very few comments were received regarding this section. Most were supportive of the proposed section. Some, however, were concerned about the manner in which the status report would relate to the transition planning requirement of § 27.103, the compliance planning requirement of § 27.11(c)(2) and (3), and the annual element of the Transportation Improvement Program (TIP). The section has been revised to simplify and clarify the requirement for an annual status report. The principal requirement is to provide a summary of the recipient's accomplishments and activities for meeting the schedule of improvements in the area's approved transition plan.

The section also provides that the first annual transition plan shall include copies of the three compliance planning items listed in § 27.11(c)(3). Subsequent annual status reports must reflect any changes made as a result of the requirement of § 27.11(c)(2)(v) for reviewing and updating compliance planning periodically.

The compliance procedures described in Subpart F of this part provide the basic mechanism for ensuring compliance with the requirements of this part. Those procedures include on-site compliance reviews where appropriate. UMTA will also review compliance with this part as a basis for performing planning certifications (described in 23 CFR 450.122) and program approvals (described in 23 CFR 450.320). Failure to prepare and implement transition plans and to meet accessibility requirements of this part may result in program disapproval or disapproval of applications for UMTA capital or operating assistance.

UMTA will make an annual determination of compliance with this part either in conjunction with the certification and program reviews or as status reports are transmitted to UMTA. For nonurbanized areas, a similar determination will be made as part of the application review process. A determination of compliance will be based upon a determination of satisfactory progress toward implementing the requirements of this part, including the schedules and benchmarks specified in the transition plan. This determination will provide a basis for UMTA to certify the planning process and approve projects contained in the annual element of the transportation improvement program.

§ 27.107 Community Participation. (Section 27.93 in the NPRM). This section of the NPRM has been changed in a few minor respects. Its effective implementation will depend upon the good faith actions of the parties concerned and the Department's monitoring activities. The section has been revised to include subheadings, to emphasize that the participation mechanisms shall ensure a continuing consultation process (as is emphasized in other sections of this part, e.g., compliance planning, § 27.11(c)), to indicate the need for adequate notice before a required hearing, and to emphasize that it specifically applies only to recipients whose systems are covered by Subpart E.

The intent of § 27.107 is to ensure significant involvement of those most concerned and knowledgeable about accessible transportation in the planning and implementation of such transportation. Efforts should include as many diverse interests as possible in order to assure obtaining all the information necessary to develop a viable, accessible system. The regulation lists the interests whose participation must be sought.

While as much use as possible should be made of the area's already established community participation procedures, the special nature of the accessibility programs requires a special, identifiable effort in community participation. Due to the mobility

problems of the transportation handicapped, special mechanisms may have to be developed to ensure the involvement of future consumers of the accessible services. Such mechanisms could include conference call meetings, providing special transportation to meetings, developing materials to be understood by the blind or the hard of hearing, or meetings and discussions via television with telephone responses. The section requires recipients to ensure participation by handicapped persons; this requirement, of course, can be met only when the recipient's public meetings, conferences and workshops are held in accessible buildings.

The U.S. Department of Transportation publication "Effective Citizen Participation in Transportation Planning" (1976) (DOT-FH-11-8514) and the booklet "Barrier Free Meetings: A Guide for Professional Associations" (American Association for the Advancement of Science, 1515 Massachusetts Avenue, N.W., Washington, D.C. 20005) are useful resources which agencies responsible for planning and implementation activities may wish to consult.

Many comments were received concerning this section. They were generally supportive of the section. The majority, however, suggested language to be added to assure effective participation of and consultation with handicapped persons and groups. Many commenters raised a concern regarding the term "adequate" in connection with citizen participation procedures, which was perceived as being vague and indefinite. In the context of the explanations to planners provided by this preamble, we believe this general term is sufficient and that it will not lead to abuse.

Subpart F—Enforcement

This subpart sets forth the procedures by which the Department of Transportation will enforce the requirements of the other subparts of the regulation. The enforcement procedures are closely modeled on the Department's enforcement procedures for Title VI of the Civil Rights Act of 1964, as § 85.5 of the HEW guidelines requires. While some details of the enforcement procedures of the final rule differ from those of 49 CFR Part 21, the Department's Title VI regulation, the substance of the section 504 enforcement procedures is essentially the same as that of the Title VI rule.

One change has been made throughout the regulation. The NPRM vested compliance functions in the Director of the Office of Environment and Safety. After further study, the Department has concluded that some of these functions, particularly concerning the handling of complaints, should be vested in the Director of the Office of Civil Rights. The Office of Civil Rights handles complaints under Title VI of the Civil Rights Act of 1964 and has considerable experience in investigating and responding to complaints. Delegation of the complaint function and other enforcement functions will be made by the Secretary in an internal directive. Reflecting this future change in the Department's assignment of enforcement functions, the rule now refers to "the responsible Departmental official" rather than to any specific official.

§ *27.121 Compliance Information.* This section requires recipients to cooperate with and assist the responsible Departmental official in compliance matters, to keep records and submit compliance reports to the official, to permit the official access to information relevant to compliance, and make information about the Department's section 504 program available to the public. It is unchanged from the NPRM. Several commenters suggested that the recordkeeping and paperwork burdens of this section were excessive. Other commenters felt that not only information about the Department's section 504 program, but also the recipients' records, should be required to be made available to the public.

The recordkeeping and reporting requirements of this section are virtually identical to those imposed on recipients by Part 21. The experience of the Department and recipients under Title VI suggests that requirements of this nature are reasonable. With respect to the public availability of information, we do not believe it is necessary to require public access to recipients' records. The performance of recipients in carrying out the most important requirements of the rule—providing accessible buses or elevators in rail stations, for example—is fully open to view. Other provisions of the rule, such as those concerning transition plans and requests for waiver, include public hearing and consultation requirements. Potential complainants are not likely to need extensive additional documentary information before filing a complaint. All relevant documentary information will become part of the record in any complaint proceeding, ensuring that it will be properly considered.

§ *27.123 Conduct of Investigations.* With one exception, this section is unchanged from the NPRM. The change is the addition of language providing that the responsible Departmental official will begin the enforcement process if he or she finds "reasonable cause to believe" that there is a failure to comply. This language was added to remove the possibility of confusion over the nature of the official's finding at this stage of the procedures. Experience in the Title VI program has shown that recipients frequently misunderstand letters stating that the Departmental Office of Civil Rights has determined that they are in noncompliance, incorrectly believing that a final determination has been made. This stage of the procedure is akin to a "probable cause" finding, and the additional language is intended to clarify this fact.

The statement in paragraph (d) that "the matter is resolved by informal means whenever possible" is particularly important. This regulation is compliance-oriented. When there is a failure to comply, the Department plans to work with the recipient to bring it into compliance. The conciliation process is the focus of this compliance effort. The Department fully supports the concept, expressed elsewhere in this subpart, that resort to administrative or other sanctions is warranted only when compliance cannot be secured by voluntary means.

Several commenters suggested that persons or groups outside the Department, such as local groups of handicapped persons, local governments, or the Architectural and Transportation Barriers Compliance Board, should have partial or total responsibility for conducting compliance reviews and complaint investigations. The Department believes that while all of these and other groups can play an important, informal role to ensure that recipients comply and to bring to the Department's attention any failures to comply, it is preferable to leave the official compliance review and complaint investigation functions in the Department.

One commenter asked for specific provision for pre-award reviews. The section 504 compliance status will be taken into consideration by operating elements of the Department when recipients apply for grants. In many of the Department's grant programs, recipients must satisfy the Department that they are in compliance before grants (e.g. UMTA grants for capital or operating expenses) are awarded. Under these circumstances, mandatory pre-award reviews are unnecessary. Nothing in the regulation prohibits pre-award reviews, however, and they may

be scheduled when the Department believes them to be useful.

One commenter suggested broadening this section's prohibition on retaliation and intimidation to cover retaliation for complaints filed under other laws concerning discrimination because of handicap. We believe that it is unwise to attempt to extend the jurisdiction of the Department's section 504 rules to cover violations of other authorities.

§ *27.125 Compliance Procedure.* This section's administrative sanction procedure, as set forth in the NPRM, is changed in three ways. Subparagraph (b)(1)(ii) has been changed to specify that the express finding on the record of noncompliance is to be made by the Secretary. Subparagraph (b)(1)(iii), which required the Secretary to approve of fund cutoff actions, has been eliminated in view of the change to subparagraph (b)(1)(ii), which assigns to the Secretary the responsibility of taking these actions in the first place. The procedure is otherwise the same as in the NPRM.

Two commenters expressed the concern that a mechanism for ensuring speedy treatment of complaints, such as a deadline for resolving complaints or a provision for a private right of court action after a certain amount of time has passed, should be included in this section. Given the emphasis which the regulation and Department of Transportation policy places on resolving noncompliance informally, measures which have the effect of forcing the Department and recipients into a confrontation over the imposition of sanctions before the possibilities of a negotiated agreement have been exhausted appear inappropriate. For this reason, we did not adopt these comments.

Another commenter asked that this section be brought closer to Title VI procedures by involving the Secretary more directly in compliance decisions and by requiring a report to Congress similar to that provided for in Title VI matters by 49 CFR 21.13(c). The first of these comments has been adopted, and the Secretary is charged with the responsibility of making the on-the-record noncompliance finding necessary for the termination of Federal funds. The legislative report requirement, however, is present in the Title VI regulations because of a statutory requirement (42 U.S.C. 2000d-1) which has no equivalent in section 504. Therefore, it is not necessary to include this requirement in the section 504 regulation.

§ *27.127 Hearings.* There were four changes to this section. The first change involves the complainant who, under the NPRM, was made a party to the proceedings. This provision was inconsistent with Title VI procedures, in which only the Department and the applicant or recipient are parties to the informal resolution and hearing processes. In order to be consistent with Title VI procedures, and to avoid the possibility of unwieldly three-party negotiations and hearings, the complainant has been deleted as a party. The complainant will have the opportunity, as complainants presently have under Title VI, of presenting information and views to the responsible Departmental official.

The second change involved adding language to subparagraph (a)(2) to specify the procedure to be followed in cases in which an applicant or recipient has waived its right to a hearing. When the hearing is waived, the responsible Departmental official and the applicant or recipient may also place information and arguments into the record.

The other two changes were the substitution of "responsible Departmental official" for the word "Department" in paragraphs (c) and (d). This change is intended to clarify the roles of actors in the hearing process. The responsible Departmental official, as with the applicant or recipient, appears as a party in the hearing. The official's role should be distinguished from that of the "Department" which, through the decision of the Secretary, will take action on the basis of the record developed at the hearing.

Relatively few comments were made on this section. One commenter asked that the convenience of the complainant be considered in determining the location of hearings. This factor will be taken into consideration, although it need not be made part of the regulation. Another commenter suggested that the complainant and its witnesses be reimbursed for travel and expenses. Since the complainant will not be a party to the hearing, this suggestion was not adopted.

§ *27.129 Decisions and Notices.* The Department has revised this section in the interests of clarity and better administrative procedure. There are two principal changes. First, administrative due process is best served where the enforcement and decision-making functions of an agency are clearly separated. Therefore, the responsible Departmental official's role is delineated as enforcement. The official initiates enforcement proceedings and participates as a party in the proceedings. The authority to decide whether to find noncompliance and impose administrative sanctions is reserved to the Secretary. This reservation of authority prevents any confusion between the "prosecutor" and "judge" roles in this type of proceeding. Moreover, it is highly likely that any matters that are unable to be settled informally will be sufficiently important and controversial to merit direct decision by the Secretary.

Second, the NPRM permitted alternative administrative procedures to be employed. Once a hearing was convened and an administrative law judge selected, the judge could either make what is called an "initial" decision (which becomes final upon approval by the Secretary unless a party raises exceptions to it) or make what is called a "proposed" or "recommended" decision (which is a non-binding recommendation to the decisionmaker upon which the parties may comment). Each of these paths for decision contained differing procedural details. To simplify this structure, the final rule provides that the administrative law judge makes a recommended decision, upon which the responsible Departmental official and applicant or recipient may comment, and that the Secretary makes the final decision. We are considering including a similar simplification in the Department's Title VI procedures, which are currently being revised by the Department.

As a result of these alterations, paragraphs (a) and (c) have been shortened by omitting references to the "initial decision" procedure. Paragraphs (b), (d) and (e) have been rewritten to provide for decisions by the Secretary, rather than by the responsible Departmental official. Paragraph (e), which provided for approval by the Secretary of decisions by the official, is no longer needed and has been deleted.

The "subsequent proceedings" provision (paragraph (f) in the final rule) has been changed in response to several public comments. One comment recommended that the rule provide procedures to govern post-termination hearings; the rule now provides that the hearing procedures of §§ 27.127 and 27.129, with certain exceptions, apply to these hearings. Another comment noted that the NPRM, in contrast with the Title VI regulations, said that sanctions "may" rather than "shall" remain in effect while a post-termination proceeding is pending. The rule now says "shall". In addition, consistent with the clarification of the role of the Secretary, the necessity of the Secretary's approval of the restoration of funding is stated explicitly in subparagraphs (1) and (2).

In consideration of the foregoing, a new Part 27 of Title 49 is added to the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C. on May 25, 1979.

Brock Adams,

Secretary of Transportation.

Appendix

Correspondence Supporting Compliance With Section 85.4(b) of the HEW Guidelines

In accordance with Section 85.4(b) of the Guidelines issued by the Department of Health, Education, and Welfare (HEW) for the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, the Department of Transportation (DOT) submitted a proposed final rule with respect to Section 504 to HEW on April 2, 1979. On May 24, 1979, the Secretary of HEW advised the DOT that the DOT Section 504 final rule "complies with the HEW standards and guidelines." The April 2nd and May 24th letters are set forth below.

The Secretary of Transportation,
Washington, D.C., April 2, 1979.

Hon. Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare, Washington, D.C.

Dear Joe: I am forwarding to you the Department of Transportation's proposed final regulations to implement Section 504 of the Rehabilitation Act of 1973. Following your review under Section 85.4(b) of your Department's Guidelines, I will publish the final DOT regulations in the Federal Register.

As you know from our discussions, this document represents the culmination of an extensive public comment period and a thorough review by my staff and myself. I believe the program in these regulations will provide effective transportation service for handicapped persons in conformity with the HEW Guidelines. The program also gives local officials and citizens an important role in shaping the local response to the regulations, within the context of Federal standards that ensure that the handicapped will benefit from significantly improved service.

I firmly believe the program is a reasonable and cost-effective approach to the implementation of Section 504 for the nation's transportation systems.

Sincerely,

Brock Adams.

Enclosure

The Secretary of Health, Education, and Welfare,
Washington, D.C., May 24, 1979.

Hon. Brock Adams,
Secretary of Transportation, Washington, D.C.

Dear Brock: I have reviewed your proposed final regulation implementing section 504 of the Rehabilitation Act of 1973. You had submitted your regulations to me on April 3, 1979, pursuant to my responsibilities under Executive Order 11914.

For the past five weeks, representatives of our Departments have discussed the difficult and complex issues raised by your regulation. I appreciate the cooperation that your Department has shown in meeting with HEW officials. Based on these discussions, a number of changes in the regulation you sent on April 3, 1979, have been agreed upon. With these changes, I now find that your Section 504 regulation complies with the HEW standards and guidelines implementing the Executive Order. Your regulation effectively resolves the unique and complex problems involved in making transportation systems in this country accessible to handicapped persons.

Once again, I congratulate you and your staff for the development of an equitable and reasonable Section 504 regulation. I believe this regulation will ensure that handicapped people in the United States will be able to use the nation's public transportation systems.

Sincerely,

Joseph A. Califano, Jr.

PART 27—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: Sec. 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1612(a); section 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142 nt.

Subpart A—General

§ 27.1 Purpose.

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified handicapped individual in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 27.3 Applicability.

This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance.

§ 27.5 Definitions.

As used in this part:

"Accessible" means (a) with respect to new facilities, (1) conforming to the minimum standards of the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the

Physically Handicapped," (ANSI A 117.1—1961 (R 1971) published by ANSI, Inc. ("ANSI Standards"),* with respect to buildings and other fixed facilities to which ANSI standards are applicable; and (2) with respect to vehicles, other moving conveyances, or fixed facilities to which the ANSI standards do not apply, able to be entered and used by a handicapped person; (b) with respect to existing facilities, able to be entered and used by a handicapped person.

"Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended.

"Air Carrier Airport" means an airport serviced by a certificated air carrier unless such airport is served solely by an air carrier which provides: (1) passenger service at that airport in aircraft having a maximum passenger capacity of less than 56 passengers, or (2) cargo service in air transportation at that airport solely with aircraft having a maximum payload capacity of less than 18,000 pounds; provided, however, that if at any such airport, Federal funds are made available for terminal facilities, it shall be deemed to be an air carrier airport.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

"Closed station" means a station at which no services are provided to passengers by station attendants and at which trains make regularly scheduled stops.

"Commuter rail" means that portion of mainline railroad transportation operations which encompasses urban passenger train service for local short-distance travel between a central city and adjacent suburbs and which is characterized by multi-trip tickets, specific station-to-station fares, railroad employment practices, and usually only one or two stations in the central business district.

"Department" means the Department of Transportation.

"Discrimination" means denying handicapped persons the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

"Facility" means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in, or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

"Fixed route bus system" means a system of buses of any size which operate on a fixed route pattern on a fixed schedule.

"Flag stop" means any station which is not a regularly scheduled stop but at which trains will stop to entrain or detrain passengers only on signal or advance notice.

"Handicapped person" means (1) any person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (2) As used in this definition, the phrase:

(a) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

"Head of Operating Administration" means the head of an operating administration within the Department (United States Coast Guard, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and Research and Special Programs Administration) providing Federal financial assistance to the recipient.

"Light rail" means a streetcar-type transit vehicle railway operated on city streets, semi-private rights-of-way, or exclusive private rights-of-way.

"Mass transportation" or "public transportation" means transportation by bus, or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

"Open station" means a station at which passengers may make reservations and purchase tickets and where passenger assistance is available for entraining and detraining passengers on trains which make regularly scheduled stops.

"Passenger" means anyone, except a working crew member, who travels on a vehicle the service of which is governed by these regulations.

"Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient for the purpose of carrying out a program.

"Public paratransit system" means those forms of collective passenger transportation which provide shared-ride service to the general public or special categories of users on a regular and predictable basis and which do not necessarily operate on fixed schedules or over prescribed routes.

"Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with

*Copies available from ANSI, Inc., 1430 Broadway, New York, N.Y 10018.

reasonable accommodation and within normal safety requirements, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to other activities, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

"Rapid rail" means a subway-type transit vehicle railway operated on exclusive private rights-of-way with high-level platform stations.

"Recipient" means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department is extended directly or through another recipient, for any Federal program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

"Secretary" means the Secretary of Transportation.

"Section 504" means section 504 of the Act.

"Transportation improvement program" means a staged multiyear program of transportation improvements including an annual element.

"Urbanized area" means an area so designated by the Bureau of Census, within boundaries which shall be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in case of any such area, encompass the entire urbanized area within a State as designated by the Bureau of Census.

§ 27.7 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance administered by the Department of Transportation.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who are not handicapped;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not handicapped;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits or services that are as effective as those provided to persons who are not handicapped;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing financial or other assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate in conferences, in planning or advising recipients, applicants or would-be applicants, or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.

(3) Even if separate or different programs or activities are available to handicapped persons, a recipient may not deny a qualified handicapped person the opportunity to participate in the programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives of the recipient's program, or (iii) that yield or perpetuate discrimination against another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid benefit, or service provided under a program or activity receiving or benefitting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Communications.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(d) *Programs limited by Federal law.* In programs authorized by Fedeal statute or executive order that are designed especially for the handicapped, or for a particular class of handicapped perons, the exclusion of nonhandicapped or other classes of handicapped persons is not prohibited by this part.

27.9 Assurance required.

(a) *General.* Each application for Federal financial assistance to carry out a program to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these

assurances by reference in subsequent applications to the Department.

(b) *Future Effect of Assurances.* Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of Federal financial assistance, are bound by the recipient's assurance under the following circumstances:

(1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the Department of Transportation to a recipient, the instrument of conveyance shall include a convenant running with the land binding the recipient and subsequent transferees to comply with the requirements of this part for so long as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose.

(2) When Federal financial assistance is used by a recipient to purchase or improve real property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part and require any subsequent transferee of the property, who is using the property for the purpose for which the Federal financial assistance was provided, to agree in writing to comply with the requirements of this part. The obligations of the recipient and transferees under this part shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.

(3) When Federal financial assistance is provided to the recipient in the form of, or is used by the recipient to obtain, personal property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

(4) When Federal financial assistance is used by a recipient for purposes other than to obtain property, the assurance provided shall obligate the recipient to comply with the requirements of this part for the period during which the Federal financial assistance is extended to the program.

§ 27.11 Remedial action, voluntary action and compliance planning.

(a) *Remedial action.* (1) If the responsible Departmental official finds that a qualified handicapped person has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.

(2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, and (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified handicapped persons.

(c) *Compliance planning.* (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)–(iii) of this section with interested persons, including handicapped persons and organizations representing the handicapped:

(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;

(ii) Identify shortcomings in compliance and describe the methods used to remedy them;

(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;

(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and

(v) Establish a system for periodically reviewing and updating the evaluation.

(3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems indentified; and

(iii) A description of any modifications made and of any remedial steps taken.

§ 27.13 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient that employs fifteen or more persons shall, within 90 days of the effective date of this regulation, forward to the head of the operating administration that provides financial assistance to the recipient, with a copy to the responsible Departmental official, the name, address, and telephone number of at least one person designated to coordinate its efforts to comply with this part. Each such recipient shall inform the head of the operating administration of any subsequent change.

(b) *Adoption of complaint procedures.* A recipient that employs fifteen or more persons shall, within 180 days, adopt and file with the head of the operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 27.15 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to

§ 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. In either case, the addition or revision must be specially noted.

§ 27.17 Effect of State or local law.

The obligation to comply with this part is not obviated or affected by any State or local law.

§§ 27.19-29 [Reserved].

Subpart B—Employment Practices

§ 27.31 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped applicant for employment, or an employee shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner assuring that discrimination on the basis of handicap does not occur. A recipient may not limit, segregate, or classify applicants for employment or employees in any way that adversely affects their opportunities or status on the basis of handicap. This part does not prohibit the consideration of handicap in decisions affecting employment if the purpose and effect of the consideration is to remove or overcome impediments or the present effects of past impediments to the employment of handicapped persons.

(3) A recipient may not enter a contractual or other relationship that subjects qualified handicapped applicants for employment or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, or with organizations providing training and apprenticeship programs.

(b) *Specific Activities.* A recipient shall not discriminate on the basis of handicap in:

(1) Recruiting, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promoting, awarding tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 27.33 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known handicaps of an otherwise qualified applicant for employment or employee unless the recipient can demonstrate to the responsible Departmental official that the accommodation would impose an undue hardship on the operations of its program.

(b) Reasonable accommodation includes (but is not limited to):

(1) Making facilities used by employees readily accessible to and usable by handicapped persons;

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment, and similar actions; and

(3) The assignment of an employee who becomes handicapped and unable to perform his/her original duties to an alternative position with comparable pay.

(c) In determining, pursuant to paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program, including number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce;

(3) The nature and cost of the accommodation needed; and

(4) Its effect on program accomplishments, including safety.

(d) A recipient shall not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodations to the handicaps of the employee or applicant.

§ 27.35 Employment criteria.

(a) A recipient shall not make use of an employment test or other selection criterion that has an adverse impact or tends to have an adverse impact on handicapped persons, unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not have an adverse impact or do not tend to have an adverse impact on handicapped persons are shown by the recipient to be unavailable.

(b) A recipient shall select and administer tests that, when administered to an applicant for employment or an employee with impaired sensory, manual, or speaking skills, nonetheless accurately measure what they purport to measure.

§ 27.37 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient shall not conduct a preemployment medical examination or inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment medical examinations that are required by Federal law or regulation or inquiries into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action pursuant to § 27.11 (a) or (c), or when a recipient is taking affirmative action pursuant to section 505 of the Act (which relates to government procurement), the recipient may invite applicants for employment to

indicate whether and to what extent they are handicapped, provided that:

(1) The recipient makes clear that the information requested is intended for use solely in connection with the remedial action obligations or its voluntary or affirmative actions efforts; and

(2) The recipient makes clear that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section prohibits a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, if:

(1) All entering employees in that category of job classification must take such an examination regardless of whether or not they are handicapped; and

(2) The results of such an examination are used only in accordance with this part.

(d) Information obtained in accordance with this section shall be collected and maintained on separate forms and treated confidentially, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of handicapped persons and necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request, consistent with the Privacy Act of 1974, 5 USC 552a.

§§ 27.39-59 [Reserved]

Subpart C—Program Accessibility—General

§ 27.61 Applicability.

This subpart applies to all programs of the Department of Transportation to which section 504 is applicable. Additional provisions with respect to certain specific programs of the Department are set forth in subparts D and E. The provisions of this subpart should be interpreted in a manner that will make them consistent with the provisions of subparts D and E. In the case of apparent conflict, the provisions of subparts D and E shall prevail.

§ 27.63 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 27.65 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that, when viewed in the entirety, it is accessible to handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, alteration of existing facilities and construction of new facilities in accordance with the requirements of § 27.67(d) or any other methods that result in making its program or activity accessible to handicapped persons. In choosing among available methods for meeting the requirements of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Structural changes.* Where structural changes are necessary to make programs or activities in existing facilities meet the requirements of paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation unless otherwise provided in subpart D or E.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop, and submit in duplicate to the cognizant operating administration providing Federal financial assistance, within one year of the effective date of this part, a transition plan listing the facilities and setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan and a list of the interested persons and organizations consulted shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify each facility required to be modified by this part. Facilities shall be listed even though the recipient contemplates requesting a waiver of the requirement to modify the facility;

(2) Identify physical obstacles in the listed facilities that limit the accessibility of its program or activity to handicapped persons;

(3) Describe the methods that will be used to make the listed facilities accessible;

(4) Describe how and the extent to which the surrounding areas will be made accessible;

(5) Specify the schedule for taking the steps necessary to achieve overall program accessibility and, if the time period of the transition plan is longer than three years, identify steps that will be taken during each year of the transition period; and

(6) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

27.67 New facilities and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part; with respect to vehicles, unless otherwise provided in subpart D or E, this requirement is effective for vehicles for which solicitations are issued or which are leased after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the accessibility of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) When an existing vehicle is renovated substantially to prolong its life, the vehicle shall, to the maximum extent feasible, meet the requirements for a comparable new vehicle. Lesser renovations shall incorporate accessibility features for a comparable

new vehicle when practicable and justified by the remaining life expectancy of the vehicle.

(d) *ANSI standards.* Design, construction or alteration of fixed facilities in paragraphs (a) and (b) of this section shall be in accordance with the minimum standards in the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by ANSI, Inc. (ANSI A117.1–1961 (R1971)), which is incorporated by reference in this part. Departures from particular requirements of these standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

§ 27.69 [Reserved]

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs; Airports, Railroads, and Highways

§ 27.71 Federal Aviation Administration—Airports.

(a) *Fixed facilities; New terminals*—(1) Terminal facilities designed and constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed or constructed in accordance with the ANSI standards. Where there is ambiguity or contradiction between the definitions and the standards used by ANSI and the definitions and standards used in paragraph (a)(2) of this section, the ANSI terms should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section. If this cannot be done, the standards in paragraph (a)(2) of this section prevail.

(2) In addition to the ANSI standards, the following standards apply to new airport terminal facilities:

(i) *Airport terminal circulation and flow.* The basic terminal design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. It is also essential that the design, especially concerning the location of elevators, escalators, and similar devices, minimize any extra distance that wheel chair users must travel compared to nonhandicapped persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(ii) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet the ANSI standards.

(iii) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(iv) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(v) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by jetways and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for movement of freight that are available for enplaning and deplaning wheelchair users.

(vi) *Telephones.* Wherever there are public telephone centers in terminals, at least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(vii) *Teletypewriter.* Each airport shall ensure that there is sufficient teletypewriter (TTY) service to permit hearing-impaired persons to communicate readily with airline ticket agents and other personnel.

(viii) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal building entrance, separated from the main flow of traffic, and clearly marked, shall be made available for the loading and unloading of handicapped passengers from motor vehicles. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of automobiles onto a level surface suitable for wheeling and walking.

(ix) *Parking.* In addition to the requirements in the ANSI standards the following requirements shall be met:

(A) Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between park areas and the terminal;

(B) Where multi-level parking is provided, ample and clearly marked space shall be reserved for ambulatory and semi-ambulatory handicapped persons on the level nearest the ticketing and boarding portion of the terminal facilities, and

(C) In multi-level parking areas, elevators, ramps, or other devices that can accommodate wheelchair users shall be easily available.

(x) *Waiting area/public space.* As the major public area of the airport terminal facility, the environment in the waiting area/public space should give the handicapped person confidence and security in using the facility. The space shall be designed to accommodate the handicapped providing clear direction about how to use all passenger facilities.

(xi) *Airport terminal information.* Airport terminal information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters, or symbols, using lighting and color coding. Airport terminals shall also have facilities providing information orally.

(xii) *Public services.* Public service facilities such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities shall be designed in accordance with ANSI standards.

(b) *Fixed facilities; existing terminals*—(1) *Structural changes.* Where structural changes are necessary to make existing air carrier terminals which are owned and operated by recipients of Federal financial assistance accessible to and usable by handicapped persons, such changes shall be made in accordance with the ANSI standards as soon as practicable, but in no event later than three years after the effective date of this part.

(2) *Ongoing renovation.* In terminals that are undergoing structural changes involving entrances, exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, curbs, and parking areas, recipients shall begin immediately to incorporate accessibility features.

(3) *Transition.* Where extensive structural changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it to the Federal Aviation Administration (FAA). Transition plans are reviewed and approved or disapproved by the FAA as expeditiously as possible after they are received.

(4) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided incident to enplaning and deplaning handicapped persons. Within three years from the effective date of this part, recipients operating terminals at air carrier airports that are not equipped with jetways or passenger lounges for boarding and unboarding shall assure that there are lifts, ramps, or other suitable devices, not normally used for movement of freight, are available for enplaning and deplaning wheelchair users.

(5) *Passenger services.* Recipients operating terminals at air carrier airports shall assure that there are provisions for assisting handicapped passengers upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

(6) *Guide dogs.* Seeing eye and hearing guide dogs shall be permitted to accompany their owners and shall be accorded all the privileges of the passengers whom they accompany in regard to access to terminals and facilities.

§ 27.73 Federal Railroad Administration—Railroads.

(a) *Fixed facilities.* (1) New facilities—(i) Every fixed facility or part of a facility—including every station, terminal, building, or other facility—designed or constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed and constructed in accordance with the ANSI standards. Where there is ambiguity or contradiction between the definitions and the standards used by ANSI and the definitions and standards used in paragraph (a)(1)(ii) of this section, the ANSI terms should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section. If this cannot be done, the standards in paragraph (a)(1)(ii) of this section will prevail.

(ii) In addition to the ANSI standards the following standards also apply to rail facilities;

(A) *Station circulation and flow.* The basic station design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. The design, especially concerning the location of elevators, escalators, and similar devices, shall minimize any extra distance that wheelchair users must travel, compared to nonhandicapped persons, to such ticket counters, baggage handling areas and boarding locations.

(B) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet ANSI standards.

(C) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(D) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(E) *Boarding platforms.* All boarding platforms that are located more than two feet above ground or present any other dangerous condition, shall be marked with a warning device consisting of a string of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms shall be coordinated with the vehicle design where possible in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Where level entry boarding is not provided, lifts, ramps or other suitable devices shall be available to permit boarding by wheelchair users.

(F) *Telephones.* At least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(G) *Teletypewriter.* Recipients shall make available a toll-free reservation and information number with teletypewriter (TTY) capabilities, to permit hearing-impaired persons using TTY equipment to readily obtain information or make reservations for any services provided by a recipient.

(H) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal entrance separated from the main flow of traffic and clearly marked shall be made available for the boarding and exiting of handicapped persons. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of vehicles onto a level surface suitable for wheeling or walking.

(I) *Parking.* Where parking facilities are provided, at least two spaces shall be set aside and identified for the exclusive use of handicapped persons. Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between parking areas and the terminal. Where multi-level parking is provided, ample space which is clearly marked shall be reserved for handicapped persons with limited mobility on the level which is most accessible to the ticketing and boarding portion of the terminal facilities; such level change shall be by elevator, ramp, or by other devices which can accommodate wheelchair users.

(J) *Waiting area/public space.* As the major public area of the rail facility, the environment in the waiting area/public space should give the handicapped persons confidence and security in using the facility. The space shall be designed to accommodate the handicapped by providing clear directions about how to use all passenger facilities.

(K) *Station information.* Station information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters or symbols using lighting and color coding. Stations shall also have facilities for giving information orally. Scheduling information shall be available in a tactile format or through the use of a toll-free telephone number.

(L) *Public services.* Public service facilities, such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities, shall be designed in accordance with ANSI standards.

(2) *Existing facilities*—(i) *Ongoing renovation.* All recipients shall begin immediately to incorporate accessibility features in stations and terminals that are already undergoing structural changes involving entrances and exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, boarding platforms, curbs, and parking garages.

(ii) *Structural changes.* Existing stations shall be modified to ensure that the facilities, when viewed in their entirety, are readily accessible to and usable by handicapped persons.

(iii) *Scheduling of structural changes.* (A) Within five years from the effective date of this section, recipients shall make accessible no less than one station in each Standard Metropolitan Statistical Area (SMSA) served by the recipient. Where there is more than one station in an SMSA, recipients shall select the station with the greatest

annual passenger volume for modification within five years.

(B) Within ten years of the effective date of this section, recipients shall make accessible all other stations in each SMSA.

(C) Within five years of the effective date of this section, recipients shall make accessible stations located outside of an SMSA and not located within 50 highway miles of an accessible station. Where there are two or more stations within 50 highway miles of one another, a recipient shall select the station with the greatest annual passenger volume for modification within five years.

(D) Within ten years of the effective date of this section, recipients shall make accessible all other stations located outside of an SMSA.

(iv) *Waiver procedure.* (A) Recipients may petition the Federal Railroad Administrator for a waiver from the requirement to make a particular station accessible under § 27.73(a)(2)(iii) (B) and (D). Such petitions shall be submitted no later than six years after the effective date of this section.

(B) A request for a waiver shall be supported by a written justification to the Federal Railroad Administrator. The justification shall include a record of a community consultative process in the area served by the station for which a waiver is sought. This request shall include a transcript of a public hearing. Handicapped persons and organizations in the area concerned shall be involved in the consultative process.

(C) Factors that are applicable to the determination on a petition for waiver and the conditions that would apply to the waiver include, but are not limited to: (1) The utilization of the station; (2) the cost of making modifications to the station; (3) and the availability of alternative, accessible means of transportation for handicapped persons that meet the needs of those persons for efficient and timely service at a fare comparable to rail fare from the area served by the station to the nearest accessible station in each direction of travel.

(D) Within 30 days of the date the waiver request is filed with the FRA, representatives of the FRA will meet with representatives of the Interstate Commerce Commission (ICC) to determine if the justification is adequate. The representatives will coordinate their efforts so that any changes requested by either FRA or ICC are consistent.

(E) If no agreement can be reached by the FRA and ICC on the adequacy of the justification within 60 days from the date the representatives first meet, the waiver request shall be denied.

(v) *Transition plan.* Where extensive changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it, in duplicate, to the Federal Railroad Administration (FRA).

(vi) *Approval of transition plan.* (A) Transition plans are reviewed and approved or disapproved as expeditiously as possible after they are received. Within 30 days from the date the plan is filed with the FRA, representatives of the FRA meet with representatives of the ICC to determine if the plan is adequate. The representatives coordinate their efforts so that any changes requested by either the FRA or the ICC are consistent.

(B) If no agreement can be reached by the FRA and the ICC within 60 days from the date the representatives first meet, the transition plan shall be disapproved.

(vii) *Existing danger.* Every existing facility and piece of equipment shall be free of conditions which pose a danger to the life or safety of handicapped persons. Upon discovery of such conditions, the danger shall be immediately eliminated and all necessary steps taken to protect the handicapped, or a particular category of handicapped persons, from harm during the period that the facility or equipment is being made safe.

(b) *Rail vehicles.* (1) Within five years from the effective date of this part, on each passenger train:

(i) At least one coach car shall be accessible;

(ii) Where sleeping cars are provided, at least one sleeping car shall be accessible; and

(iii) At least one car in which food service is available shall be accessible to handicapped persons, or they shall be provided food service where they are seated.

In cases where the only accessible car is first class, first class seating for handicapped persons shall be provided at coach fare.

(2) In order for a passenger car to be accessible to handicapped persons, the following shall be available:

(i) Space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or more wheelchairs to accommodate individuals who wish to sit in coach seats.

(ii) Accessible restrooms with wide doorways, bars to assist the individual in moving from wheelchair to toilet, low sinks, and other appropriate modifications. These restrooms should be large enough to accommodate wheelchairs.

(3) All new rail passenger vehicles for which solicitations are issued after the effective date of this part by recipients of Federal financial assistance shall be designed so as to be accessible to handicapped persons and shall display the international accessibility symbol at each entrance.

(c) *Rail passenger service.* (1) No recipient shall deny transportation to any person who meets the requirements of this regulation because that person cannot board a train without assistance, or use on-train facilities without assistance, except as provided in this regulation.

(2) Handicapped persons who require the assistance of an attendant shall not be denied transportation so long as they are accompanied by an attendant. Handicapped persons who require the service of an attendant, but who are unaccompanied, are not required under this part to be transported by the recipient. Handicapped persons requiring the assistance of an attendant shall include those who cannot take care of any one of their fundamental personal needs.

(3) All recipients at stations, except flag stops and closed stations, shall, on advance notice of 12 hours or more, provide assistance to handicapped persons, except that those handicapped persons who require the services of an attendant shall give advance notice of at least 24 hours. Such assistance shall include, but is not limited to, advance boarding and assisting handicapped persons in moving from station platform onto the train and to a seat. The recipient shall provide the same assistance to handicapped persons as they leave the train or board another train in the process of changing trains. Recipients shall provide assistance upon request to handicapped persons in the use of station facilities and in the handling of baggage.

(4) In all open stations, there shall be prominently displayed a notice stating the location of the recipient's representative or agent who is responsible for providing assistance to handicapped persons. Recipients shall publish in their schedules a notice of those closed stations and flag stops at which assistance cannot be provided to handicapped persons.

(5) Assistance to handicapped persons in the use of on-train facilities shall be provided as follows:

(i) *General assistance.* Recipients shall provide assistance to handicapped persons in moving to and from accommodations, including assistance in moving to and from wheelchairs.

(ii) *Restroom facilities.* All recipients shall, upon request, provide assistance to handicapped persons needing assistance in gaining access to rest and washroom facilities.

(iii) *Sleeping car service.* All recipients on all trains where sleeping car service is provided shall, upon request, provide assistance in gaining access to the facilities on various accommodations, such as roomette, bedroom, or compartment.

(iv) *Dining and lounge car service.* Where dining cars, food service cars, or lounge cars are inaccessible to handicapped persons, all recipients shall, upon request, provide meal, beverage, and snack service to handicapped persons needing such service in their accommodations.

(6) *Assistance with wheelchairs, crutches, walkers, and canes.* All recipients shall provide coach or sleeping car space to store, and shall assist in storing, such orthopedic aids as wheelchairs, walkers, crutches, and canes. These orthopedic aids shall be stored on the same coach or sleeping car in which the handicapped person travels.

(7) *Notice of assistance available provided in the use of on-board facilities.* All recipients shall, on all coaches, sleeping cars, dining cars, food service cars, and lounge cars, permanently display a notice stating where and from whom assistance in the use of facilities of various cars may be obtained.

(8) *Bedridden and stretcher-bound passengers.* (i) Where equipment is designed or modified to accept bedridden or stretcher-bound passengers without unreasonable delay, the recipient shall provide assistance in the boarding of bedridden or stretcher-bound persons into sleeping quarters. Accessibility to coaches for these persons is not required.

(ii) Advance notification of 24 hours or more is mandatory in order to ensure provision of assistance to bedridden or stretcher-bound passengers. For the purpose of this section, assistance need not necessarily include placing the bedridden or stretcher-bound person into the compartment.

(9) *Passengers requiring life support equipment.* Recipients shall not be required to transport persons who are dependent upon life support equipment needing power from the vehicle.

(10) *Guide dogs.* Seeing eye dogs and hearing guide dogs shall be permitted to accompany their owners on all passenger trains, and shall be permitted in coach, sleeping, and dining cars.

(11) *Services to deaf and blind passengers.* Recipients shall provide assistance to deaf and/or blind passengers, on request, by advising them of station stops.

(12) Recipients shall notify the public that they provide services that facilitate travel by handicapped persons.

(13) Recipients shall provide training to their employees sufficient to enable them to carry out the recipients' responsibilities under this section.

§ 27.75 Federal Highway Administration—Highways.

(a) New Facilities—(1) *Highway rest area facilities.* All such facilities that will be constructed with Federal financial assistance shall be designed and constructed in accordance with the ANSI standards.

(2) *Curb cuts.* All pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

(3) *Pedestrian over-passes, under-passes and ramps.* Pedestrian over-passes, under-passes and ramps, constructed with Federal financial assistance, shall be accessible to handicapped persons, including having gradients no steeper than 10 percent, unless:

(i) Alternate safe means are provided to enable mobility-limited persons to cross the roadway at that location; or

(ii) It would be infeasible for mobility-limited persons to reach the over-passes, under-passes or ramps because of unusual topographical or architectural obstacles unrelated to the federally assisted facility.

(b) Existing Facilities. *Rest area facilities.* Rest area facilities on Interstate highways shall be made accessible to handicapped persons, including wheelchair users, within a three-year period after the effective date of this part. Other rest area facilities shall be made accessible when Federal financial assistance is used to improve the rest area, or when the roadway adjacent to or in the near vicinity of the rest area is constructed, reconstructed or otherwise altered with Federal financial assistance.

§§ 27.77–79 [Reserved]

Subpart E—Program Accessibility, Requirements in Specific Operating Administration Programs: Mass Transportation

§ 27.81 Purpose.

The purpose of this subpart is, in addition to implementing section 504 of the Rehabilitation Act of 1973, also to implement section 16(a) of the Urban Mass Transportation Act of 1964, as amended, and section 165(b) of the Federal-Aid Highway Act of 1973, as amended. These latter statutes are designed to increase the availability to elderly and handicapped persons of mass transportation that they can effectively utilize. Section 165(b) also requires access for elderly and handicapped persons to public mass transportation facilities, equipment, and services. This subpart consolidates and revises existing Urban Mass Transportation Administration (UMTA) regulations, policies, and administrative practices implementing the above statutes.

§ 27.83 Fixed facilities for the public.

(a) *Existing fixed facilities.* Fixed facility accessibility shall be achieved by a staged sequence of fixed facility modifications, replacements, and new construction that reflects reasonable and steady progress. Changes not involving extraordinarily expensive structural changes to, or replacement of, existing facilities shall be implemented as soon as practicable but not later than three years after the effective date of this regulation. Other fixed facility accessibility changes shall be made as soon as practicable but no later than the deadlines specified in §§ 27.85–27.95.

(b) *New fixed facilities and alterations.* In addition to the requirements of § 27.67, new transit fixed facilities for the public shall incorporate such other features as are necessary to make the fixed facilities accessible to handicapped persons. Existing fixed facilities shall incorporate these same features to the extent provided by §§ 27.85–27.95. In particular among these features, the design of boarding platforms for level-entry vehicles shall be coordinated with the vehicle design in order to minimize the gap between the platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Special attention shall be given to the needs of handicapped persons in the areas of fare vending and collection systems, visual and aural information systems, telephones (wheelchair users

and persons with reduced hearing ability require certain accommodations), teletype machines to handle calls from deaf persons, vehicular loading and unloading areas, and parking areas at park-and-ride facilities.

§ 27.85 Fixed route bus systems.

(a) *Program accessibility.* (1) Program accessibility for a fixed route bus system is achieved when:

(i) The system is accessible to handicapped persons who can use steps; and

(ii) The system, when viewed in its entirety, is accessible to wheelchair users. With respect to vehicles, this requirement means that at least one-half of the peak-hour bus service must be accessible and accessible buses must be used before inaccessible buses during off-peak service.

(2) Fixed route bus systems shall achieve program accessibility as soon as practicable but no later than three years after the effective date of this regulation; provided, however, that the time limit is extended to 10 years for the extraordinarily expensive structural changes to, or replacement of, existing facilities, including vehicles, necessary to achieve program accessibility.

(3) Nothing in this section shall require any recipient to install a lift on any bus for which a solicitation was issued on or before February 15, 1977.

(b) *New vehicles.* New fixed route buses of any size for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons, including wheelchair users. With respect to new, standard, full-size urban transit buses, this requirement remains in effect until such time as solicitations for those buses must use UMTA's bid package entitled "Transbus Procurement Requirements."

§ 27.87 Rapid and commuter rail systems.

(a) *Program accessibility.* Program accessibility for a rapid or a commuter rail system is achieved when the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. This general requirement means that:

(1) *Stations.* All stations must be accessible to handicapped persons who can use steps, and key stations must be accessible to wheelchair users.

(i) For rapid rail systems, key stations are those that are:

(A) Stations where passenger boardings exceed average station boardings by at least 15 percent;

(B) Transfer points on a rail line or between rail lines;

(C) Major interchange points with other transportation modes;

(D) End stations, unless an end station is close to another accessible station;

(E) Stations serving major activity centers of the following types: employment and government centers, institutions of higher learning, and hospitals or other health care facilities; or

(F) Stations that are special trip generators for sizeable numbers of handicapped persons.

(ii) For commuter rail systems, key stations are those that are:

(A) Transfer points on a rail line or between rail lines;

(B) Major interchange points with other transportation modes;

(C) End stations, unless an end station is close to another accessible station;

(D) Stations serving major activity centers of the following types: employment and government centers, institutions of higher learning, and hospitals or other health care facilities;

(E) Stations that are special trip generators for sizeable numbers of handicapped persons; or

(F) Stations that are distant from other accessible stations.

(2) *Vehicles.* All vehicles must be accessible to handicapped persons who can use steps, and one vehicle per train must be accessible to wheelchair users.

(3) *Connector service.* With respect to rapid rail systems, accessible connector service is provided between accessible and inaccessible stations. The connector service may be provided by regular bus service, special bus service, special service paratransit, or any other accessible means of transportation that will transport a handicapped person from the vicinity of an inaccessible rapid rail station to the vicinity of the nearest accessible station in the person's direction of travel, or vice-versa. Provision of connector service is an integral part of rapid rail program accessibility. The connector service, when combined with the key stations, must provide a level of service reasonably comparable to that provided for a nonhandicapped person.

(4) *Timing.* Rapid and commuter rail systems shall achieve program accessibility as soon as practicable but no later than three years after the effective date of this part; provided, however, that the time limit is extended to 30 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities necessary to achieve program accessibility. Steady progress is required over that 30-year period. The time limit is extended to five years with respect to rapid rail vehicles and 10 years with respect to commuter rail vehicles for extraordinarily expensive structural changes to, or replacement of, existing rail vehicles. Complete connector service for rapid rail systems shall be provided no later than 30 years after the effective date of this part. Over this time period, there shall be a steady build-up of the connector service that is coordinated with the completion of key stations; however, no later than 12 years from the effective date of this part, the connector service shall provide effective and efficient utilization of those key stations that have been made accessible.

(5) *Assessment.* Twelve years after the effective date of this part, rapid and commuter rail operators shall prepare a full report for the Department on what accessibility improvements have been made, what the costs have been, and what the ridership attributable to the accessibility improvements has been.

(b) *New vehicles.* New rapid rail vehicles for which solicitations are issued after the effective date of this part shall be accessible, except that gap closing devices, if determined to be necessary for accessible operation of stations or cars, are not required for vehicles for which solicitations are issued before January 1, 1983. New commuter rail vehicles for which solicitations are issued on or after January 1, 1983, shall be accessible to wheelchair users; however, new commuter rail vehicles for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons who can use steps.

§ 27.89 Light rail systems.

(a) *Program accessibility.* Program accessibility for a light rail system is achieved when the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. This general requirement means that:

(1) *Stations.* All stations must be accessible to handicapped persons who can use steps, and key stations must be accessible to wheelchair users. Key stations are those that are:

(i) Transfer points on a rail line or between rail lines;

(ii) Major interchange points with other transportation modes;

(iii) End stations, unless an end station is close to another accessible station;

(iv) Stations serving major activity centers of the following types: employment and government centers, institutions of higher learning and

hospitals or other health care facilities; or

(v) Stations that are special trip generators for sizeable numbers of handicapped persons.

(2) *Vehicles.* Each light rail vehicle must be accessible to handicapped persons who can use steps; at least one-half of the peak-hour light rail service must be accessible to wheelchair users and accessible light rail vehicles must be used before inaccessible vehicles during off-peak service.

(3) *Timing.* Light rail systems shall achieve program accessibility as soon as practicable but no later than three years after the effective date of this part; provided, however, that the time limit is extended to 20 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities and vehicles necessary to achieve program accessibility.

(4) *Assessment.* Twelve years after the effective date of this part, light rail operators shall prepare a full report for the Department on what accessibility improvements have been made, what the costs have been, and what the ridership attributable to the accessibility improvements has been.

(b) *New vehicles.* New light rail vehicles for which solicitations are issued on or after January 1, 1983, shall be accessible to wheelchair users; however, new light rail vehicles for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons who can use steps.

§ 27.91 Paratransit systems.

(a) *General.* Each paratransit system shall be operated so that the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. This means that the system must operate a number of vehicles sufficient to provide generally equal service to handicapped persons who need such vehicles as is provided to other persons. Where new vehicles must be purchased or structural changes must be made to meet this requirement, the purchase or changes shall be made as soon as practicable but no later than three years after the effective date of this regulation.

(b) *New vehicles.* New paratransit vehicles for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons, unless the paratransit system is and will remain in compliance with paragraph (a) of this section without the new vehicles being accessible.

§ 27.93 Systems not covered by §§ 27.85–27.91.

(a) *Scope.* This section applies to forms of mass transportation not covered by §§ 27.85–27.91 (e.g., ferry boat).

(b) *General.* (1) Program accessibility for a subject system is achieved when the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users.

(2) Subject systems shall achieve program accessibility as soon as practicable but in no event later than three years after the effective date of this regulation, provided, however, that this period may be extended upon appeal to the Urban Mass Transportation Administrator if program accessibility can be achieved only through extraordinarily expensive structural changes to or replacement of, existing facilities, including vehicles, and if other accessible modes of transportation are available that meet the needs of handicapped persons for efficient and timely service at a fare comparable to that of the subject system in the service area of that system.

§ 27.95 Program policies and practices.

(a) Program policies and practices that prevent a system subject to this subpart from achieving program accessibility shall be modified as soon as reasonably possible but in no event later than three years after the effective date of this part. This three-year period shall prevail over the one-year period of § 27.11(c)(2).

(b) The following program policies and practices which influence the achievement of program accessibility shall, along with any other appropriate practice, be addressed in the planning process:

(1) Safety and emergency policies and procedures.

(2) Periodic sensitivity and safety training for personnel.

(3) Accommodations for companions or aides of handicapped travelers.

(4) Intermodal coordination of transportation providers.

(5) Coordination with social service agencies that provide or support transportation for handicapped persons.

(6) Comprehensive marketing considerate of handicapped persons' travel needs.

(7) Leasing, rental, procurement, and other related administrative practices.

(8) Involvement of existing private and public operators of transit and public paratransit in planning and competing to provide other accessible modes and appropriate services.

(9) Regulatory reforms to permit and encourage accessible services.

(10) Management supervision of accessible facilities and vehicles.

(11) Maintenance and security of accessibility features.

(12) Labor agreements and work rules.

(13) Appropriate insurance coverage.

§ 27.97 Interim accessible transportation.

(a) *Period prior to interim accessible transportation.* Until the requirement of paragraph (b) of this section is met, the annual element of each urbanized area's transportation improvement program submitted to UMTA after the effective date of this part shall exhibit a reasonable level of effort in programming projects or project elements designed to benefit handicapped persons who cannot otherwise use the recipient's transportation system until it is made accessible in accordance with the requirements of this part. Reasonable progress in implementing previously programmed projects, including those programmed before the effective date of this part, shall be demonstrated by recipients. Recipients, working through the Metropolitan Planning Organization (MPO), shall use their best efforts to comply with this paragraph in a way that will support the achievement of program accessibility and make the transition to interim accessible transportation efficient and cost-effective. Recipients, working through the MPO, shall also use their best efforts to coordinate and use effectively all available special services and programs in the community. Recipients in non-urbanized areas are generally subject to the requirements of this paragraph concerning special efforts in programming and implementation.

(b) *Interim accessible transportation*—(1) *General.* No later than three years after the effective date of this part, each recipient whose system has not achieved program accessibility shall provide or assure the provision of interim accessible transportation for handicapped persons who could otherwise use the system if it had been made accessible. Such transportation shall be provided until program accessibility has been achieved. An area's fixed route bus system will satisfy this requirement for a rail system if the bus system has achieved program accessibility and if the bus system serves the inaccessible portions of that rail system.

(2) *Standards and expenditures.* (i) The standards for interim accessible transportation shall be developed in cooperation with an advisory group of representatives of local handicapped persons and groups and be set forth in

the transition plan. During the period for interim accessible transportation, the recipient shall be obligated to spend annually an amount equal to two percent of the financial assistance it receives under section 5 of the Urban Mass Transportation Act of 1964, as amended, on such transportation, provided that a lower amount may be spent during any year when UMTA finds that the local advisory group had agreed with the recipient that expenditures at a lower level will provide an adequate level of service. If a recipient does not receive financial assistance under section 5, its obligation shall be an amount equal to two percent of the annual financial assistance it receives for mass transportation from the Department, with the same provision concerning lower expenditures. The recipient is not obligated to spend more on interim accessible transportation than the amount specified in this paragraph.

(ii) Subject to the expenditure limitation of paragraph (b)(2)(i) of this section, interim accessible transportation shall be available within the recipient's normal service area and during normal service hours and, to the extent feasible, meet the following requirements: there shall be no restrictions on trip purpose; combined wait and travel time, transfer frequency, and fares shall be comparable to that of the regular fixed-route system; service shall be available to all handicapped persons who could otherwise use the system if it had been made accessible, including wheelchair users who cannot transfer from a wheelchair and those who use powered wheelchairs; and there shall be no waiting list such that handicapped persons who have qualified or registered for the service are consistently excluded from that service by virtue of low capacity.

(3) *Coordination of existing services.* The recipient, working through the MPO, shall use its best efforts to coordinate and use effectively all available special services and programs in the community in order to ensure the provision of service that meets the standards of paragraph (b)(2)(ii) of this section. Such services and programs may reduce the recipient's expenditure obligation under paragraph (b)(2)(i) of this section if, in accordance with that paragraph, the handicapped advisory committee agrees that the full level of expenditure is not necessary.

§ 27.99 Waiver for existing rapid, commuter, and light rail systems.

A recipient that operates a rapid rail, commuter rail, or light rail system in existence on the effective date of this part may, through the MPO for the area or areas concerned, petition the Secretary for a waiver of any of its obligations under § 27.87 or § 27.89 with respect to accessibility for handicapped persons. Waiver requests may only be submitted after the MPO and handicapped persons and organizations representing handicapped persons in the community, through a consultative process, have developed arrangements for alternative service substantially as good as or better than that which would have been provided absent a waiver. Petitions shall be supported by a record of the community consultative process, including a transcript of a public hearing with notice and consultation with handicapped persons and organizations representing handicapped persons, and a complete transition plan for an accessible system. The Secretary may grant such a petition in his or her discretion, provided that the Secretary determines that local alternative service to handicapped persons will be substantially as good as or better than that which would have been provided by the waived requirement of this subpart. If the petition is for the major rapid rail system in New York, Chicago, Philadelphia, Boston or Cleveland (those systems currently operated by the New York City Transit Authority, the Chicago Transit Authority, the Southeastern Pennsylvania Transportation Authority, the Massachusetts Bay Transportation Authority, and the Greater Cleveland Regional Transit Authority) and the waiver is granted, the petitioner shall spend, or shall ensure that other UMTA recipients in the urbanized area spend, on an annual basis, at least an amount equal to five percent of the urbanized area's funds under section 5 of the Urban Mass Transportation Act of 1964, as amended, on this alternative service. For the purposes of the five percent measurement, "urbanized area" refers to the portion of an urbanized area located in one state.

§ 27.101 Period after program accessibility.

Following the achievement of program accessibility, all recipients whose systems are covered by this subpart shall continue to work with the MPO concerned to coordinate special services for handicapped persons.

§ 27.103 Transition plan.

(a) *General.* A transition plan shall be prepared for each urbanized and non-urbanized area receiving financial assistance from the Department for mass transportation. The transition plan is a document which describes the results of planning for program accessibility and defines a staged, multi-year program. The purpose of the plan is to identify the transportation improvements and policies needed to achieve program accessibility and to provide interim accessible transportation prior to the achievement of program accessibility in compliance with this part. The requirements of § 27.65(d) apply to transition plans prepared under this section unless they conflict with the requirements of this section, in which case the requirements of this section shall prevail.

(b) *Planning process.* (1) The urban transportation planning process of each urbanized and non-urbanized area receiving financial assistance from the Department for mass transportation shall include the development and periodic reappraisal and refinement of a transition plan which is an outgrowth of ongoing activities to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to 23 CFR 450.120(a)(5).

(2) The transition plan shall cover the entire period required to achieve program accessibility.

(3) The level of detail in the transition plan shall be appropriate for the size of the urban area, the complexity of its mass transportation system and the scheduling of its accessibility improvements.

(4) The development and periodic reappraisal and refinement of the transition plan shall:

(i) In urbanized areas, be done under the direction of the Metropolitan Planning Organization (MPO) in cooperation with State and local officials and operators of publicly owned mass transportation services in conformance with 23 CFR 450.306(a) and (b);

(ii) In non-urbanized areas, be done under the direction of local elected officials in cooperation with transit operators and the State; and

(iii) Be performed with community participation required by § 27.107.

(5) The transition plan shall be endorsed by the MPO in urbanized areas pursuant to 23 CFR 450.112(b) and shall be endorsed by the recipients responsible for implementing improvements and policies specified in the transition plan, with the recipient endorsement required only for the portions of the plan which affect each such recipient.

(c) *Plan content.* The transition plan shall include:

(1) Identification of public transportation vehicles, fixed facilities, services, policies, and procedures that do not meet the program accessibility requirements of this part;

(2) Identification by system and recipient of the improvements and policies required for bringing them into conformance with this part, including any required interim accessible transportation; the plan should indicate how interim accessible transportation service levels and fares were determined;

(3) Establishment of priorities among the improvements, reasonable implementation schedules, and system accessibility benchmarks (the plan should document phasing criteria, identify which projects are necessary to meet three-year requirements, and set appropriate benchmarks for longer-term efforts);

(4) Assignment of responsibility among public transportation service providers for the implementation of improvements and policies;

(5) Identification of coordination activities to improve the efficiency and effectiveness of existing services;

(6) Estimation of total costs and identification of sources of funding for implementing the improvements in the plan;

(7) Description of community participation in the development of the transition plan; and

(8) Identification of responses to substantive concerns raised during public hearings on the plan.

(d) *Timing.* (1) Transition plans shall be transmitted, in duplicate, for approval to UMTA as soon as practicable but not later than one year from the effective date of this part, except that for urbanized areas with inaccessible rapid rail systems, the plan shall be transmitted not later than 18 months after the effective date of this part. Upon request and an adequate showing of need, the one-year period may be extended to 18 months for urbanized areas with inaccessible rail systems other than rapid rail.

(2) Transition plans will be reviewed and approved or disapproved by UMTA as expeditiously as possible after they are received.

(3) The transition plan shall periodically be reappraised and refined, particularly to add details of accessibility improvements as their scheduled implementation dates are approached. Amendments to the plan resulting from reappraisals or refinements shall be submitted in the same manner as the original plan, with community participation and UMTA approval.

(e) *Transportation improvement program.* Annual elements of transportation improvement programs submitted for UMTA approval shall be consistent with the requirements of this part and with the local transition plan, once that plan has been approved by UMTA.

§ 27.105 Annual status report.

(a) In order to provide a basis upon which a determination of compliance can be made, each recipient of UMTA assistance (or MPO on its behalf), beginning in the year following submission of the transition plan, shall provide an annual status report on its compliance with this part. The report shall provide a summary of the recipient's accomplishments and activities for meeting the schedule of improvements in the area's approved transition plan.

(b) The first annual status report shall include a copy of the three compliance planning items listed in § 27.11(c)(3). Subsequent annual status reports shall reflect any changes made as a result of the requirement of § 27.11(c)(2)(v) for periodically reviewing and updating the compliance planning.

§ 27.107 Community participation.

(a) *General.* This section applies to recipients whose systems are covered by subpart E. Community involvement, particularly by handicapped persons or organizations representing handicapped persons, during the development of the transition plan and at least annually during its implementation, during significant changes in the transition plan, and at the time of any request for waiver is required.

(b) *Participation.* Agencies performing the planning, programming, and implementation activities required by this subpart shall use adequate citizen participation mechanisms or procedures during those activities. The mechanisms shall ensure continuing consultation, from initial planning through implementation, with handicapped persons, advocacy organizations of handicapped persons (where available), public and private social service agencies, public and private operators of existing transportation for handicapped persons, public and private transportation operators, and other interested and concerned persons.

(c) *Hearing.* A public hearing, with adequate notice, shall be held on the proposed transition plan and on significant changes to the plan, and a written response shall be provided for substantive concerns raised during the hearing. This response shall indicate whether the plan has been or will be changed to accommodate the concerns and the rationale for changing or not changing the plan.

§§ 27.109–119 [Reserved]

Subpart F—Enforcement

§ 27.121 Compliance information.

(a) *Cooperation and assistance.* The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such

information regarding the provisions of this regulation and its application to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

§ 27.123 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) *Investigations.* The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) *Resolution of matters.* (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.

(e) *Intimidating and retaliatory acts prohibited.* No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding, under this part. The identity of complainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

§ 27.125 Compliance procedure.

(a) *General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractural undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Refusal of Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program, or part thereof, in which noncompliance has been found.

(c) *Other means authorized by law.* No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.

§ 27.127 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing constitutes a waiver of the right to a hearing under section 504 of the Act and § 27.125(b), and consent to the making of a decision on the basis of such information as may be part of the record.

(b) If the applicant or recipient waives its opportunity for a hearing, the responsible Departmental official shall notify the applicant or recipient that it has the opportunity to submit written information and argument for the record. The responsible Departmental official may also place written information and argument into the record.

(c) *Time and place of hearing.* Hearings are held at the office of the Department in Washington, D.C., at a time fixed by the responsible Departmental official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings are held before an Administrative Law Judge designated in accordance with 5 U.S.C. 3105 and 3344

(section 11 of the Administrative Procedure Act).

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible Departmental official have the right to be represented by counsel.

(e) *Procedures, evidence and record.* (1) The hearing, decision, and any administrative review thereof are conducted in conformity with sections 554 through 557 of Title 5 of the United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving notice subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The responsible Departmental official and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing. Any person (other than a government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the government's behalf, attends at a time and place scheduled for a hearing provided for by this part may be reimbursed for his/her travel and actual expenses in an amount not to exceed the amount payable under the standardized travel regulations applicable to a government employee traveling on official business.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross examination are applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity is given to refute facts and arguments advanced by either side. A transcript is made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions are based on the hearing record and written findings shall be made.

(e) *Consolidation or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under section 504 of the Act, the responsible Departmental official may, in agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings. Final decisions in such cases, insofar as this regulation is concerned, are made in accordance with § 27.129.

§ 27.129 Decisions and notices.

(a) *Decisions by Administrative Law Judge.* After the hearing, the Administrative Law Judge certifies the entire record including his recommended findings and proposed decision to the Secretary for a final decision. A copy of the certification is mailed to the applicant or recipient and to the complainant, if any. The responsible Departmental official and the applicant or recipient may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) *Final decision by the Secretary.* When the record is certified to the Secretary by the Administrative Law Judge, the Secretary reviews the record and accepts, rejects, or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions if hearing is waived.* Whenever a hearing pursuant to § 27.125(b) is waived, the Secretary makes his/her final decision on the record, stating the reasons therefor.

(d) *Rulings required.* Each decision of the Administrative Law Judge or the Secretary contains a ruling on each finding or conclusion presented and specifies any failures to comply with this part.

(e) *Content of orders.* The final decision may provide for suspension or termination, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved. The decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended unless and until the recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Subsequent proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section is restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may, at any time, request the responsible Departmental official to restore its eligibility, to receive Federal financial assistance. Any request must be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Departmental official determines that those requirements have been satisfied, he/she may restore such eligibility, subject to the approval of the Secretary.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing specifying why it believes the responsible Departmental official should restore it to full eligibility. It is thereupon given a prompt hearing, with a decision on the record. The applicant or recipient is restored to eligibility if it demonstrates to the satisfaction of the Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of § 27.127(b)–(c) and paragraphs (a)–(d) of this section apply to hearings held under subparagraph (3) of this paragraph.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

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Federal Register

Thursday
May 31, 1979

Part III

Department of Transportation

Coast Guard

Special Requirements for Cargo Lightering Operations

DEPARTMENT OF TRANSPORTATION
Coast Guard

[33 CFR Part 156]

[CGD 78-180]

Special Requirements for Cargo Lightering Operations

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes regulations for the lightering or transferring from one vessel to another of oil cargos in bulk on the high seas surrounding the United States, beyond the contiguous zone. Compliance with these regulations will only be required if the cargo is to be offloaded in a port or place subject to the jurisdiction of the United States. The Port and Tanker Safety Act of 1978 requires the Secretary of the department in which the Coast Guard is operating to issue regulations for lightering. This proposed rulemaking will fulfill the requirements of this Act, provide for safe lightering operations, and reduce the incidence of cargo spills.

DATES: Comments must be received on or before August 29, 1979.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. A copy of the environmental assessment is available at the above address.

FOR FURTHER INFORMATION CONTACT: LCDR John G. Busavage, Project Manager, Office of Marine Environment and Systems, (G-WEP-3/73), Room 7301, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-426-9578.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 78-180), identify the specific section of the proposal to which the comment applies, and give the reasons for the comment. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the Federal Register if requested in writing by an interested person, raising a genuine issue and desiring to comment orally at a public hearing.

Drafting Information

The principal persons involved in drafting this proposal are: LCDR John G. Busavage, Project Manager, Office of Marine Environment and Systems, and LT G. S. Karavitis, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The Port and Tanker Safety Act of 1978 (Pub. L. 95-474, October 17, 1978) amended the Tank Vessel Act (46 U.S.C. 391a), hereafter called the Act. Section (17) of the Act requires the Secretary of the department in which the Coast Guard is operating to develop regulations for safety and protection of the marine environment for vessel to vessel transfers of oil cargos in United States navigable waters and the marine environment, commonly called lightering. Lightering as used in this proposal is the practice of transferring a cargo from a Very Large Crude Carrier (VLCC) (100,000 to 330,000 deadweight tons) or an Ultra Large Crude Carrier (ULCC) (over 330,000 deadweight tons) to a smaller tanker, on the high seas, for transport to a United States port. While VLCCs and ULCCs are normally used, smaller tankers are also used and included within the scope of this regulation. Congress took this action in response to an increased number of tank vessel incidents, an increasing number of lightering operations, and increasing public awareness of the problem. Much of the increasing imports of oil arrives in United States ports after being lightered from larger tank vessels.

The Act requires that regulations include (1) minimum safe operating conditions, (2) prevention of spills, (3) equipment for responding to any spill, (4) prevention of any unreasonable interference with navigation or other reasonable uses of the high seas, (5) establishment of lightering zones and (6) requirements for communications and prearrival messages. This proposal incorporates requirements addressing these topics. The Act also states the regulations need not be limited to these six areas.

In the initial phases of development of this proposal, two major determinations were made. The first of these was that any regulations issued as a result of this effort should parallel existing safety and pollution prevention regulations for similar operations as closely as possible. There now exists a large body of regulations for safety and pollution prevention which regulate ship-to-ship and ship-to-shore transfers inside the contiguous zone and U.S. navigable waters. These regulations have been found to be adequate for their purposes, have been developed over a period of time and have been subject to extensive public, industry, and government comment and participation. A recent study of the effectiveness of these regulations, published in the Proceedings of the 1977 Oil Spill Conference sponsored by the American Petroleum Institute, the Environmental Protection Agency, and the U.S. Coast Guard has shown that these regulations are performing their intended function of reducing the incidence of cargo spills into the waters. A copy of this study has been placed in the docket for public inspection and copies of this study are available from the Commandant (G/CMC/81), U.S. Coast Guard, Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The Coast Guard believes that a similar standard of care should be extended to offshore lightering. A lower standard of care would be environmentally irresponsible, while a greatly increased regulatory burden could not easily be justified. The present oil transfer regulations have been in effect since July 1974 and all vessels which transfer oil in United States ports or navigable waters are subject to these requirements. Since lightering vessels deliver cargos to United States ports, and thus must meet the oil transfer regulations, very little equipment refit will be necessary to comply with these regulations. Presently VLCCs and ULCCs which transport foreign oil to the waters off the United States and transfer it to lightering vessels outside of United States navigable waters and the contiguous zone are not subject to the existing regulations. Operators of the vessels may find it necessary to acquire additional equipment if they want to offload oil destined for the United States.

The second determination was to pursue the proposal in two stages. The first will be to develop and promulgate a lightering regulation setting equipment and operating standards for all lightering operations. This standard will apply to all lightering operations where the destination of the cargo is a port or place subject to the jurisdiction of the United States. The second stage will be to establish specific lightering zones where lightering operations must be conducted.

Four alternative approaches were considered in developing this proposal. The first was to apply existing oil pollution prevention regulations without

revision, to lightering operations. The second was to revise existing oil pollution prevention regulations (33 CFR Parts 155 and 156) to cover lightering. The third alternative was to develop an entirely new set of regulations for lightering, independent of existing regulations and procedures. The fourth alternative was to adopt as regulations the highest standard of care currently practiced by the oil transport industry in lightering operations as regulations.

The following factors were considered in choosing an alternative:

(1) for minimum safe operating conditions—the capabilities of the vessles involved, the typs of moorings used, the areas of operation, safety of personnel and common transferring methods;

(2) for prevention of spills—the benefits of specific methods of spill prevention on board vessels were weighed against the costs that would actually be incurred in implementing them, the practicality of their application and their appropriateness to this type of operation;

(3) for equipment for response to any spill—the types of spills likely to be encountered in these operations, the types and amounts of equipment which are effective in combating them, the capabilities of the vessels for carrying this equipment, the safety and practical considerations involved in using the equipment, the present state of the art, and the legal considerations involving spill cleanup;

(4) for prevention of interference with navigation and other uses of the high seas—the types and levels of uses in and around each projected lightering zone and the various methods of preventing conflicts between them;

(5) for the establishment of lightering zones—the areas presently in use, and the sensitivity of these and surrounding areas to all types of environmental damage and economic losses, taking into account the following factors: present environmental quality, wind and current, frequency and amount of transfers, types of cargo being tranferred, nearby environmentally sensitive areas, the utility of the sites for lightering operations, and new sites that might be available considering the foregoing factors;

(6) for communications and prearrival messages—the types of communications necessary to conduct safe and pollution-free operations, the types of equipment and procedures available, and the timing and content of required pre-arrival messages, taking into account the scope of enforcement contemplated.

After consideration of the foregoing factors, it was determined that the best approach would be a combination of the second and fourth alternatives, taking the appropriate parts of existing rules for vessels in U.S. waters, adapting them for lightering operations, and adding to them those aspects of current best industry practice which accomplish the intended safety and environmental goals. In this way, the objectives of this action can be accomplished with minimum burden to the industry. Aside from notification requirements, there are no major provisions in this proposed rule which exceed either the existing rules for vessels in U.S. waters or current best industry practice. It is the intent of this action to establish these current regulations and industry practices as the standard for lightering operations. While the Act addresses lightering of oil and hazardous materials, only oil will be covered by this proposal, because at present no hazardous materials are being imported by lightering. Regulations for lightering of hazardous materials will be the subject of a future rulemaking action if they become necessary. Hazardous substance pollution prevention regulations are being developed and will roughly paralled the regulations in 33 CFR Parts 155 and 156 for vessels. Bunkering of vessels (taking on fuel for use on board the vessel) is not covered by this proposal, because the statute specifically speaks to cargo operations.

Rather than develop an entirely new Part of Title 33 or Title 46 of the Code of Federal Regulations, it was decided to establish a new Subpart B of 33 CFR Part 156. This would place these proposed rules in the existing pollution prevention regulations for vessels and waterfront facilities for the convenience of the user.

Throughout this proposal, references are made to existing regulations in Parts 154, 155 and 156 of Title 33, Code of Federal Regulations. The intent of this proposal where references to existing regulations are used, is to impose on vessels engaged in lightering operations, requirements identical to those imposed on vessels and facilities engaged in similar operations in the navigable waters of the United States. Parts 154, 155 and 156 are currently undergoing revision. A notice of proposed rulemaking was published by the Coast Guard on June 27, 1977 (42 FR 32670). The Coast Guard expects to publish the final rule revising Parts 154, 155 and 156 prior to publication of the final rule developed from this proposal. References to the revised parts 154,155 and 156 will be corrected as necessary in the final rule developed from this proposal.

Discussions of Specific Sections

General

1. Section 156.1000—This proposal will apply to any large, deep-draft tankship that carries a cargo of oil offshore of the United States to transfer to a lightering vessel and also to the lightering vessel itself, when the cargo is destined for a port or place subject to the jurisdiction of the United States. Lightering normally involves a VLCC or a ULCC transferring to a smaller tankship, although lightering operations involving smaller ships to be lightered are also covered. This proposal will also apply to manned or unmanned barges which lighter outside of the contiguous zone. The sanctions imposed on the vessel to be lightered if it does not comply with these regulations is to not allow the cargo to be transferred in a port or place subject to the jurisdiction of the United States. The proposed regulations are specifically intended to include only those lightering operations conducted outside the territorial sea and the contiguous zone, and within the "marine enviornment", a term defined in the Act. The marine environment is defined in the statute to mean the navigable waters of the United States and the land and resources therein the thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority, the seabed, subsoil, resources and waters of the Outer Continental Shelf of the United States, and the recreational, economic and scenic values of such waters and resources. Present pollution prevention and safety regulations, and the Act cover these operations within United States navigable waters and the contiguous zone, and any revision to the existing regulation for the purpose of lightering will be the subject of a separate rulemaking process.

2. Section 156.1005—All the definitions used in this proposal are drawn from the Act, existing regulations, and publications relating to the subject, specifically the *Ship-to-Ship Transfer Guide*, published by the International Chamber of Shipping and the Oil Companies International Marine Forum, London, England, 1976, and the *International Safety Guide for Oil Tankers and Terminals*, 1978, published by the International Oil Tanker Terminal Safety Group (The Institute of Petroleum, 61 New Cavendish Street, London W1M 8AR, England). These publications are available from the

publisher and have been made a part of the docket, for public inspection. The definition of "marine environment" in this proposal uses only the geographic concept of the statutory definition.

3. Section 156.1010—A suspension order is provided for as an immediate remedy available to the Captain of the Port (COTP) if he finds that operations are being conducted in an unsafe or environmentally hazardous manner. Unless the order is complied with, the cargo may not be offloaded in the United States.

4. Section 156.1020 and 156.1030—Vessels engaged in these operations will be subject to boarding by the COTP, and certain record requirements necessary for effective enforcement.

Communications

5. Section 156.1100—The Act requires prearrival messages for these operations. The Coast Guard proposes that they be made to the COTP and contain the following information as a minimum: the vessel to be lightered would provide the vessel's name and call sign, the name and amount of cargo on board, the number of transfers expected, the location of each transfer, the estimated time of arrival in the lightering zone, and the estimated time of starting and completion of each cargo transfer. The lightering vessel would provide the vessel's name and call sign, the name and call sign of the vessel to be lightered, the name and amount of cargo to be taken on, the location of the lightering operation, the estimated time of arrival in the lightering zone, and the estimated time of return to port. This will provide the COTP with information necressary for effective enforcement, vessel identification, preplanning for discharge response, and efficient scheduling and utilization of manpower and equipment. Both the lightering vessel and the vessel to be lightered would be required to provide this information. Since the timing of these messages is essential for effective enforcement of these regulations, 48 hours advance notice for the VLCC and 6 hours notice of the lightering vessel will be required.

6. Section 156.1105—The reporting of incidents such as spills, fires, and equipment failures is considered important for the following reasons: enforcement of the regulations, Coast Guard response, if necessary, to an emergency and for development of a statistical base to use in evaluation of the effectiveness of the regulations.

7. Section 156.1110—The standard for portable communications equipment is taken from current regulations (33 CFR 155.785) since the necessary communications are essentially the same in oil transfer operations regardless of location. Timely, accurate and constant communication between the vessels is essential to safety and pollution prevention.

8. Section 156.1115—The proposed requirement for the use of English is intended to insure effective communications between the vessels throughout the lightering operation. Since English is in common usage in the international tanker fleet, this requirement should pose no great difficulty.

Personnel

9. Section 156.1200 and 156.1205—The concept of the lightering superintendent is drawn from current lightering operations. Several variations of this concept exist in current lightering operations, ranging from persons who advise the masters in mooring the vessels, much like a harbor pilot, to senior masters who take complete control of the entire lightering operation. The Coast Guard feels that placing a person who is experienced in lightering in an advisory capacity to the masters is essential to safe and pollution-free operations. Some masters of vessels involved in lightering may not have adequate experience in it, especially those on voyage charters. While a certain level of experience is required of masters, the lightering superintendent would have more experience in the areas of local knowledge, spill clean up, mooring and reporting. It is felt that this proposal strikes a median between the various existing alternatives. The Coast Guard is specifically soliciting comment on the concept of the lightering superintendent, especially how much authority, if any, this person should have, and what specific functions, duties and qualifications, should be required.

10. Section 156.1210—The concept of a person in charge of the transfer operation has been carried over from 33 CFR Parts 154–156. It is necessary that one person be in control of the transfer operation on board each vessel, and that that person be clearly designated. The person in charge is responsible for inspecting the transfer system and for approving it prior to transfer of cargo. The person in charge must have a minimum level of training and experience in oil transfer operations. Persons in charge on United States flag vessels will be tankermen certificated for the grade of cargo carried. Persons in charge on foreign-flag vessels would be required to hold licenses or certificates authorizing service as master, mate, pilot, or engineer. Whether the person in charge is the vessel's master or another qualified person is designated would be left to the discretion of the vessel's operator, but some person must be designated as person in charge.

11. Section 156.1215—The duties of this person are outlined in this section. The duties of the person in charge would include inspection of the cargo transfer system before transfer, supervising the transfer operation on board the vessel, conducting the operation in accordance with the lightering plan, and signing the declaration of inspection for the vessel. Each vessel may have several designated persons in charge on board, as one would be required for each watch in most cases, but only would be actually in charge of the cargo transfer at one time.

12. Section 156.1220—Personnel on foreign-flag vessels would be required to have licenses or certificates, as specified by the flag state, attesting to their qualifications to serve aboard this type of vessel. In all cases where foreign personnel are required to hold licenses, a foreign license which meets all requirements of the flag state would be acceptable.

13. Section 156.1230—It is necessary for the proper cleanup of cargo spills that an adequate number of trained personnel be available to conduct cleanup. the COTP will determine the adequacy of training as part of the approval of the contingency plan required by § 156.1565. Section 156.1225 requires that these persons be available. They may be company personnel for immediate response, or hired contractors whose primary function is spill cleanup for longer term response. Since § 156.1610 requires that the transfer be suspended when a spill occurs, the vessel's crew may serve this function, but, if so, they must be trained in spill cleanup procedures. Section 156.1230 requires a certain level of experience for personnel. It does not require personnel to be on board where they are not otherwise required.

Lightering Plan

14. Sections 156.1300 and 156.1305—The Coast Guard considers that the lightering plan is an essential part of this proposal. Lightering operations are complex and have critical points requiring forethought and consistency. For this reason, the operation should be carefully planned and written in a manner that ensures all personnel involved know exactly what to do, when and how to do it, and what to do if things go wrong. This concept is taken from 33 CFR Parts 154–156 where it is

called an operations manual or oil transfer procedures. These lightering plans should contain instuctions for the safe and pollution-free conduct of the lightering operation.

The proposal would require that this plan be followed in conducting a lightering operation. Failure to follow the plan would constitute a violation of these regulations and result in the prevention of offloading the cargo in any port or place subject to the jurisdiction of the United States.

In order to fulfill its purpose, the manual would have to be written so that it can be used by the crews of vessels involved in lightering operations. Since all crew members may not speak English, the proposal requires that the manual be available in the other languages in use by personnel with functions specifically listed in the lightering plan. This would insure that all persons involved in the lightering operation would be able to understand the plan, regardless of their language.

The proposal would require that the contents of the lightering plan include the items listed in § 156.1305, to ensure that these essential items are addressed in the plan. This is not intended to limit the contents of the plan in any way, and additional information may be included. In any case, an index or table of contents must be provided that allows rapid location of information.

15. § 156.1320—The lightering plan must be followed for each operation, and Coast Guard boarding teams will specifically check for compliance with the plan.

Declaration of Inspection

16. Sections 156.1400 and 156.1405—This concept is essentially the same as provided for in 33 CFR 156.150 and 46 CFR 35.35-30. A thorough and consistent inspection prior to transfer is considered essential to achieving a safe and pollution-free transfer. This Declaration of Inspection must be available for inspection by the COTP during the lightering operation.

Equipment Requirements

17. General—The equipment requirements of this section incorporate concepts drawn from existing rules in Titles 33 and 46 CFR, and from the Act. They go beyond existing regulations in the areas of ballast discharge containment for small spills, moorings, tenders, cargo discharge response, disposal of cargo discharges, and maintenance of equipment. However, they stay within the requirements of the Act and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1378).

18. Sections 156.1500-156.1535—The requirements for cargo discharge containment, transfer hose, closure devices, connections, emergency shutdown, and deck lighting are essentially the same as those in existing regulations. These have merely been extended to apply to lightering since the actual transfer operation in lightering is similar. No time limit for emergency shutdown currently exists for facilities or vessels, although a 30 second time limit for facilities has been proposed in other Coast Guard rulemaking action (42 FR 32670, June 27, 1977). However, an emergency shutdown time limit is considered necessary for lightering operations, because of the need to limit the amount of cargo spilled in the event of a hose rupture or similar casualty. A time limit of 30 seconds is proposed. Two hoses are commonly used in lightering transfer operations, and maximum pumping rates of 10,000 gallons per minute are often used. If both hoses were to break simultaneously, due to the ships pulling apart because of a mooring malfunction, this 30 second shutdown time would limit the discharge to about 10,000 gallons. The proposal would require each vessel to be capable of immediate cleanup of this size spill. This time limit is considered feasible with current technology.

19. Section 156.1540—The mooring system for lightering operations is critical, because a safe and pollution-free transfer cannot be conducted unless the vessels can be securely held together. Thus, a section of the proposal has been devoted to general mooring requirements. This section only contains general requirements in order to allow for the wide variety of techniques employed. There are too many possible combinations of vessels and equipment to require one specific arrangement. However, each method must be capable of holding the ships together without movement that would damage the transfer hoses or the vessels. It must also be capable of preventing damage to the vessels during mooring and unmooring operations.

20. Section 156.1545—Tenders or work vessels dedicated to the lightering operation are currently used by nearly all companies engaged in lightering. These vessels are essential for spill response, as it is difficult to properly handle and deploy spill containment and cleanup equipment from the deck of a large tanker. The specific use of these tenders in spill response will be evaluated as part of the contingency plan. Additionally, these vessels can assist with handling moorings, fenders, ground tackle and other equipment, provided these duties do not interfere with their spill response capabilities. These vessels will have to remain in the immediate area.

21. Section 156.1555—The grounding or insulation of tank vessels prior to hookup is a standard safety practice and is included in the proposal to reduce the potential for explosions of cargo vapor. Tank vessels can generate large differences in electric potential between them due to the operation of hull protection systems and other equipment. Use of either nonconducting hose or electric bonding would be required.

22. Section 156.1560—The proposal would also require gas detection equipment to allow the vessel's crew to determine if hazardous vapor concentrations are present on the vessel. This is proposed in order to further reduce the possibility of explosion.

23. Section 156.1565—The proposed requirement for cargo discharge response capability is considered necessary to fulfill one of the requirements of the Act. The proposal was developed as a performance requirement rather than specific equipment requirements because a number of methods and types of equipment are currently in existence. No one method or type of equipment is best in all circumstances. Also, there can be certain unique response requirements that differ from area to area.

It is proposed that each operator prepare a detailed contingency plan for three levels of response to specific spill sizes. The first level is immediate cleanup of a small operational spill, which could be caused by an incident such as a hose rupture. This type of spill could result in a 10,000 gallon discharge within the 30 second shutdown time limit. This capability is to be provided on board the vessels or the tenders. The second level is a 6 hour response to a spill from a cause such as a major equipment malfunction or minor collision, and represents a discharge of about 100,000 gallons. The third level is a 24 hour response to a large, major spill from a serious collision or other major casualty. It is not proposed that the capability be provided to clean up the entire contents of a VLCC/ULCC as it is doubtful that this capability exists anywhere. It is proposed that a spill resulting from a major collision, such as the contents of two large cargo wing tanks be used as the model in assessing the adequacy of this capability.

There is a significant possibility of a collision resulting in major damage to

two wing tanks of the vessel, therefore this is felt to be a reasonable maximum spill size. Comment is specifically solicited on the feasibility of this maximum spill size and the proposed response times.

The contingency plan is to be a very specific document, giving detailed instructions in the cleanup procedures planned and listing cleanup firms actually under contract. This contingency plan is to be submitted to the COTP prior to the vessel's first entry into a lightering zone, for COTP review and approval. In approving these plans, the COTP will consider the maximum expected spill size, together with the conditions and unique requirements of the lightering zone. He will also consider the state of the art of cleanup technology at the time of the approval, and how it can best be incorporated into the contingency plan, based on both environmental and economic considerations. The COTP will take into account new advances in spill cleanup and determine if and when they should be incorporated into the contingency plan. The COTP will either approve the plan or return it to the operator for revision. In reaching this decision, the COTP will consider all information available to him, including the potential environmental impact on the lightering zone. This contingency plan is part of the lightering plan.

24. Section 156.1570—Amendments to the contingency plan may be required by the COTP when such changes are necessary. If upon inspection, the COTP finds that the plan does not cover all the required items, or that the information or procedures are inadequate, he may require that the plan be amended. This plan will be reviewed and approved by the COTP, and must be submitted to the COTP prior to beginning of lightering operations. The COTP, who is also the on-scene coordinator under the National Contingency Plan, will review this Contingency Plan and either approve it or require that it be amended if he feels that it does not meet the requirements of these regulations.

Operational Requirements

25. Section 156.1600—Consistent with the requirement for a person in charge of the transfer operation on each vessel is the requirement that the cargo transfer operation on board the vessel be supervised directly by the person in charge. The proper supervision of complex and potentially hazardous lightering operations is of paramount importance in preventing accidents and spills.

26. Section 156.1605—This section on requirements for cargo transfer is intended as a comprehensive list of essential prerequisites to safe and pollution-free cargo transfers. In this section, the responsibility of insuring compliance with the equipment and procedural requirements prior to starting the cargo transfer is placed on the person in charge. These requirements must be complied with prior to starting the cargo transfer if the cargo is to be offloaded in a port or place subject to the jurisdiction of the United States. Most of them parallel existing requirements in 33 CFR 156 but some have been modified so as to apply to lightering. Some are new requirements which apply only to lightering. The pre-arrival message, minimum safe operating conditions, requirements to follow the lightering plan, and emergency breakaway procedures are statutory requirements that fit this category.

Paragraph (b) applies to lightering operations conducted after the effective date of designation of lightering zones by the District Commander.

The requirement in paragraph (w) for a pretransfer conference is a most important provision, as thorough understanding and agreement between the persons in charge is essential to safe and pollution-free lightering.

In paragraph (y) it is proposed that firefighting equipment already on the vessel be led out and prepared for immediate use in an emergency. No new equipment requirements are made. A fire on a tanker does not leave adequate time for preparation of firefighting equipment, especially during a busy lightering operation, with the extra hazard of another tanker moored alongside.

Paragraph (z) would require the use of all required navigation equipment throughout a cargo transfer operation, to prevent collision, grounding and straying out of a designated lightering area. Comment is specifically sought on what navigational equipment should be in operation during the lightering operation.

27. Section 156.1610—This section would require the immediate suspension of cargo tranfer if any of the listed events occurs. These events would include: 1) discharge of cargo or dirty ballast (a fire and pollution hazard); 2) fire, collision, explosion or other casualty which affects or could affect the lightering operation (danger of pollution, and further fire or explosion); 3) deterioration of weather conditions (potential for collision, or pollution due to equipment damage); 4) electrical storm (fire and explosion hazard); 5) vapor accumulation (fire and explosion hazard); 6) excessive rolling (pollution due to equipment damage); and 7) equipment malfunction (pollution due to equipment damage or breakdown in operations).

Several requirements are intended to reduce the possibility of explosion. The requirement in paragraph (e) to stop transfer if a gas accumulation greater than 30% of the lower flammable limit of the cargo occurs on deck would require the periodic testing of the area using gas detection equipment.

In paragraph (j) excessive rolling of each vessel is rolling that, if allowed to continue, will threaten the mooring system or the cargo transfer system.

In paragraph (g), any malfunction in hoses, moorings or communications equipment that could threaten their required function will require the immediate suspension of the transfer.

28. Section 156.1615—This proposal would require that discharges of cargo on deck be cleaned up on soon as they occur, since they are dangerous to personnel, present a fire hazard and are a potential source of pollution. Also, any discharge of cargo into the water must be immediately contained and cleaned up. Discharges of oil into the water from lightering operations are subject to the reporting, removal and penalty provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977.

29. Section 156.1620—This section would require that vessels lighter either at anchor, or underway with engines and boilers "on line" and capable of supplying full power immediately, to allow the vessels to maneuver in an emergency. It would prohibit vessels from transferring cargo while drifting with propulsion engines or boilers secured.

Minimum Safe Operating Conditions

30. General—The Act (Section (17)(B)(i)) requires the establishment of minimum safe operating conditions with respect to weather, sea state, and visibility. Safe operating conditions concerning proximity to shipping lanes, obstructions, anchorages and other areas, and other similar factors, including unique requirements of certain areas will be considered in depth in the process of designating lightering zones.

31. Section 156.1700—The requirement that the wind speed across the deck of each vessel be at least 5 knots is intended to eliminate dangerous buildups of flammable cargo vapors that can result in an explosion. Explosions aboard large tankers are a significant

historical cause of large pollution incidents. In the case of the tanker SANSINENA, which exploded disastrously in Los Angeles in 1976, still air which allowed a dangerous buildup of flammable cargo vapors on deck contributed significantly to the accident.

32. Section 15.1710—A maximum wave height of 10 feet is proposed as the safe upper limit for lightering, both underway and at anchor. Technology to clean up oil spills in sea heights of up to 10 feet and wind speeds of over 20 knots is being developed by the Coast Guard. Contingency plans will be approved based on the application of this technology as it becomes available or similar technology. Also, sea heights in excess of 10 feet can produce excessive rolling, especially of the smaller tanker, and can seriously affect the lightering operating. The deep draft of the VLCC/ULCC allows operations under more adverse conditions, but the limit here was based on the smaller lightering vessel. Comment on the limiting sea height is specifically requested.

33. Section 156.1715—The proposed limit on visibility of 5 kilometres (3 miles) is intended to prevent collisions within the lightering zone. This may be modified to meet local conditions and special conditions imposed as a result of designation of a lightering zone. Comment is specifically requested on this section.

Lightering Zones

34. General—It is proposed to delegate the authority to establish lightering zones to the District Commander. The District Commander is the Coast Guard official directly responsible for operations in the lightering areas who has a broad enough jurisdiction to completely cover the geographical area involved. For example, in the western Gulf of Mexico, a number of areas presently in use fall in more than one Captain of the Port Zone, but all are under the jurisdiction of the Commander Eighth Coast Guard District. This continuity is essential in establishing lightering zones and in order to ensure that all necessary factors are considered and that all interested parties are afforded ample opportunity to participate in the process.

It is the Coast Guard's intent to prepare an environmental assessment, and if necessary, an Environmental Impact Statement that covers each lightering zone in compliance with the National Environmental Policy Act (Pub. L. 91-190; 42 U.S.C. 4332). The Coast Guard intends to designate all lightering zones in a single geographic area, such as the Western Gulf of Mexico, at one time, to eliminate confusion as to where and when each applies. Use of a lightering zone will be mandatory once zones have been designated for the geographic area. Notice of proposed rulemaking designating lightering zones will be published in the Federal Register and full opportunity for public comment will be provided. A description of each designated lightering zone will be published in the Federal Register. Special local requirements may be specified by the District Commander in designating a lightering zone.

Regulatory Evaluation

The Coast Guard has evaluated this proposal under the Department of Transportation Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034). While no dollar value has been placed on the cost of the regulations to the marine industry (and ultimately, the consumer), it is anticipated to be minimal. The Report of the House Committee on Merchant Marine and Fisheries on the Act (H.R. 13311, July 21, 1978, Report 95—1384, Part 1), in the Inflationary Impact Statement (page 31) concluded that the inflationary impact of the Port and Tanker Safety Act of 1978 and its attendant requirements is minimal. Presently, each vessel that transfers oil as caro in United States navigable waters and the contiguous zone must comply with 33 CFR Parts 155 and 156 (Oil Pollution Prevention Regulations). Thus, all lightering vessels (those that receive cargo from a larger vessel and carry it to a United States port) will already be in compliance with these rules. Foreign tankers which lighter outside of United States navigable waters and the contiguous zone, and do not bring cargo into United States ports, may not be in compliance with 33 CFR Parts 155 and 156 at present. Since this rule proposes to prohibit the lightering vessel from transferring oil in a port or place subject to the jurisdiction of the United States, where the transferring vessel did not meet certain conditions, the VLCC/ULCC would have to meet these requirements if they expected to offload cargos destined for United States ports. The proposal provides for basic spill prevention and cleanup equipment and procedures, which if not already available, can be added at minimal cost. This Notice of Proposed Rulemaking specifically solicits comment on the actual economic costs which would be involved in compliance with this proposal.

This action will produce no significant impact on the environment. It is not intended to improve, or clean up, the environment, nor will it cause any degradation of the environment. Lightering is occurring, and will continue to occur, whether or not these regulations are issued, because no other law or regulation asserts jurisdiction over these operations. The actual negative effects of lightering are not quantifiable at this time, due to a lack of real evidence of discharges and the previous lack of reporting requirement for discharges outside the navigable waters of the United States and the contiguous zone. However, the potential negative impact of lightering is becoming greater as lightering increases, an increase that the lack of deep water ports in some of these areas aggravates. These regulations are designed to greatly reduce or eliminate these potential negative impacts and further degradation of the marine environment, by minimizing the possibility of discharges of oil cargos into the water. Thus this action should have no significant impact on the environment. This is in keeping with the intent of the Act, which is to prevent damage to the marine environment resulting from offshore lightering. An environmental assessment has been prepared for this proposal and has been filed as part of the docket.

The Coast Guard, through this Notice of Proposed Rulemaking, is moving to establish, as soon as possible, an effective and practical standard for lightering operations, which will provide for safety and prevent degradation of the marine environment during these operations. Through this notice, comments on all aspects of this issue are being sought, including detailed information on the actual costs of compliance, and the environmental considerations involved. Suggestions for improving this proposal are welcomed. The Coast Guard's primary goal in this action is to provide for safety and protection of the marine environment during lightering operations, as mandated by Section (17) of the Act.

§§ 156.100—156.170 [Designated as Subpart A]

In consideration of the foregoing the Coast Guard proposes to amend 33 CFR Part 156 by designating the present text of §§ 156.100 through 156.170 as Subpart A, and by adding a new Subpart B to read as follows:

PART 156—OIL TRANSFER OPERATIONS

* * * * *

Subpart B—Special Requirements for Cargo Lightering Operations

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Appendix I.—Declaration of Inspection for Lightering (Suggested)

Authority: The provisions of this subpart B are issued under Section 5(17) of the Port and Tanker Safety Act of 1978 (Pub. L. 95-474, October 17, 1978), 92 Stat. 1491, R.S. 4417a, as amended, 46 U.S.C. 391a(17).

Subpart B—Special Requirements for Cargo Lightering Operations

General

§ 156.1000 Applicability.

(a) This subpart applies to vessels which engage in oil lightering operations in the marine environment seaward of the navigable waters of the United States and the contiguous zone, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States.

(b) No vessel may transfer oil in a port or place subject to the jurisdiction of the United States, if the cargo has been transferred from another vessel in the marine environment, seaward of the navigable waters of the United States and the contiguous zone, unless—

(1) The regulations in this subpart have been complied with; and

(2) Both the delivering and receiving vessel had, on board at the time of transfer, a Certificate of Inspection or a Tank Vessel Examination Letter, as would have been required under 46 U.S.C. 391a(8), as amended, had the transfer taken place in a port or place subject to the jurisdiction of the United States.

§ 156.1005 Definitions.

(a) In addition to the terms defined in this section, the definitions in § 154.105 of this chapter apply to this subpart.

(b) As used in this subpart:

"Dirty ballast" means water which has been used for ballast and which is contaminated with 15 parts per million or more of cargo, or, if when discharged into the water, will create a visible sheen or violate the provisions of 33 U.S.C. 1001-1015.

"Lightering operation" means the transfer of a cargo of oil in bulk from one vessel to another, including all phases of the operation from the arrival of the vessels in a lightering zone to their departure from the zone, except when that cargo is intended only for use as fuel aboard the receiving vessel.

"Lightering vessel" means the vessel which receives a cargo of oil from another vessel in a lightering operation and transports it to a port or place subject to the jurisdiction of the United States for offloading.

"Marine environment" means the navigable waters of the United States; the waters of any area over which the United States asserts exclusive fishery management authority, and the waters of the Outer Continental Shelf of the United States.

"Oil" means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"Vessel to be lightered" means the vessel which transports a cargo of oil to a place within the marine environment seaward of the navigable waters of the United States and contiguous zone for transfer of that cargo to another vessel for transport to a port or place subject to the jurisdiction of the United States.

§ 156.1010 Suspension Order.

(a) The Captain of the Port or District Commander may order that the lightering operation be suspended immediately if he finds that it is being conducted in an unsafe or environmentally hazardous manner, or in violation of the requirements of this subpart. The masters of the vessels involved or the lightering superintendent must comply with this suspension order immediately.

(b) The Captain of the Port or District Commander that issued the suspension order may rescind that order if he finds that the hazard or violation has been corrected.

(c) The lightering superintendent may appeal this suspension order to the Captain of the Port, the District Commander, or the Commandant in that order. This appeal does not stay the suspension order. The Commandant's decision is final.

(d) The appeal may be written or oral. If oral, it shall be followed by at least a written outline of key points to be considered. If requested, the decision on the appeal will be provided in writing.

§ 156.1020 Records.

A record of all required tests of equipment must be maintained, as applicable, on board each lightering vessel and vessel to be lightered.

§ 156.1030 Boarding to Determine Compliance.

The Captain of the Port may board any vessel to which this subpart applies at any time to make such observations and inspections as the Captain of the Port determines are necessary to determine compliance with this subpart. If the Captain of the Port is not permitted to conduct these inspections, the cargo transferred may not be offloaded in a port or place subject to the jurisdiction of the United States.

Communications

§ 156.1100 Pre-arrival Messages.

(a) The master of each vessel to be lightered must give at least 48 hours advance notice to the Captain of the Port, prior to the vessel's arrival in a lightering zone. This advance notice must include:

(1) The vessel's name and call sign;

(2) The name and amount of cargo on board;

(3) The number of transfers expected;

(4) The location of each transfer;

(5) The estimated time of arrival (ETA) in the lightering zone; and

(6) The estimated times of starting and completion of each transfer.

(b) The master of each lightering vessel must give at least 6 hours advance notice to the Captain of the Port, prior to the vessel's departure from port to engage in a lightering operation. This advance notice must include:

(1) The vessel's name and call sign;

(2) The name and call sign of the ship to be lightered;

(3) The name and amount of cargo to be taken on;

(4) The location of the lightering operation;

(5) The estimated time of arrival (ETA) in the lightering zone; and

(6) The estimated time of return (ETR) to port;

(c) Once the initial report for any ETA or ETR has been made, it must be updated if a variance of more than 2 hours is expected from the time given in the latest report.

(d) Each time stated in a report required by this section must be given in Greenwich Mean Time (GMT) (Universal Time).

(e) Before lightering zones are established under § 156.1800, the reports in paragraphs (a) and (b) above must be given prior to arrival at the pre-selected rendezvous point, in lieu of arrival in the lightering zone.

§ 156.1105 Reporting of incidents.

The master of a vessel involved in a lightering operation must make an immediate report to the Captain of the Port if any of the following occurs:

(a) Discharge of cargo onto the deck or into the water;

(b) Fire, explosion, collison or any similar emergency, posing a threat to the vessels involved;

(c) Failure of any equipment required in this subpart.

§ 156.1110 Communications equipment.

(a) Each vessel must be capable of continuous radio communication throughout the lightering operation with—

(1) The other vessel involved;

(2) The tender required in § 156.1545; and

(3) The Captain of the Port.

(b) Each vessel and tender must be equipped with portable two-way radios to allow each person in charge, master and lightering superintendent to communicate with each person in charge and master of the other vessel throughout the cargo transfer operation.

(c) Portable radio devices used to comply with paragraph (b) of this section must be intrinsically safe, as defined in 46 CFR 111.80 (Underwriters Laboratories Class I, Group D requirements or their equivalent).

§ 156.1115 Use of English.

All vessel-to-vessel or vessel-to-shore communications relating to a lightering operations must be in the English language.

Personnel

§ 156.1200 Lightering superintendent.

(a) Each lightering operation must have a lightering superintendent responsible for coordinating the overall operation.

(b) Each lightering superintendent must be designated by name in the lightering plan described in § 156.1300.

(c) Each lightering superintendent must have at least the following qualifications:

(1) A current master's license;

(2) Experience in tank ship cargo loading and unloading;

(3) A thorough knowledge of the lightering zone and the surrounding areas;

(4) Training and experience in spill cleanup, including familiarity with the equipment and resources available in the lightering contingency plan;

(5) Thorough knowledge of the lightering plan; and

(6) Knowledge of Coast Guard COTP operations in the area and procedures for contacting the appropriate COTP.

(d) The level of qualification of the lightering superintendent must be acceptable to the COTP.

§ 156.1205 Duties and authority of lightering superintendent.

(a) The lightering superintendent must:

(1) Ensure the lightering operation is conducted in accordance with the requirements of this subpart.

(2) Advise the masters in the critical phases of the lightering operation, such as mooring, unmooring, and cargo transfer.

(3) Ensure the provisions of the contingency plan are carried out in case of a cargo discharge.

(4) Ensure that all required reports are made to the COTP.

(b) Each lightering superintendent must have authority to—

(1) Terminate the lightering operation or the cargo transfer operation; and

(2) Amend the lightering plan for that particular operation.

§ 156.1210 Person in charge.

(a) Each vessel must have a person in charge of the cargo transfer operation on board each vessel, on each watch, throughout the lightering operation.

(b) Each person in charge must be designated by name in the lightering plan described in § 156.1300.

(c) Each person in charge must meet the requirements of 33 CFR 155.710.

§ 156.1215 Duties of person in charge.

Each person in charge shall:

(a) Inspect the cargo transfer system before transfer;

(b) Supervise all aspects of the transfer operation on board the vessel;

(c) Conduct the transfer operation in accordance with the lightering plan; and

(d) Sign the Declaration of Inspection for the vessel.

§ 156.1220 Personnel on foreign-flag vessels.

(a) Each foreign-flag vessel must have, on board, the required complement of officers specified by the laws and regulations of the state of registry.

(b) Each officer must hold an appropriate license or certificate authorizing service as a master, mate, pilot, engineer or operator on the vessel.

§ 156.1225 Discharge cleanup personnel

Discharge cleanup personnel must be provided as specified in the contingency plan required by § 156.1565 of this subchapter. These persons must have training acceptable to the COTP in all aspects of discharge cleanup relating to lightering operations and must be required to review this training semi-annually.

§ 156.1230 Experience of personnel.

(a) The master of each vessel must have participated in at least ten (10) lightering operations on board a similar type and size of vessel, as a master or deck officer, prior to conducting a lightering operation regulated by this subpart.

(b) The person in charge of the cargo transfer operation on board each vessel must have participated in at least ten (10) lightering operations on board similarly equipped vessels, as person in

charge or a member of the cargo transfer crew, prior to conducting a cargo transfer operation regulated by this subpart.

(c) The lightering superintendent must meet the requirements of either (a) or (b) of this section, or have equivalent experience acceptable to the COTP.

Lightering Plan

§ 156.1300 Lightering plan.

(a) Each vessel to which this subpart applies must have on board a lightering plan which meets the requirements of this section.

(b) This lightering plan must be in the form of a manual and must be separate from any other oil transfer procedures or manuals.

(c) this lightering plan must be written in the English language and other language used by supervisory personnel listed in the lightering plan.

(d) A copy of the lightering plan must be available at each of the following locations:

(1) The bridge;

(2) The cargo transfer control station;

(3) The engine room; and

(4) The office of the Captain of the Port in whose zone the lightering operation takes place.

§ 156.1305 Contents of the lightering plan.

(a) The lightering plan must contain the following information, in the order listed:

(1) A step-by-step description of the entire lightering operation, including a description of each vessel normally involved in lightering operations;

(2) A description of the mooring system and procedures for mooring and unmooring, including diagrams where necessary, and procedures for tending the vessel's moorings during the transfer of cargo;

(3) A description of the cargo transfer system, including a detailed diagram of the system, and a complete description of the cargo transfer prodcures including those used while underway and anchored, and procedures for hooking up, topping off and disconnecting;

(4) A description of the ballast transfer system and procedures for using it, including the location of the shutoff valve or other isolation device which separates the ballast system from the cargo transfer system;

(5) The numbers, titles, locations and duties of all persons involved in the lightering operation;

(6) Procuedures for operating the emergency shutdown required by § 156.1530 and communication systems, required by § 156.1110, and for emergency breakaway;

(7) A description of the cargo discharge containment system, required by § 156.1500, and procedures for emptying the system;

(8) Procedures for reporting discharges of oil into the water;

(9) A contingency plan approved by the COTP, which meets the requirements of § 156.1565 of this subchapter.

(10) A list of the names and qualifications of each lightering superintendent;

(11) A list, by name, of each person designated as person in charge; and

(12) A list of all oil cargos carried, which includes;

(i) Shipping name as described in 49 CFR Part 172, trade name (if different), and cargo grade;

(ii) Cargo information as described in 46 CFR 151.45–2(e)(3); and

(13) A copy of this subpart B.

(b) The lightering plan must have a table of contents or an index which allows the user to rapidly locate needed information.

(c) Items (11), (12) and (13) of paragraph (a) of this section must be provided in the copy of the lightering plan kept on the vessel's bridge but need not appear elsewhere.

§ 156.1310 Compliance with the lightering plan.

The master of each vessel must ensure that the lightering plan on board is current and require all vessel personel to follow the lightering plan for each lightering operation.

Declaration of Inspection

§ 156.1400 Declaration of inspection.

(a) A Declaration of inspection must be completed for each lightering operation by each vessel.

(b) Each item on the Declaration of Inspection must be checked or initialed by the person in charge before the cargo transfer is started or restarted or at the time he comes on watch.

(c) The form must be signed by the person in charge, before starting or restarting the cargo transfer or when he relieves the previous person in charge, stating that each item has been verified and complied with.

(d) This form must be available for inspection by the COTP.

§ 156.1405 Contents and format of declaration of inspection.

The Declaration of Inspection must be a form similar to that shown as Appendix I, and containing all information therein, in the order shown.

Equipment Requirements

§ 156.1500 Cargo discharge containment.

Each vessels must meet the cargo discharge containment requirements of § 155.310(a) of this subchapter.

§ 156.1505 Ballast discharge containment.

Each dirty ballast transfer system must also meet the containment requirements of § 155.310(a) of this subschapter.

§ 156.1510 Oil transfer hose.

Each oil transfer hose must meet the requirements of § 154.500 and § 156.170 of this subchapter.

§ 156.1520 Closure devices.

Each vessel must comply with § 155.805 of this subchapter for closure devices.

§ 156.1525 Connections.

Each vessel must comply with § 156.130 of this subchapter for connections.

§ 156.1530 Emergency shutdown.

(a) Each vessel must have on board an emergency shutdown pump control or a quick-acting, power actuated valve, operable from the cargo deck, the cargo control room, the bridge, and the usual operating station of the person in charge, if different from the above.

(b) The emergency shutdown equipment and procedure must be capable of completely stopping the flow of cargo in 30 seconds or less, measured from the first occurrence of any discharge from the cargo transfer system, without causing damage to the cargo transfer system.

(c) If an emergency pump control is used, it must stop the flow of cargo if cargo could siphon through the stopped pump.

(d) Equipment and a procedure must be provided for quickly breaking free the transfer hoses and the mooring system in an emergency.

§ 156.1535 Deck lighting.

Each vessel must comply with § 155.790 of this subchapter, throughout the cargo transfer operation.

§ 156.1540 Moorings.

(a) The mooring system used in a lightering operation must be capable of holding the vessels securely together in all conditions of wind and sea encountered during the lightering operation, without movement that could cause any damage to the transfer hose.

(b) If wire mooring lines are used, they must be fitted with natural or synthetic rope pennants.

(c) Each mooring line must be fitted with chafing gear which prevents damage to the mooring line.

(d) At least six fenders of the pneumatic type or a type of fender providing equivalent protection must be used to separate the vessels when moored and to prevent contact between the vessels during mooring and unmooring.

(e) Anchors and ground tackle, when used, must be capable of holding both vessels securely in all conditions of wind and sea encountered during the lightering operation.

§ 156.1545 Tenders.

(a) During each lightering operation, a tender or work vessel must be available at all times to deploy response equipment and to conduct cleanup of cargo discharges from the lightering operation. This tender may assist with mooring, unmooring and line or fender handling, but must have no other responsibilities during the lightering operation, and must remain at all times within one mile of the lightering operation.

(b) Each tender must be equipped with the communications equipment required in § 156.1110.

§ 156.1550 Navigation equipment.

In addition to the navigation equipment required for the Certificate of Inspection or Tank Vessel Examination Letter required by 46 U.S.C. 391a(8), (RS 4417a(8)) each vessel must have on board up-to-date large scale charts of each lightering area used.

§ 156.1555 Prevention of incendiary sparking.

Either non-conductive hoses or electric bonding must be provided to prevent incendiary sparking between vessels due to differences in static elecrticity potential. If electric bounding is used, it must be used in accordance with 46 CFR 35.35–5.

§ 156.1560 Gas detection equipment.

A vessel subject to this subpart that carries a cargo with a flashpoint of 65.6° C (150° F) or lower must have a portable vapor detector or combustible gas indicator suitable for determining the presence of explosive concentrations of the cargo carried. This indicator must meet the requirements of 46 CFR § 35.30–15.

§156.1565 Cargo discharge response.

(a) Cargo discharge response equipment and personnel must be provided as specified in the contingency plan required by paragraph (e) of this section.

(b) The contingency plan must provide for response to a discharge of cargo into the water, as follows:

(1) Immediate response to contain and clean up a discharge of at least 10,000 gallons (238 barrels) or cargo, using equipment and personnel available in the immediate vicinity of the lightering operation;

(2) Contain and clean up a discharge of at least 100,000 gallons (2380 barrels) of cargo using equipment and personnel available and capable of arriving on scene within six (6) hours after the discharge; and

(3) Contain and clean up a discharge of cargo equal to the sum of the largest two contiguous cargo wing tanks of the vessel, using equipment and personnel available and capable of arriving on scene within 24 hours after the discharge.

(c) The response capabilities described in paragraph (b) of this section must be provided by trained personnel using open water equipment for containment and cleanup of cargo discharges.

(d) Any use of dispersant chemicals must be in accordance with Annex X of the United States National Oil and Hazardous Substances Contingency Plan.

(e) Each vessel must have on board a Contingency Plan which describes in detail the equipment, procedures and personnel to respond to each level of cargo discharge response described in paragraph (b) of this section. This includes:

(1) The amounts and types of equipment located in the lightering area used to comply with paragraph (b)(1) of this section;

(2) Procedures for employment of all equipment and personnel in the lightering area used to comply with paragraph (b)(1);

(3) The amounts, type, locations, and suppliers (including name and address) of all equipment and personnel used to comply with paragraphs (b)(2) and (3) of this section;

(4) A plan for transferring cargo from damaged cargo tanks to reduce or eliminate the discharge of cargo;

(5) A description of the tender required in § 156.1545.

(f) The Contingency Plan described in this section must be submitted to the COTP for his approval prior to the commencement of lightering operations.

§ 156.1570 Amendments to contingency plan.

(a) The Captain of the Port may require the lightering superintendent to any lightering operation conducted under this subpart to amend the contingency plan if he finds that it does not meet the requirements of this subpart.

(b) The Captain of the Port will notify the lightering superintendent of the proposed amendment, specifying the parts to be amended and the reasons for requiring the amendment. The lightering superintendent may submit a reply to this notice at any time prior to the elapse of 14 working days from receipt of the notice. The Captain of the Port will notify the lightering superintendent whether the proposed amendment will be required, modified, or withdrawn.

(c) If an amendment is required by the Captain of the Port it must be placed in the contingency plan within 30 days from its receipt by the lightering superintendent.

(d) The lightering superintendent may appeal a decision of the COTP to the District Commander and the Commandant in that order. The appeal must be submitted in writing via the Captain of the Port in which case the amendment is stayed pending a decision on the appeal. The Commandant's decision will be provided in writing and is final.

Operational Requirements

§ 156.1600 Supervision by person in charge.

(a) The person in charge required by § 156.1210 of this subchapter must supervise each connection or disconnection of a cargo hose, starting of the flow of cargo, and topping off of tanks.

(b) The person in charge must remain in constant communication with the transfer personnel throughout the cargo transfer operation.

§ 156.1605 Requirements for cargo transfer.

No person may conduct a cargo transfer operation unless:

(a) The master of the vessel to lightered provides the prearrival notification required by § 156.1100(a) and the master of the lightering vessel provides the advance notification required by § 156.1100(b) of this subchapter;

(b) The vessels involved are located in a designated lightering zone, if a lightering zone for that area has been designated by the District Commander;

(c) The minimum safe operating conditions specified in § 156.1700–1715 of this subchapter exist;

(d) The vessels are moored in accordance with § 156.1540, and the moorings are adjusted to allow for changes in vessel draft during transfer;

(e) Cargo transfer hoses and ballast transfer hoses are long enough to prevent any strain on them due to vessel movement, rolling, changes in draft and trim, and to prevent strain on the cargo and ballast piping systems;

(f) Each hose is handled and supported to prevent strain on its coupling;

(g) Each part of the cargo transfer system is properly aligned to allow the flow of cargo to the proper cargo tank;

(h) Each part of the cargo transfer system not used for the transfer of cargo is securely blanked or shut off;

(i) Each part of the ballast transfer system, when used, is properly aligned to allow the flow of ballast to the proper tanks;

(j) Each part of the ballast transfer system not used for the transfer of ballast is securely blanked or shut off;

(k) The end of each cargo and ballast transfer hose that is not connected for the transfer of cargo or ballast is blanked off using the closure devices required by § 156.805 of this subchapter, except that hoses which have never been used to transfer cargo need to be blanked off;

(l) The transfer system is attached to a fixed connection on each vessel;

(m) Each overboard discharge valve or sea suction valve that is connected to the vessel's cargo transfer, cargo tank, or ballast transfer system is sealed or lashed in the closed position;

(n) Each cargo transfer hose has no loose covers, kinks, bulges, or soft spots and not gouges, cuts, slashes or abrasions that penetrate the first layer of hose reinforcement. Reinforcement means the strength members, consisting of fabric, cord and/or metal, of the hose. It is not limited to the wire reinforcing helix.

(o) Each hose in use meets the requirements of § 154.500 and § 156.170 of this subchapter;

(p) Each connection meets the requirements of § 154.130 of this subchapter;

(q) The discharge containment required by § 155.310(a) of this subchapter is in place and drained of any liquid;

(r) Each scupper and drain required by § 155.310 of this subchapter is closed;

(s) All connections in the cargo transfer system are leak free except that a component in a cargo transfer system, such as the packing glands of a pump, may leak at a rate that does not exceed the capacity of the discharge containment provided;

(t) The communications equipment required by § 156.1110 of this subchapter is operable;

(u) The emergency shutdown equipment required by § 156.1530 of this subchapter is operable;

(v) The person in charge ensures that the personnel required by the lightering plan to conduct the lightering operation are on duty in their required positions, and conduct the lightering operation in accordance with the lightering plan;

(w) The persons in charge of the cargo transfer operation of each vessel and the lightering superintendent have held a conference to ensure that each of them understands the following details of the transfer operation—

(1) The identity of the product to be transferred and its hazards;

(2) The sequence of all phases of the lightering operation;

(3) The transfer rate;

(4) Adjustment of the mooring system;

(5) All details relating to ballast transfer;

(6) The name, title and location of each person listed in the lightering plan participating in the transfer operation;

(7) Details of the transferring and receiving systems;

(8) Critical stages of the transfer operation;

(9) Laws and regulations that apply to the transfer;

(10) Emergency procedures;

(11) Discharge containment and cleanup procedures;

(12) Discharge reporting procedures;

(13) Watch arrangements;

(14) Transfer shutdown procedures; and

(15) Emergency breakaway procedures.

(x) The lighting required by § 156.1535 of this subchapter is provided;

(y) The firefighting equipment required for the Certificate of Inspection or the Tank Vessel Examination Letter is ready for immediate use throughout the lightering operation; and

(z) The navigation equipment required to be on board is operational and in use when the vessels are not at anchor.

(aa) The inert gas system, where fitted, is maintained and operated in accordance with 46 CFR § 32.53.

§ 156.1610 Suspension of transfer.

Transfer operations must be suspended immediately if any of the following occurs—

(a) Discharge of cargo or dirty ballast into the water;

(b) Fire, collision, or other casualty which affects, or which could cause damage to any vessel involved in the lightering operation;

(c) Deterioration of weather conditions outside the limits prescribed in § 156.1700–1715 of this subchapter;

(d) Electrical storm within 8 kilometres (5 miles) of the lightering operation;

(e) An accumulation of cargo vapors, in excess of 30 percent of the lower flammable limit, on the deck of either vessel;

(f) Excessive rolling of either vessel; and

(g) Any malfunction in hoses, moorings or communications equipment.

§ 156.1615 Disposal of cargo discharges.

(a) Any discharge of cargo on deck must be immediately cleaned up.

(b) Any discharge of cargo into the water must be immediately contained and cleaned up, in accordance with the contingency plan required by § 156.1505.

§ 156.1620 Transfer of cargo while drifting prohibited.

All transfers of cargo and ballast shall be conducted with both vessels underway with engines available for immediate use or with both vessels at anchor.

§ 156.1625 Helicopter operations prohibited.

(a) No master may allow any helicopter to land on board or deliver cargo to his vessel during mooring, unmooring, or the transfer of cargo;

(b) After a cargo discharge has occurred and before that discharge has been cleaned up, helicopter operations are prohibited unless authorized by the COTP.

Minimum Safe Operating Conditions

§ 156.1700 Light or no-wind conditions.

No transfer of cargo may be conducted if the relative wind velocity across the deck is less than 8 kilometres per hour (5 knots).

§ 156.1710 Maximum wave height.

Transfer of cargo must be suspended and the vessels must unmoor if the wave height in the lightering zone exceeds 3 metres (10 feet).

§ 156.1720 Minimum visibility.

No underway cargo transfer may be conducted if the visibility in the lightering zone is less than 5 kilometres (3 miles).

Lightering Zones

§ 156.1800 Designation of lightering zones.

The District Commander is hereby delegated the authority to designate lightering zones in accordance with the considerations described in § 156.1820 of this subchapter.

§ 156.1810 Use of lightering zones.

After the effective date of designation of a lightering zone within a Coast Guard District, no person may conduct a lightering operation within that Coast Guard District when that cargo is destined for a port or place subject to the jurisdiction of the United States unless that operation is conducted wholely within a designated lightering zone.

§ 156.1820 Factors considered in designating lightering zones.

The following factors are considered in designating a lightering zone:

(a) The findings of the environmental analysis or, if prepared, the Environmental Impact Statement which is prepared for each area in which lightering occurs or is contemplated;

(b) A minimum safe distance from each of the following is maintained:

(1) Shipping lanes;

(2) Vessel traffic schemes or vessel separation systems;

(3) Anchorages;

(4) Fixed structures; and

(5) Designated marine sanctuaries.

(c) The proximity of the zone to commercial and recreational fishing areas;

(d) The proximity of the zone to environmentally sensitive areas;

(e) The traditional use of areas for lightering operations;

(f) The normal weather and sea conditions in the areas, and their effect on lightering operations and the fate of possible cargo discharges;

(g) The depth of water and any underwater obstructions in the area with respect to anchorage and clearance of heavily laden deep draft tank vessels;

(h) Any other relevant safety, environmental or economic data.

BILLING CODE 4910-14-M

APPENDIX I

DECLARATION OF INSPECTION FOR LIGHTERING (SUGGESTED)

Name of Vessel _____

Date of Transfer _____

Vessel transferred to/from _____

33 CFR 156.1605 (PARAGRAPH)		YES	NO
(a)	Prearrival and advance notifications have been made by both vessels		
(b)	Both vessels are located in a designated lightering zone		
(c)	Minimum safe operating conditions exist (§ 156.1700-1715)		
(d)	Moorings are correct and properly tended (§ 156.1545)		
(e)	Hoses are long enough to prevent strain		
(f)	Hoses are handled and supported correctly		
(g)	Cargo Transfer System is properly aligned		
(h)	Unused ends of transfer systems are blanked or shut off		
(i)	Ballast transfer system is properly aligned		
(j)	Unused ends of ballast systems are blanked or shut off		
(k)	Disconnected hoses are blanked off		
(l)	Transfer system is attached to fixed connections on each vessel		
(m)	Overboard discharge and sea suction valves are sealed or lashed shut		
(n)	Cargo transfer hose is not damaged		
(o)	Proper type of cargo transfer hose is used (§ 154.500)		
(p)	Proper type of connections are used (§ 154.130)		
(q)	Discharge containment is in place and drained of all liquid		
(r)	Scuppers and drains are closed (155.310)		
(s)	All connections are leak-free		
(t)	Communications equipment is in place and working (§ 156.1110)		
(u)	Emergency shutdown is in place and working (§ 156.1530)		
(v)	All required personnel are in place		
(w)	Pre-transfer conference has been held		
(x)	All required lighting is in place (§ 156.1540)		
(y)	Firefighting equipment is laid out and ready for use		
(z)	Navigation equipment is working and in use as required		
(aa)	Inert gas system is working; tank O_2 level is below 8%		

PERSONS IN CHARGE

name	date	time	name	date	time

[FR Doc. 79-16691 Filed 5-30-79; 8:45 am]
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federal register

Thursday
May 31, 1979

Part IV

Securities and Exchange Commission

Lost and Stolen Securities Program; Adopted Amendments

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249

[Release No. 34-15867; File No. S7-611]

Lost and Stolen Securities Program Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today adopted amendments to the Lost and Stolen Securities Program (the "Program") which establish registration provisions for all reporting institutions subject to Section 17(f)(1) of the Securities Exchange Act of 1934 (the "Act"), except brokers and dealers whose only business is conducted on a national securities exchange and who do not conduct a public business, and brokers and dealers who limit their business to sales of variable contracts or limited partnerships. These amendments also create a central data base of reported securities thefts and losses; incorporate into the section the temporary pilot period exemptions from reporting and inquiry; establish an exemption from required inquiry for bearer securities received by a reporting institution directly from a customer to whom it had previously sold the securities; and incorporate staff interpretations extending the exemption from required inquiry to securities received from a "certificate drop" and from a Federal Reserve Bank or Branch. In addition, this release sets forth modifications to the Commission's reporting form, Form X-17F-1A, and a conforming amendment to section 17a-3.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Gregory C. Yadley, Branch Chief, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, telephone 202-376-8129.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of various amendments and modifications to § 240.17f-1 and the Lost and Stolen Securities Program based on public comments received in response to Securities Exchange Act Release Nos. 15015 [1] and 15683.[2]

Background

On August 5, 1977, the Commission adopted § 240.17f-1 [3] implementing Section 17(f)(1) of the Act which mandated the establishment of a securities reporting and validation system. On January 2, 1978, the system for the processing of reports and inquiries became fully operational. [4]

In order to monitor the effectiveness of the section and the system designed to carry out the Program, the Commission determined that the Program should be instituted initially on a pilot basis, through December 31, 1978.

On July 31, 1978, the Commission issued Release No. 34-15015, soliciting public comments concerning the operation of the Program and announcing its intention to engage in proposed rulemaking.[5]

The Commission subsequently issued a release which extended the pilot program from December 31, 1978, to June 30, 1979, announced the redesignation of SIC, and required certain institutions subject to § 240.17f-1 to register with SIC for the remainder of the pilot period.[6]

After analyzing approximately 120 comment letters submitted by members of the public in response to its solicitation release, the Commission, in Release No. 34-15683, issued for public comment certain proposed amendments to the section and other modifications to the Program.

The Commission received 34 additional letters commenting on the proposed amendments and modifications, and analysis of these comment letters indicated that no further substantive changes to the section were necessary at this time. Therefore, the Commission herein adopts, effective July 1, 1979, the proposed amendments to the section and modifications to the Program, as discussed below.

Institutions Subject to § 240.17f-1

The Commission proposed, in Release No. 34-15683, a technical amendment to § 240.17f-1, making explicit the requirement that all reporting institutions, as defined in Section 17(f)(1) of the Act (with two exceptions discussed below), register with the Commission or its designee.[7] Although this provision was an integral part of the Program, it was not previously included in the section.[8]

Based on the comments received in response to its solicitation release, the Commission proposed that two classes of brokers and dealers with limited securities activity be exempted from the proposed registration provisions of the Program. Specifically, the Commission proposed an exemption for (a) brokers and dealers whose only business is conducted on the floor of a national securities exchange and who do not conduct a public business, and (b) brokers and dealers whose business is limited to sales of variable contracts or limited partnerships and who do not hold or receive securities subject to the reporting and inquiry provisions of the section.

Two comment letters received in response to the Commission's proposed exemption from registration suggested that an exemption also be provided for brokers and dealers whose business consists only of the sale of mutual funds and who do not hold or receive securities. Under the proposed amendment, § 240.17f-1 would contain an exemption from registration only for institutions whose business relates to securities which are not in definitive form. Mutual fund shares may be certificated, and having analyzed the potential risk of this additional exemption if it is permitted and assessed the countervailing burden on

[1] 43 FR 34790 (August 7, 1978), hereinafter cited as "Release No. 34-15015."

[2] 44 FR 20614 (April 5, 1979), hereinafter cited as "Release No. 34-15683."

[3] Securities Exchange Act Release No. 13832, 42 FR 41022 (August 12, 1977), hereinafter cited as "Release No. 34-13832."

[4] The Commission determined that it would be appropriate to designate another person, as permitted by the statute, to receive and process reports and inquiries made pursuant to the section on behalf of the Commission. Accordingly, the Commission solicited plans from persons interested in acting as the Commission's designee and, after analysis of the submissions, designated Securities Information Center, Inc. ("SIC"), of Wellesley Hills, Massachusetts, to maintain and operate the data base of missing, lost, counterfeit or stolen securities on its behalf, through the pilot period ending December 31, 1978. Securities Exchange Act Release No. 13538, 42 FR 26495 (May 12, 1977). The designation was extended for a two-year term, to end December 31, 1980, after a resolicitation of plans and analysis of the submissions received. Securities Exchange Act Release No. 15289, 43 FR 52418 (November 9, 1978), hereinafter referred to as "Release No. 34-15289."

[5] Thereafter, in response to numerous requests for additional time in which to submit comments, the Commission extended the close of the comment period from September 8, 1978, to October 15, 1978. Securities Exchange Act Release No. 15159, 43 FR 43035 (September 22, 1978).

[6] Release No. 34-15289.

[7] Paragraph (a) of the rule, which tracks the language of Section 17(f)(1) of the Act, defines a "reporting institution" to include "every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation."

[8] Some institutions argued that since there was no provision in the section requiring registration with SIC, it was possible to forego registration and, as a result, be free from the requirements of the section. The section has been amended to emphasize the Commission's view that registration is and always has been required of all reporting institutions.

the securities and banking industries if it is not, the Commission has determined to withhold the exemption at this time. The Commission will continue to monitor the operation of this aspect of the Program to determine whether additional amendments at a future date are appropriate.

Accordingly, the Commission has adopted an amendment to § 240.17f-1 which incorporates the registration requirements and provides exemptions for brokers and dealers engaged solely in the sale of variable contracts or limited partnerships and for floor traders, floor brokers, and specialists who do not conduct a public business but effect transactions only for their own account or those of other members.[9]

Securities Encompassed by § 240.17f-1

In Securities Exchange Act Release No. 13280,[10] the Commission announced that to ease implementation of the Program and to concentrate on the most widely traded securities, corporate and municipal issues not assigned CUSIP numbers and bond coupons would be exempt from required reporting and inquiry for the duration of the pilot period (the "non-CUSIP exemption").[11]

The Commission recognized that the Program's purposes would be best served if its focus were on those securities which were commonly held by the investing public, most readily negotiable, and most often subject to loss, theft or counterfeiting. The CUSIP system offered a pre-existing, convenient, and efficient method for concentrating on the securities most appropriate for inclusion in the Program.[12]

The majority of the comments received by the Commission in response to its original solicitation release and Release No. 34-15683 urged that the non-CUSIP and bond exemptions be made permanent. Accordingly, the Commission has determined that those temporary pilot period exemptions be incorporated into § 240.17f-1.[13]

Creation of a Central Data Base

With respect to the question of whether the framework of dual appropriate instrumentalities provided by the section should be retained or whether a central data base would be preferable, the overwhelming majority of the comments received supported the proposed merger of the SIC and the Federal Reserve Banks' ("FRB") data bases. In view of these comments and the systemic difficulties inherent in a system of separate, non-parallel processing facilities, the Commission has adopted an amendment to paragraph (a) of § 240.17f-1 which deletes the definition of the term "appropriate instrumentality" and makes other conforming, technical amendments, the effect of which is to create a central data base.

As discussed in Release No. 34-15683, SIC has been redesignated by the Commission to operate the data base for a two-year term ending December 31, 1980, and will, therefore, assimilate the reports already in the FRB data base.[14] It is expected that the merger of data bases will be completed by July 1, 1979.

Form X-17F-1A

Paragraph (c)(6) of § 240.17f-1 requires that all reports made pursuant to this section be submitted on SEC Form X-17F-1A.

In Release No. 34-15683, several modifications to the reporting form were proposed for public comment.[15] Since the publication of that release, SIC has suggested several technical modification, primarily in terms of format, which would facilitate the use of the form by reporting institutions and encourage its use by transfer agents as a uniform stop transfer report. SIC has asked that the box labeled "Designee's Use Only" and item 2, "Confirmation," be removed as they are not utilized by SIC or reporting institutions. It is also no longer necessary to write "Bearer" on line 11, but merely to check the box provided where appropriate.

In response to two other comments, the "Issue Date" has been relocated so that a particular certificate may be further identified by its specific date of issue. The box for "Criminality Indicated" has been relocated so that it is next to the boxes of those agencies which will receive copies of reports when criminality is indicated.

So that SIC can determine the specific information which requires correction following receipt of a corrected report, the procedure for submitting a corrected report has been modifed. Reporting institutions should now attach a copy of the original report to a new corrected or updated report.

A final comment evidenced that some confusion on the part of reporting institutions remains with respect to the inclusion of alphabetical prefixes or suffixes with certificate numbers when making reports. Section 240.17f-1 requires their inclusion whenever available. SIC computer software, however, is capable of searching the data base without prefixes or suffixes. Accordingly, if a reporting institution is unable to determine the prefix or suffix of a subject security, it should, nevertheless, proceed with the report. In this case, a report and inquiry may match although, in fact, it may not be a true match because the certificates have different prefixes or suffixes.[16]

In conclusion, Form X-17F-1A has been amended to include the proposals contained in Release No. 34-15683 and the additional modifications discussed above. Section 249.1200, which provides for the use of Form X-17F-1A, has been

[9] These brokers and dealers would continue to be "reporting institutions" under the section, as defined *supra*.

[10] 42 FR 11829 (March 1, 1977), hereinafter cited as "Release No. 34-13280."

[11] If a reporting institution is unable to determine whether a securities issue has a CUSIP number after having examined the face of the certificate and consulted a CUSIP directory, the institution should contact SIC and request a "CUSIP look up."

[12] The CUSIP system utilizes such factors as whether a security is traded on a national securities exchange, listed in the National Quotation Bureau's "pink sheets," traded on a national basis or is of general interest to determine whether a CUSIP number should be assigned. Approximately 1,200,000 securities issues are currently assigned CUSIP numbers. Non-CUSIP securities tend to be those that are of "local interest" or are short term commercial paper or money-market instruments such as certificates of deposit, among others. In addition, non-certificated securities are not assigned CUSIP numbers. It is worthy of note, however, that even though a securities issue may be initially of "local interest," it may subsequently be assigned a CUSIP number due to increased investor interest, or trading or listing on an exchange. Consequently, in most instances, there is a correlation between the lack of an assigned CUSIP number and the lack of a general market for the particular security.

[13] Although bond coupons remain exempt from the reporting and inquiry requirements of the Program, the Commission urges all instutitions to take appropriate steps to validate the legitimacy of ownership of coupons presented for payment under suspicious circumstances. In this regard, where coupons have the same serial number as the bond to which they are attached, an inquiry on the serial number may, in such circumstances, alert a reporting institution to a previously reported bond.

[14] Following the merger of the SIC and FRB data bases, reporting institutions making inquiry of the System concerning U.S. Government or Agency securities should follow the same procedures as those utilized for inquiry with respect to corporate securities used prior to the merger. In the case of a match between an inquiry made by a reporting institution and a report submitted by the FRB on behalf of the U.S. Treasury, the inquiring reporting institution will be informed of the match and advised by SIC to contact the appropriate Branch of the FRB which reported the loss.

[15] The proposals included modifying Form X-17F-1A to include a designation of the specific type of loss reported, the telephone number of the reporting institution, the names and addresses of transfer or paying agents and insurance companies to which copies of the report are sent, and the particular types of securities which are subject to reporting.

[16] Of course, institutions filing reports in these circumstances should diligently search for the unknown prefixes or suffixes and submit an update on Form X-17F-1A with the information to SIC as quickly as possible after discovery. Inasmuch as SIC operational personnel compare prefixes or suffixes included on Form X-17F-1A with those given in an inquiry when the prefixes and suffixes are available to determine if a match occurs, inclusion of prefixes and suffixes in reports and inquiries will eliminate this problem.

modified to conform to the amended version of § 240.17f-1.

Exemptions From Inquiry

A. Transfer Agent Exemption

During the pilot program, registered transfer agents were exempt from the inquiry provisions of § 240.17f-1. The overwhelming majority of the comments received by the Commission urged that this temporary exemption be continued and incorporated into the section.

Since a transfer agent will not effect registration of a transfer unless it is satisfied from its own records and a review of its stops that the particular transfer is in all respects proper, requiring a transfer agent to inquire of the data base maintained by the Commission designee would be duplicative in most instances.[17]

Accordingly, the Commission has adopted an amendment which incorporates the transfer agent exemption into this section.[18]

B. The De Minimus Exemption

During the pilot program, exemption from required inquiry was provided for securities transactions valued at $10,000 or less (the "*de minimus* exemption"). In an interpretive letter, the staff of the Commission stated that a reporting institution must view a securities transaction in its entirety and not on a piecemeal basis when determining whether the exemption is applicable.[19]

The great majority of the comment letters responding to Release Nos. 34-15015 and 34-15683 recommended continuance of the exemption and the staff interpretation. In view of the comments received and its belief that the use of a *de minimus* exemption contributes to an efficient and cost-effective system, the Commission has adopted an amendment to the section which incorporates the *de minimus* exemption, as modified by the staff interpretation.

C. Bearer Securities Sold to a Customer

The Commission did not receive any additional comments on the proposal to create an exemption from inquiry in the case of bearer securities where the reporting institution taking such securities into its possession or keeping "knows its customer" and can verify through its own internal records that it previously sold the securities offered to the person presenting them.[20]

Based on the comment letters, which indicate that the proposed exemption has the overwhelming support of the securities and banking industries, the Commission has adopted an amendment incorporating the exemption into the section.

D. Exemption Upon Receipt of Securities from a Certificate Drop or a Federal Reserve Bank or Branch

Old paragraph(c)(1) of the section provided an exemption from inquiry for securities received from another reporting institution or from a Federal Reserve Bank or Branch in its capacity as fiscal agent. The Commission has adopted new paragraph(d)(1) of the section extending this exemption from inquiry to those instances where the securities are received from an institution which is affiliated with a reporting institution and acts as a "certificate drop" [21] or from a Federal Reserve Bank or Branch in any capacity. [22]

Direct/Indirect Inquiry

In connection with the election of participation status as either a direct or an indirect inquirer on the registration form required to be filed with SIC, [23] the Commission has adopted an amendment to the section requiring all reporting institutions to maintain as part of the recordkeeping requirements of paragraph (g) of the section copies of agreements which designate one institution as a direct inquirer for the processing of inquiries on behalf of an indirect inquirer.[24] In addition the Commission urges each direct inquirer to share with its indirect inquirers all information obtained in response to inquiries made on their behalf, particularly information concerning hits.

Section 240.17a-3, which incorporates the general recordkeeping provisions of § 240.17f-1, also has been amended by the Commission to conform to the language of the amended version of § 240.17f-1.

Miscellaneous Comments

Several new comment letters have been received arguing that the staff's interpretation with respect to the appropriate party to report losses when securities are delivered "over the window" [25] is contrary to normal business practice. In view of these comments, the Commission emphasizes that this staff interpretation only provides clarity as to which reporting institution has the obligation to report losses and does not affect industry practice. The Commission believes that the section, as written, is equitable in most instances and that the certainty it provides justifies its continuation. Accordingly, the Commission had not revised this interpretation.

A final commentator requested a thirty-day extension of the comment period. In order to avoid a lapse in the Program's service, it is necessary that the final, amended version of the Program take effect on July 1, 1979.

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[17] Section 240.17f-1 requires reporting institutions to submit a copy of Form X-17F-1A to a transfer agent for the issue whenever a report of loss is made to SIC. The section has also been amended to require a report to a transfer agent within one business day after discovery of a counterfeit security.

[18] One commentator requested that the Commission clarify the reporting requirements applicable to registered transfer agents. As previously stated in Release No. 34-13832, a transfer agent which receives from a reporting institution a copy of Form X-17F-1A concerning lost or stolen securities is not required to make a report. But, when a securities loss is reported to the transfer agent by a non-reporting entity such as an individual, the transfer agent is required to make a report of the loss to SIC within the apprroriate time frames stated in the section.

[19] Letter to La Salle National Bank, dated December 7, 1977. For example, where four $5,000 bonds are used as collateral for a single loan, the total transaction exceeds $10,000, and the *de minimus* exemption from inquiry may not be claimed. If each certificate were analyzed with respect to the exemption's applicability, relatively few transactions would require inquiry.

[20] A reporting institution coming into possession or keeping of a bearer certificate in these circumstances would be expected to verify this fact by an examination of prior confirmations of securities transactions issued to the customer, delivery receipts, or other relevant internal records which would document, to the satisfaction of the firm, that the bearer security is legitimately held by the customer.

[21] The staff had previously taken this position in an interpretive letter to First National Bank of Boston, dated January 12, 1978.

[22] The staff had already taken the position that securities received from the Federal Reserve Bank or Branch in its capacity as safekeeping agent were covered by the exemption in a letter to Bankers Trust Co., dated March 21, 1978. Regardless of the capacity in which it acts, in most instances, a Federal Reserve Bank or Branch receives securities from member banks or other reporting institutions under the section. Accordingly, inquiry will have previously been made on the subject securities where required. It is only in rare circumstances that securities are received by a Federal Reserve Bank or Branch from a nonreporting institution. In such cases, the Federal Reserve Bank or Branch attempts to validate the authenticity of the certificate through SIC and otherwise.

[23] A few commentators stated that they preferred to register with SIC as indirect inquirers but were unable to locate a reporting institution willing to act on their behalf as a direct inquirer. The Commission has discussed this problem with SIC, and, in response, SIC is investigating the possibility of compiling for circulation a list of direct inquirers available to make reports and inquiries on behalf of indirect inquirers.

[24] Of course, an indirect inquirer should not designate another reporting institution as its direct inquirer prior to reaching such an agreement with that institution.

[25] A staff interpretation discussed in Release No. 34-15683 stated that a copy of a delivery bill stamped by a receiving reporting institution "Received Subject to Count and Examination" and returned to the delivering institution is a "receipt" under the section and thereby obligates the receiving institution to make a report of loss.

Therefore, the Commission has not granted an extension of the comment period.[26]

Registration

All reporting institutions registered as direct inquirers must reregister with the Commission's designee by July 15, 1979, by completing the registration form attached as an appendix to this release. The effective date of the new registration form will relate back to July 1, 1979, the end of the pilot period. Those institutions that wish to change their status in the Program to participate as direct or indirect inquirers after July 1, 1979, will have the opportunity to do so on a semi-annual basis.[27]

Statutory Basis and Competitive Considerations

The Commission acting pursuant to sections 2, 17(a), 17(f) and 23 of the Securities Exchange Act of 1934, hereby adopts amendments to § 240.17f-1 and § 240.17a-3, and modifications to the Lost and Stolen Securities Program and to Form X-17F-1A and § 249.1200 as set forth below.

The amendments to § 240.17a-3 and the adopted modifications to Form X-17F-1A and § 249.1200 are technical and non-substantive and, therefore, the Commission finds that notice and public procedure under the Administrative Procedure Act [5 U.S.C. 553(b)(B)] are impracticable, unnecessary, or contrary to the public interest, and that good cause exists for making the modifications effective July 1, 1979.

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

1. Pursuant to Section 17(f) of the Securities Exchange Act of 1934, the Securities and Exchange Commission amends paragraph (a)(14) in § 240.17a-3 in Chapter II of Title 17 of the Code of Federal Regulations as follows:

§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(14) Copies of all Forms X-17F-1A filed pursuant to § 240.17f-1, all agreements between reporting institutions regarding registration or other aspects of § 240.17f-1, and all confirmations or other information received from the Commission or its designee as a result of inquiry.

* * * * *

2. Pursuant to sections 2, 17(f), and 23 of the Securities Exchange Act of 1934, the Securities and Exchange Commission revises § 240.17f-1 in Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

§ 240.17f-1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) *Definition—Reporting institution.* For purposes of this section, the term "reporting institution" shall include every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) Every reporting institution shall register with the Commission or its designee in accordance with instructions issued by the Commission *except*

(1) A member of a national securities exchange who effects securities transactions exclusively on the floor of such national securites exchange solely for other members and does not receive of hold customer securities; and

(2) A registered broker or dealer who is engaged exclusively in the sale of variable contracts and/or limited partnership interests and does not receive or hold securities that are subject to the provisions of paragraphs (c) and (d) herein.

(c) *Reporting requirements*—(1) *Stolen Securities.* (i) Every reporting institution shall report to the Commission or its designee and to a registered transfer agent for the issue the discovery of the theft or loss of any security where there is substantial basis for believing that criminal activity was involved. Such report shall be made within one business day of the discovery and, if the certificate numbers of the securities cannot be ascertained at that time, they shall be reported as soon thereafter as possible.

(ii) Every reporting institution shall promptly report to the appropriate law enforcement agency upon the discovery of the theft or loss of any security where there is substantial basis for believing that criminal activity was involved.

(2) *Missing or lost securities.* Every reporting institution shall report to the Commission or its designee and to a registered transfer agent for the issue the discovery of the loss of any security where criminal actions are not suspected when the security has been missing or lost for a period of two business days. Such report shall be made within one business day of the end of such period *except* that:

(i) Securities lost in transit to customers, transfer agents, banks, borkers or dealers shall be reported by the delivering institutions no later than two business days after notice of non-receipt or as soon after such notice as the certificate numbers of the securities can be ascertained.

(ii) Securities considered lost or missing as result of securities counts or verifications required by rule, regulation or otherwise (e.g., dividend record date verification made as a result of firm policy or internal audit function report) shall be reported no later than ten business days after completion of such securities count or verification or as soon after such count or verification as the certificate numbers of the securities can be ascertained.

(iii) Securities not received during the completion of a delivery, deposit or withdrawal shall be reported in the following manner:

(A) Where delivery of securities is through clearing agency, the delivering institution shall supply the receiving institution the certificate number of the security within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(B) Where the delivery of securities is over the window and where the delivering institution has a receipt, the delivering institution shall supply the receiving institution the certificate numbers of the securities within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(C) Where the delivery of securities is over the window and where the delivering institution has no receipt, the delivering institution shall report within two business days of notification of non-receipt by the receiving institution; or

(D) Where delivery of securities is made by mail or via draft, if payment is not received within ten business days, the delivering institution shall confirm with the receiving institution the failure to receive such delivery; if confirmation shows non-receipt, the delivering

[26] The issues raised by this commentator, however, have been considered and the Commission will continue to review any constructive comments which it receives in the future. The Commission also intends to continue to monitor the Program to determine whether any future modifications are necessary.

[27] Reporting institutions already registered as direct inquirers for 1979 will not be charged another annual fee when they reregister for the period beginning July 1, 1979. Refer to Release Nos. 34-13832 and 34-15289 for information with respect to registration and fee schedules.

institution shall report within two business days of such confirmation.

(3) *Counterfeit securities.* Every reporting institution shall report the discovery of any counterfeit security to the Commission or its designee, to a registered transfer agent for the issue, and to the appropriate law enforcement agency within one business day of such discovery.

(4) *Recovery.* Every reporting institution shall report the recovery or finding of any security previously reported missing, lost, or stolen pursuant to this section to the Commission or its designee and to a registered transfer agent for the issue within one business day of such recovery or finding. If a report of stolen securities was made to the appropriate law enforcement agency, a report of such recovery shall also be made to such agency. Recovery may only be reported by the institution which reported the security as missing, lost or stolen.

(5) *Information to be reported.* All reports made pursuant to this section shall include, if applicable or available, the following information with respect to each security:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) Maturity date;

(v) Denomination;

(vi) Interest rate;

(vii) Certificate number, including alphabetical prefix or suffix;

(viii) Distinguishing characteristics, if counterfeit;

(ix) Date of discovery of loss or recovery;

(x) CUSIP number; and

(xi) FINS number.

(6) *Forms.* All reports made pursuant to this section shall be made on Form X-17F-1A.

(d) *Required inquiries.* (1) Every reporting institution except a registered transfer agent shall inquire of the Commission or its designee with respect to every security which comes into its possession or keeping, whether by pledge, transfer, or otherwise, to ascertain whether such security has been reported as missing, lost, counterfeit, or stolen, *unless*

(i) The security is received directly from the issuer or issuing agent at issuance;

(ii) The security is received from another reporting institution or from a Federal Reserve Bank or Branch;

(iii) The security is received from a customer of the reporting institution and

(A) is registered in the name of such customer or its nominee or

(B) was previously sold to such customer, as verified by the internal records of the reporting institution;

(iv) The security is part of a transaction which has an aggregate face value of $10,000 or less in the case of bonds or market value of $10,000 or less in the case of stocks; or

(v) The security is received directly from a drop which is affiliated with a reporting institution for the purposes of receiving and delivering certificates on behalf of the reporting institution.

(2) *Form of Inquiry.* Inquiries shall be made in such manner as prescribed by the Commission or its designee.

(e) *Permissive reports and inquiries.* Every reporting institution may report to or inquire of the Commission or its designee with respect to any security not otherwise required by this section to be the subject of a report or inquiry. The Commission on written request or upon its own motion may permit reports to and inquiries of the system by any other person or entity upon such terms and conditions as it deems appropriate and necessary in the public interest and for the protection of investors.

(f) *Exemptions.* The following types of securities are not subject to paragraphs (c) and (d), above:

(1) Registered securities of the United States Government, any agency or instrumentality of the United States Government, the International Bank for Reconstruction and Development, the Inter-American Development Bank, or the Asian Development Bank, and counterfeit securities of such entities;

(2) Security issues not assigned CUSIP numbers;

(3) Bond coupons.

(g) *Recordkeeping.* Every reporting institution shall maintain and preserve in an easily accessible place for three years copies of all Forms X-17F-1A filed pursuant to this section, all agreements between reporting institutions regarding registration or other aspects of this section, and all confirmations or other information received from the Commission or its designee as a result of inquiry.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The Securities and Exchange Commission, pursuant to Section 17(f) of the Securities Exchange Act of 1934, adopts modifications to Form X-17F-1A, § 249.1200 in Chapter II of Title 17 of the Code of Federal Regulations, as appended hereto, and amends § 249.1200 as set forth below:

§ 249.1200 Form X-17F-1A—Report for missing, lost, stolen or counterfeit securities.

This form is to be filed with the Commission or its designee pursuant to paragraph (c) of § 240.17f-1 of this chapter by all reporting institutions subject to Section 17(f)(1) of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons,

Secretary.

May 23, 1979.

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix

(Please photocopy this form, complete, and submit to SIC.)

SIC Registration Form—Lost and Stolen Securities Program

Instructions

Completion and filing of the form—All institutions completing and filing this form should fill in Part I and Part IV and either Part II or Part III of the form. Completed forms should be returned to:

Securities Information Center, Inc. Post Office Box 421 Wellesley Hills, Massachusetts 02181

The deadline for filing this form is July 15, 1979.

Who should use this form—This form should be completed and filed by all institutions subject to Rule 17f-1 (17 CFR § 240.17f-1) [1] which are not exempt from the registration provisions of the rule [2] and

(1) Who have NOT submitted a registration form for the Lost and Stolen Securities Program to Securities Information Center, Inc. OR

(2) Who have submitted a registration form for the Lost and Stolen Securities Program to Securities Information Center, Inc. and registered as a DIRECT INQUIRER, OR

(3) Who have submitted a registration form for the Lost and Stolen Securities Program to Securities Information Center, Inc., and registered as an INDIRECT INQUIRER AND desire to amend their prior registration form to either update the information submitted OR change their inquiry participation status.

Who should not use this form—Institutions should NOT complete or file this form if they have previously registered as an INDIRECT INQUIRER in the Lost and Stolen Securities Program by submission of a registration form to Securities Information Center, Inc. AND the data submitted thereon is current AND

[1] The institutions subject to Rule 17f-1 are as follows: every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation.

[2] Brokers and dealers whose only business is conducted on a national securities exchange and who do not conduct a public business, and brokers and dealers who limit their business to sales of variable contracts or limited partnership are exempt from the registration provisions of Rule 17f-1.

they do not desire to change their inquiry participation status. If an institution does not submit this form, the prior election of inquiry participation status will continue and be binding until cancelled by the institution.

Part I

A. Name of Institution

Mailing Address

Zip Code

FINS Identification No.[3]

Name, Title, and Telephone of Person to Whom Bills Should Be Directed:

Name, Title and Telephone Of Person Responsible for Institution's Compliance with Rule 17f-1 (if different from above):

B. *Type of Institution*—Check all classifications listed below that describe the institution.[4]

( ) 1. Federal Reserve System member.
( ) 2. Bank whose deposits are insured by the Federal Deposit Insurance Corporation.
( ) 3. National Securities Exchange.
( ) 4. National Securities Exchange member.
( ) 5. National Securities Exchange member firm.
( ) 6. Registered Securities Association.
( ) 7. Registered Securities Association member.
( ) 8. Securities broker.
( ) 9. Securities dealer.
( ) 10. Municipal securities dealer.
( ) 11. Registered transfer agent.
( ) 12. Registered clearing agency.
( ) 13. Participant in a registered clearing agency.

C. *Size of Institution*—Check the line below that describes the size of the institution.

1. *Banks* (those who checked lines 1 or 2 of B, above)

( ) More than $1 billion in deposits
( ) $500 million to $1 billion in deposits
( ) Less than $500 million in deposits

2. *Securities Organizations* (those who checked lines 3 through 10 of B, above)

( ) More than $25 million in annual revenues
( ) $5 million to $25 million in annual revenues
( ) $500,000 to $5 million in annual revenues
( ) Less than $500,000 in annual revenues

3. *Non-Bank Transfer Agents* (those who checked *only* classification 11 of B, above)

( ) That issued 100,000 shares or more last year
( ) That issued less than 100,000 shares last year

Parts II & III

Election of Inquiry Participation Status

To register as a Direct Inquirer, complete Part II below. To register as an Indirect Inquirer, complete Part III below. This election of inquiry participation status is binding until cancelled.

Direct inquirers will be able to make inquiries of the data base directly and will be charged usage fees and registration fees as described in the Appendix of Securities Exchange Act Release No. 15289. Indirect inquirers will NOT be able to make inquiries directly and so must make arrangements with a registered direct inquirer to inquire on its behalf. Indirect inquirers will NOT be charged any fees by Securities Information Center, Inc. but should be aware that the institution making inquiries on their behalf may assess costs and service charges. (Indirect inquirers, however, should make reports of loss directly).

Part II

Direct Inquirer

To register as a direct inquirer, please complete (A), (B), and (C) below.

A. *Registration of Access Stations*—Indicate the number of primary and secondary access stations the institution will use to make inquiries of the system.[5] All institutions must have at least one primary access station. There is an annual registration fee of $20.00 for each primary access station and $10.00 for each secondary access station.[6]

Number of Primary Access Stations ( )
Number of Secondary Access Stations ( )

B. *Optional Prompt Written Confirmation Service*—Indicate whether the institution desires prompt written confirmation service. If an institution desires this service, the Securities Information Center, Inc. will send the institution written confirmations of all inquiries and reports received by telephone, telex, and mail on a daily basis. If an institution does not desire this service, confirmations of inquiries will be sent on a monthly basis. There is a $20.00 per quarter charge for each primary access station using this service.

( ) We do not desire prompt written confirmation service.
( ) We do desire prompt written confirmation service and agree to pay the fee for this service.

C. *Agreement to Pay Fees*—After reading the statement below, please sign in the space provided.

Beginning July 1, 1979, we will participate in the Lost and Stolen Securities Program as a direct inquirer. We agree to pay Securities Information Center, Inc. the annual registration fee of $20.00 for each primary access station and $10.00 for each secondary access station. We also agree to pay in advance quarterly usage fees, charges for optional services we request, and all sales, use and excise taxes, or other taxes, which may be levied on or in connection with, the furnishing of the facilities or services of the Securities Information Center, Inc. We understand that all fees are due and payable within ten days of date of invoicing.

(Signature of authorized institutional representative)

(Type or print) (Title)

Part III

Indirect Inquirer

To register as an indirect inquirer, please complete the statement below and sign in the space provided.

Beginning July 1, 1979, we will participate in the Lost and Stolen Securities Program as an indirect inquirer. We have entered into an agreement with _____ who will (Name of Registered Direct Inquirer) make inquiries on our behalf and we have a copy of this agreement on file available for inspection. We are aware that we will receive no direct confirmations from Securities Information Center, Inc., and that the institution that makes inquiries for us may pass through to us the costs of using the system on our behalf as well as aditional service charges.

(Signature of authorized institutional representative)

(Type or print) (Title)

Part IV

All institutions filing this form must complete (A) and (B) below.

A. *Agreement*—After reading the statement below, please sign in the space provided.

We understand that our participation in the Lost and Stolen Securities Program is required by Rule 17f-1 (17 CFR § 240.17f-1) under the Securities Exchange Act of 1934, as amended. We agree that we will make reports of missing, lost, counterfeit and stolen securities and make inquiries relative thereto, in accordance with Rule 17f-1 and instructions of the Commission or its designee.

We understand that the Securities Exchange Commission has designated

[3] FINS ("Financial Industry Number Standard") numbers are compiled in the 1976 FINS Directory (First Edition), published by the Depository Trust Company. If an institution is uncertain as to whether it has a FINS number, it should consult this Directory, its self-regulatory organization, its trade association, or SEC personnel at 202-376-8129. If an institution has not been assigned a FINS number, a number may be obtained at no cost by writing the Depository Trust Company, Attention: FINS Publication, 55 Water Street, New York, New York 10041.

[4] If no classification describes the institution, the institution is not subject to Rule 17f-1. If the institution desires to participate in the Lost and Stolen Securities Program as a "permissive inquirer," a special application must be made to the Commission pursuant to paragraph (e) of Rule 17f-1 in accordance with the instructions given in Securities Exchange Act Release No. 13832 at 42 FR 41024 (August 12, 1977).

[5] Access stations are described in the "Description of the System" to which this form is appended.

[6] Institutions establishing secondary access stations should append to this form a list of the titles, addresses, and names of the responsible individual for each secondary access station.

Securities Information Center, Inc. to operate the Lost, Missing, Stolen, and Counterfeit Securities Information System. Securities Information Center, Inc. will perform its work in a businesslike manner and in accordance with reasonable standards of care. It does not, however, guarantee the accuracy of any information contained in the records of the System or of the responses to inquiries concerning missing, lost, counterfeit, and stolen securities furnished by it. Securities Information Center, Inc. shall not be liable for any unintentional delays, inaccuracies, errors or omissions in said responses, or for any damages arising therefrom or occasioned thereby, nor will it be liable for non-performance or interruption of services due to fire, storms, strikes, labor disputes or any causes beyond its control or due to the act or omission of any other person, firm or corporation.

(Signature of authorized institutional representative)

(Type or print) (Title)

B. *Names and Signatures of Persons Making Reports on Behalf of the Institution*—All reports of missing, lost, counterfeit or stolen securities and all reports of recoveries must be submitted on Form X-17F-1A and signed by an individual whose signature is on file with Securities Information Center, Inc. All individuals having this authority should fill in the spaces below (attach additional pages on institution letterhead if necessary).

(Signature and date)

(Print or type) (Title)

(Signature and date)

(Print or type) (Title)

MAIL THIS FORM TO:
Securities Information Center, Inc.
Post Office Box 421
Wellesley Hills, Massachusetts 02181

Deadline for Filing is July 15, 1979.

BILLING CODE 8010-01-M

FORM X-17F-1A

MISSING/LOST/STOLEN/COUNTERFEIT SECURITIES REPORT

PLEASE TYPE OR PRINT CLEARLY

1. REPORTING INSTITUTION: NAME _____

ADDRESS _____

_____ ZIP CODE _____

_____ ATTENTION _____

TELEPHONE NO.

FINS/SIC IDENTIFIER NUMBER _ _ _ _ _ _ /( )( )( )

2. TYPE OF REPORT: ☐ LOSS ☐ RECOVERY ☐ UPDATE

3. DATE OF LOSS/RECOVERY _____

4. TYPE OF LOSS: ☐ MAIL ☐ DELIVERY ☐ ON PREMISES ☐ CLEARING ☐ OTHER _____

5. TYPE OF SECURITY: ☐ COMMON STOCK ☐ PREFERRED STOCK ☐ CORPORATE BOND ☐ MUNICIPAL BOND

☐ GOVERNMENT/AGENCY ☐ OTHER _____

6. NAME OF ISSUER _____

7. INTEREST RATE _____ 8. MATURITY DATE _____

9. CUSIP NUMBER _ _ _ _ _ _ _ _ _

10. ☐ BEARER/NAME OF REGISTERED HOLDER _____

_____

11. CERTIFICATE/SERIAL NUMBERS	12. DENOMINATION/SHARES	13. ISSUE DATE

14. ☐ ADDITIONAL PAGES ATTACHED 15. TOTAL CURRENT MARKET OR FACE VALUE $ _____

16. ☐ COUNTERFEIT _____

If Counterfeit - Distinguishing Characteristics

17 ☐ CRIMINALITY INDICATED REPORTS FILED WITH: 18. ☐ FBI 19. ☐ LOCAL POLICE

20. ☐ TRANSFER/PAY AGENT _____

21. ☐ INSURANCE CO. _____

22. _____ Authorized Signature 23. _____ Date

SEC 1868 (5-79)

INSTRUCTIONS

Note – Section 240.17f-1 does not require reporting coupons. Municipal or corporate securities not assigned CUSIP Numbers are not the subject of reporting and inquiry.

Forms should be mailed to the Commission's designee:

Securities Information Center, Inc.
Post Office Box 421
Wellesley Hills, Massachusetts 02181

1. **Reporting Information** – Enter reporting institution name, address and FINS number, with Securities Information Center assigned suffix, if any.
2. **Type of Report** – Check whether report is a new report ("Loss"), report of recovery of previously reported loss ("Recovery"), or update or correction of report other than recovery ("Update"). If the report is an update or correction, attach a copy of the original report.
3. **Date** – Enter date when loss was noticed, theft occurred, when counterfeit was discovered or suspected, or when security was found or recovered. When submitting updates, enter date of loss.
4. **Type of Loss** – Check the box which most nearly describes the loss. If none of the classifications adequately describes the loss, check "OTHER" and describe the loss in the space provided.
5. **Type of Security** – Check the box which most nearly describes the type of security. If none of the classifications adequately describes the security check "OTHER" and describe the security in the space provided.
6. **Issuer** – Print or type the name of issuing company, agency or organization as set out on the security even though the security may have been lost, stolen, or missing prior to being "issued" by the appropriate authority.
7. **Interest Rate** – If interest rate was indicated, enter this information.
8. **Maturity Date** – Enter maturity date where applicable.
9. **CUSIP Number** – Enter entire CUSIP Number.
10. **Name of Registered Holder** – Clearly print or type the full name of person *(individual, company, bank, brokerage house, etc.)* to whom the security is registered exactly as it appears on the security. Check to indicate "Bearer" when document is a bearer security.
11. **Certificate Serial Numbers** – Enter certificate or serial number(s) including all suffixes and prefixes. If certificates have not been issued, enter the control number. Series may be indicated by the first and last numbers separated by a dash and followed by the work "Series." Certificate or serial numbers of certificates of the same CUSIP number which are not in sequential order should be listed separately on each line. For a nonsequential series of certificates having the same CUSIP number, additional pages listing securities to be reported may be attached.
12. **Denomination Shares** – Enter in numerical form the amount of money represented by bonds, debentures, notes and other securities *(except stock warrants and rights)* as indicated on the certificates. If amount was not indicated on the certificate, enter the word "Blank."

    For stocks, enter the number of shares represented by the certificates, not the par value of the stock. If number of shares is not represented, enter the work "Blank."

    For warrants and rights, enter in numerical form the number of shares which the document entitles the owner to purchase.
13. **Issue Date** – Enter issue date of certificate. If certificates have not yet been issued, indicate this fact.
14. **Additional Pages** – If additional pages are attached, check the box.
15. **Total Current Market or Face Value** – For stocks, rights and warrants, enter the approximate total current market value. For bonds, enter the face value of the certificate.
16. **Counterfeit** – Describe distinguishing characteristics of suspected counterfeit securities.
17. **Criminality Indicated** – If reporting a loss, check when a substantial belief of criminality is indicated.
18. **Filed with Federal Bureau of Investigation** – Check if you sent a copy of this report to the FBI when required.
19. **Filed with Local Police** – Check if you sent a copy of this report to the local police when required.
20. **Transfer/Pay Agent** – Check to indicate that you have sent a copy of this report to a Transfer or Paying Agent for the issue, and enter the name and address.
21. **Insurance Co.** – Check to indicate that you have sent a copy of this report to your insurance company, and enter the name and address.
22. **Authorized Signature** – Form X-17F-1A must have an authorized signature to be accepted by the System. With respect to those reports filed with the Commission's designee, such signatures must be on file with the designee. Copies of reports sent to the transfer agent and the appropriate law enforcement agency should contain an original signature.
23. **Date** – Enter date when form is signed.

NOTE: This form may be reproduced in any manner so long as the graphics and format are not altered and 8½" x 11" paper is used.

[FR Doc. 79-16327 Filed 5-30-79; 8:45 am]

BILLING CODE 8010-01-C

federal register

Thursday
May 31, 1979

Part V

Department of Energy

Electric and Hybrid Vehicles Research, Development, Demonstration, and Production Loan Guaranties

DEPARTMENT OF ENERGY

10 CFR Part 791

[Docket No. CAS-RM-79-201]

Electric and Hybrid Vehicles Research, Development, Demonstration, and Production Loan Guaranties

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This notice of final rulemaking amends the Department of Energy regulations on Electric and Hybrid Vehicle Research, Development, Demonstration, and Production Loan Guaranties in order to implement certain amendments to the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 contained in the Department of Energy Act of 1978—Civilian Applications. These amendments include provisions for the offering of principal as well as interest assistance and the establishment of the Electric and Hybrid Vehicle Development Fund. The final rule is not changed from the proposed rule.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Anthony H. Ewing (Program Office), Office of Conservation and Solar Applications, Room 3224, 20 Massachusetts Avenue, NW., Washington, D.C. 20585 (202) 376-4747

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SUPPLEMENTARY INFORMATION:

I. Background.

On May 9, 1978, the Department of Energy (DOE) issued final regulations establishing policies and procedures for loan guaranties by which lenders, as well as borrowers, may participate in accelerating the development and production of electric and hybrid vehicles (43 FR 20476, May 12, 1978). These regulations were intended to provide for the implementation of section 10 ("Loan Guaranties") of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (EHV Act) (Pub. L. 94-413, 15 U.S.C. 2501 *et seq.*).

Section 603 of the Department of Energy Act of 1978—Civilian Applications (DOE Act) (Pub. L. 95-238) amended section 10 of the EHV Act in several respects. Accordingly, on January 15, 1979, DOE issued a Notice of Proposed Rulemaking (44 FR 4418, January 19, 1979) to amend its regulations in order to conform the regulations, as appropriate, to the amendments to section 10.

II. Public Comment

DOE received no requests to speak at the public hearing scheduled for February 20, 1979, and, consequently, issued a notice in the Federal Register on February 15, 1979, cancelling the public hearing (44 FR 10090, February 16, 1979).

No written comments with respect to the proposed amendments to Part 791 were received by DOE.

III. Adoption of Amendments

Having received no comments, and based upon all other information available to it, DOE has determined to adopt the amendments as proposed.

IV. Other Matters

A. Environmental Impact

Upon review of an Environmental Assessment prepared to evaluate the environmental effects of the EHV Research, Development, and Demonstration Program of which this rulemaking is a part, it has been determined that the program does not constitute a major Federal action significantly affecting the quality of the human environment and that, therefore, no additional review is necessary at this time to fulfill DOE's responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

B. Regulatory Review

It has been determined that the amendments to Part 791 are significant, as that term is used in Executive Order (E.O.) 12044 and amplified in DOE Order 2030 which sets forth procedures for developing Department of Energy regulations. This determination is based upon the importance of the amendments which extend the program for two years and authorize principal assistance under certain circumstances, and upon an appreciation of the importance of the overall electric and hybrid vehicle program in encouraging the development of alternative means of transportation.

It has been further determined that this regulatory action is not likely to have a major impact, as defined by E.O. 12044 and as amplified in DOE Order 2030; consequently no regulatory analysis is required.

C. Urban Impact Analysis

This rulemaking has been reviewed in accordance with OMB Circular A-116 to assess the impact on urban centers and communities. In accordance with DOE's finding that the amendments are not likely to have a major impact, DOE has determined that no community and urban impact analysis of the rulemaking is necessary, pursuant to section 3(a) of Circular A-116.

D. FERC Review

Pursuant to section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*), the Federal Energy Regulatory Commission (FERC) was notified of this rulemaking when the Notice of Proposed Rulemaking was issued. FERC has reviewed the amendments and has concluded that they are unlikley to have any significant effect upon the electric utility regulatory responsibilities of FERC.

(Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, as amended by the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95-238; Energy Reorganization Act of 1974, Pub. L. 93-438; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009 (42 FR 46267); E.O. 12044 (43 FR 12661, 43 FR 18634).)

In consideration of the foregoing, Part 791 of Chapter III of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., May 24, 1979.

Omi G. Walden,

Assistant Secretary for Conservation and Solar Applications.

Chapter III of Title 10, Code of Federal Regulations, Part 791 is amended as follows:

1. Section 791.1 is revised to read as follows:

§ 791.1 Purpose.

The purpose of this regulation is to set forth policies and procedures under which lenders may obtain a Federal guaranty backed by the full faith and credit of the United States on loans to qualified borrowers for purposes related to the research, development, demonstration, and commercial production of electric or hybrid vehicles in an environmentally acceptable manner.

2. Section 791.9 is amended in paragraph (1) to read as follows:

§ 791.9 Loan guaranty criteria.

* * * * *

(1) The amount of the guaranty on any loan shall not exceed $3,000,000 principal unless the Secretary finds that a higher guaranty level for specific loan guaranties is necessary in order to carry

out the purposes of Pub. L. 94–413, as amended by Pub. L. 95–238;

* * * * *

3. Section 791.10 is revised to read as follows:

§ 791.10 Principal and interest assistance.

With respect to any loan guaranteed pursuant to this regulation, the Secretary may enter into a principal and interest assistance contract with the borrower to pay the lender, on behalf of the borrower, the principal and interest charges which become due and payable on the unpaid balance of any such loan if the Secretary finds:

(a) That the borrower is unable to meet principal and interest payments, and that it is in the public interest to permit the borrower to continue to pursue the purposes of the project, and that the probable net cost to the Federal Government in paying such principal and interest will be less than that which would result in the event of a default;

(b) That the amount of such principal and interest charges which the Secretary is authorized to pay is no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(c) That the borrower has agreed to repayment of principal and interest charges paid by the Federal Government, to the payment of any deferred user charge as provided in § 791.32, "User charge," and to the payment of interest on such principal, interest, and deferred user charges at an annual rate to be set by the Secretary and as stated in the principal and interest assistance contract.

4. Section 791.11 is revised to read as follows:

§ 791.11 Default payment.

In the event of default by a borrower, as defined in paragraph (b) of § 791.3, "Definitions," with respect to any loan guaranteed pursuant to this regulation, and except as provided in § 791.10, "Principal and interest assistance," and paragraph (b) of § 791.31, "Loan servicing by lender," the Secretary will, as provided in § 791.37, "Default and demand," make payment of principal and accrued interest in accordance with the terms and conditions of the guaranty contract. Thereupon, the Attorney General of the United States shall take such action as deemed necessary to recover the amounts of such payments including any obligations under paragraph (c) of § 791.10, "Principal and interest assistance," from such assets of the defaulting borrower as are associated with the project or as specified in the guaranty agreement. This includes patent and proprietary rights resulting from the project as provided in § 791.44, "Patent and proprietary rights," or from any other surety, security, collateral, guaranty, asset, or bond included in the terms of the guaranty. Any recovery achieved by the Attorney General, which exceeds the cost of recovery amounts included in paragraph (c) of § 791.10, "Principal and interest assistance," and the amount paid to the lender including principal and interest on any nonguaranteed portion, in accordance with the guaranty agreement or principal and interest assistance contract, shall be returned to the borrower, unless the guaranty agreement provides otherwise.

5. Section 791.12 is revised to read as follows:

§ 791.12 Period of guaranties and principal and interest assistance.

No loan guaranty agreements will be made, or principal and interest assistance contracts entered into, after September 17, 1983. Guaranty agreements in effect at that time will continue until the term of the loan is completed or until the guaranteed portion of the loan is repaid in full with accrued interest, whichever occurs first. Principal and interest assistance contracts in effect on that date will remain in effect thereafter until the contract term expires or the contract is terminated in accordance with its provisions.

6. Section 791.32 is revised to read as follows:

§ 791.32 User charge.

User charges imposed on the guaranteed portion of the loan are computed at a rate of one percent per annum on the estimated outstanding balance. Payments of the user charge will be made by the lender at the time each disbursement is made and annually on the anniversary date of closing, or at other intervals to be determined by the Secretary. The user charge will be collected from the lender and used for the purposes of defraying the cost of administration and possible Federal loss associated with the program. The user charge may be passed from the lender to the borrower, and, in such instances, may be included in the aggregate net cost. If principal and interest assistance is in effect, payments of this charge, if passed from the lender to the borrower, may be deferred for the term of the principal and interest assistance contract.

7. Section 791.37 is amended in paragraph (a) to read as follows:

§ 791.37 Default and demand.

* * * * *

(a) The Secretary shall, pursuant to the provisions of § 791.10, "Principal and interest assistance," determine whether a principal and interest assistance contract shall be executed. In the event that principal and interest assistance is not warranted, the Secretary shall so notify the borrower and the lender. The lender shall make available without delay such documents and certifications as the Secretary may reasonably require, evidencing the lender's compliance with notification provisions of the guaranty agreement.

* * * * *

8. A new section, § 791.41a, is added to read as follows:

§ 791.41a Electric and hybrid vehicle demonstration fund.

(a) As provided in section 603(a)(1) of Pub. L. 95–238, there is established in the Treasury of the United States an Electric and Hybrid Vehicle Development Fund (herinafter referred to as the fund), which is available to the Secretary in carrying out the loan guaranty and principal and interest assistance program, including the payment of administrative expenses incurred in connection therewith.

(b) That part of the amounts appropriated pursuant to section 16 of Pub. L. 94–413, as amended by Pub. L. 95–238, as the Secretary deems necessary to carry out the purposes of the program and any amounts which may be returned to the United States pursuant to § 791.11 shall be paid into the fund.

(c) Moneys in the fund not needed for current operations may, with the approval of the Secretary of the Treasury, be invested in bonds or other obligations of, or guaranteed by, the United States.

(d) The amounts in the fund shall remain available until expended, except that after September 17, 1983, such amounts in the fund which are not required to secure outstanding guaranty obligations shall be paid into the general fund of the Treasury of the United States.

(e) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities under the program, he shall issue, to the Secretary of the Treasury, notes or other obligations in

such forms and denominations bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. This borrowing authority shall be effective only to such extent or in such amounts as are specified in appropriation acts. Such authority shall be without fiscal year limitation. Redemption of such notes or obligations shall be made by the Secretary from appropriations or other moneys available for the program. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(f) Business-type financial reports covering the operations of the fund shall be submitted to the Congress by the Secretary annually upon the completion of the appropriate accounting period.

9. The Authority of 10 CFR Part 791 is amended to read as follows:

Authority: Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94–413, as amended by the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95–238; Energy Reorganization Act of 1974, Pub. L. 93–438; and Department of Energy Organization Act, Pub. L. 95–91, E.O. 12009 (42 FR 46267).

[FR Doc. 79–16833 Filed 5–30–79; 8:45 am]

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federal register

Thursday
May 31, 1979

Part VI

Environmental Protection Agency

Polychlorinated Biphenyls; Criteria Modification; Hearings

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[FRL 1075-2]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the toxic Substances Control Act (TSCA) prohibiting the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs). Specifically, this rule:

(1) Prohibits all manufacturing of PCBs after July 2, 1979 unless specifically exempted by the Environmental Protection Agency (EPA);

(2) Prohibits the processing, distribution in commerce, and use of PCBs except in a totally enclosed manner after July 2, 1979;

(3) Authorizes certain processing, distribution in commerce, and use of PCBs in a non-totally enclosed manner (which would otherwise be subject to the prohibition described above);

(4) Prohibits all processing and distribution in commerce of PCBs after July 1, 1979, unless specifically exempted by EPA.

EFFECTIVE DATE: July 2, 1979. The disposal and marking rule (43 FR 7150, February 17, 1978, as amended by 43 FR 33918 August 2, 1978) shall remain in effect until the rule promulgated today becomes effective.

FOR FURTHER INFORMATION CONTACT: For information concerning this rule and for copies of this rule contact: John Ritch, Jr., Director, Office of Industry Assistance, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Call the toll-free number (800)-424-9065, or in Washington, D.C. call 554-1404.

The support documentation for this rule can also be obtained through the above-mentioned address. The support documentation consists of two parts and are entitled *Support Document/ Voluntary Environmental Impact Statement* and *PCB Manufacturing, Processing, Distribution in Commerce Ban Regulation: Economic Impact Analysis.* (This *Economic Impact Analysis* is hereinafter referred to as the Versar Report). These two documents have been reproduced and bound into one publication.

SUPPLEMENTARY INFORMATION:

Format of Rule

In order to clarify the relationship between the PCB Disposal and Marking Rule and the PCB Ban Rule, all of Part 761 is printed in this notice in a fully integrated form. This notice incorporates the Disposal and Marking Rule (43 FR 7150, February 17, 1978) for PCBs and the technical amendments (43 FR 33918, August 2, 1978) to that Rule into one regulation. Therefore, this notice supercedes the previous notices on July 2, 1979.

Background

Section 6(e) of TSCA requires EPA to control the manufacture, processing, distribution in commerce, use, disposal, and marking of polychlorinated biphenyls (PCBs). On February 17, 1978, EPA published the PCB Disposal and Marking Rule in the **Federal Register** (43 FR 7150). Clarifying amendments to this rule were published on August 2, 1978 (43 FR 33918).

Section 6(e)(2) provides that no person may manufacture, process, distribute in commerce, or use any PCB in a manner other than in a "totally enclosed manner" after January 1, 1978, except to the extent EPA authorizes activities in a non-totally enclosed manner. On December 30, 1977, EPA published a notice (42 FR 65264) stating that implementation of the January 1, 1978 ban would be postponed until 30 days after promulgation of this rule.

Section 6(e)(3) provides that no person may manufacture any PCB after January 1, 1979, or process or distribute in commerce any PCB after July 1, 1979, except to the extent that EPA specifically exempts such activities. Implementation of the January 1, 1979 ban was postponed until 30 days after the promulgation of the rule published today (See 44 FR 108, January 2, 1979).

Section 6(e)(3)(B) provides that persons may petition the Administrator for exemptions from the prohibition of the manufacture of PCBs, which goes into effect July 2, 1979 or from the prohibition of processing and distribution in commerce, which goes into effect July 1, 1979. Interim rules establishing procedures for submitting petitions for exemptions from the manufacturing prohibition were published November 1, 1978 (43 FR 50905). More than 70 petitions for exemptions have been received. On January 2, 1979, EPA announced (44 FR 108) that it would not enforce the PCB manufacturing and importation ban of section 6(e)(3)(A) against persons who had submitted petitions until EPA has acted on their exemption petition. This nonenforcement policy applies solely to activities that are properly subject to a pending PCB manufacturing or importation exemption petition.

Elsewhere in today's **Federal Register**, EPA has published a Notice of Proposed Rulemaking that identifies each petition received for exemptions from the manufacturing prohibition and, in most cases, the action that EPA proposes to take on individual petitions. Rules establishing procedures for submitting petitions for exemptions from the processing and distribution in commerce prohibitions will be published in the near future.

Authority to grant or deny petitions for exemptions from the PCB processing and distribution in commerce bans under section 6(e)(3)(B) of TSCA, as well as the authority to revise the procedural rules for PCB exemptions and to grant further PCB authorizations and to amend or modify this regulation is delegated to the Assistant Administrator for Toxic Substances. This authority was previously delegated to the Assistant Administrator for Toxic Substances for the PCB manufacturing exemptions (see 43 FR 50905).

This final rule implementing sections 6(e) (2) and (3) of TSCA was proposed June 7, 1978 (43 FR 24802). Ten days of public hearings were held in Washington, D.C., from August 21 to September 1. Over 50 oral presentations were made and two hearing participants conducted cross-examination on September 26, 1978. On September 22, 1978 (43 FR 43048), EPA published a notice of the opportunity for cross-examination and extended the reply comment period to October 10, 1978. EPA received over 200 comments on the proposed rule.

EPA has produced, as part of the rulemaking process for PCBs, two support documents. The first support document which was entitled *Support Document/Voluntary Draft Environmental Impact Statement,* was made available at the time the proposed rule was published and discussed the health and environmental effects of PCBs, the substitutes for PCBs, and the regulatory alternatives EPA considered in developing the proposed PCB Ban Rule. The second support document entitled *Support Document/Voluntary Environmental Impact Statement* was prepared along with the final PCB Rule and Preamble. This particular document contains updated versions of the health and environmental effects and PCB substitutes sections, and addresses the

major comments that were made on the proposed rule during the comment period. In many cases these comments led to changes to the proposed PCB Ban Rule. There are also two versions of the economic impact analysis that have been prepared by Versar, Inc. The first Versar Report was made available at the time of the proposed PCB Ban Rule. The second, or final Versar Report, has been incorporated into the final Support Document. Copies of the final Support Document can be obtained from the Industry Assistance Office identified above.

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I. Summary of the Rule's Organization

Subpart A (§§ 761.1 and 761.2) of this rule contains general provisions applicable to all other Subparts. Section 761.1 states the applicability of the provisions of the rule. Section 761.2 contains definitions of terms used in the rule. Subparts B (§ 761.10) and C (§ 761.20) contain disposal and marking requirements. Subpart D (§§ 761.30 and 761.31) concerns the manufacturing, processing, distribution in commerce, and use of PCBs. Section 761.30 contains prohibitions on activities while § 761.31 sets out authorizations under TSCA section 6(e)(2)(B). Subpart E contains Annexes to the rule concerning incineration of PCBs, chemical waste landfills, storage for disposal, decontamination, marking, and records and monitoring.

The preamble to this rule primarily describes changes from the proposal. Except to the extent that it is inconsistent with this final rule preamble, the preamble to the proposed rule (43 FR 24802, June 7, 1978) is incorporated by reference into this document and should be consulted for additional information (see 43 FR 24802–24812, June 7, 1978). The contents of this preamble are summarized in Table 1. The amount of PCBs used in different PCB activities and the impact this rule will have on these PCBs is summarized in Table 2.

Table 2.—Quantities of PCB's Used in PCB Activities[a]

Activity	Pounds used	Pounds regulated	Pounds prohibited
PCB Transformers	275,000,000	275,000,000	0.
PCB-Contaminated Trans	~400,000	~400,000	0.
Railroad Trans	5,000,000	5,000,000	5,000,000[1]
Mining Motors	24,000	24,000	24,000[1]
Hydraulic Systems	750-2500	750-2500	750-2500[b]
Heat Transfer	40,000-160,000	40,000-160,000	40,000-160,000[b]
Carbonless Copy Paper	(7)	(7)	0.
Pigments	5,700/yr.	5,700/yr.	5,700/yr.[b]
Electromagnets	20,000-30,000	20,000-30,000	0.
Compressors	Small	A3	A3[6]
Small Quantity R&D	Very small	A3	(7)
Microscopy	Very small	A3	(7)
PCB Capacitors/PCB Equip	450,000,000	282,500,000	
Process Contamination[10]	100,000-600,000/yr.	100,000-600,000/yr.	100,000-600,000/yr.[b]
Dust Control, Sealants, Coatings from Waste Oil	32,000/yr.	32,000/yr.	32,000/yr.
	~750,850,000	~583,500,000[4]	~5,400,000.

[a] Over a five year period.
[b] Over a three year period.
[c] Draining and refilling reduced unit at 50 ppm.
[d] Amount of PCB carbonless copy paper inventories unknown. Use is authorized indefinitely.
[e] The difference between this value and the one in the column to the left is the PCB in small capacitors, which are uncontrolled.
[f] Data derived from Versar report.
[g] Data estimated from petitions for exemptions from the manufacturing ban.
[h] Subject to exemption.
[i] Use authorized but other activities need exemption.
[j] In one year.

II. Changes in Major Definitions

A. "PCBs" and "PCB Items"

This final rule changes the definition of "PCB" from that contained in the proposal in two significant respects. In the proposed rule, § 761.2(q) defined "PCB" and "PCBs" to include PCB Chemical Substances, PCB Mixtures, PCB Articles, PCB Equipment, PCB Containers, and PCB Sealants, Coatings, and Dust Control Agents. Section 761.2(s) of the final rule defines "PCB" and "PCBs" to mean any chemical substance or combination of substances that is limited to the biphenyl molecule that has been chlorinated to varying degrees. This definition is essentially what the proposal defined as "PCB Chemical Substance". This term and the term "PCB Mixture" have been deleted

from the rule. Because some provisions in the rule apply to concentrations of PCBs below 50 ppm (e.g., the ban on the use of PCBs as sealants, coatings, and dust control agents), the applicability section (§ 761.1(b)) explains that wherever the term "PCB" or "PCBs" is used in this rule, it means PCBs at a concentration of 50 ppm or greater unless otherwise specified.

The second principal change is the addition of a new term, "PCB Item", defined as "any PCB as it is a part of, or contained in, any 'PCB Article', 'PCB Article Container', 'PCB Containers' or 'PCB Equipment', at a concentration of 50 ppm or greater" (see § 761.2(x)). This change significantly affects the scope of the manufacturing ban. (See preamble section VI.B.1. below.)

B. Regulation of PCBs at the 50 ppm Concentration Level

To implement this rule in a practical manner, it is essential that EPA adopt a regulatory cut-off point based upon the concentration of PCBs. PCBs are widely dispersed in the environment and are found worldwide at low concentration. This wide dispersion has occurred because hundreds of millions of pounds of PCBs have been used in the past with little or no attempt to control their use or disposal. Because PCBs are now so pervasive, the effect of not having a cut-off concentration would be to extend the prohibitions and other requirements of section 6(e) of TSCA to almost all human activity. Many foods, such as fish and milk, as well as the human body often contain detectable concentrations of PCBs.

The final rule applies to any substance, mixture, or item with 50 ppm or greater PCB. This 50 ppm cut-off was proposed as a change from the Disposal and Marking Rule (43 FR 7150, February 17, 1978), which specified a 500 ppm cut-off. (See definition of "PCB Mixture" in that rule (§ 761.2(w), 43 FR 7157).)

Where to set the cut-off point for the PCB rule has been an issue throughout the development of both the Disposal and Marking Rule and the Ban Rule. The preamble to the proposed Disposal and Marking Rule (see 42 FR 26564, May 24, 1977) first discussed the issue under the heading "PCB Mixtures, Waste Materials, and Sludges". The preamble to the final Disposal and Marking Rule discussed the issue further under the heading "Changes in § 761.2 Definitions" (see 43 FR 7151, February 17, 1978). This discussion stated that EPA was seriously considering lowering the PCB concentration in the definition of "PCB Mixture" from 500 ppm to possibly 50 ppm. The preamble to the proposed Ban Rule emphasized that EPA must select a cut-off point that it can reasonably administer in order to attain the objectives of §6(e) of TSCA (see 43 FR 24804, June 7, 1978).

Before selecting 50 ppm PCB as the cut-off point, EPA considered several other options, including retaining the 500 ppm PCB cut-off originally specified in the Disposal and Marking Rule, and lowering the cut-off concentration to 10 ppm or even 1 ppm. The 500 ppm PCB option was favored by affected industries because it would reduce the costs of complying with the rule, but no evidence was presented that indicated that industry is technologically or economically unable to comply with the more stringent standard. In fact, in this final rule, EPA is easing the economic burden of complying with the more stringent standard by allowing alternative disposal methods for certain wastes containing between 50 ppm and 500 ppm PCB.

Lowering the PCB cut-off point from 500 ppm to 50 ppm will result in substantially increased health and environmental protection. Using data developed by Versar, Inc. of Springfield, Virginia, EPA estimates that approximately one million additional pounds of existing PCBs will be controlled by lowering the cut-off to 50 ppm. In addition, from 100,000 to 500,000 pounds per year (estimated from manufacturing exemption petitions) of new PCBs will be controlled. Because Congress intended that EPA address the problem of contamination of the environment by PCBs to the greatest extent possible, EPA believes that regulating this substantial additional amount of PCBs is justified.

Lowering the cut-off concentration to 10 ppm PCB would provide an additional degree of environmental protection but would have a grossly disproportionate effect on the economic impact and would have a serious technological impact on the organic chemicals industry. Although firm data are not available, investigations have indicated that a number of chlorinated organic chemicals are produced with PCB concentrations of 10 ppm to 30 ppm and that it may be very difficult technically to alter the production processes to produce lower levels of PCBs or eliminate them. In addition, a 10 ppm concentration cut-off would also substantially increase the scope of the disposal requirements, especially for soils, debris, and solvents contaminated with low concentrations of PCBs. Those wastes would be added to the total quantity of waste at these PCB disposal sites. Since PCB disposal site capacity is limited, these additional wastes would add to the volume of wastes stored at PCB storage facilities. Illegal disposal of PCB wastes and inadvertant releases of PCBs into the environment are more likely to occur when disposal capacity is not readily available.

EPA recognizes that increased environmental benefits could result if additional PCBs were destroyed or controlled by regulating PCBs at very low concentrations. These potential benefits would be negated, however, if high-concentration PCB wastes are not properly disposed of because the limited disposal capacity for PCB wastes and EPA's surveillance and enforcement efforts are diverted to low concentration wastes. In addition, other authorities administered by EPA, such as the Clean Water Act (CWA) and the Marine Protection, Research, and Sanctuaries Act, can be used to regulate low concentrations of PCBs. EPA has the ability to control environmental releases of certain low concentration PCBs through the National Pollutant Discharge Elimination System (section 402 of CWA), through dredging permits (§ 404 of CWA) and through toxic effluent standards and prohibitions (section 307(a) of CWA).

The arguments against a cut-off of 10 ppm are pertinent to a cut-off of 1 ppm to an even greater extent. Foods, such as milk and fish, and even the human body itself often contain PCBs at this low concentration. For these reasons, EPA also decided not to adopt a cut-off of 1 ppm.

After reviewing the public comments, informal hearing testimony, and other information in the rulemaking record and then evaluating the available options, EPA concludes that retaining the PCB cut-off limit at 50 ppm provides adequate protection for human health and the environment while defining a program that EPA can effectively implement.

The major exception in the rule to the 50 ppm limit is the prohibition of the use of waste oil as a sealant, coating, or dust control agent if the waste oil contains any detectable concentration of PCB. This prohibition is necessary to prevent the use of PCB-contaminated materials in ways that result in direct and widespread environmental contamination. Road oiling, other dust control, pipe coating, and spraying of vegetation permit substantial direct entry of PCBs into the air and waterways and may introduce PCBs into the food chain.

C. Classification of Transformers Under This Rule

This rule establishes four categories of transformers: 1) PCB Transformers; 2) PCB-Contaminated Transformers; 3) Non-PCB Transformers; and 4) Railroad Transformers. Railroad Transformers are discussed in the preamble section IX.B. The other three categories are discussed immediately below.

1. PCB Transformers

PCB Tranformers are transformers that contain PCBs at a concentration of 500 ppm or greater. This category includes transformers that were designed to use concentrated PCBs (40 percent or greater PCBs) as a dielectric fluid, as well as transformers that were not designed to use concentrated PCBs but contain 500 ppm or greater PCB. The higher concentration of PCB could result from an unusual contamination incident at the manufacturing facility, from careless servicing operations, or from deliberate attempts to use concentrated PCBs as a dielectric fluid. The selection of 500 ppm as the lower limit defining a PCB Transformer is directly related to the selection of limits for defining PCB-Contaminated Transformers. This is discussed in section C.2 immediately below.

A transformer must be assumed to be a PCB Transformer if any one of the following conditions exist: (1) the nameplate indicates that the transformer contains PCB dielectric fluid; (2) the owner or operator has any reason to believe that the transformer contains PCB dielectric fluid; or (3) the transformer's dielectric fluid has been tested and found to contain 500 ppm or greater PCB. If a transformer does not have a nameplate or if there is no information available to indicate the type of dielectric fluid in it, the transformer must be assumed to be a PCB Transformer unless it is tested and found to contain less than 500 ppm PCB. This category of transformers is defined in the rule in § 761.2(y).

2. PCB-Contaminated Transformers

PCB-Contaminated Transformers are transformers that contain between 50 ppm and 500 ppm PCB. This category includes transformers that were designed to use PCB-free mineral oil dielectric fluids but now contain between 50 ppm and 500 ppm of PCBs because of contamination that occurred in manufacturing or servicing operations. Available data indicate that as many as 38 percent of the 35,000,000 mineral oil transformers contain between 50 and 500 ppm PCBs but that PCB concentrations above 500 ppm in such transformers are rare. Based on these data, EPA is specifying 50 to 500 ppm as the range of PCB concentration defining PCB-Contaminated Transformers. The data also support the requirement that all mineral oil transformers must be assumed to be PCB-Contaminated Transformers unless tested and found not to contain between 50 and 500 ppm PCB.

The upper limit of 500 ppm is a practical cut-off because it includes virtually all mineral oil transformers that are substantially contaminated with PCBs and it coincides with the February 17, 1978 PCB Disposal and Marking Rule limit for defining a "PCB Transformer". Because most of the requirements of this rule apply only to PCB concentrations of 50 ppm or greater (see preamble section II.B above), 50 ppm is the logical choice for a lower limit for PCB-Contaminated Transformers.

As discussed in section C.4 below, PCB Transformers may be converted to PCB-Contaminated Transformers by draining and replacing the dielectric fluid as long as the replacement fluid is between 50 and 500 ppm PCBs after three months of in-service use. The term PCB-Contaminated Transformer is defined in § 761.2(z).

3. Non-PCB Transformers

Non-PCB Transformers are transformers that contain less than 50 ppm PCB. No transformer may ever be considered to be a Non-PCB Transformer unless its dielectric fluid has been tested or otherwise verified to contain less than 50 ppm PCB. A person who tests his transformers to classify them as Non-PCB Transformers should also take precautions to insure that these transformers are not later contaminated in servicing operations. Addition of PCB-contaminated fluid, for example, may result in PCB levels over 50 ppm.

Non-PCB Transformers are not specifically covered by this rule. However, it is possible that the dielectric fluid in these transformers may contain a detectable, but less than 50 ppm PCB concentration. In this case, the rule's prohibition of the use of waste oil containing any detectable PCBs as a sealant, coating, or dust control agent would be applicable when the dielectric fluid is removed from the transformer. The term Non-PCB Transformer is not defined in the rule.

4. Discussion of Transformer Categories

The owner or operator of a transformer must ascertain which of these three categories, PCB Transformer, PCB-Contaminated Transformer, or Non-PCB Transformer, is applicable. In determining this, a person must make certain assumptions, as discussed below.

a. Determining Appropriate Categories

Transformers originally designed to use concentrated PCBs usually have a nameplate indicating that they contain PCB dielectric fluid. Such transformers must be assumed to be PCB Transformers unless tested and found to contain less than 500 ppm PCB. The same assumption must also be made if there is any other reason to believe that a transformer was designed to use concentrated PCB fluid or was ever filled with such fluid. If a transformer does not have a nameplate or if there is no information available to indicate the type of dielectric fluid in it, the transformer must be assumed to be a PCB Transformer.

If the owner or user has serviced the transformer to reduce the PCB concentration below 500 ppm, he cannot simply assume that the PCB reduction process was successful. Because PCBs can continue to leach out of transformer windings after refilling with dielectric fluid containing less than 50 ppm PCB, the owner must test to determine the PCB concentration in the dielectric fluid if he wants to reclassify such a transformer. The test must be performed only after the transformer has been in use for three months or longer after the most recent servicing intended to reduce the PCB concentration. If this test shows the transformer dielectric fluid to contain between 50 ppm and 500 ppm PCB, then the transformer can be reclassified as a PCB-Contaminated Transformer. If the PCB reduction was successful enough to reduce the PCB concentration below 50 ppm, then the transformer would be a Non-PCB Transformer. Owners or operators of reclassified transformers must retain records of their tests in order to be able to demonstrate compliance with the reclassification requirements.

Because of the widespread PCB contamination of transformers that were designed to use PCB-free mineral oil dielectric fluid, all such mineral oil dielectric fluid transformers must be assumed to be PCB-Contaminated Transformers, unless reasons exist to believe that a transformer was filled with greater than 500 ppm PCB fluid (in which case the assumption is that the transformer is a PCB Transformer). The owner or operator has the option of testing the dielectric fluid to determine if the PCB concentration is below 50 ppm. This testing must be performed on the

dielectric fluid that is in the transformer. If the PCB concentration in the dielectric fluid is below 50 ppm, then the transformer may be considered a Non-PCB Transformer.

If any 500 ppm or greater PCB fluids are added to a collection tank, the entire tank contents must be considered to be greater than 500 ppm PCBs and be disposed of in an incinerator that meets the requirements found in Annex I of the rule. (In other parts of this preamble this will be referred to as an Annex I incinerator.) The tank contents *cannot* be used as dielectric fluid; the tank contents *must* be disposed of. In addition, PCB-free or low concentration PCB fluids cannot be added to the tank in order to dilute the tank contents to a level below 50 ppm PCBs and avoid more stringent disposal requirements. High concentration PCBs must be disposed of in accordance with the applicable requirements even if the concentration of PCBs could be or is actually lowered by dilution. This requirement is intended to prevent the deliberate dilution of concentrated PCBs to evade the more stringent disposal requirements that apply to such liquids. In addition, to permit dilution in this way would result in greater dissemination of PCBs and, consequently, greater human and environmental exposure to PCBs. The use of collection tanks for mineral oil dielectric fluid is discussed further in preamble section III.E.

b. Significance of Transformer Categories

The three categories of transformers are subject to different disposal, rebuilding, and storage requirements under these rules. Fluids from Non-PCB Transformers (with less than 50 ppm PCBs) have one disposal restriction: they cannot be used as a sealant, coating, or dust control agent if they contain any detectable PCB. Fluids from PCB-Contaminated Transformers (with 50 ppm or 500 ppm PCBs) must be disposed of in high efficiency boilers, in approved chemical waste landfills, or in Annex I incinerators. (See section III.A below). Fluids from PCB Transformers (concentrations of 500 ppm or greater) must be disposed of only by high temperature incineration.

Other significant activities for which the categories have different requirements are servicing (including rebuilding) and disposal (of the transformer coil and casing). PCB-Contaminated Transformers are subject to no restrictions on servicing (including rebuilding) or coil and casing disposal, except that after July 1, 1979, servicing of PCB-Contaminated Transformers must be performed either by the owner or operator or by someone who has an exemption from the processing and distribution in commerce bans. The major advantage of recategorizing a PCB-Contaminated Transformer to Non-PCB Transformer is that no exemption would be needed for servicing and that simpler dielectric fluid disposal requirements would apply.

The servicing and disposal of PCB Transformers are subject to more stringent restrictions. Any servicing of PCB Transformers that requires the removal of the coil from the casing is prohibited and PCB Transformer coils and casings must be disposed of either in an Annex II chemical waste landfill or in an Annex I high temperature incinerator. Any fluid removed from a PCB Transformer being serviced must either be reused as dielectric fluid or disposed of in an Annex I incinerator. Any fluid removed from a PCB Transformer that is being disposed of must be disposed of in an Annex I incinerator. Servicing that does not require the removal of the coil can be performed, but persons who process or distribute PCBs in commerce for purposes of servicing must be granted an exemption by EPA. Consequently, recategorizing a PCB Transformer to a PCB-Contaminated Transformer by lowering the PCB concentration would permit rebuilding of the transformer, simplify future disposal, and permit salvage of the casing and coil. Rebuilding may be especially important to owners of transformers that are used in special applications or have unique design characteristics and that cannot be readily replaced in the event of a failure.

D. Totally Enclosed Manner and Significant Exposure

The definitions of these terms are basically unchanged from those contained in the proposed rule. See the preamble to the proposed rule (43 FR 24805–6, June 7, 1978) for a discussion of these terms.

E. Sale for Purposes Other Than Resale

Two modifications have been made to this definition. First, sale for purposes of research and development is not considered to be for purposes other than resale. The proposed rule excluded all activities involving small quantities of PCBs for research and development (as defined in § 761.2(ee)). The final rule includes such activities within its scope and authorizes the processing and distribution in commerce of small quantities for research and development until July 1, 1979 (after which exemptions would be required to continue these activities) and authorizes use of such quantities until July 1, 1984 (see preamble section IX.J).

The second change concerns leasing of PCB Equipment. The proposed rule would have required that PCB Equipment be leased for a minimum of one year. The final rule provides that the lease period may be for any period of time provided that the lease begins before July 1, 1979. The import and export of leased equipment will require an exemption after July 1, 1979 (see preamble section VI.B.1.b).

F. Other Definition Changes

The definitions of "Chemical Waste Landfill" (§ 761.21(f)) and "Incinerator" (§ 761.2(1)) have been modified in a minor way to reflect more closely the proposed definitions developed for these facilities under the Hazardous Waste Regulations developed pursuant to the Resource Conservation and Recovery Act (RCRA). The changes do not affect the criteria for these facilities in Annexes I and II of the PCB Disposal and Marking Rule.

Definitions for "Byproducts" (§ 761.2(c)) and "Impurity" (§ 761.2(k)) have been added. These definitions are the same as those promulgated in EPA's inventory regulation under section 8 of TSCA (42 FR 64572). (See preamble section VI.C.1.)

III. Changes in Subpart B: Disposal of PCBs and PCB Items

A. Mineral Oil Dielectric Fluid With 50 to 500 ppm PCB

The proposed rule would have changed the PCB Disposal and Marking Rule by requiring all PCBs containing 50 ppm or more PCB to be disposed of in an incinerator meeting the requirements of Annex I. This requirement would have increased the quantity of liquid to be incinerated over the next 30 to 40 years from 300 million pounds to at least 3 billion pounds, with proportional increases in costs (see the Versar Report). This increase would also have severely strained available incineration capacity. EPA was concerned about the impact of this requirement and requested comments on the use of high temperature boilers for incinerating PCB contaminated mineral oil.

1. High Efficiency Boilers

A substantial number of comments stated that power generation facilities could provide an environmentally safe alternative for burning PCB-contaminated mineral oil. EPA reviewed

the comments and investigated the feasibility of permitting the use of boilers as a disposal option. After exploring this matter with combustion experts, EPA concluded that there are boilers capable of adequately incinerating PCB-contaminated mineral oil. These boilers (which can be referred to as "high efficiency boilers") include power generation boilers and industrial boilers that operate at a high combustion efficiency (99.9%), as defined by the carbon monoxide concentrations and excess oxygen percentages in the combustion emissions.

These boilers are capable of achieving a PCB destruction efficiency of 99.9% or greater. This destruction efficiency is somewhat lower than the estimated 99.9999% or greater destruction efficiency that an Annex I incinerator can achieve. However, this disposal alternative is restricted to PCB-contaminated mineral oil of low PCB concentration (50–500 ppm) and offers a substantial reduction in disposal costs (over $13 million per year). Given the 99.9% destruction efficiency for PCBs in high efficiency boilers, only 10 more pounds of PCB would enter the environment annually as compared to the amount released from high temperature incinerators under Annex I. (This estimate is derived from Versar data).

After considering these factors, EPA concluded that disposing of PCB-contaminated mineral oil containing 50 to 500 ppm PCB in high efficiency boilers does not present an unreasonable risk to human health or the environment. However, for the reasons explained in section III.B, only PCB-contaminated mineral oil will be permitted to be burned in boilers without specific approval by the appropriate EPA Regional Administrator. A discussion of the burning of other low concentration PCB wastes also is found in section III.B.

2. Conditions for Boilers

Based on the conclusions stated above, the final rule permits the burning of PCB-contaminated mineral oil with a concentration below 500 ppm in high efficiency boilers if the following conditions are met: (1) the boiler is rated at a minimum of 50 million BTU/hour; (2) the mineral oil is no more than ten percent of the total fuel feed rate; (3) the mineral oil is not added to the combustion chamber during boiler start-up or shut-down operations; (4) before commencing the burning of PCB-contaminated mineral oil, the owner or operator has conducted tests and determined that the combustion emissions contain at least three percent (3%) excess oxygen and the carbon monoxide concentration does not exceed 50 ppm for oil or gas-fired boilers or 100 ppm for coal-fired boilers; (5) the company has notified the appropriate EPA Regional Administrator at least 30 days before the company uses its high efficiency boiler for this purpose and has supplied the notice with the combustion emissions data as specified in (4) above; (6) the combustion process is monitored either continuously or, for boilers burning less than 30,000 gallons of mineral oil annually, at least once each hour that PCB-contaminated mineral oil is burned, to determine the percentage of excess oxygen and the carbon monoxide level in the combustion emission; (7) the primary fuel and mineral oil feed rates are monitored at least every 15 minutes whenever burning PCB-contaminated mineral oil; (8) the carbon monoxide and excess oxygen levels are checked at least once an hour and, if they fall below the specified levels, the flow of mineral oil to the boiler is immediately stopped; and (9) records are maintained that include the monitoring data in (6) and (7) above and the quantities of PCB-contaminated mineral oil burned each month. When burning mineral oil dielectric fluid, the boiler must operate at a level of output no less than the output at which the reported carbon monoxide and excess oxygen measurements were taken. The Regional Administrator has to be notified only before the first burning of PCB-contaminated mineral oil in the boiler. The conditions are intended to prevent the introduction of PCBs into boilers when combustion conditions are not optimum for the destruction of PCBs. The level of 30,000 gallons per year was chosen as the cut-off for continuous monitoring because, (1) EPA believes that boilers burning 30,000 gallons or more per year of PCB-contaminated mineral oil would be burning on a regular basis and therefore should continuously monitor CO and excess O_2; and (2) a boiler burning this quantity of mineral oil annually will incur more than sufficient savings over high temperature incineration or chemical waste landfill disposal costs to offset the added costs of continuous monitoring. However, a person whose boiler does not meet these requirements but who can demonstrate that the boiler will destroy PCBs as efficiently as a high efficiency boiler may seek specific approval from the appropriate EPA Regional Administrator under § 761.10(a)(2)(iv).

EPA plans to monitor the use of these boilers closely and will carefully analyze the effectiveness of this disposal option.

3. Other Disposal Alternatives

Alternatively, any PCB-contaminated mineral oil dielectric fluid (with a PCB concentration less than 500 ppm) may be disposed of either in an incinerator complying with Annex I or, under special conditions (see section III.C below), in a chemical waste landfill complying with Annex II. These landfills will provide a disposal option less costly than Annex I incineration for owners or users of PCB-contaminated mineral oil who do not have access to high efficiency boilers. EPA believes that only small quantities of dielectric fluid will be disposed of in landfills because high efficiency boilers or incinerators will be available for most of the waste fluids.

The impact on human health and the environment from disposing of these wastes in chemical waste landfills is discussed in the preamble section III.B below.

B. Other Liquid Wastes With 50 to 500 ppm PCB

To provide thermal destruction alternatives for other low concentration liquid wastes containing less than 500 ppm PCB, EPA has included in the rule a procedure that is comparable to the disposal alternatives for PCB-contaminated mineral oil. This procedure permits the disposal of these non-mineral oil fluids on a case-by-case basis in high efficiency boilers.

Such approval can be granted if: (1) the boiler is rated at a minimum of 50 million BTU/hour; (2) the PCB-contaminated waste comprises no more than ten percent (10%) of the total volume of fuel; (3) the waste will not be added to the combustion chamber during boiler start-up or shut-down operations; (4) the combustion emissions will contain at least three percent (3%) excess oxygen and the carbon monoxide concentration will be less than 50 ppm for oil or gas-fired boilers or 100 ppm for coal-fired boilers; (5) the combustion process will be monitored continuously or at least once each hour that the PCB-contaminated wastes are being burned to determine the percentage of excess oxygen and the carbon monoxide level in the combustion emissions; (6) the primary fuel and waste feed rates are monitored at least every 15 minutes whenever burning the waste; (7) the carbon monoxide and excess oxygen levels are monitored at least once an hour and if they fall below the levels

specified, the flow of wastes to the boiler is stopped immediately; and (8) records are maintained that include the monitoring data in (5) and (6) above and the quantities of PCB-contaminated waste burned each month. When burning PCB wastes, the boiler must operate at a level of output no less than the output at which the reported carbon monoxide and excess oxygen measurements were taken. These requirements are similar to those for high efficiency boilers used to burn PCB-contaminated mineral oil.

Persons seeking approval to use this disposal alternative must submit an application to the appropriate EPA Regional Administrator. The application must contain information describing the quantity of waste expected to be disposed of each month, descriptive information about the waste including the concentrations of PCBs and other chlorinated hydrocarbons, the results of a number of standard fuel analyses to determine the nature of the waste, BTU heat value and flash point of the wastes, and an explanation of the procedures to be followed to insure that burning the waste in the boiler will not adversely affect the operation of the boiler such that the combustion efficiency will decrease. The information contained in the applications will help the Regional Administrator to assess whether these high efficiency boilers will adequately destroy these low concentration PCB wastes.

The cost of this alternative is greater than the mineral oil disposal alternative because approval application costs and analytical costs are greater. However, these costs will be less than the cost for Annex I incineration or Annex II chemical waste landfills. As a result, the quantity of low concentration PCB wastes going to Annex I and Annex II facilities should be reduced. In addition, a person whose boiler does not meet these requirements but who can demonstrate that the boiler will destroy PCBs as efficiently as a high efficiency boiler may seek specific approval from the appropriate EPA Regional Administrator under § 761.10(a)(3)(iv).

These wastes are treated differently than PCB-contaminated mineral oil dielectric fluid because they tend to be more varied in composition than contaminated mineral oil. In many cases, these fluids are fire or heat resistant and could reduce PCB destruction efficiency. For example, unlike mineral oil, PCB-contaminated hydraulic fluid will require the addition of *more* primary fuel for it to burn in the manner necessary to destroy the PCBs.

C. Disposal of 50 to 500 ppm PCB Liquids in Chemical Waste Landfills

The rule also provides another new disposal alternative not permitted in the proposed rule. All liquid wastes with less than 500 ppm PCB may be disposed of in chemical waste landfills that comply with the requirements of Annex II. Allowing this additional disposal option for low concentration liquid wastes will reduce disposal costs and increase the availability of Annex I incinerators to destroy high concentration wastes.

This disposal alternative is limited to those low PCB concentration (50–500 ppm) wastes that are not considered ignitable wastes. A waste is considered ignitable if its flash point is less than 60° C (140° F). This limitation is consistent with the proposed Resource Conservation and Recovery Act (RCRA) rules for disposal of hazardous wastes (43 FR 58946, December 18, 1978).

Properly designed and operated chemical waste landfills are capable of containing liquid wastes when the liquids are stabilized in the disposal process or contained in cells of sorbent material, as required by this rule. EPA's Office of Solid Waste recommends mixing liquids with soils or solid wastes in order to stabilize liquid wastes. Alternatively, containers of the liquids may be surrounded by enough inert, sorbent material to absorb all of the liquid in the container should the container leak. These techniques will effectively control the migration of PCBs from the landfill site. Use of such landfills will result in only limited exposures to PCBs. Almost all of the exposure will occur during the liquid stabilization process. This use of chemical waste landfills is consistent with hazardous waste disposal policies being proposed by EPA under RCRA (see 43 FR 58946).

Incineration of low concentration PCB wastes is much more costly. To destroy a small percentage of PCBs, a significant volume of contaminated material must be destroyed. The cost of incineration per pound of PCB may be very high. Disposal of low concentration liquid PCBs in an Annex II chemical waste landfill will greatly reduce these disposal costs, free incineration facilities for burning of high concentration wastes, and produce little increase in environmental or human exposure to PCBs.

Owners or operators of chemical waste landfills already approved by EPA for disposal of non-liquid PCBs and PCB Items will have to request additional approval to dispose of liquids with low-concentrations of PCBs. Guidance on proper procedures for requesting such approval will be provided for these owners or operators. Owners and operators of chemical waste landfills not yet approved for disposal of PCBs will also have to request specific permission to dispose of such liquids.

D. Disposal of Non-Liquid PCBs in Chemical Waste Landfills

EPA has decided to permit the disposal of non-liquid PCBs at any concentration in chemical waste landfills that meet the requirements of Annex II. The Disposal and Marking Rule permitted only persons with contaminated soils and other solids recovered from spills or removed from old disposal sites to use this disposal option. It would be inconsistent not to permit this same disposal option for other non-liquid PCB wastes such as contaminated rags and absorbent materials. These additional solids are estimated to be only a small fraction of the total non-liquid PCB wastes generated. Providing this alternative disposal method will permit more of the currently available incineration capacity to be used for high concentration liquid wastes and will result in little additional human or environmental exposure to PCBs. For these reasons, EPA has made this change in § 761.10(a)(4) of the rule.

In addition to disposal in Annex I incinerators or Annex II chemical waste landfills, dredge materials and municipal sewage sludges that contain between 50 ppm and 500 ppm PCB may also be disposed of by any alternative method approved by the appropriate EPA Regional Administrator (see § 761.10(a)(5)(iii)). This provision is unchanged from the Disposal and Marking Rule, except that it now covers these materials down to 50 ppm.

EPA has received a petition from the State of North Carolina regarding the disposal of contaminated soil and debris from spills (44 FR 13575, March 12, 1979). EPA is required to respond to the petition by June 4, 1979.

The storage requirements of § 761.42 Subpart E apply to all of the low concentration wastes discussed above including substances containing between 50 and 500 ppm PCB and will help provide adequate protection against spills.

E. Batch Testing of Mineral Oil Dielectric Fluid

Testing of mineral oil dielectric fluid and waste oil from sources that are otherwise assumed to contain PCBs at a concentration between 50 ppm and 500

ppm can be performed on samples taken from collection tanks ("batch testing"). This is permitted so that oils from multiple sources can be collected and tested without requiring a separate test of each transformer each time a disposer wants to evaluate his disposal options.

The prohibition against dilution, however, has not changed. The new testing option does *not* permit the deliberate dilution of the collected oil (assumed to contain PCBs above 50 ppm) with PCB-free or low-PCB fluids to reduce the concentration of PCBs in the resultant mixture below 50 ppm. Further, the option does not permit the deliberate addition of PCB wastes with concentrations greater than 500 ppm to the tank in order to avoid the more stringent disposal requirements for high-concentration wastes. If such high-concentration wastes are added to the tank, then the entire tank contents must be disposed of in compliance with requirements for wastes containing 500 ppm PCBs or greater, even if a sample of the aggregate tank contents reveals a concentration below 500 ppm. In this circumstance, the tank contents *cannot* be used as dielectric fluid; the tank contents *must* be disposed of in a high temperature incinerator.

These restrictions are essential to ensure that appropriate measures are taken to destroy or dispose of PCB-contaminated wastes. In developing the final rule, EPA developed a balanced approach to disposal by considering the most appropriate means of disposing of wastes with different PCB concentrations in light of the risks to human health and the environment. Diluting or mixing PCB wastes as described above to avoid proper disposal upsets this balance and is a violation of this rule. The proposed rule would have required testing of each transformer's fluid. The cost of batch testing is substantially less than individual source testing. In addition, permitting testing from collection tanks will result in very little additional exposure of humans or the environment to PCBs.

F. Other Changes in the Disposal Requirements

The disposal requirements for PCB chemical substances and PCB mixtures have been replaced by disposal requirements for PCBs (§ 761.10(a)). This was necessary because of the revised definition of PCBs and the elimination of the definitions of "PCB Chemical Substances" and "PCB Mixtures".

The disposal requirements for PCB Articles other than PCB Transformers and PCB Capacitors have been changed to permit these articles to be disposed of in a chemical waste landfill as well as in high temperature incinerators (§ 761.10(b)(4)). Examples of these articles include pipes, hoses, parts of heat transfer systems, electromagnets, and electric motors. Altogether, these articles account for less than one percent (1%) of the PCBs currently in use in the United States. When these articles are disposed of in chemical waste landfills, they must be drained of free flowing liquid. As a consequence, these articles will contain only small amounts of PCBs. Disposal of these articles in chemical waste landfills will add only small quantities of PCBs to the landfills and will result in little or no additional human and environmental exposure of PCBs.

The final rule has a special disposal provision for hydraulic machines. These machines are difficult to transport as they frequently weigh many tons and can be as large as a small building. In general, only a relatively small portion of the machine is contaminated with PCBs. For these reasons, instead of requiring disposal in a chemical waste landfill, the final rule permits disposal of hydraulic systems as municipal solid waste and salvaging of these machines after draining. The machines must first be drained of all free-flowing liquid. If the fluid contains more than 1000 ppm PCBs, the machines must be flushed with a solvent and thoroughly drained before disposal. After considering the cost of disposing of these machines in chemical waste landfills and the small quantities of PCBs that would remain in a properly drained machine, EPA concluded that disposal as municipal solid waste did not represent an unreasonable risk to health or the environment. For these same reasons, no special storage requirements have been included for properly drained machines.

The final rule also permits PCB Containers that were used only to contain materials or fluids with PCB concentrations between 50 and 500 ppm to be disposed of as municipal solid waste. If these containers are well drained, as required by the rule, only very small quantities of PCBs would remain and these containers could be safely disposed of as municipal solid waste with little added exposure to humans or the environment. For example, if a drum containing 500 ppm liquid waste is drained of 99% of the liquid, less than one gram of PCB would remain in the drum. Disposers of these containers will have to be able to demonstrate that the containers only contained PCBs in concentrations of 50 to 500 ppm.

IV. Changes in Subpart C: Marking of PCBs and PCB Items

The PCB Disposal amd Marking Rule, as promulgated in February 1978, applied only to PCB and PCB Items that contained 500 ppm or greater PCBs. These requirements now extend to all PCB Items (including PCB Containers, PCB Article Containers, PCB Articles, PCB Equipment, and PCB transport vehicles) that contain 50 ppm or greater PCBs. This modification makes the marking and disposal requirements consistent with the final prohibition rule, which generally extends to all PCB Items with 50 ppm or greater PCBs, as discussed above.

The extension of the disposal and marking requirements is essential to ensure that PCB Items regulated under this rule are properly identified, handled, and disposed of to minimize the potential risks of exposure to PCBs. To provide sufficient time to identify and mark PCB Items containing between 50 and 500 ppm PCB, § 761.20(e) provides that these PCB Items must be marked by October 1, 1979.

PCB-Contaminated Transformers are an exception to the policy described above and are not required to be marked. The cost of marking a very large number of PCB-Contaminated Transformers while they are in service would be extremely high. There are about 35 million PCB-Contaminated Transformers and, if it cost $10 to label each one, the total labeling cost would be about $350 million. Also, because EPA assumes that all transformers other than PCB Transformers (which are required to be marked) are PCB-Contaminated Transformers, labels are not necessary. An unmarked mineral oil transformer will automatically be assumed to be a PCB-Contaminated Transformer unless it meets one of the criteria listed in preamble section II.C.1 above. Although transformers at any time can be properly tested and found to be either a Non-PCB Transformer or a PCB Transformer, such testing would generally be performed only when disposal is contemplated. Consequently, labeling to differentiate such transformers from PCB-Contaminated Transformers would have little practical value.

Some PCB-Contaminated Transformers may have already been marked with the PCB Transformer mark (especially in Michigan where State law requires marking for transformers with 100 ppm PCB or greater). There is some concern that the label on the transformer will determine the disposal alternatives. This is to clarify that when

a transformer is ready to be disposed of, the owner or operator may choose among the alternative disposal methods applicable to the transformer in question and permitted by this rule. (See preamble section II.C, "Classification of Transformers Under This Rule".)

Marking of large capacitors is relatively straightforward because virtually all large capacitors were PCB-filled until the past few years. Therefore, any capacitor that cannot be shown to be PCB-free by examining label or nameplate information, must be assumed to be a PCB Capacitor and must be marked with the PCB mark.

A new paragraph § 761.20(h), has been added that requires that marks (or labels) be placed on the exterior of PCB Items and transport vehicles so that the marks can be seen by interested persons. This addition corrects an oversight in the original Disposal and Marking Rule.

Section 761.20(i) has been added to clarify that any marking requirements for PCBs at concentrations less than 500 ppm manufactured after [30 days after publication in the Federal Register], including PCBs that are byproducts or impurities, will be contained in the exemption EPA grants to permit such manufacture. However, any PCB Article or PCB Equipment into which the PCBs are processed must be marked in accordance with the requirements found elsewhere in Subpart C. Those persons who have submitted petitions to manufacture chemicals with PCB contamination pursuant to the rulemaking procedures for the manufacturing exemptions (43 FR 50905, November 1, 1978) are not required to label any chemical that contains less than 500 ppm PCB until EPA acts on their petition. For example, persons who have petitioned because they manufacture PCBs as a contaminant at less than 500 ppm or a pigment or other commercial chemical product do not have to label that product as containing PCBs until after EPA acts on their petition. Conversely, any containers of any product that contains 500 ppm or greater PCBs must be labeled. This latter requirement was included in the PCB Disposal and Marking Rule (43 FR 7150, February 17, 1978).

V. Changes in Subpart E: Annexes

A. Annex I: Incineration

Section 761.40(a)(2) establishes a new value of 99.9% for the combustion efficiency required of incinerators. This is a correction of the earlier value of 99% efficiency that was specified in the Disposal and Marking Rule. Specifically, incinerators operating at the temperatures, dwell times, and excess oxygen concentrations specified in Annex I normally operate at a combustion efficiency of 99.9% or greater. A combustion efficiency of 99.9% thus more accurately represents the true combustion efficiency of Annex I incinerators. All incinerators that have been approved or that are under consideration for approval by EPA are capable of operating at 99.9% combustion efficiency; accordingly, this modification should not disqualify these incinerators or result in additional operating expenses for these facilities. (This change does not mean that those incinerators already approved will be required to reapply for approval to operate.) Combustion efficiency is an effective parameter for evaluating the degree of destruction that occurs in an incinerator, and it is essential that the required value for this parameter accurately reflect expected combustion conditions.

A change has been made to the CO_2 monitoring requirement of § 761.40(a)(7). The Disposal and Marking Rule required continuous monitoring of the CO_2 concentration in the stack gas of the incinerator. The rule has been changed to require periodic CO_2 monitoring as specified by the Regional Administrator. This change was made for two reasons: (1) the high cost of the equipment needed to continuously monitor CO_2; and (2) the insensitivity of the combustion efficiency calculation to variations in the CO_2 concentration.

The automatic shutoff of waste flow that was required by the Disposal and Marking Rule when certain operating deficiencies occurred has been modified. Owners or operators of an incinerator may submit to the Regional Administrator, when they apply for the approval to incinerate PCBs, a contingency plan outlining the corrective steps they will take when operating problems occur. This change provides for greater flexibility for incinerator operators and will result in no increased human or environmental exposure since the contingency plans will be examined on a case-by-case basis by the Regional Administrator for proper safeguards before approval.

A new paragraph, § 761.40(d)(8), has been added to clarify the responsibility of the owner or operator of an approved facility when the ownership of the facility is transferred.

B. Annex II: Chemical Waste Landfills

Section 761.41(b) specifies requirements for operational plans for chemical waste landfills. These requirements have been modified to require delineation of the procedures to be used for the disposal of liquids containing between 50 ppm and 500 ppm PCB. After EPA approves an operational plan, the affected landfill operator must follow those procedures in disposing of PCB wastes.

Section 761.41(b)(3) specifies that the bottom of a chemical waste landfill must be at least fifty feet above the historical high water table. Because the distance between the bottom of the chemical waste landfill and the water table in many areas east of the Mississippi River is far less than fifty feet, EPA Regional Administrators have had to waive this criterion in several situations. While the criterion in the final rule is unchanged from the Disposal and Marking Rule, EPA is proposing a modification of this provision in a separate notice of proposed rulemaking.

The provisions in Annex II of the Disposal and Marking Rule establishing monitoring requirements for surface water (§ 761.41(b)(6)(i)) have been modified to allow the Regional Administrator to designate the surface watercourses that are to be sampled. This minor change eliminates any uncertainty about which watercourses are to be sampled.

Section 761.41(b)(7) includes provisions for leachate collection in chemical waste landfills. The Disposal and Marking Rule specified that the collection system be located under the landfill liner system. The final rule corrects this provision and specifies that the collection system be above the landfill liner system. Collection systems are placed above the liner to capture liquids to protect and reduce hydraulic pressure on the liner system. All chemical waste landfills currently in use have collection systems above the liner.

A new paragraph, § 761.41(c)(7), has been added to clarify the responsibility of the owner or operator of an approved facility when the ownership of the facility is transferred.

C. Annex III: Storage

1. Container Specifications

The requirements of § 761.42(c)(6) have been modified to clarify the five types of Department of Transportation (DOT)-approved containers that can be used to store PCBs and PCB Items. The Disposal and Marking Rule (§ 761.42(c)(6)) stated that containers used to store liquid PCBs must comply with the DOT specifications set out in 49 CFR 173.346, which describe a broad range of containers varying in size from less than one gallon containers to

railroad tank cars. Since only five of these container specifications (5, 5B, 6D, 17C, and 17E) are appropriate for such PCB storage, the rule has been modified to refer only to these five DOT container specifications. This change should not be disruptive as industry already generally uses the containers included in these five DOT specifications for PCB storage and handling.

In addition, on August 2, 1978, EPA published a clarification of § 761.42(c)(6) concerning PCB containers that provided for the use of special-sized containers for oversized PCB Articles or PCB Equipment (43 FR 33918). This clarification is incorporated in the final rule.

2. Bulk Storage

A new subparagraph, § 761.42(c)(7), has been added to permit the use of large containers, such as storage tanks, for the storage of PCB liquids. This change is designed to allow safer transfer and storage of bulk PCBs. While the greatest risks of spills and exposure to PCBs may occur during transfer operations, transfers in bulk from storage tank (or tank truck) to storage tank are usually better controlled than transfers to or from drums. Accordingly, the modification should reduce the number of spills and the extent of exposure to PCBs during transfer operations.

To permit bulk storage of liquid PCBs, EPA has had to add to the rule suitable standards for the containers or storage tanks that would be used. The Occupational Safety and Health Administration (OSHA) has prepared comprehensive tank specifications (29 CFR Part 1910.106). These specifications are based on standards developed by organizations such as the American Society of Mechanical Engineers (ASME) and the American Petroleum Institute (API) and are widely recognized as reasonable standards that provide for safe storage of hazardous substances. These specifications, however, are oriented to flammable and combustible liquids, which usually have a specific gravity of less than one. As provided in the OSHA rules, when a liquid's specific gravity is greater than 1.0 (which is the case with PCBs), precaution must be taken to insure that an adequate factor of safety exists when designing new tanks or when evaluating the structural strength of existing tanks. Liquids with such specific gravities are heavier than water and will put greater stress on the tanks. Accordingly, § 761.42(c)(7)(i) requires that this factor be taken into account to insure adequate structural safety of storage tanks used for PCBs.

Owners or operators of bulk storage facilities will have to keep a record of the amounts added to and removed from the bulk containers. The records will be important in tracing waste shipments and enforcing the disposal and storage requirements. This requirement is similar to the requirement promulgated in the Disposal and Marking Rule for individual containers.

Another factor in EPA's decision to allow bulk storage was the high cost of not permitting it. Considering just mineral oil dielectric fluid, there are about 1.73 billion gallons presently in use (see Versar Report). Assuming this oil would be disposed of over a 40 year period and that the cost of storing each 55 gallon drum is $145 (see Versar Report, Disposal and Marking Rule), the annual storage cost would have been about $132 million. This value would have been larger in practice since new mineral oil brought into use after this year would also have been stored in the same way because of contamination from residual PCBs in the equipment.

3. Spill Prevention Procedures

Spill prevention procedures are necessary to provide adequate environmental protection during the use of PCB storage tanks permitted by § 761.42(c)(7). Some of the substances contained in these tanks may qualify as oils under section 311 of the Clean Water Act and, therefore, may be subject to the spill prevention provisions of 40 CFR Part 112. In order to provide equivalent control of PCB liquids that do not qualify as oils, the Spill Prevention Control and Countermeasures (SPCC) provisions of the 40 CFR Part 112 have been incorporated with certain modifications into this rule. A wide cross section of U.S. industry is now using these procedures to protect against oil spills. Extending these requirements to non-oil PCBs should provide substantial environmental protection and should be easily complied with by industry.

Those provisions of 40 CFR Part 112 incorporated in this PCB rule have been modified to adapt them to the PCB activities regulated by § 761.42(c)(7) of this rule. Specifically, the Part 112 oil spill prevention requirements do not apply to tanks smaller than 660 gallons and underground tanks smaller than 42,000 gallons. Because of the risks associated with spills of PCBs, these tank size exemptions do not apply to containers or tanks containing PCBs at concentrations of 50 ppm or greater. The PCB rule also adds the requirement that the area between a storage tank and secondary containment dikes must be impervious to PCBs to prevent groundwater contamination.

One provision of 40 CFR Part 112, the SPCC plan amendment procedures, is not currently applicable to PCBs. These procedures are triggered by a notification requirement for oil spills. Because these notification requirements do not now apply to PCB spills, the SPCC plan amendment procedures are not applicable.

EPA has proposed a spill prevention rule for hazardous substances (including PCBs) under section 311 of the Clean Water Act (43 FR 39276, September 1, 1978). When this spill prevention rule is promulgated, the spill prevention provisions of this PCB rule will be revised to eliminate duplications or inconsistencies.

4. Flood Protection

The Disposal and Marking Rule required that storage areas be above the 100 year flood level. The Agency is considering modifying the PCB rule to include the flood protection guidelines developed by the National Flood Insurance Administration (NFIA) which is part of the Department of Housing and Urban Development. The Agency decided not to change the PCB rule at this time because the Hazardous Waste Regulations proposed under the Resource Conservation and Recovery Act have included a flood protection approach based on the NFIA program. If that approach is adopted when the Hazardous Waste Regulations are promulgated, the Agency will consider adopting a similar flood protection approach for PCB storage areas.

5. Temporary Storage

a. Revisions

The temporary storage of non-leaking PCB Articles and PCB Containers containing leaking articles was permitted for 30 days under the provisions of the Disposal and Marking Rule. This would enable electric utilities and others to consolidate their PCB Items in a central facility and improve management and recordkeeping for PCB wastes. The proposal did not, however, permit PCB Containers of non-liquid wastes, such as contaminated soil, to be placed in temporary storage. Because these containers of non-liquid waste do not pose any greater hazard than the containers of leaking articles, § 761.42(c)(1) of this rule modifies the storage requirements to permit PCB Containers of non-liquid waste to be

held in temporary storage for up to 30 days.

Under the final rule, large quantities of low concentration PCB liquids from PCB-Contaminated Transformers must be properly disposed of. The logistics of immediately transporting liquids drained from these transformers to a single, permanent storage facility are frequently difficult. Even though these liquids pose less of a threat to health and the environment when spilled than do more highly concentrated PCB liquids, adequate spill prevention remains essential. The final rule permits the 30 day temporary storage of low concentration (50 to 500 ppm PCBs) liquids at facilities that have a SPCC plan. That SPCC Plan must adequately address storage of PCBs in relatively small containers, such as 55-gallon drums, which is not normally included in such plans. This approach will insure adequate environmental and human health protection and will place little or no additional burdens on facility owners or operators.

The final rule does not allow temporary storage for high concentration PCB liquids (above 500 ppm). Because of the potential harm from an uncontrolled spill, temporary storage of these concentrated liquids is not permitted.

b. Action on Petitions To Amend Rule on Temporary Storage Requirements

Subsequent to the close of the reply comment period, EPA received petitions under section 21 of TSCA from Commonwealth Edison, Consolidated Edison Company, and the Edison Electric Institute to amend § 761.42(c)(1) (43 FR 7150, 7162, February 17, 1978 and 43 FR 33918, 33920, August 2, 1978) to allow temporary storage of PCB substances, mixtures, and PCB-contaminated materials, such as rags and soil. Representatives of EPA met with petitioners on January 24, 1979 and received written materials on that date in support of the petitions. EPA wrote to petitioners on February 9, 1979 and advised them that the Agency considered the petitions to have been filed on January 24, 1979, the date when written and oral information in support of the petitions was received.

The actions on temporary storage of PCBs and PCB Items described in section V.C.5.a. above grant the petitions in part and deny them in part. The petitions are granted as to temporary storage of PCB Containers of non-liquid wastes, such as contaminated soil and rags. Such temporary storage is now permitted under the conditions of § 761. 42(c)(1)(iii). Similarly, the petitions are granted as to temporary storage of low concentration (50 to 500 ppm PCBs) liquids. Such temporary storage is permitted under the conditions of § 761.42(c)(1)(iii). However, the petitions are denied as to temporary storage of high concentration PCB liquids (above 500 ppm). As noted in section V.C.5.a. of this preamble, the risk of potential harm from an uncontrolled spill, or a leak, is too great to permit temporary storage of such high concentration PCB liquids.

D. Annex IV: Decontamination

The decontamination requirements in Annex IV were changed in this rule to require flushing with a solvent containing less than 50 ppm PCB rather than 500 ppm PCB as previously promulgated. This change is based on lowering the cut-off concentration of PCBs from 500 ppm to 50 ppm. This change will further reduce the amount of residual PCBs in decontaminated containers.

E. Annex V: Records and Monitoring

A new paragraph, § 761.45(d), has been added specifically to require chemical waste landfill operators to retain records concerning the operation of the landfill. These records include the identity of the wastes they receive and where the wastes are placed in the landfill. This paragraph does not require the development of any new records but corrects an omission from the Disposal and Marking Rule.

The final rule modifies § 761.45(b) and adds § 761.45(e) to provide for retention of records by owners or operators of high efficiency boilers. The requirements are similar to recordkeeping requirements for other PCB waste disposal alternatives, such as incinerators or chemical waste landfills, and are necessary for enforcement.

VI. Subpart D: Manufacturing, Processing, Distribution in Commerce, and Use Bans

A. Prohibitions

Section 761.30(a) implements TSCA section 6(e)(2)(A), which prohibits the manufacture (including importation), processing, distribution in commerce, and use of PCBs and PCB Items in a manner other than a totally enclosed manner unless authorized under § 761.31 of this rule. This prohibition also applies to the manufacture, processing, and distribution in commerce of PCBs and PCB Items intended solely for export (see preamble section XI below).

Section 761.30(b) implements TSCA § 6(e)(3)(A)(i), which prohibits the manufacture (including importation into the United States) of PCBs after January 1, 1979 unless an exemption is granted for such manufacturers. This prohibition applies to the manufacture (and importation) of PCBs regardless of whether they are manufactured in a totally enclosed manner or they are manufactured solely for export. This prohibition does not apply to PCBs that are imported solely for disposal (see section B.2 below).

Section 761.30(c) implements TSCA section 6(e)(3)(A)(ii), which prohibits both the processing and the distribution in commerce of PCBs and PCB Items after July 1, 1979 unless exemptions are granted for such activities. This prohibition applies to the processing and distribution in commerce of PCBs and PCB Items regardless of whether the Items are processed or distributed in a totally enclosed manner or solely for export. There are three exceptions to these prohibitions.

First, as provided in section 6(e)(3)(C) of TSCA, PCBs or PCB Items that have been sold for purposes other than resale before July 1, 1979, may continue to be distributed after July 1, 1979 in a totally enclosed manner. Therefore, a person who purchases before July 1, 1979, PCB Equipment (such as computers, television sets, or microwave ovens containing PCB Capacitors) for his own use, rather than for resale, may sell that equipment after June 30, 1979.

Second, after July 1, 1979, anyone may process or distribute in commerce PCBs or PCB Items for purposes of disposal in accordance with the requirements of § 761.10. Because TSCA treats disposal separately from processing and distribution in commerce, the processing and distribution in commerce requirements generally are not intended to interfere with the disposal requirements. Section 761.30(c)(2) explicitly states that processing and distribution for purposes of disposal in accordance with § 761.10 may continue after July 1, 1979.

Third, PCBs or PCB Items may be exported for disposal purposes despite the general ban on export of PCBs and PCB Items in § 761.30(c). Section 761.30(c)(3) requires persons to notify EPA at least 30 days before they first intend to export PCB wastes. This provision is discussed further in section B.2. below.

1. Waste Oil Bans

Section 761.30(d) prohibits the use of waste oil containing any detectable concentration of PCBs as a sealant, coating, or dust control agent. Prohibited uses include road oiling, general dust

control, as a pesticide or herbicide carrier, and as a rust preventative on pipes. Waste oil is defined as used products primarily derived from petroleum, which include, but are not limited to, fuel oils, motor oils, gear oils, cutting oils, transmission fluids, hydraulic fluids, and dielectric fluids. In the proposed rule, "PCB Sealant, Coating, and Dust Control Agent" was defined (§ 761.2(cc), 43 FR 24813) and was included in the term "PCB" for the purpose of regulating these activities. Because the term "PCB Sealant, Coating, and Dust Control Agent" was deleted from the definition of "PCB" (see preamble section II.A.), it became necessary to specifically regulate these activities in § 761.30.

Persons who process, distribute in commerce, or use waste oil must assume it contains PCBs unless the waste oil has been tested and found to contain no PCBs. Batch testing of waste oils is permitted. Waste oils that contain detectable concentrations of PCBs less than 50 ppm may be used as a fuel, as a feedstock in the production of re-refined oils and lubricants, or for any other purpose except as a sealant, coating, or dust control agent.

The use of waste oil containing any detectable concentration of PCBs as a sealant, coating, or dust control agent is banned because these uses result in rapid, direct entry of PCB into the environment. For example, the run-off from road surfaces frequently goes directly to rivers or streams. Once in the environment, PCB enters the food chain, causing a number of adverse effects. The dumping of waste oil (e.g., in a field) is considered use as a dust control agent and is prohibited by this rule. Waste oil is also used to coat water pipes and as a carrier for pesticides and herbicides. These uses also result in substantial direct entry of PCBs into the environment and are prohibited. Although the PCB concentration in waste oil may be low, the large volume of waste oil that is used in these activities results in a large quantity of PCBs entering the environment. Approximately 8,500 pounds of PCB enter the environment annually just from road oiling activities (see the Versar Report).

B. Changes in § 761.30: Prohibitions

The following changes have been made to § 761.30:

1. Change in the Scope of the Manufacturing Ban

The proposed rule would have considered the manufacture (and importation) of PCB Articles and PCB Equipment as the manufacture and import of PCBs. This approach would have had the effect of prohibiting the production (and importation) of PCB Articles and PCB Equipment after January 1, 1979, under the provisions of section 6(e)(3)(A)(i) of TSCA. A large number of commentors argued that to consider the production of PCB Articles and PCB Equipment to be "manufacture" was inconsistent with TSCA and other rules promulgated under TSCA. In addition, it was argued that if these activities are considered to be "manufacturing" PCBs, the term "processing" would have no meaning, as almost all commerical activities using PCBs prior to final sale or end use would be manufacturing activities.

a. "Manufacturing" Versus "Processing" of PCB Items

After considering the comments, EPA reexamined the "manufacturing" versus "processing" issue and concluded that PCB Article and PCB Equipment production is "processing" of PCBs, not "manufacture" of PCBs. This conclusion is based on an analysis of the activities of manufacturing, processing, distribution in commerce, and use with respect to chemical substances. EPA determined that "manufacturing" a chemical substance involves only the actual creation of the chemical substance (or of a substance contaminated with PCBs). The other activities are distinguished from "manufacturing" because they involve the use of the already existing substance. "Processing" PCBs includes activities such as placing previously manufactured PCBs into capacitors or transformers. While these activities may be referred to as "manufacturing" of PCB Articles, they do not involve the "manufacture" of the PCBs, only the "processing" of PCBs. The "distribution in commerce" and "use" of PCBs generally coincides with the distribution and use of the PCB Articles and PCB Equipment. Thus, the ban of PCB "manufacture" applies solely to the manufacture of PCBs, as defined in § 761.2(s). Bans of all other activities, namely processing, distribution in commerce, and use, apply both to PCBs as a substance and PCB Items. This interpretation of the terms "manufacture" and "process" also accords with the manner in which Congress intended the requirements of section 6(e)(3) of TSCA to be "phased-in" over time.

The change in EPA's use of the terms "manufacturing" and "processing" is reflected in the definition of PCBs. The proposed definition of "PCB" and "PCBs" included both PCB Article and PCB Equipment (see § 761.2(q) at 43 FR 24813). The final rule changes the definition of "PCB" and "PCBs" in § 761.2(s) by applying these terms only to chemical substances (see preamble section II.A. for more detailed discussion). PCB Equipment and PCB Articles are no longer included in the definition of "PCB" and "PCBs" but are included in a separate term, "PCB Items", which is defined in § 761.2(x).

b. Manufacture and Import of PCB Items

The revised interpretation of "manufacture" and "processing" has two main effects. The first is to postpone the effective date of the prohibition under section 6(e)(3) of the manufacture of PCB Articles and PCB Equipment to July 1, 1979 (unless EPA grants an exemption under section 6(e)(3)(B) of TSCA for continuation of such activities beyond that date). The continued production of PCB Articles and PCB Equipment until July 1, 1979, must, however, be performed in a totally enclosed manner in order to avoid the prohibition on non-totally enclosed processing of PCBs of section 6(e)(2). As a practical matter, this means that production of PCB Articles will be prohibited after July 2, 1979, under section 6(e)(2) as a non-totally enclosed processing of PCBs. In general, PCB Equipment is produced in a totally enclosed manner and so this activity would not be prohibited until July 1, 1979. The practical effect of the change, then, will be to allow continued production of PCB Equipment (such as television sets and microwave ovens) until July 1, 1979 (see preamble section VIII below).

A second effect relates to the importation of PCB Articles and PCB Equipment; here the issues are more complex. The TSCA definition of "manufacture" includes importation (see section 3(7) of TSCA). This means that the importation of any PCB or PCB Item is equated with manufacture. A literal interpretation of this definition in implementing TSCA section 6(e)(3)(A)(i) would mean that no person would be able to import any PCB or PCB Item after [30 days after publication in the Federal Register]. This would create an inequity between domestic manufacturers and importers of PCB Items. Specifically, domestic manufacturers of PCB Items could continue to manufacture and distribute those PCB Items in commerce until July 1, 1979, when the ban under section 6(e)(3)(A)(ii) is effective, while importers would be prohibited from conducting the

same activity after [30 days after publication in the Federal Register].

The most straightforward way to eliminate this inequity is to delay the effective date of the prohibition on the importation of PCB Items until July 1, 1979. This approach would eliminate the inequity for importers of PCB Equipment but create a different inequity for the importers of PCB Articles. Domestic production of PCB Articles, such as PCB Capacitors and PCB Transformers, is banned as of [30 days after publication in the Federal Register] (even though such production is PCB processing) because this type of production cannot be performed in a totally enclosed manner. [Non-totally enclosed processing and other activities are prohibited after July 2, 1979, by section 6(e)(2) of TSCA.] If the import prohibition for PCB Articles is delayed, PCB Articles could be imported into the U.S. even though they could not be manufactured in the U.S. The continued importation of PCB Articles would increase both the disposal problem associated with PCB Capacitors and the problems associated with use and disposal of PCB fluids in transformers.

Because of the inequities and disposal problems associated with continued importation, EPA is banning importation of PCB Articles after July 2, 1979. Persons wishing to import PCB Articles may petition EPA for an exemption from this ban. This rule does permit continued importation until July 1, 1979, of PCB Equipment, such as television sets and microwave ovens, since these items can be manufactured domestically during this period as they involve "processing" PCB in a totally enclosed manner. The effect of this rule is essentially to treat domestic and foreign manufacturers of PCB Articles and PCB Equipment equally. Such equal treatment was intended and desired by Congress.

From a strict statutory perspective, any importation of PCBs in any form, including in PCB Items, is "manufacturing" of PCBs and prohibited after [30 days after publication in the Federal Register], by TSCA section 6(e)(2) and (3). Although domestic production of PCB Items is best described as PCB "processing", importation of such items is best described as importation of PCBs in the item. The alternative would be to wholly exclude such importation from the coverage of section 6(e), a manifest absurdity. But just as Congress obviously did not intend such exclusion, so too it did not intend discriminatory treatment. EPA, therefore, construes section 6(e) as authorizing it to impose parallel restrictions on PCB Item production and importation and this is what has been done.

While domestic manufacturers and importers both may continue to build or import PCB Equipment [but not PCB Articles] until July 1, 1979, EPA will strictly enforce the prohibition under TSCA section 6(e)(3)(A)(ii) of processing and distribution in commerce of PCBs and PCB Items, including PCB Equipment, after July 1, 1979. Accordingly, no one will benefit by creating stockpiles of these items in the next several months. The only exceptions to these July 1, 1979 prohibitions will be those activities for which EPA grants an exemption.

Any PCBs or PCB Items imported pursuant to this rule must comply with the import requirements and all other requirements of this rule.

2. Import and Export of PCBs and PCB Items for Disposal

The proposed rule would have prohibited any import or export of PCBs or PCB Items for any purpose. EPA has reviewed this proposed policy and has decided that because of the many potential advantages of an open border policy with respect to disposal of PCBs, that EPA will adopt such a policy for at least one year.

In theory, an open border policy would be advantageous to both the United States and foreign countries, especially Canada. Generators of PCB wastes would be able to select the PCB disposal site that offers the most reasonable transportation and disposal costs. The success of such a policy depends, however, upon the availability of facilities in other countries to safely dispose of PCB wastes. EPA is concerned that foreign disposal alternatives may not adequately destroy the PCBs and create a threat to human health and the environment in the United States.

To date, the United States has approved seven PCB disposal sites and is actively involved in evaluating other potential sites. Other nations have not made as much progress. If the United States were to adopt an open border policy without any qualifications, there may be no incentive for other nations to develop PCB disposal sites. The United States would probably receive a disproportionate share of the international PCB wastes. This disparity could overload existing U.S. capacity and impede public acceptance of PCB disposal sites.

The one year time limit on the open border policy will provide other nations an opportunity to establish PCB disposal sites. At the end of the one year period, EPA will examine the progress made by other nations in establishing and operating safe PCB disposal sites and determine if extension of the open border policy is appropriate.

The final rule, therefore, allows the import and export of PCB wastes for disposal for one year. All imported PCB wastes must be disposed of in accordance with Subpart B of this rule. In preparing this final rule, EPA has reviewed whether regulation of imported and exported PCB wastes for disposal should be accomplished under section 6(e)(1) of TSCA or under section 6(e)(3). While section 6(e)(3)(A)(i) could be read to allow regulation of the import of PCB wastes for disposal, section 6(e) treats PCB disposal as a separate matter under section 6(e)(1). Both the import and export of PCB wastes for disposal may be regulated under section 6(e)(1), which allows comprehensive regulation of the disposal of PCBs. Accordingly, EPA has elected to regulate import and export of PCB wastes for disposal under section 6(e)(1). Since the requirements governing disposal of PCB wastes must be complied with for all imported PCB wastes, no unreasonable risks should result. Moreover, proper disposal in this country provides protection against possible hazards from improper disposal elsewhere.

Other imports and exports of PCBs and PCB Items are regulated as elsewhere described in this preamble under sections 6(e)(2), 6(e)(3), and/or section 12. All imports and exports of PCBs and PCB Items remain subject to the applicable disposal and marking requirements under section 6(e)(1).

Under RCRA, EPA expects to establish a manifest system for hazardous wastes that will monitor the disposal of PCBs and other hazardous wastes imported into the U.S. This system should be in effect in 1980. No notification system for imports of PCB wastes for disposal will be established in this rule because of potential confusion with the forthcoming RCRA program. All importers of PCB wastes will be required to maintain records, as provided in Annex VI of this rule.

With respect to exports, § 761.30(c)(3) of this rule requires that persons exporting PCBs and PCB Items for disposal notify EPA at least 30 days before the first export of wastes. The initial notice should identity the owner of the waste, the expected annual volume of wastes to be exported, a description of the intended methods of disposal, the precautions to be taken to control release into the environment, and the identity of the receiver of the

wastes. Quarterly reports of actual waste shipments are also required. For each successive year, the volume of wastes to be exported, if any, must be estimated. These reports are required pursuant to the authority in section 6(e) and 12(a) of TSCA. Additional reports under section 12(b) of TSCA would not be required for the export of these wastes. Unlike other exports of PCBs, export for disposal under this rule will not present an unreasonable risk to the United States because of the controls on such export contained in the rule and the fact that such export will only be for the purpose of disposal or destruction of PCBs.

EPA will carefully monitor the results of allowing the import and export of PCB waste. One future alternative may be to allow disposal only in countries whose facilities meet certain criteria arrived at through bilateral agreements. Closing the United States border to shipments of PCB wastes at this time, however, could have serious adverse effects on the environment by making safe disposal of PCBs more difficult. In particular, barring import of PCBs for disposal could make export for disposal impossible and thereby eliminate what in many cases would be the most desirable disposal alternative. Many generators of hazardous waste materials located near the U.S.-Canadian border find that the nearest disposal site is in the other country. An open border policy will allow import and export of such wastes to continue and maximize the opportunities for appropriate disposal.

For a general discussion of exports of PCBs, see preamble section XI, below. Import or export of PCBs or PCB Items for purposes of disposal remain subject to the other provisions of this rule.

C. Other Issues

1. PCB Impurities and Byproducts

The prohibitions in § 710.30 include a prohibition of the "manufacture" of "PCB" or "PCBs" as defined in § 761.2(s). This prohibition applies to the deliberate production of PCBs whether in large quantities for use in transformers and capacitors or in small quantities for research. Furthermore, the prohibition applies to the manufacture of any substance or mixture that contains PCB at 50 ppm or greater, including PCB that is an intermediate or "impurity" or "byproduct", as defined by § 761.2(k) and (c), respectively. While the production of PCBs under such circumstances may not be intentional and may have no independent commercial value, section 6(e) of TSCA applies to *any* production of PCBs and, therefore, covers such activities. Similarly, processing, distribution in commerce, and use of PCBs which are impurities or byproducts are subject to sections 6(e)(2) and (3) of TSCA.

The proposed rule prohibited activities involving PCB intermediates, impurities and byproducts under sections 6(e)(2) and (3) of TSCA. In response to questions on this point at the informal hearing, EPA made clear that such activities are subject to the rule. This discussion is intended to clarify further that the manufacturing, processing, distribution in commerce, and use bans of sections 6(e)(2) and (3) of TSCA apply whenever PCBs are present as intermediates, impurities, or byproducts at a concentration of 50 ppm or greater.

Some manufacturers commented that they interpreted the proposed rule to allow the creation of PCBs in concentrations greater than 50 ppm as an intermediate, impurity, precursor, or byproduct in a reaction process as long as the PCB concentration in any final byproduct or end product is below 50 ppm. The intent of the proposed rule was to prohibit such manufacture. All manufacturing or processing operations must be adequately controlled so that PCBs are not present at concentrations greater than 50 ppm at any point in the manufacturing process except when concentrating waste streams, as discussed below.

As discussed earlier in section II.B. of this preamble, several processes for the manufacture of chlorinated organic substances unintentionally create PCBs. EPA is aware of several cases in which the PCBs appear as impurities at concentrations greater than 50 ppm in the final product. To reduce the level of PCBs that are impurities in these chemical products, selection of ingredients and process techniques usually have to be altered. In some cases, more careful quality control of the production operations can help avoid unwanted impurities and byproducts.

Two groups of chemical products are most affected by controls on impurities and byproducts: pigments and other chlorinated chemicals. The impact on pigments is better understood because the industry became aware of the problem earlier than other potentially affected industries and provided extensive information and comments on the impact of the proposed rule. The PCB contamination of pigments is discussed further in preamble section IX.G. The impact on the production of other organic chemicals is not as well known. Only a few companies commented on the proposed rule, and available data are limited.

The manufacture of PCBs as intermediates, impurities and byproducts almost always involves some human and environmental exposure. Unless the PCBs are created in a totally enclosed, continuous reaction process, production workers will be exposed and there may be PCBs in air emissions and other effluents. The processing, distribution in commerce, and use of the chemicals containing PCBs will also cause exposure to PCBs among process workers and others who handle and use the chemicals. Controls that exist on worker exposure and/or handling and disposal practices are usually related to the primary chemical, not the PCBs contained in the chemical, which means that exposure to the PCBs often is uncontrolled.

As explained below, persons may petition for an exemption from this manufacturing ban pursuant to the Agency's interim procedures (43 FR 50905, November 1, 1978). In addition, the processing, distribution in commerce, and use of PCBs in a non-totally enclosed manner is prohibited after July 2, 1979, unless authorized and *all* processing and distribution of such PCBs as byproducts and impurities are prohibited after July 1, 1979, unless a specific exemption from the ban is granted by EPA.

Section 761.30(c)(2) provides that PCBs may be processed and distributed in commerce for purposes of disposal in accordance with the requirements of § 761.10. This provision is intended to apply to the concentration of waste streams and allow the concentration of PCBs to exceed 50 ppm in waste stream as long as the waste stream is disposed of in accordance with this rule. The following illustrates this. A product is manufactured that contains 20 ppm PCB. It is then processed to reduce the PCB concentration to 5 ppm. As a result of the processing, a waste stream is created that contains 100 ppm PCB. As long as this waste stream is disposed of in accordance with this rule, the manufacturer does not have to apply for an exemption. If the initial product contains more than 50 ppm PCB, however, the manufacturer must apply for an exemption from the manufacturing prohibition. Section 761.30(c)(2) only applies to byproducts or other wastes that are intended for disposal.

To clarify the relationship of the prohibitions of sections 6(e) (2) and (3) to intermediates, byproducts, and impurities, the terms "manufacture for commercial purposes" and "process for

commercial purposes", defined in § 761.2 (bb) and (dd) of the proposed rule, have been deleted. These definitions were intended to exclude from the rule a very limited number of activities (e.g., the chlorination of municipal sewage discharges) that may result in or involve PCB concentrations below 50 ppm. In the applicability section [§ 761.1(b)] the final rule states that unless otherwise specified in the rule itself, the term "PCB", as used in the rule, is intended to include only substances or combinations of substances with 50 ppm or greater PCBs. Accordingly, it should be clear that such activities are not within the scope of the rule. As a consequence, the definitions concerning "commercial purposes" are not necessary and may be confusing, especially because § 6(e) is not limited by the statute to activities "for commercial purposes".

2. Disposal of Small PCB Capacitors

The PCB Disposal and Marking Rule excluded most small PCB Capacitors, primarily those contained in small appliances and fluorescent light ballasts, from special disposal requirements. These small capacitors may be disposed of as municipal solid waste. Only small capacitors owned by persons who manufacture capacitors or PCB Equipment are subject to special disposal requirements.

These requirements are not changed by this final rule. EPA has not identified a feasible regulatory alternative that would result in disposal of a substantial portion of the remaining small PCB Capacitors in facilities other than municipal solid waste sites. In addition, the random disposal of PCB Equipment in municipal solid waste sites by householders and other infrequent disposers does not present an environmental hazard. Accordingly, EPA has no current plans to further regulate the disposal of these small capacitors.

However, the disposal of large quantities of small PCB Capacitors by commercial and industrial activities poses a somewhat larger environmental risk. Therefore, EPA encourages commercial and industrial firms that use and dispose of large quantities of small PCB Capacitors to establish voluntarily a collection and disposal program that would result in the waste capacitors going to chemical waste landfills or high temperature incinerators. Proper disposal of small PCB Capacitors is mandatory for all manufacturers of PCB Equipment. This would result in better environmental control than normal municipal solid waste disposal by preventing large concentrations of capacitors from being placed in sanitary landfills. It should also be noted that any PCB spillage that might result from failure of or from damage to a large number of small capacitors could be considered as illegal disposal, which is the case for other spills of PCBs.

3. State Preemptions

In the Disposal and Marking Rule, EPA stated that State and local requirements regarding disposal of PCBs are exempt from Federal preemption as long as the requirements are not less restrictive than those prescribed by EPA. EPA took this position to avoid interfering with existing PCB disposal requirements in Michigan, Oregon, Indiana, Minnesota, and Wisconsin, where the State requirements are at least as stringent as the Federal requirements.

In the past several months, EPA has become concerned that actions by local and State governments to prohibit disposal of PCBs and other substances in their jurisdictions could frustrate the national goal of properly disposing of hazardous chemical substances. While EPA has always believed that States should have the right to set pollution control standards more restrictive than the Federal standards, it would be a matter of national concern if this principle were to become the basis for refusal by States to share in the national responsibility for finding safe means for the proper disposal of hazardous substances. EPA has decided not to make any changes in its PCB preemption policy at this time. However, EPA will be considering the preemption issue further in its administration of the Resource Conservation and Recovery Act.

VII Relationship of Section 6(e)(2) to Section 6(e)(3)

Section 6(e)(2) of TSCA prohibits manufacturing, processing, distribution in commerce, and use of PCBs after January 1, 1978, unless conducted in a totally enclosed manner. Section 6(e)(2)(B) provides that the Administrator may, by rule, authorize continuation of an otherwise prohibited activity if the Administrator finds that the activity "will not present an unreasonable risk of injury to health or the environment".

Section 6(e)(3) prohibits *all* manufacturing, processing, and distribution in commerce of PCBs (including activities conducted in a totally enclosed manner). The manufacturing prohibition is effective on July 2, 1979 and the other prohibitions are effective on July 1, 1979. Section 6(e)(3)(B) authorizes the Administrator to exempt activities from section 6(e)(3) prohibitions if he finds that the activity will not result in an unreasonable risk to health or the environment *and* that good faith efforts have been made to develop a substitute for the PCB.

It is obvious that, with respect to manufacturing, processing, and distribution in commerce, the provisions of section 6(e)(2) are entirely duplicative of the corresponding provisions of section 6(e)(3) once these provisions of section 6(e)(3) become effective. For example, once the manufacturing prohibition of section 6(e)(3) is effective the manufacturing prohibition of section 6(e)(2) adds nothing whatever to protection of health and the environment since section 6(e)(3) is broader in coverage and somewhat more restrictive in terms of waivers (exemptions). Similarly, on July 1, 1979, the section 6(e)(3) prohibitions of processing and distribution in commerce entirely supersede the corresponding prohibitions in section 6(e)(2). It is clear that with respect to manufacturing, processing, and distribution in commerce of PCBs, Congress intended section 6(e)(2) as only an interim measure. Moreover, to continue to implement the section 6(e)(2) prohibitions on these activities after the corresponding prohibitions of section 6(e)(3) are effective would result in waste and confusion with absolutely no increase in protection from PCBs.

Therefore, EPA will consider the prohibitions in section 6(e)(2) to be superceded and no longer in effect when the corresponding prohibitions of section 6(e)(3) for each PCB activity go into effect. What this means is that the section 6(e)(2) prohibition on manufacturing of PCBs is considered to be no longer in effect now that the section 6(e)(3) prohibition on manufacturing is in effect. The provisions of section 6(e)(3) will be considered the exclusive authority under section 6(e) to prohibit PCB manufacturing. However, the section 6(e)(2) prohibitions on processing, distribution in commerce and use *are* effective as of July 2, 1979. The processing and distribution in commerce prohibitions of section 6(e)(2) will be considered to continue in effect until July 1, 1979, when they will be superceded by section 6(e)(3). Because the section 6(e)(2) *use* prohibition has no counterpart in section 6(e)(3) it remains in effect indefinitely.

VIII. Authorizations and Exemptions

A. Explanation of Authorizations and Exemptions

Section 6(e) of TSCA provides for two types of exceptions to the prohibitions of PCB activities: authorizations and exemptions. The purpose of this discussion is to clarify the distinctions between these exceptions and explain EPA's policy to simplify implementation by having a combined procedure for authorizations and exemptions.

An authorization is an exception to the TSCA section 6(e)(2) January 1, 1978

ban of non-totally enclosed activities. To authorize an activity, EPA must find that continuation of the activity does not present an unreasonable risk of injury to human health or the environment. Since the intent of the law is for PCB activities to be banned, it must be clearly evident that the risk from an activity is not unreasonable. In the absence of such evidence, an activity is banned.

Although not subject to section 6(c)(1) of TSCA, EPA used the criteria in section 6(c)(1) to determine whether or not the risk from a non-totally enclosed activity is "unreasonable". These factors include: (1) the effect of such substance or mixture on health and the magnitude of exposure of human beings to such substance or mixture, (2) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance and mixture, (3) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and (4) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

An exemption is an exception to either (1) the TSCA section 6(e)(3)(A)(i) January 1, 1979 complete ban of all PCB manufacture or (2) the TSCA section 6(e)(3)(A)(ii) July 1, 1979 complete ban of all PCB processing and distribution in commerce. To grant an exemption, EPA must determine both that an unreasonable risk is not present and that good faith efforts have been made to develop substitutes for the PCBs used in the activity to be exempted.

In addition to the difference in criteria for granting these two exceptions, there are several other important distinctions between an authorization and an exemption.

First, an authorization may be valid for any time period that EPA finds appropriate, but an exemption is only valid for one year and must be granted annually through a formal rulemaking. However, the complete bans of manufacture, processing, and distribution in commerce contained in section 6(e)(3) of TSCA supercede the corresponding bans contained in section 6(e)(2), as explained above. Since EPA must make more stringent findings under section 6(e)(3) than under section 6(e)(2), there is no reason to require petitioners to have an authorization if they have been granted an exemption for the same activity (see preamble section VII). Therefore, a PCB processing or distribution in commerce activity cannot be authorized after July 1, 1979. After this date, persons who process or distribute PCBs *must* petition for and be granted an exemption annually by EPA in order to continue these activities.

Second, EPA may propose and promulgate an authorization without a specific request from the persons who will benefit from the authorization. This is not the case for exemptions, which must be petitioned for by those who would benefit from them. The requirements regarding exemption petitions are discussed below.

Third, because section 6(e)(3) of TSCA completely bans the manufacture, processing, and distribution in commerce of PCBs and not the use of PCBs, all PCB use activities are covered only by section 6(e)(2) of TSCA. This means that a use activity never needs an exemption, and, therefore, must fall into one of three categories: (1) totally enclosed with no need for an authorization; (2) not totally enclosed and authorized; or (3) not totally enclosed and not authorized. Only the third group of use activities is prohibited by this rule. Activities that are included in the first two categories are described in section IX of the preamble, while those in the third category are described in section X.

1. Manufacturing Exemptions

No exemptions are promulgated in this rule. These are being handled in a separate rulemaking. The rulemaking procedures for PCB manufacturing exemptions were printed in the Federal Register on November 1, 1978, at page 50905. Examples of manufacturing activities that require an exemption to continue after July 2, 1979, include, but are not limited to: the manufacture of PCB for use in transformers or capacitors; the manufacture of PCB in small quantities for research and development; the manufacture of PCB for use in microscopy; the manufacture of PCB as an impurity or byproduct in or associated with other chemicals (e.g., pigments); and the importation of PCBs, including bulk form or in mixtures and PCB Articles for any purpose other than disposal. As discussed in section VI.B.1 above, importation of PCB Equipment may continue until July 1, 1979.

Persons who have submitted petitions for a manufacturing exemption in accordance with the November 1, 1978, rulemaking procedures will not be subject to the PCB manufacturing ban until EPA acts upon their petitions (see 44 FR 108, January 2, 1979). Many of the petitions are moot because of changes in the final rule that permit the manufacture of PCB Equipment until July 1, 1979. These manufacturers are required to comply with all other applicable portions of this rule, such as requirements for disposal, marking, storage, and recordkeeping.

2. Processing and Distribution in Commerce Exemptions

In the near future, EPA will issue procedures for applications for exemptions from the processing and distribution bans, which are effective July 1, 1979. The procedures may incorporate revisions from those applicable to manufacturing exemptions. Under the existing procedures, each person who wants an exemption must submit a separate petition. EPA is considering revising this requirement to reduce the number of individual petitions because substantially more persons will be affected by the processing and distribution bans than by the manufacturing ban. In addition, EPA anticipates that the petitions will fall into several principal categories. Instead of requiring petitioners to duplicate efforts in cases where their requests are essentially identical, EPA may accept certain class petitions submitted on behalf of more than one petitioner. Trade associations for example, may be permitted to develop a single petition, as appropriate, on behalf of their members, or manufacturers or processors may be permitted to petition on behalf of persons distributing their products.

Activities that will require an exemption from the July 1, 1979, processing and distribution in commerce bans include, but are not limited to: the manufacture of PCB Equipment; the sale of PCB Equipment; the sale of PCB Capacitors; the processing and distribution in commerce of PCBs for servicing PCB Transformers, PCB-Contaminated Transformers, railroad transformers, mining equipment, electromagnets, and hydraulic equipment; the processing and distribution in commerce of pigments and other chemicals that contain 50 ppm or greater PCB; and the processing and distribution in commerce of PCBs for microscopy and in small quantities for research and development.

B. General Changes in § 761.31: Authorizations

Three changes have been made from the proposal that affect all authorizations. These changes are discussed here while changes in individual authorizations are discussed in section IX of this preamble.

1. Reporting and Recordkeeping Requirements

Virtually all reporting and recordkeeping requirements have been deleted from § 761.31. Several proposed authorizations would have required persons to submit reports to EPA and to retain records for a variety of non-totally enclosed activities. EPA recognizes the burden on manufacturers and others who would have been required to prepare and maintain these records and has determined that these requirements are largely unnecessary, because most of the information will be submitted in the annual petitions for

exemptions. The only exceptions to this policy are owners of railroad transformers, hydraulic systems, and heat transfer systems who must retain records of the PCB analyses that they are required to perform.

2. Length of Use Authorizations

Unlike all other activities that may be subject to an authorization under TSCA section 6(e)(2)(B), use activities are not prohibited under TSCA section 6(e)(3)(A). Accordingly, there is no automatic limit to the length of use authorizations. In deciding how long to authorize each use, EPA believes that it should have the opportunity to review each use in a timely way to ensure that there is no unreasonable risk associated with its continuation. In addition, improved technology or development of new PCB substitutes could reduce the need for the authorization. Accordingly, EPA proposed a five-year limit on most use authorizations. The final rule has generally extended this period to five and one-half years so that the expiration date for authorizations will coincide with the expiration of the processing and distribution exemptions. This change will permit EPA to combine administrative procedures, and thereby reduce administrative costs. Several use authorizations have shorter periods as explained under section IX below.

Since, as noted earlier, the processing and distribution prohibitions of TSCA section 6(e)(2) expire on July 1, 1979, authorizations for these activities will expire on the same date. Thereafter, these activities will be subject to TSCA section 6(e)(3) and will require annual exemptions to continue.

3. Changes in § 761.46: Annex VII

Annex VII, which provided for PCB Exposure and Control Plans, has been deleted. The proposed Annex would have imposed special requirements on persons authorized to continue activities in other than a totally enclosed manner. Specifically, Annex VII would have required detailed plans for handling PCBs, preventing spills, and otherwise reducing human and environmental exposure. The final rule no longer requires such plans because EPA is developing similar requirements under section 311 of the Clean Water Act (see proposed Spill Prevention Control and Countermeasure Plan Rule, 43 FR 39276, September 1, 1978).

IX. Specific Authorizations

Activities that are regulated by this rule and the effect of the rule on these activities are summarized in Table 3. The data referred to in this section are in the Versar Report, which is available from EPA's Office of Industry Assistance at the address given at the beginning of the preamble.

In relationship to activities regulated by this rule, dilution of PCBs is prohibited unless otherwise specifically provided for in the rule. This prohibition is necessary to prevent an unreasonable risk of human and environmental exposure to PCBs. If dilution was permitted, it would be possible to dilute all PCB liquids so that their disposal would no longer be controlled by this rule. This is clearly an unacceptable alternative since it could result in all existing PCBs entering the environment. However, for several authorized activities, dilution of PCBs is essential to the intended performance of the activities and is not performed with the intent of evading the disposal requirements for PCBs. For these activities only, dilution of PCBs is permitted and the disposal of liquid is governed by its final PCB concentration rather than its beginning PCB concentration. The following authorized activities are permitted to dilute PCBs: (1) Servicing of transformers (with restrictions); (2) Servicing of railroad transformers; (3) Use in heat transfer systems; (4) Use in hydraulic systems; (5) Processing and use of pigments; and (6) Use in natural gas.

The exemption review process for the manufacturing, processing, and distribution in commerce bans will also evaluate the need for dilution in the performance of PCB activities. Any decisions to permit dilution in exempted activities will be stated in the exemption, if granted.

A. Servicing Transformers (Other Than Railroad Transformers)

EPA considers the use of transformers as use in a totally enclosed manner. Accordingly, the use of PCBs in transformers may continue indefinitely. In addition, in this rule EPA authorizes the routine servicing of PCB Transformers (as defined in § 761.21(y)) and the routine servicing and rebuilding of PCB-Contaminated Transformers (as defined in § 761.2(z)) subject to certain conditions. The rule also authorizes the processing and distribution in commerce of PCBs for servicing transformers. The following is a summary of EPA's findings and reasoning behind these decisions.

Most large electrical transformers are designed to operate with the current-carrying coils immersed in a dielectric fluid. In the past, most transformers used in buildings or other critical fire control locations were filled with non-flammable dielectric fluids containing PCBs as a major component. These PCB dielectric fluids are known by the generic term "askarel" and have been in common use since the 1930's. Currently, some 140,000 transformers, or less than one percent of all large electrical transformers in service, use askarel dielectric fluid.

PCB Ban Rule Actions

Activity	Totally enclosed	Authorized by rule [1]	Prohibited by rule	Exemption required	Type of PCB activity [2]
PCB Transformers	U (except servicing).	P, D, U (servicing).	M, Rebuilding	P, D	PCB.
PCB-Contaminated Transformers	U (except servicing).	P, D, U (servicing).		P, D	Contamination.
Railroad Transformer		P, D, U	M	P, D	PCB & Contamination.
Mining Equipment		P, D, U—1/1/82.	Miner Rebuilding (1/2/80).	P, D	PCB.
Heat Transfer		U	M, P, D		Contamination.
Hydraulic Systems		P, D, U	M	P, D	Contamination.
Carbonless Copy Paper		U—unlimited	M, P, D		PCB.
Pigments		P, D, U—1/1/82.	M	M, P, D	Contamination.
Electromagnets	U (except servicing).	P, D, U (servicing).	M, Rebuilding	P, D	PCB.
Natural Gas Pipeline Compressors		U—5/1/80	M, P, D		Contamination.
Small Quantities for R&D		P, D, U	M	M, P, D	PCB.
Microscopy		P, D, U	M	M, P, D	PCB.
PCB Capacitors	D, U		M, P	D	PCB.
PCB Equipment	M, P, D, U			P, D	PCB.
Process Contamination			M, P, D, U	M, P, D	Contamination.
Imports & Exports (except for disposal)			M, P, D	M, P, D	PCB & Contamination.
Dust Control, Sealants & Coatings (from waste oil with *any* PCB).			M, P, D, U		Contamination.

[1] Unless otherwise noted, all authorizations expire July 1, 1984. Processing and distribution in commerce require exemptions after July 1, 1979.

[2] "PCB" indicates use of "pure" PCBs (e.g., askarel dielectric fluids) while "Contamination" indicates PCB contamination at concentrations greater than 50 ppm in non-PCB substances or mixtures from previous use of "pure" PCBs.

Abbreviations: M—Manufacturing, P—Processing, D—Distribution in Commerce, U—Use.

A transformer is essentially a large, sealed can. The only time the can is deliberately opened is when the transformer requires certain types of servicing. Except in the event of a catastrophic failure or other extraordinary circumstance, use (except servicing) of transformers is performed in a totally enclosed manner and, as such, does not require an authorization. Under this rule, use of PCBs in transformers may continue indefinitely because this is a totally enclosed use.

1. General Discussion of Transformer Servicing

Servicing of transformers does result in exposure to PCBs. There are two general categories of servicing: routine servicing and rebuilding. Routine servicing includes testing the dielectric fluid, filtering the fluid, and replacing gaskets. Routine servicing often requires the removal of some dielectric fluid and then the return, or replacement, of that fluid. These activities result in some human and environmental exposure, but the exposure is usually limited to exposure of workers to small quantities of PCB. Good management practices and protective clothing should result in only very low levels of exposure to PCBs during routine servicing.

Rebuilding occurs after a transformer has failed or after an inspection indicates that it will soon fail. Rebuilding is an open process that involves draining the transformer, removing and disassembling the core, reworking the coil or rewinding a new coil, reassembling the core, and refilling the transformer with new fluid. Unless extraordinary precaution is taken, the shop personnel responsible for rebuilding the transformer are exposed to PCBs since the inner parts of the transformer are saturated with PCBs. Volatilization of the PCBs and leaks from both the transformer and PCB handling result in environmental exposure to PCBs.

Worker exposure during rebuilding can be moderated by protective equipment, but is inevitably greater than the exposures during routine servicing. Volatilization is difficult to control because of the large surface area exposed. Unless carefully controlled, the leaks may contaminate work areas and storage yards and may reach watercourses through uncontrolled runoff and drainage systems. Cleaning the inner surfaces of the transformers with solvents during the rebuilding process, cleanup of spillage and drippings, and scrapping of unserviceable components all increase the production of liquid and non-liquid PCB wastes. In addition, the old coil must be disposed of separately from the casing, potentially increasing the environmental exposure to PCBs.

2. PCB Transformers

In developing the proposed rule, EPA considered three principal options for PCB Transformers: (1) prohibit both routine servicing and rebuilding; (2) permit routine servicing but prohibit rebuilding; and (3) permit both routine servicing and rebuilding. Option 1 would result in the greatest reduction of potential PCB exposure. Prohibition of routine servicing would, however, probably significantly increase the chances of catastrophic transformer failure because of inadequate maintenance. This hazard and the resulting exposure to PCBs may present far greater risks to health and the environment than that associated with the minimal PCB exposure during routine servicing. Option 3 could result in significant human and environmental exposure to PCBs from rebuilding transformers, as explained above. For these reasons, EPA has chosen a course of action based upon Option 2, permitting routine servicing but prohibiting rebuilding of PCB Transformers.

Routine servicing will result in minimal exposures to PCBs and allow the use of most existing transformers to continue through their useful lifetimes. EPA has concluded that this activity does not pose an unreasonable risk to human health or the environment. However, any servicing (including rebuilding) of PCB Transformers that involves removing the coils from the casing is prohibited by the rule. This prohibition will cost about $12 million the first year and steadily less each year thereafter. Removing the coils substantially increases PCB exposure. Considering the PCB exposure that would result if such servicing (including rebuilding) was permitted, EPA believes that these costs are justified by the increased risks of harm to human health and the environment and concludes that such servicing of PCB Transformers presents an unreasonable risk.

3. PCB-Contaminated Transformers

As explained below, rebuilding transformers with less than 500 ppm PCB is permitted. Because of the relatively low concentrations of PCBs, EPA believes that the risks of further contamination of the environment with PCBs due to such rebuilding will be negligible. Because these transformers comprise over 99% of all large electrical transformers, the economic impact of a rebuilding prohibition on transformers with less than 500 ppm PCBs could be extremely high. Comparing these potential costs to the relatively low threat to human health and the environment under the conditions required under the rule, EPA concludes that this activity should be authorized to continue because it does not pose an unreasonable risk to human health or the environment.

Unless there is reason to believe a transformer contains PCB (askarel) dielectric fluid or otherwise has 500 ppm PCB or greater, it may be assumed to have 50 to 500 ppm PCB. In practical terms, this means that mineral oil transformers need not be tested to determine whether they contain more than 500 ppm PCB. Available information indicates that virtually no mineral oil (non-askarel) dielectric fluid will be contaminated with PCBs above 500 ppm. Even if a small percentage of such fluid might contain somewhat more than 500 ppm PCB, EPA does not believe that the cost of testing needed to identify fluids with these slightly greater amounts is justified. Specifically, there are some 35 million transformers that would be subject to such a testing requirement. With each test costing between $50 and $100, the total cost of such testing would be as great as $3.5 billion. The additional health or environmental benefits that may result from requiring such testing and applying more stringent requirements in those few cases with more than 500 ppm would be extremely small compared to these testing costs.

For all practical purposes, testing of mineral oil dielectric fluid will only be used to determine whether the mixture contains less than 50 ppm PCB and is therefore exempt from the disposal requirements for mineral oil with over 50 ppm PCB. No testing is needed if the mineral oil will be burned in a high efficiency boiler or disposed of in any other way permitted for mineral oil contaminated with PCBs up to 500 ppm.

Many commentors questioned whether they would have to test the fluid from each transformer to determine the level of PCB contamination. Under the final rule, because such testing is optional, EPA anticipates that most persons will instead assume that the transformer contains between 50 ppm and 500 ppm PCB. If a person chooses to test, the final rule permits collection of mineral oil dielectric fluid into a single tank from more than one PCB-Contaminated Transformer. The mixture of fluids can then be sampled in a manner that reasonably represents the composite contents to determine PCB concentrations. (See preamble sections II.C and III.E above.) Draining a PCB

Transformer into such a tank is prohibited.

4. Rebuilding PCB Transformers

The transformer service industry and several transformer owners commented that PCB Transformer rebuilding should be permitted. The industry was particularly concerned with the economic impact on owners of specially designed transformers. Because of the time required to build a new transformer on special order, a prohibition of rebuilding PCB Transformers could significantly disrupt their operations if a transformer should unexpectedly fail. However, some transformer failures are so extensive that the transformer cannot be rebuilt. In these instances, the transformer owner must do without a transformer until it can be replaced with either a new or used transformer. Even when a failed transformer can be rebuilt, the transformer owner still must do without a transformer for the length of time required to rebuild the transformer. In both situations, the transformer owner must either operate at a reduced output or shut-down for some period of time. This may cause some economic hardships for owners of transformers; however, considering the substantial human exposure during rebuilding, the Agency believes that exposure to PCBs from rebuilding presents an unreasonable risk.

The other changes in the final rule, however, will reduce some of the economic impact on transformer users. The final rule permits the reclassification of PCB Transformers as PCB-Contaminated Transformers if they have been drained and refilled with non-PCB dielectric fluid and if they are tested and found to contain less than 500 ppm PCB after at least three months of in-service use. Three months is the minimum amount of time necessary to ensure that the PCBs trapped in the interior parts of the transformer leach out into the dielectric fluid. After reclassifying a PCB Transformer to a PCB-Contaminated Transformer in this way, an owner would be permitted to rebuild that transformer. This reclassification option reduces the risk of disruption of operations that could result from the prohibition of rebuilding PCB Transformers.

If a PCB Transformer owner takes advantage of the reclassification option described above and converts it to a PCB-Contaminated Transformer, the transformer could be rebuilt. The alternative of rebuilding has several economic advantages. In general, rebuilding will be cheaper than replacement. In addition, the production losses will probably be less if a failed transformer can be rebuilt rather than replaced. On the other hand, rebuilding PCB Transformers may result in a substantial increase in human and environmental PCB exposure. Considering these factors, EPA has decided to permit rebuilding but only of PCB-Contaminated Transformers. To rebuild the PCB Transformer the owner would first have to reduce the concentration of PCBs to less than 500 ppm according to the schedule contained in § 761.31(a)(5) and then rebuild.

5. Contents of Authorization

The previous discussion explains EPA's rationale for authorizing the servicing of transformers and the processing and distribution in commerce of PCBs for such servicing. The authorization, contained in § 761.31(a), is valid for persons who service their own transformers until July 1, 1984. Persons who process or distribute PCBs in conjunction with servicing transformers must be granted an exemption by EPA to continue these activities after July 1, 1979.

The authorization for servicing (including rebuilding) is subject to the following six conditions. First, regardless of its PCB concentration, dielectric fluid containing less than 500 ppm PCB that is mixed with fluids containing 500 ppm or greater PCB must not be used as dielectric fluid in any transformer. This condition is intended to prevent deliberate dilution of PCBs. Dielectric fluid from PCB-Contaminated Transformers may be assumed to have less than 500 ppm. Second, persons servicing or rebuilding PCB-Contaminated Transformers must use dielectric fluids that contain less than 500 ppm PCB. Third, any servicing (including rebuilding) of PCB Transformers that requires the removal of the transformer coil from the transformer casing is prohibited. Fourth, PCBs removed in servicing or rebuilding must be captured and either reused as dielectric fluid or disposed of in accordance with the requirements of Subpart B. Fifth, a PCB Transformer may be converted to a PCB-Contaminated Transformer, as described above. Sixth, any PCB dielectric fluid that is used to service or repair any PCB Transformer must be stored in accordance with the storage for disposal requirements of Annex III (§ 761.42 of this rule). This requirement is intended to minimize the possibility of spills and other accidental releases of PCBs in the environment as they are stored prior to use. Finally, any person who wishes to process and distribute in commerce PCBs for purposes of servicing transformers after July 1, 1979, may do so only if granted an exemption by EPA. Persons may continue to service transformers that they own without such an exemption.

B. Use and Servicing of Railroad Transformers

Transformers in approximately 1,000 electric railroad locomotives and self-powered cars operated in the northeastern United States by Amtrak, Conrail and five intracity transit authorities contain PCB fluid. PCB fluids are frequently spilled onto roadbeds when these transformers overheat and when rocks and debris damage these transformers. Workers and other persons near rail lines are potentially exposed to PCBs as a result of these spills. In addition, runoff from roadbeds probably contains increased PCB concentrations. PCBs are also volatilized during overheating and servicing. PCB exposure from servicing operations is similar to non-railroad transformer servicing and is laregely confined to service shops. Because of the human and environmental exposure to PCB that results from these activities, neither the use nor the servicing of railroad transformers is considered to be totally enclosed.

EPA considered various regulatory options for PCB-containing railroad transformers in implementing section 6(e) of TSCA. In proposing the rule, EPA assumed that the 1,000 railroad transformers could not be immediately replaced without an unacceptably severe curtailment of railroad service, especially in the Northeast Corridor, and attendant adverse economic and social consequences. The proposed rule would have authorized the use of the transformers if PCB concentrations were lowered to four percent in 15 months and then to 1,000 ppm in 36 months. In addition, the proposed authorization would have allowed servicing or rebuilding if non-PCB dielectric fluid was used. While the proposal would not have disrupted service, the affected railroad and transit companies would have had to invest an estimated $12.2 million over a three-year period to comply.

The affected parties criticized the timetable for lowering PCB concentrations. A recently initiated study of the safety of PCB-containing railroad transformers that have been refilled with non-PCB fluids is not expected to be completed until late 1979. The comments emphasized the importance of first assessing the feasibility of refilling with respect to

transformer performance and potential hazards from explosion and fires as a result of the use of alternate fluids. Some comments also questioned whether a residual concentration of four percent PCB could be routinely achieved by refilling. These comments stated that a slightly higher level of six percent could be met on a routine basis. Other comments explained that, consistent with the Railroad Revitalization and Recovery Act of 1976, the Northeast Corridor railroads are changing the power supply specifications in mid-1981. Accordingly, some transformers are scheduled to be replaced and these comments suggested that to require the refilling of these transformers would impose a needless cost. As explained below, the 1981 date has changed.

The final rule takes these comments into account and authorizes continued use and servicing (including rebuilding) of these transformers as a non-totally enclosed use until July 1, 1984, subject to requirements that EPA believes will promote conversion to other types of transformers or dielectric fluids at the earliest feasible time. Persons may process or distribute PCBs in conjunction with servicing railroad transformers but must be granted an exemption by EPA to continue these activities after July 1, 1979. EPA is requiring that railroad transformers contain no more than six percent PCB by January 1, 1982, about 21 months later than proposed. This will give EPA more time to evaluate the safety of refilling these transformers with non-PCB fluid and will substantially reduce the costs of compliance. These transformers must either be replaced or be drained, flushed, and refilled with non-PCB fluid by that deadline. Before than, the use of PCB dielectric fluid for servicing (including rebuilding) railroad transformers is authorized. After that date, railroad transformers may only be serviced with fluid containing 6 percent PCBs or less.

By January 1, 1984, the concentration of PCBs in the transformers must not exceed 1,000 ppm. This is approximately 18 months later than proposed. EPA believes that the environmental and health risks that may be associated with continued use of PCB in these transformers over this period are outweighed by: (1) the yet undetermined safety risks of fire and explosion that may be associated with use of non-PCB fluid in refilled transformers; (2) the approximately $90 million cost that would be imposed if immediate conversion or replacement was required; and (3) the additional costs resulting from the disruption of critical transportation services. Therefore, EPA finds that this activity, as authorized, does not present an unreasonable risk.

Railroad transformers must be tested for PCBs immediately after the completion of any servicing conducted for the purpose of reducing the PCB concentration in the transformer's dielectric fluid and between one and two years after such servicing. Records of the results of this testing must be retained until January 1, 1991, which is five years after the last testing requirement of this rule.

EPA estimates that the total cost of complying with the final rule will be no more than $12.2 million over a five year period. Although comments indicated that some of the equipment will have been scrapped as a result of the planned change-over in mid-1981, the Department of Transportation has recently announced that this change-over will not occur until at least the Fall of 1983. The requirement to refill these transformers by January 1, 1982 provides at least 20 months of use before the change-over forces the older units out of service. Accordingly, these units could be in use for well over two years before phase-out would be required.

C. Use and Servicing of Mining Equipment

Under this authorization, PCBs may be used in mining equipment, including for purposes of servicing (including rebuilding) until January 1, 1982. However, rebuilding of continuous miner motors is permitted only until December 31, 1979. In addition, PCBs may be processed and distributed in commerce for purposes of servicing mining equipment in a manner other than a totally enclosed manner until July 1, 1979. After July 1, 1979, persons who process and distribute in commerce PCBs in conjunction with the servicing or use of mining equipment may do so only if granted an exemption by EPA to continue these activities.

There are two types of mining equipment that use PCBs as a coolant in electric motors: loaders and continuous miners. Although the manufacture of mining equipment using PCB fluids has ceased, approximately 517 such motors in loaders and 72 such motors for continuous miners are either in use or in existing inventories. PCBs may leak while the equipment is in service in underground mines or during servicing procedures, performed either in the shop or in the field. Exposure to PCBs during servicing primarily results from volatilization, spills, and direct human contact with PCBs when the inner parts of the motor are removed or rebuilt. Thus, the use and servicing of these motors are not totally enclosed activities.

To require replacement of these motors by the effective date of this rule would not be technically and economically feasible. There is only one company that currently converts PCB loader motors to air-cooled or other non-PCB motors, and PCB motors in continuous miners cannot be converted to non-PCB motors. Because of the location of the motor in continuous miners, this means that the entire machine has to be replaced. In both cases, lead time is essential to convert or replace the equipment. Prohibiting use of the equipment in the interim could result in a shut-down of approximately ten percent of the underground bituminous coal production in the United States. The impact of a prohibition of the use of PCB mining equipment can be significantly reduced by permitting more time for a phase-out. EPA believes that a phased approach is reasonable. As compared to an immediate prohibition, the risks to human health and the environment are only slightly increased, while the costs are substantially lower.

The final rule is essentially the same as proposed. To avoid the adverse consequences caused by an immediate use ban, EPA proposed a phase-out of these PCB motors. Different compliance schedules for loaders and continuous miners were proposed since they pose different problems. Because of the cutting head design, the motors on continuous miners cannot be rebuilt as non-PCB motors. The only feasible alternative is replacement of the entire continuous miner unit. Because of the lead time necessary to order and manufacture this type of equipment, EPA proposed to permit the rebuilding of PCB continuous miner motors until December 31, 1979. Rebuilding differs from servicing in that rebuilding involves removing the motor from the miner and disassembling the motor. Servicing is permitted until January 1, 1982. Service companies and others who want to process or distribute PCBs for rebuilding or servicing these motors after June 30, 1979, may do so only if granted an exemption by EPA to continue these activities. The use of continuous miners containing PCBs after January 1, 1982, is prohibited.

The PCB motors on loaders can be replaced with, or rebuilt as, air-cooled or other non-PCB motors. EPA is requiring that these motors be replaced or be rebuilt as air-cooled or other non-PCB motors when they are returned to

service shops for maintenance, but, in no event, can PCB motors be used later than January 1, 1982. Rebuilding or replacement of existing PCB motors using normal maintenance patterns should take no longer than three years. Accordingly, use of these loaders is authorized until January 1, 1982.

Since normal maintenance practicies will permit an orderly rebuilding or replacement of motors with relatively modest costs, and with little additional exposure to PCBs, this gradual replacement requirement is a reasonable approach. However, no justification exists for permitting any PCB motors on loaders to remain in service after January 1, 1982, and therefore the use is prohibited after that date. Topping-off the motor fluid levels in the field with PCB fluids is also prohibited after January 1, 1982.

The authorization for mining equipment is essentially unchanged from the proposed rule. The estimated cost to owners of the equipment is estimated to be $2.6 to $4.3 million spread over 3 years.

D. Use in Heat Transfer Systems

Section 761.31(d) of the final rule authorizes the use of PCBs in heat transfer systems until July 1, 1984, subject to conditions regarding testing and reducing PCB concentrations. This authorization for use includes servicing of heat transfer systems. Heat transfer systems that are used in the manufacture or processing of any food, drug, cosmetic, or device, as defined in § 201 of the Federal Food, Drug, and Cosmetic Act, are authorized to use heat transfer fluid containing 50 ppm or greater PCB only until November 1, 1979.

PCBs were used as a heat transfer fluid in certain applications from 1962 to 1972. In the period from 1970 to 1972, approximately 90% of the heat transfer systems that used PCB fluid were refilled with non-PCB fluid. In spite of this refilling, most systems contain residual PCB concentrations. Heat transfer systems are, by and large, relatively, but not totally, enclosed systems and therefore their use of PCBs is not in a totally enclosed manner. The primary source of human and environmental exposure to PCBs from these systems comes from leaks in pump motor seals. However, good maintenance practices will minimize the quantity of fluids that may be lost. For most systems, the loss of PCB fluid is well controlled and the corresponding amount of top-off fluid added to these systems is very small.

An authorization for the use of heat transfer systems containing PCBs was not proposed because EPA had insufficient data to judge whether the use of these systems would pose an unreasonable risk. The preamble to the proposed rule solicited comments on this issue. According to the comments received, the PCB problem in heat transfer systems is generally one of residual PCB contamination of the non-PCB replacement fluids. In many respects, heat transfer systems are similar to hydraulic systems. For these reasons, the conditions of this authorization regarding the reduction of PCB concentrations are identical to those contained in the authorization for hydraulic systems: (1) any heat transfer system that ever contained PCB heat transfer fluid must be tested by October 1, 1979, and at least annually thereafter until the system reaches 50 ppm PCB; (2) any system that contains 50 ppm PCB or greater must be drained of the PCBs and refilled with non-PCB fluid (i.e., fluid containing less than 50 ppm PCB) within six months of the test showing the PCB concentration is 50 ppm or greater; (3) PCBs may not be added to heat transfer systems; and (4) records of the testing required under (1) must be retained for five years after the heat transfer system reaches 50 ppm PCB. The testing under (1) must be done at least three months after the most recent servicing conducted to reduce the PCB concentration. This time delay is to permit residual PCBs to leach out into the fluid before it is tested.

An exception to these requirements has been made for heat transfer systems used in the manufacture or processing of any food, drug, cosmetic, or device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act. These systems are authorized to use dielectric fluid containing 50 ppm or greater PCB only until November 1, 1979. After this date, these systems must contain less than 50 ppm PCB. This exception was made because, in the event of a heat transfer system rupture, PCBs would contaminate a product that would come in direct contact with humans, either through ingestion or through application to the skin. Unlike the rupture of a heat transfer system used in the manufacture of a product that is rarely in contact with humans, leakage of PCBs into a food, drug, cosmetic, or device provides a direct avenue for PCBs to enter the human body. Since the Food and Drug Administration required the removal of PCB heat transfer fluids from these systems several years ago, this restricted authorization should not present a problem to companies owning these systems.

EPA finds that this activity, as authorized, does not present an unreasonable risk to health or the environment. The total cost for the requirements described above is estimated to range from $12.2 to $17.8 million spread over three years.

E. Use in Hydraulic Systems

Under this authorization, PCBs may be used in hydraulic systems until July 1, 1984, subject to conditions regarding testing and reducing PCB concentrations. This authorization for use includes servicing of hydraulic systems. Processing and distribution in commerce for purposes of servicing, such as filtering, distilling, or otherwise reducing the concentration of PCBs in hydraulic systems, is authorized only until July 1, 1979. After July 1, 1979, persons are prohibited from processing and distributing in commerce PCBs for this purpose unless EPA grants them an exemption.

This authorization is necessary because a large number of die casting systems currently in use were once filled with PCB hydraulic fluid. Although this use of PCBs has been discontinued, equipment containing PCB hydraulic fluid is still in service. Some systems have been topped-off with non-PCB fluids, and others have been drained and flushed in an attempt to reduce PCB contamination. However, systems may still be contaminated with residual PCBs that either remain after flushing or are gradually released from interior surfaces. As a consequence, hydraulic systems can contain concentrations of PCB ranging from less than 10 ppm to thousands of parts per million PCB. These systems normally leak fluid, even when properly maintained. In addition, some of the fluid volatilizes as a result of the high operating temperatures. These losses result in PCB-contaminated water effluents as well as air emissions, both of which have contributed to existing levels of PCB contamination in the environment. Therefore, this use of PCBs is clearly not use in a totally enclosed manner.

Mandatory immediate removal of these systems from service to remove the PCBs could affect as many as one thousand companies and disrupt important sectors of industry, especially those using die castings. The extent of PCB exposure from these systems does not justify incurring such severe costs. On the other hand, the continued uncontrolled use of these systems would result in releases of substantial amounts of PCBs into the environment and cannot be allowed to continue. EPA proposed authorizing the continued

servicing and use of PCB-contaminated hydraulic fluid in hydraulic die casting systems subject to certain conditions. One condition was that any system that contained 50 ppm or more PCB had to be drained and refilled with non-PCB fluid within one year. In addition, testing and servicing or replacement of the fluid was required at least every six months until the PCB concentration was consistently below 50 ppm.

The authorization in the final rule makes certain changes from the proposal. First, the proposed authorization covered only hydraulic die casting systems. Comments indicated that there are other types of hydraulic systems that used PCBs in high temperature environments such as in steel mills and foundries. Accordingly, the authorization has been extended to apply to the use of PCBs in all hydraulic systems.

Under the final rule, each hydraulic system must be tested no later than November 1, 1979. If the concentration of PCBs is found to be greater than 50 ppm, the whole system must be drained and refilled with non-PCB fluid within six months of the test. EPA anticipates that most of the PCBs will be removed during the initial refilling process. Subsequent draining and refilling may be necessary to remove residual PCBs. Under the final rule, persons who own hydraulic systems are required to test for the concentration of PCB annually instead of every six months as under the proposal. Comments indicated that removing a hydraulic system from use every six months would be disruptive. Most systems undergo repair or overhaul at least annually. The revised requirement would be consistent with these practices and, accordingly, result in substantial first year cost savings with little increase in PCB exposure. Records of this testing must be retained for five years after the hydraulic system reaches 50 ppm.

Many comments emphasized that requiring the draining of hundreds of gallons of fluids that may contain residual quantities of PCBs is not a cost-effective way to achieve reduction in PCB concentrations. Hydraulic systems are routinely topped-off with non-PCB hydraulic fluids. Comments argued that the addition of non-PCB fluids should effectively reduce the concentrations of PCBs. While topping-off is permitted for purposes of reducing the levels of PCBs at any time, EPA believes that an annual requirement to test and drain any fluids that contain more than 50 ppm is essential to reduce, as expeditiously as possible, the potential for PCB exposure. Although EPA does not believe that topping-off alone will reduce PCB concentrations quickly enough in all systems, many systems will be able to meet the requirements of the rule solely by topping-off. Allowing concentrations of PCBs above 50 ppm in these systems over time is not acceptable to EPA in terms of the significant risks to health and the environment associated with the leakage from these systems.

It is estimated that the costs to owners of affected hydraulic systems will total $14.6 to $25 million spread over the first two years, with insignificant costs in the subsequent years. These costs are similiar to the total cost of $19.7 million estimated in the proposal, but the final rule considered 1750 machines rather than the 1000 machines estimated in the proposal. This reduction in cost per machine is due to the annual, rather than semi-annual, testing requirement and more accurate cost information obtained as a result of the proposal. These costs are reasonable in light of the resulting reduction in human and environmental exposure to PCBs.

EPA finds that this activity, as authorized, does not present an unreasonable risk to health or the environment.

F. Use in Carbonless Copy Paper

Under this authorization, existing PCB carbonless copy paper may be used indefinitely. Prior to 1971, carbonless copy paper distributed by NCR Corporation was made with ink containing PCBs. There does not appear to be a way to distinguish PCB carbonless copy paper from non-PCB carbonless copy paper except perhaps by dates or other indications on unused inventories. A large portion of the PCB carbonless copy paper that has not been destroyed is probably in files. An enormous undertaking would be required of both business and government to purge existing files of PCB carbonless copy paper. Moreover, the amount of PCB on each sheet of carbonless copy paper is extremely small. In view of these practical considerations and because the potential PCB exposure and risks to human health or the environment are negligible, EPA has concluded that this activity does not present an unreasonable risk and is authorizing the continued use of existing PCB carbonless copy paper.

In the proposal, EPA limited this authorization to five years. However, EPA does not now believe that a method for inexpensively separating PCB from non-PCB carbonless copy paper will be developed in the near future. Accordingly, EPA is authorizing the use of existing PCB carbonless copy paper indefinitely.

G. Pigments

This rule authorizes the use of diarylide and phthalocyanine pigments containing more than 50 ppm PCB until January 1, 1982, and the processing and distribution in commerce of these pigments until July 1, 1979. After July 2, 1979, these pigments cannot be manufactured and after July 1, 1979, these pigments cannot be processed or distributed in commerce unless EPA grants exemptions for these activities.

Diarylide and phthalocyanine pigments contain PCBs as an impurity in concentrations ranging from several thousand parts per million to less then 50 ppm. Most of these pigments have PCB concentrations in the range of several hundred parts per million. These PCBs cannot easily be separated from the pigments because of the structural similarity of the PCBs to the pigments. Once manufactured, the pigments are mixed with other substances to form paints, inks, and a variety of other products. The PCB concentrations in these final products are less than 50 ppm.

Competitive pressure to market pigments with decreased PCB contamination is causing pigment manufacturers to change their processes. Comments indicate that within two years the industry will have made the changes necessary to reduce PCB contamination levels to less then 50 ppm.

In deciding whether to authorize pigment activities, EPA considered the relatively limited exposure and the economics associated with use of these pigments. The greatest potential for exposure is in the application of paints and inks using these pigments. These products contain far less than 50 ppm PCB because of the dilution that takes place when the pigment is mixed with the medium it is coloring. As a result, the health and environmental risks are not unreasonable. As discussed above, the industry is changing its processes to reduce the level of PCB contamination to below 50 ppm in the next two years. At the present time, these particular pigments are a major segment of the pigment market. For example, diarylide pigments form about 80% of the yellow pigment market. This ban will, therefore, affect a substantial number of pigment-related industries. However, the impact of the regulation of the pigment industry, as well as its customers in the paint and graphic arts industries, will be further

considered during the rulemaking on manufacturing exemptions.

The potential costs of compliance are greatly reduced if the requirements are implemented over a few years. The increased health and environmental risk is relatively small. If exemptions are granted to permit more time for the conversion to alternative manufacturing processes, the cost of conversion will total $5.6 million. Based on these considerations, EPA has concluded that the processing and distribution in commerce until July 1, 1979, and the use of these pigments until January 1, 1982, will not present an unreasonable risk to health and the environment and should be permitted.

H. Use and Servicing of Electromagnets

As explained below, EPA considers the use of electromagnets containing PCBs to be used in a totally enclosed manner. Accordingly, this use does not require authorization. Processing and distribution in commerce of PCBs to service electromagnets is authorized, as explained below.

While no new PCB electromagnets have been manufactured since mid-1976, historically PCBs have been used in some electromagnets to reduce fire hazard. PCB electromagnets are used primarily over conveyor belts to remove tramp iron from non-magnetic commodities such as coal. PCB-containing electromagnets still in use are found in enclosed areas such as coal mines, coal preparation plants, and coal-fired generating stations where there is a danger of producing explosive dusts. PCB electromagnets may also be used over conveyor belts in grain handling systems, but EPA does not have information on specific locations at this time.

Electromagnets are similar to transformers in construction. An electromagnet is a completely welded piece of equipment. Any leakage would be the result of deteriorating equipment or accidental damage rather than design characteristics. EPA has concluded that use of PCBs in electromagnets under normal circumstances is a use in a totally enclosed manner. For coal-handling systems, if leakage does occur, there will be negligible risks as the coal is handled automatically and eventually burned in combustion devices capable of destoying almost all of the PCBs. While EPA is not certain that electromagnets containing PCBs are currently in use over grain conveyors, accidental leakage in such situations may contaminate food supplies and thus pose a threat to human health. For these reasons, EPA will consider use of electromagnets over grain conveyors that leak to be a violation of this rule as a non-totally enclosed use of PCBs. In addition, EPA is notifying the U.S. Department of Agriculture and the Food and Drug Administration of this potential problem.

The servicing of PCB electromagnets is similar to servicing of PCB Transformers. Accordingly, this rule authorizes the same type of servicing of PCB electromagnets with PCB dielectric fluid. As in the case of PCB Transformers, any servicing (including rebuilding) that requires the removal of the coil from the casing is prohibited. Most of the discussion of the servicing of PCB Transformers in section IX.A of this preamble pertains to servicing PCB electromagnets. EPA has similarily concluded that this servicing, as long as it does not include removal of the coil from the casing, will not present an unreasonable risk to health or the environment. Because of limited information, EPA was unable to ascertain the costs of not granting such authorization.

I. Use in Natural Gas Pipeline Compressors

The final rule authorizes the use, including servicing, of PCBs in natural gas pipeline compressors until May 1, 1980. An authorization was not proposed for this use of PCBs because EPA had virtually no knowledge of it. Several comments on the proposed rule indicate that compressors used in natural gas pipelines contain residual PCB concentrations greater than 50 ppm. In general, these systems were drained of high concentration PCB fluid several years ago, thereby removing most of the PCBs. This authorization will allow these compressors to be drained and refilled with non-PCB fluid to further reduce the PCB concentration until it is below 50 ppm. The authorization is effective until May 1, 1980, giving persons time to work on the systems to reduce the concentration of PCBs during the summer months when demand for natural gas is lower. Use and servicing of these compressors are not a totally enclosed activity because of limited environmental exposure that may occur during servicing and use.

An immediate use prohibition could have a serious effect on natural gas distribution. Permitting more than a half a year to complete the draining and refilling significantly reduces costs and disruptions in service while causing little or no increase in exposure to PCBs. The total cost of these decontamination operations is $200,000. Because of the small quantities and low concentrations of PCBs involved, EPA believes that this authorization will not result in exposure to PCBs that presents an unreasonable risk to health or the environment.

J. Use of Small Quantities for Research and Development

EPA is authorizing the use of PCBs in "small quantities for research and development", as defined in § 761.12(ee), until July 1, 1984. Processing and distribution in commerce of PCBs for this purpose is authorized until July 1, 1979. After July 2, 1979, PCBs cannot be manufactured for this use, and after July 1, 1979, they cannot be processed or distributed in commerce, unless persons interested in continuing these activities have been granted an exemption.

Because of the importance of on-going research on the effects of PCBs and the need to have reference standards for analytical purposes, EPA believes that the extremely limited exposures associated with these activities do not present an unreasonable risk to health and the environment. The term "Small Quantities for Research and Development" is defined very narrowly. Specifically, PCBs must be contained in hermetically-sealed, five milliliter containers. EPA believes this constraint is sufficient precaution against the risks of human or environmental exposure to justify such use in light of the possible benefits of continued research. The proposed rule would have excluded these activities from the prohibitions in § 761.30; however, EPA believes it is more appropriate to authorize (and if appropriate exempt) these activities.

K. Use in Microscopy

EPA is authorizing the use of PCBs as a mounting medium for microscopic slides until July 1, 1984, and the processing and distribution in commerce of PCBs for this purpose until July 1, 1979. After July 1, 1979, persons who want to continue processing and distribution in commerce activities must be granted an exemption by EPA. Persons who want to manufacture PCBs for this use after July 2, 1979, must also be granted an exemption by EPA.

When PCBs are used as a mounting medium for slides, extemely small quantities are used on each slide. This use is particularly important to scientists who need to preserve, for future reference, a microscope particle. PCBs are also used in air pollution and criminology labs for microscopic particle identification and they play a vital role in the study and conservation of art and historic objects through use of microscopic slides. In mounting, a particle is placed in a PCB medium and

covered with a cover slip, usually for permanent reference. No substitutes with the necessary physical properties exist for this use.

Because of the small quantities of PCBs used at any one time and the careful nature of laboratory work, exposure to PCBs used as a mounting medium is minimal. Because of the substantial benefits of this use of PCBs and the very limited risks involved, EPA believes that this activity will not present an unreasonable risk and that it is appropriate to authorize this use of PCBs.

X. PCB Activities Not Authorized by This Rule

A. Manufacture of PCB Capacitors

PCBs have been used as a dielectric fluid in alternating current capacitors manufactured in the United States from the mid-1930's through the mid-1970's. Although the manufacture of PCB Capacitors is considered to be "processing" of PCBs and could continue under section 6(e)(3) until July 1, 1979, the activity is not totally enclosed and accordingly is prohibited under section 6(e)(2) after July 2, 1979.

In the past, manufacture of PCB Capacitors has been a major source of PCB release into the environment. For example, the upper reaches of the Hudson River are closed to fishing because of PCB contamination caused by capacitor manufacturing. The Support Document to the final rule (Chapter II) discusses this and other examples of environmental damage caused by this activity. In addition, there are substitutes available as discussed in Chapter III of the Support Document to the final rule. For these reasons, EPA has determined that the continued manufacture of PCB Capacitors presents an unreasonable risk to human beings and the environment and has not authorized it under section 6(e)(2). It is EPA's understanding that no company is planning to manufacture PCB Capacitors after the effective date of this rule.

B. Manufacture of PCB Transformers

The use of PCBs as a transformer dielectric fluid dates back to the 1930's. The manufacture of PCB Transformers is also considered to be "processing" PCBs under TSCA but is not a totally enclosed activity. Under section 6(e)(2), it may not continue after July 2, 1979. Significant quantities of PCB may enter the environment during the manufacture of PCB Transformers. Production of PCB Transformers has been responsible for major river damage, notably the Coosa River in Northwest Georgia. Because of the environmental and human exposure to PCBs that occurs in the manufacture of these transformers and because of the availability of substitutes, EPA has determined that the manufacture of PCB Transformers presents an unreasonable risk and, therefore, has not authorized this activity. It is EPA's understanding that the manufacture of PCB Transformers in the United States ceased in 1977.

C. Other PCB Activities

All manufacturing of PCBs is prohibited after July 2, 1979. Persons who have submitted a petition for a manufacturing exemption in accordance with the November 1, 1978 rulemaking procedures (43 FR 50905) will not be subject to this ban until EPA acts upon their petitions (see 44 FR 108, January 2, 1979).

All processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner is prohibited after July 2, 1979, unless specifically authorized in § 761.31 of this rule.

XI. Manufacturing, Processing, or Distribution in Commerce of PCBs for Export

Section 12(a) of TSCA states, in general, that no provision of TSCA shall apply to the manufacture, processing, or distribution in commerce of a chemical intended solely for export from the United States. However, if the Administrator finds that the manufacture, processing, or distribution in commerce of a chemical substance solely for export presents an unreasonable risk to health or the environment in the United States, those activities may be regulated under TSCA.

It is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States. The extreme persistence of this substance and the ease with which it is transported has made it a global problem. There is considerable evidence of PCB contamination that is far from any known source (see Chapter II of the Final Support Document). Therefore, PCBs used outside the United States can cause PCB contamination of this country. Moreover, manufacturing, processing, and distribution in commerce of PCBs in this country for purposes of export is likely to cause significant release of PCBs in this country through air and water emissions, leaks and spills, and other means. Instances of severe PCB releases from manufacturing, processing, transportation, and other activities involving PCBs are well documented. Because of these factors, EPA has determined that the manufacture, processing, and distribution in commerce of PCBs for export constitutes an unreasonable risk to health and the environment in the United States.

The final rule prohibits: (1) any manufacture of PCBs for export after the effective date of this rule; and (2) the non-totally enclosed processing and distribution in commerce of PCBs for export as of the effective date of this rule; and (3) any processing or distribution in commerce of PCBs for export after July 1, 1979, except solely for purposes of disposal in accordance with § 761.10. These prohibitions are essentially the same as proposed. Like domestic manufacturers, processors, and distributors in commerce, persons wishing to manufacture, process, or distribute in commerce PCBs or PCB Items solely for export may petition EPA for an exemption as discussed in the preamble section VIII.A above.

In addition, section 12(b)(2) of TSCA requires any person who exports or intends to export a chemical substance or mixture for which a rule has been proposed under section 6 to notify the Administrator of such export or intent to export. This requirement applies to any export of PCBs except the export of wastes which require a special report as discussed in VI.B.2 above. The requirement does not apply to the export of PCB Equipment, although the export of such equipment requires an exemption after July 1, 1979. The export of PCBs in small quantities for research and development (as defined in § 761.2(ee)), for example, does require notice to EPA.

Interim procedures regarding this requirement can be found at 43 FR 24818 (June 7, 1978). In summary, these procedures require that notices be submitted for the exports of all PCBs and PCB Items (except PCB Equipment), and the following information is to be included:

(a) The name and address of the exporter; (b) the dates of each shipment or intended shipment; (c) the country (countries) of import; and (d) a statement that notice is being submitted pursuant to Section 12(b) and 40 CFR Part 761.

Notices shall be sent to the Document Control Officer, (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

XII. Test Procedures for PCB

Test procedures for determining the PCB concentration in various media

were not included in the proposed PCB Ban Rule. A number of comments on the rule suggested that EPA provide additional information on test methods.

EPA has been involved in the development of test methods for several media and has made much of this information available to the public. Specifically, test procedures have been made available for determining PCB concentrations in air, soil, water, and sediments using an American Society of Testing and Materials method (ASTM D 3304) and in industrial effluents using EPA methods (primarily for low concentration of PCB in water) (40 CFR 136). In addition, an interim guidance package containing two test procedures (one for spills in soil and one for water) was made available to EPA Regional Offices in February 1978 for distribution to the public. In the final step of analyzing the sample, all of these procedures rely on a gas chromatograph with an electron capture detector. The primary differences between the procedures are in the methods used to separate the water-soluble fraction from the organic-soluble fraction. The latter fraction contains the PCBs and is the portion used in the gas chromatograph.

Several comments were critical that EPA did not have more specific test procedures for PCBs, in particular for mineral oil dielectric fluid and pigments. The contamination of mineral oil dielectric fluid with PCBs is a major subject of this rule and the problem affects a large number of utilities and industries. EPA has experience in the analysis of contaminated oils and has included a test procedure (described below) in an additional guidance package that will be distributed to EPA Regional Offices. Pigments represent a different type of analytical problem. Pigments are a complex analytical media, and analytical chemists in that industry who have the most knowledge on resolving analytical chemistry problems with that substance have developed techniques to quantify PCBs in pigments.

Pigment manufacturers have developed thus far several test procedures and are currently working to validate one of them. With respect to other substances or mixtures that may be contaminated with PCBs, EPA also presumes that persons who manufacture such substances have the expertise to analyze their product and are best equipped to determine whether, and to what extent, their product is contaminated with PCB.

EPA will make use of industry-developed test procedures in conducting surveys or inspections and will use data from such tests in enforcement actions where appropriate. EPA may also examine industry-developed test procedures and make modifications, if possible, that would increase the accuracy and sensitivity of the test. Such modifications will be made publicly available. Persons who manufacture or process chemicals in a manner that could result in the production of PCBs as a primary product, impurity, intermediate, precursor, or byproduct are responsible for determining whether PCBs have been produced. They will have to conduct tests using good analytical chemistry and investigate ways to improve their ability to detect and quantify PCBs.

For the testing of PCB contaminated oils, EPA uses the following analytical procedure which consists of three successive clean-up steps: at least one run through an activated silica gel column, a run through an activated basic alumina column, and a final run through an activated silica gel column followed by analysis on the gas chromatograph equipped with an electron capture detector. This procedure can be used on any waste oil. For a mineral oil dielectric fluid that is relatively clean, an alternative procedure that would yield a less accurate PCB concentration with less effort and lower cost would be to substitute a liquid-liquid clean-up step for the column clean-up. This clean-up involves mixing the oil sample with concentrated sulfuric acid and then draining of the oil fraction. The oil fraction is then run through the gas chromatograph. This clean-up step removes oxidized organic material, thiophenes, and moisture from the oil sample. This alternative is not as accurate as the column clean-up method, but for "clean" oils, it provides a less expensive, more expedient test procedure.

EPA recognizes that these procedures are subject to experimental errors and that any procedure, no matter how simple, can be run improperly. However, persons who are subject to this rule will be expected to exercise good judgment on testing decisions. For example, if, in the case of the two procedures described above for PCB contaminated oils, the more rigorous procedure may yield results of ±1 ppm PCB while the quicker procedure may yield results of ±15 ppm PCB (these estimates of error are only used as illustrative examples and are not based on actual test data) and a sample is tested by the more accurate procedure and results in a value of 30 ppm PCB, then a person could be reasonably certain that the sample falls into the less than 50 ppm category. However, if using the less accurate procedure results in a value of 45 ppm, then a person has two choices: either treat the sample as a greater than 50 ppm PCB or test the sample again with the more accurate test procedure. In this case, EPA will not consider it to be good judgment to assume that the sample has less than 50 ppm PCB because the experimental error of the procedure overlaps the cut-off point.

XIII. Compliance and Enforcement

EPA will devote a major enforcement effort to ensure compliance with the requirements of these regulations. EPA intends to take vigorous action to assure that all facilities which manufacture, process, distribute in commerce, or use PCBs, handle and dispose of PCBs properly. While EPA will be reasonable in interpreting the application of these requirements, persons who are or may be subject to these regulations should be aware that failure to properly comply with these regulations may subject them to serious civil and criminal sanctions.

Section 16 of TSCA authorizes the imposition of a civil penalty of up to $25,000 for each violation of these rules. Each day a violation continues constitutes a separate violation for the purpose of § 16. A knowing or willful violation of these rules may, in addition to any civil penalty, lead to the imposition of criminal penalties in the amount of up to $25,000 for each day of violation and imprisonment for up to one year. In addition, EPA has the authority under section 17 of TSCA to compel persons to take actions to rectify or clean up after violations.

EPA will seek stringent penalties in any situation in which significant dispersion of PCBs occurs due to a violation. Civil penalties will be scaled according to the severity of the violation. Facilities that violate approval, exemption, or authorization conditions shall also be subject to penalties under §§ 15 and 16 of TSCA, as well as the revocation of their approval, exemption or authorization. In addition, in these situations, EPA will use TSCA section 17 injunctive and seizure powers to reduce or eliminate the risks of a PCB regulation violation. For violations which risk no direct dispersion of PCBs, EPA is less likely to seek severe penalties. Facilities may be simply put on notice of certain violations and compelled to rectify any observed violations.

"Any person" who violates these regulations will be subject to an enforcement action. This includes individuals, such as corporate officials

and employees, as well as violating companies. EPA takes the position that persons may not contract away their responsibility or liability for violation of these rules, i.e. a PCB user who contracts for PCB disposal or storage with a company that he knows or should know has inadequate disposal or storage facilities, may himself be the subject of an enforcement action. This policy applies to all remedies EPA may seek for a violation.

EPA will be directing its resources to the discovery of significant instances of exposures of PCBs to the environment and developing accurate information depicting the flow of PCBs to proper disposal. Using information developed during inspections and using the records required to be kept under § 761.45, EPA will be able to focus its efforts upon areas which show the greatest potential for violation.

XIV. Relationship of PCB Disposal Under TSCA to Hazardous Waste Disposal Under RCRA

The disposal requirements of this rule specify the actions that must be taken when disposing of PCBs.

In addition, the rule contains Annexes that delineate specifications for disposal facilities that are to be used for the disposal of PCBs. These facilities are also addressed in the hazardous waste disposal rules proposed under the Resource Conservation and Recovery Act (RCRA) on December 18, 1978 (43 FR 58946). Several options for integrating the PCB rule with the RCRA rules are discussed in the preamble to the RCRA rules at 43 FR 58993 and comments were requested on the alternatives. Prior to the promulgation of the RCRA rules, EPA will resolve the differences between these two rules. Because of the special disposal problems presented by PCBs, EPA could choose to continue special provisions for the disposal of PCBs. EPA's decision will be announced when the rules under RCRA are promulgated.

XV. Summary of Economic Consequences

Section 6(e) of TSCA prohibits (1) the use of PCBs in a non-totally enclosed manner unless the use is authorized and (2) all manufacture, processing, and distribution in commerce of PCBs unless they are otherwise exempted by the Administrator. These authorizations and exemptions, however, are discretionary and can be granted only upon a finding that a particular PCB activity does not pose an unreasonable risk to health or the environment.

The impacts of both the statute and the regulation have been assessed and are discussed below. Additional information on these impacts is contained in *PCB Manufacturing, Processing, Distribution in Commerce, and Use Ban Regulation: Economic Impact Analysis* (the Versar Report) which can be obtained from the Industry Assistance Office of the Office of Toxic Substances upon request (see the beginning of this preamble for the address and telephone number).

A. Impact of the Statute

It was the clear intent of Congress, as expressed in Section 6(e) and in the pertinent legislative history, that the manufacture of PCBs should cease. Since no more PCBs will be made (unless exemptions are granted), it follows that there can be no future manufacturing of PCB Transformers or Capacitors. Consequently, the costs attributed to the cessation of the manufacture of PCB chemical substance, PCB Transformers, and PCB Capacitors are considered impacts of the statute, not of the regulation.

These costs are attributable to the statute and not to the regulation and include $12–$30 million per year in increased capacitor costs that will be borne by utility and industrial users. This results from an across-the-board increase in capacitor prices of 10–20 percent due to the higher costs of PCB substitutes. This cost will continue indefinitely, unless the cost of these substitutes falls. Purchasers of Non-PCB Transformers will incur increased costs of up to $10 million per year, depending on the particular substitute dielectric fluid selected. This cost will also continue indefinitely. These increased costs of transformers and capacitors will be passed on through a minimal increase in the cost of electricity to consumer and industrial users.

B. Impact of the Rule

The total first year cost of this rule is expected to range between $58 million and $105 million. By 1985 the annual costs will drop to between $30 million and $37 million. Annual costs should continue to diminish subsequent to 1985 as the use of PCBs is discontinued.

The largest annual economic impact of this regulation may result from the prohibition of the use of waste oil containing any detectable amount of PCB for dust control on roads. Since most waste oil contains very low PCB levels, as much as 300,000,000 gallons of waste oil per year will be diverted from this use. Highway departments and private road owners will have to use substitute products which could cost them as much as $31.7 million per year for the first several years of this rule. Note that the manufacturers of substitute products assert that use of their products will substantially reduce road maintenance costs when compared to the use of waste oil for road oiling and that such a reduction would directly reduce the net cost of the rule. However, EPA is not able to verify the potential savings involved.

The ban on rebuilding transformers which contain dielectric fluid with a 500 ppm or greater PCB concentration will cost the owners of these transformers approximately $12 million in the first year of the rule. This annual cost will be gradually reduced over a period of 30 to 40 years as the transformers are replaced. Included in the $12 million estimate is an estimated $2.4 million in costs attributed to a projected increase in down-time. In other words, when a power delivery is interrupted by an electrical failure of a PCB Transformer the rule's effective requirement that the failed PCB Transformer be replaced by a new, rather than a rebuilt transformer, will cause a longer than normal interruption. About two thirds of these transformers are owned by commercial and industrial firms and the remainder by utilities. The impact of this rule with respect to transformers is expected to have a negligible effect on the cost of electricity, and no significant impact on non-utility owners.

The cost of disposing of PCB-contaminated mineral oil will be significantly less than under the proposed rule. The final rule modifies the proposed requirement and allows disposal in high efficiency boilers. It is expected that the annual costs under the changed disposal requirements will be between $3.2 million and $17.0 million. Included in both the low and the high estimates is an estimated annual disposal cost of $11.1 million which could be incurred by disposers of contaminated mineral oil who do not own high efficiency boilers. In addition, the owners of high efficiency boilers will likely incur some capital costs in the first year of the rule in order to take advantage of the new provisions.

Seven railroad and transit companies which are affected by this rule will incur total additional operating costs of $12.2 million. These costs will be spread over the next five years. The costs will be incurred because of refilling of PCB-Containing Transformers used on locomotives and self-powered cars with substitute non-PCB fluid, and in periodically removing residual PCB contamination from the new fluid. Since

only electrically-powered units are involved, the costs will be borne solely by railroads and public transit authorities in the Northeast. These companies are in financial trouble; however, funding may be available through Federal subsidies.

Underground mining equipment will be impacted because of an older design electric motor which used PCBs as a coolant. The use of these motors will be banned as of January 1, 1982, and the total cost to users of PCB mining equipment will be $2.6 to $4.2 million. Since the ban is designed to allow a phase-out of the use of the equipment through conversion or obsolescence, it should cause no interruption of coal production. These costs are not expected to cause significant problems for the equipment owners.

Owners of hydraulic systems with PCB-containing hydraulic fluid will have to test, drain, and refill these systems periodically. As many as 1,750 systems including metal die casting and foundry equipment are believed to be affected by the rule and costs for the initial two years are expected to total between $14.6 and $25 million; costs for subsequent years should be insignificant.

Owners of heat transfer systems with PCB-containing heat transfer fluid will also have to test, drain, and refill these systems periodically. As many as 600 systems are believed to be affected by the rule, and costs for the first three years are expected to total between $12.2 and $17.8 million; cost for subsequent years should be insignificant.

Threre are a number of commercial chemical processes which produce PCBs as an unintentional byproduct in concentrations over 50 ppm. For instance, the presence of PCBs (in excess of 50 ppm) in phthalocyanine and diarylide yellow pigments has been detected. It is estimated that the pigment industry can change its production process within two years at a cost of approximately $5.6 million so that unintentional PCB production will no longer be a problem. Little is known about the cost or feasibility of eliminating PCB contamination from other chemical production processes. However, since all of these problems of PCB-contamination in the production of pigments and other chemical products will be dealt with on a case-by-case basis in exemption rulemakings, the Agency will be able to assess these economic impacts at that time.

Also, this regulation could potentially have a very costly impact on sellers of electrical equipment containing PCB Capacitors if EPA does not provide exemptions from the prohibition on distribution in commerce of PCB Equipment. These costs will be carefully considered in the separate rulemaking concerning exemptions to the July 1, 1979, distribution in commerce ban.

Several other very minor impacts which will be incurred only during 1978 have been identified. These impacts include owners of natural gas pipeline pump compressors who are expected to spend $200,000 in 1979 to remove PCB fluid from those compressors. The ban on rebuilding the approximately 200 electromagnets containing PCBs is expected to cost users $100,000 annually and have a total cost of less than $1 million.

Most of the costs discussed above result from requirements that are part of the authorizations to permit continued use of mixtures, articles and equipment containing PCBs in a manner protective of health and the environment. If these authorizations were not promulgated, the cost and economic impact on the affected industries could be considerably greater than the costs discussed above. EPA has carefully examined the costs of this rule and does not expect any severe economic or social impacts.

Dated: April 16, 1979.

Douglas M. Costle,

Administrator.

PCB Record

Official Record of Rulemaking-PCB Ban Regulations [1]

Section 19(a)(3) of TSCA defines the term "rulemaking record" for purposes of judicial review as follows:

(A) The rule being reviewed under this section;

(B) In the case of a rule under section 4(a), the finding required by such section, in the case of a rule under section 5(b)(4), the finding required by such section, in the case of a rule under section 6(a), the finding required by section 5(f) or 6(a), as the case may be, in the case of a rule under section 6(a), the statement required by section 6(c)(1), and in the case of a rule under section 6(e), the findings required by paragraph 2(B) or 3(B) of such section, as the case may be;

(C) Any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;

(D) Any written submission of interested parties respecting the promulgation of such rule; and

(E) Any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.

In accordance with the requirements of section 19(a)(3)(E) quoted above, EPA is publishing the following list of documents constituting the record of this rulemaking. This list does not include public comments, the transcript of the rulemaking hearing, or submissions made at the rulemaking hearing or in connection with it. These documents are exempt from Federal Register listing under section 19(a)(3). A full list of these materials will be available on request from the Record and Hearing Clerk.

Federal Register Notices Pertaining to This Rule

43 FR 24802, June 7, 1978. USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Bans Proposed Regulation."

42 FR 32555, June 27, 1977. USEPA. "Polychlorinated Biphenyls: Open Public Meeting; Solicitation of Comments."

42 FR 61259, December 2, 1977. USEPA. "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act."

42 FR 65264, December 30, 1977. USEPA. "Polychlorinated Biphenyls: Policy for Implementation of Section 6(e)(2) of the Toxic Substances Control Act (TSCA)."

43 FR 38057, August 25, 1978. USEPA. "Polychlorinated Biphenyls: Manufacturing, Processing, Distribution in Commerce, and Use Bans; Clarification."

43 FR 43048, September 22, 1978. USEPA. "Polychlorinated Biphenyls: Manufacturing, Processing, Distribution in Commerce, and Use Bans: Extention of Reply Comments."

44 FR 108, January 2, 1979. USEPA. "Polychlorinated Biphenyls: Policy for Implementation and Enforcement of Sections 6(e)(2) and 6(e)(3) of the Toxic Substances Control Act (TSCA)."

Support Documents

USEPA, OTS, *"PCB Manufacturing, Processing, Distribution in Commerce and Use-Ban Regulation-Proposed Action-Support Document."/Voluntary Draft Environmental Impact Statement, Environmental Protection Agency (40 CFR Part 761).* May 1978.

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[1] The official record of rulemaking for the Polychlorinated Biphenyls Marking and Disposal Regulation (43 FR 7150, February 17, 1978) is part of the record of this rulemaking. The official record of rulemaking for the PCB ban regulation also includes the official record for the Administrator's promulgation of toxic pollutant effluent standards for PCBs under section 307(a) of the Clean Water Act (42 FR 6532-6555, February 2, 1977).

Other Information

Other "Federal Register" Notices

41 FR 7552, February 19, 1976. "Velsicol Chemical Company et al., Consolidated Heptachlor/Chlordane Hearing."

41 FR 21402, May 25, 1976. "Health Risk and Economic Impact Assessments of Suspected Carcinogens: Interim Procedures and Guidelines."

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USEPA-Non "Federal Register" Statements

Region IV. News release in reference to fishing in Lake Hartwell and Twelve Mile Creek in Pickins County, South Carolina. Dated about September 10, 1976.

Statement of Honorable Russell E. Train, Administrator, EPA, before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives. January 28, 1976.

Remarks by the Honorable Russell E. Train, Administrator, EPA prepared for delivery at the National Conference on PCBs, Chicago, Illinois, Wednesday, November 19, 1975. 10 a.m. Eastern Standard Time. Environmental Protection: *Rx for Public Health.*

Region I *News Release:* September 14, 1976.

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USEPA. *Transcript of Proceedings: Public Meeting on the Ban of Polychlorinated Biphenyls.* Washington, D.C., July 15, 1977.

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Part 761 is revised to read as follows:

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

Subpart A—General

Sec.
761.1 Applicability.
761.2 Definitions.

**Denotes documents cited in the Environmental Protection Agency's Support Document/Voluntary Environmental Impact Statement for Polychlorinated Biphenyls (PCB) Manufacturing Processing, Distribution in Commerce and Use Ban Regulation; March 1979*

Subpart B—Disposal of PCBs and PCB Items

761.10 Disposal requirements.

Subpart C—Marking of PCBs and PCB Items

761.20 Marking requirement.

Subpart D—Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items

761.30 Prohibitions.
761.31 Authorizations.
761.32 [Reserved]

Subpart E—List of Annexes

Annex No. I

761.40 Incineration.

Annex No. II

761.41 Chemical waste landfills.

Annex No. III

761.42 Storage for disposal.

Annex No. IV

761.43 Decontamination.

Annex No. V

761.44 Marking formats.

Annex No. VI

761.45 Records and Monitoring.

Authority: Section 6, 8, and 12, Toxic Substances Control Act, 15 U.S.C. 2605, 2607, and 2611.

Subpart A—General

§ 761.1 Applicability.

(a) This part establishes prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.

(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Unless it is otherwise specifically provided, the terms PCB and PCBs are used in this rule to refer to any chemical substances and combinations of substances that contain 50 ppm (on a dry weight basis) or greater of PCBs, as defined in § 761.2(s), including any byproduct, intermediate, or impurity manufactured at any point in a process. Any chemical substances and combinations of substances that contain less than 50 ppm PCBs because of any dilution, shall be included as PCB and PCBs unless otherwise specifically provided. Substances that are regulated by this rule include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and byproducts.

(c) Definitions of the terms used in these regulations are in Subpart A. The basic requirements applicable to disposal and marking of PCBs and PCB Items are set forth in Subpart B—Disposal of PCBs and PCB Items and in Subpart C—Marking of PCBs and PCB Items. Prohibitions applicable to PCB activities are set forth in Subpart D—Manufacture, Processing, Distribution in Commerce, and Use of PCBs and PCB Items. Subpart D also includes authorizations from the prohibitions. The Annexes in Subpart E set forth the specific requirements for disposal and marking of PCBs and PCB Items.

(d) Section 15 of the Toxic Substances Control Act (TSCA) states that failure to comply with these regulations is unlawful. Section 16 imposes liability for civil penalties upon any person who violates these regulations, and the Administrator can establish appropriate remedies for any violations subject to any limitations included in § 16 of TSCA. Section 16 also subjects a person to criminal prosecution for a violation which is knowing or willful. In addition, § 17 authorizes Federal district courts to enjoin activities prohibited by these regulations, compel the taking of actions required by these regulations, and issue orders to seize PCBs and PCB Items manufactured, processed or distributed in violation of these regulations.

(e) These regulations do not preempt other more stringent Federal statutes and regulations.

§ 761.2 Definitions.

For the purpose of this part:

(a) "Administrator" means the Administrator of the Environmental Protection Agency, or any employee of the Agency to whom the Administrator may either herein or by order delegate his authority to carry out his functions, or any person who shall by operation of law be authorized to carry out such functions.

(b) "Agency" means the United States Environmental Protection Agency.

(c) "Byproduct" means a chemical substance produced without separate commercial intent during the manufacturing or processing of another chemical substance(s) or mixture(s).

(d) "Capacitor" means a device for accumulating and holding a charge of electricity and consisting of conducting surfaces separated by a dielectric. Types of capacitors are as follows:

(1) "Small Capacitor" means a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid.

(2) "Large High Voltage Capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectic fluid and which operates at 2000 volts a.c. or above.

(3) "Large Low Voltage Capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates below 2000 volts a.c.

(e)(1) "Chemical Substance", except as provided in subparagraph (2) of this paragraph, means any organic or inorganic substance of a particular molecular identity, including:

(i) Any combination of such substances occurring in whole or part as a result of a chemical reaction or occurring in nature, and

(ii) Any element or uncombined radical.

(2) Such term does not include:

(i) Any mixture,

(ii) Any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) Tobacco or any tobacco product,

(iv) Any source material, special nuclear material, or by product material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act),

(v) Any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or section 4221 or any provisions of such Code), and

(vi) Any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

(f) "Chemical Waste Landfill" means a landfill at which protection against risk of injury to health or the environment from migration of PCBs to land, water, or the atmosphere is provided from PCBs and PCB Items deposited therein by locating, engineering, and operating the landfill as specified in § 761.41.

(g) "Commerce" means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in subparagraph (1) of this paragraph.

(h) "Disposal" means to intentionally or accidentally discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes actions related to

containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

(i) "Distribute in Commerce" and "Distribution in Commerce" when used to describe an action taken with respect to a chemical substance, mixture, or article containing a substance or mixture means to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of the substance, mixture, or article; or to hold or the holding of, the substance, mixture, or article after its introduction into commerce.

(j) "Fluorescent Light Ballast" means a device that electrically controls fluorescent light fixtures and that includes a capacitor containing 0.1 kg or less of dielectic.

(k) "Impurity" means a chemical substance which is unintentionally present with another chemical substance.

(l) "Incinerator" means an engineered device using controlled flame combustion to thermally degrade PCBs and PCB Items. Examples of devices used for incineration include rotary kilns, liquid injection incinerators, cement kilns, and high temperature boilers.

(m) "Leak" or "leaking" means any instance in which a PCB Article, PCB Container, or PCB Equipment has any PCBs on any portion of its external surface.

(n) "Manufacture" means to produce, manufacture, or import into the customs territory of the United States.

(o) "Mark" means the descriptive name, instructions, cautions, or other information applied to PCBs and PCB Items, or other objects subject to these regulations.

(p) "Marked" means the marking of PCB Items and PCB storage areas and transport vehicles by means of applying a legible mark by painting, fixation of an adhesive label, or by any other method that meets the requirements of these regulations.

(q) "Mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(r) "Municipal Solid Wastes" means garbage, refuse, sludges, wastes, and other discarded materials resulting from residential and non-industrial operations and activities, such as household activities, office functions, and commercial housekeeping wastes.

(s) "PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. (See § 761.1(b) Applicability for applicable concentrations of PCBs). PCB and PCBs as contained in PCB Items are defined in § 761.2(x).

(t) "PCB Article" means any manufactured article, other than a PCB Container that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.

(u) "PCB Article Container" means any package, can, bottle, bag, barrel, drum, tank or other device used to contain PCB Articles or PCB Equipment, and whose surface(s) has not been in direct contact with PCBs.

(v) "PCB Container" means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.

(w) "PCB Equipment" means any manufactured item, other than a PCB Container or a PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.

(x) "PCB Item" is defined as any PCB Article, PCB Article Container, PCB Container, or PCB Equipment, that deliberately or unintentionally contains or has as a part of it any PCB or PCBs at a concentration of 50 ppm or greater.

(y) "PCB Transformer" means any transformer that contains 500 ppm PCB or greater.

(z) "PCB-Contaminated Transformer" means any transformer that contains 50 ppm or greater of PCB but less than 500 ppm PCB (See § 761.31(a)(5) for provisions permitting reclassifying PCB Transformers to PCB-Contaminated Transformers).

(aa) "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

(bb) "Process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(2) As part of an article containing the chemical substance or mixture.

(cc) "Sale for Purposes Other than Resale" means sale of PCBs for purposes of disposal and for purposes of use, except where use involves sale for distribution in commerce. PCB Equipment which is first leased for purposes of use any time before July 1, 1979, will be considered sold for purposes other than resale.

(dd) "Significant Exposure" means any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method.

(ee) "Small Quantities for Research and Development" means any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product.

(ff) "Storage for Disposal" means temporary storage of PCBs that have been designated for disposal.

(gg) "Transport Vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (e.g., trailer, railroad freight car) is a separate transport vehicle.

(hh) "Totally Enclosed Manner" means any manner that will ensure that any exposure of human beings or the environment to any concentration of PCBs will be insignificant; that is, not measurable or detectable by any scientifically acceptable analytical method.

(ii) "Waste Oil" means used products primarily derived from petroleum, which include, but are not limited to, fuel oils,

motor oils, gear oils, cutting oils, transmission fluids, hydraulic fluids, and dielectric fluids.

Subpart B—Disposal of PCBs and PCB Items

Note.—This Subpart does not require removal of PCBs and PCB Items from service and disposal earlier than would normally be the case. However, when PCBs and PCB Items are removed from service and disposed of, disposal must be undertaken in accordance with these regulations. PCBs (including soils and debris) and PCB Items which have been placed in a disposal site are considered to be "in service" for purposes of the applicability of this Subpart. This Subpart does not require PCBs and PCB Items landfilled prior to February 17, 1978 to be removed for disposal. However, if such PCBs or PCB Items are removed from the disposal site, they must be disposed of in accordance with this Subpart. Other Subparts are directed to the manufacture, processing, distribution in commerce, and use of PCBs and may result in some cases in disposal at an earlier date than would otherwise occur.

§ 761.10 Disposal requirements.

(a) *PCBs.* (1) Except as provided in subparagraphs (2), (3), (4), and (5) of this paragraph, PCBs must be disposed of in an incinerator which complies with Annex I.

(2) Mineral oil dielectric fluid from PCB-Contaminated Transformers containing a PCB concentration of 50 ppm or greater, but less than 500 ppm, must be disposed of in one of the following:

(i) In an incinerator that complies with Annex I § 761.40;

(ii) In a chemical waste landfill that complies with Annex II § 761.41 if information is provided to the owner or operator of the chemical waste landfill that shows that the mineral oil dielectric fluid does not exceed 500 ppm PCB and is not an ignitable waste as described in § 761.41 (b) (8) (iii) of Annex II;

(iii) In a high efficiency boiler provided that:

(A) The boiler complies with the following criteria:

(*1*) The boiler is rated at a minimum of 50 million BTU hours;

(*2*) If the boiler uses natural gas or oil as the primary fuel, the carbon monoxide concentration in the stack is 50 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(*3*) If the boiler uses coal as the primary fuel, the carbon monoxide concentration in the stack is 100 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(*4*) The mineral oil dielectric fluid does not comprise more than ten (10) percent (on a volume basis) of the total fuel feed rate;

(*5*) The mineral oil dielectric fluid is not fed into the boiler unless the boiler is operating at its normal operating temperature (this prohibits feeding these fluids during either start up or shut down operations);

(*6*) The owner or operator of the boiler:

(*i*) Continuously monitors and records the carbon monoxide concentration and excess oxygen percentage in the stack gas while burning mineral oil dielectric fluid; or

(*ii*) If the boiler will burn less than 30,000 gallons of mineral oil dielectric fluid per year, measures and records the carbon monoxide concentration and excess oxygen percentage in the stack gas at regular intervals of no longer than 60 minutes while burning mineral oil dielectric fluid.

(*7*) The primary fuel feed rates, mineral oil dielectric fluid feed rates, and total quantities of both primary fuel and mineral oil dielectric fluid fed to the boiler are measured and recorded at regular intervals of no longer than 15 minutes while burning mineral oil dielectric fluid.

(*8*) The carbon monoxide concentration and the excess oxygen percentage are checked at least once every hour that mineral oil dielectric fluid is burned. If either measurement falls below the levels specified in this rule, the flow of mineral oil dielectric fluid to the boiler shall be stopped immediately.

(B) Thirty days before any person burns mineral oil dielectric fluid in the boiler, the person gives written notice to the EPA Regional Administrator for the EPA Region in which the boiler is located and that the notice contains the following information:

(*1*) The name and address of the owner or operator of the boiler and the address of the boiler;

(*2*) The boiler rating in units of BTU/hour;

(*3*) The carbon monoxide concentration and the excess oxygen percentage in the stack of the boiler when it is operated in a manner similar to the manner in which it will be operated when mineral oil dielectric fluid is burned; and

(*4*) The type of equipment, apparatus, and procedures to be used to control the feed of mineral oil dielectric fluid to the boiler and to monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack.

(C) When burning mineral oil dielectric fluid, the boiler must operate at a level of output no less than the output at which the measurements required under subparagraph (B)(*3*) were taken.

(D) Any person burning mineral oil dielectric fluid in a boiler obtains the following information and retains the information for five years at the boiler location:

(*1*) The data required to be collected under subparagraphs (A)(*6*) and (A)(*7*) of this paragraph; and

(*2*) The quantity of mineral oil dielectric fluid burned in the boiler each month;

(iv) In a facility that is approved in accordance with § 761.10(e). For the purpose of burning mineral oil dielectric fluid, an applicant under § 761.10(e) must show that his combustion process destroys PCBs as efficiently as does a high efficiency boiler, as defined in subparagraph (iii), or an Annex I approved incinerator.

(3) Liquids, other than mineral oil dielectric fluid, containing a PCB concentration of 50 ppm or greater, but less than 500 ppm, shall be disposed of:

(i) In an incinerator which complies with Annex I;

(ii) In a chemical waste landfill which complies with Annex II if information is provided to the owner or operator of the chemical waste landfill that shows that the waste does not exceed 500 ppm PCB and is not an ignitable waste as described in § 761.41(b)(8)(iii)of Annex II.

(iii) In a high efficiency boiler provided that:

(A) The boiler complies with the following criteria:

(*1*) The boiler is rated at a minimum of 50 million BTU/hour;

(*2*) If the boiler uses natural gas or oil as the primary fuel, the carbon monoxide concentration in the stack is 50 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(*3*) If the boiler uses coal as the primary fuel, the carbon monoxide concentration in the stack is 100 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(*4*) The waste does not comprise more than ten (10) percent (on a volume basis) of the total fuel feed rate;

(*5*) The waste is not fed into the boiler unless the boiler is operating at its normal operating temperature (this prohibits feeding these fluids during either start up or shut down operations);

(*6*) The owner or operator of the boiler must:

(*i*) Continuously monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack gas while burning waste fluid; or

(*ii*) If the boiler will burn less than 30,000 gallons of waste fluid per year, measure and record the carbon monoxide concentration and excess oxygen percentage in the stack gas at regular intervals of no longer than 60 minutes while burning waste fluid;

(*7*) The primary fuel feed rate, waste fluid feed rate, and total quantities of both primary fuel and waste fluid fed to the boiler must be measured and recorded at regular intervals of no longer than 15 minutes while burning waste fluid; and

(*8*) The carbon monoxide concentration and the excess oxygen percentage must be checked at least once every hour that the waste is burned. If either measurement falls below the levels specified in this rule, the flow of waste to the boiler shall be stopped immediately.

(B) Prior to any person burning these liquids in the boiler, approval must be obtained from the EPA Regional Administrator for the EPA Region in which the boiler is located and any persons seeking such approval must submit to the EPA Regional Administrator a request containing at least the following information:

(*1*) The name and address of the owner or operator of the boiler and the address of the boiler;

(*2*) The boiler rating in units of BTU/hour;

(*3*) The carbon monoxide concentration and the excess oxygen percentage in the stack of the boiler when it is operated in a manner similar to the manner in which it will be operated when low concentration PCB liquid is burned;

(*4*) The type of equipment, apparatus, and procedures to be used to control the feed of mineral oil dielectric fluid to the boiler and to monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack;

(*5*) The type of waste to be burned (e.g., hydraulic fluid, contaminated fuel oil, heat transfer fluid, etc.);

(*6*) The concentration of PCBs and of any other chlorinated hydrocarbon in the waste and the results of analyses using the American Society of Testing and Materials (ASTM) methods as referenced below: carbon and hydrogen content using ASTM D–3178, nitrogen content using ASTM E–258, sulfur content using ASTM D–2784, D–1266, or D–129, chlorine content using ASTM D–808, water and sediment content using either ASTM D–2709 or D–1796, ash content using D–482, calorific value using ASTM D–240, carbon residue using either ASTM D–2158 or D–524, and flash point using ASTM D–93;

(*7*) The quantity of wastes estimated to be burned in a thirty (30) day period;

(*8*) An explanation of the procedures to be followed to insure that burning the waste will not adversely affect the operation of the boiler such that combustion efficiency will decrease.

(C) On the basis of the information in (B) above and any other available information, the Regional Administrator may, at his discretion, find that the alternate disposal method will not present an unreasonable risk of injury to health or the environment and approve the use of the boiler;

(D) When burning PCB wastes, the boiler must operate at a level of output no less than the output at which the measurements required under subparagraph (B)(*3*) were taken; and

(E) Any person burning liquids in boilers approved as provided in (C) above, must obtain the following information and retain the information for five years at the boiler location:

(*1*) The data required to be collected in subparagraphs (A)(*6*) and (A)(*7*) of this paragraph;

(*2*) The quantity of low concentration PCB liquid burned in the boiler each month.

(*3*) The analysis of the waste required by subparagraph (B)(*6*) of this paragraph taken once a month for each month during which low concentration PCB liquid is burned in the boiler.

(iv) In a facility that is approved in accordance with § 761.10(e). For the purpose of burning liquids, other than mineral oil dielectric fluid, containing 50 ppm or greater PCB, but less than 500 ppm PCB, an applicant under § 761.10(e) must show that his combustion process destroys PCBs as efficiently as does a high efficiency boiler, as defined in § 761.10(a)(2)(iii), or an Annex I incinerator.

(4) Any non-liquid PCBs in the form of contaminated soil, rags, or other debris shall be disposed of:

(i) In an incinerator which complies with Annex I; or

(ii) In a chemical waste landfill which complies with Annex II.

Note: Except as provided in § 761.41(b)(8)(ii), liquid PCBs shall not be processed into non-liquid forms to circumvent the high temperature incineration requirements of § 761.10(a).

(5) All dredged materials and municipal sewage treatment sludges that contain PCBs shall be disposed of:

(i) In an incinerator which complies with Annex I;

(ii) In a chemical waste landfill which complies with Annex II; or

(iii) Upon application, using a disposal method to be approved by the Agency's Regional Administrator in the EPA Region in which the PCBs are located. Applications for disposal in a manner other than prescribed in (i) or (ii) above must be made in writing to the Regional Administrator. The application must contain information that, based on technical, environmental, and economic considerations, indicates that disposal in an incinerator or chemical waste landfill is not reasonable and appropriate, and that the alternate disposal method will provide adequate protection to health and the environment. The Regional Administrator may request other information that he or she believes to be necessary for evaluation of the alternate disposal method. Any approval by the Regional Administrator shall be in writing and may contain any appropriate limitations on the approved alternate method for disposal. In addition to these regulations, the Regional Administrator shall consider other applicable Agency guidelines, criteria, and regulations to ensure that the discharges of dredged material and sludges that contain PCBs and other contaminants are adequately controlled to protect the environment. The person to whom such approval is issued must comply with all limitations contained in the approval.

(6) When storage is desired prior to disposal, PCBs shall be stored in a facility which complies with Annex III.

(b) *PCB Articles.* (1) Transformers.

(i) PCB Transformers shall be disposed of in accordance with either of the following:

(A) In an incinerator that complies with Annex I; or

(B) In a chemical waste landfill which complies with Annex II; provided that the transformer is first drained of all free flowing liquid, filled with solvent, allowed to stand for at least 18 hours, and then drained thoroughly. PCB liquids that are removed shall be disposed of in accordance with paragraph (a) of this section. Solvents may include kerosene, xylene, toluene and other solvents in which PCBs are readily soluble. Precautionary measures should be taken, however, that the solvent flushing procedure is conducted in accordance with applicable safety and health standards as required by Federal or State regulations.

(ii) PCB-Contaminated Transformers shall be disposed of by draining all free flowing liquid from the transformer and disposing of the liquid in accordance

with paragraphs (a)(2) above. The disposal of the drained transformer is not regulated by this rule.

(2) PCB Capacitors. (i) The disposal of any capacitor normally used in alternating current circuits shall comply with all requirements of this subpart unless it is known from label or nameplate information, manufacturer's literature, or chemical analysis that the capacitor does not contain PCBs.

(ii) Any person may dispose of PCB Small Capacitors as municipal solid waste, unless that person is subject to the requirements of subparagraph (iv).

(iii) Any PCB Large High or Low Voltage Capacitor owned by any person shall be disposed of in accordance with either of the following:

(A) Disposal in an incinerator that complies with Annex I; or

(B) Until January 1, 1980, disposal in a chemical waste landfill that complies with Annex II.

(iv) Any PCB Small Capacitor owned by any person who manufactures or at any time manufactured PCB Capacitors or PCB Equipment and acquired the PCB Capacitors in the course of such manufacturing shall be disposed of in accordance with either of the following:

(A) Disposal in an incinerator which complies with Annex I; or

(B) Until January 1, 1980, disposal in a chemical waste landfill which complies with Annex II.

(3) PCB Hydraulic Machines. PCB hydraulic machines such as die casting machines may be disposed of as municipal solid waste or salvage provided that the machines are drained of all free-flowing liquid and the liquid is disposed of in accordance with the provisions of § 761.10(a). If the PCB liquid contains 1000 ppm PCB or greater, then the hydraulic machine must be flushed prior to disposal with a solvent containing less than 50 ppm PCB (see transformer solvents at § 761.10(b)(1)(i)(B)) and the solvent disposed of in accordance with § 761.10(a).

(4) Other PCB Articles must be disposed of:

(i) In an incinerator that complies with Annex I; or

(ii) In a chemical waste landfill that complies with Annex II, provided that all free-flowing liquid PCBs have been thoroughly drained from any articles before the articles are placed in the chemical waste landfill and that the drained liquids are disposed of in an incinerator that complies with Annex I.

(5) Storage of PCB Articles—Except for a PCB Article described in subparagraph (b)(2)(ii) and hydraulic machines that comply with the municipal solid waste disposal provisions described in subparagraph (b)(3), any PCB Article shall be stored in accordance with Annex III prior to disposal.

(c) *PCB Containers.* (1) Unless decontaminated in compliance with Annex IV or as provided in (2) below, a PCB Container shall be disposed of:

(i) In an incinerator which complies with Annex I, or

(ii) In a chemical waste landfill that complies with Annex II; provided that if there are PCBs in a liquid state, the PCB Container shall first be drained and the PCB liquid disposed of in accordance with paragraph (a) of this section.

(2) Any PCB Container used to contain only PCBs at a concentration less than 500 ppm shall be disposed of as municipal solid wastes; provided that if the PCBs are in a liquid state, the PCB Container shall first be drained and the PCB liquid shall be disposed of in accordance with paragraph (a) of this section.

(3) Prior to disposal, a PCB container shall be stored in a facility which complies with Annex III.

(d) *Spills.* (1) Spills and other uncontrolled discharges of PCBs constitute the disposal of PCBs.

(2) PCBs resulting from spill clean-up and removal operations shall be stored and disposed of in accordance with paragraph (a) of this section. In order to determine if a spill of PCBs has resulted in a contamination level that is 50 ppm of PCBs or greater in soil, gravel, sludge, fill, rubble, or other land based substances, the person who spills PCBs should consult with the appropriate EPA Regional Administrator to obtain information on sampling methods and analytical procedures for determining the PCB contamination level associated with the spill.

(3) This paragraph does not exempt any person from any actions or liability under other statutory authorities, including section 311 of the Clean Water Act and the Resource Conservation and Recovery Act.

(e) Any person who is required to incinerate any PCBs and PCB Items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB Items exists and that this alternative method can achieve a level of performance equivalent to Annex I incinerators or high efficiency boilers as provided in § 761.10(a)(2)(iv) and § 761.10(a)(3)(iv), may submit a written request to the Regional Administrator for an exemption from the incineration requirements of Annex I. The applicant must show that his method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any available information, the Regional Administrator may, in his discretion, approve the use of the alternate if he finds that the alternate disposal method provides PCB destruction equivalent to disposal in an Annex I incinerator and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may contain such conditions and provisions as the Regional Administrator deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination.

(f)(1) Each operator of a chemical waste landfill, incinerator, or alternative to incineration approved under paragraph (e) shall give the following written notices to the state and local governments within whose jurisdiction the disposal facility is located:

(i) Notice at least thirty (30) days before a facility is first used for disposal of PCBs required by these regulations; and

(ii) At the request of any state or local government, annual notice of the quantities and general description of PCBs disposed of during the year. This annual notice shall be given no more than thirty (30) days after the end of the year covered.

(2) Any person who disposes of PCBs under a §761.10(a)(5)(iii) incineration or chemical waste landfilling waiver shall give written notice at least thirty (30) days prior to conducting the disposal activities to the state and local governments within whose jurisdiction the disposal is to take place.

(g) *Testing Procedures.*

(1) Owners or users of mineral oil dielectric fluid transformers may use the following procedures to determine the concentration of PCBs in the dielectric fluid:

(i) Dielectric fluid removed from mineral oil dielectric fluid transformers may be collected in a common container, provided that no other chemical substances or mixtures are added to the container.

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common containers or the individual transformers to determine the PCB concentration, *except that* if any PCBs at a concentration of 500 ppm or greater have been added to the container then the total container contents must be considered as having a PCB concentration of 500 ppm or greater

for purposes of complying with the disposal requirements of this subpart. For purposes of this subparagraph, representative samples of mineral oil dielectric fluid are either samples taken in accordance with American Society of Testing and Materials method D-923 or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

(2) Owners or users of waste oil may use the following procedures to determine the PCB concentration of waste oil:

(i) Waste oil from more than one source may be collected in a common container, provided that no other chemical substances or mixtures, such as non-waste oils, are added to the container.

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common container or individual containers to determine the PCB concentration *except that* if any PCBs at a concentration of 500 pm or greater have been added to the container then the total container contents must be considered as having a PCB concentration of 500 ppm or greater for purposes of complying with the disposal requirements of this subpart. For purposes of this subparagraph, representative samples of waste oil are either samples taken in accordance with American Society of Testing and Materials D-923 method or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

(h) Requirements for export and import of PCBs for purposes of disposal and PCB Items for purposes of disposal are found in § 761.30.

Subpart C—Marking of PCBs and PCB Items

§ 761.20 Marking requirements.

(a) Each of the following items in existence on or after July 1, 1978 shall be marked as illustrated in Figure 1 in Annex V—§ 761.44(a): The mark illustrated in Figure 1 is referred to as M_L throughout this subpart.

(1) PCB Containers;

(2) PCB Transformers at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked. [Marking of PCB—Contaminated Transformers is not required];

(3) PCB Large High Voltage Capacitors at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked;

(4) Equipment containing a PCB Transformer or a PCB Large High Voltage Capacitor at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal of the equipment from use if not already marked;

(5) PCB Large Low Voltage Capacitors at the time of removal from use;

(6) Electric motors using PCB coolants (See also § 761.20(e)).

(7) Hydraulic systems using PCB hydraulic fluid (See also § 761.20(e));

(8) Heat transfer systems (other than PCB Transformers) using PCBs (See also § 761.20(e));

(9) PCB Article Containers containing articles or equipment that must be marked under provisions (1) through (8) above;

(10) Each storage area used to store PCBs and PCB Items for disposal.

(b) As of October 1, 1978, each transport vehicle shall be marked on each end and side with M_L as described in Annex V—§ 761.44(a) if it is loaded with PCB Containers that contain more than 45 kg (99.4 lbs.) of PCBs in the liquid phase or with one or more PCB Transformers (See also § 761.20(e)).

(c) As of January 1, 1979, the following PCB Articles shall be marked with mark M_L as described in Annex V—§ 761.44(a):

(1) All PCB Transformers not marked under paragraph (a) of this section (Marking of PCB-Contaminated Transformers is not required);

(2) All PCB Large High Voltage Capacitors not marked under paragraph (a) of this section

(i) Will be marked individually with mark M_L, or

(ii) If one or more PCB Large High Voltage Capacitors are installed in a protected location such as on a power pole, or structure, or behind a fence; the pole, structure, or fence shall be marked with mark M_L, and a record or procedure identifying the PCB Capacitors shall be maintained by the owner or operator at the protected location.

(d) As of January 1, 1979, all PCB Equipment containing a PCB Small Capacitor shall be marked at the time of manufacture with the statement, "This equipment contains PCB Capacitor(s)". The mark shall be of the same size as the mark M_L.

(e) As of October 1, 1979, applicable PCB Items in paragraphs (a)(1), (6), (7), and (8) containing PCBs in concentrations of 50 to 500 ppm and applicable transport vehicles in paragraph (b) loaded with PCB Containers that contain more than 45 kg (99.4 lbs.) of liquid PCBs in concentrations of 50 ppm to 500 ppm shall be marked with mark M_L as described in Annex V—§ 761.44(a).

(f) Where mark M_L is specified but the PCB Article or PCB Equipment is too small to accomodate the smallest permissible size of mark M_L, mark M_S as described in Annex V—§ 761.44(b), may be used instead of mark M_L.

(g) Each large low voltage capacitor, each small capacitor normally used in alternating current circuits, and each fluorescent light ballast manufactured ("manufactured", for purposes of this sentence, means built) between July 1, 1978 and July 1, 1998 that do not contain PCBs shall be marked by the manufacturer at the time of manufacture with the statement, "No PCBs". The mark shall be of similar durability and readability as other marking that indicate electrical information, part numbers, or the manufacturer's name. For purposes of this subparagraph marking requirement only is applicable to items built domestically or abroad after June 30, 1978.

(h) All marks required by this subpart must be placed in a position on the exterior of the PCB Items or transport vehicles so that the marks can be easily read by any persons inspecting or servicing the marked PCB Items or transport vehicles.

(i) Any chemical substance or mixture that is manufactured after the effective date of this rule and that contains less than 500 ppm PCB (0.05% on a dry weight basis), including PCB that is a byproduct or impurity, must be marked in accordance with any requirements contained in the exemption granted by EPA to permit such manufacture and is not subject to any other requirement in this Subpart unless so specified in the exemption. This paragraph applies only to containers of chemical substances or mixtures. PCB articles and equipment into which the chemical substances or mixtures are processed, are subject to the marking requirements contained elsewhere in this Subpart.

Subpart D—Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items

§ 761.30 Prohibitions.

Except as authorized in § 761.31, the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraphs (b)

and (c) of this section concerning export and import of PCBs for purposes of disposal and PCB Items for purposes of disposal are established pursuant to section 6(e)(1) of TSCA. Subject to any exemptions granted pursuant to section 6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of this section are prohibited pursuant to section 6(e)(3)(A) of TSCA. In addition, the Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce of PCBs and PCB Items for export from the United States presents an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure; the high probability of human and environmental exposure to PCBs and PCB Items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB Items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. In addition, the Administrator hereby finds that any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method is a significant exposure, as defined in § 761.2(dd). Section 761.2(hh) and TSCA section 6(e)(2)(C) define the term totally enclosed manner as "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant. . . ." Since any exposure to PCBs is found to be a significant exposure, a totally enclosed manner is a manner that results in no exposure of humans or the environment to PCBs. The following activities are considered totally enclosed: distribution in commerce and use (except servicing) of intact, non-leaking PCB Transformers or PCB-Contaminated Transformers (except those used in railroad locomotives or self-propelled cars); distribution in commerce and use (except servicing) of intact, non-leaking PCB electromagnets; distribution in commerce and use of intact, non-leaking PCB Capacitors; and processing, distribution in commerce, and use of PCB Equipment containing an intact, non-leaking PCB Capacitor.

(a) No person may process, distribute in commerce, or use any PCB or PCB Item in any manner other than in a totally enclosed manner within the United States or export any such PCB or PCB Item from the United States unless authorized under § 761.31 of this Subpart. Section 761.30(a) is superseded by § 761.30(c) for processing and distribution in commerce of PCBs and PCB Items on the dates when that section becomes effective.

(b) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption except that:

(1) PCBs or PCB Items may be imported for purposes of disposal until May 1, 1980, provided that the disposal is in accordance with § 761.10; and

(2) PCBs or PCB Items may be exported for disposal until May 1, 1980, in accordance with the requirements of § 761.30(c)(3).

(c) Effective July 1, 1979, no person may process or distribute in commerce any PCB or PCB Item for use within the United States or for export from the United States without an exemption except that:

(1) PCBs or PCB Items sold before July 1, 1979, for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date;

(2) PCBs or PCB Items may be processed and distributed in commerce in compliance with the requirements of this Part for purposes of disposal in accordance with the requirements of § 761.10;

(3) PCBs or PCB Items may be exported for disposal until May 1, 1980, if an export notice is submitted at least thirty (30) days before the first shipment in any calendar year leaves the customs territory of the United States. Export notices must be submitted to the Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The generator of the PCB waste material intended for disposal, or an agent acting on his behalf, must certify to the best of his knowledge and belief that the information is complete and accurate. Each notice should contain the following information:

(i) Name, company name, address, and telephone number of the owner of the PCB waste material to be exported and the name and address of any person or agent acting on his behalf;

(ii) Estimated quantity of wastes to be shipped during the calendar year and the estimated number of shipments to be made and the dates when such shipments are expected to leave the customs territory of the United States;

(iii) Description of the PCBs or PCB Items being exported;

(iv) Country(s) of destination for the shipments;

(v) Name and address of facility(s) receiving the shipment and person(s) responsible for receiving the shipment(s).

(vi) Method(s) of disposal and precautions taken to control release into the environment.

(vii) No less than 30 days after the end of each calendar quarter (March 31, June 30, September 30, and December 31) during which PCBs were exported for disposal, each person exporting the PCBs must submit a report to the Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The report shall list the quantity of PCB wastes in each shipment made during the quarter and include the date when each shipment left the customs territory of the United States and the information specified in subparagraphs (i) and (iii) through (vi) above. If the quantity of wastes shipped during the calendar year exceeds by 25 percent or more the estimated quantities reported in (ii) above, a special export notice must be submitted to the Document Control Officer (TS-793) at the address given in paragraph (3) at least 30 days before any additional shipments leave the customs territory of the United States and the notice shall include the information specified in subparagraphs (i) through (vi) above.

(viii) Any person expecting to export PCB wastes for disposal in calendar year 1980 must submit an export notice at least thirty (30) days before the first shipment leaves the customs territory of the United States to the Document Control Officer (TS-793) at the address given in paragraph (3), and the notice shall contain the information listed in subparagraphs (i) through (vi).

(d) The use of waste oil that contains any detectable concentration of PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes.

§ 761.31 Authorizations.

The following non-totally enclosed PCB activities are authorized pursuant to § 6(e)(2)(B) of TSCA:

(a) *Servicing Transformers (Other Than Railroad Transformers).* PCBs may be processed, distributed in commerce, and used for the purposes of servicing including rebuilding transformers (other than transformers for railroad locomotives and self-

propelled railroad cars) in a manner other than a totally enclosed manner until July 1, 1984, subject to the following conditions:

(1) Regardless of its PCB concentration, dielectric fluids containing less than 500 ppm PCB that are mixed with fluids that contain 500 ppm or greater PCB must not be used as dielectric fluid in any transformer. Dielectric fluid from PCB-Contaminated Transformers may be assumed to have less than 500 ppm PCBs.

(2) PCB-Contaminated Transformers (as defined in § 761.2(z)) may only be serviced (including rebuilding) with dielectric fluid containing less than 500 ppm PCB.

(3) Any servicing (including rebuilding) of PCB Transformers (as defined in § 761.2(y)) that requires the removal of the transformer coil from the transformer casing is prohibited. PCB Transformers may be topped off with PCB dielectric fluid.

(4) PCBs removed during servicing of a PCB Transformer or PCB-Contaminated Transformer or during rebuilding of a PCB-Contaminated Transformer must be captured and either reused as dielectric fluid or disposed of in accordance with the requirements of Subpart B. PCBs from PCB Transformers must not be mixed with or added to dielectric fluid from PCB-Contaminated Transformers.

(5) A PCB Transformer may be converted to a PCB-Contaminated Transformer by draining, refilling, and otherwise servicing the transformer with non-PCB dielectric fluid so that after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer, the transformer's dielectric fluid contains less than 500 ppm PCB (on a dry weight basis).

(6) Any PCB dielectric fluid that is on hand to service a PCB Transformer or a PCB-Contaminated Transformer must be stored in accordance with the storage for disposal requirements of Annex III (§ 761.42).

(7) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing transformers is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(b) *Use in and Servicing of Railroad Transformers.* PCBs may be used in transformers in railroad locomotives or railroad self-propelled cars ("railroad transformers") and may be processed and distributed in commerce for purposes of servicing these transformers in a manner other than a totally enclosed manner until July 1, 1984, subject to the following conditions:

(1) *Use Restrictions:*

(i) After January 1, 1982, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 60,000 ppm (6.0% on a dry weight basis) is prohibited;

(ii) After January 1, 1984, use of railroad transformers which contain dielectric fluids with a PCB concentration greater than 1000 ppm (0.10% on a dry weight basis) is prohibited;

(iii) The concentration of PCBs in the dielectric fluid contained in railroad transformers must be measured:

(A) Immediately upon completion of any authorized servicing of a railroad transformer conducted for the purpose of reducing the PCB concentration in the dielectric fluid in the transformer; and

(B) Between 12 and 24 months after each servicing conducted in accordance with subparagraph (A);

(C) The data obtained as a result of subparagraphs (A) and (B) above shall be retained until January 1, 1991.

(2) *Servicing Restrictions:*

(i) If the coil is removed from the casing of a railroad transformer (e.g., the transformer is rebuilt), after January 1, 1982, the railroad transformer may not be refilled with dielectric fluid containing a PCB concentration greater than 50 ppm;

(ii) After January 1, 1982, railroad transformers may only be serviced with dielectric fluid containing less than 60,000 ppm PCBs, except as provided in (i) above;

(iii) After January 1, 1984, railroad transformers may only be serviced with dielectric fluid containing less than 1000 ppm PCB, except as provided in (i) above;

(iv) Dielectric fluid may be filtered through activated carbon or otherwise industrially processed for the purpose of reducing the PCB concentration in the fluid;

(v) Any PCB dielectric fluid that is used to service PCB railroad transformers must be stored in accordance with the storage for disposal requirements of Annex III (§ 761.42);

(vi) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing railroad transformers is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(c) *Use in and Servicing of Mining Equipment.* PCBs may be used in mining equipment and may be processed and distributed in commerce for purposes of servicing mining equipment in a manner other than a totally enclosed manner until January 1, 1982, subject to the following conditions:

(1) PCBs may be added to motors in mining equipment in mines or mining areas until January 1, 1982;

(2) PCB motors in loader-type mining equipment must be rebuilt as air-cooled or other non-PCB-containing motors whenever the motor is returned to a service shop for servicing;

(3) PCB motors in continuous miner-type equipment may be rebuilt as PCB motors until January 1, 1980;

(4) Any PCBs that are on hand to service or repair mining equipment must be stored in accordance with the storage for disposal requirements of Annex III (§ 761.42);

(5) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing mining equipment is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(d) *Use in Heat Transfer Systems.* PCBs may be used in heat transfer systems in a manner other than a totally enclosed manner until July 1, 1984, subject to the following conditions:

(1) Each person who owns a heat transfer system that ever contained PCBs must test for the concentration of PCBs in the heat transfer fluid of such a system no later than November 1, 1979, and at least annually thereafter. All test sampling must be performed at least three months after the most recent fluid refilling. When a test shows that the PCB concentration is less than 50 ppm, testing under this subparagraph is no longer required;

(2) Within six (6) months of a test performed under subparagraph (1) that indicates that a system's fluid contains 50 ppm or greater PCB (0.005% on a dry weight basis), the system must be drained of the PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-off with non-PCB heat transfer fluids to reduce PCB concentrations is permitted;

(3) After November 1, 1979, no heat transfer system that is used in the manufacture or processing of any food, drug, cosmetic, or device, as defined in § 201 of the Federal Food, Drug, and Cosmetic Act, may contain heat transfer fluid with 50 ppm or greater PCB (0.005% on a dry weight basis);

(4) Addition of PCBs to a heat transfer system is prohibited.

(5) Data obtained as a result of subparagraph (1) must be retained for five (5) years after the heat transfer system reaches 50 ppm PCB;

(e) *Use in Hydraulic Systems.* PCBs may be used in hydraulic systems and

may be processed and distributed in commerce for purposes of filtering, distilling, or otherwise reducing the concentration of PCBs in hydraulic fluids in a manner other than a totally enclosed manner until July 1, 1984, subject to the following conditions:

(1) Each person who owns a hydraulic system that ever contained PCBs must test for the concentration of PCBs in the hydraulic fluid of each such system no later than November 1, 1979, and at least annually thereafter. All test sampling must be performed at least three months after the most recent fluid refilling. When a test shows that the PCB concentration is less than 50 ppm, testing under this subparagraph is no longer required;

(2) Within six (6) months of a test under subparagraph (1) that indicates that a system's fluid contains 50 ppm or greater PCB (0.005% on a dry weight basis), the system must be drained of the PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-off with non-PCB hydraulic fluids to reduce PCB concentrations is permitted;

(3) Addition of PCBs to a hydraulic system is prohibited;

(4) Hydraulic fluid may be drained from a hydraulic system and filtered, distilled, or otherwise serviced in order to reduce the PCB concentration below 50 ppm;

(5) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing hydraulic systems is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B);

(6) Data obtained as a result of subparagraph (1) above must be retained for five years after the hydraulic system reaches 50 ppm.

(f) *Use in Carbonless Copy Paper.* Carbonless copy paper containing PCBs may be used in a manner other than a totally enclosed manner indefinitely.

(g) *Pigments.* Diarylide and Phthalocyanin pigments that contain 50 ppm or greater PCB may be processed, distributed in commerce, and used in a manner other than a totally enclosed manner until January 1, 1982, except that after July 1, 1979, processing and distribution in commerce of diarylide or phthalocyanin pigments that contain 50 ppm or greater PCB is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(h) *Servicing Electromagnets.* PCBs may be processed, distributed in commerce, and used for the purpose of servicing electromagnets until July 1, 1984, in a manner other than a totally enclosed manner subject to the following requirements:

(1) PCBs removed during servicing must be captured and either returned to the electromagnet, reused as a dielectric fluid, or disposed of in accordance with Subpart B (§ 761.10);

(2) Servicing of PCB electromagnets (including rebuilding) which requires the removal of the coil from the casing is prohibited.

(3) Any PCBs that are on hand to service a PCB electromagnet must be stored in accordance with the storage for disposal requirements of Annex III (§ 761.42);

(4) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing electromagnets is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(i) *Use in Natural Gas Pipeline Compressors.* PCBs may be used in natural gas pipeline compressors until May 1, 1980, in a manner other than a totally enclosed manner.

(j) *Small Quantities for Research and Development.* PCBs may be processed, distributed in commerce, and used in small quantities for research and development, as defined in § 760.2(ee), in a manner other than a totally enclosed manner until July 1, 1984, except that after July 1, 1979, processing and distribution in commerce of PCBs in small quantities for research and development is permitted only for persons who have been granted an exemption under TSCA section 6(e)(3)(B).

(k) *Microscopy Mounting Medium.* PCBs may be processed, distributed in commerce, and used as a mounting medium in microscopy in a manner other than a totally enclosed manner until July 1, 1984, except that after July 1, 1979, processing and distribution in commerce of PCBs for purposes of use as a mounting medium in microscopy are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

Subpart E—List of Annexes

Annex I

§ 761.40 Incineration.

(a) *Liquid PCBs.* An incinerator used for incinerating PCBs shall be approved by the Agency Regional Administrator pursuant to paragraph (d) of this section. The incinerator shall meet all of the requirements specified in subparagraph (1) through (9) of this paragraph, unless a waiver from these requirements is obtained pursuant to paragraph (d)(5) of this section. In addition, the incinerator shall meet any other requirements which may be prescribed pursuant to paragraph (d)(4) of this section.

(1) Combustion criteria shall be either of the following:

(i) Maintenance of the introduced liquids for a 2-second dwell time at 1200°C(±100°C) and 3 percent excess oxygen in the stack gas; or

(ii) Maintenance of the introduced liquids for a 1½ second dwell time at 1600°C(±100°C) and 2 percent excess oxygen in the stack gas.

(2) Combustion efficiency shall be at least 99.9 percent computed as follows:

$$\text{Combustion efficiency} = C_{CO_2}/C_{CO_2} + C_{CO} \times 100$$

where

C_{CO_2} = Concentration of carbon dioxide.
C_{CO} = Concentration of carbon monoxide.

(3) The rate and quantity of PCBs which are fed to the combustion system shall be measured and recorded at regular intervals of no longer than 15 minutes.

(4) The temperatures of the incineration process shall be continuously measured and recorded. The combustion temperature of the incineration process shall be based on either direct (pyrometer) or indirect (wall thermocouple-pyrometer correlation) temperature readings.

(5) The flow of PCBs to the incinerator shall stop automatically whenever the combustion temperature drops below the temperatures specified in subparagraph (1) of this paragraph.

(6) Monitoring of stack emission products shall be conducted:

(i) When an incinerator is first used for the disposal of PCBs under the provisions of this regulation;

(ii) When an incinerator is first used for the disposal of PCBs after the incinerator has been modified in a manner which may affect the characteristics of the stack emission products; and

(iii) At a minimum such monitoring shall be conducted for the following parameters: (a) O_2; (b) CO; (c) CO_2; (d) Oxides of Nitrogen (NO_x); (e) Hydrochloric Acid (HCl); (f) Total Chlorinated Organic Content (RCl); (g) PCBs; and (h) Total Particulate Matter.

(7) At a minimum monitoring and recording of combustion products and incineration operations shall be conducted for the following parameters whenever the incinerator is incinerating PCBs: (i) O_2; (ii) CO; and (iii) CO_2. The monitoring for O_2 and CO shall be continuous. The monitoring for CO_2 shall be periodic, at a frequency specified by the Regional Administrator.

(8) The flow of PCBs to the incinerator shall stop automatically when any one or more of the following conditions occur unless a contingency plan is submitted by the incinerator owner or operator and approved by the Regional Administrator and the contingency plan indicates what alternative measures the incinerator owner or operator would take if any of the following conditions occur:

(i) Failure of monitoring operations specified in subparagraph (7) of this paragraph;

(ii) Failure of the PCB rate and quantity measuring and recording equipment specified in subparagraph (3) of this paragraph; or

(iii) Excess oxygen falls below the percentage specified in subparagraph (1) of this paragraph.

(9) Water scrubbers shall be used for HCl control during PCB incineration and shall meet any performance requirements specified by the appropriate EPA Regional Administrator. Scrubber effluent shall be monitored and shall comply with applicable effluent or pretreatment standards, and any other State and Federal laws and regulations. An alternate method of HCl control may be used if the alternate method has been approved by the Regional Administrator. (The HCl neutralizing capability of cement kilns is considered to be an alternate method.)

(b) *Non-liquid PCBs.* An incinerator used for incinerating non-liquid PCBs, PCB Articles, PCB Equipment, or PCB Containers shall be approved by the Agency Regional Administrator pursuant to paragraph (d) of this section. The incinerator shall meet all of the requirements specified in subparagraphs (1) and (2) of this paragraph unless a waiver from these requirements is obtained pursuant to paragraph (d)(5) of this section. In addition, the incinerator shall meet any other requirements that may be prescribed pursuant to paragraph (d)(4) of this section.

(1) The mass air emissions from the incinerator shall be no greater than 0.001g PCB/kg of the PCB introduced into the incinerator.

(2) The incinerator shall comply with the provisions of § 761.40(a)(2), (3), (4), (6), (7), (8)(i) and (ii), and (9).

(c) *Maintenance of data and records.* All data and records required by this section shall be maintained in accordance with Annex VI—§ 761.45, Records and Monitoring.

(d) *Approval of incinerators.* Prior to the incineration of PCBs and PCB Items the owner or operator of an incinerator shall receive the written approval of the Agency Regional Administrator for the Region in which the incinerator is located. Such approval shall be obtained in the following manner:

(1) *Initial Report.* The owner or operator shall submit to the Regional administrator an initial report which contains:

(i) The location of the incinerator;

(ii) A detailed description of the incinerator including general site plans and design drawings of the incinerator;

(iii) Engineering reports or other information on the anticipated performance of the incinerator;

(iv) Sampling and monitoring equipment and facilities available;

(v) Waste volumes expected to be incinerated;

(vi) Any local, State, or Federal permits or approvals; and

(vii) Schedules and plans for complying with the approval requirements of this regulation.

(2) *Trial burn.* (i) Following receipt of the report described in subparagraph (1) of this paragraph, the Regional Administrator shall determine if a trial burn is required and notify the person who submitted the report whether a trial burn of PCBs and PCB Items must be conducted. The Regional Administrator may require the submission of any other information that the Regional Administrator finds to be reasonably necessary to determine the need for a trial burn. Such other information shall be restricted to the types of information required in subparagraph (1)(i) through (1)(vii) of this paragraph.

(ii) If the Regional Administrator determines that a trial burn must be held, the person who submitted the report described in subparagraph (1) of this paragraph shall submit to the Regional Administrator a detailed plan for conducting and monitoring the trial burn. At a minimum, the plan must include:

(A) Date trial burn is to be conducted;

(B) Quantity and type of PCBs and PCB Items to be incinerated;

(C) Parameters to be monitored and location of sampling points;

(D) Sampling frequency and methods and schedules for sample analyses; and

(E) Name, address, and qualifications of persons who will review analytical results and other pertinent data, and who will perform a technical evaluation of the effectiveness of the trial burn.

(iii) Following receipt of the plan described in subparagraph (2)(ii) of this paragraph, the Regional Administrator will approve the plan, require additions or modifications to the plan, or disapprove the plan. If the plan is disapproved, the Regional Administrator will notify the person who submitted the plan of such disapproval, together with the reasons why it is disapproved. That person may thereafter submit a new plan in accordance with subparagraph (2)(ii) of this paragraph. If the plan is approved (with any additions or modifications which the Regional Administrator may Prescribe), the Regional Administrator will notify the person who submitted the plan of the approval. Thereafter the trial burn shall take place at a date and time to be agreed upon between the Regional Administrator and the persons who submitted the plan.

(3) *Other information.* In addition to the information contained in the report and plan described in subparagraphs (1) and (2) of this paragraph, the Regional Administrator may require the owner or operator to submit any other information that the Regional Administrator finds to be reasonably necessary to determine whether an incinerator shall be approved.

Note.—The Regional Administrator will have available for review and inspection an Agency manual containing information on sampling methods and analytical procedures for the parameters required in § 761.40(a)(3), (4), (6), and (7) plus any other parameters he may determine to be appropriate. Owners or operators are encouraged to review this manual prior to submitting any report required in this Annex.

(4) *Contents of Approval.* (i) Except as provided in subparagraph (5) of this paragraph, the Regional Administrator may not approve an incinerator for the disposal of PCB and PCB Items unless he finds that the incinerator meets all of the requirements of paragraphs (a) and/or (b) of this section.

(ii) In addition to the requirements of paragraphs (a) and/or (b) of this section, the Regional Administrator may include in an approval any other requirements that the Regional Administrator finds are necessary to ensure that operation of the incinerator does not present an unreasonable risk of injury to health or the environment from PCBs. Such requirements may include a fixed period of time for which the approval is valid.

(5) *Waivers.* An owner or operator of the incinerator may submit evidence to the Regional Administrator that operation of the incinerator will not present an unreasonable risk of injury to health or the environment from PCBs, when one or more of the requirements of paragraphs (a) and/or (b) of this section are not met. On the basis of such evidence and any other available information, the Regional Administrator may in his discretion find that any requirement of paragraph (a) and (b) is

not necessary to protect against such a risk, and may waive the requirements in any approval for that incinerator. Any finding and waiver under this subparagraph must be stated in writing and included as part of the approval.

(6) *Persons Approved.* An approval will designate the persons who own and who are authorized to operate the incinerator, and will apply only to such persons, except as provided in paragraph (8) below.

(7) *Final Approval.* Approval of an incinerator will be in writing and signed by the Regional Administrator. The approval will state all requirements applicable to the approved incinerator.

(8) *Transfer of Property.* Any person who owns or operates an approved incinerator must notify EPA at least 30 days before transferring ownership in the incinerator or the property it stands upon, or transferring the right to operate the incinerator. The transferor must also submit to EPA, at least 30 days before such transfer, a notarized affidavit signed by the transferee which states that the transferee will abide by the transferor's EPA incinerator approval. Within 30 days of receiving such notification and affidavit, EPA will issue an amended approval substituting the transferee's name for the transferor's name, or EPA may require the transferee to apply for a new incinerator approval. In the latter case, the transferee must abide by the transferor's EPA approval until EPA issues the new approval to the transferee.

Annex II

§ 761.41 Chemical waste landfills.

(a) *General.* A chemical waste landfill used for the disposal of PCBs and PCB Items shall be approved by the Agency Regional Administrator pursuant to paragraph (c) of this section. The landfill shall meet all of the requirements specified in paragraph (b) of this section, unless a waiver from these requirements is obtained pursuant to paragraph (c)(4) of this section. In addition, the landfill shall meet any other requirements that may be prescribed pursuant to paragraph (c)(3) of this section.

(b) *Technical Requirements.* Requirements for chemical waste landfills used for the disposal of PCBs and PCB Items are as follows:

(1) *Soils.* The landfill site shall be located in thick, relatively impermeable formations such as large-area clay pans. Where this is not possible, the soil shall have a high clay and silt content with the following parameters:

(i) In-place soil thickness, 4 feet or compacted soil liner thickness, 3 feet;

(ii) Permeability (cm/sec), equal to or less than 1×10^{-7};

(iii) Percent soil passing No. 200 Sieve, >30;

(iv) Liquid Limit, >30; and

(v) Plasticity Index >15.

(2) *Synthetic Membrane Liners.* Synthetic membrane liners shall be used when, in the judgment of the Regional Administrator, the hydrologic or geologic conditions at the landfill require such a liner in order to provide at least a permeability equivalent to the soils in (1) above. Whenever a synthetic liner is used at a landfill site, special precautions shall be taken to insure that its integrity is maintained and that it is chemically compatible with PCBs. Adequate soil underlining and soil cover shall be provided to prevent excessive stress on the liner and to prevent rupture of the liner. The liner must have a minimum thickness of 30 mils.

(3) *Hydrologic Conditions.* The bottom of the landfill shall be above the historical high groundwater table as provided below. Floodplains, shorelands, and groundwater recharge areas shall be avoided. There shall be no hydraulic connection between the site and standing or flowing surface water. The site shall have monitoring wells and leachate collection. The bottom of the landfill liner system or natural in-place soil barrier shall be at least fifty feet from the historical high water table.

(4) *Flood Protection.* (i) If the landfill site is below the 100-year floodwater elevation, the operator shall provide surface water diversion dikes around the perimeter of the landfill site with a minimum height equal to two feet above the 100-year floodwater elevation.

(ii) If the landfill site is above the 100-year floodwater elevation, the operators shall provide diversion structures capable of diverting all of the surface water runoff from a 24-hour, 25-year storm.

(5) *Topography.* The landfill site shall be located in an area of low to moderate relief to minimize erosion and to help prevent landslides or slumping.

(6) *Monitoring Systems.* (i) *Water Sampling.* (A) For all sites receiving PCBs, the ground and surface water from the disposal site area shall be sampled prior to commencing operations under an approval provided in § 761.41(c) for use as baseline data.

(B) Any surface watercourse designated by the Regional Administrator using the authority provided in § 761.41(c)(3)(ii) shall be sampled at least monthly when the landfill is being used for disposal operations.

(C) Any surface watercourse designated by the Regional Administrator using the authority provided in § 761.41(c)(3)(ii) shall be sampled for a time period specified by the Regional Administrator on a frequency of no less than once every six months after final closure of the disposal area.

(ii) *Groundwater Monitor Wells.* (A) If underlying earth materials are homogenous, impermeable, and uniformly sloping in one direction, only three sampling points shall be necessary. These three points shall be equally spaced on a line through the center of the disposal area and extending from the area of highest water table elevation to the area of the lowest water table elevation on the property.

(B) All monitor wells shall be cased and the annular space between the monitor zone (zone of saturation) and the surface shall be completely backfilled with Portland cement or an equivalent material and plugged with Portland cement to effectively prevent percolation of surface water into the well bore. The well opening at the surface shall have a removable cap to provide access and to prevent entrance of rainfall or stormwater runoff. The well shall be pumped to remove the volume of liquid initially contained in the well before obtaining a sample for analysis. The discharge shall be treated to meet applicable State or Federal discharge standards or recycled to the chemical waste landfill.

(iii) *Water Analysis.* As a minimum, all samples shall be analyzed for the following parameters, and all data and records of the sampling and analysis shall be maintained as required in Annex VI—§ 761.45(d)(1). Sampling methods and analytical procedures for these parameters shall comply with those specified in 40 CFR Part 136 as amended in 41 FR 52779 on December 1, 1976.

(A) PCBs.

(B) pH.

(C) Specific Conductance.

(D) Chlorinated Organics.

(7) *Leachate Collection.* A leachate collection monitoring system shall be installed above the chemical waste landfill. Leachate collection systems shall be monitored monthly for quantity and physicochemical characteristics of leachate produced. The leachate should be either treated to acceptable limits for discharge in accordance with a State or Federal permit or disposed of by another State or Federally approved method. Water analysis shall be conducted as

provided in subparagraph (6) (iii) of this paragraph. Acceptable leachate monitoring/collection systems shall be any of the following designs, unless a waiver is obtained pursuant to paragraph (c)(4) of this section.

(i) Simple Leachate Collection. This system consists of a gravity flow drainfield installed above the waste disposal facility liner. This design is recommended for use when semi-solid or leachable solid wastes are placed in a lined pit excavated into a relatively thick, unsaturated, homogenous layer of low permeability soil.

(ii) Compound Leachate Collection. This system consists of a gravity flow drainfield installed above the waste disposal facility liner, and above a secondary installed liner. This design is recommended for use when semi-liquid or leachable solid wastes are placed in a lined pit excavated into relatively permeable soil.

(ii) Suction Lysimeters. This system consists of a network of porous ceramic cups connected by hoses/tubing to a vacuum pump. The porous ceramic cups or suction lysimeters are installed along the sides and under the bottom of the waste disposal facility liner. This type of system works best when installed in a relatively permeable unsaturated soil immediately adjacent to the bottom and/or sides of the disposal facility.

(8) *Chemical Waste Landfill Operations.* (i) PCBs and PCB Items shall be placed in a landfill in a manner that will prevent damage to containers or articles. Other wastes placed in the landfill that are not chemically compatible with PCBs and PCB Items including organic solvents shall be segregated from the PCBs throughout the waste handling and disposal process.

(ii) An operation plan shall be developed and submitted to the Regional Administrator for approval as required in paragraph (c) of this section. This plan shall include detailed explanations of the procedures to be used for recordkeeping, surface water handling procedures, excavation and backfilling, waste segregation burial coordinates, vehicle and equipment movement, use of roadways, leachate collection systems, sampling and monitoring procedures, monitoring wells, environmental emergency contingency plans, and security measures to protect against vandalism and unauthorized waste placements. EPA guidelines entitled "Thermal Processing and Land Disposal of Solid Waste" (39 FR 29337, August 14, 1974) are a useful reference in preparation of this plan. If the facility is to be used to dispose of liquid wastes containing between 50 ppm and 500 ppm PCB, the operations plan must include procedures to determine that liquid PCBs to be disposed of at the landfill do not exceed 500 ppm PCB and meaures to prevent the migration of PCBs from the landfill. Bulk liquids not exceeding 500 ppm PCBs may be disposed of provided such waste is pretreated and/or stabilized (e.g., chemically fixed, evaporated, mixed with dry inert absorbant) to reduce its liquid content or increase its solid content so that a non-flowing consistency is achieved to eliminate the presence of free liquids prior to final disposal in a landfill. PCB Container of liquid PCBs with a concentration between 50 and 500 ppm PCB may be disposed of if each container is surrounded by an amount of inert sorbant material capable of absorbing all of the liquid contents of the container.

(iii) Ignitable wastes shall not be disposed of in chemical waste landfills. Liquid ignitable wastes are wastes that have a flash point less than 60 degrees C (140 degrees F) as determined by the following method or an equivalent method: Flash point of liquids shall be determined by a Pensky-Martens Closed Cup Tester, using the protocol specified in ASTM Standard D-93, or the Setaflash Closed Tester using the protocol specified in ASTM Standard D-3278.

(iv) Records shall be maintained for all PCB disposal operations and shall include information on the PCB concentration in liquid wastes and the three dimensional burial coordinates for PCBs and PCB Items. Additional records shall be developed and maintained as required in Annex VI.

(9) *Supporting Facilities.* (i) A six foot woven mesh fence, wall, or similar device shall be placed around the site to prevent unauthorized persons and animals from entering.

(ii) Roads shall be maintained to and within the site which are adequate to support the operation and maintenance of the site without causing safety or nuisance problems or hazardous conditions.

(iii) The site shall be operated and maintained in a manner to prevent safety problems or hazardous conditions resulting from spilled liquids and windblown materials.

(c) *Approval of Chemical Waste Landfills.* Prior to the disposal of any PCBs and PCB Items in a chemical waste landfill, the owner or operator of the landfill shall receive written approval of the Agency Regional Administrator for the Region in which the landfill is located. The approval shall be obtained in the following manner:

(1) *Initial Report.* The owner or operator shall submit to the Regional Administrator an initial report which contains:

(i) The location of the landfill;

(ii) A detailed description of the landfill including general site plans and design drawings;

(iii) An engineering report describing the manner is which the landfill complies with the requirements for chemical waste landfills specified in paragraph (b) of this section;

(iv) Sampling and monitoring equipment and facilities available;

(v) Expected waste volumes of PCBs;

(vi) General description of waste materials other than PCBs that are expected to be disposed of in the landfill;

(vii) Landfill operations plan as required in paragraph (b) of this section;

(viii) Any local, State, or Federal permits or approvals; and

(ix) Any schedules or plans for complying with the approval requirements of these regulations.

(2) *Other Information.* In addition to the information contained in the report described in subparagraph (1) of this paragraph, the Regional Administrator may require the owner or operator to submit any other information that the Regional Administrator finds to be reasonably necessary to determine whether a chemical waste landfill should be approved. Such other information shall be restricted to the types of information required in subparagraphs (1)(i) through (1)(ix) of this paragraph.

(3) *Contents of Approval.* (i) Except as provided in subparagraph (4) of this paragraph the Regional Administrator may not approve a chemical waste landfill for the disposal of PCBs and PCB Items, unless he finds that the landfill meets all of the requirements of paragraph (b) of this Annex.

(ii) In addition to the requirements of paragraph (b) of this section, the Regional Administrator may include in an approval any other requirements or provisions that the Regional Administrator finds are necessary to ensure that operation of the chemical waste landfill does not present an unreasonable risk of injury to health or the environment from PCBs. Such provisions may include a fixed period of time for which the approval is valid.

The approval may also include a stipulation that the operator of the chemical waste landfill report to the Regional Administrator any instance when PCBs are detectable during

monitoring activities conducted pursuant to paragraph (b)(6) of this section.

(4) *Waivers.* An owner or operator of a chemical waste landfill may submit evidence to the Regional Administrator that operation of the landfill will not present an unreasonable risk of injury to health or the environment from PCBs when one or more of the requirements of paragraph (b) of this section are not met. On the basis of such evidence and any other available information, the Regional Administrator may in his discretion find that one or more of the requirements of § 761.41(b) is not necessary to protect against such a risk and may waive the requirements in any approval for that landfill. Any finding and waiver under this paragraph will be stated in writing and included as part of the approval.

(5) *Persons Approved.* Any approval will designate the persons who own and who are authorized to operate the chemical waste landfill, and will apply only to such persons, except as provided by paragraph (7) below.

(6) *Final Approval.* Approval of a chemical waste landfill will be in writing and will be signed by the Regional Administrator. The approval will state all requirements applicable to the approved landfill.

(7) *Transfer of Property.* Any person who owns or operates an approved chemical waste landfill must notify EPA at least 30 days before transferring ownership in the property or transferring the right to conduct the chemical waste landfill operation. The transferor must also submit to EPA, at least 30 days before such transfer, a notarized affidavit signed by the transferee which states that the transferee will abide by the transferor's EPA chemical waste landfill approval. Within 30 days of receiving such notification and affidavit, EPA will issue an amended approval substituting the transferee's name for the transferor's name, or EPA may require the transferee to apply for a new chemical waste landfill approval. In the latter case, the transferee must abide by the transferor's EPA approval until EPA issues the new approval to the transferee.

Annex III

§ 761.42 Storage for disposal.

(a) Any PCB Article or PCB Container stored for disposal before January 1, 1983, shall be removed from storage and disposed of as required by this Part before January 1, 1984. Any PCB Article or PCB Container stored for disposal after January 1, 1983, shall be removed from storage and disposed of as required by Subpart B within one year from the date when it was first placed into storage.

(b) Except as provided in paragraph (c) of this section, after July 1, 1978, owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall comply with the following requirements:

(1) The facilities shall meet the following criteria:

(i) Adequate roof and walls to prevent rain water from reaching the stored PCBs and PCB Items;

(ii) An adequate floor which has continuous curbing with a minimum six inch high curb. The floor and curbing must provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container stored therein or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored therein, whichever is greater;

(iii) No drain valves, floor drains, expansion joints, sewer lines, or other openings that would permit liquids to flow from the curbed area;

(iv) Floors and curbing constructed of continuous smooth and impervious materials, such as Portland cement concrete or steel, to prevent or minimize penetration of PCBs; and

(v) Not located at a site that is below the 100-year flood water elevation.

(c)(1) The following PCB Items may be stored temporarily in an area that does not comply with the requirements of paragraph (b) for up to thirty days from the date of their removal from service, provided that a notation is attached to the PCB Item or a PCB Container (containing the item) indicating the date the item was removed from service:

(i) Non-leaking PCB Articles and PCB Equipment;

(ii) Leaking PCB Articles and PCB Equipment if the PCB Items are placed in a non-leaking PCB Container that contains sufficient sorbent materials to absorb any liquid PCBs remaining in the PCB Items;

(iii) PCB Containers containing non-liquid PCBs such as contaminated soil, rags, and debris; and

(iv) PCB Containers containing liquid PCBs at a concentration between 50 and 500 ppm, provided a Spill Prevention, Control and Countermeasure Plan has been prepared for the temporary storage area in accordance with 40 CFR 112. In addition, each container must bear a notation that indicates that the liquids in the drum do not exceed 500 ppm PCB.

(2) Non-leaking and structurally undamaged PCB Large High Voltage Capacitors and PCB-Contaminated Transformers that have not been drained of free flowing dielectric fluid may be stored on pallets next to a storage facility that meets the requirements of paragraph (b) until January 1, 1983. PCB-Contaminated Transformers that have been drained of free flowing dielectric fluid are not subject to the storage provisions of Annex III. Storage under this subparagraph will be permitted only when the storage facility has immediately available unfilled storage space equal to 10 percent of the volume of capacitors and transformers stored outside the facility. The capacitors and transformers temporarily stored outside the facility shall be checked for leaks weekly.

(3) Any storage area subject to the requirements of paragraph (b) or subparagraph (c)(1) of this section shall be marked as required in Subpart C—§ 761.20(a)(10).

(4) No item of movable equipment that is used for handling PCBs and PCB Items in the storage facilities and that comes in direct contact with PCBs shall be removed from the storage facility area unless it has been decontaminated as specified in Annex IV, § 761.43.

(5) All PCB Articles and PCB Containers in storage shall be checked for leaks at least once every 30 days. Any leaking PCB Articles and PCB Containers and their contents shall be transferred immediately to properly marked non-leaking containers. Any spilled or leaked materials shall be immediately cleaned up, using sorbents or other adequate means, and the PCB-contaminated materials and residues shall be disposed of in accordance with § 761.10(a)(4).

(6) Except as provided in subparagraph (7) below, any container used for the storage of liquid PCBs shall comply with the Shipping Container Specification of the Department of Transportation (DOT), 49 CFR 178.80 (Specification 5 container without removable head), 178.82 (Specification 5B container without removable head), 178.102 (Specification 6D overpack with Specification 2S(§ 178.35) or 2SL(§ 178.35a) polyethylene containers) or 178.116 (Specification 17E container). Any container used for the storage of non-liquid PCBs shall comply with the specifications of 49 CFR 178.80 (Specification 5 container), 178.82 (Specification 5B container) or 178.115 (Specification 17C container). As an alternate, containers larger than those specified in DOT Specifications 5, 5B, or 17C may be used for non-liquid PCBs if the containers are designed and constructed in a manner that will

provide as much protection against leaking and exposure to the environment as the DOT Specification containers, and are of the same relative strength and durability as the DOT Specification containers.

(7) Storage containers for liquid PCBs can be larger than the containers specified in (6) above provided that:

(i) The containers are designed, constructed, and operated in compliance with Occupational Safety and Health Standards, 29 CFR 1910.106, *Flammable and combustible liquids.* Before using these containers for storing PCBs, the design of the containers must be reviewed to determine the effect on the structural safety of the containers that will result from placing liquids with the specific gravity of PCBs into the containers (see 29 CFR 1910.106(b)(i)(f)).

(ii) The owners or operators of any facility using containers described in (i) above shall prepare and implement a Spill Prevention Control and Countermeasure (SPCC) Plan as described in 40 CFR 112. In complying with 40 CFR 112, the owner or operator shall read "oil(s)" as "PCB(s)" whenever it appears. The exemptions for storage capacity, 40 CFR 112.1(d)(2), and the amendment of SPCC plans by the Regional Administrator, 40 CFR 112.4, shall not apply unless some fraction of the liquids stored in the container are oils as defined by section 311 of the Clean Water Act.

(8) PCB Articles and PCB Containers shall be dated on the article or container when they are placed in storage. The storage shall be managed so that the PCB Articles and PCB Containers can be located by the date they entered storage. Storage containers provided in subparagraph (7) above shall have a record that includes for each batch of PCBs the quantity of the batch and date the batch was added to the container. The record shall also include the date, quantity, and disposition of any batch of PCBs removed from the container.

(9) Owners or operators of storage facilities shall establish and maintain records as provided in Annex VI.

Annex IV

§ 761.43 Decontamination.

(a) Any PCB Container to be decontaminated shall be decontaminated by flushing the internal surfaces of the container three times with a solvent containing less than 50 ppm PCB. The solubility of PCBs in the solvent must be five percent or more by weight. Each rinse shall use a volume of the normal diluent equal to approximately ten (10) percent of the PCB Container capacity. The solvent may be reused for decontamination until it contains 50 ppm PCB. The solvent shall then be disposed of as a PCB in accordance with § 761.10(a). Non-liquid PCBs resulting from the decontamination procedures shall be disposed of in accordance with the provisions of § 761.10(a)(4).

(b) Movable equipment used in storage areas shall be decontaminated by swabbing surfaces that have contacted PCBs with a solvent meeting the criteria of paragraph (a) of this section.

Note.—Precautionary measures should be taken to ensure that the solvent meets safety and health standards as required by applicable Federal regulations.

Annex V

§ 761.44 Marking formats.

The following formats shall be used for marking:

(a) *Large PCB Mark—M_L.* Mark M_L shall be as shown in Figure 1, letters and striping on a white or yellow background and shall be sufficiently durable to equal or exceed the life (including storage for disposal) of the PCB Article, PCB Equipment, or PCB Container. The size of the mark shall be at least 15.25 cm (6 inches) on each side. If the PCB Article or PCB Equipment is too small to accommodate this size, the mark may be reduced in size proportionately down to a minimum of 5 cm (2 inches) on each side.

(b) *Small PCB Mark—M_s.* Mark M_s shall be as shown in Figure 2, letters and striping on a white or yellow background, and shall be sufficiently durable to equal or exceed the life (including storage for disposal) of the PCB Article, PCB Equipment, or PCB Container. The mark shall be a rectangle 2.5 by 5 cm (1 inch by 2 inches). If the PCB Article or PCB Equipment is too small to accommodate this size, the mark may be reduced in size proportionately down to a minimum of 1 by 2 cm (.4 by .8 inches).

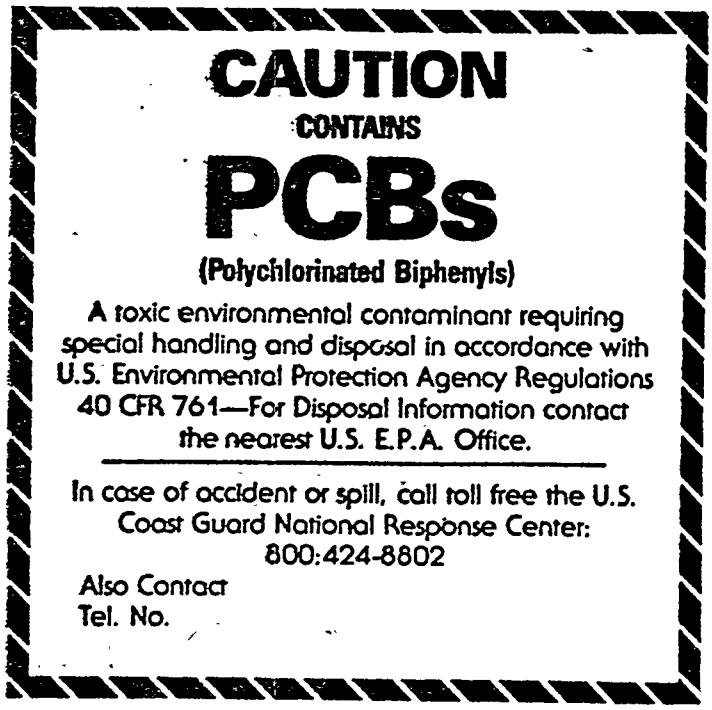

Figure 1

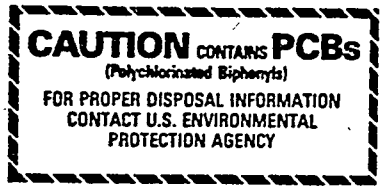

Figure 2

Annex VI

§ 761.45 Records and monitoring.

(a) *PCBs and PCB Items in service or projected for disposal.* Beginning July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s) or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop and maintain records on the disposition of PCBs and PCB Items. These records shall form the basis of an annual document prepared for each facility by July 1 covering the previous calendar year. Owners or operators with one or more facilities that use or store PCBs and PCB Items in the quantities described above may maintain the records and documents at one of the facilities that is normally occupied for 8 hours a day, provided the identity of this facility is available at each facility using or storing PCBs and PCB Items. The records and documents shall be maintained for at least five years after the facility ceases using or storing PCBs and PCB Items in the prescribed quantities. The following information for each facility shall be included in the annual document:

(1) The dates when PCBs and PCB Items are removed from service, are placed into storage for disposal, and are placed into transport for disposal. The quantities of the PCBs and PCB Items shall be indicated using the following breakdown:

(i) Total weight in kilograms of any PCBs and PCB Items in PCB Containers including the identification of container contents such as liquids and capacitors;

(ii) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers; and

(iii) Total number of PCB Large High or Low Voltage Capacitors.

(2) For PCBs and PCB Items removed from service, the location of the initial disposal or storage facility and the name of the owner or operator of the facility.

(3) Total quantities of PCBs and PCB Items remaining in service at the end of the calendar year using the following breakdown:

(i) Total weight in kilograms of any PCBs and PCB Items in PCB Containers, including the identification of container contents such as liquids and capacitors;

(ii) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers; and

(iii) Total number of PCB Large High or Low Voltage Capacitors.

(b) *Disposal and storage facilities.* Each owner or operator of a facility (including high efficiency boiler operations) used for the storage or disposal of PCBs and PCB Items shall by July 1, 1979 and each July 1 thereafter prepare and maintain a document that includes the information required in subparagraphs (1) thru (4) below for PCBs and PCB Items that were handled at the facility during the previous calendar year. The document shall be retained at each facility for at least 5 years after the facility is no longer used for the storage or disposal of PCBs and PCB Items except that in the case of chemical waste landfills, the document shall be maintained at least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs and PCB Items. The documents shall be available at the facility for inspection by authorized representatives of the Environmental Protection Agency. If the facility ceases to be used for PCB storage or disposal, the owner or operator of such facility shall notify within 60 days the EPA Regional Administrator of the region in which the facility is located that the facility has ceased storage or disposal operations. The notice shall specify where the documents that are required to be maintained by this paragraph are located. The following information shall be included in each document:

(1) The date when any PCBs and PCB Items were received by the facility during the previous calendar year for storage or disposal, and identification of the facility and the owner or operator of the facility from whom the PCBs were received;

(2) The date when any PCBs and PCB Items were disposed of at the disposal facility or transferred to another disposal or storage facility, including the identification of the specific types of PCBs and PCB Items that were stored or disposed of;

(3) A summary of the total weight in kilograms of PCBs and PCB Articles in containers and the total weight of PCBs contained in PCB Transformers, that have been handled at the facility during the previous calendar year. This summary shall provide totals of the above PCBs and PCB Items which have been:

(i) Received during the year;

(ii) Transferred to other facilities during the year; and

(iii) Retained at the facility at the end of the year. In addition the contents of PCB Containers shall be identified. When PCB Containers and PCBs contained in a transformer are transferred to other storage or disposal facilities, the identification of the facility to which such PCBs and PCB Items were transferred shall be included in the document.

(4) Total number of any PCB Articles or PCB Equipment not in PCB Containers, received during the calendar year, transferred to other storage or disposal facilities during the calendar year, or remaining on the facility site at the end of the calendar year. The identification of the specific types of PCB Articles and PCB Equipment received, transferred, or remaining on the facility site shall be indicated. When PCB Articles and PCB Equipment are transferred to other storage or disposal facilities, the identification of the facility to which the PCB Articles and PCB Equipment were transferred must be included.

Note.—Any requirements for weights in kilograms of PCBs may be calculated values if the internal volume of containers and transformers is known and included in the reports, together with any assumptions on the density of the PCBs contained in the containers or transformers.

(c) *Incineration facilities.* Each owner or operator of a PCB incinerator facility shall collect and maintain for a period of 5 years from the date of collection the following information, in addition to the information required in paragraph (b) of this section:

(1) When PCBs are being incinerated, the following continuous and short-interval data:

(i) Rate and quantity of PCBs fed to the combustion system as required in Annex I—§ 761.40(a)(3);

(ii) Temperature of the combustion process as required in Annex I—§ 761.40(a)(4); and

(iii) Stack emission product to include O_2, CO, and CO_2 as required in Annex I—§ 761.40(a)(7).

(2) When PCBs are being incinerated, data and records on the monitoring of stack emissions as required in Annex I—§ 761.40(a)(6).

(3) Total weight in kilograms of any solid residues generated by the incineration of PCBs and PCB Items during the calendar year, the total weight in kilograms of any solid residues disposed of by the facility in chemical waste landfills, and the total weight in kilograms of any solid residues remaining on the facility site.

(4) When PCBs and PCB Items are being incinerated, additional periodic data shall be collected and maintained as specified by the Regional Administrator pursuant to § 761.40(d)(4).

(5) Upon any suspension of the operation of any incinerator pursuant to § 761.40(a)(8), the owner or operator of such an incinerator shall prepare a document. The document shall, at a minimum, include the date and time of the suspension and an explanation of the circumstances causing the suspension of operation. The document shall be sent to the appropriate Regional Administrator within 30 days of any such suspension.

(d) *Chemical waste landfill facilities.* Each owner or operator of a PCB chemical waste landfill facility shall collect and maintain until at least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs the following information in addition to the information required in paragraph (b) of this section:

(1) Any water analysis obtained in compliance with § 761.41(b)(6)(iii); and

(2) Any operations records including burial coordinates of wastes obtained in compliance with § 761.41(b)(8)(ii).

(e) *High efficiency boiler facilities.* Each owner or operator of a high efficiency boiler used for the disposal of liquids between 50 and 500 ppm PCB shall collect and maintain for a period of 5 years the following information, in addition to the information required in paragraph (b) of this section:

(1) For each month PCBs are burned in the boiler the carbon monoxide and excess oxygen data required in § 761.10(a)(2)(iii)(A)(*8*) and § 761.10(a)(3)(iii)(A)(*8*);

(2) The quantity of PCBs burned each month as required in § 761.10(a)(2)(iii)(A)(*7*) and § 761.10(a)(3)(iii)(A)(*7*); and

(3) For each month PCBs (other than mineral oil dielectric fluid) are burned, chemical analysis data of the waste as required in § 761.10(a)(3)(iii)(B)(*6*).

(f) *Retention of Special Records by Storage and Disposal Facilities.* In addition to the information required to be maintained under paragraphs (b), (c), (d) and (e) of this section, each owner or operator of a PCB storage or disposal facility (including high efficiency boiler operations) shall collect and maintain for the time period specified in paragraph (b) of this section the following data:

(1) All documents, correspondence, and data that have been provided to the owner or operator of the facility by any State or local government agency and that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(2) All documents, correspondence, and data that have been provided by the owner or operator of the facility to any State or local government agency and that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(3) Any applications and related correspondence sent by the owner or operator of the facility to any local, State, or Federal authorities in regard to waste water discharge permits, solid waste permits, building permits, or other permits or authorizations such as those required by Annex I—§ 761.40(d) and Annex II—§ 761.41(c).

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40 CFR Part 750

[FRL 1227-5]

Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions From the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions

AGENCY: Environmental Protection Agency.

ACTION: Interim procedures for filing and processing petitions for exemptions from the PCB processing and distribution in commerce prohibitions under section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA).

SUMMARY: Section 6(e)(3)(B) of TSCA allows EPA to grant, by rule, exemptions from the prohibitions on manufacturing, processing, and distribution in commerce of PCBs established pursuant to section 6(e)(3)(A) of TSCA. Since the PCB processing and distribution in commerce prohibitions will become effective July 1, 1979, EPA wishes to inform affected parties of the procedures that will be followed for the filing and processing of petitions for exemptions from the processing and distribution in commerce bans imposed by section 6(e)(3)(A)(ii) of TSCA. As this notice is strictly procedural, notice and public comment are unnecessary, and it is effective upon publication.

DATE: Petitions for exemptions from the 1979 processing and distribution in commerce prohibitions must be received by July 2, 1979.

ADDRESS: Petitions, preferably in triplicate, are to be sent to: Document Control Officer, (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attn.: Document No. OTS/066002(PCB/PDE).

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Office of Industry Assistance, Office of Toxic Substances, (TS-799), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Call the toll free number (800) 424-9065 (in Washington, D.C., 554-1404).

SUPPLEMENTARY INFORMATION: Elsewhere in today's Federal Register, the final PCB Ban Rule is promulgated. The PCB Ban Rule implements the PCB manufacturing, processing, distribution in commerce, and use prohibitions of section 6(e) of TSCA. On November 1, 1978 (43 FR 50905), EPA published a notice similar to this one which provided an opportunity for the filing of petitions for exemptions from the PCB manufacturing prohibition, which ban is effective July 2, 1979. The PCB processing and distribution in commerce prohibitions are effective July 1, 1979. Section 6(e)(3)(B) provides an opportunity for affected persons to petition for an exemption from the prohibitions on processing and distribution in commerce of PCBs. Accordingly, EPA is issuing these procedures to describe the required contents of petitions, who may submit a class petition, and the procedures that EPA will follow in processing petitions for exemptions from the PCB processing and distribution in commerce prohibitions.

Unless EPA grants exemptions, all PCB processing and distribution in commerce will be banned after July 1, 1979 pursuant to section 6(e)(3)(A)(ii) of TSCA. These activities include, but are not necessarily limited to: the processing and distribution in commerce of dielectric fluid for PCB Transformers, PCB-Contaminated Transformers, PCB Railroad Transformers, and PCB Electromagnets; the distribution in commerce of PCB Articles (such as small PCB Capacitors); the processing (*i.e.*, building) and distribution in commerce of PCB Equipment (including the manufacture of fluorescent light ballasts, television sets, air conditioners and microwave ovens and the sale of such PCB Equipment); the processing and distribution in commerce of PCB-contaminated hydraulic fluid; the processing and distribution in commerce of PCBs for servicing mining equipment; the processing and distribution in commerce of chemical substances and mixtures that contain 50 ppm or greater PCB as impurities or contaminants (including diarylide and phthalocyanine

pigments, some aluminum chloride, and some phenylchlorosilanes).

In contrast to the Interim Procedural Rules for Exemptions from the PCB Manufacturing Prohibition, the procedural rules published today for exemptions from the processing and distribution in commerce prohibitions provide for class petitions in certain limited circumstances. Allowance of some class petitions is an administrative necessity. EPA estimates that there are thousands of potential petitoners for exemptions from the prohibitions on PCB processing and distribution in commerce. The great majority of these petitions are expected to be concentrated in the areas of distribution of PCB Equipment and distribution of PCB-contaminated substances and mixtures. For example, virtually every retail appliance store, appliance repair service, and wholesale distributor of electrical equipment could need an exemption. Thus, allowing use of class petitions for such persons is a matter of practical reality.

In addition to the sheer number of possible petitioners in a given potential class, EPA evaluated the seriousness of potential risk of injury to health and the environment that could result from permitting a PCB activity to continue if it were granted an exemption. Those persons not allowed to submit class petitions are generally those whose activities involve significant quantities and/or highly concentrated PCB fluids processed or distributed in a non-totally enclosed manner. As a result, the potential risk associated with these activities is relatively high. In such cases it is more important that EPA evaluate petitions individually.

Petitions concerning the manufacture (*i.e.*, processing) of PCB Equipment involving incorporation of PCB Articles into equipment must be submitted on an individual basis. Although this activity in itself may present a low potential risk, the activity results in the wide dissemination of small PCB Capacitors. The disposal of such capacitors is not controlled once the capacitors are processed into PCB Equipment. Since most PCB Equipment manufacturers have converted to non-PCB Capacitors, the number of potential petitioners for exemptions to manufacture PCB Equipment should be small.

These Interim Procedural Rules provide for two types of class petitions and limit the use of each type to certain activities. The two types of class petitions are: (1) a class petition requiring a listing of, and certain information about, each person covered by the petition; and (2) a class petition that does not require a listing of persons covered by the petition.

Once EPA had determined to allow class petitions for certain activities, the same factors previously described (number of potential petitioners and extent of risk) were again evaluated to determine which class petitions would have to identify each petitioner covered by the class petition. In general, those petitions thought likely to represent large numbers of potential petitioners engaged in enclosed or low concentration PCB distribution activities are those allowed to file class petitions without listing each individual petitioner.

Class petitions are not required for persons engaged in those activities permitted to submit class petitions. An individual involved in one of these activities has the choice of either submitting an individual petition or joining with others to submit a class petition. For class petitions, EPA will accept petitions prepared by one company (to which other companies may provide the required information), by a trade association on behalf of its members (as well as others), or by any other person on behalf of a group of persons requiring exemptions.

Persons who have already submitted petitions for exemptions to manufacture or import PCB Equipment pursuant to the Interim Procedural Rules of November 1, 1978 (43 FR 50905) need not submit new petitions, but must advise EPA if they still wish the Agency to act on their pending petitions. If they wish, such petitioners may submit additional information concerning their petitions. Similarly, EPA may request additional information concerning such petitions by letter to the petitioners.

All petitions for exemptions from the 1979 processing and distribution in commerce bans must be received by EPA by July 1, 1979. This deadline is being imposed to permit consolidation of all rulemaking on these petitions and to expedite the rulemaking to the greatest extent possible. The deadline is also the date on which the processing and distribution in commerce prohibitions of section 6(e)(3) of TSCA become effective. EPA estimates that a Notice of Proposed Rulemaking concerning exemptions from the processing and distribution in commerce bans will be published in September 1979, that the public hearing, if requested, will be held in October 1979, and that the Final Rule concerning exemptions will be published in January 1980. Any person who petitions EPA by July 1, 1979 to continue processing or distribution in commerce after July 1, 1979 may continue his activity until EPA rules on his petition. Persons who do not so petition EPA will be subject to the July 1, 1979 ban on all processing and distribution in commerce of PCBs and PCB Items.

In determining whether to grant a petition for exemption to the PCB ban, EPA will apply the standards enunciated in section 6(e)(3)(B) of TSCA. Section 6(e)(3)(B) reads in pertinent part as follows:

> * * * the Administrator may grant by rule such an exemption if the Administrator finds that—
>
> (i) an unreasonable risk of injury to health or environment would not result, and
>
> (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

Although EPA is not issuing a form for petitions, petitions must include the information described in § 750.31(d) of the Interim Procedural Rules.

Due to the need to grant or deny petitions on an expedited basis, and pursuant to the delegation of authority by the Administrator in the Preamble to the Final PCB Ban Rule, authority has been delegated to the Assistant Administrator for Toxic Substances to grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to these interim procedures. The Assistant Administrator will rule on petitions subsequent to opportunity for an informal hearing.

The Interim Procedural Rules applicable to section 6(e) exemption proceedings are adapted from the TSCA section 6 procedural rules (40 CFR Part 750, 42 FR 61259, December 2, 1977, now titled Subpart A—General Procedural Rules).

EPA is aware that many participants at the informal hearings on the proposed PCB Ban and Marking and Disposal Rules presented information directly applicable to a PCB exemption rulemaking. To expedite Agency action on exemption petitions, participants in the PCB exemption informal hearing are permitted and encouraged to designate testimony from prior EPA informal rulemaking hearings on PCBs under TSCA. The exemption hearing panel is specifically authorized by the Interim Procedural Rules to reject repetitive testimony submittted earlier to EPA at a TSCA PCB informal hearing.

These rules are issued under authority of section 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605(e).

Dated: May 11, 1979.

Marilyn C. Bracken,

Acting Assistant Administrator for Toxic Substances.

Title 40 of the Code of Federal Regulations is amended by adding two Subpart headings, Subpart A—General Procedural Rules for §§ 750.1–750.9 and Subpart B—Manufacturing Exemption Procedural Rules for §§ 750.10–750.21, to the Table of Contents and a new Subpart C as set forth below:

Subpart A—Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act. [§§ 750.1–750.9—Added at 42 FR 61259, December 2, 1977].

Subpart B—Interim Procedural Rules for Manufacturing Exemptions. [§§ 750.10–750.21—Added at 43 FR 50905, November 1, 1978].

Subpart C—Interim Procedural Rules for Processing and Distribution in Commerce Exemptions

Sec.
750.30 Applicability.
750.31 Filing of petitions for exemption.
750.32 Consolidation of rulemaking.
750.33 Notice of proposed rulemaking.
750.34 Record.
750.35 Public comments.
750.36 Confidentiality.
750.37 Subpoenas.
750.38 Participation in informal hearing.
750.39 Conduct of informal hearing.
750.40 Cross-examination.
750.41 Final rule.

Authority: Section 6(e), Toxic Substances Control Act, 15 U.S.C. 2605(e).

Subpart C—Processing and Distribution in Commerce Exemption Procedural Rules

§ 750.30 Applicability.

Sections 750.30–750.41 apply to all rulemakings under authority of section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3)(B) with respect to petitions for PCB processing and distribution in commerce exemptions filed pursuant to § 750.31(a) of this Part.

§ 750.31 Filing of petitions for exemption.

(a) *Who May File.* Any person seeking an exemption from the PCB processing and distribution in commerce prohibitions imposed by section 6(e)(3)(A)(ii) of TSCA may file a petition for exemption. Petitions must be submitted on an individual basis for each processor, distributor, seller or individual affected by the 1979 processing and distribution in commerce prohibitions, except as described in subparagraphs (1) through (9) below.

(1) *Processing and Distribution in Commerce of PCB-Contaminated Transformer Dielectric Fluid.* Persons who process or distribute in commerce dielectric fluid containing 50 ppm or greater PCB (but less than 500 ppm PCB) for use in PCB-Contaminated Transformers may submit a single consolidated petition on behalf of any number of petitioners. The name and address of each petitioner must be stated in the petition.

(2) *Contaminated Substances and Mixtures—Processing.* Persons who process the same chemical substance or the same mixture containing 50 ppm or greater PCB as an impurity or contaminant may submit a consolidated petition if the chemical substance or mixture is processed for the same use by each person represented by the petition. For example, persons who process a PCB-contaminated pigment into printing inks may combine their petitions into one petition. The name and address of each petitioner must be stated in the petition.

(3) *Contaminated Substances and Mixtures—Distribution in Commerce.* Persons who distribute in commerce the same chemical substance or the same mixture containing 50 ppm or greater PCB as an impurity or contaminant may submit a consolidated petition if the chemical substance or mixture is distributed in commerce for a common use. Such a petition is not required to name each person who distributes in commerce the chemical substance or mixture.

(4) *PCB Capacitor Distribution for Purposes of Repair.* Persons who distribute in commerce PCB capacitors for servicing (repair) of PCB Equipment may submit a single consolidated petition on behalf of any number of petitioners engaged in such distribution in commerce for purposes of repair. The name of each petitioner need not be stated in the petition.

(5) *Small Quantities for Research and Development.* Persons who process or distribute in commerce small quantities of PCBs for research and development may submit a single consolidated petition. The name and address of each petitioner must be stated in the petition.

(6) *Microscopy.* Persons who process or distribute in commerce PCBs for use as a mounting medium in microscopy may submit a single consolidated petition on behalf of any number of petitioners. The name and address of each petitioner must be stated in the petition.

(7) *Processing of PCB Articles into PCB Equipment.* A person who processes (incorporates) PCB Articles (such as small PCB Capacitors) into PCB Equipment may submit a petition on behalf of himself and all persons who further process or distribute in commerce PCB Equipment built by the petitioner. For example, a builder of motors who places small PCB Capacitors in the motors may submit a petition on behalf of all persons who process or incorporate motors built by the petitioner into other pieces of PCB Equipment and all those who sell the equipment. Such a petition is not required to identify the persons who distribute in commerce or further process the PCB Equipment. A separate petition must be filed, however, by each processor of PCB Articles into PCB Equipment.

(8) *Processing of PCB Equipment into Other PCB Equipment.* A person who processes (incorporates) PCB Equipment into other PCB Equipment may submit a petition on behalf of himself and all persons who further process or distribute in commerce PCB Equipment built by the petitioner. Such a petition is not required to identify the persons who distribute in commerce or further process the PCB Equipment. If a petition has been filed under subparagraph (a)(7) by the builder of the original PCB Equipment, no other petition is required.

(9) *Distribution of PCB Equipment.* Distributors in commerce of PCB Equipment may submit a consolidated petition on behalf of persons who distribute in commerce PCB Equipment of one type (such as air conditioners). The petition is not required to name the persons who distribute in commerce the affected PCB Equipment.

(b) *Petition Filing Date.* All petitions for exemptions from the 1979 processing and distribution in commerce prohibitions under section 6(e)(3)(A)(ii) must be received by the Hearing Clerk by July 2, 1979.

(c) *Where to File.* All petitions must be submitted to the following location: Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attn.: Docket Number OTS/066002 (PCB/PDE).

(d) *Content of Petition.* Each petition must contain the following:

(1) Name, address and telephone number of petitioner. See also subparagraphs (a)(1)–(9) for additional identification requirements applicable to certain consolidated petitions.

(2) Description of PCB processing or distribution in commerce exemption requested, including a description of the chemical substances, mixtures or items to be processed or distributed in commerce and, if processing is involved, the nature of the processing.

(3) For processing petitions, location(s) of sites requiring exemption.

(4) Length of time requested for exemption (maximum length of exemption is one year).

(5) Estimated amount of PCBs (by pound and/or volume) to be processed, distributed in commerce, or used during requested exemption period and the manner of release of PCBs into the environment associated with such processing, distribution in commerce, or use. Where the PCB concentration is less than 500 ppm, both the total liquid volume and the total PCB volume must be provided.

(6) The basis for the petitioner's contention that under section 6(e)(3)(B)(i) of TSCA "an unreasonable risk of injury to health or environment would not result" from the granting of the petition for exemption.

(7) The basis for the petitioner's contention that under section 6(e)(3)(B)(ii) "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for" the PCB.

(8) Quantification of the reasonably ascertainable economic consequences of denying the petition for exemption and an explanation of the manner of computation.

(9) In addition to the information in subparagraphs (1) through (8), certain petitions must contain additional information as follows:

(i) Persons who process or distribute in commerce dielectric fluids containing 50 ppm or greater PCB for use in PCB Transformers, railroad transformers, or PCB electromagnets must also state the expected number of PCB Transformers, railroad transformers, or PCB electromagnets to be serviced under the exemption. In addition, a person must identify all the facilities which he owns or operates where he services PCB transformers, railroad transformers, or PCB electromagnets.

(ii) Persons filing petitons under subparagraph (a)(1) (Processing and Distribution in Commerce of PCB-Contaminated Transformer Dielectric Fluid) must also provide the expected number of PCB-Contaminated Transformers to be serviced under the requested exemption and the expected method of disposal of waste dielectric fluid. In addition, a person must identify all the facilities which he owns or operates where he services PCB-Contaminated Transformers. This information, as well as the information required by subparagraphs (d)(1), (d)(3) and (d)(5), must be provided for each person represented by the petition. All other information may be provided on a group basis.

(iii) Persons filing petitions under subparagraphs (a)(2) (Contaminated Substances and Mixtures-Processing) and (a)(3) (Contaminated Substances and Mixtures-Distribution in Commerce) must also provide a justification for the class grouping selected and a description of the uses and the human and environmental exposure associated with each use of the PCB-contaminated chemical substance or mixture for which an exemption is sought. Information may be provided on a group basis, except that the information required by subparagraphs (d)(1), (d)(3) and (d)(5), must be provided for each person represented by a petition under subparagraph (a)(2).

(iv) Persons filing petitions under subparagraph (a)(4) (PCB Capacitor Distribution for Purposes of Repair) must also provide an estimate of the expected total number of PCB Capacitors to be distributed in commerce under the requested exemption. All information may be provided on a group basis.

(v) Persons filing petitions under subparagraph (a)(7) and (a)(8) (Processing of PCB Articles into PCB Equipment and Processing of PCB Equipment into Other PCB Equipment) must provide a description of each type of PCB Equipment (including the amount of PCBs by poundage and/or volume in the PCB Equipment) to be processed and/or distributed in commerce under the exemption, the number of each type of equipment expected to be processed and/or distributed in commerce, and the approximate number of distributors or further processors covered by the petition. All information may be provided on a group basis. However, in the case of a petition under subparagraph (a)(7), the processor of PCB Articles into PCB Equipment must be identified in the petition. In the case of a petition under subparagraph (a)(8), the processor of PCB Equipment who files the petition must be identified.

(vi) Persons filing petitions under subparagraph (a)(9) (Distribution of PCB Equipment) must provide a description of each type of PCB Equipment (including the amount of PCBs by poundage and/or volume in the PCB Equipment) to be distributed in commerce under the exemption, the number of each type of equipment to be distributed in commerce, and the approximate number of distributors covered by the petition. All information may be provided on a group basis.

(vii) Persons filing petitions under subparagraphs (a)(5) and (a)(6) must provide the information required by subparagraphs (d)(1) through (d)(8) for each petitioner named in the petition.

(e) EPA reserves the right to request further information as to each petition where necessary to determine whether the petition meets the statutory tests of section 6(e)(3)(B) of TSCA prior to or after publication of the notice of proposed rulemaking required by § 750.33 of these rules.

§ 750.32 Consolidation of rulemaking.

All petitions received pursuant to § 750.31(a) will be consolidated into one rulemaking with one informal hearing held on all petitions.

§ 750.33 Notice of proposed rulemaking.

Rulemaking for PCB processing and distribution in commerce exemptions filed pursuant to § 750.31(a) will begin with the publication of a Notice of Proposed Rulemaking in the Federal Register. Each notice will contain:

(a) A summary of the information required in §750.31(d);

(b) A statement of the time and place at which the informal hearing required by section 6(c)(2)(C) of TSCA shall begin, or, to the extent these are not specified, a statement that they will be specified later in a separate Federal Register notice provided that Federal Register notice of the date and city at which any informal hearing shall begin will be given at least 30 days in advance;

(c) A statement identifying the place at which the official record of the rulemaking is located, the hours during which it will be open for public inspection, the documents contained in it as of the date the Notice of Proposed Rulemaking was issued, and a statement of the approximate times at which additional materials such as public comments, hearing transcripts, and Agency studies in progress will be added to the record. If any material other than public comments or material generated by a hearing is added to the record after publication of the notice required by this action, and notice of its future addition was not given at the time of that initial publication, a separate Federal Register notice announcing its addition to the record and inviting comment will be published;

(d) The due date for public comments, which will be (1) 30 days after publication of the notice of proposed rulemaking for main comments and (2) one week after the informal hearing for reply comments;

(e) The name, address, and office telephone number of the Record Clerk and the Hearing Clerk for the rulemaking in question; and

(f) A nonbinding target date for issuing the final rule.

§ 750.34 Rulemaking record.

(a) No later than the date of proposal of a rule subject to this Subpart, a rulemaking record for that rule will be established. It will consist of a separate identified filing space containing:

(1) All documents required by § 750.31(d);

(2) All public comments timely received;

(3) All public hearing transcripts;

(4) All material received during an informal hearing and accepted for the record of that hearing; and

(5) Any other information that the Assistant Administrator for Toxic Substances considers to be relevant to such rule and that the Assistant Administrator identified, on or before the date of the promulgation of the rule, in a notice published in the Federal Register.

(b) All material in the record will be appropriately indexed. Each record will be available for public inspection during normal EPA business hours. Appropriate arrangements allowing members of the public to copy record materials that do not risk the permanent loss of such materials will be made. All material required to be included in the record will be added to the record as soon as feasible after its receipt by EPA.

(c) The Record Clerk for each rulemaking will be responsible for EPA compliance with the requirements of paragraph (a) of this section.

§ 750.35 Public comments.

(a) Main comments must be postmarked or received no later than the time specified in the Notice of Proposed Rulemaking and must contain all comments on and criticisms of that Notice by the commenting person, based on information which is or reasonably could have been available to that person at the time.

(b) Reply comments must be postmarked or received no later than one week after the close of all informal hearings on the proposed rule and must be restricted to comments on:

(1) Other comments;

(2) Material in the hearing record; and

(3) Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

(c) Extensions of the time for filing comments may be granted in writing by the Hearing Chairman. Application for an extension must be made in writing. Comments submitted after the comment period and all extensions of it have expired need not be added to the rulemaking record and need not be considered in decisions concerning the rule.

(d) Unless the Notice of Proposed Rulemaking states otherwise, four copies of all comments must be submitted.

§ 750.36 Confidentiality.

EPA encourages the submission of non-confidential information by petitioners and commentors. EPA does not wish to have unnecessary restrictions on access to the rulemaking record. However, if a petitioner or commentor believes that he can only state his position through the use of information claimed to be confidential, he may submit it. Such information must be separately submitted for the rulemaking record and marked "confidential" by the submitter. For the information claimed to be confidential, EPA will list only the date and the name and address of the petitioner or commentor in the public file, noting that the petitioner or commentor has requested confidential treatment. The information claimed to be confidential will be placed in a confidential file. A petitioner must also file a non-confidential petition with a non-confidential summary of the confidential information to be placed in the public file. Similarly, a commentor must supply a non-confidential summary of the information claimed to be confidential to be placed in the public file. Any information not marked as confidential will be placed in the public file. Information marked confidential will be treated in accordance with the procedures in Part 2, Subpart B of this Title.

§ 750.37 Subpoenas.

(a) Where necessary, subpoenas requiring the production of documentary material, the attendance of persons at the hearing, or responses to written questions may be issued. Subpoenas may be issued either upon request as provided in paragraph (b) or by EPA on its own motion.

(b) All subpoena requests must be in writing. Hearing participants may request the issuance of subpoenas as follows:

(1) Subpoenas for the attendance of persons or for the production of documents or responses to questions at the legislative hearing may be requested at any time up to the deadline for filing main comments.

(2) Subpoenas for production of documents or answers to questions after the legislative hearing may be requested at any time between the beginning of the legislative hearing and the deadline for submitting reply comments.

(c) EPA will rule on all subpoena requests filed under paragraph (b)(1) no later than the beginning of the informal hearing. Such requests may be granted, denied, or deferred. EPA will rule on all subpoena requests filed under paragraph (b)(2) and all deferred subpoena requests filed under paragraph (b)(1) no later than the promulgation of the final rule. Such requests will be either granted or denied.

§ 750.38 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA must file a written request to participate with the Hearing Clerk. This request must be received no later than seven days prior to the scheduled start of the hearing. The hearing will begin seven days after the close of the thirty day comment period or as soon thereafter as practicable. The request must include:

(1) A brief statement of the interest of the person or organization in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. No organization not filing main comments in the rulemaking will be allowed to participate at the hearing, unless a waiver of this requirement is granted in writing by the Hearing Chairman or the organization is appearing at the request of EPA or under subpoena.

(b) No later than three days prior to the start of the hearing, the Hearing Clerk will make a hearing schedule publicly available and mail or deliver it to each of the persons who requested to appear at the hearing. This schedule will be subject to change during the course of the hearing at the discretion of those presiding over it.

(c) Opening statements should be brief, and restricted either to points that could not have been made in main

comments or to emphasizing points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context.

§ 750.39 Conduct of informal hearing.

(a) A panel of EPA employees shall preside at each hearing conducted under section 6(c)(2)(C) of TSCA. In appropriate cases, other Executive Branch employees may also sit with and assist the panel. The membership of the panel may change as different topics arise during the hearing. In general, the panel membership will consist of EPA employees with special responsibility for the final rule or special expertise in the topics under discussion. One member of the panel will be named to chair the proceedings and will attend throughout the hearing, unless unavoidably prevented by sickness or similar personal circumstances.

(b) The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination by others will normally not be permitted at this stage. It may be granted in compelling circumstances at the sole discretion of the hearing panel. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions.

(c) Participants in the hearing may submit additional material for the hearing record and shall submit such additional material as the hearing panel may request. All such submissions will become part of the record of the hearing. A verbatim transcript of the hearing shall be made. Participants will be allowed to designate testimony from prior EPA informal rulemaking hearings concerning PCBs under TSCA. The hearing panel may reject repetitive testimony previously presented at such hearings.

§ 750.40 Cross-examination.

(a) After the close of the informal hearing conducted under § 750.39, any participant in that hearing may submit a written request for cross-examination. The request must be received by EPA within one week after a full transcript of the informal hearing becomes available and must specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This must include an explanation of why the questions at issue are "factual", rather than of an analytical or policy nature, the extent to which they are in "dispute" in the light of the record made thus far, and the extent to which and why they can reasonably be considered "material" to the decision on the final rule; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This must include a statement as to how the cross-examination requested can be expected to result in "full and true disclosure" resolving the issue of material fact involved.

(b) Within one week after receipt of all requests for cross-examination under subparagraph (a), the hearing panel will rule on them. The ruling will be served by the Hearing Clerk on all participants who have requested cross-examination and will be inserted in the record. Written notice of the ruling will be given to all persons requesting cross-examination and all persons to be cross-examined. The ruling will specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons to be allowed to conduct cross-examination; and

(4) Time limits for the examination of each witness by each cross-examiner.

(c) In issuing this ruling, the panel may determine that one or more participants who have requested cross-examination have the same or similar interests and should be required to choose a single representative for purposes of cross-examination by that single representative without identifying the representative further. Subpoenas for witnesses may be issued where necessary.

(d) Within one week after the insertion into the record of the ruling under subparagraph (b), the hearing at which the cross-examination will be conducted will begin. One or more members of the original panel will preside for EPA. The panel will have authority to conduct cross-examination on behalf of any participant, although as a general rule this right will not be exercised. The panel will also have authority to modify the governing ruling in any respect and to make new rulings on group representation under section 6(c)(3)(C) of TSCA. A verbatim transcript of the hearing will be made.

(e)(1) No later than the time set for requesting cross-examination, a hearing participant may request that other alternative methods of clarifying the record (such as informal conferences or the submittal of additional information) be used. Such requests may be submitted either in lieu of cross-examination requests, or in conjunction with them.

(2) The panel in passing on a cross-examination request may, as a precondition to ruling on its merits, require that alternative means of clarifying the record be used whether or not that has been requested under subparagraph (e)(1). In such a case, the results of the use of such alternative means will be made available to the person requesting cross-examination for a one-week comment period, and the panel will make a final ruling on cross-examination within one week thereafter.

(f) Waivers or extensions of any deadline in this section applicable to persons other than EPA may be granted on the record of the hearing by the person chairing it or in writing by the Hearing Chairman.

§ 750.41 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, EPA will issue a final rule. EPA will also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a Federal Register document, and

(2) The effective date of the rule.

(b) Pursuant to the delegation of authority made in the Preamble to the Final Regulation for the PCB Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, the Assistant Administrator for Toxic Substances will grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.31. The Assistant Administrator will act on such petitions subsequent to opportunity for an informal hearing pursuant to this rule.

(c) In determining whether to grant an exemption to the PCB ban, EPA will apply the two standards enunciated in section 6(e)(3)(B) of TSCA.

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 761]

[FRL 1227-7; OTS-066001]

Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions

AGENCY: Environmental Protection Agency.

ACTION: Proposed PCB exemption rule; notice of informal hearing.

SUMMARY: This notice lists the petitions received by EPA for exemption from the prohibition on PCB manufacturing and importation pursuant to section 6(e)(3) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3). The notice also indicates, the most cases, which petitions for exemption EPA proposes to grant and which petitions the Agency proposes to deny.

DATES: Written comments, preferably in triplicate, must be received by the Hearing Clerk by July 2, 1979. Hearing Date and Time: July 9, 1979 at 10:00 a.m. in Washington, D.C. Requests to participate in the hearing must be received by the Hearing Clerk by July 2, 1979.

ADDRESSES: Send comments and requests to participate in the hearing to: Ms. Linda Thomson, Hearing Clerk, Office of Toxic Substances (TS-794), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket Number OTS/066001 (PCB/ME). The hearing will be held in Washington, D.C. The exact location of the hearing will be made available by calling the toll-free number 800-424-9065.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Director, Office of Industry Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (800)-424-9065, or in Washington, D.C. call 554-1404.

SUPPLEMENTARY INFORMATION: Section 6(e)(3)(A) of TSCA (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.)* prohibits all manufacture (including importation) of PCBs as of January 1, 1979. EPA's regulation entitled PCB Manufacturing, Processing, Distribution in Commerce, and Use Prohibition Rule (PCB Prohibition Rule) which implements the prohibitions of section 6(e)(3) of TSCA, appears elsewhere in today's Federal Register. Section 6(e)(3)(B) of TSCA allows affected persons to petition EPA for exemptions from the section 6(e)(3)(A) PCB prohibitions. On November 1, 1978, EPA published Interim Procedural Rules (43 FR 50905) for the filing and processing of petitions for exemptions from the PCB manufacturing prohibition of section 6(e)(3) of TSCA. More than seventy petitions for exemption have been received. These petitions have been consolidated into one rulemaking in accordance with § 750.12 of the Interim Procedural Rules (43 FR at 50906).

On January 2, 1979, the Agency announced (44 FR 108) that persons who had filed petitions for exemptions from the PCB manufacturing ban under section 6(e)(3)(B) of TSCA could continue the manufacturing or importation activity for which the exemption is sought until EPA has acted on the applicable petition.

The Interim Procedural Rules for manufacturing exemptions (43 FR 50905) will be applicable to this rulemaking. The official record of rulemaking is located in Room 447, East Tower, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202)-755-6956. It will be available for viewing and copying from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Hearing transcripts, hearing materials and submissions received will be added to the record as they become available.

To facilitate informed comment, EPA is indicating its proposed action on most exemption petitions. For EPA to grant a requested exemption, the Agency must make the findings required by section 6(e)(B)(3) of TSCA. That section reads as follows:

> * * * the Administrator may grant by rule such an exemption if the Administrator finds that—
>
> (i) An unreasonable risk of injury to health or environment would not result, and
>
> (ii) Good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

EPA wishes to advise commentors that for each exemption petition the Agency may request by letter additional information from the petitioner concerning his petition. This information would be supplementary to information requested in this Notice. The Agency will make such requests if it determines that it requires the information in order to adequately assess the petition. Accordingly, persons may wish to file reply comments under § 750.15 of the Interim Procedural Rules (43 FR 50906) on any additional material filed by petitioners in response to information requests from EPA.

Section 750.11(b) of the Interim Procedural Rules established a filing date of December 1, 1978 for all petitions for exemption from the TSCA section 6(e)(3) PCB manufacturing (and important) prohibition. Subsequent to the filing date, additional petitions have been received by the Agency. Due to the shortness of the original filing period of thirty days, EPA has accepted all late petitions. The Agency will decide on a case-by-case whether petitions for exemptions for PCB manufacturing and importation activities filed subsequent to the date of this Notice should also be accepted. If a PCB manufacturer or importer subject to the final PCB regulation (1) now wishes to file a petition for exemption and (2) did not earlier file a petition because he had good cause to believe his PCB activity was not subject to the proposed regulation (43 FR 24802, June 7, 1978), he should indicate the basis for his prior failure to file a petition and should request EPA to accept his late petition. No late petition will be accepted unless good cause can be shown for the failure to file on time. Whether or not late petitions are accepted will be announced at the informal hearing for this rulemaking. A supplemental notice of proposed rulemaking probably will not be issued as to such petitions.

In the preamble to the final PCB Prohibition Rule (see preamble section VI.C.1.), EPA states: ". . . the prohibition applies to the manufacture of any substance or mixture that contains PCB at 50 ppm or greater, including PCB that is an intermediate or 'impurity' or 'byproduct'. . . . While the production of PCBs under such circumstances may not be intentional and may have no independent commercial value, section 6(e) of TSCA applies to *any* production of PCBs and, therefore, covers such activities." EPA is aware that although the proposed rule included such PCBs in its coverage, some manufacturers may not have interpreted the proposed rule to include such PCBs and, therefore, may not have submitted a petition for an exemption from the manufacturing prohibition. As discussed above, EPA will accept petitions from such persons during the comment period for this rule, if the required showing of good faith in not filing earlier is made.

Several persons requested that petitions be accepted on a class basis. They argued that PCB equipment manufacturers should be able to petition for exemptions on behalf of those customers who are also PCB equipment

manufacturers or distributors as defined in the proposed regulation.* In view of the change which has been made concerning restrictions on the manufacture of PCB equipment in the final PCB Prohibition Rule,** EPA will not accept exemption petitions on a class basis in this rulemaking. However, the Agency has addressed the question of class petitions in the Interim Procedural Rules which establish procedures for filing and processing exemption petitions from the July 1, 1979 PCB processing and distribution in commerce prohibitions. These Interim Procedural Rules are found elsewhere in today's Federal Register.

It is the intent of EPA to grant or deny the petitions for exemption from the prohibition of the manufacture (including importation) of PCBs subject to this rulemaking prior to August 1, 1979.

Below are listed the exemption petitions that EPA has received. These exemptions have been categorized according to the nature of the petition, and the categories are indicated by a numbered key. The Agency's proposed action on the petitions follows the listing.

Petitioner and Basis for Petition

Abolite Lighting, Inc., P.O. Box 237, West Lafayette, OH 43845.[1]

Advance Transformer Co., 2950 North Western Ave., Chicago, IL 60618.[2]

Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219.[3]

American Hoechst Corp., Route 202-206 North, Somerville, NJ 08876.[4]

Binney and Smith, Inc., 1100 Church Lane, P.O. Box 431, Easton, PA 18042.[4]

Borden, Inc., Borden Chemical Division, 630 Glendale-Milford Rd., Cincinnati, OH 45215.[4]

Chemetron Pigments, Division of Chemetron Corp., 491 Columbia Ave., Holland, MI 49423.[4]

Chemical Waste Management Limited, 211 King Street, P.O. Box 1268, St. Catherines, Ontario, Canada L2R7A7.[5]

Ching Mei U.S.A. Ltd., 350 Fifth Ave., Rm. 1825, New York, NY 10001.[4]

Cincinnati Milacron Inc., 4701 Marburg Ave., Cincinnati, OH 45209.[6]

Colt Industries, Inc., Fairbanks Morse Pump Division, 3601 Fairbanks Ave., Kansas City, KS 66110.[7]

Columbia Lighting Inc., Terminal Annex, Box 2787, Spokane, WA.[1]

Control Data Corporation, Autocon Industries Inc., Subsidiary of Control Data Corp., 2300 Berkshire Lane, Minneapolis, MN 55441.[7]

Copeland Corp., Sidney, OH 45365.[8]

Crouse-Hinds Co., P.O. Box 4999, Wolf and Seventh North St., Syracuse, NY 13221.[1]

Dainichiseika Color & Chemicals, America, Inc., 20 Hook Mountain Rd., Pine Brook, NJ 07058.[4]

Dainippon Ink & Chemicals America, Inc., 200 Park Ave., New York, NY 10017.[4]

Day-Brite Lighting, 1015 South Green St., P.O. Drawer 1687, Tupelo, MS 38801.[1]

Dow Corning Corp., Midland, MI 48640.[9]

Dunham-Bush, Inc., 101 Burgess Road, Harrisonburg, VA 22801.[10]

Emerson Quiet Kool Corp., 400 Woodbine Ave., Woodbridge, NJ 07095.[8]

Emerson Electric Co., Industrial Control Division, 3300 S. Standard St., P.O. Box 1679, Santa Ana, CA 92702.[10]

Emerson Electric Company, Gearmaster Division, 1809 S. Route 31, McHenry, IL 60050.[10]

General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06431.[1 11 2 10]

Globe Illumination Company, 1515 W. 178th St., Gardena, CA 90248.[1]

Guardian Chemical Corp., Eastern Chemical Division, 230 Marcus Blvd., Hauppauge, NY 11787.[12]

Guardian Light Co., 5125 W. Lake St., Chicago, IL 60644.[1]

Halstead Industries, Inc., Halstead and Mitchell/Division, Highway 72 West, Scottsboro, AL 35768.[10]

Harmon Colors Corp., 550 Belmont Ave., Haledon, NJ 07508.[4]

Harvey Hubbell, Inc., (Lighting Division), 2000 Electric Way, Christianburg, VA 24073.[1]

Hercules, Inc., 910 Market St., Wilmington, DE 19889.[4]

Hills-McCanna Co., 400 Maple Ave., Carpentersville, IL 60110.[19]

Hilton-Davis Chemical Co., Division of Sterling Drug Inc., 2235 Langdon Farm Road, Cincinnati, OH 45237.[4]

Honeywell, Inc., 200 Smith St., Waltham, MA 02154.[13]

ICI Americas, Inc., Wilmington, DE 19897.[4]

International Telephone & Telegraph Corp., 250 Cochituate Road, Suite 109, Framington, MA 07101.[1]

Intsel Corp., 825 Third Ave., New York, NY 10022.[14]

Keene Corporation-Lighting Division, Industrial Way, Wilmington, MA 01887.[1]

Keystone Lighting Corp., Inc., U.S. 13 & Beaver Streets, Bristol, PA 19007.[1]

Kramer Trenton Co., Box 820, Trenton, NJ 08605.[10]

Lightolier, Inc., 346 Claremont Ave., Jersey City, NJ 07305.[1]

Litton Industrial Products, Inc., Louis Allis Division, 16555 West Ryerson Road, New Berlin, WI 53151.[15]

Litton Microwave Cooking, Litton Systems, Inc., P.O. Box 9461, Minneapolis, MN 55440.[16]

Litton Systems Inc., Jefferson Electric Division, 840 South 25th Ave., Bellwood, IL 60104.[1]

Marathon Electric Manufacturing Corp., P.O. Box 1407, Wausau, WI 54401.[17]

McGraw-Edison Co., Area Lighting Div., 7601 Durand Ave., Racine, WI 53405.[1]

McGraw-Edison Co., Kitchen Appliance Division, P.O. Box 1111, Chattanooga, TN 37401.[16]

Metalux Corp., P.O. Box 1207, Americus, GA 31709.[1]

The Miller Company, Lighting Division, 99 Center Street, Meridian, CT 06450.[1]

Montedison USA, Inc., 1114 Ave. of the Americas, New York City, NY 10036.[4]

Nagase America Corp., 500 Fifth Ave., New York, NY 10036.[4]

National Services Industries, Lithonia Lighting Div., 1335 Industrial Blvd. NW., Conyers, GA 30207.[1]

National Solid Waste Management Association, 1120 Connecticut Ave. NW., Washington, DC 20036.[5]

Phillips Petroleum Company, 10 C2 Phillips Bldg., Bartlesville, OK 74004.[17]

Phthalchem Inc., 6675 Beechlands Dr., Cincinnati, OH 45237.[4]

Pope Chemical Corp., 33 Sixth Ave., Paterson, NJ 07524.[4]

Prescolite, 1251 Doolittle Drive, San Leandro, CA 94557.[1]

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*See the definition of "PCB" in Section 761.2(q) of the proposed PCB Prohibition Rule (43 FR at 24813, June 7, 1978) and the definition of "PCB Equipment" in Section 761.2(v) of the final PCB Disposal and Marking Rule (43 FR at 7157, February 17, 1978).

**This change classifies the manufacture of PCB equipment as "processing" subject to prohibition as of July 1, 1979 under Section 6(e)(3)(A)(ii) of TSCA. The proposed regulation classified such activity as "manufacture" subject to prohibition as of January 1, 1979 under Section 6(e)(3)(A)(i). For further discussion, see Section VI.B.1.a. of the preamble to the final PCB Prohibition Rule, which appears elsewhere in today's Federal Register.

[1] Requests an exemption in order to manufacture either fluorescent or High Intensity Discharge (HID) lighting fixtures with a PCB capacitor or PCB ballast transformer.

[2] Requests an exemption in order to manufacture PCB ballast transformers which can be used by its customers in the manufacture of fluorescent and HID lighting fixtures.

[3] Requests an exemption in order to continue manufacturing aluminum chloride which is contaminated with PCBs.

[4] Requests an exemption to either manufacture or import diarylide yellow or phthalocyanine pigments.

[5] Requests an exemption in order to import into the United States PCB waste material for disposal.

[6] Requests an exemption in order to incorporate PCBs as an additive component in rigid PVC vibration damping devices used in large machine tools.

[7] Requests an exemption in order to use PCB capacitors in the manufacture of electric pumps and water and waste water control systems.

[8] Requests an exemption in order to use PCB capacitors in the manufacture of air conditioners or air conditioner sub-assemblies.

[9] Requests an exemption in order to continue manufacturing an unspecified chemical using a PCB contaminated intermediate.

[10] Requests an exemption in order to manufacture motors using a PCB capacitor or to manufacture another product or system using such a motor.

[11] Requests an exemption in order to continue manufacturing phenylchlorosilanes with unintentional PCB impurities.

[12] Requests an exemption in order to sell a small quantity of PCB.

[13] Requests an exemption in order to import PCB equipment and small PCB capacitors for purposes of repair, replacement and trade-in.

[14] Requests an exemption in order to import a dielectric called Electrophenyl T-60 which is contaminated with PCB.

[15] Requests an exemption in order to use PCB capacitors in the manufacture of power conversion equipment.

[16] Requests an exemption in order to use PCB capacitors in the manufacture of microwave ovens.

[17] Requests an exemption in order to import PCBs for use in research and development of an unspecified chemical intermediate.

Ridgeway Color & Chemical of Wheelabrator-Fry, Inc., 75 Front St., Ridgeway, PA 15853.[4]
Rollins Environmental Services, Inc., One Rollins Plaza, P.O. Box 2349, Wilmington, DE 19899.[5]
Sandoz, Inc., Sandoz Colors and Chemicals Division, 59 Route 10, East Hanover, NJ 07936.[4]
Sim-Kar Lighting Fixture Co., Inc., 601 East Cayuga Street, Philadelphia, PA 19120.[1]
Spero Electric Corp., 18222 Lanken Ave., Cleveland, OH 44119.[1]
Sta-Rite Industries Inc., Suite 3300, 977 East Wisconsin Ave., Milwaukee, WI 53202.[7]
Stauffer Chemical Company, on behalf of SWS Silicones Corp. Subsidiary, Westport, CT 06880.[18]
Steelcase Inc., 1120 36th Street, Grand Rapids, MI 49501.[1]
Sterner Lighting Systems, Inc., 351 Lewis Ave., NW., Winstead, MN 55395.[1]
Sun Chemical Corp., Pigments Division, Research & Operations Center, 4625 East Ave., Cincinnati, OH 45232.[4]
Sumitomo Corporation of America, 345 Park Ave., New York, NY 10022.[4]
Tappan Air Conditioning-Smith Jones, Inc., 206 Woodford Ave., Elyira, OH 44035.[8]
Tivian Chemical Associates, 720 Union Street, Manchester, NH 03104.[19]
Thomas Industries, Inc., Benjamin Division, P.O. Box 180, Sparta, TN 38583.[1]
Toyo Ink America, Inc., 560 Sylvan Ave., Englewood Cliffs, NJ 07632.[4]
Universal Manufacturing Corp., 29 E. 6th Street, Paterson, NJ 70509.[2]
Vivitar Corp., 1630 Stewart Street, Santa Monica, CA 90406.[20]
Weatherking, Inc., P.O. Box 20434, Orlando, FL 32814.[8]
Westinghouse Electric Corp., Lighting Business Unit, P.O. Box 824, Vicksburg, MS 39180.[1 10]
Whiteway Manufacturing Co., 1736 Dreman Avenue, Cincinnati, OH 45223.[1]
Wide-Lite Corp., P.O. Box 606, Redwood Rd. & IH35, San Marcos, TX 78666.[1]
Wylain, Inc., Mold Cast Lighting Division, I-80 at Maple Avenue, Pine Brook, NJ 07058.[1]

EPA has completed a preliminary analysis of the above-listed petitions for exemption from the PCB Prohibition Rule which was promulgated elsewhere in today's Federal Register. The Agency has decided that it will not evaluate at this time any of the 49 requests for exemption from the prohibitions on manufacturing equipment which contains a PCB capacitor. (The requests which fall in this category are those footnoted with numbers 1, 2, 7, 8, 10, 13, 15, 16, 20.) EPA is not processing these requests in the present proceeding because, as previously noted, the Agency defines in the final PCB Prohibition Rule the activity of "manufacturing" equipment utilizing a PCB capacitor as "processing" of PCBs. Processing of PCBs is not subject to section 6(e)(3) until July 1, 1979.

EPA will consider petitions concerning PCB processing activities in a subsequent proceeding. Persons who filed requests for exemptions for this activity will not be required to refile. However, they will be required under Interim Procedural Rules, found elsewhere in today's Federal Register, to indicate to EPA in writing if they wish their petitions to be considered as requests for exemption from the July 1, 1979 prohibition on processing or distribution in commerce of PCBs.

Imports of PCB Wastes

Chemical Waste Management, Ltd., the National Solid Waste Management Association, and the Rollins Environmental Services, Inc., petitioned to continue importation of PCB waste material into the U.S. for purposes of disposal. These petitions have been mooted by the PCB Prohibition Rule published elsewhere in today's Federal Register. For the reasons explained in the preamble to that regulation, EPA has decided to allow imports and exports of PCB waste for disposal (so long as such disposal is in accordance with Subpart B of the regulation) until May 1, 1980. Accordingly, no petitions for importation of PCB wastes for disposal are required.

Manufacture and Import of Pigments

EPA proposes to grant all of the requests to either manufacture or import diarylide and phthalocyanine pigments containing more than 50 ppm PCB. (These petitions are identified in the above list with footnote number 4). Information submitted with the requests and testimony and written comments received during the rulemaking for the PCB Manufacturing, Processing, Distribution in Commerce and Use Prohibition Rule which EPA promulgated today indicates (1) granting these exemption requests would not result in an unreasonable risk of injury to health or the environment and (2) good faith efforts are being made by the pigment industry to develop alternative processes for manufacturing the diarylide and phthalocyanine pigments without PCB contamination. Most of these pigments have PCB concentrations in the range of several hundred parts per million. These PCBs cannot easily be separated from the pigments because of the structural similarity of the PCBs with the pigments. Once manufactured, the pigments are mixed with other substances to form paints, inks, and a variety of other products.

In deciding whether to permit continued pigment manufacture, EPA has considered the relatively limited human and environmental exposure to PCBs involved and the economic effects associated with prohibiting manufacture of these pigments. The greatest potential for exposure is in the application of the paints and inks using these pigments. These products contain far less than 50 ppm PCB because of the dilution that takes place when the pigment is mixed with the medium it is coloring. As a result, the health and environmental risks are relatively small. At the present time, these particular pigments account for most of the yellow and blue pigments in use and a significant portion of the total pigment market. If the manufacture of these pigments is not permitted until the conversion to alternative processes is complete, there will be a severe impact on the pigment industry as well as its customers in the paint and graphic arts industries.

The potential costs of compliance will be greatly reduced if an exemption is granted while process changes to reduce PCB contamination are made. It is anticipated that such changes can be made over a period of a year or two. The increased health and environmental risk will be relatively small as there will be limited exposure to PCBs as a result of the exemption.

Furthermore, the granting of these exemption requests will be consistent with the authorization for continued use of phthalocyanine and diarylide yellow pigments which is contained in the final PCB Prohibitions Rule.

EPA especially invites comment not only on the merits of granting the above described petitions, but also on the terms and conditions which the Agency should apply to such exemptions if granted.

Import of PCB Equipment

Honeywell Inc.'s request to be permitted to continue importing PCB equipment will not be evaluated in this proceeding but will be evaluated (if requested) in the future rulemaking dealing with exemptions from the prohibition on processing and distribution in commerce of PCBs. The PCB Prohibition Rule which EPA promulgated today treats importation of PCB equipment in the same manner as

[18] Requests an exemption in order to continue importing a polysiloxane intermediate which is used in the manufacture of heat curable silicone rubber products and which is contaminated with 600 ppm PCBs. Chemical (polysiloxane intermediate) is described generically because petitioner has claimed confidential treatment for identity of chemical.

[19] Requests an exemption in order to continue unspecified activity which may be subject to either January 1, 1979 or July 1, 1979 prohibitions. See later discussion in this Notice.

[20] Requests an exemption in order to use PCB capacitors in the manufacture of photographic enlargers.

the domestic assembly of such equipment and, therefore, such activity is not prohibited until July 1, 1979.

Other Petitions

Guardian Chemical Corporation's request to be permitted to sell small quantities of 4,4'-Dichlorodiphenylsulfane as a laboratory reagent also will not be evaluated now but will be evaluated (if requested) in the processing and distribution in commerce exemption proceeding. Guardian did not indicate that they in any way manufacture PCBs. However, it does appear that the activity which is seeks to continue is the "distribution in commerce" of PCBs.

Similarly, the petition submitted by Cincinnati Milacron which, if granted, would permit the company to continue to use PCBs as an additive component in their manufacture of polyvinyl chloride vibration damping devices will not be considered now but will be considered in the future proceeding, if requested. The reason for delaying the processing of Cincinnati Milacron's petition is that EPA has determined that the company's use of PCBs is "processing" as that term is defined by the PCB Prohibition Rule and is therefore not subject to this proceeding.

Exemption Requests Proposed To Be Denied

EPA proposes to deny Intsel Corporation's request to import Electrophenyl T-60 and Phillips Petroleum Company's request to import significant quantities of PCBs for unspecified research and development purposes. Neither of the requestors have shown that they are making a good faith effort to develop substitutes which do not contain 50 ppm or greater PCBs, nor that the adverse economic or other consequences of EPA's denying the requests outweigh the potential harm to health and the environment of EPA's granting the requests.

Exemption Requests for Which a Determination Is Not Proposed

EPA has not proposed its disposition of the requests received from Alcoa which respect to its manufacture of aluminum chloride and the General Electric Co. with respect to its manufacture of phenylchlorosilanes due to the technical complexity of the activities for which exemptions are sought.

Before making a determination with respect to these exemption petitions, the Agency will seek, by means of written requests to the companies and by this notice, further comments and/or data. Additional information on these petitions is given below.

Alcoa requested a one-year exemption for the manufacture of approximately 132.77 million pounds of aluminum chloride at its facility in Anderson County, Texas. The process would result in the annual production of approximately 9,294 pounds of PCBs, 95% of which is concentrated and disposed of as a PCB mixture. The remaining 5% represents an impurity in the aluminum chloride which Alcoa sells for a variety of uses. Comments and data are requested on the health and environmental risks that would be posed by granting Alcoa's exemption and also on the risks associated with using the aluminum chloride for applications other than smelting aluminum. In particular, EPA is interested in information regarding processes for the production of aluminum chloride which do not produce PCBs. In addition, EPA invites comments on the economic or other adverse impacts that denial of the exemption would have on Alcoa's users of this product.

General Electric seeks an exemption to continue the manufacture of phenylchlorosilanes with unintentional PCB impurities. The manufacturing process results in approximately 50,000 pounds per year of PCBs which are removed and concentrated for disposal in an on-site incineration facility in Waterford, New York. The phenylchlorosilanes are used in the production of a number of high performance silicone products for various industrial, aerospace, and defense applications. Comments and data are requested on the health and environmental risk associated with granting or denying General Electric's exemption petition, on alternative methods of manufacturing phenylchlorosilanes without PCB contamination, and on the impact of denying this petition on the users of this chemical.

EPA has also not proposed its disposition of the petition of Tivian Chemical Associates. EPA is seeking to clarify whether Tivian's activity for which exemption is sought is subject to the January 1, 1979 prohibition on PCB manufacture and importation, or rather to the July 1, 1979 prohibition on PCB processing and distribution in commerce.

In addition, EPA has not proposed its disposition of the petitions of Dow Corning Corporation and Stauffer Chemical Company. EPA currently does not have sufficient information to determine whether exemptions should be proposed for these companies. Dow Corning has not identified the substance which it wishes to manufacture and the amount of PCB contamination in the chemical intermediate. Stauffer has not provided sufficient information concerning the identity of products which may be subject to PCB contamination. EPA will seek, by means of written requests to both companies, to clarify the identity of the products identified in the petitions of the companies, and the nature of the manufacturing processes, which includes determining whether intermediates are contaminated during the manufacturing process.

Section 750.13 of the Interim Procedural Rules does not require EPA to announce its proposed disposition of exemption petitions in a Notice of Proposed Rulemaking. Due to the need to expedite action on the exemption petitions, EPA will not publish a subsequent notice concerning the Alcoa, General Electric, Tivian, Dow Corning and Stauffer petitions.

Dated: May 11, 1979.

Marilyn C. Bracken,

Acting Assistant Administrator for Toxic Substances.

[FR Doc. 79-16201 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 761]

[FRL 1227-6]

Polychlorinated Biphenyls (PCBs); Amendment to Criteria for Chemical Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment to final rule; notice of informal hearing.

SUMMARY: This proposed rule would modify Annex II of Subpart E of the Polychlorinated Biphenyls regulation promulgated elsewhere in today's Federal Register under the authority of section 6(e) of the Toxic Substances Control Act. The proposed rule would amend the criteria for chemical waste landfills by reducing the required distance between the bottom of the chemical waste landfill liner system and the historical high water table from fifty feet to five feet.

DATES: Written comments, preferably in triplicate, must be received prior to the close of business July 16, 1979. Informal hearing date and time (if a hearing is requested): August 6, 1979, at 10:00 a.m. in Washington, DC. Requests to hold a hearing and to participate in the hearing must be received prior to the close of

business on July 16, 1979. See Supplementary Information below.

ADDRESSES: Send comments to: Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20406, Attn: Docket Number OTS/066000(PCB/RR). The informal hearing (if a hearing is requested) will be held in Washington, DC. The exact location of the hearing will be made available by calling the toll-free number 800-424-9065. Address requests to participate to Ms. Linda Thomson, Hearing Clerk, Office of Toxic Substances (TS-794), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Attn: Docket Number OTS/066000(PCB/RR) The telephone number for Ms. Thomson is (202)-755-1188.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Office of Industry Assistance, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Call the toll free number (800)-424-9065, (in Washington, DC, 554-1404).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency proposes this rule pursuant to the authority of section 6(e) of the Toxic Substances Control Act (Pub. L. 94-469; 90 Stat. 2003; 15 U.S.C. 2601 et seq., hereinafter referred to as TSCA). The procedures for rulemaking under section 6 of TSCA (40 CFR Part 750), 42 FR 61269 (December 2, 1977), will be followed. The official record of rulemaking is located in Room 447, East Tower, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202)-755-6956. It will be available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Hearing transcripts and other hearing materials will be added to the record as they become available.

I. Chemical Waste Landfill Criteria

In Annex II of Subpart E of the PCB Rule (published elsewhere in today's Federal Register), the Agency specifies criteria for chemical waste landfills to be used for the disposal of PCBs. Section 761.41(b)(3), Hydrologic Conditions, states that the bottom of the landfill liner system or natural in-place soil barrier must be at least fifty feet from the historical high water table. This requirement is essentially the same as the provisions contained in § 761.41(b)(2), Hydrology, of the PCB Disposal and Marking Rule (43 FR 7150, 7161, February 17, 1978). The earlier version of the PCB Rules will be superseded in thirty days by the PCB Rule published in final form today.

Because the distance between the bottom of a chemical waste landfill and the historical high water table cannot be fifty feet or more in many areas east of the Mississippi River due to the closeness of the water table to the surface, EPA Regional Administrators have had to use the waiver provisions of § 761.41(c)(4) to waive this criterion in order to be able to approve PCB chemical waste landfills. The Regional Administrators have been able to grant these waivers because the shorter separation between the bottom of the landfill and the groundwater was found not to present an unreasonable risk of injury to health or the environment from PCBs. After examining the circumstances related to these waivers, EPA has concluded, for the reasons stated below, that the fifty foot criterion in the rule is too stringent, and that the rule should be modified accordingly.

The state of the art in the design and construction of chemical waste landfill liner systems and leachate detection and collection systems has advanced sufficiently so that the bottom of the liner system can be as close as five feet from the historical high water table. The liner systems are designed to be virtually impermeable, and the leachate collection systems are designed as a back-up measure to help insure that the liner system is not penetrated by liquids. This approach has also been included in the proposed EPA Hazardous Waste Guidelines and Regulations (40 CFR Part 250) [see 43 FR 58946-59028, December 18, 1978] in § 250.45-2(a)(2) proposed under the authority of the Resource Conservation and Recovery Act (RCRA).

This proposed change would modify § 761.41(b)(3), Hydrologic Conditions, of the PCB Rule, to change from fifty feet to five feet the required minimum distance between the bottom of the liner system and the historical high water table.

II. Effective Date

It is the intent of EPA to make the final version of this proposed amendment effective thirty days after the date of publication in the Federal Register. The final promulgation of this rule is expected in September 1979.

Dated: May 11, 1979.

Marilyn C. Bracken,

Acting Assistant Administrator for Toxic Substances.

Pursuant to the Toxic Substances Control Act, 15 U.S.C. 2605, and pursuant to authority delegated in the *Background* section of the Preamble to the Final PCB Regulation published elsewhere in today's Federal Register, the following amendment to 40 CFR Chapter I, Part 761 is proposed.

Subpart E—List of Annexes

Annex II

Section 761.41 is amended by revising subparagraph (b)(3) to read as follows:

§ 761.41 Chemical waste landfills.

* * * * *

(b) * * *

(3) *Hydrologic Conditions.* The bottom of the landfill liner system or natural in-place soil barrier shall be at least five feet above the historical high groundwater table. Floodplains, shorelands, and groundwater recharge areas shall be avoided. There shall be no hydraulic connection between the site and standing or flowing surface water. The site shall have monitoring wells and leachate collection.

[FR Doc. 79-16902 Filed 5-30-79; 8:45 am]

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federal register

Thursday
May 31, 1979

Part VII

Department of Energy

Weatherization Assistance for Low-Income Persons

DEPARTMENT OF ENERGY

10 CFR Part 440

[CAS-RM-79-502]

Weatherization Assistance for Low-Income Persons; Amendment of Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy hereby amends the regulations for its program of weatherization assistance for low-income persons in order primarily to carry out changes required by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.* In addition, DOE is providing certain other changes to simplifying further the program regulations and to improve program administration. The changes include a new ceiling of $800 per dwelling unit for the cost of weatherization materials and most other allowable expenditures, an increase in the poverty level which is a criterion for weatherization assistance, a simplification of one of the eligibility tests to qualify a dwelling unit for weatherization work, and certain modifications regarding the materials which may be purchased with program funds.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT:
Mary M. Bell, Director, Office of Weatherization Assistance, Department of Energy, Room 4121, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-9481.
Richard F. Kessler, Office of General Counsel, Department of Energy, Room 3228, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-4543.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Comments and Changes
A. Definitions
1. General
2. Weatherization Materials
B. Allowable Expenditures
1. The 30-Percent Umbrella
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I. Introduction

The Department of Energy ("DOE") is amending the regulations for the program for weatherization assistance for low-income persons ("program" or "weatherization program"), 10 CFR Part 440, under the Energy Conservation in Existing Buildings Act of 1976, as amended ("Act"), 42 U.S.C. 6851 *et seq.* These changes implement certain amendments contained in § 231, 92 Stat. 3224, of the National Energy Conservation Policy Act ("NECPA"), Pub. L. 95-619, 92 Stat. 3206 *et seq.* In addition, DOE is providing certain other changes to simplify further the program regulations and to improve program administration. DOE proposed these changes on February 14, 1979, 44 FR 10348, February 16, 1979.

DOE recently completed a major revision of the program regulations based upon experience gained in the first year of program implementation, 44 FR 31, January 2, 1979. These changes were made to introduce greater flexibility into the administration of the program at the State and local levels. Today's issuance does not introduce another series of major changes but primarily makes those changes necessary to conform the regulations with provisions of NECPA. A number of the changes introduced into the program today are changes which are specifically mandated by NECPA and which DOE accordingly does not have discretion to vary. This final rule retains the changes as proposed, except for certain modifications pertaining to the 30-percent "umbrella," repairs, eligibility, taxes and materials which do not comply with a standard prescribed by DOE.

Today's issuance does not discuss a separate notice of proposed rulemaking issued by DOE on April 6, 1979, 44 FR 22608, April 16, 1979. This later proposal would revise program regulations to respond to the NECPA provision which requires DOE to establish procedures for determining the optimum set of cost-effective measures, within the cost guidelines for the program, for weatherizing each dwelling unit under the program.

II. Discussion of comments and changes.

DOE received 91 comments on the proposed amendments during and after the 30-day comment period, in addition to the testimony of seventeen speakers at the public hearing held on March 12, 1979. Consideration of these comments resulted in certain changes in the final rule which are discussed below.

A. *Definitions.*

1. *General.* The DOE proposed to amend § 440.3, Definitions, to revise the definitions of "low-income," "repair materials," and "weatherization materials" and to delete the definitions of "cosmetic items," "heating or cooling source," and "mechanical equipment." A conforming amendment to delete § 440.16(c)(3) was also proposed. Subparagraph 440.16(c)(3) precluded expenditure of program funds for "cosmetic items" or a "heating or cooling source." These proposals are made final as proposed.

2. *Weatherization Materials.* The proposed definition of "weatherization materials," which is incorporated unchanged in today's final notice, repeats the NECPA list of weatherization materials and adds four materials to the NECPA list by exercising the NECPA authority to prescribe further weatherization materials by rule. The four additional materials are "skirting," "items to improve attic ventilation," "vapor barriers," and "materials used as a patch to reduce infiltration through the building envelope." These additional materials are already covered by the program.

Fifty-three comments were received on the proposed definition of "weatherization materials". Five comments supported the proposed definition, while six expressed concern over the fact that, as NECPA requires, only materials listed in the definition would allowable as weatherization materials under the program. Six respondents offered comments on "materials used as a patch to reduce infiltration," recommending either relaxation or tightening of the language describing this item. Specifically, some of the comments recommended deleting the "patch" limitation. The DOE has determined to leave the language as proposed, which is also as it appears in the current rules. By retaining the "patch" limitation, the regulatory language should not admit of the mistaken interpretation that general maintenance and repairs, total roof replacement or siding installation are allowable expenditures.

DOE also received numerous comments requesting the addition of further items to the definition of "weatherization materials." Some of the additional items suggested are already covered by the program, however, such as glass to replace broken windows, roof patching materials, certain furnace efficiency modifications, furnace repairs, and repair materials such as nails, screws, staples, and glue. Moreover, as discussed elsewhere in this notice, work is underway in the context of the residential energy conservation ("RCS") program that may add to the list of qualifying weatherization materials.

"Items to improve attic ventilation" are included within the definition of "weatherization materials," § 440.3(f)(ii). Such items are currently covered by the program. On May 1, 1979, the DOE received comments from the National Bureau of Standards suggesting that these materials be limited to "non-powered" items to improve attic ventilation, such as louvres in gables and soffits. The DOE is reviewing this suggestion in the context of the rulemaking described elsewhere in this notice for the RCS program and for determining the optimum set of cost-effective measures for weatherizing any particular dwelling under the weatherization program.

B. *Allowable Expenditures.*

Prior to its amendment by NECPA, the Act prescribed a ceiling of $400 per dwelling unit for weatherization materials unless the State policy advisory council ("PAC") provided for a greater amount. The NECPA raised this amount to $800 but expanded its scope to cover most of the other important allowable program expenditures as well as weatherization materials. The proposal made no substantive change to existing § 440.16(a) of the program regulations, other than to integrate the new $800 ceiling. The prior $400 ceiling, which had been carried in another place in the regulation, was deleted. The proposal retained in § 440.16(a) a previously prescribed 30-percent "umbrella" on certain allowable expenditures and a $100 per dwelling limit on repair materials and repairs to the heating source. The proposal also retained prior regulatory language on taxes as allowable expenditures.

In today's notice, § 440.16(a) is retained as proposed, except for minor revisions to the 30-percent umbrella, and to the "repairs" and "taxes" language.

1. *The 30-Percent Umbrella.* In the final rule, § 440.16(a)(1)(ii), the 30-percent umbrella has been modified into a dollar figure which may not exceed an average of $240 per dwelling unit for any weatherization project. This change was made primarily to accommodate the 30-percent umbrella within the broader $800 ceiling. The fit of the $800 ceiling and the $240 "sub-ceiling" is discussed in greater detail below.

Twenty-one individuals commented on the 30-percent umbrella. While one comment favored it, eighteen comments recommended a larger amount and various changes in the items covered. Two comments were general. No larger amount is adopted in today's final rule (the $240 is the substantial equivalent of the 30-percent umbrella in dollar terms), nor are changes introduced in the items covered. The 30-percent umbrella provisions were first introduced into the regulations in January 1979, and the DOE believes it premature to make any further changes in them at this time.

Five comments questioned whether the umbrella itself was permissible under the NECPA. Their argument noted that the NECPA did not specifically provide for this restriction, where it did specifically provide for the $800 limit and for a $100 per unit limit on incidental repairs. The DOE has carefully considered these comments and believes it has the discretion to set the $240 ceiling. Without the ceiling, amounts disproportionately large in DOE's view might be spent for certain indirect costs and little for weatherization materials.

2. *Incidental Repairs.* DOE proposed no revision to the current program regulations or repairs, limiting to $100 per dwelling unit the cost of repair materials and repairs to the heating source. NECPA imposes a $100 limit per dwelling unit on the cost for "making incidental repairs to such unit if such repairs are necessary to make the installation of weatherization materials effective." Seventeen comments urged that this limitation be raised. Upon review of the comments it has modified the regulatory language, § 440.16(a)(1)(iii), to make it congruent with the NECPA's phrasing. The DOE believes that the major effect of this change is to clarify that use of a contractor is not precluded in making appropriate incidental repairs. Before this amendment, it was not clear that program operators could arrange for a contractor to repair anything but the heating source. Any incidental repair may be made which the program operator determines is necessary to make the installation of weatherization materials effective, as long as expenditures remain within the $100 limit. Accordingly, repairs to a chimney, a leaking pipe, or a furnace, for example, would be allowable under § 440.16(a)(1)(iii).

3. *Complying with the $800 and $240 Limits.* The amendments announced today contain various limits on program costs. These limits, or close variants of them, are all contained in the current regulations. There is the $800 limit, unless raised in particular cases, on weatherization materials and most other allowable expenditures. Within the $800 limit, there is the $240 limit on five types of indirect costs and the $100 limit on incidental repairs. The rules also limit the amounts which may be spent for administrative expenses, as is discussed further below.

Significant concern with compliance with the $800 limit and the $240 limit was expressed in the comments and appears to be a cause for particular concern and confusion at present. In the proposal, DOE specifically requested comments concerning approaches it could use to encourage compliance with the $800 per dwelling unit ceiling. Fifty-one commenters responded to DOE's solicitation, nearly all expressing concern that the new ceiling would not be administratively workable or would require program operators to be more strictly accountable for all costs incurred in connection with the program. Concern was also expressed that compliance could only be achieved through a detailed accounting system too complex for some Community Action Agencies ("CAA's") to use. One commenter noted that a detailed cost accounting system would be impossible with the concurrent program limitation on administrative costs.

While grantees and subgrantees will have a responsibility to comply with the new program limits on expenditures as of the effective date of this final rule, the DOE expects to develop further guidance to assist this compliance. The following discussion, while interim in nature, may serve to reduce uncertainties, regarding compliance with the $800 and $240 limits.

One effect of the change adopted today in § 440.12(b)(4) is expected to be that the budget which accompanies a State's annual application will demonstrate that projected expenditures do not exceed the $800 and $240 limits. This is one important step in insuring adherence to these limits. The DOE encourages the States in their annual applications to project reasonable numbers of units to be weatherized. The DOE intends to review those estimates carefully because an unrealistically large projection may work to jeopardize compliance with the limits. DOE is

considering other steps it can take in this area.

The DOE intends that the $800 limit apply to each dwelling weatherized. An average of $800 for each weatherized dwelling, either on a statewide or project area basis, was considered and rejected. The DOE is at this time retaining, as proposed, the $800 limit on the actual costs per dwelling weatherized. The DOE believes that, at least for the present, this actual cost approach will serve as an extra assurance that the costs to which the $800 limit apply will in fact remain within this statutory limit, and thereby that the maximum number of low-income persons can be served by the program. The DOE also believes that many, if not all, concerns associated with the actual cost approach to the $800 limit will be relieved by the averaging which is authorized for the $240 limit.

The $240 limit is an average cost calculated by the grantee and applicable on a project area basis, for the five items under § 440.16(a)(1)(ii). Since the $240 limit—like the current 30-percent umbrella—applies to certain indirect costs which cannot be specifically identified to individual dwellings, DOE believes that the simplest and easiest approach to implementing the $240 limit is to have it apply as an average over the total number of units weatherized on a project area basis.

Until further guidance is provided on implementation of the $240 ceiling, DOE recommends that grantees follow an approach similar to that currently being followed under the 30-percent umbrella. The grantee, except tribal organizations, should estimate statewide costs for the items in § 440.16(a)(1)(ii). A tribal organization, which is a grantee, should estimate these costs only for its own weatherization project. The grantee should calculate the total amount of these indirect costs divided by the estimated number of dwelling units to be weatherized to arrive at an average indirect cost per dwelling unit, not exceeding $240 per dwelling unit.

Thereafter, every grantee or subgrantee will use this average cost calculation and may, with respect to each dwelling weatherized, spend only up to the difference between $800 and the average cost calculation to pay for weatherization materials and incidental repairs, the remaining two items under the $800 limit. For example, if a grantee estimates it will weatherize 1000 dwelling units and budgets $230,000 for the indirect costs under § 440.16(a)(1)(ii), the average indirect cost would be $230. The difference between $800 and $230 is $570. Accordingly, a subgrantee in the State may not spend more than $570 for a dwelling unit to pay for the costs of materials under § 440.16(a)(1)(i) and repairs under § 440.16(a)(1)(iii). Program operators are expected to keep records to show this limitation is being followed, as at present with regard to the 30-percent umbrella limitations.

Because the grantee establishes the average indirect cost for a project area, no burden is placed upon the subgrantee to perform any further calculation or accounting procedures to estimate these indirect costs. Thus, if the statewide average cost is $230 per dwelling unit and a grantee has estimated a subgrantee will weatherize 100 dwelling units in its project area, the subgrantee will receive $23,000 ($230×100) for these indirect costs under § 440.16(a)(1)(iii). Any funds not expended for indirect costs may, however, be used by a subgrantee to purchase weatherization materials.

In summary, DOE believes that further guidance to compliance with the $800 and $240 limitations can be built closely upon the interim approach, discussed above. The approach to the $240 ceiling imposes virtually no new burden upon program operators. Program operators will continue to account for funds allocated by the State for expenditures for the items under § 440.16(a)(1)(ii). States and program operators previously had to identify separately expenditures made under the 30-percent umbrella, and this distinction continues to be required under the $240 ceiling. All other costs under the $800 limitation, i.e., purchase, delivery and storage of weatherization materials and incidental repairs, can be related to individual dwelling units, and compliance with the $800 limitation should not require an approach significantly different from complying with the current $400 limitation.

While the DOE believes that the major elements already exist for an approach to compliance with the $800 and $240 limits, which is workable and not unduly burdensome, the DOE is particularly interested in receiving suggestions on this matter from others who are involved with the operation of the program.

4. *Taxes.* In order to simplify recordkeeping at the project level, DOE is deleting § 440.16(a)(3) which specifies as an allowable expenditure "taxes related to other allowable expenditures, except the cost of employment of on-site supervisory personnel." The DOE intends that taxes related to other allowable expenditures continue to be allowable expenditures but to be covered only by other specific allowable expenditures. For example, "the cost of purchase, delivery, and storage of weatherization materials," § 440.16(a)(1)(i), may include any sales taxes related to the purchase of weatherization materials. As a further example, any tax on the employment of on-site supervisory personnel may be treated as an integral part of the allowable expenditure for the cost of employment of on-site supervisory personnel, § 440.16(a)(1)(ii)(E), which is included under the $240 ceiling.

C. *Standards for Weatherization Materials.*

DOE has retained the requirement to limit purchases of weatherization materials to those for which standards exist. However, in § 440.17, DOE has revised paragraph (a) and deleted proposed § 440.17(b) from the final rule so that DOE will not approve, even on an exceptions basis, the purchase of weatherization materials which do not meet the standards prescribed in Appendix A. Three commenters supported limiting expenditures for weatherization materials only to materials for which standards exist, as DOE has done.

One commenter objected that the proposed change makes no allowance for taking advantage of newer and better materials or for seeking comparable materials at a reduced cost. Two commenters stated that limiting weatherization materials only to materials for which standards exist would unnecessarily increase costs and make purchasing of materials difficult. The DOE believes the advantages of safety and effectiveness that standards can provide make them advisable for weatherization materials purchased under the program. Moreover, any problems associated with the lack of standards should be minimized by work now ongoing in the RCS program.

The question of standards for weatherization materials is under careful study by DOE in connection with the RCS program. On March 12, 1979, DOE issued a proposed rule for the RCS program, 44 FR 16546, March 19, 1979, pursuant to Title II, Part I of NECpA. The purpose of the RCS program is to encourage larger gas and electric utilities and home heating oil suppliers to assist their residential customers in retrofitting their dwellings with conservation measures. The RCS rulemaking is considering an extensive list of conservation measures, with related standards, qualifying for use under the RCS program. The DOE expects to review this list to determine which items would be appropriate for

use as weatherization materials under the weatherization assistance program. Pending receipt and consideration of comments with regard to the list of materials and standards which may be used under the RCS program, an extensive reconsideration of weatherization materials at this time would be inappropriate.

Some program operators feared that, under the proposed change, installation of materials not meeting standards prior to the effective date of the final rule might cause retroactive disallowance of costs. Where DOE has approved the particular use of the nonconforming materials, this fear is unfounded because this final rule will apply only to acquisition of weatherization materials after its effective date. Similarly, materials acquired before the effective date of this final rule but not yet installed may nonetheless be used for weatherization assistance where prior DOE approval has been obtained.

D. *Eligible Dwelling Units.*

Under proposed § 440.18(b), one test of eligibility of a dwelling unit for weatherization work is whether it contains a family member who has received certain cash assistance payments "throughout" the 12-month period preceding the determination of eligibility for weatherization assistance. Twenty-eight comments were received, all urging that instead of using the word "throughout" DOE retain the word "during," which is used in the current regulations. The comments objected to requiring—as "throughout" would—that a person be continuously eligible for the 12-month period.

DOE is retaining the word "during," as recommended by the comments, and is promulgating the rest of § 440.18(b) as proposed. The DOE notes that a test requiring a full year of cash assistance payments is not precluded for grantees and subgrantees who want to use it. Further, DOE urges all grantees and subgrantees to continue giving as much attention as they can to providing assistance to the neediest among those who are eligible.

III. Comments DOE could not incorporate

DOE received many comments which suggested revisions to the regulations which were not able to be incorporated in the final rule. Most of these comments recommended changes inconsistent with specific requirements of the NECPA or outside the scope of the proposal.

A. *Labor.*

Several comments expressed concern regarding the availability, reliability, and skill levels of labor provided in accordance with training programs conducted under the Comprehensive Employment and Training Act of 1976 ("CETA"), which is being used to weatherize dwelling units. Alternatives suggested in comments included: (1) Authorizing greater expenditure of grant funds under this program to pay the costs of employing labor and (2) creation of a special set-aside from the Secretary of Labor's discretionary fund for weatherization labor.

The DOE has not been able to address labor comprehensively in its program rules because the Act contemplates that, to the maximum extent practicable, CETA labor will perform the weatherization work under the program. Section 233 of NECPA tasks the DOE, the Department of Labor ("DOL"), Community Services Administration ("CSA"), and others to work together in securing CETA support for Federally-assisted weatherization programs. Among the efforts already undertaken to minimize the labor problems related to weatherization work, on January 9, 1979, guidance was developed by DOE in conjunction with DOL, CSA, the Office of Management and Budget ("OMB") and staff from the White House Domestic Policy Council. This guidance requires an ongoing working agreement between DOE, DOL and CSA at the regional office level to identify and resolve current labor problems, up to and including a change of weatherization sponsors, if necessary, to achieve the purposes of the program. The issue of weatherization labor is discussed in greater detail in the preambles of notices regarding proposals for, and recent changes in, the program's regulations, 43 FR 34493, August 4, 1978; 44 FR 31, January 2, 1979.

B. *Administrative Costs.*

The final rule retains the proposed language concerning administrative costs. Almost half of all those responding to the proposed regulations objected strongly to proposed § 440.16(b) limiting both the grantee and subgrantee to 5% of their grant funds for administrative costs. These limits, however, are contained in the NECPA.

C. *The $800 Limitation.*

DOE received twenty-six comments on the $800 per dwelling ceiling on weatherization materials and most other allowable program expenditures. Twelve comments supported the change while nine others thought that this ceiling was too low or that it should not apply to other expenditures than expenditures for weatherization materials. This ceiling and the items it covers, however, are mandated by the NECPA.

DOE received six comments requesting DOE to delay incorporation of the $800 limitation in the revisions to proposed § 440.16 although the NECPA provisions relating to the program explicitly call for expeditious implementation. Three comments observed that the proposed revisions were confusing but provided no specific recommendations.

D. *Waiver of $800 Limitation.*

Again, the proposed language is retained in the final rule. Twenty commenters offered their views on the proposed procedure for increasing the $800 maximum expenditure per dwelling unit for specific categories of units or materials in a State. Eight commenters opposed the amendment requiring the Regional Representative's approval of such an increase and recommended that the authority to make this determination be returned to the State PAC.

NECPA is specific in mandating DOE approval for an increase in the $800 ceiling for specific categories of units or materials in the State. Proposed § 440.16(d), therefore, has been retained in the final rule to implement this statutory requirement.

E. *Return to Previously Weatherized Dwellings.*

Fourteen commenters recommended that § 440.16(c)(1), which prohibits the weatherization of a dwelling unit which has been weatherized previously with grant funds, be modified to provide additional assistance to clients who received services before the increase in the maximum expenditure from $400 to $800. DOE believes that such a change would be inappropriate because it would make less assistance available to those low-income persons who have need of and have never received any weatherization assistance.

F. *Other Issues.*

Other comments which DOE was unable to corporate in this rulemaking requested DOE to: (1) Eliminate the requirement that a landlord consent to the weatherization rental property which he owns, a problem in certain urban areas where the landlord has abandoned the building; (2) establish a separate weatherization program for farm workers; and (3) encourage program operators to combine DOE weatherization funds with HUD and CSA programs funds. These ideas will be considered further, pursued as appropriate with other agencies, and may be addressed in subsequent rulemaking.

IV. Environmental and other review.

This rule was developed in accordance with Executive Order 12044,

"Improving Government Regulations." Receipt and analysis of public comment occurred for a period in excess of 30 days, and a regulatory analysis was determined not to be necessary.

The environmental impacts associated with the implementation of the weatherization program as amended by NECPA were analyzed in a programmatic environmental assessment ("EA"). Notice of the public availability of the EA and of DOE's negative determination, based on that EA that the program regulations including the amendments promulgated by this rule, did 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 of 1969, as amended, 42 U.S.C. 4321 *et seq.*, was published in the Federal Register on April 10, 1979, 44 FR 21323. That notice solicited comments on the EA and DOE's negative determination. No comments have been received to date. Accordingly, DOE reaffirms its negative determination, but, at the same time, re-emphasizes the commitment made in the EA that appropriate environmental evaluation will be made on a site-specific basis.

(Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

In consideration of the foregoing, Part 440 of Chapter II of Title 10 of the code of Federal Regulations is amended as set forth below, effective July 2, 1979.

Issued in Washington, D.C., May 24, 1979

Omi G. Walden,

Assistant Secretary, Conservation and Solar Applications, Department of Energy.

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

1. 10 CFR 440.3 is amended by deleting the definitions of "cosmetic items," "heating or cooling source," and "mechancial equipment" and by revising the definitions of "low income," "repair materials" and "weatherization materials" to read as follows:

§ 440.3 Definitions.

* * * * *

"Low income" means that income in relation to family size which—

(1) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964; or

(2) Is the basis on which cash assistance payments have been paid during the preceding 12 month period under Titles IV and XVI of the Social Security Act or applicable State or local law.

* * * * *

"Repair materials" mean items necessary for the effective performance or preservation of weatherization materials. Repair materials include, but are not limited to lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped, and protective materials, such as paint, used to seal materials installed under this program.

* * * * *

"Weatherization materials" mean—

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications limited to—

(i) Replacement burners designed to substantially increase the energy efficiency of the heating system;

(ii) Devices for modifying fuel openings which will increase the energy efficiency of the heating system; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Clock thermostats;

(4) Ceiling, attic, wall, floor, and duct insulation;

(5) Water heater insulation;

(6) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

(7) The following insulating or energy conserving devices or technologies—

(i) Skirting;

(ii) Items to improve attic ventilation;

(iii) Vapor barriers; and

(iv) Materials used as a patch to reduce infiltration through the building envelope.

* * * * *

§ 440.12 [Amended]

2. 10 CFR 440.12(b)(4) is amended by deleting the reference to "(a) (2) or (3)" following "§ 440.16".

3. 10 CFR 440.16(a), the first sentence of §§ 440.16(b), and 440.16(d) are amended to read as follows and § 440.16(c)(3) is deleted:

§ 440.16 Allowable expenditures.

(a) To the maximum extent practicable, the grant funds provided under this part shall be used for the purchase of weatherization materials and related matter described in subparagraph (1). Allowable expenditures under this part include only—

(1) A maximum of $800 for any dwelling unit, except as provided in paragraph (d) of this section, for—

(i) The cost of purchase, delivery, and storage of weatherization materials;

(ii) The cost, determined by a grantee, which shall not exceed an average for any subgrantee of $240 per dwelling unit, of—

(A) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(B) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(C) Maintenance of tools and equipment;

(D) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance; and

(E) Employment of on-site supervisory personnel; and

(iii) The cost, not to exceed $100 per dwelling unit, of incidental repairs, including repair materials and repairs to the heating source, necessary to make the installation of weatherization materials effective;

(2) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(3) [Reserved]; and

(4) Allowable administrative expenses under paragraph (b) of this section.

(b) Not more than 5 percent of each grant made pursuant to this part may be used for the administrative expenses of the grantee, and not more than 5 percent of each amount allocated to a sub-grantee under this part may be used for administrative expenses of the sub-grantee.

* * * * *

(c) * * *

(3) [Deleted]

(d) The limitation of $800 described in paragraph (a) of this section shall not apply if the State policy advisory council requests a greater amount be provided for specific categories of units or materials in the State, and the Regional Representative approves the request.

4. 10 CFR 440.17 is amended by revising subparagraph (a) to read as set

forth below, and by deleting subparagraph (b), and by redesignating subparagraphs (c), (d), (e) as (b), (c), and (d).

§ 440.17 Standards and techniques for weatherization.

(a) Only weatherization materials which meet or exceed standards prescribed in Appendix A shall be purchased with funds provided under this part.

* * * * *

5. 10 CFR 440.18 is amended to read as follows:

§ 440.18 Eligible dwelling units.

No dwelling unit shall be eligible for weatherization assistance under this part unless it is occupied by a family unit—

(a) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget; or

(b) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law during the 12 month period preceding the determination of eligibility for weatherization assistance.

6. Appendix A to 10 CFR Part 440 is amended to add the following after "clock thermostats":

APPENDIX A—Standards for weatherization materials

* * * * *

Clock thermostats—Skirting—commercial availability.

Items to improve attic ventilation—commercial availability.

Vapor barriers—commercial availability.

Materials used as a patch to reduce infiltration through the building envelope—commercial availability.

[FR Doc. 79-16864 Filed 5-30-79; 8:45 am]

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federal register

Thursday
May 31, 1979

Part VIII

Department of the Interior

Fish and Wildlife Service

State Cooperation Agreements Relating to Endangered and Threatened Species of Fish and Wildlife or Plants

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17, 81

State Cooperation Agreements Relating to Endangered and Threatened Species of Fish and Wildlife or Plants

AGENCY: United States Fish and Wildlife Service, Department of the Interior.

ACTION: Final rulemaking.

SUMMARY: The Fish and Wildlife Service amends its regulations concerning State cooperative agreements relating to endangered and threatened fish and wildlife or plants. Recent legislation provided for an alternative set of requirements which could be satisfied by the individual States in qualifying for a cooperative agreement and Federal grant-in-aid funds. This rulemaking is intended to implement that legislation and to replace the proposed rulemaking for section 6 published in the Federal Register on August 30, 1978 (43 FR 38737–38).

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jacobsen, Chief, Branch of Management Operations, Office of Endangered Species, United States Fish and Wildlife Service, Department of the Interior, Washington, D.C. (703/235–2760).

SUPPLEMENTAL INFORMATION:

Background

This final rulemaking amends certain provisions of Parts 17 and 81, Title 50, Code of Federal Regulations, concerning endangered and threatened fish and wildlife or plants. It incorporates the provisions of Pub. L. No. 95–212 and Pub. L. No. 95–632 to facilitate State qualification for financial assistance under section 6 of the Endangered Species Act of 1973 (hereinafter referred to as the Act) for fish and wildlife or plants. This final rulemaking stems from the proposed rulemaking for section 6 published in the Federal Register on August 30, 1978 (43 FR 38737–38).

Congress intended that the State cooperative agreement program would be a vital element of the Act. Unfortunately, the cooperative agreement program has developed more slowly than originally hoped because of the difficulties encountered by the States in satisfying subsections 6(c)(1)(A), and (B) of the Act. To date, only 22 States have signed cooperative agreements with the Service on listed species of fish and wildlife. The Service believes that the greatest impediment to the development of an active cooperative agreement program has now been removed with the new amendments to section 6 of the Act. In addition, States may now enter into cooperative agreements covering resident species of listed plants. To further improve program administration, the Service is making several minor modifications to 50 CFR Part 81 regarding the allocation of funds and the application for Federal assistance.

On December 19, 1977, Pub. L. No. 95–212 was enacted. This law amended sections 6(c) and 6(i) of the Endangered Species Act of 1973 to provide an alternative set of requirements which could be satisfied by the individual States in qualifying for a cooperative agreement and Federal grant-in-aid funds. It also authorized appropriations for fiscal years 1978 through 1981 for grant-in-aid purposes. On August 30, 1978, the Service issued proposed regulations designed to implement the new amendments to section 6 of the Endangered Species Act of 1973.

Subsequent to the August 30, 1978, publication of the proposed amendments to the State cooperative agreement regulations under section 6(c) of the Act, Congress again amended that section of the Act to allow for State cooperative agreements on endangered or threatened plants, Pub. L. No. 95–632, November 10, 1978. Cooperative agreements for plants could be independent from the existing cooperative agreement program for listed species of fish and wildlife. Although a State may voluntarily choose to combine its plant and fish and wildlife cooperative agreements into one document, there is no requirement that it do so. Thus, States will still be able to qualify for cooperative agreements for fish and wildlife under section 6(c)(1) of the Act, regardless of the status of their program for endangered or threatened plants.

In authorizing cooperative agreements for plants, Congress merely followed the existing language in section 6(c)(1) for fish and wildlife. The only exception is that habitat acquisition authority is not a requirement for a cooperative agreement on plants. In light of the simplicity of the plant amendment to section 6(c) and the fact that it was designed by Congress to be integrated immediately into the existing Endangered Species Cooperative Agreement Program, this final rulemaking has been modified to reflect the availability of cooperative agreements for listed plants. For the above reasons, it was determined that it would be unnecessary and contrary to the public interest to delay the implementation of the plant cooperative agreement program pending public comment on a proposed rulemaking to incorporate plants into Part 81 of 50 CFR. The establishment of a cooperative agreement program for plants is no longer a discretionary matter; Congress mandated the existence of such a program with the enactment of Pub. L. No. 95–632. Thus, throughout this final rulemaking amending Part 81, the simple addition of the words "or plants" has been made to reflect the modifications to the cooperative agreement program desired by Congress.

Section 6(c) of the Act authorizes the Secretary of the Interior to enter into a cooperative agreement with a State which has established an "adequate and active" program for the conservation of endangered species and threatened species. Such a finding requires the satisfaction of the criteria set forth in subsections 6(c)(1) and 6(c)(2) of the Act, pertaining to the adequacy of the States' authority in areas such as law enforcement, research, habitat acquisition, and conservation program. Each State must submit extensive documentation of appropriate authorities and its endangered species program to the Service. Only after a careful review of the submitted information will the Service certify or reject the "adequacy and activeness" of a State's endangered and threatened species program.

The December 19, 1977, amendments modified the criteria of section 6(c) of the Act by providing an alternative set of requirements to be utilized by individual States and the Service in ascertaining the eligibility of a State's endangered species program for a cooperative agreement. Thus, a State has two options for entering into a cooperative agreement on endangered or threatened plants. First, under the original requirements for a section 6 cooperative agreement, a State could attempt to show that it has adequate authority to satisfy all of the requirements of section 6(c)(1)(A) through (E). This would require a State to have the authority to conserve all resident species of fish and wildlife which the Secretary determines to be endangered or threatened. States that have such broad authorities and wish to conserve all federally listed resident species of fish and wildlife may still do so under the original cooperative agreement requirements. However, a number of State conservation agencies do not possess such broad authorities

and have, therefore, been ineligible for a cooperative agreement. Thus, a State conservation agency may have authority to protect only certain categories of listed species, such as vertebrates, rather than all resident species that are federally listed. The December 1977, amendments facilitated State qualification for an alternative cooperative agreement under section 6(c) by only requiring the satisfaction of the criteria of subsections 6(c)(1)(C), (D) and (E) of the Act, eliminating mandatory satisfaction of subsection 6(c)(1)(A) and (B).

Furthermore, with the enactment of Pub. L. No. 95-632, Section 6(c) was again amended to authorize the States to enter into cooperative agreements for listed plants.

Accordingly, States now have two alternative methods for qualifying for a cooperative agreement for fish and wildlife or plants: Satisfying the original criteria of subsection 6(c)(1)(A) through (E) for fish and wildlife or satisfying the criteria of subsection 6(c)(2)(A) through (D) for plants, or, in the alternative, utilizing the abbreviated cooperative agreement approach by satisfying subsection 6(c)(1)(i) or 6(c)(2)(i) and reaching agreement with the Secretary as to which listed species of fish and wildlife or plants are most urgently in need of conservation programs. States can utilize any combination of these alternatives.

In providing a basis for determining which listed species are most urgently in need of a conservation program, the Director will consider the following criteria: (1) The degree of threat to the continued existence of the species, (2) the recovery potential of the species, (3) the taxonomic status, e.g., giving full species priority over subspecies or populations, and (4) such other relevant biological factors as determined appropriate.

Summary of Comments Received on Proposed Rulemaking

A total of 38 comments were received on the proposed rulemaking of August 30, 1978. Thirty-five of the comments expressed unequivocal support for the proposal or offered no substantive comment at that time. Two of the comments expressed overall support for the proposal but offered comments on particular changes in language or approach. One comment declined to evaluate the proposal in the absence of an indepth impact analysis of the regulations. Thirty-four comments were received from State of regional organizations, three comments from Federal agencies, and one comment from a private environmental organization. One State requested a modification of the proposed amendment No. 20 (§ 81.2(6)(2)) designed to more accurately reflect the language of the Act by referencing the alternative authority of the Secretary or the State to determine those resident species of fish and wildlife to be endangered or threatened. Accordingly, proposed amendment No. 20, now amendment No. 16 (§ 81.2(b)(2)), will read in part: "(2) plans are included under which immediate attention will be given to those resident species of fish and wildlife or plants which are determined by the Secretary or the State agency to be endangered or threatened * * *"

Another requested modification was for proposed amendment No. 23 (§ 81.6(b)). Concern was expressed that the Service might be requesting an applying State to submit detailed information on every State activity receiving Federal support. Since the intent of the amendment is to have each State applying for funds under a cooperative agreement declare their Federal grant support received under section 6(c) of the Act, the amendment for § 81.6(b) has been modified to read as follows: "All of the States' activities proposed for this Federal grant support will be incorporated in one or more project applications."

One comment inquired as to the need to submit allocation requests semi-annually pursuant to proposed amendment No. 22 (§ 81.4). The Service recognizes that future funding requests will exceed appropriated funds and has determined that the submission twice annually is necessary for program administration.

Another comment suggested a modification to proposed amendment No. 21 (§ 81.3) that appears to specify that only the Secretary would apply the four criteria in that section designed to determine those species most urgently in need of a conservation program. The Service is cognizant of the mutual responsibilities of the State and Federal governments for the conservation of endangered and threatened species. However, the criteria established in § 81.3 merely set out the factors or methodology to be employed by the Secretary of the Interior in arriving at a determination of those species most urgently in need of a conservation program. It was never intended to address the criteria to be utilized by the individual States in developing their proposed lists of species most urgently in need of conservation, although many States may ultimately adopt the Federal criteria. Thus, since the amendment was merely designed to set forth the factors to be relied upon by the Federal Government in negotiations with the States, the Service has retained the amendment as proposed.

A Federal agency suggested the Service conduct an environmental, social and economic impact analysis of the regulations prior to implementation. The amendments to section 6 of the Act did not address the substance of the cooperative agreement area of the Endangered Species Program. In order to facilitate full utilization of cooperative agreements by all States, resulting in encouraging conservation of endangered and threatened species and their habitats, Congress merely provided more flexibility in the administration of cooperative agreements by no longer requiring a State to have the authority to conserve all federally listed species to qualify. Because the amendments to the Act are specific with regard to the criteria to be employed in qualifications for cooperative agreements, the Service feels it has limited discretion in considering alternatives to these regulations. In addition, since these regulations increase the flexibility of the administration of cooperative agreements as directed by Congress, by merely amending existing procedures, the Service has determined that the suggested impact analaysis would be unnecessary.

Description of Final Rulemaking

The purpose of this rulemaking is to amend existing procedures for cooperative agreements between the respective States and the Service concerning the consevation of endangered and threatened species pursuant to section 6(c) of the Act. This rulemaking is summerized below.

Sections 17.21(c), 17.31(b), and 17.42(a) affirm that the permitting exceptions allowed to a State are restricted to those species expressly covered by an approved cooperative agreement between the State and the Service.

Section 81.1 sets forth the definitions to reflect the amendments to the Act, including the term "species" now limiting distinct population segments to vertebrate fish or wildlife, and the term "plan" as a course of action designed to give immediate attention to the subject species.

Section 81.2 describes Service cooperation with the States and now contains the procedures under which a State may qualify for a cooperative agreement if the criteria of section 6(c)(1)(i) (fish and wildlife) or section 6(c)(2)i) (plants) of the Act are met, and

includes plans for immediate attention to be given resident species determined by the Secretary or the State to be endangered or threatened and which the Secretary and the State agree are most urgently in need of conservation programs.

Section 81.3 describes the following basic criteria to be used by the Secretary for determining which species are most urgently in need of a conservation program: (1) The degree of threat to the continued existence of the species; (2) the recovery potential of the species; (3) the taxonomic status; and (4) such other relevant biological factors as determined appropriate.

Section 81.4 establishes a semi-annual allocation of funds for cooperative agreements designed to facilitate administration of the program by allowing evaluation of species in need of conservation every six months rather than once yearly.

Section 81.6(b) sets forth the requirements that each State's activities proposed for this Federal grant support will be incorporated in one or more project applications.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Chapter I of Title 50, Code of Federal Regulations, is amended in Parts 17 and 81 to read as follows:

§ 17.21 [Amended]

1. Amend § 17.21(c)(5) by deleting the words "endangered species" and substituting "those endangered species which are covered by an approved cooperative agreement."

§ 17.31 [Amended]

2. Amend § 17.31(b) by deleting the words "any threatened wildlife" and "scientific research or" and add "those threatened species of wildlife which are covered by an approved cooperative agreement" after the word "take" and before the words "to carry out."

§ 17.42 [Amended]

3. Amend § 17.42(a)(i)(D) by adding the words "which covers American alligators" between the words "operating under a cooperative agreement" and "with the Service."

PART 81—CONSERVATION OF ENDANGERED AND THREATENED SPECIES OF FISH, WILDLIFE AND PLANTS—COOPERATION WITH THE STATES

§ 81.1 [Amended]

4. Amend § 81.1(a)(1) by deleting the words "and containing provisions found in subsection 6(d)(2) of the Act" and substituting the words "and § 81.2 of these regulations."

§ 81.1 [Amended]

5. Amend § 81.1(f) by deleting the words "plan for the conservation and management of all species of fish and wildlife that exist in the wild in that State during any part of their life which are endangered or threatened, which includes" and add after "a State-developed" the words "set of." Delete the words "accomplish the objectives on an individual basis" and substitute instead the words "promote the conservation and management of resident endangered or threatened species."

§ 81.1 [Amended]

6. Amend § 81.1(h) by replacing it entirely with "*Species.* This term includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."

§ 81.1 [Amended]

7. Amend § 81.1(j) by deleting the words "department, board, or commission" and by adding after the words "governmental entity" the words "or entities" and deleting the word "is" and substituting the word "are."

§ 81.1 [Amended]

8. Amend § 81.1(k) to read § 81.1(l). Add a new § 81.1(k) to read as follows: "*Plan.* A course of action under which immediate attention will be given to a State's resident species determined to be endangered or threatened."

§ 81.1 [Amended]

9. Amend § 81.1(l) to read § 81.1(m). Delete the words "substantial undertaking" and substitute the words "plan undertaken" and delete the words "or wildlife and" substitute the words "and wildlife or."

§ 81.2 [Amended]

10. Amend § 81.2 by adding the work "various" after the words "for the conservation of." Also after the words "on an annual basis, that" add the words "under the State program, either:."

§ 81.2 [Amended]

11. Amend § 81.2(a) by adding the words " or plants" after the word "wildlife."

§ 81.2 [Amended]

12. Amend § 81.2(b) by adding the words "or plants" after the word "wildlife."

§ 81.2 [Amended]

13. Amend § 81.2(c) by adding the words "or plants" after the word "wildlife."

§ 81.2 [Amended]

14. Amend § 81.2(e) by adding the words "or plants" after the word "wildlife." Also add after the words "endangered or threatened" a comma and the words "or that under the State program: (1) The requirements set forth in paragraphs (c), (d), and (e) of this section are complied with concerning fish and wildlife and in paragraphs (c) and (e) of this section concerning plants, and plans are included under which immediate attention will be given to those resident species of fish and wildlife or plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to this paragraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) of the Endangered Species Act of 1973 with respect to the taking of any resident endangered or threatened species."

§ 81.3 [Amended]

15. Amend § 81.3 by adding after the word "active" in the first sentence, the following "and complies with § 81.2." Also, delete the words "It must be reconfirmed annually to" and substitute the words "A cooperative agreement under § 81.2 must be reconfirmed annually to." Add the following to the end of § 81.3: "The Secretary, in determining which species are most urgently in need of a conservation program as provided for in § 81.2(e), shall apply the following criteria: (1) The degree of threat to the continued existence of the species; (2) the recovery potential of the species; (3) the taxonomic status, e.g., giving full species priority over subspecies or populations; and (4) such other relevant biological factors as determined appropriate."

§ 81.4 [Amended]

16. Amend § 81.4 by adding the words, "semi-annually" after "The Secretary shall."

§ 81.6 [Amended]

17. Amend §81.6(b) by adding at the end of the paragraph, "All of a State's activities proposed for this Federal grant support will be incorporated in one or more project applications."

§ 81.8 [Amended]

18. Amend § 81.8 by deleting the words, "Federal Management Circular 74–7" and substituting the words "Office of Management and Budget Circular A–102."

§ 81.9 [Amended]

19. Amend § 81.9 by deleting the words "Federal Management Circular 74–7" and substituting the words "Office of Management and Budget Circular A–102."

§ 81.12 [Amended]

20. Amend § 81.12 by deleting the words "Federal Management Circular 74–7" and substituting the words "Office of Management and Budget Circular A–102."

The primary author is David Watts, Office of Endangered Species, United States Fish and Wildlife Service, Department of the Interior, (703–235–2760).

A determination has been made that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Note.–The Department of the Interior has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: May 16, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79–16888 Filed 5–30–79; 8:45 am]

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federal register

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May 31, 1979

Part IX

Endangered Species Scientific Authority

American Alligator; Proposed Export Findings for the 1979 Harvest Season

ENDANGERED SPECIES SCIENTIFIC AUTHORITY

[50 CFR Part 810]

Exports of Appendix II Species; American Alligator—Proposed Export Findings for the 1979 Harvest Season

AGENCY: Endangered Species Scientifc Authority.

ACTION: Proposed rulemaking.

SUMMARY: The Endangered Species Scientific Authority (ESSA) proposes findings as to whether commercial export of American alligator hides. harvested after June 28, 1979, will not be detrimental to the survival of the alligator or other crocodilian species. These findings are meant to satisfy ESSA's responsibilities under Article IV, paragraph 2 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Federal export permits could be issued only for hides that were harvested in Louisiana and Florida subject to specified conditions. The ESSA seeks public comment in order to base such determinations on the best available information.

DATES: Comments are due on or before July 30, 1979.

ADDRESS: Comments should be addressed to the Executive Secretary, Endangered Species Scientific Authority, 18th & C Streets, NW, Washington, DC 20240. Forthcoming comments and comments already received will be available for public inspection at room 536, 1717 H Street, NW, Washington, DC, 7:45 a.m. to 5:30 p.m., Mondays through Fridays except federal holidays.

FOR FURTHER INFORMATION CONCERNING BIOLOGICAL FINDINGS CONTACT: Dr. Peter C. Escherich, Staff Zoologist, Endangered Species Scientific Authority, 18th & C Streets, NW, Washington, DC 20240, 202-653-5948.

FOR INFORMATION CONCERNING EXPORT PERMITS CONTACT: Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240, 703-235-1903.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its implementing regulations, 50 CFR Part 23, control international trade in animal and plant species, subspecies or geographically separate populations included in any to three appendices, listed in 50 CFR 23.23. Currently 51 nations are party to the CITES. The CITES is implemented in each Party by one or more scientific authorities and one or more management authorities. The CITES appendixes are distinct from the list of species issued under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

As discussed in our notice of April 30 1979 (44 FR 25383), the Department of the Interior, as U.S. Management Authority (MA), may grant an export permit for a specimen of an Appendix II species, only after the ESSA has found that the export "will not be detrimental to the survival of that species" (Article IV 2(a)). For specimens of species included in Appendix II under Article II 2(a), because of potential threat to their own survival, we propose to address the potential effect of exports on the listed species itself; for species included in Appendix II under Article II 2(b), to protect other species, we propose to address how such exports may affect the status of the species intended to be protected: those associated species included in Appendix II under Article II 2(a), or included in Appendix I.

In certain cases it may be necessary to include a species in Appendix II both because it may become threatened with extinction and because its trade must be regulated to effectively control trade in other species included because of biological jeopardy. In such cases the ESSA proposes to make two findings on detriment, one with respect to Article II 2(a) and the other with respect to Article II 2(b).

The U.S. proposed to transfer the American alligator *(Alligator mississippiensis)* from Appendix I to Appendix II under Article II 2(a) and Article II 2(b) of the CITES (February 14, 1979, Federal Register, 44 FR 9689). Transfer to Appendix II was agreed to at the Second Meeting of the Conference of the Parties and will become effective June 28, 1979 (44 FR 25480, May 1, 1979). An advance notice of proposed export findings for the alligator was published on April 30, 1979 (44 FR 25383). The ESSA now proposes seprate findings on detriment with respect to Article II 2(a) and Article II 2(b) for exports of hides of this species taken on or after June 28, 1979. The present findings are independent of any findings on export of hides taken prior to June 28. Such findings await a determination by the MA whether it is prepared to issue export permits for hides taken while the species was included in Appendix I.

Environmental Assessment

No significant impact

The ESSA has determined that the standards for findings proposed below in this notice for American alligator are not major Federal actions that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, an Environmental Impact Statement on this proposal will not be prepared.

Alternative extremes

The ESSA potentially could adopt standards allowing export of alligator hides without any conditions imposed by the ESSA, or standards resulting in essentially no export. In our view, neither of these two extremes would constitute a major Federal action significantly affecting the quality of the human environment; consequently, the proposed intermediate standards and findings and any similar final actions would not have such an effect.

Status

The following information is summarized from Doc. 2.26.8, offered by the United States at the Second Conference of the CITES Parties in support of the U.S. proposal to transfer the alligator to Appendix II.

Distribution

The American alligator is distributed throughout fresh and brackish water habitats in the coastal region of the southeastern United States from central North Carolina to Texas and north along the Mississippi River drainage into extreme southeastern Oklahoma and southern Arkansas (Joanen 1974). Large marsh-bordered lakes, fresh and brackish water marshes, and savannas appear to support the highest densities (Reese 1915; McIlhenny 1935; Fogarty 1974).

The present range approaches the historical range. There is evidence that the species once ranged north of central north Carolina into the Dismal Swamp region of southeastern Virginia and northeastern North Carolina (Neill 1971). The southern extent of its historic range in Texas and possibly northeastern Mexico is unknown; however, records Exist from the Rio Grande River, indicating the possibility that it once ranged into the extensive aquatic habitats of northeastern Tamaulipas, Mexico.

Population estimates and trends

From the late 1940's throught he mid 1960's, alligator populations declined sharply from hunting and hibitat loss. Chabreck (1967) estimated that between the late 1940's and late 1950's populations in Louisiana decline 90%. Since the 1960's, state and federal protection has generally reversed population decline, and alligators are now stabilized or increasing in numbers in most areas throughout their range.

In 1973, ten states reported alligators present (Joanen 1974): North Carolina—1,314; South Carolina—48,700; Florida—407,585; Georgia—29,954; Alabama—12,715; Mississippi—4,740; Oklahoma—10; Arkansas—1,900; Louisiana—200,682; and Texas—26,784. A total of 734,384 alligators were reported, occupying approximately 45,000 square miles of available alligator habitat. Joanen's report suggested an overall increasing population trend.

In Florida, Joanen reported that alligators were present in every county responding to a questionnaire. No population trend estimates were given except to note that, in general, peninsular Florida, roughly south of the Suwannee River region, supports moderate to large alligator populations that are increasing or remaining stable, except in centers of intensive development. The panhandle of the State was reported to support less dense populations with local pockets of abundance.

In Louisiana, Joanen stated that 63 parishes reported the presence of alligators. Forty parishes reported increasing populations and 22 reported stable populations. The extensive coastal marshes of southern Louisiana were considered to support the largest alligator populations anywhere in the species' range, although some local populations elsewhere (Okefenokee Swamp, Georgia, for example) apparently may equal the density found in this area. The situation in the northern parishes, which have few marshes, is less clear, but numbers there are low.

Reproduction

Reproductive behavior begins with bellowing by both males and females, usually in early spring, March to April, depending on local climate. The bellow may serve both as a territorial signal and as a component of the male-female interaction, but data are not yet available to fully document its function (Campbell 1973; Herzog 1974; Garrick and Lang 1977).

Copulation takes place in the water (McIlhenny 1935; Joanen 1969). Nest construction and egg-laying takes place in May–June, depending on local climate; and the eggs hatch in August–September (Kellogg 1929; McIlhenny 1935; Joanen 1969; Neill 1971). Clutch size varies from about 20–60 eggs.

At least some females are protective of the nest and remain near for the entire incubation period. After a period of about 9 weeks the eggs hatch and the 9-inch long young are freed from the nest by the female. Hatching young are very vocal and their high-pitched "umph, umph" calls may stimulate the female to open the nest. The young often remain together in a group called a "pod" for the remainder of the summer (McIlhenny 1935; Campbell 1973; McNease and Joanen 1974). Tagged young have been recaptured near the nest site as long as three years after hatching (McIlhenny 1935; Joanen 1969; Campbell 1973; McNease and Joanen 1974; Metzen 1977).

Survivorship of the young is unknown, except in local situations, but is expected to be low in mature populations and higher in depleted populations. Variations in water levels appear to be the major limiting factor on nesting success (Hines et al. 1968; Joanen 1969; Nichols et al. 1976). Growth rates of the young vary widely but may approach one foot per year with optimal habitat and food availability (Joanen and McNease 1975; McIlhenny 1935). Juveniles often remain together in loosely associated groups until about 1 m long.

Domestic and international demand

Current domestic commercial utilization of alligators is limited to those bred in captivity, taken during limited open seasons in Louisiana, or taken by state agents in Florida. From 1,300 to 6,000 hides are estimated to have entered legal domestic commerce annually since 1972. No legal commercial export has been allowed for wild-caught alligators since the U.S. Endangered Species Act was enacted in 1973. Presently, one tanner processes almost all alligator hides used commercially in the United States. Apparently, most hides are used to manufacture boots sold in the western United States.

There is no doubt that alligator hides presently are worth more if they can be exported. For example, at a 1978 sale in Florida, 1500 hides that could not be exported sold for about $9.00 per foot, whereas farmed hides that were eligible for export sold at about $18.00 per foot.

Consequences of No Export

This alternative extreme is the status quo: only captive-bred hides could be exported commercially. This situation has good and bad elements for alligator conservation. Enforcement of federal trade restrictions is simplified by a complete prohibition on export, and there is a diminished commercial incentive for harvest—a significant factor in the original decline of the alligator.

Perhaps the most significant positive consequence of no export concerns the potential adverse effect of American alligator export on other species of crocodilians protected by the CITES. It is possible that exportation of American alligator hides may stimulate capture of other crocodilians for commercial purposes—both because illegally traded crocodilian hides may be confused with and pass for legally traded alligator hides and because trade in alligator hides may stimulate the overall market for crocodilian hides.

Failure to approve any export of wild-caught American alligators also may have negative consequences for alligator conservation. The states of Louisiana and Florida have stated that their programs for alligator research and management may be jeopardized unless the species has economic value. Analogously, these states have stated that landowners may drain and use alligator habitat for other purposes, rather than preserve it, if they cannot profit from the species' presence. These problems may be compounded both because large alligators can be dangerous to man and because about half of the alligator's diet in coastal Louisiana consists of nutria, valued for its fur in that state.

Consequences of Export Without Restriction by the ESSA

Commercial export of American alligators without restriction by the ESSA might in some respects be better for the alligator than an export prohibition. Given the higher price for hides in foreign markets, permitting export increases the economic value of the alligator in the United States. As stated above, this higher value may be critical to funding of state alligator conservation programs, and may disincline landowners from destroying alligator habitat. On the other hand, state programs might remain adequate without such additional support, and land development on the whole may not be closely related to the price of alligators.

Because of state harvest controls and domestic federal harvest controls under the Endangered Species Act, there are certain assurances independent of the CITES that harvest will not be detrimental. Annual ESSA review of the biology and management of the alligator reinforces these controls.

In our view, a major potential negative impact of allowing export without restriction is the effect that international commerce in American alligator hides may have on other crocodilian species protected by the CITES. The effect, if any, is essentially unknown at this time. However, there is a real danger of confusing alligator hide with hide of other crocodilians, especially in products. Consequently, enforcing trade restrictions for other crocodilians is made more difficult if export of American alligator is permitted. For this reason, we are proposing conditions on alligator export to facilitate law enforcement. We are also proposing to restrict export to CITES Parties without reservations for crocodilians, in order to prevent supply of American alligator hides to markets in countries that have not fully accepted the CITES obligations to conserve crocodilians. Even if these conditions were not imposed, however, the implications of allowing or disallowing alligator export are so uncertain that we do not believe choosing one course or the other requires a step great enough to encompass a major Federal action significantly affecting the quality of the human environment.

Guidelines for ESSA Findings on Export

Article II 2(a)

In our notice of April 30, 1979 (44 FR 25383), we suggested that the guidelines published on April 10, 1978 (43 FR 15097), for findings under Article II 2(a) concerning commercial export of bobcat, lynx and river otter would also be generally applicable to commercial export of American alligators harvested in 1979, pending possible adoption of revised interpretations in procedural regulations. Such determinations include an assessment both of the species' biological status and of management controls.

Article II 2(b)

The general problems to be addressed concerning potential detriment to other associated species have also been discussed in the April 30 Federal Register notice. The two major concerns which must be satisfied are (1) that specimens of the exported species must be sufficiently distinguishable from specimens of the other similar species protected by the CITES to prevent a detrimental confusion in trade, and (2) that trade in this species does not stimulate trade in similar protected species which would be detrimental to those species. Application of these standards to commercial export of American alligator will be discussed below in the findings.

ESSA Proposed Finding Under Article II 2(a)

Because Louisiana and Florida are the only states which allows a harvest that may be commercially exported, the ESSA's proposed findings focus on those two states. The general status of the species throughout the remainder of its range has been addressed in the environmental assessment above.

Proposed Finding Under Article II 2(a)

The Endangered Species Scientific Authority proposes to find that commercial export of certain hides of *Alligator mississippiensis* will not be detrimental to the survival of that species. This proposed finding would apply only (a) to hides legally taken in the 1979 season in the areas of Louisiana where the U.S. Fish and Wildlife Service classifies the species as T(S/A) under the Endangered Species Act of 1973 and (b) to hides taken in Florida on or after June 28, 1979, by state agents under the State's nuisance control program. In addition, this proposed finding would be subject to a positive finding under Article II 2(b), and to fulfillment of conditions set forth below.

Grounds for the proposed finding under Article II 2(a)

Recent research on the species in both states as well as significant new management initiative provide assurance that export under present conditions will not be detrimental to those populations. We list here several of the principal factors leading to our proposed finding; additional information is contained in the documents listed in the reference section.

General

1. Excessive harvest is considered to be a major factor in the original decline of this species, especially from the late 1940's into the early or middle 1960's. These declines, however, occurred during a period when minimal research and management attention was directed to the species. Neither state nor federal laws were adequate to control overharvest or illegal trade. Since that time, increased public awareness has resulted in improved laws and enforcement at both levels. Within the past 10–15 years, reserach has produced a significant body of new information on which sound management can be based. As a result of these developments, the potential for effective control is notably improved as compared to the period when the decline of this species occurred.

2. Domestic trade in American alligators within the United States has come under increased federal control. One provision of the Endangered Species Conservation Act of 1969 was an amendment to the Lacey act prohibiting interstate and foreign trade in illegally taken wild reptiles. This provision, enacted with alligators in mind, has proved useful in reinforcing state laws for the species. In addition, regulations under the Endangered Species Act of 1973 (50 CFR 17.42) regulate where alligators may be harvested, require licenses of all buyers, tanners, and fabrictors of alligator hides, and detail marking, transportation and record-keeping requirements. These regulations are currently under review (43 FR 45513 and 44 FR 27199), including consideration of their extension to potential foreign buyers, tanners, and fabricators.

3. The species has responded well to improved protection. Although there are still some populations which have not totally recovered, especially on the periphery of the species' distribution, its recovery in much of the range has been rapid.

Louisiana

1. In the coastal marsh zone of Louisiana, annual aerial surveys of nesting have been conducted since 1970. These surveys have demonstrated a large and increasing population during that time. Some of the largest increases have occurred in the parishes where controlled harvests (for domestic sale) have been conducted.

2. In five of the years from 1972 through 1977, hunts have been conducted under the control of the Louisiana Department of Wildlife and Fisheries. These harvests have removed from 1350 to about 5500 alligators in each year from certain parishes in southwestern Louisiana. The surveys have continued to find growing populations in those parishes.

3. State harvest regulations incorporate many features to avoid adverse impact, including:

(a) Hunting is only allowed on land owned or leased by the hunter. A limited quota of tags is issued to the hunter based on an assessment by state

biologists of the area of different habitats on that land and of densities found on each habitat type in the area.

(b) Harvest rates used in setting quotas are based conservatively on know reproductive and growth rates for the populations. A population model has been derived which simulates alternative harvest strategies and suggests areas for further research. Rates are adjusted annually by parish and habitat type based on the annual nesting surveys and other data.

(c) The season is set for September, and hunting is restricted to open water. These restrictions favor taking large males, for females at the time are found mostly in shallower areas of the marsh. Also, hatching has occurred, and females will have opened the nests to release the young. As a result, it females are taken at that time, the effect on their offspring is reduced.

(d) "Pole-hunting" is prohibited. This method uses poles to remove animals from shallow dens, and would produce mostly females. This regulation also protects breeding size females.

(e) The issuance of a limited number of tags also encourages the taking of males because they reach much larger sizes, which bring more money. Alligator populations tend to have a larger proportion of males (about 60%), but a single male may mate with several females. Harvests have consisted of 66–86% males.

(f) The minimum allowable size is four feet in length.

4. Harvest regulations also include a number of measures which help insure that legally taken hides can be identified and reduce the incidence of illegal activities:

(a) Tags are serially numbered and are registered when issued to the hunters. All tags must be accounted for at the end of the season, and unused tags are returned to state agents for destruction. No substitute tags are issued for lost tags.

(b) Specialized and varying skinning instructions are issued at the start of the season to prevent tags being applied to skins taken prior to the season. Skins not meeting these specifications are confiscated.

(c) Prior to sale, skins are registered by size, tag number, and trapper. State agents remove a stub from the trapper's tags, and attach a validation tag.

(d) Shipment and sale of hides within the state is controlled by licensing of buyers and dealers, registration of shipments, and attachment of identifying labels to containers.

(e) Legal hunting is restricted to daytime, which facilitates enforcement of regulations on taking.

5. The average size of animals harvested from the wild has been increasing since the season of 1972. Although this may reflect either increasing skill of hunters in taking larger animals or increasing size of animals in the source population, it suggests at minimum that the population is not being impacted seriously by the harvest as presently conducted, especially when considered with the increasing population found in annual nest surveys.

Florida

1. Florida's situation is rather different. There is no regular season, and the only legal harvest is of "nuisance" animals taken by designated state agents.

2. The state has been conducting annual spotlight surveys of selected transects at various sites in the state since 1974. (The primary alligator habitats in Florida are not amenable to aerial nest counts as used in Louisana.) Because dispersion of alligators can vary greatly depending on water level, influencing the results of spotlight surveys, trends are less clearly identified than in Louisiana. The 1977 survey was taken during a year of especially low water, which probably resulted in counts that were artificially high on the survey routes. If that year is ignored, the remaining surveys suggest at least a stable and possibly increasing population level, and reflect the species' presence in some numbers in many areas of the state. Research has been conducted on sources of variation in spotlight counts, and ways are being sought to improve their interpretation.

3. Florida contains 4,170 square miles of alligator habitat (7.1% of the state's area) where the species is totally protected and will not be taken under the nuisance control program. These areas include much of the prime breeding habitat in the state.

4. Increasing numbers of complaints have been received concerning interactions between alligators and humans. This may suggest an increasing alligator population, but may also reflect the increasing human populations in Florida, with increasing construction in or near alligator habitat; improved reporting and recording of complaints; and possibly a reduced fear of man by alligators which are not hunted.

5. The nuisance control program is designed to remove only problem animals and to minimize the effect on the breeding population. The present program replaces a previous system of relocating problem animals. The latter was ineffective, largely because of the time, difficulty, and cost of capturing and transporting large alligators as well as the tendency of these alligators to return to the site of capture.

The current program has trapper/agents operating under the supervision of state biologists, and contains a number of controls designed to protect the alligator population, including:

a. Trappers are selected by the state and are assigned a specific territory. They can be removed if their activities do not meet strict standards.

b. Complaints are received by the state, and are screened by state biologists, either by telephone or in the field, to ensure that the complaint is valid. Only after screening is a tag or tags issued to the trappers for use on the specific animal or animals. As desribed for Louisiana, varying skinning instructions help prevent stockpiling of illegal hides. Follow-up checks are made to be sure the correct animal was taken.

c. Numbered tags are issued only for the taking of alligators which, in the biologist's opinion, constitute genuine threats.

Tags are not issued for animals under four feet in length. Careful records are maintained of all tags issued, and unused tags must be returned and are destroyed.

d. As in Louisiana, adult males spend more time in open water, where most human activities occur, and this has resulted in a take heavily biased toward males. Nesting areas, where females spend more time, are more remote, which protects the breeding potential.

e. Detailed records are maintained of the number of animals taken in specific areas.

f. Following skinning and tagging by the trapper, hides are turned over to the state, which records the hides and marks them with a second numbered tag. The state retains the hides until sale at auction. Part of the proceeds is returned to the trapper, and part is retained to help finance the state's alligator program.

g. Areas subject to nuisance control are spot-checked to ensure that excessive numbers are not being removed.

ESSA Proposed Finding Under Article II 2(b)

Proposed Finding Under Article II 2(b)

The Endangered Species Scientific Authority proposes to find that export of certain hides of *Alligator mississippiensis* will not be detrimental

to the survival of other species of crocodilians. This proposed finding would apply only (a) to hides legally taken in the 1979 season in the areas of Louisiana where the U.S. Fish and Wildlife Service classifies the species as T(S/A) under the Endangered Species Act of 1973 and (b) to hides taken in Florida on or after June 28, 1979, by state agents under the state's nuisance control program. In addition this finding would be subject to the conditions that:

(a) Foreign buyers, tanners, and fabricators must be subject to licensing requirements similar to those currently in force within the United States (50 CFR 17.42; see also 43 FR 45513, Oct. 2, 1978, and 44 FR 27199, May 9, 1979). Licensees must provide access to their records and may sell to other buyers, tanners or fabricators only if these hold federal licenses; fabricators must permanently mark all products to indicate that they are alligator.

(b) Exports must only be allowed to licensed buyers, tanners or fabricators located in countries which have ratified the CITES and which have not taken reservations for any crocodilians. At this time, these contries include only the following: Australia, Brazil, Canada, Chile, Costa Rica, Cyprus, Denmark, Ecuador, Egypt, Federal Republic of Germany, Finland, Gambia, German Democratic Republic, Ghana, Guyana, India, Indonesia, Iran, Jordan, Kenya, Madagascar, Malaysia, Mauritius, Monaco, Morocco, Nepal, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Senegal, Seychelles, South Aftrica, Sri Lanka, Sweden, Switzerland, Tunisia, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom (and territories), United States, Uruguay, Venezuela, Zaire.

(c) Prior to export, all hides must be indelibly marked over their entire reverse surface with identifying symbols. At this time there are only a few companies in the United States that tan alligator hides, and to our knowledge only the Fouke Company, in South Carolina, currently marks alligator hides in this manner. However, we understand that this marking process is available to other tanners.

Grounds for the Proposed Finding Under Article II 2(b)

Because the question of threat to other similar species is one which deals with the whole species, discussion of individual states' management will not be repeated here from the preceding section. As discussed in the guidelines above, and in the Federal Register of April 30, 1979 (44 FR 25383), the two primary issues to be dealt with here involve identification and possible stimulation of trade in similar species.

Identification

We must be assured that the alligators exported will be only taken in areas where harvest for potential export is allowed. This is an obligation of the Management Authority pursuant to Article IV 2(b) of the CITES, as well as our concern. We have described above the tagging procedures for the involved states, and anticipate that those, together with federal requirements, will be the primary vehicles for carrying out this responsibility. Both states apparently account for all tags ordered and purchased, but there have been unsupported allegations that counterfeit tags are available; we request the Management Authority to proceed with care in fulfilling this requirement of our approval, particularly because there are no recognized subspecies of American alligator, and we know of no unequivocal way to distinguish morphologically between specimens from different parts of the species' distribution.

Complete hides of American alligator and products incorporating its ventral (belly) skin can be distinguished from those of other crocodilians (King and Brazaitis, 1971). The square ventral scales of alligators have a smooth surface and lack features seen on those of crocodiles, gharials and caimans. Crocodiles and gharials have on each ventral scale a clearly visible follicle gland or pore which is missing from alligators and caimans.

Caiman species all have double osteoderms (bony buttons) underlying the ventral scales, although these may be limited to the midline scales of *Melanosuchus niger*. These osteoderms can be seen from the inside of the hide, or are evident on the surface of finished skins as a pitting, wrinkling, or discoloration. Contrary to previously published information, *Alligator sinensis*, the Chinese alligator, frequently has single osteoderms, and may be separable from *A. mississippiensis* by that feature (F. W. King, personal communication). In addition, *A. sinensis* is in low numbers, *sinensis*, the Chinese alligator. The latter species is in low numbers, has a restricted distribution, and is rigidly protected by the Chinese government (King & Brazaitis, 1971). Its occurrence in trade is sufficiently unlikely that trade in American alligator could not be expected to affect it.

Identification of other hide parts is more difficult, and may be impossible for small pieces, which are used for manufacture of watch bands and other small articles. In international trade this would most likely be a problem on re-import of pieces or products or on their transfer between other countries. The U.S. Fish and Wildlife Service has proposed to limit intestate commerce in American alligator hides to those that have been marked over the entire reverse of the hide with identifying symbols (43 FR 45513, October 2, 1978, proposed amendment 12 of § 17.42). Applying this requirement to exported hides should significantly reduce problems of identification.

The U.S. Fish and Wildlife Service has given notice that it is considering extending to foreign buyers, tanners, and fabricators of alligator hides the current domestic requirement (50 CFR 17.42) that these individuals and companies be licensed by the Fish and Wildlife Service (44 FR 27199, May 9, 1979). This requirement would substantially lessen concern for the effect that trade in American alligators may have on other crocodilian species.

A general weakness in the control of the crocodilian trade lies in countries which have not ratified the CITES; contributing alligators to the crocodilian products industry in these countries may help perpetuate a drain on endangeed populations. This would seem undesirable even if the contribution is incremental. In addition, these countries are the most likely sites for commingling of endangered crocodilian species with legally taken and exported skins of American alligator. Non-Parties include several countries that are major processors or shippers of reptilian leathers, such as Japan, Italy, Singapore and Spain. In addition, France ratified the CITES, but took reservations on four species of crocodilians which are included in Appendix I: *Melanosuchus niger, Corcodylus cataphractus, C. niloticus* and *Osteolaemus tetraspis*. Botswana, which in the past exported quantities of *C. niloticus*, has taken a reservation for that species.

Finally, the question of possible stimulation of trade in other crocodilian species has been raised. A detailed study of this question would require considerably more data than are available. However, a comparison can be made of relative volumes of hides in trade. The IUCN TRAFFIC group (Burton and Inskipp 1979) estimated worldwide trade of 2,000,000 crocodilian skins in 1976, with 500,000 going to France alone and 350,000 to West Germany. No more than 10,000 hides of American alligator might be exported from the U.S. in 1979. This apparently

would represent less than one percent of the world market in crocodilian hides. Alligator is one of the more valuable crocodilian leathers, but its export may not significantly affect such a large market.

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Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 810, Chapter VIII, Title 50 of the Code of Federal Regulations. An annex shall be added and is proposed to read as follows:

Annex B—American alligator

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species.

1979 Harvest (taken after June 28): Florida, Louisiana. *Conditions on finding:* (a) Foreign buyers, tanners and fabricators must be subject to licensing requirements similar to those currently in force within the United States (50 CFR 17.42; see also 43 FR 45513, Oct. 2, 1978, and 44 FR 27199, May 9, 1979). Licensees must provide access to their records and may sell to other buyers, tanners or fabricators only if these hold federal licenses; fabricators must permanently mark all products to indicate that they are alligator; (b) Exports must only be allowed to licensed buyers, tanners or fabricators located in countries which have ratified the CITES and which have not taken reservations for any crocodilians; (c) Prior to export, all hides must be indelibly marked over their entire reverse surface with identifying symbols. *For further information:* see 44 FR [insert pages of this notice], [insert date of this notice].

Publication of these findings has been approved by the Members of the Endangered Species Scientific Authority.

Dated: May 25, 1979.

William Y. Brown,

Executive Secretary.

[FR Doc. 79-16961 Filed 5-30-79; 8:45 am]
BILLING CODE 4310-55-M

federal register

Thursday
May 31, 1979

Part X

Department of Transportation

Coast Guard

Navigation Safety Regulations; Electronic Navigation Equipment

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 77-168]

Navigation Safety Regulations; Electronic Navigation Equipment

AGENCY: Coast Guard, DOT.

ACTION: Interim Final Rule.

SUMMARY: This rule amends the Navigation Safety Regulations by requiring vessels of 1600 gross tons or more, when calling at ports in the continental U.S. including Alaska, to have installed a Loran-C or specified alternative electronic navigation receiver. The rule, although issued under the authority of the Ports and Waterways Safey Act, also implements one of the standards contained in Section 7(J) of Section 5 of the Port and Tanker Safety Act of 1978. This will improve the overall accuracy of position fixing in the U.S. Coastal Confluence Zone and reduce the incidence of vessel groundings. Since the rule includes an expansion of the area of applicability in Alaskan waters, additional comments from the public are invited.

DATES: Comments must be received before July 16, 1979.

EFFECTIVE DATE: This amendment is effective on July 16, 1979.

1. June 1, 1979, for tank vessels of 10,000 gross tons or more under Section 7(J) of Section 5 of the Port and Tanker Safety Act of 1978 (Pub. L. 95-474, 92 Stat. 1480);

2. June 1, 1980, for other vessels of 10,000 gross tons or more; and

3. June 1, 1982, for vessels of 1600 but less than 10,000 gross tons.

ADDRESSES: Comments on the expanded applicability should be submitted to Commandant (G-CMC/81) (CGD 77-168), U.S. Coast Guard, Washington, D.C. 20590. All comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Copies of the Regulatory Evaluation and Environmental Analysis are also available for examination at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Fred A. Schwer, Project Manager, Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20950, (202) 426-4958.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this subject was published on November 14, 1977 (42 FR 59012). Thirty-two letters of comment were received. A supplemental notice of proposed rulemaking was published on January 25, 1979 (44 FR 5312). The purpose of the supplemental notice was to introduce a new minimum performance standard and digital interface for Loran-C. In addition, the letters of comment on the earlier notice were discussed and substantive comments responded to.

Drafting Information

The principal persons involved in drafting this rule are Mr. Fred Schwer, Project Manager, Office of Marine Environment and Systems, and Mr. Stanley Colby, Project Attorney, Office of Chief Counsel.

Discussion of Comments

Nine letters of comment on the supplemental notice of proposed rulemaking were received. Additionally, six letters were received after the closing date for comments on the notice itself. Those letters were considered together with the responses to the supplemental notice. In all, forty-seven letters of comment on this docket were considered. This discussion will not respond to comments already addressed in the preamble to the supplemental notice, but rather to those substantive comments not previously addressed or to those on which the Coast Guard's position has changed in light of other comments received.

The Department of State received on March 30, 1978, and forwarded to Coast Guard an Aide Memoire jointly presented by the Governments of Denmark, Finland, Greece, Japan and the Netherlands and which was subsequently joined by the Government of the United Kingdom and supported by the Government of Italy. Those governments called attention to the efforts taking place within the Inter-Governmental Maritime Consultative Organization (IMCO) to reach international agreement concerning carriage of navigation equipment. They urged the United States to delay any national requirement for position fixing devices until IMCO completes its work. Additionally, two other commenters cited the proposed unilateral action as contrary to the spirit of the international organization and one further observed that it could provoke retaliatory action against U.S. ships.

It is true that IMCO is discussing the principles of harmonization of navigation systems and that the United States is a full and active participant in the discussion. The international discussions are in the early stages, addressing principles rather than any specific requirements. The Coast Guard feels that, for public and environmental safety reasons, it must act immediately. In addition, the Port and Tanker Safety Act of 1978 (Pub. L. 95-474) requires an electronic positioning device on certain large tankers by June 1, 1979.

The Coast Guard does not consider this rule to be contrary to either the letter or the spirit of our international agreements. It is a national response to a perceived national need. Nor should compliance with the rule be particularly burdensome. Loran-C is designated as the governmentally provided electronic navigation system for the U.S. Coastal Confluence Zone (CCZ), but satellite-based alternatives are permitted and the Commandant will consider systems which meet the intent of the U.S. National Plan for Navigation concerning coverage, accuracy, and availability.

The Coast Guard has decided not to require the proposed digital data output at this time. One commenter observed that the RTCM standard is vague on this point. Two commented that this requirement would render obsolete many otherwise perfectly good receivers. Another pointed out that the capability should be required of all navigation devices, not just Loran-C, if the idea of vessel monitoring is to work. All of these comments are quite valid.

The main reasons for dropping the requirement at this time are that the needs are not yet fully identified and that the signal format is yet to be developed. The Coast Guard finds that it cannot define the requirement to the degree necessary for compliance. However, the subject of vessel monitoring, along with other aspects of vessel traffic management, is under study and a position transmission capability may be required at some future date.

Three commenters contend that a satellite navigation receiver interfaced with gyro and speed log inputs normally is at least as accurate as a satellite-Omega hybrid, particularly at times of ionospheric disturbance such as dawn and dusk. The Coast Guard agrees that, in the absence of significant drift and where reliable satellite fixes are reasonably frequent, the statement is probably true. However, course and speed inputs provide only a dead reckoning (D.R.) position update which can evolve into a considerable position

error between satellite fixes if drift is a factor. Nonetheless, it is assumed that the prudent navigator will not rely completely on a single positioning source, but rather seek to verify that information by other means. Also to be considered are the more than 3,000 "stand alone" satellite navigation receivers now in use which would have to be modified or made redundant in order to comply with the rules in the document. Therefore, § 164.41(e) will permit those receivers installed prior to June 1, 1982, to be in compliance until 1985. Until 1982, the Coast Guard will observe the incidence of groundings by vessels equipped with satellite navigation receivers and will make a final determination of their acceptability after considering the data gathered.

One commenter noted that the phrase "Gulf of Alaska" is unclear and does not provide for the considerable tanker traffic in Southeast Alaskan and Aleutian waters. The Coast Guard agrees that coverage is available off of all southern Alaskan ports and in the Aleutian Islands. The applicability section has been rewritten to clarify this point. Because this is a substantive departure from the area of applicability proposed in the Notice, comments from the public will be accepted on this change. The rule may be changed in light of the comments received, and any change will be published in the Federal Register.

The proposed exclusion for vessels calling only at ports on the Great Lakes has been rendered moot by the imminent activation of the Great Lakes Loran-C chain. The first "Lakers" will not be affected until 1980. By that time, coverage will be available.

This final rule calls for a manufacturer's label to be on Loran-C receivers beginning in 1982 in place of a warranty accompanying the receiver beginning in 1981. This change is in response to several factors. Two commenters maintain that the lack of signal specifications and test standards makes a 1981 warranty program impossible to attain. One commenter said that a two year phase in period does not permit adequate amortization of existing equipment, while another said that much good equipment would be rendered obsolete for minor variances from the RTCM standard.

A factor in the proposed warranty program was the Coast Guard's assertion that any list of presumably complying receivers would be published solely for public convenience and that the Coast Guard would not test or otherwise verify the authenticity of the attestations. Since publication of the supplemental notice, however, the Coast Guard has been developing a proposed regulation for Ocean Dumping Surveillance Systems (ODSS). Loran-C receivers are a component of the ODSS and the Coast Guard is considering type-testing Loran-C receivers for compliance with the RTCM MPS, as amended for the purposes of that program.

The intent of the warranty proposal was to ensure that Loran-C receivers used in our CCZ will yield a positioning accuracy that is acceptable for safe navigation. The Coast Guard considers labeling will achieve that end as effectively as a warranty program. Moreover, delaying the effective date of that requirement until 1982 and providing a longer amortization period for installed equipment will respond to the concerns of both manufacturers and users.

Several commenters remarked that the proposed June 1, 1979, implementation date for large tankers is all but impossible to meet because of the late issuance of this rule. The Coast Guard recognizes the validity of this objection. The Port and Tanker Safety Act of 1978 does not permit any waiver of the implementation date; therefore, the Coast Guard must cite vessels for non-compliance. However, the Coast Guard will allow a six month period not reflected in the rule, until November 30, 1979, during which the late issuance of this regulation will be considered a mitigating factor and, if a vessel is cited, no penalty will be assessed.

Several persons have questioned the status of "Type III" Loran-C receivers, i.e. manual acquisition devices. Those receivers will not be an acceptable option and installations made after May 31, 1979, will have to be replaced at the time a vessel becomes subject to this rule, according to vessel size and type. However, Type III receivers installed before June 1, 1979, will be in compliance until June 1, 1982.

Implementation dates for this rule have been relaxed and somewhat altered from previous notices. The rule addresses all vessels of 1600 gross tons or more in three categories: (1st) Vessels carrying certain cargoes in bulk addressed in Section 7(j) of Section 5 of the Port and Tanker Safety Act of 1978, i.e. oil and bulk hazardous liquid tankers of 10,000 gross tons or more; (2nd) other vessels, including other tankers, of 10,000 gross tons or more; and (3rd) vessels of 1600 but less than 10,000 gross tons.

Vessels in the first category will be required to have the equipment by June 1, 1979, but failure to comply will not incur a penalty until December 1, 1979. Type I or II Loran-C receivers installed before June 1, 1982, need not have a label affixed until June 1, 1985. Satellite navigation receivers installed before June 1, 1982, need not have the continual tracking complementary system until June 1, 1985. Vessels in the second and third categories have the same requirements and relaxations, except that they will not be subject to this rule until June 1, 1980, for the second category and June 1, 1982, for the third category.

This rule has been reviewed under Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A Final Evaluation has been prepared and is included in the public docket. This may be obtained as indicated in "ADDRESSES".

In consideration of the foregoing, Part 164 of Chapter I of Title 33, Code of Federal Regulations is amended as follows:

§ 164.30 [Amended]

1. By striking in § 164.30, the section number "164.35" and inserting the section number "164.41" in place thereof.

2. By adding a new § 164.41 to read as follows:

§ 164.41 Electronic Position Fixing Devices.

(a) This section applies to vessels calling at ports in the continental U.S., including Alaska south of Cape Prince of Wales, except those vessels owned or bareboat chartered and operated by the United States, by a state or its political subdivision, or by a foreign nation, and not engaged in commerce.

(b) Each vessel must have one of the following devices installed:

(1) A Loran-C receiver meeting paragraph (c) of this section.

(2) A continual update, satellite-based hybrid navigation receiver meeting paragraph (d) of this section.

(3) A system that is found by the Commandant to meet the intent of the statements of availability, coverage, and accuracy for the U.S. Coastal Confluence Zone (CCZ) contained in the U.S. "Department of Transportation (DOT) National Plan for Navigation" (Report No. DOT-TST-78-4, dated November 1977). A person desiring a finding by the Commandant under this subparagraph must submit a written request describing the device to: Commandant (G-WLE/73), U.S. Coast Guard, Washington, D.C. 20950. After reviewing the request, the Commandant may require additional information to

establish whether or not the device meets the intent of the "DOT National Plan for Navigation."

Note.—The "DOT National Plan for Navigation" is available from the National Technical Information Service, Springfield, VA 22161. Government Accession No. AD-A-052269.

(c) Each Loran-C receiver installed after May 31, 1979 must meet the following:

(1) Be a Type I or II receiver as defined in Section 1.2(e), meeting Part 2 (Minimum Performance Standards) of the Radio Technical Commission for Marine Services (RTCM) Paper 12-78/DO-100 dated December 20, 1977, and entitled "Minimum Performance Standards (MPS) Marine Loran-C Receiving Equipment". The standards referred to in this subparagraph are intended to be incorporated by reference as they exist on December 20, 1977 and notice of any change in these standards will be published in the Federal Register. This incorporation by reference was approved by the Director of the Federal Register on May 25, 1979 and is available for inspection at the Office of the Federal Register Library, Room 8401, 1100 L St. NW. Washington, D.C. 20408. The RTMC paper is available from the Radio Technical Commission for Marine Services, P.O. Box 19087, Washington, D.C. 20036 (202) 296-6610].

(2) After June 1, 1982, except as allowed by paragraph (c)(3) of this section, have a permanently affixed label containing—

(i) The name and address of the manufacturer; and

(ii) The following statement:

This receiver was designed and manufactured to comply with Part 2 (Minimum Performance Standards) of the RTCM MPS for Marine Loran-C Receiving Equipment.

(3) Each Loran-C receiver installed before June 1, 1982, that meets paragraph (c)(1) of this section must meet paragraph (c)(2) of this section on June 1, 1985.

(d) Each hybrid satellite system must have—

(1) Automatic acquisition of satellite signals after initial operator settings have been entered;

(2) Position updates derived from satellite information obtained during each usable satellite pass; and

(3) A continual tracking integrated complementary system that provides automatically, in between satellite passes, position updates at intervals of one minute or less.

(e) Each satellite navigation receiver installed before June 1, 1982, that meets paragraphs (d)(1) and (2), of this section must meet paragraph (d)(3) of this section on June 1, 1985.

§ 164.53 [Amended]

3. By adding in § 164.53(b) the words "radio navigation receivers," after the word "radar," "and before the word "gyrocompass,".

(Sec. 2, Pub. L. 95-474 (33 U.S.C. 1221); 49 CFR 1.46(n)(4))

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

May 25, 1979.

[FR Doc. 79-16966 Filed 5-30-79; 8:45 am]
BILLING CODE 4910-14-M

federal register

Thursday
May 31, 1979

Part XI

Environmental Protection Agency

Performance Standards for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Definition of "Commenced"

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 60 and 61]

[FRL 1085-1]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Definition of "Commenced"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This action proposes an amendment to the definition of "commenced" as used under 40 CFR Parts 60 and 61 (standards of performance for new stationary sources and national emission standards for hazardous air pollutants). The legislative history of the Clean Air Act Amendments of 1977 indicates that EPA should revise the definition of "commenced" to be consistent with the definition contained in the prevention of significant deterioration requirements of the Act. This proposal would effect that revision.

DATES: Comments must be received on or before July 30, 1979.

ADDRESSES: Comments should be submitted to Jack R. Farmer, Chief, Standards Development Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Public comments received may be inspected and copied at the Public Information Reference Unit (EPA Library) Room 2922, 401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919-541-5271.

SUPPLEMENTARY INFORMATION: For many of EPA's regulations, it is important to determine whether a facility has commenced construction by a certain date. For instance, as provided under section 111 of the Clean Air Act, facilities for which construction is commenced on or after the date of proposal of standards of performance are covered by the promulgated standards. The definition of "commenced" is thus one factor determining the scope of coverage of the proposed standards. "Commenced" is currently defined under 40 CFR Part 60 as meaning:

> * * * with respect to the definition of "new source" in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

A similar definition (minus the reference to section 111(a)(2)) is used under 40 CFR Part 61. As provided under section 112 of the Act, facilities which commence construction after the date of proposal of a national emission standard for a hazardous air pollutant are subject to different compliance schedule requirements than those facilities which commence before proposal.

The Clean Air Act Amendments of 1977 include a definition of "commenced" under Part C—Prevention of Significant Deterioration (PSD) of Air Quality. The PSD definition of "commenced" requires an owner or operator to obtain all necessary preconstruction permits and either (1) to have begun physical on-site construction or (2) to have entered into a binding agreement with significant cancellation penalties before a project is considered to have "commenced."

On November 1, 1977, Congress adopted some technical and conforming amendments to the Clean Air Act Amendments of 1977. Representative Paul Rogers presented a Summary and Statement of Intent which stated:

> In no event is there any intent to inhibit or prevent the Agency from revising its existing regulations to conform with the requirements of section 165. In fact, the Agency should do so as soon as possible. It is also expected that the Agency will act as soon as possible to revise its new source performance standards and the definition of 'commenced construction' for the purpose of those revised standards to conform to the definition contained in part C.

In view of this background, EPA has decided to make the definition of "commenced" as used under Part 60 consistent with the definitions used under the PSD requirement of Parts 51 and 52. Even though Congress did not specify any changes to the definition under Part 61, it is reasonable to also change that definition to be consistent with those under Parts 60, 51, and 52. The manner in which the definition would be interpreted is expressed in the preamble to the PSD regulations 43 FR 26395-26396. For complete consistency with the Clean Air Act and Parts 51 and 52, a new definition of "necessary preconstruction approvals or permits" has also been added.

EPA does not intend that sources would be brought under the standards by the revised definitions that would not have been covered by the existing definitions. The revised definitions would be effective 30 days after promulgation of the final definitions. Facilities which have commenced construction under the present definitions before the effective date of the revised definitions would be considered to have commenced construction under the revised definitions, i.e., the revised definitions would not be applied retroactively. Note, however, that under the PSD regulations, sources could be required to apply control technology capable of meeting the most recent standard of performance even though that standard is not applicable, because the applicable standard of performance requirements are only the minimum criteria for granting a PSD permit.

During the public comment period, comments are invited regarding the impact of the revised definition. In particular, comments are invited regarding actual compliance problems which may occur because of this revision.

Dated: May 23, 1979.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Parts 60 and 61 by amending §§ 60.2(i) and 61.02(d) and by adding §§ 60.2(cc) and 61.02(q) as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart A—General Provisions

§ 60.2 Definitions.

* * * * *

(i) "Commenced" means, with respect to the definition of "new source" in section 111(a)(2) of the Act, either that:

(1) An owner or operator has obtained all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of physical on-site construction of the facility to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time, or

(2) An owner or operator had commenced construction before (effective date of this definition) under

the definition of "commenced" in effect before (effective date of this definition).

* * * * *

(cc) "Necessary preconstruction approvals or permits" means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State implementation plan.

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

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Subpart A—General Provisions

§ 61.02 Definitions.

* * * * *

(d) "Commenced" means, with respect to the definition of "new source" in section 111(a)(2) of the Act, either that:

(1) An owner or operator has obtained all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of physical on-site construction of the source to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time, or

(2) An owner or operator had commenced construction before (effective date of this definition) under the definition of "commenced" in effect before (effective date of this definition).

* * * * *

(q) "Necessary preconstruction approvals or permits" means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State implementation plan.

(Sec. 112, 301(a) of the Clean Air Act as amended (42 U.S.C. 7412, 7601(a)).)

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

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

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

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

REMINDERS

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

Rules Going Into Effect Today

DEPARTMENT OF TRANSPORTATION

Coast Guard—

25986 5-3-79 / Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases; Special Interim Regulations for Issuance of Letters of Compliance to Barges and Existing Liquefied Gas Vessels

FEDERAL DEPOSIT INSURANCE CORPORATION

25412 5-1-79 / Practice and procedure rules; revision of regulations

List of Public Laws

Last Listing May 29, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-375-3030).

S. 631 / Pub. L. 96-15 To authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to John Wayne. (May 26, 1979; 93 Stat. 32) Price: $.60.