8-7-80
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federal register

Thursday
August 7, 1980

Highlights

52356 **Campaign Funds** FEC announces 8-7-80 as effective date for ruling regarding contributions to and expenditures by delegates to national party nominating conventions

52750 **Motor Vehicles** FTC proposes rule concerning practices and information disclosure on used car sales; comments by 10-7-80 (Part IV of this issue)

52542 **Mass Transportation** DOT/FRA proposes guidelines for Federal financing of Amtrak; comments by 9-22-80

52373 **Income Tax** Treasury/IRS provides final regulations relating to investment in U.S. property by controlled foreign corporations

52399 **Income Tax** Treasury/IRS proposes regulations relating to deductibility of expenses in connection with business use, or rental to others of dwelling units

52371 **Public Housing** HUD/FHC implements certain changes pertaining to continued operation of public housing projects after completion of debt service for the project; effective 9-15-80; comments by 10-6-80

52762 **Housing** HUD/CPD publishes interim rule authorizing use of certain funds; effective 9-15-80; comments by 10-6-80 (Part V of this issue)

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

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Area Code 202-523-5240

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52442 **Petroleum** DOE/ERA issues notice of entitlement program of crude oil cost data for November 1978 through May 1980

52441 **Petroleum** DOE intends to prepare environmental impact statement on potential use of salt domes to store crude oil

52359 **Natural Gas** DOE/FERC exempts certain small industrial boiler fuel facilities from incremental pricing

52538 **Oil Pollution** DOT/CG solicits information pertinent to study of large tank barges, comments by 10-1-80

52408 **Oil and Gas Exploration** Interior/GS plans to provide for the submission of a plan of operations for leases in the Western Gulf of Mexico; comments by 9-8-80

52411 **Water Pollution Control** EPA announces availability of, and invites comments on, effluent limitation guidelines for certain subcategories of canned and preserved seafood processing point source category; comments by 9-8-80

52676 **Air Pollution Control** EPA prints requirements for preparation, adoption, and submittal of implementation plans; effective 8-7-80 (Part III of this issue)

52410 **Surface Mining** Interior/SMO extends comment period until 8-18-80 on proposed rule to define "surface coal mining operations" and "coal processing plants"

52365 **Highways and Roads** DOT/FHWA issues requirements for certifying State enforcement on size and weight laws on Federal-aid highway systems; effective 10-1-80

52386 **Freight** DOT/CG revises tables which list flammable and combustible bulk cargoes; effective 9-10-80

52397 **Improving Government Regulations** Justice/DEA issues semiannual agenda

52547 **Sunshine Act Meetings**

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52676 **Part III, EPA**
52750 **Part IV, FTC**
52762 **Part V, HUD/CPD**

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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

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department; Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary to reflect the Assignment of responsibility for Departmental energy programs to the Assistant Secretary for Rural Development and to the Director of Economics, Policy Analysis and Budget.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: C. R. Hanna, Jr., Director, Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6111.

SUPPLEMENTARY INFORMATION: Department-wide responsibility for coordination, evaluation, and policy development on energy issues has heretofore been located in the Office of the Secretary. Two actions are now being taken to strengthen these functions on a day-to-day basis. First, authority to provide operational support to Departmental efforts to encourage the production of alternate fuels is being transferred to the Assistant Secretary for Rural Development. Second, authority for Department policy development and coordination and allocation of scarce fuel resources is being transferred to the Director of Economics, Policy Analysis, and Budget.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis.

Accordingly, 7 CFR Part 2 is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries and the Director of Economics, Policy Analysis and Budget

1. Section 2.23 is amended by adding a new paragraph (g) to read as follows:

§ 2.23 Delegations of Authority to the Assistant Secretary for Rural Development.

* * * * *

(g) *Related to Energy.*

(1) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products

(2) Participate as a Department representative at conferences, meetings and other contacts including liaison with the Department of Energy and other government agencies and departments with respect to implementation of established Department energy policy.

(3) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

2. Section 2.27 is amended by adding a new paragraph (h) to read as follows:

§ 2.27 Delegations of Authority to the Director of Economics, Policy Analysis and Budget.

* * * * *

(h) *Related to energy.* (1) Advise the Secretary and other policy-level officials of the Department on energy policies and programs.

(2) Participate as the Department representative at hearings, conferences, meetings and other contacts with respect to policy matters related to energy, including liaison with the Department of Energy and other governmental agencies and departments.

(3) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

(4) Provide Department-wide leadership in developing the agricultural and rural components of the National Energy Policy Plan.

(5) Develop and evaluate Departmental energy policies and strategies, including those regarding the allocation of scarce resources.

(6) Review and evaluate Departmental energy and energy-related programs and progress.

(7) Work with the Assistant Secretary for Governmental and Public Affairs to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in Congress, appearances before Congressional Committees and related activities.

(8) Incorporate into existing budgetary systems and procedures the capabilities necessary to carry out functions and responsibilities for USDA energy planning, policies, and strategies, including the management of funds transferred to USDA from the Department of Energy pursuant to interagency agreements.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

3. Section 2.37 is hereby revoked and reserved as follows:

§ 2.37 [Revoked and reserved]

Subpart I—Delegations of Authority by the Assistant Secretary for Rural Development

4. Section 2.70 is amended by adding a new paragraph (a)(29) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(29) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products.

Subpart K—Delegations of Authority by the Director of Economics, Policy Analysis and Budget

5. Section 2.84 is amended by revising that part of paragraph (a) which precedes § 2.84(a)(1) and adding new paragraphs (a)(13) thru (a)(18) to read as follows:

§ 2.84 Director, Office of Budget, Planning and Evaluation.

(a) *Delegations.* Pursuant to § 2.27 (a) and (h), the following delegations of authority are made by the Director of Economics, Policy Analysis and Budget to the Director, Office of Budget, Planning and Evaluation:

* * * * *

(13) Provide Department-wide leadership in developing the agricultural and rural components of the National Energy Policy Plan.

(14) Develop and evaluate Departmental energy policies and strategies, including those regarding the allocation of scarce resources.

(15) Review and evaluate Departmental energy and energy-related programs and progress.

(16) Represent the Director of Economics, Policy Analysis and Budget at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(17) Work with the Assistant Secretary for Governmental and Public Affairs to maintain Congressional and Public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in Congress, appearances before Congressional Committees and related activities.

(18) Incorporate into existing budgetary systems and procedures the capabilities necessary to carry out functions and responsibilities for USDA energy planning, policies, and strategies, including the management of funds transferred to USDA from the Department of Energy pursuant to interagency agreements.

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

Dated: August 1, 1980.

For Subparts C and D:

Bob Bergland,

Secretary of Agriculture.

Dated: August 1, 1980.

For Subpart I:

Alex P. Mercure,

Assistant Secretary for Rural Development.

Dated: August 1, 1980.

For Subpart K:

Howard W. Hjort,

Director of Economics, Policy Analysis and Budget.

[FR Doc. 80-23807 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 658]

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 August 8–August 14, 1980. 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: August 8, 1980.

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

SUPPLEMENTARY INFORMATION:

Findings.

This regulation is issued under the marketing agreement, as amended, and Order No. 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 action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on August 5, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges has decreased.

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

Section 908.958 is added as follows:

§ 908.958 Valencia Orange Regulation 658.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period August 8, 1980 through August 14, 1980, are established as follows:

(1) District 1: 329,000 cartons;

(2) District 2: 371,000 cartons;

(3) District 3: Open Movement.

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

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

Dated: August 6, 1980.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-24027 Filed 8-6-80; 11:42 am]

BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 1980-26]

Contributions to and Expenditures by Delegates to National Nominating Conventions; Effective Date

AGENCY: Federal Election Commission.

ACTION: Final rule: announcement of effective date.

SUMMARY: On May 23, 1980, (45 FR 34865) The Commission published the text of regulations to govern the application of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, *et seq.*), to contributions to and expenditures by delegates to national party nominating conventions. The Commission announces that these

regulations are effective as of August 7, 1980.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ann Fiori, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143.

SUPPLEMENTARY INFORMATION: 2 U.S.C. 438(d) requires that any rule or regulation proposed by the Commission to implement Chapter 14 of Title 2, United States Code be transmitted to the Speaker of the House and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulation in question. The regulations being made effective by this notice were transmitted to Congress on May 14, 1980. Thirty legislative days expired in the Senate as of June 28, 1980, and in the House as of July 21, 1980.

Announcement of Effective Date

11 CFR 100.5(e)(5), 110.5(d) and 110.14, as published at 45 FR 34867-34868, are effective as of August 7, 1980.

Dated: August 4, 1980.

Max L. Friedersdorf,

Chairman, Federal Election Commission.

[FR Doc. 80-23839 Filed 8-6-80; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NW-38-AD. Amdt. 39-3871]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment revises Airworthiness Directive (AD) 78-24-05 which requires inspection for interference between the escape slide girt bar and the mid-cabin galley door. The requirement for repeat inspections is eliminated if a high lift gate modification is incorporated on the mid-cabin galley door.

DATE: Effective date August 18, 1980.

ADDRESSES: The service bulletins specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington, 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young Airframe Section, ANW-212, Engineering and Manfacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: Amendment 39-3355 (43 FR 56017) AD 78-24-05, requires inspection for interference between the escape slide girt bar and the mid-cabin galley door. The manufacturer has developed a modification to the door gate which will provide for more clearance between the girt bar and galley door and thus prevent interference.

Since this regulation is relieving in nature and imposes no additional burden, it is found that notice and public procedure hereon are unnecessary, and the amendment may be made 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 amending Airworthiness Directive 78-24-05, (Amdt. 39-3355, 43 FR 56017) as follows:

By amending Paragraph C to read:

"C. Repeat the inspections, described in paragraph A, at intervals not to exceed 1,500 flight hours time-in-service or one (1) year from the last inspection, whichever comes first, unless the galley door is modified as described in Boeing Service Bulletin 727-25-A247, Revision 2, paragraph III, part II, or later FAA approved revisions, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region. This modification is terminating action for this AD."

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Comany, 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 August 18, 1980.

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

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

Issued in Seattle, Washington, on July 29, 1980.

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

E. O'Connor,

Acting Director, Northwest Region.

[FR Doc. 80-23806 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-NW-22-AD, Amdt. 39-3867]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: FAA Airworthiness Directive (AD) 79-17-02 (Amdt. 39-3526; 44 FR 46782), requires repetitive inspection of 7079-T6 aluminum lower cargo door sill truss and latch support fittings on Boeing Model 747 airplanes, and also requires that those fittings be replaced with 7075-T73 fittings by April 1, 1982. This amendment decreases the repetitive inspection interval for the affected fittings, but eliminates the requirement that they be replaced.

DATES: Effective date September 13, 1980.

FOR FURTHER INFORMATION, CONTACT: Mr. William M. Perrella, Airframe Section, ANW-212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTAL INFORMATION:

History

Following several reported instances of cracks in the lower cargo door sill truss and latch support fittings on Boeing Model 747 airplanes, AD 79-17-02 was issued, requiring inspection and eventual replacement of affected fittings. The inspections conducted pursuant to AD 79-17-02 have shown significant variations between operators in the incidence of stress corrosion cracks. To date, there have been no instances where cracks have resulted in fitting failures.

Public Participation

A petition was received from the Air Transport Association of America, on behalf of numerous operators, for an amendment to AD 79-17-02 which would delete the requirement for replacement of the 7079-T6 fittings. The FAA determined to issue a Notice of Proposed Rule Making (NPRM), proposing to delete the mandatory replacement requirement. Due to the unpredictable nature of the stress corrosion as demonstrated by the varying inspection reports from different operators, and in view of the proposal to allow indefinite use of the 7079-T6 fittings, the FAA incorporated into the proposal a decrease in the repetitive inspection interval for the fittings which are not replaced, from 2,000 flight hours to 1,200 flight hours. An NPRM was published in the Federal Register (45 FR 27770) on April 24, 1980. All interested parties have been given an opportunity to participate in the making of this amendment, and due consideration has been given to all matters presented. Nine comments were received.

Discussion of Comment

One commenter responded in favor of the proposed amendment. All of the others agreed with the proposed deletion of the mandatory replacement requirement, but suggested varying reinspection intervals, including: 1,350 hours; 250 days; and 4,000 hours or 12 months.

The first two inspections conducted pursuant to AD 79-17-02 show a significant variation among operators in the incidence of stress corrosion cracks. This is to be expected due to different operational environments. Based on the results of these inspections, the FAA does not believe that a 2,000 hour interval is adequate for all cases, but that a 1,200 hour interval will assure an acceptable level of safety. However, amended paragraph (D) is incorporated into the AD which will permit alternate inspections depending on an operators individual circumstances, including type and quality of inspection, operating environment, corrosion treatment program, and service experience.

This amendment allows operators to make one more inspection at the 2,000 flight hour interval originally specified in AD 79-17-02, measured from the last inspection conducted prior to the effective date of this AD, before complying with the 1,200 flight hour repetitive inspection interval required by this amendment.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 3913) is amended by amending Airworthiness Directive number 79-17-02 (Amdt. 39-3526, 44 FR 26782), as follows:

Boeing: Applies to model 747 airplanes.

1. Amend paragraph C to read:

"C. Repeat the inspection in accordance with paragraph A at intervals not to exceed 1,200 flight hours, until all affected fittings are replaced with 7075-T73 fittings. Apply BMS-3-23 or equivalent to the internal lower sill areas after each inspection. Operators may make one more inspection at an interval not exceeding 2,000 flight hours (as required by AD 79-17-02, Amendment 39-3526, 44 FR 46782), measured from the last inspection conducted prior to the effective date of this Amendment, before complying with the 1,200 hour repetitive inspection."

2. Amend paragraph D to read:

"D. Upon request of an operator, an FAA Maintenance Inspector, subject to the prior approval by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, may adjust the repetitive inspection intervals specified in this AD if the request contains substantiating data to justify such adjustment."

This amendment becomes effective September 13, 1980.

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

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provision of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 1134; February 26, 1979).

Issued in Seattle, Washington, on July 25, 1980.

David E. Jones,

Acting Director, Northwest Region.

[FR Doc. 80-23638 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 20573; Amdt. No. 1170]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; 2. The FAA Regional Office of the region in which the affected airport is located; or 3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or 2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and §97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a

special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective September 18, 1980.*

Columbus, TX—Columbus, VOR-A, Amdt. 2, cancelled

** * * Effective September 4, 1980.*

Durhamville, NY—Kamp, VOR Rwy 28, Original

Note.— The FAA published an amendment in docket No. 20480, amdt. No. 1167 to part 97 of the Federal Aviation Regulations (vol. 45 FR No. 127 Page 43699; dated June 30, 1980) under section 97.23 effective August 7, 1980, which is hereby amended as follows: Marshfield, MA—Marshfield, VOR-A, amdt. 3 is rescinded. Marshfield, MA—Marshfield, VOR-A, amdt. 2 remains in effect.

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective July 17, 1980.*

Hawthorne, CA—Hawthorne Muni, LOC Rwy 25, Amdt. 5

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective September 18, 1980.*

Clarendon, TX—Clarendon Muni, NDB Rwy 1, Original
Houston, TX—David Wayne Hooks Memorial, NDB Rwy 35L, Original
New Braunfels, TX—New Braunfels Muni, NDB Rwy 22, Original
Pleasanton, TX—Pleasanton Muni, NDB-A, Amdt. 4

** * * Effective September 4, 1980.*

St. Paul Island, AK—St. Paul Island, NDB-3 Rwy 36, Original
New Bedford, MA—New Bedford Muni, NDB Rwy 5, Amdt. 6
Rota Island, Mariana Is.—Rota Intl, NDB Rwy 9, Original
Rota Island, Mariana Is.—Rota Intl, NDB Rwy 27, Original

** * * Effective July 24, 1980.*

Ontario, CA—Ontario Intl, NDB Rwy 25R, Amdt. 29, cancelled
Clinton, OK—Clinton-Sherman, NDB Rwy 17R, Amdt. 6

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

** * * Effective September 4, 1980.*

New Bedford, MA—New Bedford Muni, ILS Rwy 5, Amdt. 15

** * * Effective July 24, 1980.*

Ontario, CA—Ontario Intl, ILS Rwy 25R, Amdt. 31
Clinton, OK—Clinton-Sherman, ILS Rwy 17R, Amdt. 2

Note.— The FAA published an amendment in docket No. 20409, amdt. No. 1166 to part 97 of the Federal Aviation Regulations (vol. 45 FR No. 115 page 39838; dated June 12, 1980) under section 97.29 effective July 10, 1980, which is hereby amended as follows: Minot, ND—Minot Intl, ILS Rwy 3L, amdt. 4 is changed to Minot, ND—Minot Intl, ILS Rwy 31, amdt. 4.

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective September 18, 1980.*

El Paso, TX—El Paso Intl, RADAR 1, Amdt. 10

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective September 18, 1980.*

Dickinson, ND—Dickinson Municipal, RNAV Rwy 14, Original
Dickinson, ND—Dickinson Municipal, RNAV Rwy 32, Original

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

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 August 1, 1980.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

John S. Kern,

Acting Chief, Aircraft Programs Division.

[FR Doc. 80-23805 Filed 8-6-80; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-48; Order No. 96]

Section 206 (d) Exemption for Small Industrial Boiler Fuel Facilities From the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued July 29, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule, subject to congressional review.

SUMMARY: Under authority of section 206(d) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission issues a final rule, exempting certain small industrial boiler fuel facilities from incremental pricing. The exemption applies to facilities whose average per day use of natural gas as boiler fuel does not exceed 300 Mcf, but which do not qualify for an existing small user exemption under section 206(a)(2) of the Act. This rule is

designed to place new small facilities in the same position as existing small facilities with respect to the incremental pricing program.

EFFECTIVE DATE: September 5, 1980, or such later date as represents the first day following 30 days of continuous session of the Congress, if not disapproved by either House.

FOR FURTHER INFORMATION CONTACT: Alice Fernandez, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-9095 or Carol M. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8114.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., and George R. Hall.

I. Background

Issued July 29, 1980.

The Federal Energy Regulatory Commission (Commission) amends its regulations under the Natural Gas Policy Act of 1978 (18 CFR Subchapter I, Part 282, Subpart B) to provide an exemption from incremental pricing for certain small industrial boiler fuel facilities not previously exempt.

Title II of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.*, requires the Commission to prescribe and make effective a program of incremental pricing of natural gas used as industrial boiler fuel. Section 206(a) of the NGPA, however, grants an exemption from incremental pricing surcharges for natural gas used as boiler fuel by "small" industrial boiler fuel facilities which were "in existence on the date of enactment" (November 9, 1978). Regulations governing this exemption were promulgated in final form in Commission Order No. 85, which was issued on May 8, 1980.[1] Among other things, these regulations provide that a facility may qualify for such an exemption if (1) it was in existence on November 9, 1978, and (2) its average daily use of natural gas as a boiler fuel during the month of peak use in 1977 did not exceed 300 Mcf.

However, no exemption was provided in Title II of the NGPA, for "new" small boiler fuel facilities; *i.e.*, for facilities which were *not* in existence on November 9, 1978. Similarly, there is no provision in the statute for an exemption for "newly" small facilities; *i.e.*, for facilities which have reduced their boiler fuel usage to below the 300 Mcf per day threshold since 1977. Both the statute and the legislative history are silent as to the reason for the lack of such exemptions.

Congress did, however, provide in section 206(d) of the NGPA that the Commission may promulgate rules exempting from incremental pricing any appropriate category of facilities for which there is no specific statutory exemption. Pursuant to this discretionary authority, the Commission has determined that it would be both equitable and consistent with implementation of the incremental pricing program to provide an exemption for small boiler fuel facilities not exempted under Order No. 85. To this end, the Commission has issued two Notices of Proposed Rulemaking and conducted two sets of public hearings.

Initial proposals to exempt "new" small facilities were made in this docket in a Notice of Proposed Rulemaking issued on September 28, 1979.[2] On March 6, 1980, a further Notice of Proposed Rulemaking, was issued.[3] In the March 6th Notice the Commission requested additional comments to supplement the record developed on the September proposal. In addition, the scope of the proposed exemption was expanded to include all small industrial boiler fuel facilities not eligible for the statutory exemption under section 206(a) of the NGPA.

The comments filed in response to the Notices, and the Commission's analysis of those comments, are summarized below.

II. Summary of Public Comments

Thirty-one companies, industry groups or State regulatory commissions filed written comments in response to the March 6th proposal. In addition, representatives of fourteen organizations testified at public hearings held in Washington, D.C. on March 28, 1980, and in Los Angeles, California on March 31 and April 1, 1980. The commenters unanimously supported the concept of an exemption for all small industrial boiler facilities, but many disagreed with the Commission's proposals for implementation of such an exemption.

A. Suggested Exemption of First 300 Mcf per day of Usage for All Industrial Boiler Fuel Facilities

A number of commenters proposed that the Commission replace the rules proposed in this docket with an across-the-board exemption of the first 300 Mcf per day of natural gas consumed by all industrial boiler fuel facilities, existing or new, large or small. It was asserted that this approach would be administratively attractive, would prevent load loss [4], and would eliminate inequities which could occur where, for example, a facility consuming 310 Mcf per day (and thus subject to incremental pricing) is in economic competition with a facility consuming 290 Mcf per day (and thus exempt from incremental pricing).

The Commission agrees that this approach would be easy to administer and might eliminate certain potential inequities in the program. However, the Commission believes that it would not be consistent with the overall Congressional approach to incremental pricing as established in Title II. Congress intended industrial boiler fuel facilities to be incrementally priced on their entire natural gas consumption. A specific statutory exemption was provided for small existing users, and the Commission is extending this exemption to other small users. However, there is no indication of a Congressional intent to exempt a portion of gas consumption for *all* industrial boiler fuel facilities. Indeed, such an exemption would remove a large proportion of natural gas used as industrial boiler fuel from the incremental pricing program and thus undercut Congressional intent. In addition, the 300 Mcf per day figure proposed by Congress for existing small boiler fuel facilities was predicated upon a *full* exemption from incremental pricing. The use of this figure for a partial exemption scheme for boiler fuel users would not necessarily be appropriate. Accordingly, this proposal has not been adopted in the final rule.

B. The 12-Month Rule

The rule proposed in the March 6th Notice, and herein adopted as a final rule, provides an exemption from incremental pricing for facilities whose average per day use of natural gas as a boiler fuel does not exceed 300 Mcf, but which do not qualify for an existing small user exemption under section 206(a)(2) of the NGPA. The rule provides that such facilities may qualify for a small user exemption based upon a 12-month record of boiler fuel usage at a level not exceeding an average of 300 Mcf per day in any month.

[1] Docket No. RM80-24, 45 FR 31980 (May 15, 1980).

[2] 44 FR 57783 (October 5, 1979).

[3] 45 FR 15556 (March 11, 1980).

[4] The commenters asserted that load loss might occur where a facility's normal gas consumption slightly exceeded 300 Mcf per day. The facility might switch to oil for part of the month to keep average consumption at a figure below 300 Mcf per day and thereby obtain a small user exemption. This, in turn, could subject high priority gas users to a larger portion of fixed charges.

Under this 12-month rule, two types of facilities will be able to qualify for an exemption:

(1) A facility which was not in existence on November 9, 1978, but which can establish, on the basis of its most recent 12-month record, that its average per day use of natural gas as boiler fuel does not exceed 300 Mcf; and

(2) A facility which was in existence on November 9, 1978, and whose average per day use of natural gas as boiler fuel exceeded 300 Mcf during the 1977 base period, but which has subsequently decreased its gas consumption to the point at which it can establish, on the basis of its most recent 12-month record, an average per day use of 300 Mcf or less.

The choice of 300 Mcf per day as the threshold for determining small facilities under this rule is consistent with the Commission's implementation of a 300 Mcf per day threshold in the permanent rule defining "existing" small facilities.[6] Also consistent with the rule for existing facilities are: (1) the method set forth in this rule for determining a facility's average per day use of a natural gas as boiler fuel (*see* § 282.203(b)(2)(ii)); and (2) the requirement that suppliers file a statement, under oath, with the Commission stating that for all exemptions granted on the basis of company records under this rule, the supplier has determined that the facility meets the definition of a "small industrial boiler fuel facility" set forth in § 282.203(b)(2)(i).

This rule provides that an exemption may be based on the supplier's company records or, if unable to be determined on that basis, may be based on the filing of an affidavit by the user. An exemption will continue to be effective so long as consumption does not exceed the 300 Mcf threshold for any month. If the threshold is exceeded, the exemption is lost until such time as the facility qualifies under § 282.203(b)(2)(i)(A), or under any available exemption in accordance with § 282.203(a).

Although the great majority of commenters supported the 12-month rule as proposed, one commenter suggested that the 12-month period be shortened to 6 months. This suggestion has not been adopted in the final rule, because the Commission believes that a 12-month period, which emcompasses the entire seasonal pattern of boiler fuel usage, will provide a more accurate record of a facility's average natural gas consumption.

[6] *See* n.1, *supra*.

C. New Facilities Do Not Fall Within the 12-Month Rule

The March 6th Notice proposed that facilities which do not have a 12-month gas consumption record be permitted to qualify for an exemption on the basis of boiler capacity. The proposed method to determine boiler capacity was to total the nameplate ratings of all of the facility's boilers which have gas burning capacity, and then to multiply that number by 16. This approach assumed that gas-fired boilers would be operated at rated capacity for an average of 16 hours per day.

A large majority of commentors opposed this proposal. They pointed out that it is not unusual for a facility to have at least one stand-by boiler which would have to be counted even though not ordinarily being used. In addition, they argued that there is a wide variation in the number of hours each facility's boilers are operated. A 16-hour per day average is arbitrary and, frequently, would not reflect actual operating conditions. The alternative proposed by many commenters was an exemption based on the filing of an affidavit reflecting actual use of natural gas as boiler fuel.

After consideration of the comments, the Commission has determined that it would be both reasonalbe and equitable to adopt an affidavit approach in lieu of the nameplate rating approach. Accordingly, the final regulations provide for exemptions based upon the filing of an affidavit by the end user. Two types of situations will be involved: (1) if the facility has possessed the physical components necessary to receive and use natural gas as boiler fuel for less than 12 months, the user must affirm, under oath, that from the initial month of such possession to the present, the facility's average per day use of natural gas as boiler fuel has not exceeded 300 Mcf, and that the facility's future daily use is not expected to exceed 300 Mcf, or; (2) if the facility does not yet possess the necessary components, the user must affirm, under oath, that the facility's estimated usage does not exceed the 300 Mcf threshold. In the first situation, the estimates need be made only for the number of months in the future which are necessary to make up a 12-month period, including the number of months since initial installation of the components. In the second situation, the estimates must be made for the first 12 months after the components are installed. In either situation, the exemption shall continue so long as the facility does not exceed an average of 300 Mcf per day in any month. Once an exemption affidavit is filed, it will not be necessary to refile on the basis of 12 months of actual usage. However, if the 300 Mcf figure is exceeded in any month, the Commission and the natural gas supplier must be immediately notified of the changed circumstances in accordance with § 282.205, and the facility loses its exemption until it qualifies under § 282.203(b)(2)(i)(A), or under any available exemption in accordance with § 282.203(a).

D. Potential Incentive for Increased Oil Consumption

In the March 6th Notice, the Commission specifically requested comments on whether the proposed exemption for small industrial users would act as an incentive for users to limit their use of natural gas as boiler fuel to an average of 300 Mcf per day simply to gain an exemption from incremental pricing surcharges. This, in turn, might serve as an incentive for the consumption of other boiler fuels, such as oil, or might lead to proliferation of small plants.

A number of commenters noted that they shared the Commission's concern about this potential problem. However, aside from the previously discussed proposal that the first 300 Mcf of usage be exempted for all industrial boiler fuel facilities, only two commenters suggested methods of preventing users from burning oil for part of their fuel requirements in order to retain a small user exemption. The first suggestion was that the exemption be based on the natural gas equivalent of the users's total fossil fuel use in any month. The Commission agrees that this approach has merit, but has rejected the suggestion because it would be too difficult to implement from an administrative standpoint. The second suggestion was that the 12-month rule be eliminated and exemptions granted solely on the basis of nameplate ratings. The Commission has not adopted this suggestion, because, as discussed above, it is persuaded that the nameplate approach is inappropriate.

A number of commenters indicated that the small user exemption would not in fact provide an incentive for usage of alternative fuels. Among the reasons given for this conclusion were: (1) use of fuels other than gas might subject some users to penalties under take-or-pay obligations in their contracts; (2) a user who needed more than 300 Mcf of gas per day but engaged in temporary fuel switching to hold gas consumption below that level would be establishing a record of gas demand which the supplier would use in projecting allocation of available supplies, and thus would be

placing itself in a position of dependency on an alternative fuel source; (3) the delivered price of alternative boiler fuels generally exceeds the price of incrementally priced gas; and (4) in some industries temporary fuel switching is simply not feasible. In addition, one commenter noted that the small industrial user rule could have a beneficial effect in that it might encourage those users slightly over the 300 Mcf threshold to undertake conservation measures which would reduce consumption to a point at which the facility would fall below the threshold and receive an exemption.

The Commission remains concerned about the rule's potential as an incentive for marginal use of alternative fuels. Nevertheless, it concludes that increased alternative fuel consumption will not be so significant a factor under this rule so as to offset its equitable benefits in other respects.

E. Adjustments

A number of commenters expressed concern about facilities which might exceed the 300 Mcf threshold for only one month due to an operational abberation. It was asserted that such facilities should not be subjected to incremental pricing for the next 12 months before regaining their small user exemption.

The Commission recognizes that there may occasionally arise unrepresentative circumstances which cause a small facility to exceed the 300 Mcf threshold in a given month. A user faced with this situation may seek both interim and final relief from the Commission under section 502(c) of the NGPA, implemented in § 1.41 of the Commission's regulations. If a waiver of a Commission rule is necessary in order to prevent special hardship, inequity, or an unfair distribution of burdens to the applicant, an ajustment may be granted. Adjustments under the Act are considered on a case-by-case basis.

F. Retroactivity

Several commenters proposed that the Commission make the small user rule issued in this docket retroactive in application to January 1, 1980, the date of implementation of the incremental pricing program. The Commission declines to adopt this proposal, because it would be administratively impractical to attempt to make this rule apply retroactively.

G. Obtaining an Exemption

As set forth in §§ 282.204 (c) and (d), an exemption under this rule may be based on the supplier's company records or, where appropriate, on the filing of an exemption affidavit by the end user. Under § 282.204(d)(2)(i)C), natural gas suppliers are required to mail or otherwise supply exemption affidavits to their end users which are not otherwise exempt from incremental pricing and which the supplier determines may be eligible for an exemption under § 282.203(b).

An exemption will take effect as of the dates set forth in § 282.204(c)(3)(ii), for exemptions based on company records, or § 282.204(d)(7), for exemptions based on affidavits. An exemption on either basis will continue until such time as the facility exceeds the 300 Mcf per day threshold in any month. If the threshold is exceeded, the Commission and the natural gas supplier must be notified of the changed circumstances in accordance with § 282.205, and the facility then becomes subject to incremental pricing. If the facility subsequently experiences twelve consecutive months of usage at 300 Mcf or below, another exemption on the basis of company records or on the basis of an exemption affidavit may be obtained, and the facility may regain its exemption.

One commenter suggested that monthly review of data to determine continuing eligibility was unnecessary and that annual review should instead be conducted, prior to the supplier's annual purchased gas adjustment review. The Commission disagrees. It believes that it is important that small user exemptions be based upon the most current data available. The monthly review is not burdensome to small users when weighed against the benefits of continuing exemption from incremental pricing surcharges.

The exemption affidavit requires that all records, documents or data which form the basis of any response on the affidavit be retained. In order to conform to this requirement, § 282.204(d)(8) has been revised to provide that such records must be retained regardless of the type of exemption claimed. The section also makes clear that it is not necessary to keep records for a period greater than three years from the date the affidavit is filed.

Section 282.204(d) has been revised to delete the listing of the contents of the exemption affidavit.

H. Change of Circumstances

The duty to report usage in excess of the 300 Mcf threshold is on the user, not the supplier. *See* § 282.205. Several commenters suggested that this duty should fall on the supplier, who, it was asserted, is in the best position to monitor usage. The Commission does not adopt this suggestion. The incremental pricing exemption program is basically an oath program which relies on sworn statements by industrial boiler fuel users that they qualify for a particular exemption. The Commission does not wish to place the natural gas supplier in the position of a program monitor for each individual facility. If a small user elects to take advantage of an incremental pricing exemption, that user has the obligation to monitor boiler fuel gas usage and to report consumption in excess of the exemption threshold. As the Commission has noted in other incremental pricing orders, both civil and criminal penalties may be levied under section 504 of the NGPA for noncompliance with regulations promulgated under the Act.

I. Technical Changes in Regulations

Minor technical, conforming or clarifying changes have been made to §§ 282.201, 282.202(g), 282.204(c)(2)(iii), 282.204(d)(2)(B), 282.204(d)(4), 282.204(f)(2) and (3), 282.205 and 282.207(c)(2)(i).

IV. Effective Date

Section 206(d)(2) of the NGPA requires that any rule which grants an exemption under section 206(d) be submitted to each House of Congress for review prior to taking effect. Unless either House adopts a resolution of disapproval within 30 calendar days of continuous session (determined in accordance with section 507(b) of the NGPA), these regulations will take effect on the day after expiration of the 30-day review period. Accordingly, this rule will be effective on the day following the expiration of the 30-day period for Congressional review.

(Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. 3301-3434)

In consideration of the foregoing, if neither House of Congress passes a Resolution of Disapproval of the regulations transmitted to them in this rulemaking within 30 days of Congressional review (as determined in accordance with section 507(b) of the NGPA), Part 282 of Subchapter I, Chapter 1, Title 18, Code of Federal Regulations, is amended as set forth below, effective on the day following the expiration of the 30-day Congressional review period.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 282.201 is revised to read as follows:

§ 282.201 General rule.

The provisions of this subpart govern the exemption (and the termination of the exemption) of natural gas from incremental pricing under this part. Pursuant to section 206 of the NGPA, natural gas specified in § 282.203 shall be exempt from incremental pricing. The procedures for determining exemptions are set forth in § 282.204. Adjustments under authority of 502(c) of the NGPA as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens may be obtained as provided in § 1.41.

2. Section 282.202 is amended in paragraph (g) to read as follows:

§ 282.202 Definitions.

For purposes of this subpart:

* * * * *

(g) "Average per day use of natural gas as a boiler fuel during the month or peak use during calendar year 1977" means the average daily use of natural gas as a boiler fuel, calculated by dividing the total boiler fuel use of natural gas in the month of peak use during calendar year 1977 by the total of: (1) the number of days in that month on which service was available at 100 percent of normal delivery level; and (2) the sum of the number of days in that month on which service was available at less than 100 percent of normal delivery level (which sum is computed by multiplying the number of days at each delivery level less than 100 percent of normal times the percentage of normal delivery level experienced on those days, and adding the products).

* * * * *

3. Section 282.203 is revised to read as follows:

§ 282.203 Exempt end-uses.

Exemptions in this subpart from the incremental pricing provisions of this part shall apply only to industrial facilities which use natural gas as boiler fuel.

(a) *Statutory exemptions.* In accordance with the provisions of sections 206(a), (b), and (c) of the NGPA, natural gas used for the following purposes shall be exempt from incremental pricing under this part:

(1) All gas used for boiler fuel by an industrial boiler fuel facility:

(i) Which was in existence on November 9, 1978; and

(ii) Whose average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 did not exceed 300 Mcf;

(2) All gas used for an agricultural use;

(3) All gas used in a school, hospital, or similar institution;

(4) All gas used for the generation of electricity by an electric utility; and

(5) All gas used in a qualifying cogeneration facility.

(b) *Exemption for small industrial boiler fuel facilities under section 206(d).* (1) *General Rule.* Natural gas used for boiler fuel in a small industrial boiler fuel facility, as defined in paragraph (b)(2)(i) of this section, which is not eligible for an exemption under paragraph (a)(1) of this section shall be exempt from incremental pricing under this part.

(2) *Definitions.* For purposes of this paragraph, the following definitions apply.

(i) "Small industrial boiler fuel facility" means an industrial boiler fuel facility which:

(A)(*1*) Possessed, for the twelve preceding consecutive months, the installed lines, piping, regulators, meters and any other similar components necessary for that facility to have received and used natural gas as a boiler fuel, and

(*2*) Did not experience an average per day use of natural gas as a boiler fuel, calculated in accordance with paragraph (b)(2)(ii) of this section, exceeding 300 Mcf during any month of the preceding twelve consecutive months; or

(B) Did not, in all of the twelve preceding consecutive months, possess the installed lines, piping, regulators, meters and any other similar components necessary for that facility to have received and used natural gas as a boiler fuel, but which either:

(*1*)(*i*) Did possess such components during some of the preceding twelve consecutive months, and

(*ii*) Did not experience an average per day use of natural gas as boiler fuel during such months, calculated in accordance with paragraph (b)(2)(ii) of this section, exceeding 300 Mcf during any of those months, and

(*iii*) Is not expected, based on estimates by a person qualified to make such estimates, to experience an average per day use of natural gas as boiler fuel, calculated in accordance with paragraph (b)(2)(ii) of this section, exceeding 300 Mcf for any of the number of future months necessary to make up the necessary twelve month consecutive period; or

(*2*)(*i*) Did not possess such components during any of the preceding twelve consecutive months, and

(*ii*) Is not expected, based on estimates by a person qualified to make such estimates, to experience an average per day use of natural gas as boiler fuel, calculated in accordance with paragraph (b)(2)(ii) of this section, exceeding 300 Mcf for any of the first twelve consecutive months during which the facility possessed such components.

(ii) "Average per day use of natural gas as a boiler fuel", with respect to an industrial boiler fuel facility, means the facility's average daily use of natural gas as a boiler fuel, calculated by dividing the facility's total boiler fuel use of natural gas in a particular month by the total of:

(A) the number of days in that month on which service was available to the facility at 100 percent of the normal delivery level; and

(B) the sum of the number of days in that month on which service was available to the facility at less than 100 percent of the normal delivery level (which sum is computed by multiplying the number of days at each delivery level less than the normal level times the percentage of the normal delivery level experienced on those days, and adding the products).

4. Section 282.204 is amended by revising paragraphs (a), (c)(2)(iii)(A) and (B), (d)(1), (d)(2)(i)(B), (d)(3), (d)(4), (d)(5), (d)(6)(i) and (ii), (d)(8), (f)(2) and (3), and by adding paragraphs (c)(3), (d)(2)(i)(C), and (d)(2)(ii)(C) as follows:

§ 282.204 Obtaining an exemption.

(a) *General.* This section establishes procedures by which natural gas which qualifies for an exemption under § 282.203 is to be exempted from incremental pricing.

* * * * *

(c) *Exemption on the basis of company records.*

* * * * *

(2) *Exemption after September 30, 1980.*

* * * * *

(iii) * * *

(A) The exempted facility was in existence on November 9, 1978; and

(B) The exempted facility's average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 did not exceed 300 Mcf.

(3) *Facilities exempt under § 282.203(b).* (i) On or before [30 days following expiration of the 30-day Congressional review period], each natural gas supplier shall determine from an examination of its records which industrial boiler fuel facilities are not eligible for an exemption under § 282.203(a)(1) but meet the definition of a "small industrial boiler fuel facility" set forth in § 282.203(b)(2)(i)(A).

(ii) The natural gas supplier shall treat an industrial boiler fuel facility for which an affirmative determination is made under paragraph (c)(3)(i) of this

section as exempt from incremental pricing under this part without further action by the owner or operator of the facility. Such exemption shall be effective as of the beginning of the first full month following the date the supplier determines under paragraph (c)(3)(i) of this section that the facility is exempt from incremental pricing.

(iii) On or before November 1, 1980, each natural gas supplier shall file with the Commission a statement, under oath, that for all exemptions from incremental pricing granted under paragraph (c)(3) of this paragraph, the facility met the definition of a "small industrial boiler fuel facility" set forth in § 282.203(b)(2)(i)(A).

(d) *Exemption on the basis of affidavit.* (1) *Commission to provide exemption affidavits.* The Commission will provide exemption affidavits as described in paragraph (d)(3) of this section to natural gas suppliers and to any other interested person upon request. Requests should be directed to the Division of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(2) *Availability from natural gas suppliers.* (i) *Initial Service.* (A) * * *

(B) Not later than August 15, 1980, each natural gas supplier shall mail or otherwise supply an exemption affidavit, as described in paragraph (d)(3) of this section, to the owner or operator of each industrial boiler fuel facility on such supplier's system which the supplier does not determine to be exempt pursuant to paragraph (c) of this section, or which is not otherwise exempt under this part, and which the supplier determines may be eligible for an exemption under § 282.203(a).

(C) Not later than [30 days following expiration of the 30-day Congressional review period], each natural gas supplier shall mail or otherwise supply an exemption affidavit to the owner or operator of each industrial boiler fuel facility on such supplier's system which the supplier does not determine to be exempt pursuant to paragraph (c) of this section, or which is not otherwise exempt under this part, and which the supplier determines may be eligible for an exemption under § 282.203(b).

(ii) *Response date.*

* * * * *

(C) Natural gas suppliers which supply exemption affidavits under paragraph (d)(1)(i)(C) of this section shall request that executed affidavits be filed on or before [60 days following expiration of the 30-day Congressional review period], in accordance with paragraph (d)(4) of this section.

* * * * *

(3) *Contents of exemption affidavit.* (i) The exemption affidavit shall provide the owner or operator of an industrial boiler fuel facility with the opportunity to respond to a series of questions so that the owner or operator may establish, if appropriate, the basis for one or more of the exemptions set forth in this part.

(ii) The exemption affidavit shall indicate the record retention obligation which may be incurred by the customer under paragraph (d)(8) of this section.

(4) *Filing of exemption affidavits.* In order to obtain an exemption, under this paragraph, from incremental pricing, an owner or operator of an industrial boiler fuel facility shall file an executed exemption affidavit, signed and dated by a responsible official associated with the facility, under oath, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, and send a copy of the executed affidavit to the natural gas supplier serving the industrial boiler fuel facility.

(5) *Effect of filing an exemption affidavit.* (i) If the owner or operator of an industrial boiler fuel facility files an affidavit in accordance with paragraph (d)(4) of this section, claiming that all of the natural gas used in the facility is exempt from incremental pricing surcharges, then natural gas used in the facility shall be exempt from incremental pricing under this part.

(ii) If the owner or operator of an industrial boiler fuel facility files an affidavit in accordance with paragraph (d)(4) of this section, claiming that a portion of the natural gas used in the facility is not subject to incremental pricing, then natural gas used in the facility shall be exempt from incremental pricing surcharges as follows:

(A) For the period January 1, 1980, through October 31, 1981, to the extent determined in accordance with § 282.207; and

(B) On and after November 1, 1981, to the extent determined in accordance with the applicable provision of paragraph (d)(6) of this section.

(6) *Determination of extent of partial exemption on and after November 1, 1981.* (i) If the owner or operator of an industrial boiler fuel facility files an affidavit in accordance with paragraph (d)(4) of this section, claiming that a portion of the natural gas used in the facility is exempt under § 282.203(a)(2), then:

* * * * *

(B) * * *

(ii) If the owner or operator of an industrial boiler fuel facility files an affidavit in accordance with paragraph (d)(4) of this section, claiming that a portion of the natural gas used in the facility is exempt under § 282.203(a) (3), (4), or (5), or is not subject to incremental pricing for the reason that the gas is not consumed as a boiler fuel, then:

* * * * *

(8) *Record retention.* If the owner or operator of an industrial boiler fuel facility obtains an exemption by filing an affidavit in accordance with paragraph (d)(4) of this section, the owner or operator shall, for a period of at least three years from the date of filing the exemption affidavit, retain all records, documents or data which formed the basis of the responses on the affidavit.

* * * * *

(f) *Protests.*

* * * * *

(2) The procedures set forth in § 1.10 shall govern the filing of such a protest, except that any person filing such a protest shall serve a copy of the protest on the affiant of the exemption affidavit or on the natural gas supplier who determined the exemption on the basis of supplier records, as appropriate.

(3) The affiant or the natural gas supplier, as appropriate, may file an answer to any protest. Such answer must be filed within 30 days of the service date of a protest. The affiant or the natural gas supplier, as appropriate, shall serve a copy of the answer on the party filing the protest.

5. Section 282.205 is revised to read as follow:

§ 282.205 Change of circumstances.

(a) *General rule.* If an industrial boiler fuel facility whose natural gas has been exempt under this subpart from incremental pricing under this part experiences a change of circumstances described in paragraph (b) of this section, the owner or operator of the facility shall promptly, in writing, under oath, notify the Commission and the natural gas supplier serving the facility. The natural gas which was exempt, and with respect to which circumstances have changed in accordance with this section, shall be subject to incremental pricing in accordance with and to the extent required by the provisions of this part.

(b) *Circumstances.* For purposes of paragraph (a) of this section, a change of circumstances which subjects natural gas, previously exempt under this subpart, to the incremental pricing

provisions of this part includes the following:

(1) If the natural gas was exempted on the basis of its use in accordance with § 282.203(a), a change in the use of the gas such that it is no longer used for the purpose on the basis of which it was exempted under § 282.203(a);

(2) If the natural gas was exempted on the basis of actual or estimated average per day use of natural gas as a boiler fuel in accordance with § 282.203(b), a change in the amount of gas used for boiler fuel such that the average per day use of natural gas as a boiler fuel in the facility exceeds 300 Mcf in any calendar month; and

(3) Any other change such that the basis for the exemption has changed or no longer exists.

(c) *Filing of Notification.* The notification filed pursuant to paragraph (a) shall be marked, "Changed of Exemption Status Under Incremental Pricing Program" and shall be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(d) *Effective date.* A notification filed pursuant to paragraph (a) shall be effective as of the beginning of the first full month of service after the notification is filed with the Commission and is received by the natural gas supplier serving the facility.

§ 282.207 [Amended]

6. Section 282.207 is amended in paragraph (c)(2)(i) by replacing "§ 282.203(b)" by "§ 282.203(a)(2)".

[FR Doc. 80-23443 Filed 8-6-80; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

19 CFR Part 571

[Docket No. 80-02; Notice 2]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires, Passenger Cars

In FR Doc. 80-22418, appearing at page 49938, in the issue of Monday, July 28, 1980, please make the following corrections to Appendix A in § 571.109:

1. In the first table on page 49939, designated as Table I-JJ, in the line beginning "P235/70R14", in the seventh column, the number "620" should be changed to read "820".

2. In the same table, the last line, which begins "P255/70R15", in the fifth column, the number "990" should be changed to read "900."

BILLING CODE 1505-01-M

Federal Highway Administration

23 CFR Part 657 and 658

Certification of Size and Weight Enforcement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) issues requirements for certifying that each State is enforcing all State size and weight laws on the Federal-aid highway systems, including the Interstate System in accordance with 23 U.S.C. 127, as required by 23 U.S.C. 141 and section 123 of the Surface Transportation Assistance Act of 1978. An initial submission and annual revision of a plan for enforcement and an annual certification of compliance are required. Failure to meet the requirements of this regulation may result in a reduction of apportioned Federal-aid highway funds.

DATES: This regulation is effective on October 1, 1980. The initial submission of a plan is due on November 1, 1980. Annual updates are required thereafter, preferably on or before July 1 of each year. The State must have an approved plan by October 1 of each year thereafter. The first certification under this regulation is due by December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Bauch, 202/426-1993, Office of Traffic Operations, or Mr. David C. Oliver, 202/426-0825, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of 23 U.S.C. 141, each of the States has submitted certifications of enforcement of vehicle size and weight laws prior to January 1 in each of the years from 1976 to 1979. The accumulation of data extracted from these certifications is considerable, but insufficient *per se* to determine the adequacy of State enforcement efforts.

As a result of the insufficiency of the prior certification requirements and the enactment of section 123 of the Surface Transportation Assistance Act of 1978, the FHWA issued a Notice of Proposed Rulemaking on March 14, 1979 (44 FR 15638, FHWA Docket No. 77-21, Notice 2). The notice set forth requirements providing for the development of an enforcement plan by each State. Elements of the plan were discussed in some detail. The plan, after review and approval by the FHWA, would become the benchmark against which the quantitative results of each year's certification could be compared in order to evaluate a State's success in accomplishing its enforcement goals.

The development of this procedure was based upon the difficulty encountered in assessing State enforcement on a quantitative basis alone. Individual variances in geography, volume of traffic, budget, and philosophy of enforcement cannot be accounted for on the basis of numbers, whether numbers of vehicles weighed, registered, or cited. However, the quantitative assessment is sufficient to indicate questionable areas in a State's enforcement efforts, and past evaluations have relied upon the numbers to initiate a dialogue in States where programs appeared inadequate in reducing violations. In the past two years, conferences have been held with the representatives of more than 18 States to develop a complete assessment of State efforts. Program improvements have resulted in every State for which a conference was held.

Beginning with the quantitative references provided by prior certifications, the material addressed at each conference included enforcement philosophy, budgetary and personnel considerations, policies and practices with respect to penalizing violators, the issuance of special permits, and plans for implementing improvements in all of the above areas. The dialogue begun with these States has helped us engender perspective on each State's individual conditions, needs, and success in enforcement.

This experience has led to the development of a certification process which involves a two-stage procedure consisting of an enforcement plan and certification. The intent of this procedure is to reduce the red tape involved in the certification process to a minimum, while at the same time establishing a thorough process of review and understanding of enforcement on a nationwide basis.

At the same time, the notice discussed the development by the FHWA of guidelines which would enable the States to integrate objective components in their enforcement plans, to equalize the assessment of the certification. Consideration has been given to establishing minimum numbers for vehicles weighed, ratios of violations to vehicles weighed and target numbers based upon a combination of integral

factors, including vehicles registered, vehicles weighed, and vehicle miles traveled. Each of the above has been found inadequate, confusing and susceptible to misinterpretation. The appendix to this regulation provides plan guidelines, which, however, do not provide minimum requirements.

Comments on these guidelines are solicited and can be submitted to the Docket No. 77-21, which is being continued for this purpose. The guidelines are not mandatory but have been designed for use as a frame of reference in developing enforcement plans.

Discussion of Comments

Twenty-one comments were received in the docket in response to the Notice of Proposed Rulemaking. The majority of comments received (14) were from State organizations, including State highway or transportation agencies, enforcement agencies and motor vehicle departments. Several of the comments reflected dissatisfaction with the proposed regulation on the general philosophical basis that it constituted an intrusion into traditional State prerogatives. There was also concern that the development of an enforcement plan would constitute an unnecessary administrative exercise contrary to the FHWA's policy of reducing red tape.

These State responses focused on three major areas of concern: that reporting requirements under the regulation be reasonable and not require large numbers of personnel hours to accumulate data which would take enforcement personnel away from their primary mission; that guidelines be provided for States' use in plan development; and that minimum criteria be established, such as an annual target number of vehicles to be weighed by each State.

Comments were also received from three associations which indicated general approval of the intent of the proposed rule. The American Association of State Highway and Transportation Officials (AASHTO) was concerned with the level of detail required in the development of the plan. This comment was repeated often by State organizations. The final regulation has been modified to accommodate specific suggestions and to alleviate the concern over the level of detail. Specific comments on this point will be included below.

The American Trucking Associations (ATA), while concurring generally in the proposed rule, expressed concern that portable scales be accurate, particularly where they are the primary tool in a State's enforcement efforts. The FHWA is aware of difficulties arising out of portable scale use and is continuing to evaluate the experience of the States in their usage. No specific requirements are set forth in the final regulation, but information will be disseminated to the States as it becomes available to the FHWA on the equipment available and its correct usage. The ATA also raised a valid point concerning the potential for undue delay which can result from multiple weighings in relatively short distances; this matter is under further review. The FHWA regional offices have already been requested to assist the States in coordinating enforcement efforts, including scale placement, to reduce delay to a minimum.

Other comments included one from an independent trucker in opposition to the proposed rule; one from a railroad pertaining to weighing practices in a particular State; and one comment from a Florida State legislator, who expressed concern over the failure of the regulation to establish uniform criteria, since those States with recognized strong enforcement efforts are affected economically by those which have little or no enforcement. The FHWA agrees with this latter concern; however, the specific comment indicates that a statement of the underlying basis of the regulation is needed. Those States with strong enforcement efforts will benefit from the implementation of this regulation, as it is the underlying intent of the FHWA to guide all States into improved, effective weight enforcement programs. While quantification alone is insufficient as a benchmark of program effectiveness, there are no intrinsic difficulties in identifying weak programs. It is obvious that States which have low numbers of vehicles weighed, little equipment, minimum personnel, and weak penalties can be generally said to have ineffective enforcement programs. However, it is the FHWA's belief that it is not conversely possible to establish an effective program simply on the basis of the number of vehicles weighed. By requiring each State to analyze its needs and to manage its resources, in time all States will have effective enforcement programs.

For example, the guidelines which accompany this regulation support the regulation's presumption that 23 U.S.C. 127, which limits the weight of vehicles using the Interstate System, provides the States with a set of parameters for the design of structures and pavements. Similarly, it is the belief of the FHWA that the law of each State applicable to other Federal-aid systems provides a basis for structure and pavement design as well as for classifying vehicles for licensing purposes.

It is the belief that truck use of the Nation's highways should be limited to those vehicles with legislatively authorized gross vehicle and axle weights which underlies this regulation, and it is the explicit intent of the regulation to activate this belief by ensuring effective enforcement. It is a further fundamental presumption of this regulation that effective enforcement is predicated upon a high-volume weighing capability, utilizing a system of monitoring/weighing to maximize the potential for apprehension of weight violators. Permanent platform scales are the most effective means of achieving this goal, however, weighing-in-motion systems, semi-portable scales used in a strike-team concept and other techniques can also achieve the goal. Nevertheless, a State which chooses to adopt an enforcement plan without including provisions for high-volume weighing must demonstrate conclusively that such a plan will be as effective as one which includes the use of high-volume weighing.

The specific comments received in the docket have been accommodated and, with the principles set forth above as the underlying premise of the regulation, a discussion of the individual regulation sections follows.

The Final Rule

The response to the Notice of Proposed Rulemaking together with evaluation of the most recent certifications confirm the initial determination of the FHWA that little objective data are available in a format useful for the development of minimum criteria at this time. As a result no substantive changes have been made in the introductory sections of the regulation (657.1-657.7).

However, several changes have been made in § 657.9, which addresses the formulation of a plan for enforcement. Several comments were received on the requirement that the plan address facilities and resources. The major comment was that it was difficult to estimate the hours of personnel assignments in advance. There were also repeated comments indicating that the proposed rules appeared to remove the FHWA from any objective assessment of State efforts based on minimum acceptable numbers.

The requirement that equipment be sufficient to cover the Federal-aid systems has been modified to require that each State utilize a combination of two or more types of listed scales in its enforcement plan. This requirement is based on the significant technological

advances which have been made since 1975, the first date of the certification requirement. At that time there were two basic types of equipment in use, the fixed platform scale and the portable wheel-weigher scale. In the interim, two additional scale types have come into use, the semi-portable scale and the weighing-in-motion (WIM) unit. Each of the 4 types of weighing equipment has unique capabilities with respect to the locations and facilities necessary for operation and in terms of the numbers of vehicles which can be weighed. The WIM and platform scales have a high capacity, while semi-portable scales are of a lesser capacity and wheel-weigher portable scales can be used on a selective basis at best.

A combination of the various types of equipment will enable every State to devise an effective program fitting its geographical and fiscal needs. It is particularly important that in those States relying on high-volume weighing equipment, programs should include plans for the deployment of portable weighing equipment on routes which bypass the fixed weighing locations.

This modification requiring the use of a mix of equipment derives from the FHWA analysis of types of weighing operations from which three generalized operations have been developed. In the *port-of-entry* or *perimeter weighing system*, operations are characterized by permanent facilities near State borders on major highways where inbound trucks must stop to be weighed and checked for motor vehicle law requirements (registration, fuel tax, reciprocity, etc.). Such operations are generally categorized by high numbers of vehicles weighed.

Many States have developed operations relying exclusively on *portable scales*, including a more recent addition of *semi-portable ramp-type scales*. This operation is categorized by selective enforcement, as personnel generally select only the obviously heavily laden vehicles for weighing. However, capacity is low and reporting for such systems is characterized by low numbers of vehicles weighed with relatively high numbers of citations.

Finally, several States have begun to develop systems using *combinations of high-volume equipment and portable or semi-portable equipment*. Such operations are distinguished from perimeter systems in that the fixed or high-volume scale placements are strategically located throughout the State rather than at or near State boundaries. Operations characterized by this system report high numbers of vehicles weighed.

This modification addresses the lack of measurable criteria by establishing a firm requirement for each State to equalize enforcement efforts as plans are developed.

A further modification deletes the requirement to identify staff assigned to the program by work hours. A general statement of the number of uniformed and administrative personnel assigned exclusively to size and weight enforcement will be sufficient.

Likewise, modifications have been made to the requirements for identifying practices and procedures in the plan. The comments received on the level of specificity and detail warrant some explanation of the intent of this section. The proposed plan of operation should be sufficiently detailed to indicate that the major Federal-aid systems will be covered on a regular basis daily and weekly. If operations are based on a 5-day work week, a 7-day round-the-clock week or some other system, this should be indicated in general terms. There is no need to provide shift charts on an individual or troop basis. It is the FHWA concern that the major systems be identified and that each State provide comprehensive geographical coverage with enforcement efforts underway throughout the day-night and week periods. Also, seasonal curtailments of efforts should be identified.

The policy and practices with respect to both special permits and violators are particularly important to the plan. It was apparent to the FHWA, in conducting the survey required by section 123 of the Surface Transportation Assistance Act of 1978, that little coordination among agencies is present, that policies and practices often depart from legal requirements, and that management personnel are often unaware of actual practices. It is the expectation of the FHWA that this requirement will induce each State to undertake a management review of practices and to make changes necessary to the efficient administration of a quality enforcement effort.

The requirements for policy and practices with respect to mobile homes and other oversized vehicles, and levels of weighing and measuring by highway class and by time of day and week have been deleted. The requirement for levels of weighing and measuring by highway class is red tape which involves statistical crystalball calculations of uncertain validity and significance. Also, it has been determined that the requirement for policies with respect to mobile homes and other oversized vehicles is unnecessary, because it does not significantly relate to the enforcement of weight laws.

In response to comments received from the States by the FHWA, on the difficulty of coordinating a State plan with State budgetary cycles and on the requirement for a semi-annual review of the State's operations, modifications have been made in the requirement for the evaluation of operations. The final regulation requires an initial submission of a plan on or before November 1, 1980, following which a State will be notified of the plan's acceptance or rejection. Updates shall be made on an annual basis with some flexibility for timing based on State legislative or budgetary cycles. The State must have an improved plan by October 1 of each year. Further, the requirement for FHWA review and evaluation of operations has been reduced to an annual requirement.

Modifications have also been made in § 657.15 with respect to the certification content, by eliminating the requirements for reporting data where those data do not have a significant value to the evaluation process.

Significant changes were made to the requirements for the submittal of changes in law; vehicles weighed; vehicles measured; reporting citations; reporting permits; and in the procedure for the reduction of funds. These changes are described below.

Submittal of changes in the law. Each State shall be required to submit a copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification, together with an analysis of changes made.

The analysis should include an assessment by the State's Attorney General where necessary. This requirement has been included to reduce the confusion which can result from a finding that a State law is inconsistent with 23 U.S.C. 127, particularly where several significant changes are made at one time. The analysis of changes made will enable the FHWA to identify and review amendments in a more efficient manner. This requirement will also enable highway management officials to develop more efficient mechanisms for communicating with State legislatures on such bills. Our experience indicates that laws which conflict with 23 U.S.C. 127 are often passed without the knowledge of highway management officials.

Vehicles weighed. In previous certification years the gross number of vehicles weighed was required to provide a level of comparison with a previous year's activity. But the gross number, which is derived from cumulative totals of vehicles weighted on high-volume as well as low-volume

equipment, is meaningless in terms of developing criteria for performance. To develop such criteria, the numbers of vehicles weighed must be broken down by fixed scales, semi-portable scales, portable, and WIM units. Where vehicles are weighed on WIM equipment, only those vehicles weighed as part of an enforcement exercise are to be reported.

Vehicles measured. The confusion surrounding the measurement of vehicles for length has made this figure meaningless. As it is not a significant element in terms of evaluating the certification, the requirement for reporting a bulk number of vehicles measured for length is being deleted. This change does not mean that vehicle measurements need not be made in the future, as Federal law with respect to width, and State height and length laws, are still applicable, though they are not significant in evaluating enforcement programs.

Reporting Citations. The certification shall include citations for gross and axle weights and also now must include, by specific reference, violations of the bridge formula, which is the central element in ensuring compliance with 23 U.S.C. 127. In raising the permissible weight limit to 80,000 pounds in 1975, the Congress specifically made the number and spacing of axles a condition of the permissible truck weight on the Interstate, to prevent overstressing highway bridges. One State, Florida, which does maintain bridge formula enforcement efforts, contends that few other States may be enforcing the bridge formula. Data available to the FHWA through planning studies indicate that a high percentage of weight violations may be bridge formula violations. It is essential that the bridge formula be enforced and it is not possible to evaluate State efforts in this respect without a specific reporting of activity.

Reporting Permits. Only those numbers of permits issued for overweight and overweight-oversize combination loads shall be reported, with specific reference to whether the load was divisible or indivisible. The only breakdown necessary on trip types are the numbers issued on an annual basis and those issued on a trip basis, whether for 1 day, 3 days, 1 week, or 1 month. Specific breakdowns for each of the trip categories are not necessary. This will simplify recordkeeping and reporting requirements.

Reduction of Funds. Several comments indicated misunderstanding of the possibility for informal resolution in situations involving a certification which has been questioned. Such informal resolution is not only possible but encouraged. The regulation reflects the availability of an informal conference and procedures for making an explanation and offer of settlement which would resolve certification questions at the level of the Federal Highway Administrator. The regulation also clarifies the right of the States to secure formal administrative procedures to resolve such matters.

The regulation does not provide mandatory minimum or target numbers, but does require the application of relatively uniform management approaches to enforcement. It is the intent of the FHWA to bring about uniformity of effectiveness in encouraging management initiatives. In utilizing the guidelines, each State should be able to develop an acceptable plan which will provide satisfactory quantifications in the certification report. Changes will be recommended in the future to incorporate needed modifications as indicated by an expanded data base and experience with plan evaluations.

Note.—The Federal Highway Administration has determined that this document contains a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. William Bauch at the address specified above.

This regulation is effective on October 1, 1980. The first submission under this regulation is due on November 1, 1980.

Issued on: August 4, 1980.

John S. Hassell, Jr.,
Federal Highway Administrator.

PART 658—NATIONAL MAXIMUM SPEED LIMIT; MAXIMUM VEHICLE SIZE AND WEIGHT

In consideration of the foregoing, Chapter I of Title 23, Code of Federal Regulations, is amended as follows:

§ 658.9 [Reserved]

1. Vacate and reserve from the table of sections in Part 658 the heading "§ 658.9 Certification of size and weight enforcement," and the corresponding section within the part.

2. Add a new Part 657 to read as set forth below:

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

Sec.
657.1 Purpose.
657.3 Definition.
657.5 Policy.
657.7 Objective.
657.9 Formulation of a plan of enforcement.
657.11 Evaluation of operations.
657.13 Certification requirement.
657.15 Certification content.
657.17 Certification submittal.
657.19 Effect of failure to certify or to enforce State laws adequately.
657.21 Procedure for reduction of funds.
Appendix—Guidelines to be used in developing enforcement plans and certification evaluation.

Authority: Sec. 123, Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 CFR 1.48(b).

§ 657.1 Purpose.

To prescribe requirements for administering a program of vehicle size and weight enforcement on Federal-aid (FA) highways, including the required annual certification by the State.

§ 657.3 Definition.

"Enforcing" or "enforcement" means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on the FA Interstate, primary, urban, and secondary systems.

§ 657.5 Policy.

Federal Highway Administration (FHWA) policy is that each State enforce vehicle size and weight laws to assure that violations are discouraged and that vehicles traversing the highway system do not exceed the limits specified by law. These size and weight limits are based upon design specifications and safety considerations, and enforcement shall be developed and maintained both to prevent premature deterioration of the highway pavement and structures and to provide a safe driving environment.

§ 657.7 Objective.

The objective of this regulation is the development and operation by each State of an enforcement process which identifies vehicles of excessive size and weight and provides a systematic approach to eliminate violations and thus improve conditions.

§ 657.9 Formulation of a plan for enforcement.

(a) Each State shall develop a plan for the maintenance of an effective enforcement process. The plan shall describe the procedures, resources, and facilities which the State intends to devote to the enforcement of its vehicle size and weight laws. Each State plan must be accepted by the FHWA and will then serve as a basis by which the annual certification of enforcement will be judged for adequacy.

(b) The plan shall discuss the following subjects:

(1) *Facilities and resources.* (i) No program shall be approved which does

not utilize a combination of at least two of the following listed devices to deter evasion of size and weight measurement in sufficient quantity to cover the FA system: fixed platform scales; portable wheel weigher scales; semiportable or ramp scales; WIM equipment.

(ii) Staff assigned to the program, identified by specific agency. Where more than one State agency has weight enforcement responsibility, the lead agency should be indicated.

(2) *Practices and procedures.* (i) Proposed plan of operation, including geographical coverage and hours of operation in general terms.

(ii) Policy and practices with respect to overweight violators, including off-loading requirements for divisible loads. In those States in which off-loading is mandatory by law, an administrative variance from the legal requirement shall be fully explained. In those States in which off-loading is permissive administrative guidelines shall be included.

(iii) Policy and practices with respect to penalties, including those for repeated violations. Administrative directives, booklets or other written criteria shall be made part of the plan submission.

(iv) Policy and practices with respect to special permits for overweight. Administrative directives, booklets or other written criteria shall be made part of the plan submission.

(3) *Updating.* Modification and/or additions to the plan based on experience and new developments in the enforcement program. It is recognized that the plan is not static and that changes may be required to meet changing needs.

§ 657.11 Evaluation of operations.

(a) The State shall submit its initial plan to the FHWA Division Administrator on or before November 1, 1980. Following consultation with the FHWA Regional Administrator, the State will be notified of its acceptance or rejection. The plan shall be updated annually thereafter, preferably on or before July 1, but an alternate date acceptable to both the FHWA and the State, may be chosen if a State's legislative or budgetary cycle is not consonant with July 1. In any event, a State must have an approved plan in effect by October 1 of each year. Failure of a State to submit or update a plan will be deemed to be a failure to certify in accordance with § 657.13.

(b) The FHWA division office shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation, and of any needed changes either in the plan itself or in its implementation. Copies of the evaluation report and subsequent modifications resulting from the evaluation shall be forwarded through the region to the Washington Headquarters.

§ 657.13 Certification requirement.

Each State shall certify to the Federal Highway Administrator before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weight permitted on the FA primary, secondary, and urban systems, including the Interstate System, in accordance with 23 U.S.C. 127. The certification shall be supported by information on activities and results achieved during the preceding 12-month period ending on September 30.

§ 657.15 Certification content.

The certification shall consist of the following elements and each element shall be addressed even though the response is negative:

(a) A statement by the Governor of the State, or an official designated by the Governor, that the size and weight laws and regulations in the State governing use of the Interstate System conform to 23 U.S.C. 127.

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the FA Interstate, primary, urban, and secondary systems. Urban areas not subject to State jurisdiction shall be identified and the statement shall address total FA mileage involved and an analysis of enforcement efforts in such areas.

(c) The certifying statement required by paragraphs (a) and (b) of this section shall be worded as follows: I (name of certifying official), (position title), of the State of , do hereby certify that all State laws and regulations are being enforced on the FA primary, urban, and secondary systems and the Interstate System in accordance with 23 U.S.C. 127.

(d) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made. Those laws and regulations pertaining to special permits and penalties shall be specifically identified and analyzed in accordance with section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599).

(e) A report of State size and weight enforcement efforts during the period covered by the certification which addresses the following:

(1) Actual operations as compared with those forecast by the plan submitted earlier, with particular attention to changes in or deviations from the operations proposed.

(2) Impacts of the process as actually applied, in terms of changes in the number of oversize and/or overweight vehicles.

(3) Measures of activity.

(i) Vehicles weighed. Separate totals shall be reported for the annual number of vehicles weighed on fixed scales, on semi-portable scales, on portable scales, and on WIM when used for enforcement.

(ii) Penalties reported shall include citations issued, civil assessments, and incidences of load shifting or off-loading of excess weight categorized as follows: violations of axle and/or gross vehicle weights, or violations resulting from application of the bridge formula.

(iii) Permits. The number of permits issued for *overweight* loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis. Permits issued for excess height, length, or width need not be reported except where issued for the overwidth movement of a divisible load.

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall each year submit one copy of the certification to the FHWA Division Administrator prior to January 1.

(b) The division office shall forward the original certification to the Office of the Chief Counsel and one copy to the Associate Administrator for Engineering and Traffic Operations. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

§ 657.19 Effect of failure to certify or to enforce State laws adequately.

Beginning January 1, 1981, if a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on FA highways notwithstanding the State's certification, the FA highway funds apportioned to the State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

§ 657.21 Procedure for reduction of funds.

(a) If it appears to the Federal Highway Administrator that a State has not submitted a certification conforming to the requirements of this regulation, or that the State is not adequately enforcing State laws respecting maximum vehicle size and weight, including laws applicable to vehicles using the Interstate System with weights or widths in excess of those provided under 23 U.S.C. 127, the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the State that it may, within 30 days from the date of the notice, request a hearing to show cause why it should not be found in nonconformity. If the State informs the Administrator before the end of this 30-day period that it wishes to attempt to resolve the matter informally, the Administrator may extend the time for requesting a hearing. In the event of a request for informal resolution, the State and the Administrator (or designee) shall promptly schedule a meeting to resolve the matter.

(b) In all instances where the State proceeds on the basis of informal resolution, a transcript of the conference will be made and furnished to the State by the FHWA.

(1) The State may offer any information which it considers helpful to a resolution of the matter, and the scope of review at the conference will include, but not be limited to, legislative actions, including those proposed to remedy deficiencies, budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the State into compliance.

(2) The information produced at the conference may constitute an explanation and offer of settlement and the Administrator will make a determination on the basis of the certification, record of the conference, and other information submitted by the State. The Administrator's final decision together with a copy of the transcript of the conference will be furnished to the State.

(3) If the Administrator does not accept an offer of settlement made pursuant to paragraph (b)(2) of this section, the State retains the right to request a hearing on the record pursuant to paragraph (d) of this section, except in the case of a violation of section 127.

(c) If the State does not request a hearing in a timely fashion as provided in paragraph (a) of this section, the Federal Highway Administrator shall forward the proposed determination of nonconformity to the Secretary. Upon approval of the proposed determination by the Secretary, the fund reduction specified by § 657.19 shall be effected.

(d) If the State requests a hearing, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 555 *et seq.* Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this regulation. If the Secretary determines that the State is in nonconformity, the fund reduction specified by section 567.19 shall be effected.

(e) The Secretary may reserve 10 percent of a State's apportionment of funds under 23 U.S.C. 104 pending a final administrative determination under this regulation to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(f) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into conformity with this regulation. If the Secretary determines that the State has come into conformity, the withheld funds shall be released to the State.

(g) The reapportionment of funds under paragraph (e) of this section shall be stayed during the pendency of any judicial review of the Secretary's final administrative determination of nonconformity.

Appendix.—Guidelines To Be Used in Developing Enforcement Plans and Certification Evaluation

A. Facilities and Equipment

1. Permanent Scales
a. Number
b. Location (a map appropriately coded is suggested)
c. Public-private (if any)
2. Weigh-in-motion (WIM)
a. Number
b. Location (notation on above map is suggested)
3. Semi-portable scales
a. Type and number
b. If used in sets, the number comprising a set
4. Portable Scales
a. Type and number
b. If used in sets, the number comprising a set

B. Resources

1. Agencies involved (i.e., highway agency, State police, motor vehicle department, etc.)
2. Personnel—numbers from respective agencies assigned to weight enforcement
3. Funding
a. Facilities
b. Personnel

C. Practices

1. Proposed schedule of operation of fixed scale locations in general terms
2. Proposed schedule of deployment of portable scale equipment in general terms
3. Proposed schedule of deployment of semi-portable equipment in general terms
4. Strategy for prevention of bypassing of fixed weighing facility location
5. Proposed action for implementation of off-loading, if applicable

D. Goals

1. Short term—the year beginning October 1 following submission of a vehicle size and weight enforcement plan
2. Medium term—2–4 years after submission of the enforcement plan
3. Long term—5 years beyond the submission of the enforcement plan
4. Provision for annual review and update of vehicle size and weight enforcement plan

E. Evaluation

The evaluation of an existing plan, in comparison to goals for strengthening the enforcement program, is a difficult task, especially since there is very limited experience nationwide.

The FHWA plans to approach this objective through a continued cooperative effort with State and other enforcement agencies by gathering useful information and experience on elements of enforcement practices that produce positive results.

It is not considered practicable at this time to establish objective minimums, such as the number of vehicles to be weighed by each State, as a requirement for satisfactory compliance. However, the States will want to know as many specifics as possible about what measuring tools will be used to evaluate their annual certifications for adequacy.

The above discussion goes to the heart of the question concerning numerical criteria. The assumption that a certain number of weighings will provide a maximum or even satisfactory deterrent is not supportable. The enforcement of vehicle size and weight laws requires that vehicles be weighed but it does not logically follow that the more vehicles weighed, the more effective the enforcement program, especially if the vehicles are weighed at a limited number of fixed locations. A "numbers game" does not necessarily provide a deterrent to deliberate overloading. Consistent, vigorous enforcement activities, the certainty of apprehension and of penalty, the adequacy of the penalty, even the publicity given these factors, may be greater deterrents than the number of weighings alone.

In recognizing that all States are unique in character, there are some similarities between certain States and useful perspectives may be obtained by relating their program elements. Some comparative factors are:

1. Truck registration (excluding pickups and panels)
2. Population
3. Average Daily Traffic (ADT) for trucks on FA highways
4. To total mileage of Federal-aid highways
5. Geographic location of the State
6. Annual truck miles traveled in State
7. Number of truck terminals (over 6 doors)
8. Vehicle miles of intrastate truck traffic

Quantities relating to the above items can become factors that in the aggregate are descriptive of a State's characteristics and can identify States that are similar from a trucking operation viewpoint. This is especially applicable for States within the same area.

After States with similar truck traffic operations have been identified in a regional area, another important variable must be considered: the type of weighing equipment that has been or is proposed for predominant use in the States. When data become available on the number of trucks weighed by each type of scale (fixed, portable, semi-portable, etc.) some indicators will be developed to relate one State's effort to those of other States. The measures of activity that are a part of each certification submitted will provide a basis for the development of more precise numerical criteria by which an enforcement plan and its activities can be judged for adequacy.

Previous certifications have provided information from which the following gross scale capabilities have been derived.

Potential Weighing Capacities

1. Permanent scales 60 veh/hr.
2. Weigh-in-motion scales 100 veh/hr.
3. Semi-portable scales 25 veh/hr.
4. Portable scales 3 veh/hr.

To meet the mandates of Federal and other laws regarding truck size and weight enforcement, the FHWA desires to become a resource for all States in achieving a successful exchange of useful information. Some States are more advanced in their enforcement activities. Some have special experience with portable, semi-portable, fixed, or weighing-in-motion devices. Others have operated permanent scales in combination with concentrated safety inspection programs. The FHWA is interested in information on individual State experiences in these specialized areas as part of initial plan submissions. If such information has recently been furnished to the Washington Headquarters, an appropriate cross reference should be included on the submission.

It is the policy of the FHWA to avoid red tape, and information volunteered by the States will be of assistance in meeting many needs. The ultimate goal in developing information through the evaluation process is to assemble criteria for a model enforcement program.

[FR Doc. 80-23879 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 869

[Docket No. R-80-829]

Low-Income Public Housing—PHA-Owned Projects—Continued Operation as Low-Income Housing After Completion of Debt Service

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

ACTION: Interim rule and request for comments.

SUMMARY: This Interim Rule implements certain amendments to § 9 of the United States Housing Act of 1937, pertaining to continued operation of a public housing project as low-income housing after the completion of debt service for the project. These statutory changes wer made by section 211 of the Housing and Community Development Amendments of 1979.

EFFECTIVE DATE: September 15, 1980.

COMMENT DUE DATE: October 6, 1980.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Each comment should include the commentor's name and address, and must refer to the docket number indicated in the heading of this document. Copies of all written comments received will be available for copying and inspection in the Office of the Rules Docket Clerk at the above address. The rule may be changed in the light of comments received.

FOR FURTHER INFORMATION CONTACT: Wayne Hunter, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone number (202) 755-6460 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This rule, which implements recent amendments to the United States Housing Act of 1937, (Act) made by § 211 of the Housing and Community Development Amendments of 1979, provides a basis for maintaining the low-income nature of a public housing project after the completion of all debt service on the project under § 5 of the Act. Specifically, the Act states that a PHA may not dispose of a public housing project without HUD approval for 10 years after all operating subsidy payments for that project have ceased. Under this rule, the maintenance of the low-income nature of a project allows for continued eligibility for payment of operating subsidy with respect to the project. This rule is applicable only to public housing projects owned by public housing agencies (PHAs).

For most of the PHA-owned public housing projects whose Annual Contributions Contract (ACC) terms would otherwise expire within the next few years, as a result of the completion of debt service, the ACC terms have been, or are expected to be, extended in connection with modernization, pursuant to 24 CFR 868. For those projects which may not be included under modernization programs before the expiration of their existing ACC terms, this rule provides for extension of the term of those ACC provisions which relate to project operation. ACC provisions related to development and debt service would not remain in effect for the project during such an extension.

For use in determining the exact time of ACC expiration for a particular project, § 869.103(a) sets forth a definition of "ACC Expiration Date." Provision is made in § 869.104 for the payment of operating subsidy with respect to a project during continued operation as low-income public housing, until and after the completion of debt service, pursuant to an ACC amendment under § 869.105 or § 869.106, extending the term of the ACC provisions related to project operation.

Under § 869.105, this rule requires that, as a condition for the first HUD approval for payment of operating subsidy under a particular ACC for a PHA fiscal year beginning after the effective date of this rule, the PHA and HUD must enter into an ACC amendment stipulating that each project which is subject to the ACC shall continue to be operated as low-income public housing, on accordance with the ACC provisions related to project operation, for a period of 10 years after the last PHA fiscal year for which operating subsidy is paid with respect to the project.

An ACC amendment under § 869.105 will result in an automatic extension for any project under an ACC whenever, and to the extent that, less than 10 years of the project's ACC term would otherwise remain after the end of the last PHA fiscal year for which operating subsidy is paid with respect to the project. After the initial ACC extension is effected under § 869.105, successive annual payments of operating subsidy with respect to the project will automatically result in successive annual extensions of the project's ACC

term. Complete expiration for a project will occur only if no operating subsidy is paid with respect to the project for the last 10 years of the project's ACC term. Even if a PHA chooses to accept no further operating subsidy for a project, the Act requires that it still seek HUD approval for disposition of the project for a period of 10 years following the last operating subsidy payment.

Where there is a Consolidated ACC covering two or more projects, the PHA's decision not to receive operating subsidy for any of the projects will result in a reduction of the total amount of operating subsidy payable under the ACC, as explained in § 869.105(b). Before deciding not to receive operating subsidy for a particular project under § 869.105, the PHA should evaluate the impact of such a decision on the other projects under the ACC.

Where the project has not received operating subsidy for the last 10 years of its ACC term and thus is not subject to an ACC extension under § 869.105, the PHA may still desire such an extension as a basis for maintaining the project's eligibility for operating subsidy beyond the anticipated date of ACC expiration. For this situation, § 869.106 provides that, upon request by the PHA, HUD may approve a one to ten year extension of the term of the ACC provisions related to project operation.

Notwithstanding these provisions, HUD may approve the disposition of a project before the scheduled expiration of the term of the ACC for the project (i.e., at any time prior to the completion of debt service or during an extended term under this Part). This possibility is acknowledged in § 869.107, which makes it clear that this Part is not intended to restrict or preclude demolition or disposition of a project pursuant to HUD approval in accordance with 24 CFR 870.

This rule is being issued as an Interim Rule because it is urgent that the statutory changes mandated by § 211 of the Housing and Community Development Amendments of 1979 be implemented immediately. Unless the Annual Contributions Contracts governing certain Low-Income Public Housing projects are extended before their scheduled expiration dates, the affected projects will become ineligible for operating subsidy after ACC expiration, and some local Public Housing Agencies may be unable in that case to maintain the decent, safe and sanitary housing they now provide to the low-income residents of the projects that would be affected. The first of the ACC expirations which are affected by these statutory changes is scheduled for October 1980 and additional expirations are scheduled to occur in 1981. It is very important for this rule to be in place well before any expirations occur, so that local PHAs may have planning time to consider the options this rule offers.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 had been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection in the Office of the Rules Docket Clerk at the above address.

This rule is listed as item number H-60-79 in the Department's semi-annual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, Chapter VIII of Title 24 of the Code of Federal Regulations is amended to add a new Part 869, as follows:

PART 869—PHA-OWNED PROJECTS—CONTINUED OPERATION AS LOW-INCOME HOUSING AFTER COMPLETION OF DEBT SERVICE

Sec.

869.101 Purpose.
869.102 Applicability.
869.103 Definitions.
869.104 Continuing eligibility for operating subsidy.
869.105 Extension of ACC upon payment of operating subsidy.
869.106 ACC extension in absence of current operating subsidy.
869.107 HUD approval of demolition or disposition before ACC expiration.

Authority: United States Housing Act of 1937, (42 U.S.C. 1437 et seq.); Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 869.101 Purpose.

This Part provides a basis for maintaining the low-income nature of a public housing project after the completion of debt service on the project, specifying methods for extending the effective period of those provisions of the Annual Contributions Contract (ACC) which relate to project operation. Such an extension provides a contractual basis for the continued operation of the project under the Low-Income Public Housing Program, including continued eligibility for Operating Subsidy.

§ 869.102 Applicability.

This Part applies to any low-income public housing project which, on or after the effective date of this Part, is owned by a Public Housing Agency (PHA) and is subject to an ACC under § 5 of the United States Housing Act (Act), including any Turnkey III or Mutual Help housing which is owned by the PHA. This Part does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs, the Section 10(c) and Section 23 Leased Housing Programs, or Lanham Act projects which remain under Administration Contracts.

§ 869.103 Definitions.

(a) "ACC Expiration Date" means the last day of the term during which a particular public housing project is subject to all or any of the provisions of the ACC. The ACC term for a particular project expires at the latest of:

(1) The end of the "Debt Service Completion Date," which is the last day of a one-year period beginning with, and inclusive of, the last debt service Annual Contribution Date for the project, as determined under the ACC (e.g., if the last debt service Annual Contribution Date is June 15, 1983, the one-year period continues through the end of the day on June 14, 1984, which is the Debt Service Completion Date); or

(2) The end of the date of full repayment of any indebtedness of the PHA to the Federal government in connection with the project; or

(3) The end of the last date of an extension of the term of the ACC provisions related to project operation, as effected under § 869.105 or § 869.106.

(b) "Operating Subsidy" means additional annual contributions for operations under section 9 of the Act.

§ 869.104 Continuing eligibility for operating subsidy.

Until and after the Debt Service Completion Date for any project, HUD shall pay Operating Subsidy with respect to such project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation, pursuant to § 869.105 or § 869.106. The ACC amendment shall be in the form prescribed by HUD and shall specify the particular provisions of the ACC which relate to continued project operation and, therefore, remain in effect for the extended ACC term. These provisions shall include a requirement that the PHA execute and file for public record an appropriate document evidencing the PHA's covenant not to convey, encumber or make any other disposition of the project before the end of the project's ACC Expiration Date, without HUD approval.

§ 869.105 Extension of ACC upon payment of operating subsidy.

(a) *ACC Amendment.* As a condition for the first HUD approval for payment of Operating Subsidy with respect to the projects under a particular ACC for a PHA fiscal year beginning after the effective date of this Part, the PHA and HUD shall enter into an amendment to

the ACC for all projects under the ACC. This ACC amendment shall provide that the ACC provisions related to project operation shall continue in effect with respect to each project under the ACC for a period of 10 years after the end of the last PHA fiscal year for which Operating Subsidy is paid with respect to the project.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (Consolidated ACC), each annual Operating Subsidy payable under that ACC is a lump-sum amount, which is not divided into discrete amounts for the individual projects which are subject to the Consolidated ACC (see 24 CFR 890). Accordingly, if a PHA, before submitting a request for Operating Subsidy pursuant to paragraph (a) of this section, determines that any project(s) under the Consolidated ACC will not require Operating Subsidy and should not be subject to the provisions of paragraph (a), the PHA shall accompany its request with a resolution certifying that no Operating Subsidy shall be utilized with respect to such project(s) after the effective date of this rule and that all financial records and accounts shall be kept separately for such project(s). In such case, the removal of the project(s) from the request for Operating Subsidy shall be reflected by the exclusion of that number of unit months available for the project(s) when making the calculations, under 24 CFR 890, for determination of the total amount of Operating Subsidy payable under the Consolidated ACC. In any event, no Operating Subsidy payable under a Consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project which is ineligible or otherwise excluded from Operating Subsidy under § 869.104. Even if no Operating Subsidy is received with respect to a project, the PHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

§ 869.106 ACC extension in absence of current operating subsidy.

Where Operating Subsidy under an ACC is not approved for payment during a time period which results in extension of the term of the ACC provisions related to project operation, with respect to a particular project, pursuant to § 869.105, the PHA shall, at least one year before the anticipated ACC Expiration Date for the project, notify HUD as to whether or not the PHA desires to maintain a basis for receiving Operating Subsidy with respect to the project after the anticipated ACC Expiration Date. This notification shall be submitted to the appropriate HUD Field Office in the form of a resolution of the PHA's Board of Commissioners. If the PHA does not desire to maintain a basis for Operating Subsidy payments with respect to the project after the anticipated ACC Expiration Date, the resolution shall certify that no Operating Subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the PHA does desire to maintain a basis for such Operating Subsidy payments, the resolution shall include the PHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon HUD's receipt of the request, HUD and the PHA shall enter into an ACC amendment effecting the extension for the period requested by the PHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in 24 CFR 870 (HUD's regulation on demolition or disposition of public housing).

§ 869.107 HUD approval of demolition or disposition before ACC expiration.

This Part is not intended to preclude or restrict the demolition or disposition of a project pursuant to HUD approval in accordance with 24 CFR 870. Subject to the requirements of 24 CFR 870, HUD may authorize a PHA to demolish or dispose of public housing at any time before the ACC Expiration Date.

Issued at Washington, D.C., June 25, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-23885 Filed 8-6-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7712]

Income Tax; Investment in United States Property by Controlled Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the exceptions to the definition of United States property under section 956 (b) (2) of the Internal Revenue Code of 1954. Changes in the applicable tax law were made by the Tax Reform Act of 1976. This document also contains final regulations under section 956 (c) which affect the computation of the investment of earnings in United States property by controlled foreign corporations. The regulations provide the public with the guidance needed to comply with the provisions of the Tax Reform Act of 1976 as well as guidance with respect to the clarification of existing regulations. The final regulations affect controlled foreign corporations making certain investments in United States property and their United States shareholders.

DATE: The amendments in general apply to taxable years beginning after December 31, 1975 except that the amendment to § 1.956-2 (c) (2) applies with respect to pledges made after September 8, 1980.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1979, the Federal Register published proposed regulations under sections 956 and 958 of the Internal Revenue Code of 1954 (44 FR 23880). Amendments under section 956 (a), (b)(2), and 958 were proposed to conform the regulations to amendments made to the Code by section 1021 of the Tax Reform Act of 1976 (90 Stat. 1618). Amendments made under section 956 (c) were intended to clarify existing regulations. A public hearing was held on October 30, 1979. After consideration all comments regarding the proposed amendments, this Treasury decision is adopted.

Discussion

The proposed amendments made changes to the regulations under section 965 (b) and 958 to conform the regulations to amendments made to the Code by section 1021 of the Tax Reform Act of 1976 (90 Stat. 1618). In addition, amendments were made to the regulations under section 956 (c) to clarify existing regulations.

Proposed § 1.956-2 (c) (2) dealing with indirect pledges or guarantees has been modified. Under the final regulations the pledge of stock of a controlled foreign corporation will be considered as an indirect pledge of the assets of the controlled foreign corporation only if at least 66⅔ percent of the voting power of the stock of the controlled foreign

corporation is pledged and only if, in addition, the pledge of stock is accompanied by negative covenants or similar restrictions. This provision applies to pledges made after September 8, 1980.

Proposed § 1.956-2 (c) (3) dealing with the facilitation of loans to shareholders has been eliminated. Although the Committee Report accompanying the Tax Reform Act of 1976 supports the position taken in the proposed regulations, a number of comments were received that the proposed section was too vague and could be misconstrued to cover situations not prohibited by section 956. Any need for specificity will be covered in rulings on particular facts. Examples (4) and (5) under proposed § 1.956-2 (c) (3) have also been eliminated. Example (4) dealt with the operation of an effective date which has been modified and Example (5) dealt with the concept of facilitation.

A change was also made under proposed § 1.956-2 (b) (1) (ix) in order to expand the concept of "when used" to include situations in which equipment has been purchased for use and not as yet used. Another change of a clarifying nature was made under § 1.956-2 (b) (1) (ix) with respect to the definition of movable drilling rigs and other oil and gas exploration and exploitation equipment used on the continental shelf of the United States.

Drafting Information

The principal author of these regulations is Jacob Feldman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Paragraph (b) of § 1.956-1 is amended by redesignating subparagraphs (2) and (3) as subparagraphs (3) and (4), respectively, and by adding new subparagraph (2) to read as set out below:

§ 1.956-1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

* * * * *

(b) *Amount of a controlled foreign corporation's investment of earnings in United States property.* * * *

(2) *Aggregate amount of United States property.* For purposes of determining an increase in earnings invested in United States property for any taxable year beginning after December 31, 1975, the aggregate amount of United States property held by a controlled foreign corporation at the close of—

(i) Any taxable year beginning after December 31, 1975, and

(ii) The last taxable year beginning before January 1, 1976

does not include stock or obligations of a domestic corporation described in section 956(b)(2)(F) or movable property described in section 956(b)(2)(G).

Par. 2. Section 1.956-2 is amended as follows:

1. Paragraph(b)(1) is amended by revising subdivision (iii), by redesignating subdivision (viii), as subdivision (x), and by adding subdivisions (viii) and (ix) as set forth below.

2. Paragraph (c) is amended as follows:

a. Subparagraph (1) amended by deleting "subparagraph (2)" from the first sentence and by inserting in lieu thereof "subparagraph (4)", and by deleting the last sentence and the examples.

b. Subparagraph (2) is redesignated as subparagraph (4) and new subparagraphs (2) and (3) are added to read as set forth below.

3. Paragraph (d)(1)(i) is revised by deleting "of paragraph (a)" from the first sentence, and by revising paragraph (d)(1)(i)(*b*) to read as set forth below.

4. Paragraph (d)(2) is revised by deleting "of paragraphs (a)(1)(iii) and (b)(1)(v)" from the first sentence.

§ 1.956-2 Definition of United States property.

(b) *Exceptions*—(1) *Excluded property.* * * *

(iii) Deposits with persons carrying on the banking business, unless the deposits serve directly or indirectly as a pledge or guarantee within the meaning of paragraph (c) of this section. See paragraph (e)(2) of § 1.956-1.

* * * * *

(viii) For taxable years beginning after December 31, 1975, the voting or nonvoting stock or obligations of an unrelated domestic corporation. For purposes of this subdivision, an unrelated domestic corporation is a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation making the investment, nor a corporation 25 percent or more of whose total combined voting power of all classes of stock entitled to vote is owned or considered as owned (within the meaning of section 958 (b)) by United States shareholders of the controlled foreign corporation making the investment. The determination of whether a domestic corporation is an unrelated corporation is made immediately after each acquisition of stock or obligations by the controlled foreign corporations.

(ix) For taxable years beginning after December 31, 1975, movable drilling rigs or barges and other movable exploration and exploitation equipment (other than a vessel or an aircraft) which are used exclusively on the Continental Shelf (as defined in section 638) of the United States in the exploration for, development, removal or transportation of natural resources from or under ocean waters. Property of the kind described in this subdivision which is being constructed or is in storage or in transit within the United States meets the requirements of § 1.956-2(b)(1) defining excluded property if it is actually used on the Continental Shelf by the last day of the taxable year following the year of purchase, commencement of storage or commencement of transit, and has nto been used by the taxpayer anyplace else. In general, the type of property which qualifies for the exception under this subdivision includes any movable property which would be entitled to the investment credit if used outside the United States in certain geographical areas of the Western Hemisphere pursuant to section 48(a)(2)(B) (x) (without reference to sections 49 and 50).

* * * * *

(c) *Treatment of pledges and guarantees*— (1)*General rule.* * * *

(2) *Indirect pledge or guarantee.* If the assets of a controlled foreign corporation serve at any time, even though indirectly, as security for the performance of an obligation of a United States person, then, for purposes of paragraph (c)(1) of this section, the controlled foreign corporation will be considered a pledgor or guarantor of that obligation. For this purpose the pledge of stock of a controlled foreign corporation will be considered as the indirect pledge of the assets of the corporation if at least 66 2/3 percent of the total combined voting power of all classes of stock entitled to vote is pledged and if the pledge of stock is accompanied by one or more negative covenants or similar restrictions on the shareholder effectively limiting the corporation's discretion with respect to the disposition of assets and the incurrence of liabilities other than in the ordinary course of business. This

paragraph (c)(2) applies only to pledges and guarantees which are made after September 8, 1980. For purposes of this paragraph (c)(2) a refinancing shall be considered as a new pledge or guarantee.

(3) *Illustrations.* The following examples illustrate the application of this paragraph (c):

Example (1). A, a United States person, borrows $100,000 from a bank in foreign country X on December 31, 1964. On the same date controlled foreign corporation R pledges its assets as security for A's performance of A's obligation to repay such loan. The place at which or manner in which A uses the money is not material. For purposes of paragraph (b) of § 1.956–1, R Corporation will be considered to hold A's obligation to repay the bank $100,000, and, under the provisions of paragraph (e)(2) of § 1.956–1, the amount taken into account in computing R Corporation's aggregate investment in United States property on December 31, 1964, is the unpaid principal amount of the obligation on that date ($100,000).

Example (2). The facts are the same as in example (1), except that R Corporation participates in the transaction, not by pledging its assets as security for A's performance of A's obligation to repay the loan, but by agreeing to buy for $1,00,000 at maturity the note representing A's obligation if A does not repay the loan. Separate arrangements are made with respect to the payment of the interest on the loan. The agreement of R Corporation to buy the note constitutes a guarantee of A's obligation. For purposes of paragraph (b) of § 1.956–1, R Corporation will be considered to hold A's obligation to repay the bank $100,000, and, under the provisions of paragraph (e)(2) of § 1.956–1, the amount taken into account in computing R Corporation's aggregate investment in United States property on December 31, 1964, is the unpaid principal amount of the obligation on that date . ($100,000).

Example (3). *A, a United States person, borrows $100,000 from a bank on December 10, 1981, pledging 70 percent of the stock of X, a controlled foreign corporation, as collateral for the loan. A and X use the calendar year as their taxable year. in the loan agreement, among other things, A agrees not to cause or permit X Corporation to do any of the following without the consent of the bank:*

(a) Borrow money or pledge assets, except as to borrowings in the ordinary course of business of X Corporation;

(b) Guarantee, assume, or become liable on the obligation of another, or invest in or lend funds to another;

(c) Merge or consolidate with any other corporation or transfer shares of any controlled subsidiary;

(d) Sell or lease (other than in the ordinary course of business) or otherwise dispose of any substantial part of its assets;

(e) Pay or secure any debt owing by X Corporation to A; and

(f) Pay any dividends, except in such amounts as may be required to make interest or principal payments on A's loan from the bank.

A retains the right to vote the stock unless a default occurs by A. Under paragraph (c)(2) of this section, the assets of X Corporation serve indirectly as security for A's performance of A's obligation to repay the loan and X Corporation will be considered a pledgor or guarantor with respect to that obligation. For purposes of paragraph (b) of § 1.956–1, X Corporation will be considered to hold A's obligation to repay the bank $100,000 and under paragraph (e)(2) of § 1.956–1, the amount taken into account in computing X Corporation's aggregate investment in United States property on December 31, 1981, is the unpaid principal amount of the obligation on that date.

(d) *Definitions*—(1) *Meaning of "acquired"*—(i) *Applicable rules.* For purposes of this section—

* * * * *

(*b*) Property which is an obligation of a United States person with respect to which a controlled foreign corporation is a pledgor or guarantor (within the meaning of paragraph (c) of this section) shall be considered acquired when the corporation becomes liable as a pledgor or guarantor or is otherwise considered a pledgor or guarantor (within the meaning of paragraph (c)(2) of this section); and

* * * * *

Par. 3. Section 1.958–2 is amended as follows:

1. The first sentence of paragraph (a) is revised as set out below.

2. Paragraph (b)(3) is amended by adding a new sentence immediately after the first sentence as set forth below.

3. Paragraph (d)(2) is amended by adding a new sentence immediately after the first sentence as set forth below.

§ 1.958–2 Constructive ownership of stock.

(a) *In general.* Section 958(b) provides that, for purposes of sections 951(b), 954(d)(3), 956(b)(2), and 957, the rules of section 318(a) as modified by section 958(b) and this section shall apply to the extent that the effect is to treat a United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of a controlled foreign corporation under section 956(b)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957. * * *

(b) *Members of family.* * * *

(3) *Stock owned by nonresident alien individual.* * * * However, this limitation does not apply for purposes of determining whether the stock of a domestic corporation is owned or considered as owned by a United States shareholder under section 956(b)(2) and § 1.956–2(b)(1)(viii). * * *

* * * * *

(d) *Attribution to partnerships, estates, trusts, and corporations.* * * *

(2) *Limitation.* * * * This limitation does not apply for purposes of determining whether the stock of a domestic corporation is owned or considered as owned by a United States shareholder under section 956(b)(2) and § 1.956–2(b)(1)(viii). * * *

(Secs. 956(c), 7805, Internal Revenue Code of 1954 (76 Stat. 1017, 68A Stat. 917; (26 U.S.C. 956(c) and U.S.C. 7805 respectively)))

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: July 18, 1980.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

[FR Doc. 80-23878 Filed 8-6-80; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects § 762.13 of the Permanent Regulatory Program published in the Federal Register, March 13, 1979, Part II, Book 3 of 3. The provision relates to land exempt from designation as unsuitable for surface coal mining operations.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Boyd B. Lewis (202) 343–5361. Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: This document corrects an error that appeared in the March 13, 1979, Permanent Regulatory Program and Title 30, Code of Federal Regulations, 1979. The page number corresponds to the March 13, 1979, Federal Register document. The following instructions will aid the user in locating the referenced:

Page—indicates the page number that appears in the upper margin of the March 13, 1979, Federal Register;

Section—indicates the Section and paragraph where the error occurred;
Lines—indicates the number of lines down from the referenced section.

The following correction is made:

§ 762.13 [Corrected]

On page 15344, § 762.13(a), line 3, "on the date of enactment;" is corrected to read "on the date of enactment of the Act;"

Dated: July 28, 1980.

Walter N. Heine,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 80-23872 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations; Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart agency, the St. Lawrence Seaway Authority of Canada, after reviewing their joint Seaway Regulations have determined that several sections are in need of revision. The Seaway Corporation will therefore amend Subpart A of 33 CFR Part 401 in order to 1) require certain new safety features and procedures, 2) revise provisions concerning the transportation of hazardous cargo in accordance with the International Maritime Dangerous Goods Code as promulgated by the Intergovernmental Maritime Consultative Organization (IMCO), 3) insure its consistency with actual operating procedures, and 4) clarify several existing regulations.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315) 764-0271, Ext. 245.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1979, the Seaway Corporation published in the Federal Register (44 FR 35256) proposed amendments to the Seaway Regulations which had been developed jointly with the Canadian Seaway Authority for the reasons set forth in the Summary.

Two comments were submitted in response to the notice of proposed rulemaking. The first comment was from the National Transportation Safety Board which suggested that two minor changes be made to the revised section on Dangerous Cargo, both of which have been made. As a result of the Board's suggestion, the word "flammable" (which had been used in the proposed rule interchangeably with "inflammable") will be used consistently. The Board also suggested that a phrase be added which explains the method by which a cargo's flashpoint is determined. This comment, too, has been adopted.

The second comment was from The Research and Special Projects Administration of the U.S. Department of Transportation. A request was made that The Hazardous Materials Transportation Act of the United States be included in the list of laws and regulations with which we require compliance in Part 401.66 of the Seaway Regulations. In accordance with this request, this suggestion has also been adopted.

Explanation of Changes

Since publication of the notice of proposed rulemaking, the Seaway Corporation and the Canadian Seaway Authority have held further discussions concerning the proposed amendments. As a result, several minor technical and editorial changes have been made, none of which have affected the substance of the amendments. Following is an explanation of the revised regulations.

The Table of Contents has been amended to reflect changes in several section headings.

In § 401.2, a definition for "flashpoint" was added in accordance with a request from the National Transportation Safety Board. A definition for "tanker" was also added. This was necessary as several of the sections included under the heading "Dangerous Cargo" are applicable to these vessels.

In § 401.3, paragraphs (b) and (d) have been amended to restrict vessel dimensions so as to protect all structures which could be interfered with at any of the locks. In the proposed rule, a specific reference was made to bascule bridges, but since bascule bridges are located at only a few of the locks, it is essential that the regulations provide for the protection of structures at all locks. Section 401.3(d)(1) was formerly noted only in Appendix I, but has now become § 401.3(d)(1) since it is a substantial rule. Appendix I has been retained to provide a block diagram which shows maximum allowable vessel dimensions as well as some explanatory notes.

In § 401.3(b), a correction in translation has been made, and § 401.3(d) has been redesignated as § 401.19(c).

The main text of § 401.5(b) has been relocated in substantially the same form to § 401.21 while its subparagraphs have been set forth in a new Schedule I. This change is designed to clearly indicate that the requirements contained therein apply only to the U.S. waters of the Seaway.

The heading to § 401.6 has been changed from "Draft markings" to "Markings" and a new paragraph (c) has been added to the section which requires that vessels with bulbous bows so indicate by placing special markings above their draft markings. This has appeared as a strong recommendation in the general Seaway Notice published by both Seaway entities for a number of years and is necessary so that the vessel may be safety spotted in the lock. Because the regulation will not be effective until the beginning of the 1981 navigation period, vessels will have an adequate time in which to comply with a relatively simple requirement.

In § 401.16, a reference to the vessel's weight has been substituted for a reference to the vessel's length. This will make the equipment required by the section dependent on the gross tonnage of the vessel rather than on its length and will keep the Seaway Regulations consistent in their requirements for equipment. Subsection 401.16(b) has been reworded for clarity with no change in substance.

As indicated above, a new paragraph (c) has been added to § 401.19 which prohibits the discharge of any substance onto lock or tie-up walls. In addition, the section's heading has been changed to read "Disposal and discharge systems".

The heading to § 401.20 has been changed to more accurately reflect the substance of the regulation. This had originally been changed in 1978 (43 FR 25817). However, the modification did not appear in the most recent edition of Title 33 of the Code of Federal Regulations.

As further stated above, § 401.21 has been modified to indicate that in addition to the requirements contained elsewhere in the Seaway Regulations, certain requirements as set forth in Schedule I are applicable only to the U.S. waters of the Seaway. The present § 401.21 provision that vessels be equipped with rudder angle indicators has been included in Schedule I.

Section § 401.23(a) is revised to reflect the fact that a condition of approval of an application for preclearance must show that the vessel is covered by

liability insurance equal to or exceeding $100 per gross registered ton.

Section 401.26 along with § 401.29(c), § 401.31(c)(4), § 401.35, § 401.43, § 401.62 and § 401.63 have been amended so as to delete any reference to the Canadian Sault Ste. Marie Lock. This is necessary to reflect that the Canadian Seaway Authority no longer has any responsibility for the area.

New security required of vessels as a result of the recently revised Tolls Schedule (43 FR 11672) has been set forth in § 401.26.

Subsection 401.31(c)(2) has been amended to prohibit smaller pleasure craft from overtaking and passing commercial vessels near lock entrances, the practice of which endangers both vessels.

As indicated previously, bascule bridges overhang several lock walls within the Seaway system. Section 401.3 has been amended to provide for this. Section 401.33 has also been amended to require that vessels whose dimensions exceed the maximum allowable under § 401.3(d) must apply for special transit instructions from either the Seaway Corporation or the Seaway Authority.

Section 401.35 has been reworded to conform to changes in Sections 401.3(b) and 401.3(d).

Subsection 401.40(a) has been revised to indicate that stop symbols rather than "Stop" signs are now in use at the locks.

Section 401.51 has been amended to require that a vessel master signal the vessel's presence to a bridgemaster by VHF radio rather than by using the vessel's whistle. This will make the regulation consistent with the usual practice.

Subsection 401.59(b) has been revoked and a new provision substituted therefor which requires that vessels only discharge substances in accordance with the applicable U.S. Federal Regulations and Canadian Regulations. Additionally, in the Welland Canal; two zones have been designated as prohibited discharge areas due to their proximity to municipal intake areas.

In Section 401.63 the control sectors beginning with Control Sector Number 4 are renumbered as follows to reflect the actual Sector Numbers.

Station; Control Sector Number

Seaway Clayton; 4.
Seaway Sodus; 4.
Seaway Newcastle; 5.
Seaway Welland; 6.
Seaway Long Point; 7.

In Sections 401.68 and 401.69, references to metric and short tons have been deleted, and the term, "tonnes" substituted in view of the fact that the phrase tonnes is metric.

Sections 401.66 through 401.73 have been revised in accordance with IMCO standards and applicable U.S. and Canadian statutes concerning the transportation of dangerous cargo.

Section 401.77, "Pleasure craft tolls" has been deleted because of non-use. However, Section 401.77 will be reserved.

Section 401.78 has been expanded to include additional required documents.

Section 401.80 has been amended to require a hazardous cargo vessel to report certain particulars of its cargo to the nearest Seaway station prior to entering or getting underway in the Seaway system.

Sections 401.84 and 401.85 have been substantially revised so as to group in one place applicable vessel reporting requirements.

A new Section 401.95, "Compliance with Regulations" has been added. This addition is necessary so that there is no misunderstanding as to whom the Regulations apply.

Sections 401.95 and 401.96 under NAVIGATION CLOSING PROCEDURES have now been redesignated Section 401.96, "Defintions", and Section 401.97, "Closing Procedures".

Schedules I, II and III presently follow Section 401.94. However, they will be moved to follow Section 401.97.

A new Schedule I which indicates additional maneuvering data and equipment required to be on board vessels transiting the U.S. waters of the Seaway has been added. This Schedule includes the requirements previously set forth in § 401.5(b). The remaining Schedules have been renumbered accordingly. In addition, several minor changes have been made to the redesignated Schedules II and III in order to make them consistent with operating procedures now in effect.

Appendix I is titled "Vessel Dimensions".

The Seaway Corporation has determined that the expected impact of this regulation is so minimal that it does not warrant either a Regulatory Analysis or a formal Evaluation as required by the Secretary of Transportation's Order concerning Regulatory Policies and Procedures (44 FR 11034). It is expected to result in negligible cost to a few vessel owners. There should be no added cost to or impact on consumers and/or Federal, state and local governments.

Since these amendments should require minimal action on the part of vessel owners and operators, good cause exists for making them effective upon publication.

1. The Table of Contents to the Seaway Regulations is amended by revising the section headings of Sections 401.6, 401.19, 401.20, 401.21, 401.77, 401.80, 401.84, 401.95, 401.96, 401.97; revising the headings of Schedules I, II and III, and adding Appendix I.

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

Sec.

* * * * *

401.6 Markings.

* * * * *

401.19 Disposal and discharge systems.
401.20 Oily water extractors.
401.21 Requirements for U.S. waters of the St. Lawrence Seaway.

* * * * *

401.77 [Revoked]

* * * * *

401.80 Reporting Dangerous Cargo.

* * * * *

401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.
401.85 Reporting of impairment or other hazard by vessels intending to transit the Seaway.

* * * * *

401.95 Compliance with Regulations.

Navigation Closing Procedures

401.96 Definitions.
401.97 Closing procedures.

Schedule I—Vessels Transiting U.S. Waters.
Schedule II—Table of Speeds.
Schedule III—Calling-in-Table.
Appendix I—Vessel Dimensions.

2. Section 401.2 is amended by adding in alphabetical order defintions for "flashpoint" and "tanker" and by redesignating the subparagraphs to reflect these additions.

§ 401.2 Interpretation.

* * * * *

"Flashpoint" means the temperature as determined by the closed-cup method.

* * * * *

"Tanker" means any vessel specifically constructed for carrying bulk cargoes of liquid petroleum products, liquid chemicals, liquid edible oils and liquified gases in tanks which form both an integral part and the total cargo carrying portion of that vessel.

* * * * *

3. Section 401.3 is amended by revising paragraphs (b) and (d) to read as follows:

§ 401.3 Maximum vessel dimensions.

* * * * *

(b) No vessel shall transit if any part of the vessel or anything on the vessel

extends more than 35.5 meters (116.5 feet) above water level.

* * * * *

(d) No vessel's hull or superstructure when alongside a lock wall shall extend beyond the limits of the lock wall, as illustrated in Appendix I.

(d)(1) A vessel having a beam width less than 23.16 meters (76 feet) and having dimensions exceeding the limits of the block diagram illustrated in Appendix I shall not transit a lock except in accordance with a permit to transit issued by the Authority.

§ 401.5 [Deleted]

4. Section 401.5(b) is deleted.

5. The heading to § 401.6 is changed and a new paragraph (c) is added as follows.

§ 401.6 Markings.

* * * * *

(c) Effective April 1, 1981, where a vessel's bulbous bow extends forward beyond her stem head, a symbol of a bulbous bow shall be marked above the 79.25 decimeters (26 feet) mark in addition to a "+" symbol followed by a number indicating the total length in meters by which the bulbous bow projects beyond the stem.

6. Section 401.16 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 401.16 Propeller direction alarms.

Every vessel of 1600 gross registered tons or more shall be equipped with

* * * * *

(b) Visible and audible wrong-way propeller direction alarms located in the wheelhouse and the engine room, unless the vessel is fitted with a device which renders it impossible to operate engines against orders from the bridge telegraph.

7. The heading to § 401.19 will be changed and a new paragraph (c) added as follows:

§ 401.19 Disposal and discharge systems.

* * * * *

(c) No substance shall be discharged or disposed of onto a lockwall or tie-up wall by any means, including overboard discharge pipes.

8. The heading to Section 401.20 is revised to read as follows.

§ 401.20 Oily water extractors.

* * * * *

9. Section 401.21 is revised to read as follows:

§ 401.21 Requirements for U.S. waters of the St. Lawrence Seaway.

In addition to the requirements set forth elsewhere in these Regulations, vessels transiting the U.S. waters of the St. Lawrence Seaway are subject to the requirements set out in Schedule I.

10. Section 401.23(a) is amended to read as follows:

§ 401.23 Liability insurance.

(a) It is a condition of approval of an application for preclearance that the vessel is covered by liability insurance equal to or exceeding $100 per gross registered ton.

* * * * *

11. The introductory paragraph to § 401.26(a) and § 401.26 (b) and (c) are revised to read as follows:

§ 401.26 Security for tolls.

(a) Before transit by a vessel to which the requirement of preclearance applies, security for the payment of tolls in accordance with the St. Lawrence Seaway Tariff of Tolls as well as security for any other charges, shall be provided by the representative by means of * * *

* * * * *

(b) The security for the tolls of a vessel shall be sufficient to cover the gross registered tonnage of the vessel:

(1) On the Seaway between Montreal and Lake Ontario, at $1.50 per ton for transit each way or at $3.00 per ton for a round trip;

(2) On the Welland Canal, at $1.25 per ton for transit each way or at $2.00 per ton for a round trip; and shall be maintained in an amount sufficient to cover each transit for which tolls have been incurred and are unpaid.

(c) Where a number of vessels:

(1) Are owned or controlled by the same individual or company, and

(2) Have the same representative, the security for the tolls may be provided in an amount estimated by the representative to be equal to $2.20 per ton for the aggregate maximum tonnage of the vessels within the Seaway at any one time and shall be maintained in an amount sufficient to cover each transit for which tolls have been incurred and are unpaid.

* * * * *

§ 401.29 [Amended]

12. Paragraph (c) of § 401.29 is revoked.

13. Section 401.31 (c)(2) is revised as follows and (c)(4) is revoked.

§ 401.31 Meeting and passing.

* * * * *

(c) * * *

(2) Within 609.60 meters (2,000 feet) of a canal or lock entrance

* * * * *

14. Section 401.33 is revised to read as follows:

§ 401.33 Special instructions.

Special instructions shall be applied for from the Corporation or the authority in connection with the intended transit of vessels of unusual design, hulks, sections of vessels, large dredges, all vessels in tow and vessels whose limits exceed the requirements of § 401.3(d), and such vessels shall not transit except in compliance with such instructions.

15. Section 401.35 is revised to read as follows:

§ 401.35 Employment of tugs.

No tug shall be fastened alongside a vessel in a canal so that the aggregate of the beams exceeds 23 meters (75 feet 6 inches).

16. In § 401.40, paragraph (a) is revised to read as follows:

§ 401.40 Entering a lock.

(a) No vessel shall proceed into a lock in such a manner that the stem passes the stop symbol on the lock wall nearest the closed gates.

* * * * *

17. Section 401.43 is revised to read as follows:

§ 401.43 Mooring table.

Unless otherwise directed by an officer, vessels passing through locks in the South Shore, Beauharnois, Wiley-Dondero, Iroquois and Welland Canals shall moor at the side of the tie-up wall or lock as shown in the table to this section.

§ 401.43 [Table Amended]

The table to § 401.43 is amended by deleting therefrom the portion entitled "Canadian Sault Ste. Marie".

18. Section 401.51 is revised as follows:

§ 401.51 Signalling approach to a bridge.

Unless a vessel's approach has been recognized by a flashing signal, the master shall signal the vessel's presence to the bridgemaster by VHF radio when it comes abreast of any of the bridge whistle signs, which signs shall be placed at distances varying between 670.56 meters and 1500 meters (2200 feet and 4921 feet) upstream and downstream from movable bridges at sites other than lock sites.

19. Paragraph (b) of § 401.59 is amended to read as follows:

§ 401.59 Pollution.

* * * * *

(b) No vessel shall discharge into Seaway waters any substance not in conformity with applicable United States Federal Regulations and Canadian Regulations with the exception of the waters of the Welland Canal where two specific zones are established in which no substances shall be discharged, namely,

(1) From Lock 7 (Thorold) to mile 17 (Welland); and

(2) From Lock 8 (Port Colborne) to the outer Port Colborne Piers (Lake Erie).

* * * * *

20. Section 401.62 is amended as follows:

§ 401.62 [Amended]

The following Seaway station is deleted:

VDX23 (Seaway Sault)—Sault Ste. Marie, Ontario—Traffic Control Sector No. 8.

21. In § 401.63, the control sectors are renumbered to reflect the actual Sector Numbers.

§ 401.63 Radio procedure.

* * * * *

Control Sector; No. and Station

* * * * *

4 Seaway Clayton.
4 Seaway Sodus.
5 Seaway Newcastle.
6 Seaway Welland.
7 Seaway Long Point.

The following is deleted.

9 Seaway Sault	C.I.P. No. 17 to C.I.P. No. 18	Channel 14	Channel 14	Channel 16

22. Sections 401.66 through 401.73 under the heading of "DANGEROUS CARGO" are revised as follows:

Dangerous Cargo

§ 401.66. Applicable laws.

Vessels carrying a cargo or part cargo of fuel oil, gasoline, crude oil or other flammable goods in bulk, including empty tankers which are not gas free, and vessels carrying dangerous substances whether break-bulk or containerized, to which regulations made under the *Canada Shipping Act*, or under the *Transportation of Dangerous Goods Act* or to which the *Dangerous Cargo Act* or the *Hazardous Materials Transportation Act* of the United States or regulations issued pursuant thereto apply, shall be deemed to carry dangerous substances and shall not transit unless all requirements of the said Statutes and regulations and of these Regulations have been fulfilled.

§ 401.67 Explosive vessles.

A vessel carrying explosives, either Government or commercial, as defined in the Dangerous Cargo Act of the United States and in the International Maritime Dangerous Goods Code, Class 1, Divisions 1.1 to 1.5 inclusive, shall be deemed for the purpose of these Regulations to be an explosive vessel.

§ 401.68 Explosives permit.

(a) A Seaway Explosives Permit is required for an explosive vessel in the following cases:

(1) For all vessels carrying any quantity of explosives with a mass explosive risk, up to a maximum of 2 tonnes (2.2 tons) (IMCO Class 1, Division 1.1);

(2) For all vessels carrying more than 10 tonnes (11.02 tons) and up to a maximum of 50 tonnes (55.12 tons) of explosives that do not explode en masse (IMCO Class 1, Division 1.2);

(3) For all vessels carrying more than 100 tonnes (110.23 tons) and up to a maximum of 500 tonnes (551.16 tons) of explosives having a fire hazard without explosive effect (IMCO Class 1, Division 1.3); and

(4) For all vessels carrying more than 100 tonnes (110.23 tons) and up to a maximum of 500 tonnes (551.16 tons) of safety explosives and shop goods (IMCO Class 1, Divisions 1.4 and 1.5).

(b) When an explosive vessel is carrying quantities of explosives above the maximum mentioned in paragraph (a), no Seaway Explosives Permit shall be granted and the vessel shall not transit.

(c) A written application for a Seaway Explosives Permit may be made to the Chief, Office of Lock Operations, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 or to the Manager of Operational Services, The St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario K6J 3P7. The application shall show that the cargo is packed, marked, labeled, described, certified, stowed and otherwise conforms with all relevant regulations of the country in which it was loaded and of Canada and the United States.

(d) A signed copy of a Seaway Explosives Permit and a true copy of any certificate as to the loading of dangerous cargo shall be kept on board every explosive vessel in transit and shall be made available to any officer requiring production of such copies.

§ 401.69 Hazardous cargo vessels.

For the purpose of these Regulations, a vessel shall be deemed to be a hazardous cargo vessel in the following cases:

(a) A tanker carrying fuel oil, gasoline, crude oil or other flammable liquids in bulk, having a flashpoint below 61°C, including a tanker that is not gas free where its previous cargo had a flashpoint below 61°C;

(b) A tanker carrying compressed liquefied gases, bulk acids or liquefied chamicals;

(c) A dry cargo vessel carrying the following dangerous substances, whether in bulk, break-bulk or containerized, that are

(1) In excess of 50 tonnes (55.12 tons) of gases, compressed, liquefied or dissolved under pressure (IMCO Class 2),

(2) In excess of 50 tonnes (55.12 tons) of flammable liquids having a flashpoint below 61°C (IMCO Class 3),

(3) In excess of 50 tonnes (55.12 tons) of flammable solids spontaneously combustible material or substances emitting combustible gases when wet (IMCO Class 4),

(4) In excess of 50 tonnes (55.12 tons) of oxidizing substances or organic peroxides (IMCO Class 5),

(5) Any quantity of poisonous (toxic) substances and infectious substances (IMCO Class 6),

(6) Any quantity of radioactive substances (IMCO Class 7),

(7) In excess of 50 tonnes (55.12 tons) of corrosive substances (IMCO Class 8),

(8) Any quantity of metal turnings, borings, cuttings, or shavings in bulk having a temperature on loading or in transit in excess of 65.5°C, and

(9) Any quantity of grain that is under fumigation, where the chemical being used is hazardous to human life.

§ 401.70 Fendering—Explosive and hazardous cargo vessels.

All explosive vessels requiring a permit in accordance with § 401.68 and

all tankers carrying cargo with a flashpoint of up to 61°C, except those carrying such cargo in center tanks with gas free wing tanks, shall be equipped with a sufficient number of non-metallic fenders on each side to prevent any metallic part of the vessel from touching the side of a dock or lock wall.

§ 401.71 Signals—Explosive and hazardous cargo vessels.

(a) An explosive vessel shall display at the masthead or at an equivalent conspicuous position a "B" flag.

(b) A hazardous cargo vessel shall display at the masthead or at an equivalent conspicuous position a "B" superior to numeral pennant number 1.

§ 401.72 Reporting—Explosive and hazardous cargo vessels.

(a) Every explosive vessel or hazardous cargo vessel shall, when reporting information related to cargo as required by § 401.64(a), report the nature and tonnage of its explosive or hazardous cargo and the flashpoint of that cargo where applicable. Every vessel carrying grain which is under fumigation shall declare the nature of the fumigant and its properties.

(b) Every explosive vessel requiring a Seaway Explosives Permit shall, when reporting in, give the number of its Seaway Explosives Permit.

(c) Every hazardous cargo vessel carrying metal turnings, shavings, cuttings or borings in bulk shall, when reporting information related to cargo as required by § 401.64(a), give the high temperature reading of each compartment at that time, together with the high temperature reading in each compartment taken on completion of loading.

(d) Every vessel carrying radioactive substances shall, when reporting in, give the number and date of issue of any required certificate issued by the Atomic Energy Control Board authorizing such shipment.

§ 401.73 Cleaning tanks—Hazardous cargo vessels.

Gas freeing and cleaning of cargo tanks shall not take place:

(a) In a canal or a lock;

(b) In an area that is not clear of other vessels or structures; and

(c) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

§ 401.77 [Reserved]

22. Section 401.77 entitled Pleasure craft tolls is revoked and reserved because of non-use.

23. Section 401.78 under INFORMATION and REPORTS is revised as follows:

§ 401.78 Required information.

(a) Documentary evidence, comprising inspection certificates, load line certificates, crew lists, dangerous cargo manifest and the cargo stowage plan, shall be carried on board and shall be made available to any officer requiring production of such evidence.

(b) Documentary evidence, comprising evidence of cargo declared, cargo manifest, dangerous cargo manifest and bills of lading, shall be kept by the agent, owner or operator for a period of five years, or until an audit has been performed by the Corporation or the Authority, whichever occurs first, and such documents shall be made available to an officer requiring production of such evidence.

24. Section 401.80 is revised to read as follows:

§ 401.80 Reporting dangerous cargo.

(a) The master of any explosive vessel or hazardous cargo vessel shall report or shall cause to be reported to the nearest Seaway station at least three hours prior to expected entry into the Seaway System, the nature and quantity of the dangerous cargo and where it is stowed on the vessel.

(b) The master of any vessel, that takes an explosive or hazardous cargo while in the Seaway System, shall report to the nearest Seaway station at least three hours prior to commencing transit the nature and quantity of the dangerous cargo and where it is stowed on the vessel.

25. Section 401.84 is revised to read as follows:

§ 401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

While transiting the Seaway, the master of a vessel shall immediately report to the nearest Seaway station:

(a) Any condition of the vessel that might impair its ability to transit safely and expeditiously;

(b) Any hazardous condition of the vessel;

(c) Any malfunction on the vessel of equipment required by § 401.5 and § 401.21;

(d) Any difficulty on the part of the vessel in controlling its tow or tows;

(e) Any hazard, dangerous situation or malfunctioning aid to navigation which has not been published in a Notice to Mariners;

(f) Any loss of anchor with particulars of the precise location of the loss; and

(g) Any location where visibility is less than one nautical mile (1.15 statute miles).

26. Section 401.85 is revised to read as follows:

§ 401.85 Reporting of impairment or other hazard by vessels intending to transit the Seaway.

The master of any vessel which intends to transit the Seaway shall report to the nearest Seaway Station, prior to entering the Seaway, any of the conditions set out in paragraphs (a) to (d) of § 401.84.

27. Sections 401.95 and 401.96 are renumbered as §§ 401.96 and 401.97 respectively and the introductory text to § 401.96 is revised as follows:

§ 401.96 Definitions.

In § 401.97: * * *

* * * * *

28. A new § 401.95 is added as follows:

§ 401.95 Compliance with regulations.

The master or owner of a vessel shall ensure that all requirements of these Regulations applicable to that vessel are complied with.

29. A new general heading, "Navigation Closing Procedures" is added before § 401.96

30. Schedule I, "Table of Speeds", and Schedule II, "Calling-in Table", are renumbered as Schedules II and III, respectively, A new Schedule I is added as follows:

Schedule I—

Vessels Transiting U.S. Waters

No vessel of 1600 gross tons or more shall transit the U.S. waters of the St. Lawrence Seaway unless it is equipped with the following maneuvering data and equipment:

(a) Charts of the Seaway that are currently corrected and of large enough scale and sufficient detail to enable safe navigation. These may be published by a foreign government if the charts contain similar information to those published by the U.S. Government.

(b) U.S. Coast Guard Light List, currently corrected.

(c) Current Seaway Notices Affecting Navigation.

(d) The following maneuvering data prominently displayed on a fact sheet in the wheelhouse:

(1) For full and half speed, a turning circle diagram to port and starboard that shows the time and distance of advance and transfer required to alter the course 90 degrees with maximum rudder angle and constant power settings:

(2) The time and distance to stop the vessel from full and half speed while maintaining approximately the initial heading with minimum application of rudder;

(3) For each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds;

(4) For each vessel that is fitted with an auxiliary propeller, a table of control settings for a representative range of speeds;

(5) For each vessel that is fitted with an auxiliary device to assist in maneuvering,

such as a bow thruster, a table of vessel speeds at which the auxiliary device is effective in maneuvering the vessel;

(6) The maneuvering information for the normal load and normal ballast condition for:

(A) Calm weather—wind 10 knots or less, calm sea;

(B) No current;

(C) Deep water conditions—water depth twice the vessel's draft or greater; and

(D) Clean hull.

(7) At the bottom of the fact sheet, the following statement:

Warning

The response of the (name of the vessel) may be different from the above if any of the following conditions, on which the maneuvering is based, are varied:

(a) Calm weather—wind 10 knots or less, calm sea;

(b) No current;

(c) Deep water conditions—water depth twice the vessel's draft or greater;

(d) Clean hull;

(e) Intermediate drafts or unusual trim.

(e) Illuminated magnetic compass at main steering station with compass deviation table, graph or record.

(f) Gyro-compass with illuminated gyro-repeater at main steering station.

(g) Marine radar system for surface navigation.

(h) Efficient echo sounding device.

(i) Illuminated rudder angle indicator or repeaters that are:

(1) Located in the wheelhouse;

(2) Arranged so that they can easily be read from any position on the bridge.

(j) Illuminated indicator showing the operating mode of that device when vessel is equipped with auxiliary maneuvering devices.

Schedule II [Amended]

31. Schedule II, "Table of Speeds*", is amended by deleting entry 14, renumbering entries 15 and 16 as 14 and 15 respectively, and revising entries 1, 3, 4, 5, 9 and 10 as follows:

From	To	Maximum speed over the bottom (knots)	
		Col. III	Col. IV
1. Upper Entrance South Shore Canal.	Lake St. Louis Buoy 13A.	10.4 (12 mph).	10.4 (12 mph)
* * * * *			
3. Upper Entrance Beauharnois Lock Buoy 5B.	Lake St. Francis Buoy 27F.	8.6 (10 mph upb).	8.6 (10 mph dnb)
4. Lake St. Francis Buoy 27F.	Lake St. Francis Buoy 87 F.	15.5 (18 mph).	15.5 (18 mph)
5. Lake St. Francis Buoy 87F.	Snell Lock	8.6 (10 mph upb).	7.7 (9 mph upb)
* * * * *			
9. Ogden Island Buoy 99.	Blind Bay ½ mile east of Buoy 162.	13 (15 mph)	10.4 (12 mph)
10. Blind Bay ½ mile east of Buoy 162.	Deer Island Lt. 186.	11.3 (13 mph).	10.4 (12 mph)
* * * * *			
14. Port Robinson.	Ramey's Bend through the Welland By-Pass.	7.7 (9 mph)	7.7 (9 mph)
15. All other canals.		6.1 (7 mph)	6.1 (7 mph)

*Maximum speeds at which a vessel may travel in identified area in both normal and high water conditions are set out in this schedule. The Corporation and the Authority will, from time to time, designate the set of speed limits that is in effect.

32. Schedule III, "Calling-in Table" is amended by revoking Items 25, 26, 27, 28 and 52. In addition, Item 53 will be revised to read as follows:

C.I.P. and Checkpoint	Station to Call	Message Content
Downbound vessels.		
* * * * *		
53. St. Nicholas Island.	Seaway Beauharnois Ch. 14.	1. Name of Vessel. 2. Location. 3. Confirm harbor or river pilot requirement—St. Lambert. 4. Montreal Harbor Berth Number (if applicable).

* * * * *

33. The former Schedule III which noted locations where pleasure craft tickets could be purchased is revoked.

34. Appendix I is added to read as follows.

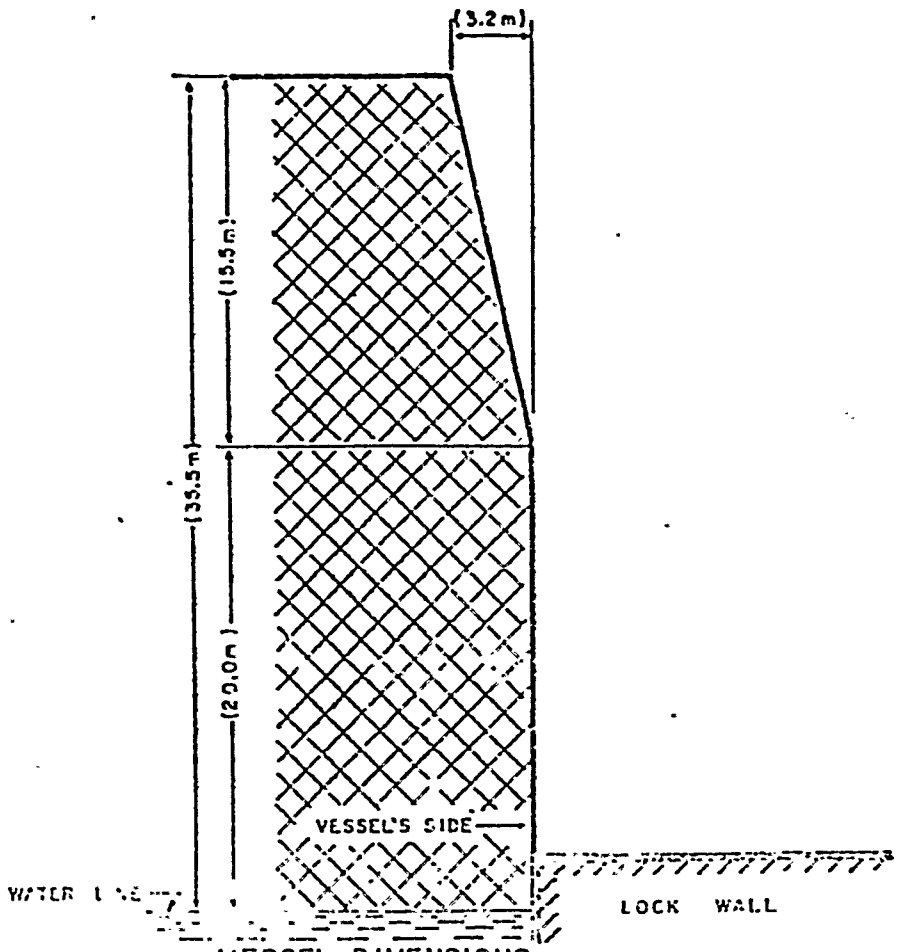
Appendix I—Vessel Dimensions

Structures are located at a number of Seaway locks which, when fully raised, overhang the lock wall at a given point, thereby limiting:

(a) The height of a vessel above the water line measured at the vessel's side; and

(b) The height of other structures that are located near the sides of the vessel, such as derricks, crosstrees, antennas, etc.

The following block diagram shows the limits beyond which a vessel's hull or superstructure cannot extend *when the vessel is alongside the lock wall.*



VESSEL DIMENSIONS

Block Diagram

NB. Not to scale

The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16 m (76 feet). For vessels that have a beam width less than this and that have dimensions exceeding the limits of the block diagram (measured with the vessel alongside the lock wall), a special permission to transit must be obtained. (Accurate measurements may be required before such permission is granted).

Caution: Masters must take into account the ballast draft of the vessel when verifying the maximum permissible dimensions.

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and Sections 4, 5, 6, 7, 8, 12 and 13 of SEC. 2 of Pub. L. 95–474, 92 Stat. 1471).

Issued at Washington, D.C. on July 21, 1980.

Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 80-22236 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5745

[M-39381]

Montana; Withdrawal of National Forest Lands for Selway-Bitterroot Wilderness Trailhead Facility and Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 80.72 acres of national forest land for a recreation area and trailhead facilities into the Selway-Bitterroot Wilderness Area.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Dan Stark, Montana State Office, 406–657–6291.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from location and entry under the mining laws (30 U.S.C., Ch. 2), for a trailhead facility into the Selway-Bitterroot Wilderness Area:

Lolo National Forest

Principal Meridan

T. 11 N., R. 21 W.,
Sec. 6, West 660 feet of lot 3, East 1,000 feet of lot 4, and East 1,000 feet of lot 5.

The area described contains 80.72 acres in Missoula County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

James W. Curlin,

Acting Assistant Secretary of the Interior.

July 31, 1980.

[FR Doc 80-23883 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5746

[R-1663]

California; Withdrawal for National Forest Recreation and Administrative Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 789.97 acres of national forest lands from the mining laws for recreation and administrative sites in the Inyo National Forest.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Marie Getsman, California State Office, 916–484–4431.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), it is hereby ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the United States mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

Inyo National Forest

Mount Diablo Meridian

June Lake Loop Recreation Area

Rush Creek Campground

T. 1 S., R. 26 E.,
Sec. 33, E½SW¼SW¼, W½SE¼SE¼.
T. 2 S., R. 26 E.,
Sec. 4, W½ of Lot 1, E½of Lot 2, SW¼NE¼, NW¼SE¼NE¼, NE¼SE¼NW¼, S½SE¼NW¼, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, N½NW¼SE¼, SW¼SW¼, W½SE¼SW¼;
Sec. 5, SE¼SE¼SE¼;
Sec. 8, NE¼NE¼NE¼, S½NE¼NE¼, SE¼NE¼, SE¼SW¼NE¼;
Sec. 9, W½W½NW¼, NE¼NW¼NW¼.

June Lake Beach

T. 2 S., R. 26 E.,
Sec. 1, Lot 5;
Sec. 2, S½ of Lot 5.

Silver Lake Campground

T. 2 S., R. 26 E.,
Sec. 8, E½ of Lot 1, W½ of Lot 2, E½NW¼SE¼, W½NE¼SE¼, N½NE¼NE¼SE¼

Oh! Ridge Viewpoint

T. 2 S., R. 26 E.,
Sec. 12, Lot 1.

Gull Lake Campground

T. 2 S., R. 26 E.,
Sec. 14, N½SW¼SW¼;
Sec. 15, E½E½ of Lot 2.

Lone Pine Creek Recreation Area

Whitney Portal

T. 15 S., R. 34 E.,
Sec. 35, S½SE¼NE¼, SE¼SW¼NE¼, E½NW¼SE¼;
Sec. 36, E½SW¼NW¼NE¼, SE¼NW¼NE¼, W½SW¼NE¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼.

Lone Pine

T. 15 S., R. 35 E.,
Sec. 29, S½N½SE¼, N½S½SE¼.

The areas described aggregate approximately 789.87 acres in Inyo and Mono Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit or governing the

disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

James W. Curlin,

Acting Assistant Secretary of the Interior.

July 31, 1980.

[FR Doc. 80-23882 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5871]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	County	Location	Community No	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Arizona	Maricopa	Chandler, city of	040040B	July 16, 1980, suspension withdrawn	May 24, 1977, and Jan. 17, 1978.
Arkansas	Benton	Bentonville, city of	050012B	do	May 10, 1974, and Feb. 27, 1976.
Do	Monroe	Clarendon, city of	050165B	do	Dec. 28, 1973.
Do	Scott	Waldron, city of	050193B	do	Apr. 5, 1974, and Dec. 10, 1976.
California	Santa Clara	Los Altos, city of	060341B	do	June 7, 1974, and Sept. 24, 1976.
Connecticut	Hartford	Berlin, town of	090022B	do	Aug. 16, 1974, and April. 8, 1977.
Do	Middlesex	Chester, town of	090065B	do	Sept. 7, 1973, and Nov. 5, 1976.
Do	do	Essex, town of	090065B	do	Oct. 26, 1973, and Aug. 20, 1976.
Florida	Bay	Callaway, city of	120005B	do	Aug. 9, 1974, and Oct. 15, 1976.
Georgia	Gwinett	Snellville, city of	130102A	do	Mar. 19, 1976.
Illinois	do	Dolton, village of	170063C	do	Mar. 22, 1974, and Apr. 2, 1976 and May 12, 1978.
Do	Madison	Madison, city of	170446B	do	Nov. 23, 1973, and Aug. 27, 1976.
Do	do	Palos Park, village of	170144B	do	Mar 15, 1974, and June 4, 1976.
Do	do	Park Forest, village of	170145C	do	Apr. 12, 1974, and Nov. 28, 1975, Mar. 31, 1978.
Do	Cook and Will	Park Forest South, village of	170708A	do	Sept. 19, 1975.
Do	Madison	Pontoon Beach, Village of	170447A	do	Nov. 22, 1974; Mar. 22, 1974, and Sept. 12, 1975.
Louisiana	Caddo	Oil City, town of	220002B	do	Dec. 27, 1974, and Oct. 3, 1975.
Do	St. Martin	Parks, village of	220190B	do	Jan. 23, 1974, and Dec. 5, 1975.
Do	Madison	Richmond, village of	220125A	do	Oct. 1, 1976.
Maine	Oxford	Fryeburg, town of	230093B	do	Aug. 2, 1975, and Oct. 29, 1976.
Michigan	Oakland	Farmington, city of	260171B	do	Oct. 12, 1973, and June 4, 1976.
Do	Macomb	Mount Clemens, city of	260124B	do	Oct. 5, 1973, and Mar. 5 1976.
Do	do	Shelby, township of	260126B	do	May 31, 1974, and Mar. 18, 1977.
Do	Berrien	St. Joseph, township of	260045A	do	July 30, 1976.
Do	Washtenaw	Ypsilanti, city of	260216B	do	June 14, 1974, and June 11, 1976.

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Minnesota	Anoka	Ham Lake, city of	270674B	do	Aug. 15, 1975, and May 28, 1976.
Do	Dakota and Washington	Hastings, city of	270105C	do	Nov. 16, 1973, and June 11, 1976; Apr. 15, 1977.
Do	Jackson	Jackson, city of	270213D	do	Oct. 26, 1973, and May 28, 1976, Dec. 31, 1976, and Mar. 18, 1977.
Do	Todd	Long Prairie, city of	270479B	do	Apr. 12, 1974, and Aug. 6, 1976.
Do	Dakota	Randolph, city of	270112B	do	July 19, 1974, and Oct. 31, 1975.
Do	do	Rosemount, city of	270113B	do	June 7, 1974, and Nov. 14, 1975.
Do	Morrison	Sobieski, city of	270304B	do	Aug. 16, 1974, and June 11, 1976.
Missouri	Greene	Ash Grove, city of	290751A	do	Apr. 25, 1975.
Do	Shannon	Birch Tree, city of	290417B	do	Mar. 15, 1974, and Nov. 21, 1975.
Do	Stone	Crane, city of	290430B	do	June 7, 1974 and Oct. 3, 1975.
New York	Steuben	Hornellsville, town of	36077B	do	June 28, 1974 and Apr. 15, 1977.
North Dakota	Cass	Noble, township of	380268A	do	
Do	do	Wiser, township of	380267A	do	
Oklahoma	Osage	Avant, town of	400147B	do	Sept. 13, 1974 and Jan. 9, 1976.
Do	do	Barnsdall, city of	400148B	do	Dec. 17, 1973 and Apr. 9, 1976.
Do	McCurtain	Idabel, city of	400108B	do	Jan. 23, 1974 and Jan. 17, 1976.
Do	Osage	Pawhuska, city of	400152B	do	Mar. 15, 1974 and Nov. 26, 1976.
Do	Tulsa and Osage	Skiatook, town of	400212C	do	June 7, 1974 and Aug. 9, 1977.
Do	Pottawatomie	Tecumseh, city of	400179B	do	July 19, 1974 and Nov. 12, 1976.
Do	Oklahoma	The Village, city of	400420A	do	Oct. 29, 1976.
Pennsylvania	Erie	McKean, township of	422623B	do	Mar. 9, 1979.
Do	Allegheny	Springdale, borough of	421282B	do	Feb. 8, 1974, and July 16, 1976.
Do	do	Springdale, township of	420074B	do	May 24, 1974, and May 14, 1976.
South Carolina	Orangeburg	Bowman, town of	450161B	do	May 31, 1974, and Apr. 23, 1976.
Do	do	Orangeburg, city of	450164B	do	June 28, 1974 and Sept. 26, 1975.
Texas	Tarrant	Blue Mound, city of	480587B	do	Dec. 17, 1973, and Apr. 23, 1976.
Do	do	Pantego, town of	481116A	do	Aug. 13, 1976.
Do	Rockwall	Royse City, city of	480548B	do	June 28, 1974 and June 25, 1976.
Vermont	Orleans	North Troy, village of	500087B	do	Aug. 2, 1974 and Nov. 5, 1976.
Washington	Thurston	Lacey, city of	530190B	do	June 28, 1974 and Oct. 3, 1975.
Wisconsin	Dodge	Theresa, village of	550106B	do	Dec. 7, 1973 and Jan. 2, 1976.
Pennsylvania	Crawford	Summerhill, township of	422399	July 16, 1980, emergency	Jan. 31, 1975.
Alabama	Madison	Triana, town of	010155	July 21, 1980, emergency	June 25, 1976.
Texas	Harris and Fort Bend	Chelford City Municipal Utility District.	481568—New	do	
Do	do	Kingsbridge Municipal Utility District.	481567	do	
New York	Rensslae	Brunswick, town of	361130B	Aug. 26, 1977, emergency, June 4, 1980, regular, June 4, 1980, suspended, July 25, 1980, reinstated.	Nov. 12, 1976.
Pennsylvania	Luzerne	Conynham, borough of	420992B	Aug. 24, 1973, emergency, July 16, 1980, regular, July 16, 1980, suspended, July 28, 1980, reinstated.	May 10, 1974 and Oct. 22, 1976.
Colorado	Grand	Winter Park, town of	080305—New	July 30, 1980, emergency	
Illinois	Cook	Bedfork Park, village of	171007—New	do	
New York	St. Lawrence	Morristown, town of	360706B	do	Sept. 6, 1974, July 16, 1976, and July 1, 1977.
Pennsylvania	Susquehanna	Lathrop, township of	422085	do	Nov. 29, 1974.
Connecticut	Hartford	Enfield, town of	090028B	Apr. 4, 1974, emergency, Mar. 28, 1980, regular, Mar. 28, 1980, suspended, June 19, 1980, reinstated.	Apr. 5, 1974 and May 10, 1977.
Illinois	Henry	Green Rock, city of	170285C	July 22, 1975, emergency, July 16, 1980, regular, July 16, 1980, suspended, July 29, 1980, reinstated.	Jan. 16, 1974, May 28, 1976, Mar. 11, 1977.
Pennsylvania	Northampton	Forks, township of	421930B	Sept. 19, 1975, emergency, July 16, 1980, regular, July 16, 1980, suspended, July 30, 1980, Reinstated.	Nov. 8, 1974 and Jan. 23, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1966); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: July 29, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-23842 Filed 8-6-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5872]

List of Withdrawal of Flood Insurance Maps Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Federal Insurance Administration, have been temporarily withdrawn for administrative or technical reason. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATES: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The list includes the date that each map was

withdrawn, and the effective date of its republication, if it has been republished. If a flood-prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, requires, at Section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) for acquisition and construction of buildings, and

(2) for buildings located in a special flood hazard area identified by the Director of Federal Emergency Management Agency.

One year after the identification of the community as flood-prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction of buildings in these areas unless the community has entered the program. The denial of such financial assistance has no application outside of the identified special flood hazard areas of such flood-prone communities.

Prior to July 1, 1975, the statutory requirement for the purchase of flood insurance did not apply until and unless the community entered the program and the special flood hazard areas were identified by the issuance of a flood insurance map. However, after July 1, 1975, or one year after identification, whichever is later, the requirement applies to all communities in the United States that are identified as having special flood hazard areas within their community boundaries, so that, no such financial assistance can legally be provided for buildings in these areas unless the community has entered the program.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Insurance Administration's (FEMA) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FIA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new applications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 44 CFR Part 59 et seq.)

As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication. Accordingly, Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations is amended as follows:

1. Present § 65.6 is revised to read as follows:

§ 65.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 5149
40 FR 17015
40 FR 20798
40 FR 46102
40 FR 53579
40 FR 56672
41 FR 1478
41 FR 50990
41 FR 13352
41 FR 17726
42 FR 8895
42 FR 29433
42 FR 46226
42 FR 64076
43 FR 24019
44 FR 815
44 FR 6383
44 FR 18485
44 FR 25636
44 FR 34120
44 FR 52835
44 FR 57094
44 FR 12421
44 FR 26051
44 FR 31318
44 FR 34120
45 FR 49570
45 FR 52385

(b) *Flood Insurance Rate Maps (FIRM's)*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 17015
41 FR 1478
42 FR 49811
42 FR 64076
43 FR 24019
44 FR 25636
44 FR 12421
45 FR 49570

2. The following additional entries (which will not appear in the Code of Federal Regulations) are made Pursuant to § 65.6:

State	Community name and number	County	Hazard ID date	Rescission date	Reason
Arizona	City of Eloy, 040083A, E	Pinal	Oct. 10, 1978	Aug. 5, 1980	2
Arkansas	Town of Norvell, 050268	Crittenden	Aug. 15, 1975	Aug. 5, 1980	4
Lousiana	Town of Brusly, 220241R	West Baton Rouge Parish	Aug. 15, 1977	Aug. 5, 1980	2
Missouri	Village of Bellerive, 290331E	St. Louis	Sept. 10, 1976	Aug. 5, 1980	1
Pennsylvania	Boro of Hunker, 420880A, E	Westmoreland	Feb. 7, 1975	Aug. 5, 1980	2
Utah	Town of Mona, 490081A, E	Juab	June 21, 1977	Aug. 5, 1980	1

KEY TO SYMBOLS

E—The community is participating in the Emergency Program. It will remain in the Emergency Program without a FHBM.
R—The community is participating in the Regular Program.
1. The Community appealed its flood-prone designation and FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.
2. FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.
3. The Flood Hazard Boundary Map (FHBM) contained printing errors or was improperly distributed. A new FHBM will be prepared and distributed.
4. The community lacked land-use authority over the special flood hazard area.
5. The FHBM does not accurately reflect the Community's special flood hazard areas (i.e., sheet flow flooding, extremely inaccurate map, etc). A new FHBM will be prepared and distributed.
6. The Flood Insurance Rate Map was rescinded because of inaccurate flood elevations contained on the map.
7. The Flood Insurance Rate Map was rescinded in order to re-evaluate the mudslide hazard in this Community.
8. The T&E or H&E Map was rescinded.
9. A revision of the FHBM within a reasonable period of time was not possible. A new FHBM will be prepared and distributed.
10. Miscellaneous.

(44 CFR § 65.6)
(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 29, 1980.
Gloria M. Jimenez,
Federal Insurance Administrator.
[FR Doc. 80-23041 Filed 8-6-80; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 151

[CGD 80-02]

Revisions to Lists of Flammable and Combustible Bulk Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising two tables found in its regulations which list flammable and combustible cargoes that may only be transported in bulk in certificated tank vessels. The revisions add to the lists cargoes that the Coast Guard has evaluated and determined to be flammable or combustible in the period since the tables were last revised. In addition, certain editorial corrections are being made to the tables.

EFFECTIVE DATE: This amendment is effective on September 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Payne, Office of Merchant Marine Safety (G-MHM/14), Room 1400-B, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202) 426-6260.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking concerning this amendment was published in the Federal Register on April 7, 1980 (45 FR 23475). Interested persons were invited to submit comments on the proposal by May 22, 1980.

Two pertinent comments were received. The first of these recommended the inclusion of Tallow Fatty Acid on the Subcharter D list. This has not been done owing to the fact that this commodity has yet to be evaluated and classified. The second commenter stated that several commodities proposed for inclusion in the revised Subchapter D list are in reality solids at ambient temperatures. These commodities are Ethylene-Propylene Copolymer, 2-Mercaptobenzothiazole, and Propylene Polymer. They were included in the Subchapter D list because they are sometimes shipped as components of mixtures containing other Subchapter D commodities which are liquids at ambient temperatures. These commodities have in the past been authorized for shipment in bulk and will continue to be so authorized. However, their entries on the Subchapter D list are being modified to indicate that these commodities are only regulated when contained in liquid mixtures.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Curtis Payne, Project Manager, Office of Merchant Marine Safety, and Mr. Coleman Sachs, Project Counsel, Office of the Chief Counsel.

This amendment has been reviewed and determined to be nonsignificant under the Department of Transportation's "Regulatory Policies and Procedures" published on February 26, 1979 (44 FR 11034). A final evaluation has been prepared and included in the public docket. This may be obtained from the Marine Safety Counsel (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, D.C. 20593.

§ 30.25-1 [Amended]

§ 151.01-10 [Amended]

In consideration of the foregoing, the Coast Guard is amending Title 46, Code of Federal Regulations by revising the contents of Table 30.25-1 in § 30.25-1 in Part 30 and Table 151.01-10(d) in § 151.01-10(d) in Part 151 to read as follows:

Acetone.
Acetophenone.
Acetyl Tributyl Citrate.
Alcohols (Mixed).
Alkenylsuccinic Acid.
Alkenylsuccinic Anhydride.
Alkyle Benzene Sulfonic Acid (4% or less).
Alkyl Phthalates (n-).
Alkyl Succinate Formaldehyde Hydroxy Amino Condensate (3.2% or less).
Amyl Acetate (iso-, n-).
Amyl Alcohol (n-).
Amylene.
Amyl Methyl Ketone.
Amyl Tallate.
Asphalt.
Asphalt Blending Stocks:
Roofers Flux.
Straight Run Residue.
Behenyl Alcohol.
Benzyl Alcohol.
Bicyclic Terpenel Polyamine Amide Salt.
Butane.
Butyl Acetate (iso-, n-, sec-).
Butyl Alcohol (iso-, n-, sec-, tert-).
Butyl Benzyl Phthalate.
Butylene.
1,3-Butylene Glycol.
Butylene Polyglycol.
Butyl Heptyl Ketone.
Butyl Methyl Ketone.
Butyl Stearate.
Butyl Toluene.
Butyrolactone (Gamma).
Calcium Alkylphenate.
Calcium Alkyl Salicylate.
Calcium Amino Nonyl Phenolate.
Calcium Carboxylate.
Caprolactam Solutions.
Carbon Black Base.
Cetyl Alcohol (Hexadecanol).
Cetyl Stearyl Alcohol.
Cleaning Spirit (unleaded).
Cumene.
Cyclopentadiene Polymers.
Cycloaliphatic Resins.
Cyclohexane.
Cyclohexanol.
Cymene (para-).
Decaldehyde (iso-, n-).
Decane.
Decene.
Decyl Alcohol (iso-, n-).
Decyl Benzene (n-).
Detergent Alkylate.
Diacetone Alcohol.
Dibutyl Carbinol.
Dibutyl Phthalate (ortho-).
Dicyclopentadiene.
Diethylbenezene.
Diethylene Glycol.
Diethylene Glycol Diethyl Ether.
Diethylene Glycol Monobutyl Ether (Methyl Carbitol).
Diethylene Glycol Monobutyl Ether Acetate.
Diethylene Glycol Monoethyl Ether.
Diethylene Glycol Monoethyl Ether Acetate.
Diethylene Glycol Monomethyl Ether.
Diethylene Glycol Monomethyl Ether Acetate.
Diethylene Glycol Monophenyl Ether.
Di (Ethylhexyl) Phthalate.
Diethyl Phthalate.
Digylcidyl Ether of Bisphenol A.
Diheptyl Phthalate.
Dihexyl Phthalate.
Diisobutyl Carbinol.
Diisobutylene.
Diisobutyl Ketone.
Diisobutyl Phthalate.
Diisodecyl Phthalate.
Diisononyl Phthalate
Diisooctyl Phthalate.
Diisopropyl Benzene.
Dimethyl Benzene.
Dimethyl Phthalate.
2,2-Dimethylpropane-1, 3-Diol.
Dinonyl Phthalate.
Di(Octyl Phenyl) Amine.
Dioctyl Phthalate.
Dipentene.
Diphenyl.
Diphenyl-Diphenyl Oxide.
Diphenyl Ether.
Dipropylene Glycol.
Dipropylene Glycol Monomethyl Ether.
Distillates:
Flashed Feed Stocks.
Straight Run.
Diundecyl Phthalate.
Dodecane
Dodecanol.
Dodecene.
Dodecylbenzene (commercial).
Dodecyl Phenol.
Epoxylated Linear Alcohols, C11-C15.
Ethane.
Ethoxyethanol.
Ethoxyethyl Acetate.
Ethoxylated Alcohols, C11-C15.
Ethoxy Triglycol (crude).
Ethyl Acetate.
Ethyl Alcohol.
Ethyl Amyl Ketone.
Ethyl Benzene.
Ethyl Butanol.
Ethyl Cyclohexane.
Ethylene.
Ethylene Carbonate.
Ethylene Glycol.
Ethylene Glycol Diacetate.
Ethylene Glycol Methyl Butyl Ether.
Ethylene Glycol Monobutyl Ether.
Ethylene Glycol Monobutyl Ether Acetate.
Ethylene Glycol Monoethyl Ether.
Ethylene Glycol Monoethyl Ether Acetate.
Ethylene Glycol Monoisopropyl Ether.
Ethylene Glycol Monomethyl Ether.
Ethylene Glycol Monomethyl Ether Acetate.
Ethylene Glycol Phenyl Ether.
Ethylene-Propylene Copolymer (in liquid mixtures).
Ethylhexaldehyde.
Ethylhexanoic Acid.
2-Ethyl Hexanol.
Ethylhexoic Acid.
Ethyl Hexyl Phthalate.
Ethyl Hexyl Tallate.
Ethyl Toluene.
Fatty Acid Amides.
Formamide.
Furfuryl Alcohol.
Gas Oil, Cracked.
Gasoline Blending Stocks:
Alkylates.
Reformates.
Gasolines:
Automotive (containing not over 4.23 grams lead per gallon).
Aviation (containing not over 4.86 grams lead per gallon).
Casinghead (natural).
Polymer.
Straight Run.
Glycerine.
Glycerol.
Glyceryl Triacetate.
Glycidyl Ester of Tertiary Carboxylic Acid.
Glycidyl Ester of Versatic Acid.
Glycol Diacetate.

Glycols, Resins, & Solvents Mixture.
Glycol Triacetate.
Glyoxal (40%).
Grease.
Heptadecane.
Heptane.
Heptanoic Acid.
Heptanol.
Heptene.
Herbicide ($C_{15}H_{22}NO_2Cl$).
Hexaethylene Glycol.
Hexamethylene Glycol.
Hexane (iso-, n-).
Hexanol.
Hexene.
Hexyl Acetate.
Hexylene Glycol.
Hog Grease.
Isophorone.
Jet Fuels:
JP-1 (Kerosene).
JP-3.
JP-4.
JP-5 (Kerosene, Heavy).
Kerosene.
Lactic Acid.
Lard.
Latex, Liquid Synthetic.
Magnesium Nonyl Phenol Sulfide.
Magnesium Sulfonate.
Maleic Anhydride Copolymer.
2-Mercaptobenzothiazole (in liquid mixtures).
Methane.
Methoxy Triglycol.
Methyl Acetate.
Methyl Acetoacetate.
Methyl Alcohol.
Methyl Amyl Acetate.
Methyl Amyl Alcohol.
Methyl Amyl Ketone.
Methyl Butanol.
Methyl Ethyl Ketone.
Methyl Formal (Dimethyl Formal).
Methyl Heptyl Ketone.
Methyl Isobutyl Carbinol.
Methyl Isobutyl Ketone.
Methyl Naphthalene.
Methyl Pentene.
Methyl Pyrrolidone (n-).
Methyl tert-Butyl Ether.
Mineral Spirits.
Naphtha:
Aromatic (10% or less benzene).
Cracking Fraction.
Heavy.
Paraffinic.
Petroleum.
Solvent.
Stoddard Solvent.
Varnish Makers' and Painters' (75%).
Naphthenic Acid.
Nonane.
Nonanoic Acid.
Nonanoic-Tridecanoic Acid Mixture.
Nonene.
Nonyl Alcohol.
Nonyl Phenol.
Nonyl Phenol (ethoxylated).
Nonyl Phenol Sulfide (30% or less).
Octadecene.
Octadecenoamide (Oleamide).
Octane.
Octene.
Octyl Acetate.
Octyl Alcohol (iso-, n-).
Octyl Aldehyde (iso-).
Octyl Epoxytallate.
Octyl Phthalate.
Oils:
Absorption.
Aliphatic.
Animal.
Aromatic.
Aviation F2300.
Clarified.
Coal.
Coal Tar.
Croton.
Crude.
Diesel.
Fuel Oils:
No. 1 (Kerosene).
No. 1-D.
No. 2.
No. 2-D.
No. 4.
No. 5.
No. 6.
Gas, Low Pour.
Gas, Low Sulphur.
Heartcut Distillate.
Lanolin.
Linseed.
Lubricating.
Mineral.
Mineral Seal.
Motor.
Neatsfoot.
Oiticica.
Penetrating.
Perilla.
Pilchard.
Pine.
Range.
Residual.
Resin.
Resinous Petroleum.
Road.
Rosin.
Seal.
Soapstock.
Sperm.
Spindle.
Spray.
Tall.
Tall, Fatty Acid.
Tanner's.
Transformer.
Tung.
Turbine.
Whale.
White (Mineral).
Wood.
Edible Oils, including:
Babassu.
Beechnut.
Castor.
Cocoa Butter.
Coconut.
Coconut Oil Fatty Acid.
Coconut Oil, Esterfield.
Coconut Oil, Methyl Ester.
Cod Liver.
Corn.
Cotton Seed.
Cotton Seed Fatty Acid.
Fish.
Grapeseed.
Groundnut.
Hazelnut.
Lard.
Maize.
Mustard Seed.
Nutmeg Butter.
Olive.
Palm.
Peanut.
Poppy.
Raisin Seed.
Rapeseed.
Rice Bran.
Safflower.
Salad.
Sesame.
Soya Bean.
Soybean (Epoxidized).
Sunflower Seed.
Tucum.
Vegetable.
Walnut.
Oleic Acid.
Oleyl Alcohol (Octadecenol).
Organic Amine 70 (mixture of high molecular weight alcohol amines).
Pentadecanol.
Pentaethylene Glycol.
Pentane (iso-, n-).
1-Pentene.
Petrolatum.
Phosphosulfurized Bicyclic Terpene.
Phthalate Plasticizers.
Pinene.
Polyalkenyl Succinic Anhydride Amine.
Polyamine, Amide Mixture.
Polybutene.
Polyethlene Glycols.
Polyisobutylene.
Polymerized Esters.
Polypropylene.
Polypropylene Glycols.
Polypropylene Glycol Methyl Ether.
Polystyrene Dialkyl Maleate.
Propane.
Propyl Acetate (iso-, n-).
Propyl Alcohol (iso-, n-).
Propyl Benzene.
Propylene.
Propylene Butylene Polymer.
Propylene Glycol.
Propylene Glycol Monoethyl Ether.
Propylene Glycol Monomethyl Ether.
Propylene Polymer (in liquid mixtures).
Propylene Tetramer.
Propylene Trimer.
Propyl Ether (iso-).
Pseudocumene (1,2,4-Trimethylbenzene).
Rum.
Sodium Acetate, Glycol, Water Solutions.
Sodium Sulfonate.
Stearic Acid.
Sulfolane.
Stearyl Alcohol (Octadecanol).
Tallow.
Tallow Alcohol.
Tallow Nitrile.
Tetradecanol.
Tetradecene.
Tetradecyl Benzene.
Tetraethylene Glycol.
Tetrahydronaphthalene.
Tetrapropyl Benzene.
Toluene.
Triarylphosphate.
Tricresyl (Tritolyl) Phosphate (containing less than 1% of the ortho isomer).
Tridecane.
Tridecanoic Acid.
Tridecanol.
Tridecene.
Tridecyl Benzene.
Triethyl Benzene.
Triethylene Glycol.
Triethylene Glycol Diethyl Butyrate.
Triethylene Glycol Monomethyl Ether.
Triethyl Phosphate.
Triisooctyl Trimellitate.
Trimethyl Benzene.
2,2,4-Trimethyl Pentanediol-1,3-Diisobutyrate.
2,2,4-Trimethyl-3-Pentanol-1-Isobutyrate.
Tripropylene.
Tripropylene Glycol.
Tripropylene Glycol Monomethyl Ether.
Trixylonyl Phosphate.
Turpentine.
Turpentine Substitute (White Spirit).
Undecanol.
Undecene.
Undecylbenzene.
Vinyl Acetate, Fumarate Copolymer.
Waxes:
Candelilla.
Carnauba.
Paraffin.
Petroleum.
White Spirit.
White Spirit, Low Aromatic.
Wine.
Wool Grease.
Xylene (meta-, para-, Ortho-).
Zinc Dialkyldithiophosphate.

(46 U.S.C. 391a, 49 CFR 1.46(n)(4))

Dated: July 24, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-23530 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Part 61

[CGD 78-153]

Tailshaft Examination

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the vessel inspection requirements for tailshafts with oil lubricated bearings to allow the shaft to be shifted for inspection in lieu of being drawn as currently required. Shifting the shaft allows for examination of all components that are prone to develop defects or experience failure, and accordingly, a drawing is unnecessary to ensure the satisfactory operational condition of the shaft.

The rule also adds specific inspection requirements for flanged tailshafts; specifies bearing weardown criteria for tailshafts with oil lubricated bearings and water lubricated rubber bearings; and authorizes the Officer in Charge, Marine Inspection to grant all extensions pertaining to tailshaft examination intervals.

EFFECTIVE DATE: This rule is effective on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael P. Rolman, Office of Merchant Marine Safety (G-MVI-1/24), Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202-426-1464).

SUPPLEMENTARY INFORMATION: On November 1, 1979, the Coast Guard published a Notice of Proposed Rulemaking (44 FR 62915) concerning these amendments. A correction was published in the November 19, 1979 issue of the Federal Register (44 FR 66219). Four written comments were received on the proposal.

Drafting Information

The principal persons involved in drafting this rule are: Lieutenant Michael P. Rolman, Project Manager, Office of Merchant Marine Safety, and John W. Salter, Project Counsel, Office of the Chief Counsel.

Discussion of Comments

The four comments received generally supported the proposal.

§ 61.20-17. One commenter suggested a five year drawing interval for tailshafts on multiple screw vessels referencing a 1976 American Bureau of Shipping (ABS) circular sanctioning the practice. The 1980 ABS rules provide for a four year examination interval for these shafts. Moreover, given the revised examination procedures for tailshafts with oil lubricated bearings and the additional two year extension period, the Coast Guard has retained the

four year period pending experience under the new examinations.

§ 61.20-21. One commenter indicated that on occasion vessels have been required to drydock for an examination pursuant to the granting of a two year extension. It is not mandatory to drydock a vessel to conduct the examination. Any examination procedure that provides for inspection of the shafts' bearing clearance, seals, and lubricating system would meet the requirements. To clarify this fact, the provision in paragraph (3)(i) concerning examination of the propeller in place has been deleted from the final rule. This provision was included to differentiate the examination for extensions from the normal examination during which the propeller is removed.

§ 61.20-23. Two commenters felt that listing the manufacturer's recommendations concerning bearing weardown as a criteria for the Officer in Charge, Marine Inspection (OCMI) to consider would cause that officer to use them as the sole consideration. The commenters recommended listing sound engineering practices and the recommendations of the marine inspector as additional criteria for the OCMI to consider. The OCMI will, as a matter of course, consider these criteria during any examination. However, since they address general criteria and the paragraph is solely concerned with bearing weardown, the Coast Guard does not believe their inclusion would serve any useful purpose. Therefore, the rule has been retained as proposed.

This regulation has been reviewed under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034) and is considered "non-significant." A final evaluation has been prepared and placed in the public docket for inspection.

Accordingly, Part 61 of Title 46, Code of Federal Regulations, is amended by revising § 61.20-15 and adding new §§ 61.20-17 through 61.20-23 to read as follows:

§ 61.20-15 Tailshaft examination.

The rules in §§ 61.20-15 through 61.20-23 apply only to vessels in ocean and coastwise service. Each examination, inspection and test prescribed by these sections must be conducted in the presence of a marine inspector.

§ 61.20-17 Examination intervals.

(a) Except as provided in paragraphs (b) and (c) of this section, each tailshaft on a vessel must be examined at least once within two years.

(b) Tailshafts fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft must be examined at the following intervals:

(1) A tailshaft on a vessel with a single tailshaft must be examined at least once within three years, except that a tailshaft with a taper, keyway, and propeller designed in accordance with American Bureau of Shipping standards to reduce stress concentrations must be examined at least once within four years.

(2) Each tailshaft on a vessel with multiple tailshafts must be examined at least once within four years.

(c) A tailshaft on a mobile offshore drilling unit is not subject to the examination intervals prescribed in paragraphs (a) and (b) of this section if it is:

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant.

§ 61.20-18 Examination details.

(a) Except as provided in paragraphs (b) and (c) of this section, each tailshaft on a vessel must be drawn and visually inspected at each examination.

(b) Tailshafts with a taper, keyway, and propeller designed in accordance with American Bureau of Shipping standards to reduce stress concentration must be examined as follows:

(1) Each tailshaft with water lubricated bearings must be drawn for examination. At each examination, in addition to a visual inspection of the entire shaft, the forward ⅛ of the shaft's taper section must be nondestructively tested.

(2) Each tailshaft with oil lubricated bearings must be examined as prescribed in paragraph (b)(1) of this section or as follows:

(i) The shaft must be shifted aft, as directed by the attending marine inspector, to expose the after end of its bearing contact area;

(ii) The exposed bearing contact area and the forward ⅛ of the shafts' taper section must be nondestructively tested and

(iii) The shaft's bearing clearance, seals, and lubricating system must be inspected.

(c) Tailshafts with a propeller fitted is the shaft by means of a coupling flange must be examined as follows:

(1) Each flanged tailshaft with water lubricated bearings must be drawn for examination. At each examination, in addition to a visual inspection of the entire shaft, the flange, fillet at the propeller end and each coupling bolt must be nondestructively tested.

(2) Each flanged tailshaft with oil lubricated bearings must be examined as prescribed in paragraph (c)(1) of this section or as follows;

(i) The shaft must be shifted aft, as directed by the attending marine inspector, to expose the after end of its bearing contact area;

(ii) The exposed bearing contact area, flange fillet at the propeller end, and each coupling bolt must be nondestructively tested; and

(iii) The shaft's bearing clearance, seals, and lubricating system must be inspected.

(d) If any defects are detected after a tailshaft is shifted for examination, the attending marine inspector may direct that the tailshaft be drawn for further examination of the shaft, seals, and bearings.

§ 61.20-21 Extension of examination interval

(a) The Officer in Charge, Marine Inspection, may extend the interval between tailshaft examinations as follows;

(1) An extension to the next drydocking period may be granted, except that the period of extension shall not exceed six months.

(2) If a vessel has had a long period of layup after its last tailshaft examination, an extension equal to the time the vessel has been laid up may be granted, except that the period of extension shall not exceed one year for vessels that have tailshafts with oil lubricated bearings and six months for all other vessels.

(3) An extension of up to two years may be granted to vessels that have tailshafts with oil lubricated bearings if:

(i) Each tailshaft is examined in place with consideration given to the condition of the shafts' bearing clearance, seals, and lubricating system;

(ii) No major repairs by grinding or welding have ever been made to the shaft; and

(iii) Review of the vessel's file, drydock reports, and operations since its last tailshaft examination shows no deficiencies exist that would preclude the extension.

§ 61.20-23 Tailshaft clearance; bearing weardown.

(a) Water lubricated bearings, other than rubber, must be rebushed as follows:

(1) Where the propelling machinery is located amidship, the after stern tube bearing must be rebushed when it is worn down to 6.4 mm (0.25 in) clearance for shafts of 229 mm (9 in) or less in diameter, 7.95 mm (0.3125 in) clearance

for shafts exceeding 229 mm (9 in) but not exceeding 305 mm (12 in) in diameter, and 9.53 mm (0.375 in) clearance for shafts exceeding 305 mm (12 in) in diameter.

(2) Where the propelling machinery is located aft, the after stern tube bearing must be rebushed when weardown is 1.6 mm (.0625 in) less than the applicable clearance for propelling machinery located amidship.

(b) Water lubricated rubber bearings must be rebushed when any water groove is half the original depth.

(c) Oil lubricated bearings must be rebushed when deemed necessary by the Officer in Charge, Marine Inspection. The manufacturer's recommendation shall be considered in making this determination.

(46 U.S.C. 375, 390b, 391a, 416; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Dated: July 31, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-23831 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Docket No. 20828]

Second Computer Inquiry; Motion for Waiver Granted

AGENCY: Federal Communications Commission.

ACTION: Waiver of page limitation requirement (Second Computer Inquiry).

SUMMARY: In response to a motion filed by the Computer and Business Equipment Manufacturers Association (CBEMA), the Chief Common Carrier Bureau, acting on delegated authority, has waived 47 CFR 429(f), which provides that oppositions to a petition for reconsideration shall not exceed 25 pages, and 47 CFR 429(g), which provides that replies to oppositions shall not exceed 10 pages, for all parties filing such pleadings in the Second Computer Inquiry (45 FR 31319, May 13, 1980).

DATES: July 24, 1980.

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

FOR FURTHER INFORMATION CONTACT: H. Russell Frisby, Jr., Common Carrier Bureau, Tele: (202) 632-9342.

Order

Adopted: July 24, 1980.

Released: July 28, 1980.

In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry).

By the Chief, Common Carrier Bureau:

1. The Computer and Business Equipment Manufacturers Association (CBEMA) has moved that the Commission waive in this proceeding the 25 page limitation imposed on oppositions to petitions for reconsideration, contained in Section 1.429(f) of the Commission's Rules, and the 10 page limitation imposed on replies to oppositions, contained in Section 1.429(g) of the Rules. In support of its motion, CBEMA states that the Chief of the Common Carrier Bureau has previously waived the 25 page limitation for the petitions for reconsideration filed herein and that if similar action is not taken parties opposing these petitions will be denied a comparable opportunity to analyze fully and comment upon the issues.

2. In light of the fact that the similar 25 page limitation for petitions for reconsideration was waived, it appears reasonable and in the public interest that the 25 page limitation on oppositions and the 10 page limitation on replies to oppositions be likewise waived. Accordingly, it is ordered, pursuant to Section 0.291 of the Commission's Rules on delegation of authority, that CBEMA's motion for waiver is granted. The 25 page limitation provision of Section 1.429(f) of the Commission's Rules and the 10 page limitation of Section 1.429(g) of the Commission's Rules are hereby waived for all parties filing oppositions to petitions for reconsideration and replies to oppositions in this proceeding.

Philip L. Verveer,

Chief, Common Carrier Bureau.

[FR Doc. 80-23803 Filed 8-6-80; 8:45 am]

BILLING CODE 6712-01-M

UNITED STATES RAILWAY ASSOCIATION

49 CFR Part 941

Regulations for Determination of the Attainment by Consolidated Rail Corporation of Certain Standards Relating to the Corporation's Employee Stock Ownership Plan

AGENCY: United States Railway Association.

ACTION: Final regulations.

SUMMARY: The regulations hereby promulgated by the United States Railway Association (the Association) with the concurrence of the Finance Committee are the regulations required by Section 216(f) of the Rail Act for determining whether the Consolidated Rail Corporation (Conrail) has attained the positive net income test and the freight labor cost to freight revenue ratio test set forth in that Section so that the rights of the participants to the securities in the employee stock ownership plan established by Conrail (ESOP) will not be subject to defeasance.

DATE: These regulations are effective as of January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Edwin Rector, Assistant General Counsel (USRA) (202) 755-6763.

Supplementary Information

United States Railway Association Amendments Act of 1978, Pub. L. 95-565, 92 Stat. 2397, enacted November 1, 1978, provides, among other things, for an increase from $2,100,000,000 to $3,300,000,000 in the authorization for appropriations to the Association to be used for the purchase of securities of Conrail.

Section 3 of Pub. L. 95-565 added a new Subsection (f) to Section 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 700-794) (hereafter referred to as "the Rail Act"). Subsection (f) provides, in part, that:

(1) The Association shall not invest the final $345,000,000 of the additional investment in the Corporation authorized by the Regional Rail Reorganization Act Amendments of 1978 unless and until (A) the Corporation has in effect an employee stock ownership plan which satisfies the requirements of paragraphs (2) and (3), and (B) the requirements of the other paragraphs of this subsection have been satisfied.

"(2) The employee stock ownership plan shall:

"(A) provide:

"(i) for a transfer to the plan and allocation to the accounts of plan participants in periodic installments of Series A preferred stock of the Corporation with a stated redemption value of at least $345,000,000 or any other securities in an amount determined by the Association, with the concurrence of the Finance Committee, as constituting a meaningful interest in the Corporation, or any combination thereof so determined by the Association, with the concurrence of the Finance Committee. The use of Series A preferred stock to fund the Employee Stock Ownership Plan shall not be interpreted to relieve Conrail of the responsibility for repaying in full to the United States Railway Association its indebtedness as represented by all shares originally issued under Public Law 94-210 and this Act;

"(ii) for immediate vesting of the rights of participants to such securities upon allocation, subject to defeasance as a result of the plan's termination which termination shall occur in the event that, by the end of the 120th month beginning after the month in which securities or interests therein are first

allocated to participants' accounts, the Corporation has not attained for two consecutive quarters positive net income and a freight labor cost to freight revenue ratio equal to the average such ratio for all Class I railroads in 1977, as determined pursuant to procedures adopted by the Corporation pursuant to regulations promulgated by the Association with the concurrence of the Finance Committee. * * *

Proposed regulations were published in the Federal Register on February 20, 1980 (45 FR 11141–11142). These final regulations reflect revisions made after consideration of comments received with respect to the proposed regulations.

Analysis of Comments:

The proposed regulations provided for public comment to be submitted on or before March 14, 1980. The Association received comments submitted on behalf of Conrail and other comments submitted on behalf of the Railway Labor Executives' Association (RLEA) and the Conrail employees whose interest in the Conrail (ESOP).

RLEA represents under Section 216(f) of the Rail Act. These comments were carefully considered by the Association and revisions to the proposed regulations have been made as described below.

Both sets of comments maintained that Conrail's own costs and revenues should be included in the computation of the average freight labor costs to freight revenue ratio for all Class I railroads in 1977. This suggestion has been adopted and the final regulations have been amended accordingly. The average freight labor costs to freight revenue ratio for all Class I railroads (including Conrail) in 1977 has been calculated by the Association to be 0.4164. The details of this calculation have been included in the final regulations.

Both sets of comments contend that the accounting methodology incorporated in the final regulations should be that of generally accepted accounting principles (GAAP) rather than the railroad accounting principles prescribed by the Interstate Commerce Commission (ICC). The Association believes that ICC accounting is the appropriate methodology to be used for the purposes of determining whether the statutory tests have been attained by Conrail. The ICC is the Government agency with the statutory authority to issue accounting rules for railroads; and the ICC accounting methodology applies to the railroads with which Conrail is being compared. In the absence of a clear directive in the statute to use another accounting methodology these regulations will be based on the ICC system of accounts in effect for the period for which the determinations are made.

Both sets of comments point out that the statutory term "positive net income" is not a standard accounting term and they therefore suggest that the Association should construe that term in one special manner or another. The Association has concluded that the term "positive net income" means simply a net income greater than zero. The proposed and final regulations reflect this interpretation.

Both sets of comments maintain that the two tests, each of which must be met during two consecutive quarters need not be met during the *same* two consecutive quarters. While Public Law 95–565 may be subject to different interpretations on this point, the Association concludes that the better interpretation of the statutory language is that both tests must be met during the same two-quarter period.

The comments submitted on behalf of Conrail question whether the proposed regulations are in accordance with the statutory language regarding the determination of whether the tests have been attained. The final regulations have been drafted to make it clear that this determination will be made pursuant to procedures adopted by Conrail pursuant to these regulations.

The comments submitted on behalf of Conrail point out that the proposed regulations do not prescribe the manner in which the test computations will be adjusted in the event there is a substantial restructuring of Conrail's capital structure or assets at some future time. There are at this time no specific proposals to restructure Conrail's capital structure or assets, therefore, it would be difficult to provide for such possibilities in these regulations. Should such plans be developed, appropriate amendments to these regulations may be necessary.

Pursuant to the authority set forth in Pub. L. 95–565, 49 CFR is amended by adding a new Part 941 to read as follows:

PART 941—REGULATIONS FOR DETERMINATION OF THE ATTAINMENT BY CONSOLIDATED RAIL CORPORATION OF CERTAIN STANDARDS RELATING TO THE CORPORATION'S EMPLOYEE STOCK OWNERSHIP PLAN

Secs.

941.1 Purpose of regulations.
941.2 Positive net income test.
941.3 Freight labor cost to freight revenue ratio test.
941.4 Average freight labor cost to freight revenue ratio for all Class I Railroads in 1977.
941.5 Period of application of the tests.
941.6 Procedures for determination of attainment of the positive net income test and the freight labor cost to freight revenue ratio test.

Authority: The Regional Rail Reorganization Act of 1973 (45 U.S.C. 700–794) as amended by Pub. L. 95–565 (92 Stat. 2397).

§ 941.1 Purpose of regulations.

The purpose of the regulations is to set forth the definitions and criteria for determining whether by the end of the 120th month beginning after the month in which securities or interests therein are first allocated to the accounts of the participants in the employee stock ownership plan established by Consolidated Rail Corporation (Conrail), Conrail has attained for two consecutive quarters (a) positive net income, and (b) a freight labor cost to freight revenue ratio equal to the average such ratio for all Class I railroads in 1977.

§ 941.2 Positive net income test.

Positive net income is defined to mean net income greater than zero. Net Income of Conrail shall be determined on a company-only basis (excluding extraordinary items) as prescribed by the Interstate Commerce Commission (ICC) Uniform System of Accounts for Railroads in effect for the period for which the determination is made. Net Income for each quarter shall be the amount shown as such on Conrail's "Quarterly Report of Revenues, Expenses and Income—Railroads" as filed with the ICC. Determination of Conrail's net income shall be subject to adjustment whenever Conrail is required to restate its quarterly net income on an amended ICC Quarterly Report of Revenues, Expenses and Income—Railroads.

§ 941.3 Freight labor cost to freight revenue ratio test.

(a) The freight labor cost to freight revenue ratio shall be determined by dividing freight labor cost by total revenues assignable to freight service. Freight labor cost is the amount expended by Conrail for freight salaries and wages. Total revenues assignable to freight service is the freight-related portion of total railway operating revenues. Each quarter Conrail shall determine these costs and revenues on the basis of accounting systems and practices consistent with those used in the preparation of the corresponding annual data for inclusion on the annual report submitted by Conrail to the ICC on Report R–1.

(b) On Report R–1 freight labor cost is the freight salaries and wages included in *"Total Carrier Operating Expenses"*

(Column (b) of Line 620) on schedule 410 (*"Railway Operating Expense"*): and total revenues assignable to freight service is the freight-related portion of *"Total Railway Operating Revenues"* (Column (d) of Line 13) on schedule 210 (*"Results of Operations"*).

§ 941.4 Average freight labor cost to freight revenue ratio for all Class I railroads in 1977.

(a) The average freight labor cost to freight revenue ratio for all Class I railroads (including Conrail) in 1977 is 0.4164. This ratio was calculated by dividing total freight labor cost by railway operating revenues assignable to freight service. The statistics used to derive the numbers used to calculate this ratio are reported in *Transport Statistics in the United States for the year ended December 31, 1977* (published by ICC Bureau of Accounts) (hereafter referred to as *ICC Transport Statistics, 1977*).

(b) The amount of railway operating revenues—assignable to freight service is $19,505,457,000 (as reported in *ICC Transport Statistics, 1977*, table 4, column 1, line 242). Total freight labor cost is $8,122,128,000, and was calculated by multiplying $8,511,085,000, the amount of employee compensation chargeable to operating expenses (as reported in *ICC Transport Statistics, 1977*, table 5, column 1, line 456A) by .9543, the ratio of freight labor expenses to total labor expenses for all Class I railroads. This ratio was derived by dividing the employees health and welfare benefits expenses for freight service, which is $486,801,000 (as reported in *ICC Transport Statistics, 1977*, table 10, column 3, sum of items in lines 277, 335, 359, 409, 449, and 456) by the difference between the employees health and welfare benefits expenses, all districts, and such expenses of the National Railroad Passenger Corporation. That difference is $510,128,000 (as reported in *ICC Transport Statistics, 1977*, table 5, column 1, the sum of lines 308, 340, 359, 421 and 434, minus, in column 2, the sum of all items listed).

§ 941.5 Period of application of the tests.

For purposes of determining whether Conrail has attained for two consecutive quarters the positive net income test and the freight labor cost to freight revenue ratio test in order that the plan will not be terminated under the provisions of Section 216(f) of the Rail Act, both tests must be met during the same two consecutive quarters.

§ 941.6 Procedures for determination of attainment of the positive net income test and the freight labor cost to freight revenue ratio test.

Determinations of whether Conrail has attained the positive net income test and the freight labor cost to freight revenue ratio test will be made pursuant to procedures adopted by Conrail pursuant to these regulations.

Signed at Washington, D.C. this 31st day of July 1980.

Donald C. Cole,

President, United States Railway Association.

Concurrence by the Finance Committee

By resolution enacted on July 24, 1980, the Finance Committee of the Board of Directors of the United States Railway Association has concurred with the promulgation of the above Regulations for Determination of the Attainment by Consolidated Rail Corporation of Certain Standards Relating to the Corporation's Employee Stock Ownership Plan.

William E. Loftus,

Acting for the Secretary of the Finance Committee of the USRA Board.

[FR Doc. 80-23802 Filed 8-6-80; 8:45 am]
BILLING CODE 8240-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Amendment to Back Bay National Wildlife Refuge, Va.; Public Entry and Use

AGENCY: United States Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulations—amendments.

SUMMARY: This document amends certain portions of the special regulations governing public access, use, and recreation on Back Bay National Wildlife Refuge, Virginia, published on page 35823, Federal Register, Volume 45, No. 104, Wednesday, May 28, 1980.

DATES: July 25, 1980 through December 31, 1982.

ADDRESSES: Contact the Refuge Manager, Back Bay National Wildlife Refuge, Pembroke Office Park, Pembroke No. Two Building, Suite 218, Virginia Beach, Virginia 23462, at 804-490-0505.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617-965-5100 Ext. 200).

SUPPLEMENTARY INFORMATION: Edward S. Moses, U.S. Fish and Wildlife Service, Newton Corner, Massachusetts 02158 (617-965-5100 Ext. 222), is the primary author of this amendment.

Background

On July 25, 1980, President Jimmy Carter signed into law Senate Bill =2382 which reads in part:

Section 3(a) During any period in which the Secretary of the Interior, by regulation, limits vehicular access to Back Bay National Wildlife Refuge, the Secretary of the Interior shall issue to any eligible applicant, a renewable annual permit to enable the applicant to commute across the Back Bay National Wildlife Refuge. For purposes of this section, the term "eligible applicant" shall include all full-time residents who can furnish to the Refuge Manager, Back Bay National Wildlife Refuge, adequate proof of residence commencing prior to December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain full-time residents. The south boundary of the area for access consideration is defined as a straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point one thousand and six hundred feet due south of the Currituck Lighthouse.

(b) As used in this section, the term—

(1) "residence" means a place of general abode;

(2) "place of general abode" means a principal, actual dwelling place in fact, without regard to intent; and

(3) "dwelling" means a residential structure occupied on year-round basis by the permit applicant and shall not include seasonal or part-time dwelling units such as beach houses, vacation cabins, or structures which are intermittently occupied.

(c) Any permit issued pursuant to this section shall assure that eligible applicants shall be allowed at least two round trips per day. Travel pursuant to such permits may be restricted to between the hours of 5 a.m. and 12 p.m. (midnight). In addition the Refuge Manager may make exceptions to access restrictions for qualified permittees who have demonstrated to the satisfaction of the Refuge Manager a need for additional access relating to health or livelihood.

(d) Permits pursuant to this section shall be renewed upon the submission of a signed, notarized statement by an eligible applicant that conditions of the previous permit have not changed.

(e) The Secretary of the Interior, may, subject to the foregoing provisions of this section, issue such regulations as are necessary to protect the resources of the refuge.

Accordingly the amended portions of § 26.34 are set forth below.

§ 26.34 Special regulations concerning public access, use and recreation for individual national wildlife refuges.

Virginia

Back Bay National Wildlife Refuge

Access

(a) Who can qualify for access?

(1) Permanent, full-time residents who can furnish to the Refuge Manager, Back Bay National Wildlife Refuge, adequate proof of continuous and continuing residence, commencing prior to December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain permanent, full-time residents, are authorized beach access. The south boundary of the area for access consideration is defined as a straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point 1,600 feet due south of the Currituck Lighthouse Residence is defined as the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. For the purposes of this section, a dwelling shall mean a residential structure occupied on a year-round basis by the permit applicant and shall not include seasonal or part-time dwelling units such as beach houses, vacation cabins, or structures which are intermittently occupied. The burden of proof showing that the prospective permittee meets these criteria shall be on the applicant by presentation of appropriate documentation. Only one permit will be issued per family.

* * * * *

(c) How many trips are allowed?

Permitted vehicles of permanent full-time residents shall be limited to a total of two round trips per day. Travel is restricted to the designated route of travel between the hours of 5 a.m. and 12 p.m. (midnight).

* * * * *

General Rules

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(q) *Dogs.* Dogs on a hand-held leash are permitted on refuge public use areas.

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Note.—The Department of the Interior has determined that these amendments are not a significant rule and do not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Robert L. Miller,

Acting Regional Director, U.S. Fish and Wildlife Service.

July 30, 1980.

[FR Doc. 80-23909 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain National Wildlife Refuges in Idaho is compatible with the objectives for which these areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting seasons for migratory game birds, upland game, and big game.

DATES: September 1, 1980 to February 28, 1981.

ADDRESSES: Contact the Refuge Manager at the address and/or telephone number listed below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: L. A. Mehrhoff, Area Manager, U.S. Fish and Wildlife Service, 4620 Overland Road, Room 238, Boise, Idaho 83705.

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

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Hunting is permitted on the National Wildlife Refuges indicated below in accordance with 50 CFR 32, and the following special regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. No vehicle travel is permitted except on designated roads and trails. Special conditions applying to individual refuges are listed on the reverse side of maps available at refuge headquarters and from the office of the Regional Director, Fish and Wildlife Service, Lloyd 500 Bldg., Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

1. Migratory game birds except mourning doves, common snipe, and crows, may be hunted on the following refuge areas:

Bear Lake National Wildlife Refuge, P.O. Box 9, Montpelier, Idaho 83254, phone 208-847-1757.

Special Regulations: (1) Air-thrust boats are prohibited. Camas National Wildlife Refuge, Hamer, Idaho 83425, phone 208-662-5423.

Deer Flat National Wildlife Refuge, Snake River Island Sector, and Lake Lowell Sector, Route 1, Box 1457, Nampa, Idaho 83651, phone 208-467-9278.

Special Conditions: (1) Waterfowl and coot hunters are required to use native materials for hunting blind construction. (2) Hunting is on a first-come-first-served basis. (3) Goose hunting is prohibited on the Lake Lowell Sector.

Grays Lake National Wildlife Refuge, P.O. Box 837, Soda Springs, Idaho 83276, phone 208-547-4996.

Special Conditions: (1) Air-thrust boats are prohibited. (2) Entry to the hunting area is limited to foot travel only.

Kootenai National Wildlife Refuge, Star Route No. 1, Box 160, Bonners Ferry, Idaho 83805, phone 208-267-3888.

Special Conditions: (1) Hunting is permitted on Saturdays, Sundays, Tuesdays and Thursdays. (2) Hunters are required to use native materials for blind construction.

Minidoka National Wildlife Refuge, Route 4, Rupert, Idaho 83350, phone 208-436-3580.

§ 32.22 Special regulations; upland game (excluding mourning dove and crows); for individual wildlife refuge areas.

Bear Lake National Wildlife Refuge, P.O. Box 9, Montpelier, Idaho 83254, phone 208-847-1757.

Special Conditions: Cottontail (including pygmy) rabbit hunting will be permitted concurrent with the State season.

Camas National Wildlife Refuge, Hamer, Idaho 83425, phone 208-662-5423.

Deer Flat National Wildlife Refuge, Lake Lowell and Snake River Sectors, Route 1, Box 1457, Nampa, Idaho 83651, phone 208-467-9278.

Special Conditions: (1) Lake Lowell sector is open only during waterfowl season.

Kootenai National Wildlife Refuge, Star Route 1, Box 160, Bonners Ferry, Idaho 83805, phone 208-267-3888.

Special Conditions: (1) Only that portion of the refuge west of the West Side road is open to upland game hunting. (2) Pheasant hunting is prohibited.

Minidoka National Wildlife Refuge, Route 4, Rupert, Idaho 83350, phone 208-436-3589.

Special Conditions: Upland game may be hunted on the public hunting area during the waterfowl season only.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Deer Flat National Wildlife Refuge, Snake River Island Sector, Route 1, Box 1457, Nampa, Idaho 83651, phone 208-467-9278.

Grays Lake National Wildlife Refuge, P.O. Box 837, Soda Springs, Idaho 83276, phone 208-547-4996.

Special Conditions: (1) Entry to the hunting area is by foot travel only. (2) Horses may only be used to retrieve bagged animals.

Kootenai National Wildlife Refuge, Star Route #1, Box 160, Bonners Ferry, Idaho 83805, phone 208-267-3888.

Special Conditions: Only that portion of the refuge west of the West Side road is open to big game hunting.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Note.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11494 and OMB Circular A-107.

Dated: July 30, 1980.

W. D. Carter,

Acting Boise Area Manager.

[FR Doc. 80-23778 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

National Wildlife Refuges in Oreg.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain National Wildlife Refuges in Oregon is compatible with the objectives for which these areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting seasons for migratory game birds, upland game, and big game.

DATES: August 15, 1980 to February 28, 1981.

ADDRESS: Contact the Refuge Manager at the address and/or telephone number listed below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: L. A. Mehrhoff, Area Manager, U.S. Fish and Wildlife Service, 4620 Overland Road, Room 238, Boise, Idaho 83705, 208-334-1960.

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

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Hunting is permitted on the National Wildlife Refuges indicated below in accordance with 50 CFR 32, and the following special regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. No vehicle travel is permitted except on designated roads and trails. Special conditions applying to individual refuges are listed on the reverse side of maps available at refuge headquarters and from the office of the Regional Director, Fish and Wildlife Service, Lloyd 500 Bldg., Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

1. Migratory game birds may be hunted on the following refuge areas: Ankeny National Wildlife Refuge, Route 1, Box 198, Jefferson, Oregon 97352, phone 503-327-2444.

Special Conditions: (1) Mourning dove and band-tailed pigeon hunters must check in and out of the refuge by use of self-service permits. (2) Waterfowl, coot, and snipe hunting is permitted on Wednesdays, Saturdays and Sundays from opening shooting time until 12 noon during the authorized season. (3) A Federal permit is required for waterfowl, coot, and snipe hunting and will be issued on an advanced reservation basis. Applications for reservations will be accepted between September 15 and October 15. (4) Steel shot only may be possessed or used on the refuge while hunting waterfowl, coot, and snipe. (5) Waterfowl, coot, and snipe hunters are limited to the possession and use of twenty (20) shells per day.

Baskett Slough National Wildlife Refuge, 10995 Highway 22, Dallas, Oregon, 97338, phone 503-623-2749.

Special Conditions: (1) Mourning dove and band-tailed pigeon hunting is prohibited. (2) Waterfowl, coot, and snipe hunting is permitted on Wednesdays, Saturdays and Sundays from opening shooting time until 12 noon during the authorized season. (3) A Federal permit is required for waterfowl, coot, and snipe hunting and will be issued on an advanced reservation basis. Application for reservations will be accepted between September 15 and October 15. (4) Steel shot only may be possessed or used on the refuge while hunting waterfowl, coot, and snipe. (5) Waterfowl, coot, and snipe hunters are limited to the possession and use of twenty (20) shells per day.

Deer Flat National Wildlife Refuge, Snake River Island Sector, Route, 1, Box 1457, Nampa, Idaho 83651, phone 208-467-9278.

Special Conditions: (1) Waterfowl and coot hunters are required to use native materials for hunting blind construction. (2) Hunting is on a first-come-first-serve basis.

Malheur National Wildlife Refuge, P.O. Box 113, Burns, Oregon 97720, phone 502-493-2323.

Special Conditions: (1) That portion of the Blitzen Valley west of Highway 205, the Malheur Lake area, and the Kern Reservoir will be open to hunting as posted. (3) The Malheur Lake hunt area is open for scouting with boats two weeks prior to season opening. (4) Use of motors on boats, all-terrain vehicles and construction or use of permanent blinds are prohibited.

William L. Finley National Wildlife Refuge, Route 2, Box 208, Corvallis, Oregon 97330, phone 503-757-7236.

Special Conditions: (1) Mourning dove and band-tailed pigeon hunters are required to check in and out of the refuge daily by use of self-service permits. (2) Waterfowl, coot and snipe hunting is permitted on Wednesdays, Saturdays and Sundays from opening shooting time until 12 noon during the authorized season. (3) A Federal permit is required for waterfowl, coot and snipe hunting and will be issued on an advanced reservation basis. Applications for reservations will be accepted between September 15 and October 15. (4) Steel shot only may be possessed or used on the refuge while hunting waterfowl, coots and snipe. (5) Waterfowl, coot and snipe hunters are limited to the possession and use of twenty (20) shells per day.

2. Migratory game birds, except mourning doves, band-tailed pigeons and common snipe, may be hunted on the following refuge areas: Cold Springs National Wildlife Refuge, Hermiston, Oregon, P.O. Box 239, Umatilla, Oregon 97882, phone 503-922-3232.

Klamath Forest National Wildlife Refuge (Headquarters: Klamath Basin National Wildlife Refuges, Route 1, Box 74, Tule Lake, California 96134, phone 916-667-2231).

Special Conditions: (1) Boats with or without motors are permitted except air-thrust and inboard water-thrust are prohibited. (2) All decoys, boats and other personal property must be removed from the refuge at the close of each day. (3) No person may possess any weapon or ammunition that may not be legally used for taking waterfowl.

Lower Klamath National Wildlife Refuge (Headquarters: Klamath Basin National Wildlife Refuges, Route 1, Box 74, Tule Lake, California 96134, phone 916-667-2231).

Special Conditions: (1) Posted retrieving zones are established on certain hunting units. Possession of firearms in these retrieving zones is prohibited, except, unloaded firearms may be taken through these zones when necessary to reach or leave hunting areas. Decoys may not be set in retrieving zones. (2) Boats with or without motors are permitted. Air-thrust and inboard water-thrust boats are prohibited. (3) All decoys, boats, and other personal property must be removed at the close of each day.

McKay Creek National Wildlife Refuge, Pendleton, Oregon, (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882, phone 503-922-3232).

Special Conditions: Hunting is permitted on Wednesdays, Saturdays, Sundays and State holidays, except Christmas.

Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882, phone 503-922-3232.

Special Conditions: (1) Waterfowl and coot hunting is permitted on Wednesdays, Saturdays, Sundays and State holidays, except Christmas. (2) A Federal permit is required and will be issued on an advance reservation basis. Successful applicants may bring one guest and must arrive at check station at least one hour before shooting time or reservation is cancelled. (3) Applications will be accepted during two sign-up periods. Permits are non-transferable. (4) Steel shot only may be possessed or used during waterfowl and coot hunting. (5) Waterfowl and coot hunting will be from blinds only. Upper Klamath National Wildlife Refuge, (Headquarters: Klamath Basin National Wildlife Refuges, Route 1, Box 74, Tule Lake, California 96134, phone 916-667-2231).

Special Conditions: (1) Boats with or without motors are permitted. Air-thrust and inboard water-thrust boats are prohibited. (2) All decoys, boats and other personal property must be removed from the refuge at the close of each day. (3) No person may possess any weapon or ammunition that may not be legally used for taking waterfowl.

3. Ducks, geese, coots, and snipe may be hunted on the following refuge areas:

Lewis and Clark National Wildlife Refuge, Route 1, Box 376 C, Cathlamet, Washington 98612, phone 206-795-3915.

§ 32.22 Special regulations; upland game, for individual wildlife refuge areas.

Upland game may be hunted on the following refuge areas: Ankeny National Wildlife Refuge, Route 1, Box 198, Jefferson, Oregon 97352, phone 503-327-2444.

Special Conditions: (1) Only pheasant and quail may be hunted. (2) No upland game hunting is permitted after November 2, 1980. (3) All hunters must check in and out of the refuge daily by use of self-service permits. (4) Hunters on the area served by each registration station may be limited to 50 at any one time.

Baskett Slough National Wildlife Refuge, 10995 Highway 22, Dallas, Oregon 97338, phone 503-623-2749.

Special Conditions: (1) Only pheasant and quail may be hunted. (2) No upland game hunting is permitted after November 2, 1980. (3) All hunters must check in and out of the refuge daily by use of self-service permits. (4) Hunters on the area served by each registration station may be limited to 50 at any one time.

Cold Springs National Wildlife Refuge, Hermiston, Oregon (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882, phone 503-922-3232).

Deer Flat National Wildlife Refuge, Snake River Island Sector, Route 1, Box 1457, Nampa, Idaho 83651, phone 208-467-9278.

Hart Mountain National Wildlife Refuge, P.O. Box 11, Lakeview, Oregon 97630, phone 503-947-3315.

Lower Klamath National Wildlife Refuge (Headquarters: Klamath Basin National Wildlife Refuges, Route 1, Box 74, Tule Lake, California 96134, phone 916-667-2231.

Malheur National Wildlife Refuge, P.O. Box 113, Burns, Oregon 97720, phone 503-493-2323.

Special Conditions: (1) Pheasant, quail and partridge hunting will be permitted on the Blitzen Valley upland game hunting area during the last nine days of the State season. (2) Pheasant, quail and partridge hunting will be permitted on the Malheur Lake waterfowl hunting area during the waterfowl season. (3) Hunting will be permitted in the Blitzen Valley west of Highway 205 and the Kern Reservoir area as posted.

McKay Creek National Wildlife Refuge, Pendleton, Oregon (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882, phone 503-922-3232).

Special Conditions: (1) Hunting is permitted on Wednesdays, Saturdays, Sundays and State holidays, except Christmas. Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882, phone 503-922-3232.

Special Conditions: (1) A Federal advanced reservation permit is required to hunt pheasants on the opening weekend of pheasant season. (2) Hunting is permitted from 12 noon until closing time on Wednesday, Saturdays, Sundays and State holidays, except Christmas. (3) Pheasant hunters are required to check in and out of the refuge at check stations.

William L. Finley National Wildlife Refuge, Route 2, Box 208, Corvallis, Oregon 97330, phone 503-757-7326.

Special Conditions: (1) Only pheasant and quail may be hunted. (2) Hunters are required to check in and out of the refuge by use of self-service permits. (3) Upland game hunting is prohibited after November 2, 1980. (4) Each registration station may be limited to 100 hunters at any one time.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Deer Flat National Wildlife Refuge, Snake River Island Sector, Route 1, Box 1457, Nampa, Idaho 83651, phone 208-467-9278.

Hart Mountain National Wildlife Refuge, P.O. Box 11, Lakeview, Oregon 97630, phone 503-947-3315.

Special Conditions: (1) Hunters are required to check in and out of the refuge. (2) Antelope and sheep hunters are required to attend a prehunt indoctrination session.

Malheur National Wildlife Refuge, P.O. Box 113, Burns, Oregon 97720, phone 503-947-3315.

Special Conditions: (1) That portion of the refuge in the Blitzen Valley west of Highway 205 will be open as posted to deer hunting concurrent with the regular State season. (2) That portion of the refuge in the Blitzen Valley west of Highway 205 and the Kern Reservoir will be open to hunting of coyotes, rabbits and hare from September 1, 1980 to January 31, 1981.

William L. Finley National Wildlife Refuge, Route 2, Box 208 Corvallis, Oregon 97330, phone 503-757-7326.

Special Conditions: (1) Hunters are required to check in and out of the refuge by use of self-service permits. (2) The use of rifles is prohibited.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuges areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Note.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 30, 1980.

W. D. Carter,

Acting Area Manager.

[FR Doc. 80-23779 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 154
Thursday, August 7, 1980

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-SO-29]

Revocation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to revoke Federal Airways, V-51E, between Louisville, Ky., and Livingston, Ky., and V-140N, between Nashville, Tenn., and London, Ky. Use of these airways has steadily declined for the last several years. In 1979, less than one percent of the aircraft in the area utilized these airway segments. This action will simplify charting and lessen storage requirements for the ATC automation data base.

DATES: Comments must be received on or before September 8, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 80-SO-29, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Horne, 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.

SUPPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before September 8, 1980 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, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket 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 FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would revoke Federal Airways, V-51E between Louisville, Ky., and V-140N between Nashville, Tenn., and London, Ky. Use of these airways has steadily declined for the last several years. In 1979, less than one percent of the aircraft in the area utilized these airway segments. This action will simplify charting and lessen storage requirements for the air traffic control automation data base. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) as follows:

1. Under V51 after "Livingston, Tenn.; Louisville, Ky., including an" delete "E alternate and also a"

2. Under V140 after "London, Ky." delete ", including a north alternate from Nashville to London via INT Nashville 049 degree and London 258 degree radials"

(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 11.65)

Note: The FAA has determined that this document involves a proposed 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 and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on July 30, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-23442 Filed 8-6-80; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 80-ASW-30]

Alternation of Jet Route and Establishment of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Jet Route J-13 between Truth or Consequences, N. Mex., and Delicias, Mex., and establish new Jet Route J-141 from El Paso, Tex., to Delicias. These actions would reduce controller workload by permitting air traffic control flexibility for operations between the United States and Mexico.

DATES: Comments must be received on or before September 8, 1980.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-ASW-30, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76010.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (ATT-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.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before September 8, 1980 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 Dockets 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, SW., Washington, D.C., 20591, or be calling (202) 426-8058. Communications must identify the docket 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 FAA is considering an amendment to Subpart B of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would realign Jet Route J-13 between Truth or Consequences, N. Mex., and Delicias, Mex., and establish new Jet Route J-141 from El Paso, Tex., to Delicias. These changes have been requested by the Government of Mexico in order to improve traffic flow in the Cuidad Juarez, Mex., airport terminal area and would provide for an improved departure route from El Paso International Airport. The action requested would reduce controller workload, improve traffic flow, and aid flight planning. Section 75.100 of Part 75 was republished in the Federal Register on January 2, 1980, (45 FR 732).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 74.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) as follows:

1. By revising Jet Route No. 13 to read as follows: "From Delicias, Mex., to Chihuahua, Mex.; thence via Truth or Consequences, N. Mex., 165°T(152°M) radial to Truth or Consequences; Albuquerque, N. Mex.; Alamosa, Colo.; Denver, Colo.; Cheyenne, Wyo.; Casper, Wyo.; Billings, Mont.; Great Falls, Mont.; to Lethbridge, Alberta, Canada. The airspace within Mexico and the airspace within Canada are excluded."

2. By adding a new Jet Route No. 141 to read as follows: "Jet Route No. 141 From El Paso, Tex., via INT El Paso 137°T(125°M) and Fort Stockton, Tex., 273°T(262°M) radials; to Delicias, Mex. The airspace within Mexico is excluded."

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 11.65)

The FAA has determined that this document involves a proposed 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 and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on July 30, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-23637 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Ch. II

Semiannual Agenda of Regulations

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Publication of semiannual agenda.

SUMMARY: In compliance with Executive Order No. 12044 and Attorney General Order No. 831-79, the Drug Enforcement Administration (DEA) is providing public notice of its plan to simplify its regulations and to streamline its administrative procedures.

FOR FURTHER INFORMATION CONTACT: Richard Ira Lebovitz, Office of the Chief Counsel, Drug Enforcement Administration, Washington, D.C. 20537. Telephone: (202) 633-1141.

I. REVIEW OF SIGNIFICANT REGULATIONS

All regulations concerning the importation, exportation, manufacture, distribution and dispensing of controlled substances, the scheduling of such substances, the registration of all legitimate handlers of controlled substances, and the administrative procedures to be followed by DEA, registrants under the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and interested members of the public with respect to such matters, are presently contained in a single volume of the Code of Federal Regulations, 21 CFR Part 1300 to End.

While some of the regulations contained in this volume are clearly of a less significant or housekeeping nature, we consider the majority significant because they have an impact upon, and create some burden or responsibility which devolves upon, one or more of the classes of DEA registrants. For the most part, these regulatory controls are Congressionally mandated and necessary if the integrity of the closed system of controlled substance distribution is to be maintained.

DEA seeks to clarify and simplify its regulations to reduce to the greatest degree possible consistent with the requirements of the Controlled Substances Act and the public health and safety, the burdens imposed by its regulations upon those who legitimately handle controlled substances.

The following parts of Title 21, Code of Federal Regulations, were identified in our initial review as being subject to review during the subsequent six month period:

Part 1301—Registration of Manufacturers, Distributors and Dispensers of Controlled Substances
Part 1303—Quotas
Part 1304—Records and Reports of Registrants
Part 1308—Schedules of Controlled Substances
Part 1311—Registration of Importers and Exporters of Controlled Substances
Part 1316—Administrative Functions, Practices and Procedures

In addition to those sections listed above, our last semiannual agenda, published on September 19, 1979, identified a significant regulation that was under review concerning the limitation on importation of narcotic raw materials. During the 60-day comment period which followed the publication, approximately 15 individuals and organizations commented on the parts under review. We received many other comments on parts not under review during the six month period covered by the agenda. We will keep those comments, many of which concerned Part 1306, Prescriptions, for future consideration. We are reviewing comments received on the affected parts to ascertain what regulatory changes, if any, should be considered.

The significant regulation concerning the limitation on importation of narcotic raw materials, identified in the semiannual agenda, was published as a proposed rule on February 12, 1980 (see 45 FR 9289).

Additionally, the review by DEA has generated proposed regulations concerning the partial filling of prescriptions for controlled substances (45 FR 24199, April 9, 1980), the transfer of prescriptions for controlled substances between pharmacies as a recordkeeping task (45 FR 21652, April 2, 1980), the elimination of the need for obtaining a permit to maintain records in a central location (45 FR 24198, April 9, 1980) and the issuance of a statement of policy concerning the maintenance of emergency kits containing controlled substances in long term care facilities (45 FR 24128, April 9, 1980).

These notices of proposed rulemaking and the statement of policy provided the opportunity for comment. DEA reviewed comments received on the statement of policy concerning emergency kits and the proposed rule concerning central recordkeeping permits. By formal publication dated June 16, 1980 (45 FR 40576), DEA placed the statement of policy into effect and also published a final rule concerning central recordkeeping permits on July 1, 1980 (45 FR 44266).

After consideration of all timely comments submitted in response to the other proposed regulations referred to above, DEA will decide whether to publish final orders.

DEA also proposes to engage in a review of the following parts of its regulations in 21 CFR Part 1300 to End:

Part 1302—Labeling and Packaging Requirements for Controlled Substances
Part 1307—Miscellaneous
Part 1310—Piperidine Reporting and Purchaser Identification

Part 1302—Labeling and Packaging Requirements for Controlled Substances

Regulations in Part 1302 require that controlled substances distributed in commercial containers bear labeling which displays the appropriate symbol to identify in which schedule the controlled substances are placed. This part requires that commercial containers for certain controlled substances be sealed to deter and detect tampering.

Legal Basis—21 U.S.C. 825.

Knowledgeable Official—Ronald W. Buzzeo, Chief, Compliance Division, Office of Compliance and Regulatory Affairs, Drug Enforcement Administration, Washington, D.C. 20537. Telephone (202) 633-1321.

Regulatory Analysis—Not required.

Discussion—Review of this part will focus on the clarification and simplification of terms defined and used in this regulation.

Part 1307—Miscellaneous

The regulations in Part 1307 provide the authority in furtherance of the Controlled Substances Act for the Administrator to except persons from DEA regulations concerning registration, packaging and labeling, order forms, quotas, records and reports, prescription requirements, controlled substances schedule requirements, importation and exportation requirements, and administrative functions, practices and procedures. This part merely provides the authority to grant exceptions; it is stressed that the exercise of this authority is entirely in the Administrator's discretion. This part further provides special exceptions from regulations for certain manufacturing and distribution activities and provides procedures for the proper disposal and disposition of controlled substances.

Legal Basis—21 U.S.C. 821 and 871(b).

Knowledgeable Official—Ronald W. Buzzeo, Chief, Compliance Division, Office of Compliance and Regulatory Affairs, Drug Enforcement Administration, Washington, D.C. 20537. Telephone (202) 633-1091.

Regulatory Analysis—Not required.

Discussion—Review of this part will include identifying the need or desire, and the practicalities, of providing additional exceptions for registrants' activities beyond those special exceptions for manufacture and distribution of controlled substances currently set forth in Part 1307.

Part 1310—Piperidine Reporting and Purchaser Identification

Regulations in Part 1310 were first published on March 9, 1979 (44 FR 12993) pursuant to the mandate of Title II, PCP Criminal Penalties and Piperidine Reporting, of the Psychotropic Substances Act of 1978, Pub. L. 95-633. The 1978 Act amended the Controlled Substances Act by creating a new section 310 (21 U.S.C. 830) that requires sellers of the chemical piperidine to report their sales to DEA and to require proof of positive identification from the piperidine purchaser. Section 310 authorizes the Attorney General to establish regulations detailing the reporting requirements and identification procedures to be met by sellers of piperidine, and, in consequence, the Administrator has issued Part 1310. Part 1310 requires reports from persons who distribute, transfer, sell, import, or suffer theft or loss of, piperidine. Part 1310 also particularizes the information such reports must contain, sets out the format for the reports, and notes when they must submitted. It also sets out the acceptable type of identification which purchasers should present to sellers during a sale of piperidine. Lastly, Part 1310 allows sellers an exemption from reporting sales to known customers.

Legal Basis—21 U.S.C. 830.

Knowledgeable Official—Dale Schuitema, Staff Coordinator, Office of Enforcement, Drug Enforcement Administration, Washington, D.C. 20537. Telephone (202) 633-1463.

Regulatory Analysis—Not required.

Discussion—Review of Part 1310 will encompass the productivity of those reporting and purchaser identification requirements. The authority for Part 1310 is section 310 of the Controlled Substances Act, and by the terms of Pub. L. 95-633, section 310 is repealed, effective January 1, 1981. If DEA's review reveals that the reporting and purchaser identification requirements have proven to be worthy tools in curtailing illegal sales and purchases of piperidine, DEA will recommend that the "sunset" provision of Pub. L. 95-633 be repealed.

There will be a 60-day comment period following the present publication of DEA's semiannual agenda. DEA will consider any and all comments

submitted by interested persons on the parts currently scheduled for reviews. If this review shows that amendments or deletions are necessary, whether initiated by interested persons through their comments filed within the 60-day period or by DEA through its own initiative, DEA will then publish notices of proposed rulemaking.

A second 60-day comment period will follow publication of any such proposed revised regulations. During the entire review period, DEA will solicit and encourage active participation by the affected industries and professions and by DEA staff within the limitations imposed by budgetary constraints and normal day-to-day workloads.

Dated: July 23, 1980.

Marion W. Hambrick,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80-23847 Filed 8-6-80; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-164-78]

Coordination of Vesting and Discrimination Requirements for Qualified Plans; Announcement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: This document announces that the Internal Revenue Service has published on August 4, 1980, a news release, IR-80-85, dated August 4, 1980, that provides examples of the coordination of vesting and discrimination rules for employee retirement plans that may be included in the final regulations for determining if a plan's vesting schedule discriminates in favor of certain types of employees.

FOR FURTHER INFORMATION CONTACT: George H. Bradley of the Legislation and Regulations Division Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N W., Washington, D.C. 20224, Attention CC:LR:T, 202-566-3486, not a toll-free call.

Announcement

Proposed regulations for Internal Revenue Code section 411(d)(1) were published in the Federal Register on April 9, 1980 (45 FR 24201). In response to comments received, modifications to the proposed regulations were published in the Federal Register on June 12, 1980, (45 FR 39869) with three examples showing how the facts and circumstances test for discriminatory vesting in the proposed regulations was to be applied.

At the July 10, 1980, public hearing on the modified proposed regulations several commenters asked the IRS to include the three examples in the final regulations and to provide additional examples as guidance. The Treasury Department has indicated that other examples will be publicized before the final regulations are adopted so that the public and members of Congress can make comments.

The three original examples, with modifications, and two new examples are attached to IR-80-85. All five examples may be included in the final regulations under 411(d)(1).

Written comments on the examples should be sent to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-164-78), 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

George H. Jelly,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 80-23799 Filed 8-6-80; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-261-76]

Income Tax; Deductions for Business Use or Rental of Dwelling Unit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the deductibility of expenses in connection with the business use, or the rental to others, of a dwelling unit that the taxpayer is deemed to have used for personal purposes during the taxable year. The Tax Reform Act of 1976 established new conditions for the deductibilty of such expenses. The regulations would provide the public with needed guidance in complying with the Act and would affect individuals, partnerships, trusts, estates, and electing small business corporations that incur business expenses for dwelling units which are deemed to have been used for personal purposes during the taxable year.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 6, 1980. The amendments are proposed to be effective for taxable years beginning after 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-261-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul A. Francis (202-566-6640).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 183, 212, 262, and 280A of the Internal Revenue Code of 1954. These amendments are proposed to provide regulations under section 280A which was added to the Code by section 601 of the Tax Reform Act of 1976 (90 Stat. 1569) and amended by section 306 of the Tax Reduction and Simplification Act of 1977 (91 Stat. 152) and section 701(h) of the Revenue Act of 1978 (92 Stat. 2904). The amendments to the regulations under sections 183, 212, and 262 provide for coordination of those sections with section 280A. These amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

General Rule

Section 280A generally disallows business deductions for expenses with respect to the use of a dwelling unit used by the taxpayer as a residence during the taxable year, but there are several exceptions to this general rule. Section 280A prescribes certain criteria for determining whether a taxpayer who uses a dwelling unit for business purposes or rents a dwelling unit to others has used the dwelling unit as a residence during the taxable year. A dwelling unit may be a house, apartment, condominium, mobile home, boat, or similar property with basic living accommodations. Section 280A also applies to other property, such as a garage, which is closely related to the dwelling unit itself. If the taxpayer has used the dwelling unit as a residence, the taxpayer may deduct the expenses attributable to the business use or rental of the unit only to the extent provided in section 280A.

Use as a Residence

A taxpayer uses a dwelling unit as a residence during a taxable year if the number of calendar days on which the taxpayer uses the unit for personal purposes exceeds the greater of 14 days or 10 percent of the number of calendar days on which the unit is rented at a fair rental (excluding days on which the taxpayer uses the unit for personal purposes). A special rule applies in certain situations in which the taxpayer

is renting out a unit used by the taxpayer as a principal residence.

A taxpayer is treated as using a unit for personal purposes on any day on which the unit is used—

(1) For personal purposes by the taxpayer or any other person with an interest in the unit, or by certain relatives of either;

(2) By any person under an arrangement which enables the taxpayer to use another unit; or

(3) By any person (except certain employees) if fair rental has not been paid for the use of the unit for that day.

The proposed regulations explain how these rules apply to units in which entities, such as partnerships or trusts, have an interest. The proposed regulations also provide that an individual who works on repair or maintenance of the unit on a substantially full-time basis will not be treated as using the unit for personal purposes.

Business Use of Home

A taxpayer who uses a dwelling unit as a residence may deduct expenses for business use of the unit only if the use is within one of the exceptions enumerated in section 280A. No deductions are allowed unless the taxpayer uses the unit for a specified business purpose on a regular basis. Deductions are subject to the limitation explained below.

A taxpayer may deduct expenses allocable to the use of a portion of a dwelling unit as the taxpayer's principal place of business if the taxpayer makes no use of that portion of the unit other than for business purposes. The proposed regulations provide that this exception applies only if the unit is the principal place of the taxpayer's overall business activity. Use of a unit as the principal place of business for a secondary business does not qualify. The proposed regulations do not follow the decision of the tax Court in *Curphey v. Commissioner*, 73 T.C. No. 61 (Feb. 4, 1980).

Expenses allocable to the use of a portion of a unit as a place of business used by patients, clients, or customers in meeting or dealing with the taxpayer are deductible if the taxpayer makes no use of that portion of the unit other than for business purposes.

A taxpayer who, in connection with a trade or business, uses a separate structure which is related to the dwelling unit but not attached to it may deduct expenses allocable to the use of the separate structure if the taxpayer makes no use of the structure other than for business purposes.

An employee may deduct expenses under the three exceptions just described only if the employee's use of the unit is for the convenience of the employer.

There is also an exception for expenses allocable to space within the unit in which the taxpayer stores inventory. The inventory must be held for use in the taxpayer's trade or business of selling products at wholesale or retail, and the unit must be the sole fixed location for that trade or business.

A taxpayer may deduct expenses allocable to the use of a unit in the taxpayer's trade or business of providing day care for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves. The regulations distinguish day care services, which are primarily custodial, from educational activities.

There are two special rules that apply to the exception for day care services. The taxpayer may deduct expenses accuring after August 1977, only if the taxpayer is taking, or has taken, whatever steps may be necessary to comply with applicable state laws such as licensing or registration requirements. The proposed regulations indicate when a taxpayer will be deemed to have satisfied this rule. If the taxpayer uses any portion of the unit for day care services and for some other purpose besides the purposes described in section 280A, the taxpayer must make a time allocation of the expenses attributable to that portion of the unit according to the formula specified in the proposed regulations.

Limitation on Deductions for Business Use

Deductions allowable under the five exceptions just described are subject to a special limitation. As the proposed regulations indicate, the first step necessary to apply the limitation is to determine the gross income derived from the use of the unit. If the taxpayer carries on the trade or business in more than one location, the taxpayer must allocate the income to the activity in the different locations. The gross income derived from the use of the unit equals the excess of the gross income allocable to the business activity in the unit over the expenses incurred in the activity but not allocable to the use of the unit itself, such as expenditures for supplies and compensation paid to assistants. The gross income derived from the use of the unit is the ceiling for all other deductions. The proposed regulations prescribe the sequence in which the deductions must be claimed.

Rental of Dwelling Unit

Section 280A prescribes several special rules with respect to the deductibility of expenditures in connection with the rental of dwelling units.

Section 280A(d)(3) provides that the days on which the taxpayer used the rental unit as a principal residence are disregarded in determining whether a taxpayer may deduct rental expenses in excess of income from a "qualified rental period." A "qualified rental period" is a consecutive period of 12 or more months, or a shorter period ending with the sale or exchange of the unit, during which the unit is rented to someone other than a family member, or is held for rental, at fair rental value.

Section 280A(f)(1)(B) excludes from the definition of "dwelling unit", and therefore from the general disallowance provision of section 280A(a), any portion of a unit "used exclusively as a hotel, motel, inn, or similar establishment". The proposed regulations state that this exception applies only if the portion of the unit is regularly available for occupancy by paying customers and only if no person with an interest in the property is deemed to have used it as a residence during the taxable year.

If a taxpayer uses a unit as a residence and actually rents it to others for less than 15 days during the year, the taxpayer disregards the rental use altogether for tax purposes. Thus, the taxpayer excludes the rental income from gross income for the year and may not deduct the rental expenses.

If a taxpayer who rents a dwelling unit to others makes any personal use of the unit during the taxable year, the taxpayer may not deduct more than a proportionate share of the expenses for the unit as rental expenses. The proposed regulations explain this limitation, which applies even if the personal use of the unit by the taxpayer is insufficient to constitute use as a residence.

A taxpayer who uses a unit as a residence and rents it to others for more than 14 days during the year may deduct rental expenses only to the extent of the gross rental income from the unit. The taxpayer must deduct expenses allocable to the rental use of the unit in the sequence prescribed in the proposed regulations. Items which are deductible without regard to any connection to a business activity, such as mortgage interest and taxes, are deducted first, then operating expenses, and finally items which affect basis, such as depreciation.

Special Property Arrangements

The proposed regulations provide for the application of section 280A to two types of special property arrangements: rental pools and time sharing arrangements.

Rental pools are arrangements whereby a number of dwelling units are made available for rental and the owners of the units agree to share at least a portion of the rental receipts without regard to the actual rental of the individual units. The proposed regulations require each pool participant to include in gross income the amounts received from the pool. The limitation on the allocation of expenses to the rental use of a unit is applied by reference to the actual use of each unit.

A time sharing arrangement is an arrangement whereby two or more persons with interests in a dwelling unit agree to exercise control over the unit for different periods during a year. In general, the proposed regulations treat such arrangements as tenancies in common.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six 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 was Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department particpated in developing the regulations, both on matters of substance and style.

Evaluation of the effectiveness of the proposed regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.183-1 is amended by adding at the end thereof the following new paragraph:

§ 1.183-1 Activities not engaged in for profit.

* * * * *

(g) *Coordination with section 280A.* If section 280A(a) (relating to disallowance of deductions for certain expenses with respect to the use of a dwelling unit used as a residence) applies with respect to any dwelling unit (or portion thereof) for the taxable year—

(1) Section 183 and this section shall not apply to that unit (or portion thereof) for that year, but

(2) That year shall be taken into account as a taxable year for purposes of applying section 183(d).

See section 280A and the regulations thereunder for definitions and rules relating to use of dwelling units. Note that the limitation of section 280A(e) and § 1.280A-3(c) applies in any case where an individual or an electing small business corporation uses a dwelling unit for personal purposes on any day during the taxable year.

Par. 2. Paragraph (h) of § 1.212-1 is amended by adding at the end thereof a new sentence to read as follows:

§ 1.212-1 Nontrade or nonbusiness expenses.

* * * * *

(h) * * * But see section 280A and the regulations thereunder.

* * * * *

Par. 3. Paragraph (b)(3) of § 1.262-1 is amended to read as follows:

§ 1.262-1 Personal, living and family expenses.

* * * * *

(b) *Examples of personal, living, and family expenses.* * * *

(3) Expenses of maintaining a household, including amounts paid for rent, water, utilities, domestic service, and the like are not deductible. For rules relating to expenses incurred in connection with dwelling units used for both business purposes and personal purposes, see section 280A and the regulations thereunder.

* * * * *

Par. 4. The following new sections are inserted immediately after § 1.279-7:

§ 1.280A-1 Limitations on deductions with respect to a dwelling unit which is used by the taxpayer during the taxable year as a residence.

(a) *General rule.* In the case of an individual, a partnership, a trust an estate, or an electing small business corporation (as defined in section 1371 (b)), no deductions which would otherwise be allowable under chapter 1 of the Code shall be allowed with respect to the use of a dwelling unit used by such person during the taxable year as a residence except as provided in section 280A and in §§ 1.280A-1 through 1.280A-3. The requirements imposed by section 280A are in addition to the requirements imposed by other provisions of the Code. If a deduction is claimed for an item attributable to a dwelling unit used by the taxpayer during the taxable year as a residence, the taxpayer must first establish that it is otherwise allowable as a deduction under chapter 1 of the Code before the provisions of section 280A become applicable. Section 1.280A-2 sets forth the rules relating to the deductibility of expenses attributable to the business use of a dwelling unit used as a residence. Section 1.280A-3 sets forth the rules relating to the deductibility of expenses attributable to the rental of a dwelling unit used as a residence. Note that the allocation rule of section 280A (e) and § 1.280A-3 (c) applies to expenses attributable to any dwelling unit used by the taxpayer for personal purposes on any day during the taxable year, whether or not the taxpayer is treated as using the unit as a residence.

(b) *Deductions allowable without regard to any connection with a trade or business or an income-producing activity.* Deductions which are allowable without regard to any connection with a trade or business or an income-producing activity are allowed with respect to the use of dwelling units. Such deductions include the deduction for interest under section 163, the deduction for taxes under section 164, and the deduction for casualty losses under section 165.

(c) *Dwelling unit*—(1) *In general.* For purposes of this section and §§ 1.280A-2 and 1.280A-3, the term "dwelling unit" includes a house, apartment, condominium, mobile home, boat, or similar property, which provides basic living accommodations such as sleeping space, toilet, and cooking facilities. All structures and other property appurtenant to a dwelling unit which do not themselves constitute dwelling units are considered part of the unit. For example, an individual who rents to another person space in a garage which is appurtenant to a house which the individual owns and occupies may claim deductions with respect to that rental activity only to the extent allowed under section 280A, paragraph (b) of this section, and § 1.280A-3.

(2) *Exception.* Notwithstanding the provisions of paragraph (c)(1) of this section the term "dwelling unit" does not include any portion of a unit which is used exclusively as a hotel, motel, inn, or similar establishment. Property is so

used only if it is regularly available for occupancy by paying customers and only if no person having an interest in the property is deemed under the rules of this section to have used the unit as a residence during the taxable year. For example, this exception will apply to a unit entered in a rental pool (see § 1.280A-3 (e)) only if the owner of the unit does not use it as a residence during the taxable year.

(d) *Use as residence*—(1) *In general.* For purposes of this section and §§ 1.280A-2 and 1.280A-3, a taxpayer uses a dwelling unit during the taxable year as a residence if the taxpayer uses the unit for personal purposes for a number of days which exceeds the greater of—

(i) 14 days, or

(ii) 10 percent of the number of days during the year for which the unit is rented at a fair rental.

For purposes of this determination, a unit shall not be treated as rented at fair rental for any calendar day on which it is used for personal purposes.

(2) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). B owns a boat suitable for overnight use. B is deemed, under paragraph (d) of this section, to have used the boat for personal purposes for 16 days during B's taxable year. B rents the boat at fair rental for 163 days during B's taxable year. B is not deemed to have used the boat for personal purposes on any of the 163 days for which it is rented at fair rental. Since the number of days on which B used the boat for personal purposes does not exceed 16.3 (10 percent of 163, the number of days on which the boat is treated as rented at a fair rental for purposes of this determination), B has not used the boat as a residence for the taxable year.

Example (2). Assume the same facts as in example (1) of this subparagraph, except that 5 of the 16 days on which B is deemed to have used the boat for personal purposes were included in the 163 days on which the boat was rented at fair rental. On those 5 days the boat is not treated as rented at a fair rental for purposes of this paragraph. Since the number of days on which B used the boat for personal purposes exceeds 15.8 (10 percent of 158, the number of days on which the boat is treated as rented at a fair rental for purposes of this determination), B has used the boat as a residence for the taxable year.

(e) *Personal use of dwelling unit*—(1) *General rule.* For purposes of this section and §§ 1.280A-2 and 1.280A-3, a taxpayer shall be deemed to have used a dwelling unit for personal purposes for a calendar day if, for any part of such day, any portion of the unit is used—

(i) For personal purposes by the taxpayer or any other person who has an interest in the unit;

(ii) By a brother or sister (whether by the whole or half blood), spouse, ancestor, or lineal descendant of the taxpayer or of any other person who has an interest in the unit;

(iii) By any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit for any period of time, whether or not a rental is charged for the use of the other unit and regardless of the length of time that the taxpayer uses the other unit; or

(iv) By any individual, other than an employee with respect to whose use section 119 (relating to meals or lodging furnished for the convenience of the employer) applies, unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental.

For purposes of this paragraph, a person is considered to have an interest in a dwelling unit if that person holds any interest in the unit (other than a security interest or an interest under a lease for a fair rental) even if there are no immediate rights to possession and enjoyment under the interest.

(2) *Special rule for "qualified rental period".* For purposes of determining whether section 280A(c)(5) and § 1.280A-3(d) limit deductions for expenses allocable to a "qualified rental period", a taxpayer shall not be considered to have used the rented unit for personal purposes on any day during the taxable year before or after a "qualified rental period" described in paragraph (e)(2)(ii) of this section, or before a "qualified rental period" described in paragraph (e)(2)(ii) of this section, if the rented unit was the principal residence of the taxpayer with respect to that day. The use of the unit for personal purposes shall, however, be taken into account for all other purposes of section 280A. A "qualified rental period" is a consecutive period of—

(i) 12 or more months which begins or ends during the taxable year, or

(ii) less than 12 months which begins in the taxable year and at the end of which the rented unit is sold or exchanged, and

for which the unit is rented to a person other than a member of the family of the taxpayer, or is held for rental, at a fair rental. For purposes of the preceding sentence, the family of the taxpayer includes the brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal decendants of the taxpayers. For the meaning of the term "principal residence", see section 1034 and § 1.1034-1 (c)(3).

(3) *Dwelling units in which a partnership, a trust, an estate, or an electing small business coporation has an interest.* For purposes of applying the provisions of paragraph (e) (1) of this section to a dwelling unit in which a partnership, a trust, an estate, or an electing small business corporation (as defined in section 1371 (b)) has an interest, the entity shall be considered to have made personal use of the unit on any calender day on which any member of the partnership, beneficiary of the trust or estate, or shareholder in the corporation would be considered to have made personal use of the unit if that member, beneficiary, or shareholder had an interest in the dwelling unit.

(4) *Use of the unit for repairs and maintenance.* For purposes of applying the provisions of paragraph (e)(1) of this section, the use of a dwelling unit by any individual on any calendar day shall be disregarded if on that calendar day that individual is engaged in repair or maintenance work on the unit on a substantially full-time basis. An individual will be deemed to have satisfied this condition on any calendar day on which the individual works on the unit for the lesser of 8 hours or ⅔ of the time that the individual is present on the premises. If all individuals on the premises on a calendar day who are capable of working do work on the unit on a substantially full-time basis, incidental use of the unit on the same day by other individuals incapable of working, *e.g.*, small children, shall be disregarded for purposes of paragraph (e) (1) of this section.

(5) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). B owns a vacation home which B rents to S, B's sister, at a fair rental for 10 days. B also rents the home to C at fair rental for 11 days as a part of an arrangement whereby B is enabled to use D's home for 6 days. As a favor, B rents the home to F at a discount rate for 15 days. On the basis of the rental activity described, B is deemed to have used the home for personal purposes on 36 days.

Example (2). X Inc., an electing small business corporation in which A and B are shareholders, is the owner of a fully equipped recreational vehicle. During the month of July, the vehicle is used by three individuals. A uses the vehicle on a 7-day camping trip. D, who is B's daughter, rents the vehicle from A and B at fair rental for 10 days. E rents the vehicle at fair rental for 12 days under an arrangement whereby B is enabled to use an apartment owned by F, a friend of E, for 9 days. X Inc. is deemed to have used the dwelling unit for personal purposes on any day on which any of its shareholders would be deemed to have so used the unit if each shareholder had an interest in the unit.

Example (3). A owns a lakeside cottage which A rents during the summer. A arrives at the cottage alone at 8 p.m. on a Thursday to prepare it for the summer season. A works on the cottage for 3 hours that evening and for 10 hours on Friday. B, A's spouse, joins A at the cottage at noon on Saturday. A works on the cottage for 9 hours that day, and B works on the cottage for 4 hours. On Sunday A and B work on the cottage for one hour and then return home. A and B ate their meals in the cottage and slept there during the time that they were present. A will be deemed to have used the cottage for personal purposes on Saturday because B, who made personal use of the cottage on that day, did not work on the cottage on a substantially full-time basis. A also made personal use of the cottage on Sunday on which A worked only briefly. A will not be deemed to have used the cottage for personal purposes on Thursday or Friday because the use by A, the only person making use of the cottage on those days, is disregarded since A was engaged in repair and maintenance work on the unit for more than ⅔ of the time that A was on the premises on Thursday and for more than 8 full hours on Friday.

Example (4). A owns a mountain cabin which A rents for most of the year. A works on maintenance of the cabin on a substantially full-time basis for several days. A's four-year old son, S, accompanies A to the cabin and plays while A works. The personal use of the cabin by S is disregarded since S, who is incapable of working is accompaning A, who is working on a substantially full-time basis. If S were 16 years old and otherwise capable of working, however, A would be deemed to have used the cottage for personal purposes unless S worked on the cabin on a substantially full-time basis.

Example (5). B, an individual whose taxable year is the calendar year, uses a dwelling unit as a principal residence from January 1, 1978, to June 30, 1978. On July 1, 1978, B rents the unit at a fair rental to D, an unrelated individual, for a two-year period beginning immediately. In determining whether section 280A(c)(5) and § 1.280A-3(d) limit deductions for expenses allocable to this "qualified rental period", B is not considered to have used the unit for personal purposes from January 1, 1978, to June 30, 1978. Note, however, that section 280A(e) and § 1.280A-3(c) limit the portion of the total 1978 expenses with respect to the unit which may be attributed to the "qualified rental period." B's personal use of the unit is similarly taken into account in applying section 280A(c)(5) to any other use of the unit during the taxable year, *e.g.*, the use of a portion of the unit as a place of business.

(f) *Coordination with section 183.* If a dwelling unit is used by the taxpayer during the taxable year as a residence, section 183 (relating to activities not engaged in for profit) shall not apply with respect to the unit for the taxable year. The taxable year shall, however, be taken into account as a taxable year for purposes of determining whether the presumption described in section 183(d) applies.

Example. B owns a cottage which B rents for part of the summer in 1976, 1977, and 1978. B also uses the cottage as a residence in 1976 and 1977, but not in 1978. B's rental income for 1976 exceeds the expenses allocable to the rental activity, but in 1977 the expenses exceed the rental income. In determining whether B may claim for 1978 the benefit of the presumption described in section 183(d), the rental activity in 1976 and 1977 is taken into account even though section 183 did not apply with respect to the cottage for those years.

(g) *Effective date.* This section and §§ 1.280A-2 and 1.280A-3 apply to taxable years beginning after December 31, 1975.

§ 1.280A-2 Deductibility of expenses attributable to business use of a dwelling unit used as a residence.

(a) *Scope.* This section describes the business uses of a dwelling unit used as a residence for which items may be deductible under an exception to the general rule of section 280A and explains the general conditions for the deductibility of items attributable to those uses. Deductions are allowable only to the extent provided in section 280A(c)(5) and in paragraph (i) of this section. See § 1.280A-1 for the general rules under section 280A.

(b) *Use as the taxpayer's principal place of business*—(1) *In general.* Section 280A(c)(1)(A) provides an exception to the general rule of section 280A(a) for any item to the extent the item is allocable to a portion of the dwelling unit which is used exclusively and on a regular basis as the taxpayer's principal place of business.

(2) *Determination of principal place of business.* For purposes of section 280A(c)(1)(A) and this section, a taxpayer may have only one principal place of business regardless of the number of business activities in which the taxpayer may be engaged. When a taxpayer engages in business activities at more than one location, it is necessary to determine the principal place of the taxpayer's overall business activity in light of all the facts and circumstances. Among the facts and circumstances to be taken into account in determining an individual's principal place of business are the following:

(i) The portion of the total income from business activities which is attributable to activities at each location;

(ii) The amount of time spent in business activities in each location; and

(iii) The facilities available to the taxpayer at each location.

For example, a home office in which a taxpayer engages in business as a self-employed person would rarely qualify as the taxpayer's principal place of business if the taxpayer's primary source of income is wages for services performed in another business on the employer's premises. On the otherhand, if an outside salesperson has no office space except at home and spends a substantial amount of time on paperwork at home, the office in the home may qualify as the salesperson's principal place of business.

(c) *Use by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of business.* Section 280A (c)(1)(B) provides an exception to the general rule of section 280A(a) for any item to the extent the item is allocable to a portion of the dwelling unit which is used exclusively and on a regular basis as a place of business in which patients, clients, or customers meet or deal with the taxpayer in the normal course of the taxpayer's business. This exception applies only if the use of the dwelling unit by patients, clients, or customers is substantial and integral to the conduct of the taxpayer's business. Occasional meetings are insufficient to make this exception applicable.

(d) *Use of a separate structure not attached to the dwelling unit in connection with the taxpayer's trade or business.* Section 280A(c)(1)(C) provides an exception to the general rule of section 280A(a) for any item to the extent that the item is allocable to a separate structure which is appurtenant to, but not attached to, the dwelling unit and is used exclusively and on a regular basis in connection with the taxpayer's trade or business. An artist's studio, a florist's greenhouse, and a carpenter's workshop are examples of structures that may be within the description of this paragraph.

(e) *Use as a storage unit for taxpayer's inventory.* Section 280A(c)(2) provides an exception to the general rule of section 280A(a) for any item to the extent such item is allocable to space within the dwelling unit which is used on a regular basis as a storage unit for the inventory of the taxpayer held for use in the taxpayer's trade or business of selling products at retail or wholesale. The storage unit includes only the space actually used for storage; thus, if a taxpayer stores inventory in one portion of a basement, the storage unit includes only that portion even if the taxpayer makes no use of the rest of the basement. The exception provided under section 280A(c)(2) applies only if—

(1) The dwelling unit is the sole fixed location of that trade or business, and

(2) The space used is a separately identifiable space suitable for storage.

(f) *Use in providing day care services*—(1) *In general.* Section 280A (c)(4) provides an exception to the general rule of section 280A(a) for any item to the extent that the item is allocable to the use of any portion of the dwelling unit on a regular basis in the taxpayer's trade or business of providing day care services for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves.

(2) *Day care services.* Day care services are services which are primarily custodial in nature and which, unlike foster care, are provided for only certain hours during the day. Day care services may include educational, developmental, or enrichment activities which are incidental to the primary custodial services. If the services performed in the home are primarily educational or instructional in nature, however, they do not qualify as day care services. The determination whether particular activities are incidental to the primary custodial services generally depends upon all the facts and circumstances of the case. Educational instruction to children of nursery school age shall be considered incidental to the custodial services. Further, educational instruction to children of kindergarten age would ordinarily be considered incidental to the custodial services if the instruction is not in lieu of public instruction under a State compulsory education requirement. In addition, enrichment instruction in arts and crafts to children, handicapped individuals, or the elderly would ordinarily be considered incidental to the custodial services rendered.

(3) *State law requirements.* This paragraph applies to items accruing after August 31, 1977, only if the owner or operator of the day care business is, at the time the item accrues, acting in accordance with the applicable State law relating to the licensing, certification, registration, or approval of day care centers or family or group day care homes. A person satisfies the condition stated in the preceding sentence for any period for which—

(i) There is no applicable State law of the type described;

(ii) The person is exempt from the requirements of the applicable State law;

(iii) The person has whatever license, etc., is required under the applicable State law; or

(iv) The person has applied for whatever license, etc., is required under the applicable State law, provided, that the application has not been rejected, and provided that the person has corrected or removed any deficiencies that resulted in the revocation of any previous license, etc., or in the rejection of any previous application.

(g) *Exclusive use requirement*—(1) *In general.* Paragraph (b), (c), or (d) of this section may apply to the use of a portion of a dwelling unit for a taxable year only if there is no use of that portion of the unit at any time during the taxable year other than for business purposes. Paragraph (b), (c), or (d) may apply to a portion of a unit which is used for more than one business purpose. Necessary repair or maintenance does not constitute use for purposes of this paragraph.

(2) *Convenience of the employer.* In the case of an employee, paragraph (b), (c), or (d) shall apply to a use of a portion of a dwelling unit only if that use is for the convenience of the employer.

(h) *Use on a regular basis.* The determination whether a taxpayer has used a portion of a dwelling unit for a particular purpose on a regular basis must be made in light of all the facts and circumstances.

(i) *Limitation on deductions*—(1) *In general.* The deductions allowable under chapter 1 of the Code for a taxable year with respect to the use of a dwelling unit for one of the purposes described in paragraphs (b) through (f) of this section shall not exceed the gross income derived from such use of the unit during the taxable year, as determined under subparagraph (2) of this paragraph. Subparagraphs (3) and (4) of this paragraph provide rules for determining the expenses allocable to the business use of a unit. Subparagraph (5) of this paragraph prescribes the order in which deductions are allowable.

(2) *Gross income derived from use of unit*—(i) *More than one location.* If the taxpayer engages in a business in the dwelling unit and in one or more other locations, the taxpayer shall determine the portion of the gross income from the business that is attributable to business activity in the unit. In making this determination, the taxpayer shall take into account the amount of time that the taxpayer engages in business activity at each location, and any other facts and circumstances that may be relevant.

(ii) *Exclusion of certain amounts.* For purposes of section 280A and this section, gross income derived from use of a unit means gross income from the business activity in the unit reduced by expenditures required for the activity but not allocable to the use of the unit itself, such as expenditures for supplies and compensation paid to other persons. For example, a physician who uses a portion of a dwelling for treating patients shall compute gross income derived from use of the unit by subtracting from the gross income attributable to the business activity in the unit any expenditures for nursing and secretarial services, supplies, etc.

(3) *Expenses allocable to portion of unit.* The taxpayer may determine the expenses allocable to the portion of the unit used for business purposes by any method that is reasonable under the circumstances. If the rooms in the dwelling unit are of approximately equal size, the taxpayer may ordinarily allocate the general expenses for the unit according to the number of rooms used for the business purpose. The taxpayer may also allocate general expenses according to the percentage of the total floor space in the unit that is used for the business purpose. Expenses which are attributable only to certain portions of the unit, *e.g.*, repairs to kitchen fixtures, shall be allocated in full to those portions of the unit. Expenses which are not related to the use of the unit for business purposes, *e.g.*, expenditures for lawn care, are not taken into account for purposes of section 280A.

(4) *Time allocation for use in providing day care services.* If the taxpayer uses a portion of a dwelling unit in providing day care services, as described in paragraph (f) of this section, and the taxpayer makes any use of that portion of the unit for non-business purposes during the taxable year, the taxpayer shall make a further allocation of the amounts determined under subparagraph (3) of this paragraph to be allocable to the portion of the unit used in providing day care services. The amounts allocated to the business use of the unit under this subparagraph shall bear the same proportion to the amounts determined under subparagraph (3) of this paragraph as the length of time that the portion of the unit is used for day care services bears to the length of time that the portion of the unit is available for all purposes. For example, if a portion of the unit is used for day care services for an average of 36 hours each week during the taxable year, the fraction to be used for making the allocation required under this subparagraph is 36/168, the ratio of the number of hours of day care use in a week to the total number of hours in a week.

(5) *Order of deductions.* Business deductions with respect to the business use of a dwelling unit are allowable in the following order and only to the following extent:

(i) The allocable portions of amounts allowable as deductions for the taxable year under chapter 1 of the Code with

respect to the dwelling unit without regard to any use of the unit in trade or business, *e.g.*, mortgage interest and real estate taxes, are allowable as business deductions to the extent of the gross income derived from use of the unit.

(ii) Amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code by reason of the business use of the dwelling unit (other than those which would result in an adjustment to the basis of property) are allowable to the extent the gross income derived from use of the unit exceeds the deductions allowed or allowable under subdivision (i) of this subparagraph.

(iii) Amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code by reason of the business use of the dwelling unit which would result in an adjustment to the basis of property are allowable to the extent the gross income derived from use of the unit exceeds the deductions allowed or allowable under subdivisions (i) and (ii) of this subparagraph.

(6) *Cross reference.* For rules with respect to the deductions to be taken into account in computing adjusted gross income in the case of employees, see section 62 and the regulations prescribed thereunder.

(7) *Example.* The provisions of this subparagraph may be illustrated by the following example:

Example. A, a self-employed individual, uses an office in the home on a regular basis as a place of business for meeting with clients of A's consulting service. A makes no other use of the office during the taxable year and uses no other premises for the consulting activity. A has a special telephone line for the office and occasionally employs secretarial assistance. A also has a gardener care for the lawn around the home during the year. A determines that 10% of the general expenses for the dwelling unit are allocable to the office. On the basis of the following figures, A determines that the sum of the allowable business deductions for the use of the office is $1,050.

Gross income from consulting services	$1,900
Expense for secretary	500
Business telephone	150
Supplies	200
Total expenditures not allocable to use of unit	850
Gross income derived from use of unit	1,050
Deductions allowable under subparagraph (5) (i) of this paragraph:	
Mortgage interest (total $5,000)	[1]500
Real estate taxes (total $2,000)	[1]200
Amount allowable	700
Limit on further deductions	350
Deductions allowable under subparagraph (5) (ii) of this paragraph:	
Insurance (total $600)	[1]$90
Utilities, other than residential telephone (total $900)	[1]90
Lawn care (total $500)	[1]0
Amount allowable	150
Limit on further deductions	200
Deductions allowable under subparagraph (5)(ii) of this paragraph:	
Depreciation (total $3,200)	[1]300
Amount allowable	200

[1] Allocable to office.

No portion of the lawn care expense is allocable to the business use of the dwelling unit. A may claim the remaining $6,300 paid for mortgage interest and real estate taxes as itemized deductions.

§ 1.280A-3 Deductability of expenses attributable to the rental of a dwelling unit used as a residence.

(a) *Scope.* This section provides rules for determining the deductibility of expenses attributable to the rental of a dwelling unit used as a residence. Note that paragraph (c) of this section applies to any dwelling unit used by the taxpayer for personal purposes on any day during the taxable year, whether or not the taxpayer is treated as using the unit as a residence. See § 1.280A-1 for the general rules under section 280A.

(b) *Short rental period.* If a dwelling unit used by the taxpayer as a residence during the taxable year is actually rented for less than 15 days during the taxable year,

(1) No deduction otherwise allowable because of the rental use shall be allowed, and

(2) The rental income shall not be included in gross income.

(c) *Allocation*—(1) *In general.* If a taxpayer uses a dwelling unit for personal purposes on any day during the taxable year, the amount deductible by reason of the rental use of the unit during the taxable year shall not exceed an amount which bears the same relationship to the total expenses paid or incurred with respect to the unit during the taxable year as the number of calendar days on which the unit is rented at fair rental during the year bears to the total number of calendar days that the unit is used for any purpose during the taxable year. For purposes of section 280A(e) and this section, the fact that a unit is deemed to be used for personal purposes on a particular day does not prevent that day from being counted as a day on which the unit is rented at fair rental. Use of a unit for repair and maintenance which is disregarded under § 1.280A-1(e)(4) shall be disregarded for purposes of this paragraph.

(2) *Portion of unit rented.* If the taxpayer rents only a portion of the dwelling unit, the rule prescribed in subparagraph (1) of this paragraph shall be applied to the expenses attributable to that portion of the unit, and the days to be taken into account shall be the days on which that portion of the unit is rented at fair rental during the taxable year and the days on which that portion of the unit is used for any purpose during the taxable year. The expenses attributable to any portion of a unit shall be determined in accordance with the rules prescribed in § 1.280A-2(i)(3).

(3) *Deductions allowable without regard to rental use.* This paragraph shall not disallow any part of those deductions with respect to a dwelling unit which are allowable without regard to the rental use of the unit.

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. A, an individual, owns a cottage which A rents to vacationers at fair rental for 120 days during the taxable year. A is deemed to have made personal use of the cottage on 15 of those 120 days. The unit is used for one or more purposes (other than repair or maintenance) on 160 days during the taxable year. The amount that A may claim as rental expenses may not exceed 120/160 of the total expenses paid or incurred with respect to the unit during the taxable year. If A itemizes deductions, A may claim the remaining 40/160 of items, such as mortgage interest and taxes, which are deductible without regard to the rental use of the unit.

(d) *Limitation on deductions if taxpayer has used dwelling unit as a residence*—(1) *In general.* The deductions allowable under chapter 1 of the Code for a taxable year with respect to the rental use of a dwelling unit which the taxpayer is treated as having used as a residence during such year shall not exceed the gross rental income from the unit for such year. See section 280A(d)(3) and § 1.280A-1(e)(2) for special rules affecting the determination whether the taxpayer has used a unit as a residence if any day during the taxable year is part of a "qualified rental period."

(2) *Gross rental income.* For purposes of section 280A and this section gross rental income from a unit equals the gross receipts from rental of the unit reduced by expenditures to obtain tenants for the unit, such as realtors' fees and advertising expense. The gross rental income from a unit for a taxable year includes rental income for periods during which the unit is rented at less than a fair rental as well as rental income for periods during which the unit is rented at fair rental.

(3) *Order of deductions.* Deductions with respect to the rental use of a dwelling unit are allowable in the following order and only to the following extent:

(i) The allocable portions of amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code with respect to the dwelling unit without regard to the rental use of the unit, *e.g.*, mortgage interest and real estate taxes, are deductible as rental expenses to the extent of the gross rental income from the unit.

(ii) The allocable portions of amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code by reason of the rental use of the dwelling unit (other than those which would result in an adjustment to the basis of property) are allowable to the extent the gross rental income exceeds the deductions allowed or allowable under subdivision (i) of this subparagraph.

(iii) The allocable portions of amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code by reason of the rental use of the dwelling unit which would result in an adjustment to the basis of property are allowable to the extent the gross rental income exceeds the deductions allowed or allowable under subdivisions (i) and (ii) of this subparagraph.

For purposes of this subparagraph, the portion of any item which is allocable to the rental use of a unit during a taxable year shall be that amount which bears the same relationship to the total amount of the item as the number of days on which the unit is rented at a fair rental during the taxable year bears to the number of days on which the unit is used for any purpose (other than repair or maintenance) during the taxable year.

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. B owns a lakeside home which B rents at a fair rental for 90 days during the taxable year. B uses the home for personal purposes on 20 other days during the taxable year and also rents it to a friend at a discount for 10 days. Thus, the home is used for some purpose (other than repair or maintenance) on 120 days during the taxable year, and the rental allocation fraction may not exceed 90/120. On the basis of the following figures, B determines that the sum of the rental expenses for the home for the taxable year that are deductible under subparagraph (3) of this paragraph is $2,200. The advertising expense and the realtor's fee are also deductible.

Gross receipts from rental:	
90 days at $25 per day	$2,250
10 days at $15 per day	150
Total	2,400
Computation of gross rental income:	
Gross receipts from rental	2,400
Less: Advertising and realtor's fee	200
Gross rental income	2,200

	Total	Allocable to rental
Deductions allowable under subparagraph (3)(i) of this paragraph:		
Mortgage interest	$1,000	$750
Real estate taxes	800	600
Amount allowable		1,350
Limit on further deductions		850
Deductions allowable under subparagraph (3)(ii) of this paragraph:		
Insurance	400	300
Utilities	600	450
Amount allowable		750
Limit on further deductions		100
Deductions allowable under subparagraph (3)(iii) of this paragraph:		
Depreciation	1,500	1,125
Amount allowable		100

NOTE.—If B itemizes deductions, B may claim the other $250 in mortgage interest and the other $200 in real estate taxes as itemized deductions.

(e) *Application of the provisions of § 1.280A–1 and this section to rental pools*—(1) *In general.* In the case of a dwelling unit which is entered in a rental pool, as defined in subparagraph (2) of this paragraph, during the taxable year, the provisions of § 1.280A–1 and this section shall be applied in accordance with this paragraph.

(2) *Rental pool.* For purposes of this section, the term "rental pool" means any arrangement whereby two or more dwelling units are made available for rental and those persons with interests in the units agree to share at least a substantial part of the rental income from the units without regard to the actual use of the various units. The fact that those persons with interests in a particular unit are entitled to an occupancy fee or other payment for the actual use of the unit does not prevent the arrangement from constituting a rental pool if the percentage of the rental income in which the participants in the arrangement share is substantial.

(3) *Gross rental income of participants.* Participants in a rental pool shall include in gross rental income all amounts received or accrued by reason of participation in the rental pool (including payments such as occupancy fees) except amounts which are clearly not rental income, *e.g.*, interest earned on deposits held in escrow on behalf of the rental pool participants. Thus, a taxpayer who participates in a rental pool may have gross rental income although the unit in which the taxpayer has an interest is not actually rented during the taxable year.

(4) *Determination of use.* For purposes of § 1.280A–1(d)(1) and paragraph (c) of this section, the number of days on which the unit is rented at fair rental and the number of days on which the unit is used for any purpose shall be determined by reference to the actual use of the unit. Availability for rental through the rental pool does not constitute rental at a fair rental or use of the unit for any other purpose. If the taxpayer's unit is actually rented at a fair rental on any day during the taxpayer's participation in the rental pool, the taxpayer may count that day as a day on which the unit is rented at a fair rental although the taxpayer receives only a portion of the rental paid.

(5) *Reciprocal arrangements.* If the rental pool agreement provides that a participant whose unit is rented on a given day may make use of another unit in the pool on that day, a taxpayer who has an interest in a unit so used by another participant shall be deemed to have used the unit for personal purposes on any day on which another participant uses the unit under that provision of the agreement.

(f) *Application of the rules of § 1.280A–1 and this section to time sharing arrangement*—(1) *In general.* In the case of a dwelling unit which is used during the taxable year under a time sharing arrangement, as defined in subparagraph (2) of this paragraph, the provisions of § 1.280A–1 and this section shall be applied in accordance with this paragraph.

(2) *Time sharing arrangement.* For purposes of this section, the term "time sharing arrangement" means any arrangement whereby two or more persons with interests in a dwelling unit agree to exercise control over the unit for different periods during the taxable year. For example, an arrangement under which each of twelve persons with interests in a unit is entitled to exercise control over the unit for one month during the taxable year is a time sharing arrangement. Whether all twelve persons have undivided interests in the unit for the entire year or each has the sole interest in the unit for a single month during the year is immaterial.

(3) *Use for personal purposes.* For purposes of § 1.280A–1 (d) and (e), each of the persons with an interest in the unit subject to the time sharing arrangements shall be considered to have a continuing interest in the unit regardless of the terms of the interest under local law.

(4) *Short rental period.* The provisions of paragraph (b) of this section shall be applied on the basis of the number of days that the unit is actually rented during the entire taxable year.

(5) *Allocation rule.* The provisions of paragraph (c) of this section shall apply if any person with an interest in the unit is deemed to use the unit for personal

purposes on any day during the taxable year. The provisions of paragraph (c) of this section shall be applied on the basis of the taxpayer's expenses for the unit, the number of days during the taxable year that the unit is rented at a fair rental, and the number of days during the taxable year that the unit is used for any purpose.

(6) *Limitation on deductions.* The provisions of paragraph (d) of this section shall be applied on the basis of the taxpayer's rental income and expenses with respect to the unit.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80-23877 Filed 8-6-80; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 70, 240, 245, 250, 270, and 275

[Notice No. 346; RE: Notice Nos. 341 and 342]

Electronic Fund Transfer and Return and Deferral Periods for Certain Alcohol and Tobacco Products Excise Tax Payments and Other Provisions; Extension of Comment Periods

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rules; extension of comment periods.

SUMMARY: This notice extends the comment priod for Notice No. 341 (45 FR 38258, June 6, 1980) and for Notice No. 342 (45 FR 38271, June 6, 1980). ATF published for comment proposed regulations that (1) would require large alcohol and tobacco products excise taxpayers to pay their excise taxes by electronic fund transfer (Notice No. 341) and that (2) would change for large manufacturers of tobacco products the return period from a semimonthly to a weekly tax return period and the deferral period from the last day of the next succeeding return period to no later than three business days succeeding the last day of the proposed weekly return period (Notice No. 342).

According to Notice Nos. 341 and 342, the comment period is to end August 5, 1980. The comment period on both notices are being extended an additional 30 days since several large taxpayers of tobacco products requested an extension of time to comment on both notices.

DATE: Comments must be received on or before September 8, 1980.

ADDRESS: Send comments on Notice Nos. 341 and 342 separately to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Post Office Box 385, Washington, D.C. 20044.

Notice.—AFT will not recognize any material in comments designated as confidential or as not to be disclosed; any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments; the name of any commenter is not exempt from disclosure.

FOR FURTHER INFORMATION CONTACT: A. N. Stickney or James A. Hunt at 202-566-7626.

Authority: This notice is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

Signed: August 5, 1980.

G. R. Dickerson,

Director.

[FR Doc. 80-23939 Filed 8-5-80; 2:48 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Disclosure of Comments Received From Federal Agencies on Tennessee Proposed Permanent Program Submitted Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Announcement of public disclosure of comments on the Tennessee Program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), and other Federal agencies.

SUMMARY: Before the Secretary of the Interior may approve a permanent State regulatory program submitted under Section 503(a) of the Surface Mining and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies on the Tennessee State Program, and is today announcing their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Administrative Record Room, Office of Surface Mining Reclamation and Enforcement, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.

Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 1720 West End Avenue, Nashville, Tennessee 37203.

Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 618 Church Avenue, S.W., Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT:

John T. Davis, Assistant Regional Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 637-8060; or

Carl C. Close, Assistant Director, State & Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4225.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the Tennessee permanent regulatory program submitted by Tennessee for his review on February 28, 1980. See 45 FR 15578-15580 (March 11, 1980), 45 FR 28369 (April 29, 1980), and 45 FR 41979-41981 (June 23, 1980). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), the Tennessee program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of the Department of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following Federal agencies were invited to comment on the Tennessee Program:

Tennessee Valley Authority
Advisory Council on Historic Preservation
Department of Labor:
  Mine Safety and Health Administration
Ohio River Basin Commission
Appalachian Regional Commission
U.S. Army Corps of Engineers
Department of Agriculture:
  U.S. Forest Service
  Soil Conservation Service
Water Resources Council
Department of Energy
U.S. Environmental Protection Agency
Department of the Interior:
  Bureau of Indian Affairs
  Bureau of Land Management
  Heritage Conservation & Recreation Service
  U.S. Geological Survey
  Bureau of Mines
  U.S. Fish & Wildlife Service
  National Park Service

Of those agencies invited to comment, OSM received comments from the following offices:

U.S. Forest Service

Heritage Conservation and Recreation Service
Bureau of Mines
Mine Safety and Health Administration
U.S. Army Corps of Engineers
Tennessee Valley Authority
U.S. Fish and Wildlife Service
Department of Energy
Bureau of Land Management
Appalachian Regional Commission
Soil Conservation Service

Dated: July 31, 1980.

Carl C. Close,

Assistant Director, State & Federal Programs.

[FR Doc. 80-23873 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Ch. VII

Public Disclosure of Comments Received From Federal Agencies on the Kansas State Permanent Program Submitted Under Pub. L. 95-87

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

ACTION: Announcement of public disclosure of comments on the Kansas program.

SUMMARY: Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies, and is today announcing receipt and availability for public review of agency comments on the Kansas State Program.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining, Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Ave., Kansas City, Missouri 64106, Telephone (816) 374-5056.

Mined Land Office, 107 West 11th Street, Pittsburg, Kansas.

Kansas Corporation Commission, Legal Office, 4th Floor, State Office Building, 915 Harrison, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374-3920.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the permanent regulatory program submitted by Kansas for his review on February 26, 1980. See the March 4, 1980, Federal Register (45 FR 14152-14153); April 18, 1980, Federal Register (45 FR 26368); and the June 16, 1980, Federal Register (45 FR 40619-40621). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Kansas program may not be approved until the Secretary has solicited and publicly disclosed the views of the administrator of the Environmental Protection agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following federal agencies were invited to comment on the Kansas program:

Department of Agriculture
- State Land Use Committee
- SEA-Extension
- Farmers Home Administration
- Agricultural Stabilization and Conservation Service
- SEA-Agricultural Research
- Soil Conservation Service
- Forest Service
- SEA-Cooperative Research

Advisory Council on Historic Preservation
Department of Labor
- Mine Safety & Health Administration

U.S. Enviornmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation & Recreation Service
- Water & Power Services
- Fish & Wildlife Service
- National Park Service
- Geological Survey

U.S. Dept. of the Army Corps of Engineers
Missouri River Basin Commission
Council on Environmental Quality

Of these agencies invited to comment, OSM recieved comments from the following offices:

Advisory Council on Historic Preservation
U.S. Dept. of the Army Corps of Engineers
Soil Conservation Service
Fish and Wildlife Service
Heritage Conservation and Recreation Service
Bureau of Mines
National Park Service
Mine Safety and Health Administration
Geological Survey
Department of Energy

These comments are available for review and copying during business hours, at the locations listed above under "Addresses."

Dated: July 31, 1980.

Carl C. Close,

Assistant Director, State and Federal Programs.

[FR Doc. 80-23874 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

Geological Survey

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: A final rule incorporating the modification of 30 CFR § 250.34 required to conform to the Outer Continental Shelf (OCS) Lands Act Amendments of 1978, 92 Stat. 629 (herein referred to as the "Act"), was published September 14, 1978 (44 FR 53685). This proposed revision would amend 30 CFR § 250.34, exploration, development, and production plans, to provide for the submission of a plan of operations for leases in the western Gulf of Mexico in lieu of the current requirement for the submission of a development and production plan. Interested persons are invited to submit written comments and recommendations on the proposed regulation.

DATE: Written comments and recommendations must be submitted on or before September 8, 1980.

ADDRESS: Comments and recommendations should identify the subject matter and be directed to the Deputy Division Chief, Offshore Minerals Regulation, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Conservation Division. U.S. Geological Survey, National Center, Mail stop 640 Reston, Virginia 22092, (703) 860-7531.

AUTHOR: Richard B. Krahl, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092, (703) 860-7531.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of final rule on September 14, 1978 (44 FR 53685), a number of parties petitioned the Secretary of the Interior requesting a review and revision of the requirements of 30 CFR § 250.34. Under the current requirements of § 250.34-2, development and production plans are required of all lessees in all OCS areas including the Gulf of Mexico. There are special provisions permitting the submission of less detailed information with respect to development and production plans covering activities in the western Gulf of Mexico. Under the proposed rule, a plan of operations would be submitted for development and production activities on leases in the western Gulf of Mexico. The plan of operations would contain all

the information needed for the determinations required to assure that the proposed activities described in the plan are adequate from the standpoint of safety, protection of the environment, and prompt and efficient development and production. Moreover, a plan of operations would constitute an "OCS Plan" within the meaning of 15 CFR § 930.73(a) and together with the related Environmental Report (Development and Production) would provide the data and information necessary to determine the consistency of proposed Federal license and permit activities described in detail in "OCS plans." 15 CFR § 930.77(a). 44 FR 37142. While the receipt of a plan of operations need not be published in the Federal Register, a plan of operations for a lease or leases in the western Gulf of Mexico would be accompanied by an Environmental Report (Development and Production) when the activities in the plan affect the land or water use of an affected State, such as Alabama, which has a coastal zone management program approved under the Coastal Zone Management Act. The proposed modification should reduce the chances for inadvertent delays in the Conservation Division's review and and decisionmaking process while assuring that those Gulf of Mexico coastal States with coastal zone management programs approved under the Coastal Zone Management Act are provided adequate information on which to make the required coastal zone consistency concurrence determination.

Environmental Impact and Regulatory Analysis

The Department of the Interior has determined that this proposed revision of the provisions of 30 CFR § 250.34 is not a major Federal action significantly affecting the quality of the human environment, and, therefore, preparation of an Environmental Impact Statement is not required. The Department has also determined that this proposed rule is not a significant regulatory action and does not require the preparation of a regulatory analysis under Executive Order 12044.

Dated: August 1, 1980.

Charles P. Eddy,

Acting Assistant Secretary—Energy and Minerals.

It is proposed to amend the provisions of 30 CFR § 250.34 as follows:

§ 250.34-2 [Amended]

1. Revise the first sentence of § 250.34-2(a)(1) to read:

(a)(1) No development or production activities may be commenced or conducted on any leased area, except in accordance with a development and production plan or a plan of operations approved by the Director. * * *

2. Revise the portion of the fourth sentence of § 250.34-2(a)(1) which precedes the colon to read:

(a)(1) * * *

* * * A development and production plan, or in the western Gulf of Mexico a plan of operations, shall include: * * *

3. Revise § 250.34-2(a)(2) to read:

(a)(1) * * *

(2) For leases in the western Gulf of Mexico, a plan of operations may be submitted in lieu of a development and production plan. The Director may limit the information that will be required to be included in a plan of operations to those parts of paragraph (a)(1)(i) through (viii) that are necessary to assure conformance with the Act; other laws, including § 307 of the Coastal Zone Management Act; applicable regulations; and lease provisions. In determining the information to be included in a plan, the Director shall consider current and expected operating conditions together with experience gained during past operations of a similar nature in the area of proposed activities.

4. Revise § 250.34-2(a)(4) to read:

(a) * * *

* * * * *

(4) The Director may require the lessees of tracts on which oil or gas, or both, have been discovered in paying quantities and which are adjacent to or nearby the area covered in a development and production plan or a plan of operations to submit a preliminary description of their plans for development and production from those leases which are on adjacent or nearby areas.

5. Revise the first sentence of § 250.34-2(a)(5) to read:

(a) * * *

* * * * *

(5) The lessee shall indicate which portions of a development and production plan, or a plan of operations for a lease in the western Gulf of Mexico, the lessee believes are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2).* * *

6. Revise the portion of § 250.34-2(a)(6) preceding the colon to read:

(a) * * *

* * * * *

(6) A development and production plan or a plan of operations shall not be deemed submitted until: * * *

7. Revise § 250.34-2(b)(2) to read:

(b) * * *

* * * * *

(2) The Governor of an affected State adjacent to the western Gulf of Mexico that does not have a coastal zone management program approved pursuant to § 306 of the Coastal Zone Management Act may receive copies of plans of operation and development and production plans by submitting to the Director a written request for the documents. The Director shall notify the appropriate lessees immediately upon receipt of such a request. The Governor of Florida will receive copies of plans under the provisions of paragraph (b)(1) of this section.

8. Revise § 250.34-2(c)(3)(i) to read:

(c) * * *

* * * * *

(3)(i) When it is determined that the activities proposed in a development and production plan or in a plan of operations will affect any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to § 306 of the Coastal Zone Management Act, the plan will be processed in accordance with the regulations in this section and the regulations governing Federal Coastal Zone Management Consistency Procedures (15 CFR Part 930).

9. Revise § 250.34-2(d) to read:

* * * * *

(d) The Director shall review the environmental impacts of the activities described in a development and production plan or in a plan of operations pursuant to the provisions of § 250.34-4.

10. Revise the first part of § 250.34-2(e)(1) to read:

* * * * *

(e)(1) If the Director determines, subject to the provisions of § 120(2)(C) of the National Environmental Policy Act, that approval of a development and production plan or a plan of operations is a major Federal action * * *

11. Revise § 250.34-2(e)(2) to read:

(e)(1) * * *

(2) Prior to or immediately after a determination by the Director that approval of a development and production plan or a plan of operations requires that the procedures under the National Environmental Policy Act shall commence, the Director may require lessees of tracts in the vicinity, for which development and production plans or plans of operations have not been approved, to submit preliminary or final plans for their leases.

12. Revise the first part of § 250.34-2(e)(3) to read:

(e) * * *

(3) A determination by the Director that approval of a development and

production plan or a plan of operations requires commencement * * *

13. Revise the first part of § 250.34–2(f) to read:

* * * * *

(f) After reviewing the record of any public hearing held with respect to the approval of a development and production plan or a plan of operations for which an * * *

14. Revise the first part of § 250.34–2(g)(1) to read:

* * * * *

(g)(1) In the evaluation of a development and production plan or a plan of operations, the Director shall consider * * *

15. Revise § 250.34–2(g)(3) to read:

(g) * * *

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a plan of operations or a development and production plan or for requiring modification of a plan and the conditions which must be met for plan approval.

16. Revise § 250.34–2(h) to read:

* * * * *

(h) The lessee may submit either a development and production plan or a plan of operations, as modified, to the Director. Within 60 days following the 60-day comment period provided for in § 250.34–2(c)(1), the Director shall approve or disapprove a modified development and production plan based upon the criteria in subparagraphs (g)(1)(i) through (vi) of this section.

17. Revise the first part of § 250.34–2(i)(1) to read:

* * * * *

(i)(1) If a development and production plan or a plan of operations is disapproved for the sole reason * * *

18. Revise the first part of § 250.34–2(i)(2) to read:

(i)(1) * * *

(2) If a development and production plan or a plan of operations is disapproved because a State * * *

19. Revise § 250.34–2(j) to read:

* * * * *

(j) A modified development and production plan or a plan of operations which has been disapproved pursuant to subsection (h) of this section may be revised in the same manner as, and with the same information required for, a new plan.

20. Revise the first sentence of § 250.34–2(l)(1) to read:

* * * * *

(l)(1) The Director shall periodically review the activities being conducted under an approved development and production plan or under an approved plan of operations.

21. Revise the first sentence of § 250.34–2(l)(2) to read:

(l)(1) * * *

(2) Proposals to revise an approved development and production plan or to revise an approved plan of operations, whether initiated by the lessee or ordered by the Director, shall be submitted to the Director for approval in the same manner as, and with the same information required for, a new plan.

22. Revise the first part of § 250.34–2(l)(3) to read:

(l) * * *

* * * * *

(3) When any revision to an approved development and production plan or to an approved plan of operations is proposed by the lessee, * * *

23. Revise the first sentence of § 250.34–2(n) to read:

* * * * *

(n) In order to ensure that activities to be carried out under a proposed development production plan or an proposed plan of operations or activities which are being carried out under an approved plan, are carried out in a safe and environmentally acceptable manner. The Director may authorize or direct the lessee to conduct geological, geophysical, or other surveys that the Director determines are necessary for the evaluation of such activities.

24. Revise the last sentence of § 250.34–2(o) to read:

* * * * *

(o) * * * Permit activities must conform to the activities described in detail in the related approved development and production plan or the related approved plan of operations, and shall not be subject to a separate State coastal zone consistency review.

25. Revise the last sentence of § 250.34–2(p) to read:

* * * * *

(p) * * * In such situations, the Director may approve or require departures from an approved development and production plan or from an approved plan of operations.

§ 250.34–3 [Amended]

1. Revise the first sentence of § 250.34–3(b) to read:

* * * * *

(b) At the same time a lessee submits a development and production plan or a plan of operations to the Director, an Environmental Report (Development/Production) shall be submitted, except as provided for in § 250.34–2(a)(3)(ii).

* * *

2. Revise the portion of § 250.34–3(b)(1) which precedes the colon to read:

* * * * *

(b)(1) To the extent that information is not contained in the related development and production plan or plan of operations, the environmental report shall contain: * * *

§ 250.34–4 [Amended]

1. Revise the first part of the first sentence of § 250.34–4(a) to read:

(a) Prior to approval of an exploration plan, a development and production plan, or a plan of operations, or approval of significant revisions to an approved exploration plan, development and production plan, or plan of operations, the Director shall * * *

[FR Doc. 80-23818 Filed 8-6-80; 8:45 am]
BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701

Definition of Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of extension of comment period on proposed rulemaking.

SUMMARY: On June 24, 1980, the Office of Surface Mining Reclamation and Enforcement (OSM) proposed rules to amend the definitions of "surface coal mining operations" and "coal processing plants." 45 FR 42333. Comments on these proposed rules were solicited until July 24, 1980 and a public hearing was held on July 16, 1980. Several persons requested an extension of the comment period on these rules. Because these rules will be applicable during the interim regulatory program, which program is expected to expire early next year, OSM is concerned about any extension of the comment period that might delay the final adoption of these rules. On the other hand, OSM wishes to provide all interested persons with an adequate opportunity to submit comments.

DATE: Accordingly, OSM has decided to extend the comment period until August 18, 1980. Comments received after 5:00 p.m. EST on that date will not be considered.

ADDRESSES: Written comments should be addressed to: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044 or may be hand-delivered to Office of Surface Mining Reclamation and Enforcement, Room 153, U.S. Department of the Interior, South Building, Washington, D.C. 20240, where all comments will be available for public inspection. In addition, representatives of OSM will be available to meet with interested persons upon request before the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Richard Robinson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, (202) 343-8061 or Mark Squillace, Office of the solicitor, U.S. Department of the Interior, (202) 343-4671.

Dated: August 1, 1980.

Charles F. Eddy,

Acting Assistant Secretary, Energy and Minerals.

[FR Doc. 80-23875 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 408

[FRL 1564-2]

Canned and Preserved Seafood Processing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for public comment on petitions to modify regulations.

SUMMARY: This notice announces the availability of, and invites public comment on a Petition for Modification and a Supplemental Petition for Modification of the BPT effluent limitations guidelines for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category. The Petitions, submitted by a portion of the Alaskan seafood industry, request that the regulations cited below be modified to delete Anchorage, Cordova, Juneau, Ketchikan, and Petersburg from the "non-remote" Alaska subcategories. The practical effect of this modification would be to change the wastewater control technology from screening and solids handling to grinding for plants located in these areas.

DATE: Comments must be received on or before September 8, 1980.

ADDRESS: Send comments to: Mr. Gary S. Kasaoka, Effluent Guidelines Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Room 925, WSME (WH-552), Washington, D.C. 20460, Attention: Seafood Effluent Guidelines Modification.

The Petition for Modification, the Supplemental Petition for Modification, and all supporting information including appendices to these Petitions will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; U.S. Environmental Protection Agency, Region X, Regional Library, 1200 Sixth Avenue, Seattle, Washington, 90101; and Alaska Operations Office, U.S. Environmental Protection Agency, Room E535, 701 C Street, Box 19, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Gary S. Kasaoka, Effluent Guidelines Division, 401 M Street, SW., Room 925, WSME (WH-552), Washington, D.C. 20460 (202) 426-2707.

SUPPLEMENTARY INFORMATION: On May 7, 1980, a portion of the Alaskan seafood industry submitted a Petition for Suspension and a Preliminary Petition for Modification of EPA's effluent limitations guidelines based on the Best Practicable Control Technology Currently Available (BPT) for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category, 40 CFR Part 408. These had been promulgated under the Clean Water Act (33 U.S.C. 1251, *et seq.*) ("the Act). The Petition for Suspension requested that the applicability of BPT effluent limitations guidelines regulations be suspended for the 1980 salmon processing season (May 15 through October 15) for facilities located in the following cities originally classified as "non-remote" by EPA: Anchorage, Cordova, Juneau, Ketchikan, and Petersburg. The current regulations for the Alaska seafood processing subcategories divide the State of Alaska into two classifications—"remote" and "non-remote." BPT regulations for "remote" areas are based upon grinding technology. BPT regulations for "non-remote" areas are based upon screening and solids handling technology. Thus, the practical effect of this temporary suspension is to designate grinding as BPT for facilities at these "non-remote" locations, rather than screening and solids handling technology. EPA granted the Petition to Suspend the applicability of the BPT "non-remote" regulations to facilities located in Anchorage, Cordova, Juneau, Ketchikan, and Petersburg for the 1980 salmon processing season. A notice of Suspension of the Regulations was published in the May 19, 1980 Federal Register (45 FR 32676).

The petitioners filed a Supplemental Petition for Modification dated June 16, 1980 in accordance with the schedule set forth in the May 19, 1980 Notice. The schedule requires that EPA review the Petition for Modification and the Supplemental Petition for Modification and make any request for clarification or additional data by July 16, 1980. Any additional submissions in response to such requests must be made by the petitioners by August 15, 1980. EPA will either grant or deny the petition by October 15, 1980, the date on which the temporary suspension of the regulations expires.

The petitioners maintain that "the costs of screening are wholly out of proportion to the effluent reduction benefits achieved and that other factors indicate that screening is not a practicable technology." Sections of the Petitions examine the costs of screening and barging and the lack of Alaskan waste disposal alternatives to barging, such as landfills, municipal sewage treatment facilities, and reduction (fish meal) facilities. The petitioners claim that screening in Alaska, other than in Kodiak, achieves no effluent reduction benefits. The petitioners also claim that the following factors were not properly considered by the Administrator in setting BPT and are appropriate for consideration: (1) The significant energy requirements of screening and barging; (2) the potential for violating the Sanitation Standards of the U.S. Food and Drug Administration (20 CFR Part 110) if wastes are stored near the processing plant; and (3) the fact that the increased costs of screening will frustrate the purposes of the Fisheries Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*). Published as an Appendix to this Federal Register Notice are the Petition for Modification

and Supplemental Petition for Modification. Appendices to these Petitions and other supporting data are available for inspection at the addresses listed above.

The Agency hereby solicits comments on the Petitions. EPA will review the Petitions for Modification and any comments received. Notice of EPA's final action will be published in the Federal Register. Anyone who wishes to comment on the Petitions and proposed modification of the regulations must do so on or before September 8, 1980.

Dated: July 31, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

Petition For Modification

I. Introduction

In Re Effluent Guidelines Regulations for Alaskan Subcategories of the Canned and Preserved Seafood Processing Point Source Category (40 CFR Part 408).

Petitioners Pacific Seafood Processors Association, Morpac, Inc., Nefco-Fidalgo Packing Company, North Pacific Processors, E. C. Phillips and Son, Inc., Washington Fish & Oyster Company and Whitney-Fidalgo Seafoods, hereby request reconsideration and modification by The Environmental Protection Agency ("EPA") of the 1977, effluent guidelines for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category, which were promulgated under the Clean Water Act (33 U.S.C. 466, *et seq.*) ("the Act").[1]

Specifically, petitioners seek to modify the following subcategory regulations:

40 CFR 408.40 (Subpart D); 40 CFR 408.60 (Subpart F); 40 CFR 408.90 (Subpart I); 40 CFR 408.162 and 408.165 (Subpart P); 40 CFR 408.172 and 408.175 (Subpart Q); 40 CFR 408.202 and 40 CFR 408.205 (Subpart T); 40 CFR 408.292 and 40 CFR 408.295 (Subpart AC); and 40 CFR 408.312 and 408.315 (Subpart AE).[2]

In summary, petitioners' request is that the regulations be modified to delete Anchorage, Cordova, Juneau, Ketchikan and Petersburg from the non-remote Alaska subcategories. The effect of this modification, under the current regulations, would be to designate grinding as the best practicable control technology currently available ("BPT") for facilities at those locations, rather than the current screening technology.

II. Background

The Administrator, pursuant to the Act, published the effluent limitations for the seafood processing category in two parts. The first, referred to as Phase I, was published on June 26, 1974. These regulations covered, in part, the Alaska crab subcategories and the Alaska shrimp subcategories. On December 1, 1975 the Phase II regulations were published covering, in part, the Alaska salmon, Alaska bottom fish, Alaska scallop and Alaska herring subcategories.

The regulations prescribe as BPT grinding of solids at most locations in Alaska (designated as remote locations) and screening at certain other locations in Alaska (designated as non-remote locations).

The discharge which is the subject of the regulations is effluent from seafood processing plants, which includes only the residuals of the seafood that are not utilized in the processing operation. Nothing is added during the processing of the seafood. The effluent enters the food chain at a high level as a food source for birds (such as gulls and terns), fish (such as flounders, sea trout and the like) and crab.

III. The Legal Basis for the Request

This petition for modification is a petition for rulemaking under the Administrative Procedure Act (5 U.S.C. 553(e)). Although EPA has not promulgated regulations specifically governing such petitions, the courts have recognized this mechanism for modifying EPA regulations. Two early cases under the Clean Air Act held that the appropriate procedure to seek a modification of EPA regulations is to petition the agency. *Union Electric Company* v. *EPA*, 515 F.2d 206 (8th Cir. 1975), *aff'd*, 427 U.S. 246 (1976), *reh. denied* 429 U.S. 873 (1977) and *Oljato Chapter of Navajo Tribe* v. *Train*, 515 F. 2d 654 (D.C. Cir. 1975). The relevant judicial review section of the Clean Water Act, Section 509(b)(1), is analogous to the review provision of the Clean Air Act, Section 307(b)(1). Similarly, the Ninth Circuit Court of Appeals, in a recent opinion on certain regulations at issue in this proceeding, stated:

"The Act provides for annual revision of guidelines for effluent limitations—such as the challenged regulations—promulgated under Section 304, 33 U.S.C. Section 1314. Section 304(b), 33 U.S.C. Section 1314(b) * * * In an appropriate case, moreover, a petition for reconsideration may be filed with the EPA to consider whether evidence such as that offered by petitioners requires the agency to review its original actions (citation). Thus, there are mechanisms for the agency to consider evidence developed after promulgation of the 1977 regulations."

Association of Pacific Fisheries v. *Environmental Protection Agency*, No. 75-2007, slip op. at 23 (9th Cir. February 4, 1980).

IV. The Environmental Protection Agency Should Modify the Regulations at Issue Because Screening is not BPT for Areas in Alaska, except Kodiak.

The current regulations for the Alaska seafood processing subcategories divide the State of Alaska into two classifications—remote and non-remote. BPT for remote areas is grinding. BPT for the non-remote areas is screening. This petition seeks the reclassification of a number of areas from non-remote to remote, limiting the area where screening is BPT. The petition is based on the fact that screening in Alaska locations, with exception of Kodiak, does not meet the statutory criteria for BPT.

A. *The Costs of Screening in Alaska Are Wholly Out of Proportion to the Effluent Reduction Benefits Achieved.* Section 304 of the Act sets forth the factors the Administrator must consider in establishing BPT. Among those factors is:

"* * * the total cost of application of technology in relation to the effluent reduction benefits to be achieved by such application."

Section 304(b)(1)(B). The Congress, in explaining the cost-benefit factor, stated:

"The balancing test between total cost and effluent reduction benefit is intended to limit the application of technology only where the additional degree of effluent reduction is wholly out of proportion to the cost of achieving such marginal level of reduction for any class or category of sources."

Congressional Research Service, A Legislative History of the Water Pollution Control Act Amendments of 1972, at 170 (1973).

1. *EPA's cost determinations for screening are significantly understated.* In 1975, as part of the determination of BPT, EPA determined the cost of installation of screening with the attendant of barging required for disposal.[3] Recently, EPA, as part of its re-evaluation of best available technology economically achievable,

[1] This petition presents preliminary material. Petitioners have advised EPA that they will complete this submission, with all the relevant supporting data, by June 16, 1980.

[2] The proposed modifications to each section are attached as Appendix A.

[3] See: "Development Document for Effluent Guidelines and New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Clam, Oyster, Sardine, Scallop, Herring, and Abalone Segment of the Canned & Preserved Fish & Seafood Processing Industry Point Source Catagory," (September, 1975). ("Development Document").

commissioned its contractor to update these cost estimates.[4] As the chart below illustrates, EPA's costs are significantly understated.

CAPITAL COSTS [5]

	EPA 1975 [6]	EPA 1979 [7]	Industry 1980 [8]
Screening and storage	$64,000	$198,000	$186,500
In plant	0	220,000	220,000
Barging	82,000	25,000	475,000
Dock construction	0	0	156,000
Total	146,000	443,000	1,037,500

[5] These represent the capital costs for the Alaska Mechanized Salmon subcategory (Subpart Q).

[6] From the Development Document.

[7] From the 1979 Reassessment.

[8] This data is preliminary Cordova data. The plant costs figure is adopted from the EPA figure. The barging cost is based on a self-powered, twin engine, 65' x 24' barge. The dock construction is a small platform, 1200 sq. feet with steel pilings.

The two significant items of discrepancy are the cost of a barge and the dock construction. EPA as based its recent barge estimate on the cost of a scow provided with a plastic liner being towed by an "available power boar." [9] A plastic lined barge would not be sufficiently durable for use in Alaska. Further, plants do not have extra power boats of the size needed to tow a barge. In addition, EPA ignored the cost of dock loading facilities which is a significant capital expense in any area, but especially with the exceedingly high materials and labor costs in Alaska. The cost of the dock is based on $130 per square foot.

Petitioner submit that a result of these understated costs, EPA's assessment of the relationship between the cost of treatment and the effluent reduction benefits achieved produced an inaccurate conclusion.

2. *Screening in Alaska, other than in Kodiak, achieves no effluent reduction benefit.* It has been settled, that the "effluent reduction benefits" referenced in Section 304(b)(1)(B) are not primarily water quality benefits. *Weyerhaeuser Company v. Costle*, 590 F.2d 1011 (D.C. Cir. 1978). Effluent reduction benefit is the reduction in the pounds of waste which are discharged into the water.

It is petitioners' position that screening in Alaska, other than in Kodiak,[10] achieves no effluent reduction benefit. This position is based on the fact that the only practicable disposal method in Alaska is barging with ocean discharge. Such a screening and barging operation does not result in the removal of waste from the receiving water. In other words, the same number of pounds of seafood waste is discharged into the water whether by grinding or by screening.[11]

The development documents discuss other methods of disposing of screened seafood waste. These include landfill, reduction facilities for by-product recovery, and discharge into municipal sewer systems. These alternate methods, in fact, are utilized for the non-Alaska seafood processing subcategories in Washington, Oregon and California. However, these alternatives are not available in Alaska.

First, there are no available landfill sites in any of the presently designated non-remote Alaska locations. Because seafood waste is very watery after screening, any discharge in a landfill near the water could result in the leaching of the seafood material into the water.

Second, while there has been much discussion about reduction facilities as a method of disposing of screened seafood waste, this is not a practicable disposal method. Currently the City in Kodiak is the only year-round processing location in Alaska. Even with its 17 facilities, the reduction facility loses money each year and requires an annual subsidy from the processors. To construct a reduction facility in any other location would not only require a significant capital investment, but would result in unreasonably large deficits given the seasonal operations and the lack of processor concentration in any of these other locations.[12]

Finally, none of the municipalities in Alaska are equipped to receive seafood processing waste in their sewage treatment facilities. Discussions have been undertaken with each of the affected municipalities and each has refused to accept seafood processing waste.

In summary, the only practicable method of handling the waste collected on the screens is the barging method—and this method achieves no effluent reduction benefit because screening with barging does not reduce the pounds of waste discharged.

3. *Summary.* Based on the above information, petitioners submit that the high cost of implementing screening and barging (in excess of $1,000,000 per processing facility) satisfies the test of being "wholly out of proportion" to the effluent reduction benefits—one million dollars per plant does not remove one pound of waste.

B. *The Administrator did not consider other significant factors in establishing BPT.* In addition to the cost-benefit factor, required under the Act, Section 304(b)(1)(B) provides that in determining BPT consideration should be given to "such other factors as the Administrator deems appropriate." Petitioners suggest that the following factors were not considered by the Administrator, and are appropriate for consideration.

1. *The energy requirements of screening and barging are significant.* The State of Alaska is constantly operating under the threat of serious curtailments in petroleum products, especially diesel fuel. This fuel is required for the fishing vessels which operate throughout Alaskan waters and as the source of fuel for the generation of electricity and steam. It is important to point out that many of the plants generate their own electricity and steam.

The operation of a barge will require significant quantities of diesel fuel each day during the fishing season—at the time of peak demand. This is a significant drain on the diesel fuel resources in a particular area and also results in a significant additional daily operating cost.

2. *The Sanitation Standards of U.S. Food and Drug Administration and the State of Alaska may conflict with screening.* Both the U.S. Food and Drug Administration sets stringent standards for sanitation in a food processing facility. Because of the location of the processing facilities in Alaska—that is, either between the mountains and the water or at the end of a pier—the storage area for seafood waste must be directly adjacent to the processing facility. Seafood wastes attract a number of insects, vermin, birds and rodents. Because of their proximity to the processing plant the waste storage facilities may cause significant problems by attracting such animals into the processing facility itself. It is already a major job to keep such animals out of the plants and waste storage will serve to aggravate the problem.

3. *The increased costs from screening will frustrate the purposes of the Fisheries Conservation & Management Act of 1976.* One of the major purposes

[4] "Reassessment of Effluent Limitations Guidelines and New Source Performance Standards For the Canned & Preserved Seafood Point Source Category." Prepared for EPA by E. C. Jordan & Co. (December, 1979) ("1979 Reassessment").

[9] 1979 Reassessment at p. 232

[10] In the City of Kodiak, there are enough year-round processors to support a reduction facility where the screened waste can be utilized.

[11] The NPDES permits issued direct the location of the dump site. These vary from less than one mile to 2½ miles.

[12] One of the companies in Petersburg, Icicle Seafoods, owns an existing reduction facility. There is some question as to whether that facility can handle all the waste generated by all three Petersburg plants. In addition, the logistics and costs of moving waste from the Whitney-Fidalgo plant to the reduction facility makes disposal at the facility not practicable. (This subject will be discussed in greater detail in petitioners' supplemental filing.)

of the Fisheries Conservation & Management Act of 1976 (16 U.S.C. 1801 *et seq.*) was to establish a preference for American processors.

Congressman John Murphy, Chairman of the House Merchant Marine and Fisheries Committee, stated in explaining the final language of the 1978 amendments to the Fisheries Conservation & Management Act that the language:

"* * * would give preference to U.S. fish processors of U.S. harvested fish* * * ."

Congressional Record, H-8266, August 10, 1978. The House Report accompaning the 1978 amendments states:

"* * * Some of the species which would appear to be fully utilized by U.S. processors are salmon, king crab, halibut, surf clams, menhaden, lobster and shrimp. When processing capacity and intent is sufficient, the committee feels that foreign processing vessels should not be allowed to participate in such fisheries."

H. Rep. No. 95-1024, 95th Cong. 2d Sess. 6 (1978).

The imposition of the significant screening costs will adversely affect the ability of American processors to compete with foreign-owned floating processors which operate outside U.S. waters, and, therefore, are not required to install pollution control technology of any type. The result of this discrepancy will be to frustrate the Congressional intent of encouraging more American processing with its attendant employment base, material support and the resulting increase in export of processed fish which will help significantly to lessen this country's balance of payment deficit.

IV. Summary

Petitioners submit that screening is not BPT for Alaska, other than in the City of Kodiak, for the reasons stated in this petition. Petitioners submit that the information above shows that the costs of screening are wholly out of proportion to the effluent reduction benefits achieved and that other factors further indicate that screening is not a practicable technology. Petitioners urge the administrator to propose a modification of the regulations, as submitted by petitioners, which will reclassify a number of areas in the State of Alaska and establish a true BPT.

Dated: May 7, 1980.

Respectfully submitted,

Bogle & Gates.

Charles R. Blumenfeld,

Attorneys for Petitioners.

Supplemental Petition for Modification

In Re Effluent Guidelines Regulations for Alaskan Subcategories of the Canned and Preserved Seafood Processing Point Source Category (40 CFR Part 408).

I. Introduction

Petitioners Pacific Seafood Processors Association, Morpac, Inc., Nefco-Fidalgo Packing Company, North Pacific Processors, E. C. Phillips & Son, Inc., Washington Fish & Oyster Company and Whitney-Fidalgo Seafoods, submit this Supplemental Petition for Modification of the 1977 effluent guidelines for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category, which were promulgated under the Clean Water Act (33 U.S.C. 466, *et seq.*).

This Supplemental Petition is filed in accordance with the schedule set forth in the May 19, 1980 Federal Register (45 FR 32676). The purpose of this Supplemental Petition and the accompanying appendices is to provide additional material and supporting documentation for petitioners' Petition for Modification ("Original Petition") filed on May 7, 1980.

As stated in the Original Petition, petitioners request that the regulations at issue [1] be modified to delete Anchorage, Cordova, Juneau, Ketchikan and Petersburg from the non-remote Alaska subcategories. The effect of this modification, under the current regulations, would be to designate grinding as the best practicable control technology currently available ("BPT") for facilities of those locations, rather than the current screening technology.

II. The Cost of Screening

Petitioners, in their Original Petition (Part IV.A.1.), set forth comparative costs for screening and barging. The information which follows supplements the material in the Original Petition. In particular, the following chart is intended to supersede the chart on page 6 of the Original Petition.

Capital Costs [2]

	EPA[3] 1975	EPA[4] 1979	Cordova[5]	Ketchikan[6]	Anchorage[7]	Juneau[8]	Petersburg (barging)[9]	Petersburg (reduction)[10]
Screening and storage	$64,000	$198,000	$257,000	$312,000	*$151,000	$277,000	*$75,000	$314,000
Barging	82,000	25,000	479,000	*485,000	[10]225,000	485,000	[10]225,000	0
Dock	0	0	164,000	172,000	135,000	90,000	0	800,000
Total	146,000	*223,000	900,000	969,000	*511,000	852,000	*300,000	1,114,000

*Corrected as of June 20, 1980.

[2]These represent the capital costs for the Mechanized salmon subcategory (Subpart Q).

[3]Source: "Development Document for Effluent Guidelines and New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Clam, Oyster, Sardine, Scallop, Herring, and Abalone Segment of the Canned and Preserved Fish & Seafood Processing Industry Point Source Category." (September, 1975); Table 194 at p. 429.

[4]Source: "Reassessment of Effluent Limitations Guidelines and New Source Performance Standards For the Canned and Preserved Seafood Point Source Category." Prepared for EPA by E. C. Jordan & Co. (December, 1979); Table 100 at p. 252.

[5]These costs are the average costs from the three Cordova petitioners: Morpac, Inc., North Pacific Processors, and St. Elias (Washington Fish & Oyster Co.). The individual plants costs are detailed in Appendix B.

[6]These costs are the costs for petitioner Nefco-Fidalgo's facility. The other Ketchikan Petitioner, E. C. Phillips, has only a cold storage facility. Because of the minimal waste generated by cold storage facilities, its waste disposal costs are not typical. The individual costs are detailed in Appendix C.

[7]Petitioner Whitney-Fidalgo operates the only facility in Anchorage. These costs are detailed in Appendix D.

[8]Petitioner Juneau Cold Storage (Washington Fish & Oyster Co.) operates the only facility in Juneau. These costs are detailed in Appendix E.

[9]The only petitioner operating a facility is Whitney-Fidalgo. Costs are presented for both barging and transportation to the reduction facility operated by Icicle Seafoods. (See discussion in Part III.C., below). The costs are detailed in Appendix F.

[10]This barging cost is based on a non-self-propelled barge and tender. Petitioner Whitney-Fidalgo selected this method because of the lesser amount of waste generated at these two facilities.

One item deserves note—the "In-Plant" category has been deleted. In petitioners' haste to file the Original Petition, EPA's in-plant costs were included; however, these costs are not appropriate for BPT considerations. Thus, this category has been deleted.

III. Waste Disposal Alternatives, Other Than Barging, Are Not Available in Alaska

As discussed in the Original Petition (Part IV.A.2.), landfill, reduction facilities for by-product recovery, and discharge into municipal sewer systems are not available alternatives in Alaska.

A. *Landfill.* Appendix G includes correspondence from the cities of Cordova and Ketchikan discussion the unavailability of municipal landfills for

[1]The proposed modifications to each section are attached as Appendix A.

the discharge of seafood waste.[11] Petitioners initiated inquiries and the correspondence is the municipality's response.

B. *Municipal Sewage Treatment Facilities.* Appendix G includes correspondence from the cities of Cordova and Ketchikan discussion the unavailability of municipal treatment facilities for seafood processing wastes.[11] Petitioners initiated inquiries and the correspondence is the municipality's response.

C. *Reduction Facilities.* As petitioners mentioned in their Original Petition (at page 8), reduction facilities are not a feasible method of disposing of screened seafood waste. Currently, the only independent reduction facility in Alaska is operated in the City of Kodiak. All the processors located in Kodiak subsidize the reduction facility. Even though processors located in the City of Kodiak operate nearly year round, and seventeen facilities are located there, the reduction facility continues to lose money each year. The subsidy for 1980 has increased to $20.00 per ton of wet waste handled. To construct a reduction facility at any other location would not only require a significant capital investment, but would result in an unreasonably large annual operating deficit—given the seasonal nature of processing and the limited number of processors.

Petitioner Washington Fish & Oyster Company has developed capital costs for its Cordova and Juneau processing locations.[12]

An EPA contractor evaluated the profitability of reduction facilities at certain Alaska locations.[13] Among those locations which are relevant to this petition, were Cordova and Ketchikan. The contractor concluded that a reduction facility in Cordova would have a net profit of $22 per ton and, in Ketchikan, a net profit of $15 per ton. To achieve this profit figure the contractor assumed that the reduction facility would recover 25% of the raw waste material delivered.[14] However, the operators of existing reduction facilities in Alaska have experienced no more than a 20% recovery. This 20% recovery, instead of 25%, significantly decreases the profitability of a reduction facility, since the expense of operating the facility remains constant (because the volume of waste delivered is not reduced). For example, at 20% recovery the net profit in Cordova is reduced to only $5 per ton and a net *loss* of $5 per ton is created in Ketchikan.

Cordova

	25 percent recovery [15]		20 percent recovery	
	Tons	Annual gross revenue	Tons	Annual gross revenue
Fish meal	940	$360,000	752	$288,000
Fish oil	300	117,000	300	117,000
Shell fish meal	135	13,000	135	13,000
		490,000		418,000
Less: annual cost		(399,000)		(399,000)
Net profit		$91,000		$19,000
Divided by: raw tons delivered		4,136		4,136
Net profit per ton of raw material		$22.00		$4.59

Ketchikan

	25 percent recovery [16]		20 percent recovery	
	Tons	Annual gross revenue	Tons	Annual gross revenue
Fish meal	950	$360,000	760	$288,000
Fish oil	300	120,000		
			300	120,000
		480,000		408,000
Less: annual cost		(427,000)		(427,000)
Net profit/(loss)		$53,000		$(19,000)
Divided by: raw tons delivered		3,533		3,533
Net profit per ton of raw material		$15.00		$(5.38)

[15] *Id.* at p. 173. See Appendix I.
[16] *Id.* at p. 182. See Appendix I.

In addition, it is important to point out that the contractor has undersized the Cordova facility, and as a result, it would be unable to handle all the waste material generated. In an earlier study, by another EPA contractor, it was concluded that a 50-ton per day facility in Cordova would only handle 66% of the waste generated.[17] It is this 50-ton per day plant which is used by contractor E. C. Jordan Co., Inc. in its 1979 Reassessment to fix capital costs and operating expense.[18] To process 100% of the waste generated in Cordova, the facility in Cordova would have to be approximately the same size as the Ketchikan facility, used in the 1979 Reassessment, and its operating expenses would be similar to that facility, also. Therefore, the actual profitability of an adequately-sized Cordova reduction facility would result in approximately the same $5 per ton *loss* as at the Ketchikan facility.

There is an existing reduction facility in Petersburg, Alaska. This facility is owned and operated by Icicle Seafoods, a processor. Petitioners question whether that facility has enough capacity to handle waste generated in Petersburg during the peak of the season. (The peak capacity is the key, because any waste disposal system, to be viable, must be able to handle waste generated at the peak of the season.)

Petitioners also are concerned about a facility having to rely on a competitor's reduction plant for waste disposal. Such dependence could be vulnerable to anti-competitive practices. For example, if the operator of the reduction facility either refused to accept waste material from another processor, or significantly increased its price for the waste at the peak of the processing season, the dependent processor could be faced

[11] Petitioners expect to receive further correspondence on this matter. Such correspondence will be forwarded to the Agency when received. The letters in Appendix G, however, are representative of the position of each municipality involved.

[12] These costs are detailed in Appendix H.

[13] See: "Reassessment of Effluent Limitation Guidelines and New Source Performance Standards For the Canned and Preserved Seafood Point Source Category." Prepared by E. C. Jordan Co., Inc. ("1979 Reassessment"); at pp. 164–190.

[14] *Id.* at p. 169.

[17] "Draft Report Market Feasibility Study of Seafood Waste Reduction in Alaska." Prepared by Development, Planning and Research Associates, Inc. (March 1979): Table III-1 at p. III-5).

[18] 1979 Reassessment at p. 169.

with a choice of shutting down or violating its NPDES permit—neither is an attractive alternative.

Finally, petitioner Whitney-Fidalgo has submitted material which indicates that its cost of transporting waste material to the existing Petersburg reduction facility is significantly more costly than barging. (See: Chart on p. 3, above). The reason for this is that Whitney-Fidalgo must increase the width of its 800 foot dock so that vehicles can move the material to the shore. [19]

D. *Summary.* As stated in the Original Petition, the above information indicates that the only viable method of disposing of seafood wastes collected on screens is by barging; yet, this method achieves no reduction in the volume of effluent discharged. The same number of pounds of waste are discharged with screening and barging as with direct discharge through grinding.

IV. Consideration of Other Significant Factors in Establishing BPT

As discussed in the original Petition (Part IV.B.), there are a number of other significant factors which were not considered in establishing BPT. Among those are U.S. Food & Drug Administration regulations which set forth the current good manufacturing practice in manufacturing, processing, packing or holding human food (20 CFR Part 110). [20] Petitioners are particularly concerned about the storage of seafood waste directly adjacent to the processing plant which may constitute an attractant, breeding place, or harborage for rodents, insects and other pests.

V. Summary

Petitioners submit that screening is not BPT for Alaska, other than in the City of Kodiak, for the reasons stated in petitioners' Petition for Modification and Supplemental Petition.

Petitioners further submit that the information included in the petition demonstrates that the costs of screening are wholly out of proportion to the effluent reduction benefits achieved and that other factors further indicate that screening is not BPT.

Petitioners respectfully urge the Administrator to propose a modification of the regulations, as submitted by petitioners, which will reclassify a number of areas in the State of Alaska; thus, establishing a true BPT.

Respectfully submitted,

Bogle & Gates.

Dated: June 16, 1980.

Charles R. Blumenfeld,

Attorneys for Petitioners.

[FR Doc. 80-23809 Filed 8-6-80; 8:45 am]

BILLING CODE 6560-01-M

[19] The Whitney-Fidalgo plant is located at the end of a one-lane 800-foot dock. In order to get waste material to the reduction facility a transportation system would have to be established. This would include loading 2,000-pound bins, which can be handled at the end of the dock, with waste and carrying these bins on a forklift to the shore where larger waste bins would be constructed. The larger waste bins would be emptied into a truck for transport across Petersburg from the Whitney facility to the reduction plant. Given the volume of waste from Whitney's Petersburg facility, the logistics would be complicated inasmuch as a forklift would be traveling down the dock every five to ten minutes with a 2,000-pound bin and a truck would make 50 trips a day through the center of Petersburg. The major cost of the transportation system is the necessity to add an additional lane on the dock. A forklift traveling along the dock every five to ten minutes will tie up one lane on the dock and the existing one-lane-wide dock would not be sufficient to handle that volume of forklift traffic along with all the other traffic which presently uses the dock.

[20] See: Appendix J.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5843]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Commerce, Oakland County, Michigan, previously published at 45 FR 42699 on June 25, 1980.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Commerce, Oakland County, Michigan previously published at 45 FR 42699 on June 25, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)). The location described as, "Just downstream of Farr Road," under the Source of Flooding of Huron River should read, "Just downstream of Farr Street."

The location described as, "Just upstream of Fox Lake Dam," under the Source of Flooding of Huron River should read, "Just upstream of Fox Lake Outlet Dam."

The Source of Flooding listed as Channel from Lake Pleasant should read Carus Lake and Lake Pleasant Channel. Also under this Source of Flooding, the location described as, "About 3,000 feet downstream of Haggerty Road," should read, "About 3,000 feet downstream of Haggerty Highway," and the location described as, "Just downstream of Haggerty Road," should read, "Just downstream of Haggerty Highway."

The Source of Flooding listed as Commerce Lake should read North Commerce Lake.

The Source of Flooding, South Commerce Lake, location—Shoreline, with a corresponding elevation of 910 feet should be added.

The Source of Flooding, Fox Lake, location—Shoreline, with a corresponding elevation of 931 feet should be added. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(Twp) Commerce, Oakland County.	Huron river	Just downstream of Farr Street	*929
			Just upstream of Fox Lake Outlet Dam	*931
		Carus Lake and Lake Pleasant Channel.	About 3,000 feet downstream of Haggerty Highway	*931
			Just downstream of Haggerty Highway	*934
		North Commerce Lake	Shoreline	*910
		South Commerce Lake	Shoreline	*910
		Fox Lake	Shoreline	*931

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367)

Issued: July 25, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-23849 filed 8-6-80; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-5818]

National Flood Insurance Program

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Rice County, Minnesota, previously published at 45 FR 31443 on May 13, 1980.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Rice County, Minnesota previously published at 45 FR 31443 on May 13, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

The Source of Flooding of Cannon Lake must be added. The location described as, "Shoreline, south of County Road 13," which originally appeared under the Source of Flooding of Cannon River should now appear under Cannon Lake. The accompanying Flood Insurance Study (profile) and Flood Insurance Rate Map were correct as printed.

The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Minnesota	(Uninc.), Rice County	Cannon Lake	Shoreline, south of County Road 13	*962

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367)

Issued: July 29, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-23848 Filed 8-6-80; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA 5873]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Caernarvon, Township, Lancaster County.	Conestoga Creek	Approximately 1,200 feet downstream of Private Lane	*418
			Private Land (upstream	*424
			State Route 23 (upstream)	*429
			Approximately 700 feet upstream of State Route 23	*430
Maps available at the Caernarvon Township Office.				
Send comments to Honorable Jerald Martin, Chairman of the Caernarvon Board of Supervisors, Churchtown, Narvon, Pennsylvania 17555.				
Pennsylvania	Centre, Township, Perry County	Little Juniata Creek	Downstream Corporate Limits with Borough of Bloomfield	*654
			Private Road approximately 2,600 feet upstream of Bloomfield Corporate Limits (Downstream).	*663
			Private Road approximately 5,300 feet upstream of Bloomfield Corporate Limits (Upstream).	*676
			Point approximately 6,940 feet upstream of Bloomfield Corprate Limits	*685
Maps available at the residence of Ms. Christina Morrow, Township Secretary, New Bloomfield, Pennsylvania.				
Send comments to Honorable Samuel R. Wagner, Chairman of the Centre Board of Supervisors, R.D. 1, Ellottsburg, Pennsylvania 17024.				
Pennsylvania	Dupont, Borough, Luzerne County	Mill Creek	Downstream Corpoate Limits	*712
			Upstream Center Street	*720
			Downstream Main Street	*728
			Upstream Main Street	*733
			Upstream Chestnut Street	*749
			Upstream Bear Creek Road	*752
			Approximately 1,465' upstream of Bear Creek Road	*800
		Collins Creek	Downstream Chestnut Street	*742
			Downstream Walnut Street	*753
			Upstream Walnut Street	*757
			Upstream Ash Street	*774
			Downstream I-81	*799
			Upstream I-81	*826
			Downstream Pennsylvania Turnpike (Northeast Extension)	*836
			Upstream Pennsylvania Turnpike (Northeast Extension)	*853
			Approximately 320' upstream of Pennsylvania Turnpike	*866
		Liddy Creek	Confluence of Mill Creek	*713
			Downstream Main Street	*731
			Downstream State Route 315	*734
			Upstream Walnut Street	*749
			Upstream Private Road	*820
			Downstream Pennsylvania Turnpike (Northeast Extension)	*838
Maps available at the Municipal Building, 600 Chestnut Street, Dupont, Pennsylvania.				
Send comments to Honorable Edward Zurek, Council President of Dupont, 411 Front Street, Dupont, Pennsylvania 18641.				
Pennsylvania	Edinboro, Borough, Erie County	Conneauttee Creek	Upstream of Kinter Hill Road	*1,185
			Upstream of Normal Street	*1,200
			Upstream of Chestnut Street	*1,203
			Upstream Corporate Limits	*1,204
		Tributary A	Downstream Corporate Limits (First Crossing)	*1,206
			Upstream Corporate Limits (First Crossing)	*1,212
			Upstream Corporate Limits (Second Crossing)	*1,219
Maps available at the Municipal Building, 124 Meadville Street, Edinboro, Pennsylvania.				
Send comments to Honorable David A. Crawe, Manager of Edinboro, 124 Meadville Street, Edinboro, Pennsylvania 16412.				
Pennsylvania	Ephrata, Township, Lancaster County.	Cocalico Creek	Legislative Route 36060 upstream	*309
			Middle Creek Road	*313
			Royer Road	*319
			Rettewmill Road upstream	*326
			Confluence of Indian Run	*345
			Mohlers Church Road upstream	*353
			Garden Spot Road upstream	*357
		Indian Run	Confluence with Cocalico Creek	*345
			Approximately 850 feet upstream of Trout Run Road	*348
Maps available at the Ephrata Township Building.				
Send comments to Honorable Robert D. Staller, Secretary of the Township of Ephrata, R.D. 4, Ephrata, Pennsylvania 17522.				
Pennsylvania	Greenwood, Township, Perry County.	Juniata River	Downstream Corporate Limits	*399
			Extension of Legislative Route 50001	*404
			Corporate Limits downstream of Millerstown	*406
			Corporate Limits upstream of Millerstown	*409
		Cocolamus Creek	Approximately 2,200 feet downstream of the confluence of Pfoutz Valley Run.	*432
			Upstream State Route 17	*440
			Upstream side of Legislative Route 50042	*470
			Upstream Corporate Limits	*475
Maps available at the Office of Mr. W. N. Zeiders, Township Secretary, R.D. 1, Millerstown, Pennsylvania.				
Send comments to Honorable Kenneth Bonsall, Chairman of the Greenwood Board of Supervisors, R.D. 1, Box 278, Millerstown, Pennsylvania 17062.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Heidelberg, Borough, Allegheny County.	Chartiers Creek	Downstream Corporate Limits	*780
			Walnut Street (Extended)	*782
			Upstream of State Route 50	*783
			Upstream of 2nd Street (Extended)	*784
			Third Street (Extended)	*785
			Fourth Street (Extended)	*786
			Upstream Corporate Limits	*787
Maps available at the Office of the Tax Collector, 1642 Walnut Street, Heidelberg, Pennsylvania.				
Send comments to Honorable James Marra, Council President, 1631 Railroad Street, Heidelberg, Pennsylvania 15106.				
Pennsylvania	Mill Village, Borough, Erie County.	Tributary to French Creek	Downstream of Conrail Bridge	*1,196
			Downstream of North Main Street Bridge	*1,202
			Downstream of Depot Street Bridge	*1,220
			Upstream of Frisbee Street Bridge	*1,258
Maps available at the residence of Mrs. Rita Naculich, Secretary of Mill Village, South Main Street, Mill Village, Pennsylvania.				
Send comments to Honorable James Naculich, Mayor of Mill Village, P.O. Box 29, Mill Village, Pennsylvania 16427.				
Pennsylvania	Millerstown, Borough, Perry County.	Juniata River	Downstream corporate limits	*406
			Approximately 3,000 feet upstream of State Route 17	*407
			Upstream corporate limits	*409
Maps available at the Millerstown Borough Hall.				
Send comments to Honorable Paul Graybill, Council President, P.O. Box 235, 313 East Sunbury Street, Millerstown, Pennsylvania 17062.				
Pennsylvania	Mountville, Borough, Lancaster County.	Strickler Run	Downstream Corporate Limits	*358
			Upstream of Main Street (State Route 462)	*372
			Downstream of Hill Street	*386
			Upstream Corporate Limits	*392
Maps available at the Mountville Borough Hall.				
Send comments to Honorable John R. Eby, Council President, 19 North Manor Street, Mountville, Pennsylvania 17554.				
Pennsylvania	Pittston, Township, Luzerne County.	Mill Creek	Upstream Pennsylvania Turnpike (N.E. Extension)	*868
			Upstream Private Road	*876
			Upstream Dam	*890
			Approximately 2,200' upstream of Dam	*940
			Approximately 4,500' upstream of Dam	*1,024
		Collins Creek	Downstream Corporate Limits	*866
			Downstream Private Road	*910
			Upstream Private Road	*916
			Upstream Corporate Limits	*929
Maps available at the Municipal Building, 421 Broad Street, Pittston, Pennsylvania.				
Send comments to Honorable Anthony Attardo, Chairman of the Pittston Board of Supervisors, 421 Broad Street, Pittston, Pennsylvania 18640.				
Pennsylvania	Thompsontown, Borough, Juniata County.	Delaware Creek	Downstream Corporate Limits	*423
			Approximately 800' downstream of Main Street Bridge	*428
			Upstream of Main Street Bridge	*437
			Confluence of Platte Hollow Run	*438
			Approximately 700' upstream of Platte Hollow Run confluence	*445
			Upstream Corporate Limits	*451
Maps available at the residence of Mr. Donald Frey, Borough Secretary, Thompsontown, Pennsylvania.				
Send comments to Honorable Robert Eichman, Council President, Thompsontown, Pennsylvania.				
Pennsylvania	Washington, Township, Erie County.	Shenango Creek	Upstream side of Lake View Drive	*1,204
			Approximately 600' downstream of Lay Road	*1,206
			Upstream side of Lay Road	*1,210
			Approximately 900' downstream of Crane Road	*1,216
			Upstream side of Crane Road	*1,222
		Conneautee	Approximately 500' downstream of Kinter Hill Road	*1,180
			Upstream side of Kinter Hill Road	*1,184
		Creek	Upstream side of Foot Bridge (Approximately 3,100' upstream of Kinter Hill Road.	*1,193
		Tributary A	Approximately 400' downstream of Highland Drive	*1,204
			Upstream side of Highland Drive	*1,205
			Approximately 800' upstream of Highland Drive	*1,211
			Approximately 200' downstream of Angling Road	*1,222
			Upstream side of Angling Road	*1,228
			Approximately 350' upstream of Angling Road	*1,229
		Tributary B	Approximately 130' downstream of Lay Road	*1,206
			Upstream side of Lay Road	*1,211
			Approximately 900' upstream of Lay Road	*1,220
			Approximately 840' downstream of Angling Road	*1,230
			Approximately 180' downstream of Angling Road	*1,240
			Upstream side of Angling Road	*1,252
Maps available at the Washington Municipal Building, 11800 Edinboro Road, Erie, Pennsylvania.				
Send comments to Honorable James Skelton, Mayor of Washington, R.D. 1, Edinboro, Pennsylvania 16412.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Wattsburg, Borough, Erie County..	West Branch French Creek	Confluence with French Creek	*1,286
			Downstream of State Route 8/Main Street Bridge	*1,289
			Upstream Corporate Limits	*1,291
Maps available at the Borough Hall, Main Street, Wattsburg, Pennsylvania.				
Send comments to Honorable S. Gene Combs, Mayor of Wattsburg, 14400 Main Street, P.O. Box 233, Wattsburg, Pennsylvania 16442.				
Pennsylvania	Wesleyville, Borough, Erie County	Fourmile Creek	Downstream Corporate Limits	*682
			Buffalo Road (Downstream)	*690
			Buffalo Road (Upstream)	*705
			Rose Avenue (Extended)	*725
			Station Road (Upstream)	*749
			Upstream Corporate Limits	*771
Maps available at the Borough Hall, 3421 Buffalo Road, Wesleyville, Pennsylvania.				
Send comments to Honorable Raymond Van Horn, Council President of Wesleyville, 2828 East 30th Street, Wesleyville, Pennsylvania 16510.				
Pennsylvania	West Donegal, Township, Lancaster County.	Conewago Creek East	Downstream Corporate Limits	*329
			Downstream of Conrail	*352
			Upstream of Conrail	*350
			Upstream of Zeager Road	*371
			Upstream Corporate Limits	*385
		Snitz Creek	Downstream Corporate Limits	*395
			Downstream of Private Bridge	*430
			Upstream of Private Bridge	*439
			Downstream of Bossler Road	*442
		Conoy Creek	Upstream of Stone Mill Road	*357
			Confluence of Tributary No. 1 to Conoy Creek	*361
		Tributary No. 1 to Conoy Creek	Upstream of confluence with Conoy Creek	*362
			Upstream of Miller Road	*365
			Downstream of Private Road	*377
			Approximately 1,600 feet upstream of Private Bridge	*388
Maps available at West Donegal Township Building.				
Send comments to Honorable Christian Miller, Secretary of the Township of West Donegal, R.D. 1, Box 560, Elizabethtown, Pennsylvania 17022.				
Pennsylvania	West Earl, Township, Lancaster County.	Cocalico Creek	Approximately 2,950 feet downstream from State Route 772	*300
			State Route 772 (Upstream)	*308
			Approximately 5,200 feet upstream from State Route 772	*308
		Conestoga River	State Route 772	*298
			Log Cabin Road (Upstream)	*299
			Approximately 2,900 feet upstream from Log Cabin Road	*302
		Groff Creek	Confluence with Conestoga River	*298
			State Route 722 (Upstream)	*299
			Private Lane approximately 2,150 feet upstream from State Route 772 (Upstream).	*302
			Approximately 4,150 feet upstream from State Route 772	*307
Maps available at the West Earl Township Building.				
Send comments to Honorable Jay C. Buch, Chairman of the West Earl Board of Supervisors, Brownstown, Pennsylvania 17508.				
Tennessee	Unincorporated Areas of Cheatham County.	Cumberland River	Just upstream of County limits	*397
			Just downstream of Cheatham Dam	*399
			Montgomery Bell Bridge	*402
		Harpeth River	Just upstream of State Highway 49	*401
			Just downstream of Ashland City Road	*425
			Just downstream of U.S. Highway 70	*483
			Just downstream of Louisville & Nashville Railroad (Downstream Crossing).	*498
			Just downstream of I-40 (Downstream Crossing)	*514
			Just upstream of Riverview Drive	*525
		South Harpeth River	Just downstream of Unnamed Road	*517
			Just upstream of County Road	*525
		Marrowbone Creek	Just upstream of State Highway 12	*408
Maps available at Cheatham County Courthouse, Ashland City, Tennessee 37015.				
Send comments to Honorable Robert Pennington, County Judge, Cheatham County Courthouse, Ashland City, Tennessee 37015.				
Tennessee	Goodlettsville (City), Davidson and Sumner Counties.	Dry Creek	Intersection of Janette Avenue and Melissa Drive	*450
			Intersection of creek and center of Dickerson Pike (U.S. Highway 31 west, 41 and State Highway 11.	*493
		Mansker Creek	Intersection of creek and center of Interstate Highway	*444
		Goodlettsville Outlett Ditch	Intersection of Ditch and center of Louisville and Nashville Railroad	*#1
			100 feet upstream from center of Two Mile Pike	*461
		Slaters Creek	Intersection of Interstate Highway 65 and U.S. Highway 31W	*465
		Lumsley Fork	Intersection of Hitt Lane and Utley Drive	*460
Maps available at 117 Memorial Drive, Goodlettsville, Tennessee.				
Send comments to the Honorable Raymond C. Massie, 117 Memorial Drive, Goodlettsville, Tennessee 37072.				
Tennessee	Hendersonville (City), Sumner County.	Mansker Creek (Back-water from the Cumberland River).	Intersection of creek and center of Gallatin Pike (U.S. Highway 31E and State Route 6).	*430
		Madison Creek (Backwater from the Cumberland River).	Intersection of creek and center of Jackson Road	*430

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Madison Creek	100 feet upstream from center of Long Hollow Pike	*449
		Willis Branch	50 feet upstream from center of county road	*459
		Drakes Creek	Intersection of Thirty Road and Stop Road	*477
			30 feet upstream from center of Long Hollow Pike (County Route 6126).	*516
		Drakes Creek Right Bank Tributary No. 1.	20 feet upstream from Louisville and Nashville Railroad	*463
			50 feet upstream from center of New Shackle Island Road	*497
		Drakes Creek Right Bank Tributary No. 2.	Intersection of South Burn Drive and Wessington Place	*464
			50 feet upstream from center of Shackle Island Road (County Route 6127).	*495
		Drakes Creek Right Bank Tributary No. 3.	100 feet south of intersection of Yorkside Place and Louann Lane	*475
		Drakes Creek Left Bank Tributary No. 1.	30 feet upstream from center of Callender Lane	*485
			Intersection of creek and center of Thirty Road	*531
		Station Camp Creek	Intersection of creek and center of Long Hollow Pike	*489
		Cumberland River	50 feet upstream from center of Old Hickory Dam	*450
			50 feet downstream from center of Old Hickory Dam	*430
Maps available at P.O. Box 1570, Hendersonville, Tennessee.				
Send comments to the Honorable T. W. Patterson, P.O. Box 1570, Hendersonville, Tennessee 37075.				
Texas	City of Bishop, Nueces County	Carretta Creek	Approximately 300 feet upstream of Missouri Pacific Railroad	*55
		North Carretta Creek	Approximately 300 feet upstream of US 77 Bypass	*53
			Just upstream of Missouri Pacific Railroad	*58
Maps available at City Hall, Bishop, Texas 78343.				
Send comments to Mayor Herbert Danmer, or Ms. Irene Rodriguez, City Administrator, City Hall, P.O. Box 356, Bishop, Texas 78343.				
Texas	City of Brownwood, Brown County.	Pecan Bayou	Just downstream of U.S. Highway 84 and 87	*1,332
			Just upstream of A concrete dam	*1,336
		Adam Branch	Just downstream of Austin Avenue	*1,335
			Just downstream of Coleman Avenue	*1,350
		Tom Williams Creek	Just downstream of U.S. Highway 84 and 87	*1,337
		Willis Creek	Just downstream of Austin Avenue	*1,327
			Just downstream of Southside Street	*1,335
		South Willis Creek	Just downstream of Southside Street	*1,336
			Just downstream of Stephen Austin Drive	*1,353
		Tributary of South Willis Creek	Just downstream of Morris Sheppard Drive	*1,375
Maps available at City Hall, 110 South Greenleaf, Brownwood, Texas 76801.				
Send comments to Mayor W. T. Harlow, or Mr. Virgil C. Gray, City Manager City Hall, 110 South Greenleaf, Brownwood, Texas 76801				
Texas	City of Gregory, San Patricio County.	Drainage Ditch	Approximately 800 feet downstream of southern most crossing of U.S. Highway 181.	*29
			Approximately 850 feet downstream of Sunset Road	*31
		Shallow Flooding Area (Ponding)	Intersection of North and McKaney Avenues	*32
Maps available at City Hall, 306 Ayers, Gregory, Texas 78358.				
Send comments to Mayor Celestino Fambrano or Mr. Robert Mancien, City Administrator, City Hall, 306 Ayers, Gregory, Texas 78358.				
Texas	City of Odem, San Patricio County.	Peter's Swale	Just downstream of Missouri Pacific Railroad	*71
			Just upstream of U.S. Highway 77	*73
Maps available at City Hall, 514 Park Avenue, Odem, Texas 78370.				
Send comments to Mayor Sanley Webb III, or Ms. Billie Joe Tennill, City Secretary, P.O. Drawer AG, Odem, Texas 78370.				
Washington	Kirkland (City), King County	Forbes Creek	At the intersection of Forbes Creek and center of 108th Avenue	*48
			At the intersection of Forbes Creek and center of Northeast 108th Street (most upstream crossing).	*89
		Unnamed Drainageway Shallow Flooding.	At the intersection of 3rd Street and Commercial Street	*28
		Yarrow Creek	Along Yarrow Creek 100 feet northwest from intersection of creek with State Highway 908.	*#1
Maps available at 210 Main Street, Kirkland, Washington.				
Send comments to the Honorable D. V. Hurst, 210 Main Street, Kirkland, Washington 98033.				
Washington	Renton (City), King County	Green River	Intersection of River and South West 43rd Street	*28
		Cedar River	100 feet upstream of intersection of River and Houser Way North	*32
			75 feet upstream of intersection of river and the second crossing of the Chicago, Milwaukee, St. Paul, and Pacific Railroad.	*53
		May Creek	25 feet downstream of intersection of creek and Interstate Highway 405.	*35
			Intersection of creek and downstream crossing of northeast 31st Street.	*96
		Springbrook Creek	Intersection of creek and southwest Grady Way	*15
		Black River	25 feet upstream of intersection of River and P-1 Pumping Station	*15
Maps available at 200 Mill Avenue, South, Renton, Washington.				
Send comments to the Honorable Barbara Y. Shinpoch, 200 Mill Avenue, South, Renton, Washington 98055.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Washington	Ridgefield (City), Clark County	Gee Creek	10 feet downstream from center of Division Street	*37
		Columbia River	Center of Mill Street at approximately 500 feet west of its intersection with Railroad Avenue.	*24
Maps available for inspection at City Hall, 230 Pioneer Avenue, Ridgefield, Washington.				
Send comments to Honorable William Alexander, P.O. Box 608, Ridgefield, Washington 98642.				
Washington	Tukwila (City), King County	Green River	100 feet upstream from intersection of river and Interstate Highway 5	*14
			100 feet upstream from intersection of river and Strander Boulevard	*25
		Springbrook Creek	Center of South 158th Street approximately 150 feet north of its intersection with the Chicago Milwaukee St. Paul and Pacific railroad.	*10
Maps available for inspection at City Hall, 6200 Southcenter Blvd., Tukwila, Washington.				
Send comments to Honorable Frank Todd, 6200 Southcenter Blvd., Tukwila, Washington 98188.				
Washington	Vancouver (City), Clark County	Columbia River	Intersection of river and center of Interstate Highway 5	*28
		Burnt Bridge Creek	Intersection of creek and center of Leverich Parkway	*50
			Intersection of creek and center of Devine Road	*165
Maps available at City Hall, 210 E. 13th Street, Vancouver, Washington.				
Send comments to Honorable Jim Justin, 210 East 13th Street, Vancouver, Washington 9660.				
Washington	City of Westport, Grays Harbor	Pacific Ocean	Along Western Coastline	*20
		Grays Harbor Entrance	Along the northern corporate limits	*19
		South Bay	At the intersection of Pacific Avenue and the Levee	*10
			At the intersection of First Avenue and Dock Street	*10
			The intersection of Spokane Avenue and Montseano Street	*10
		Grays Harbor Entrance	The intersection of West Haven Drive and Core Streets	*2
			At circle at the end of Revetment Drive	*1
			At the intersection of Harbor Street and Second Avenue	*1
Map available at Office of Clerk Treasurer, City Hall, 505 N. Montseano Street, Westport, Washington 98595.				
Send comments Major Engle or Ms. Bertha Wilcox, Clerk Treasury, City Hall, P.O. Box 505, Westport, Washington 98595.				
Wisconsin	(C) West Allis, Milwaukee County	Root River	About 700 feet downstream of West Morgan Avenue	*720
			Just upstream of West Morgan Avenue	*731
			Approximately 200 feet downstream of West Lincoln Avenue	*750
		Hale Creek	Just downstream of Parkway Road	*735
			Approximately 2100 feet upstream of West Cleveland Avenue	*737
			Approximately 3300 feet upstream of West Cleveland Avenue	*738
		West Branch Root River	500 feet upstream of West Oklahoma Avenue	*738
			Approximately 100 feet downstream of South 124th Street	*750
Maps available at West Allis Engineering & Planning Department, City Hall, 7525 West Greenfield, West Allis, Wisconsin.				
Send comments to Honorable John F. Barlich, Mayor, City of West Allis, City Hall, 7525 West Greenfield, West Allis, Wisconsin 53214.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 40001–4128); Executive Order 12127, 44 FR 19367)

Issued: July 25, 1980.

Gloria M. Jimenez,

Federal Insurance Administration.

[FR Doc. 80-23844 Filed 8-6-80; 8:45 am]

BILLING CODE 6718-03—M

44 CFR Part 67

[Docket No. FEMA 5874]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities.

These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Fultondale, Jefferson County.	Five Mile Creek	Just upstream of corporate limits	*498
			Just upstream of U.S. Highway 31	*509
		Black Creek	Just upstream of Stouts Road	*497
			Just downstream of New Castle road	*515
Maps available at City Hall, 1005 Walkers Chapel road, Fultondale, Alabama 35068.				
Send comments to Mayor James Arwood or City Clerk, Milton Stuckey, City Hall, P.O. 378, Fultondale, Alabama 35068.				
Arkansas	City of Greenwood, Sebastian County.	Vache Grasse Creek	Approximately 150 feet upstream of Route 10	*488
			Approximately 400 feet upstream of Route 71B	*493
		Heartsill Creek	Just downstream of Arkansas Route 10	*491
			Just downstream of Denver Street	*505
		Hester Creek	Just upstream of Interstate 71	*506
Maps available at City Hall, 101 North Aster Street, Greenwood, Arkansas 72936.				
Send Comments to Mayor T. P. BROWN OR Ms. Bobbie Jones, Recorder of Deeds, City Hall, P.O. Box 206, Greenwood, Arkansas 72936.				
California	Dixon (City), Solano County	Dickson Creek	At intersection of North First Street and Stratford Avenue	*61
			At intersection of North Almond Street and West H Street	*63
			Intersection of North Washington Street and Park Drive	*#1
Maps available at City Hall, Dept. of Public Works, 600 East A Street, Dixon, California.				
Send comments to the Honorable Marine Burton-Halloran, 600 East A Street, Dixon, California 95620.				
California	Rio Vista (City), Solano County	Sacramento River	Intersection of river and center of State Highway 12	*8
		Marina Creek	100 feet upstream from center of Second Street	*9
		Marina Creek Tributary	100 feet upstream from corporate limits	#1
		Industrial Creek	100 feet downstream from center of St. Francis Way	*13
			Intersection of creek and center of St. Francis Way	#2
Maps available at City Eng. Office, City Hall, 1 Main Street, Rio Vista, California.				
Send comments to the Honorable Milton Wallace, 1 Main Street, Rio Vista, California 94571.				
Illinois	(V) Bloomingdale, DuPage County	Spring Brook Creek	Just downstream of Medinah—On-The-Lake Road	*705
			Just upstream of Circle Avenue	*714
			About 430 feet upstream of Foster Avenue	*726
			Just upstream of private drive (about 520 feet upstream of Foster Avenue).	*729
		West Branch Tributary to Spring Brook Creek.	About 200 feet upstream of confluence with Spring Brook Creek	*720
			About 120 feet downstream of Maple Avenue	*740
			About 250 feet downstream of Lake Street	*750
Maps available at the Engineer's Office, Village Hall, 201 South Bloomingdale Road, Bloomingdale, Illinois.				
Send comments to Honorable Sam Tenuto, Village President, Village of Bloomingdale, Village Hall, 201 South Bloomingdale Road, Bloomingdale, Illinois 60108.				
Illinois	(V) Eldred, Greene County	Hurricane Creek	At downstream corporate limits	*443
			About 700 feet downstream Bluff Street	*446
			Just downstream Bluff Street	*449
			At upstream corporate limits	*452
		Illinois River	About 0.75 mile downstream State Route 106 (West of Maple Street; North of Locust Street).	*443
Maps available at Eldred Post Office, Eldred, Illinois.				
Send comments to Honorable Glenn Jones, Village President, Village of Eldred, Village Hall, Eldred, Illinois 62027.				
Illinois	(V) Justice, Cook County	Justice Ditch	Downstream corporate limits	*597
			About 600 feet upstream Banks Street	*600
		71st Street Ditch	At mouth at Sanitary Drainage and Ship Canal	*581
			About 100 feet upstream Illinois Central Gulf Railroad	*593
			Upstream corporate limits	*594

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Des Plaines River Diversion Channel.	Within corporate limits	*598
Maps available at the Village Clerk's Office, 7800 Archer Road, Justice, Illinois.				
Send comments to Honorable Edward C. Rusch, Village President, Village of Justice, 7800 Archer Road, Justice, Illinois 60458.				
Indiana	(T) Burns Harbor, Porter County	East Arm Little Calumet River	Downstream corporate limit	*590
			Just downstream of State Route 149	*608
			At upstream corporate limit	*613
		Lake Michigan	Shoreline	*584
Maps available at Burns Harbor Town Hall, R.R. #1, P.O. Box 155, Chesterton, Indiana.				
Send comments to Honorable George Smith, President of the Town Board, Town of Burns Harbor, Burns Harbor Town Hall, R.R. #1, P.O. Box 155, Chesterton, Indiana 46304.				
Indiana	(C) Elwood, Madison County	Big Duck Creek	At South P Street	*843
			Just downstream of South 9th Street	*850
			Just upstream of North C Street	*855
			About 1,700 feet upstream of North 20th Street	*856
		Little Duck Creek	At southern corporate limits	*850
			About 200 feet downstream of South J Street	*855
			About 600 feet upstream of South 28th Street	*856
Maps available at the Mayor's Office, City Hall, 1601 Main Street, Elwood, Indiana.				
Send comments to Honorable Webb Morris, Mayor, City of Elwood, City Hall, 1601 Main Street, Elwood, Indiana 46036.				
Indiana	(T) Frankton, Madison County	Pipe Creek	About 630 feet downstream of Conrail	*821
			About 240 feet downstream of Conrail	*822
			About 200 feet downstream of Washington Street	*823
			About 100 feet upstream of Washington Street	*824
			About 0.72 mile upstream of Washington Street	*825
Maps available at the Clerk's Office, Town Hall, 1208 Penn Street, Frankton, Indiana.				
Send comments to Honorable Larry Whetsel President of the Town board, Town of Frankton, Town Hall, 1208 Penn Street, Frankton, Indiana 46044.				
Indiana	(C) Michigan City, La Porte County.	Trail Creek	At mouth at Lake Michigan	*584
			Just upstream on Springland Avenue	*595
			Just upstream of Michigan Avenue	*603
		Deer Creek	At mouth at Trail Creek	*598
			Just downstream of Golf Course Road	*609
			Just upstream of Golf Course Road	*616
			Just downstream of Meer Road	*634
		Otter Creek	At mouth at Trail Creek	*592
			Just downstream of Karwick Road	*608
			Just upstream of Karwick Road	*614
		Beck Ditch	At mouth of Otter Creek	*596
			Just upstream of Karwick Road	*608
		Lake Michigan	Entire length of community along Lake Michigan	*584
		North Branch Deer Creek	About 600 feet upstream Warnke Road	*616
			Just downstream of private road (about 1,900 feet upstream Warnke Road).	*622
			Just upstream of private road (about 1,900 feet upstream of Warnke Road).	*628
			About 1,800 feet upstream of Chicago South Shore and South Bend Railroad.	*634
		White Ditch	About 1,100 feet downstream of confluence of Kimball Ditch	*607
			Just downstream of Grand Beach Road	*613
			Just upstream of U.S. Route 12	*622
		Kimball Ditch	At confluence with White Ditch	*608
			Just upstream of Duneland Beach Drive	*608
		Kintzele Ditch	Just upstream of County Line Road	*617
			At confluence with Striebel Arm	*618
		Striebel Arm	Just upstream of Hitchcock Road	*619
			Just upstream of Earl Road	*628
			Just upstream or Louisville and Nashville Railroad (southern crossing)	*642
Maps available at the Planning Department, City Hall, 100 E. Michigan Boulevard, Michigan City, Indiana.				
Send comments to Honorable Clifford Arnold, Mayor, City of Michigan City, City Hall, 100 E. Michigan Boulevard, Michigan City, Indiana 46360.				
Iowa	Cambridge, City, Story County	South Skunk River	Downstream Corporate Limits	*849
			Confluence of Ballard Creek	*851
			County Trunk E63 Bridge	*852
			Upstream Corporate Limits	*853
Maps available at the City Hall, Cambridge, Iowa.				
Send comments to Honorable Donald Wilson, Mayor of Cambridge, P.O. Box 583, Cambridge, Iowa 50046.				
Louisiana	City of Jennings, Jefferson Davis Parish.	East Grand Manais Ditch	Just downstream of W. Division Street	*13
			Just downstream of Elevated conduit of the Tiptop Canal	*17
		Northeast Outfall Ditch (Backwater flooding from Bayou Nezpique).	Intersection of Fifth Street and Hickory Lane Extended	*17
		Southeast Outfall Ditch (Backwater flooding from Bayou Nezpique).	Just downstream of U.S. Highway 90	*15
Maps available at City Hall, Broadway, Jennings, Louisiana 70546.				
Send comments to Mayor Melvin Gramin or Mrs. Sadie Manuel, City Clerk, City Hall, P.O. Drawer 1249, Jennings, Louisiana 70598.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Louisiana	Town of Lake Arthur, Jefferson Davis Parish.	Lake Arthur	Entire Shoreline	*7
			Intersection of Kellogg and Sixth Streets	*8
Maps available at Town Hall, 102 Arthur Avenue, Lake Arthur, Louisiana 70549.				
Send comments to Mayor Harry Kratzer, Town Hall, 102 Arthur Avenue, Lake Arthur, Louisiana 70549.				
Louisiana	Town of Plain Dealing, Bossier Parish.	Little Cypress Bayou	Just downstream of St. Louis South-western Railway	*261
			Just upstream of Mary Lee Street	*264
			Just upstream of North Street	*272
		West Fork of Little Cypress Bayou.	Just upstream of Arkansas Street	*263
			Just downstream of Louisiana Highway 3	*267
		East Fork of Little Cypress Bayou	Just downstream of Gilmer Street	*260
			Just downstream of Lynch Street	*265
			Just upstream of Vance Avenue Extended	*269
Maps available at City Hall, Corner of Arkansas and Palmetto, Plain Dealing, Louisiana 71254.				
Send comments to Mayor Leon Sanders, Jr. or Ms. Sally Chandler, City Clerk, City Hall, P.O. Box 426, Plain Dealing, Louisiana 71254.				
Maine	Casco, Town, Cumberland County.	Songo River	Confluence with Sebago Lake	*268
			Confluence of Crooked River	*272
		Crooked River	Confluence with Songo River	*272
			Upstream side of Songo Locks Road	*274
			Upstream side of U.S. Route 302	*284
			Upstream Corporate Limits	*291
		Sebago Lake	Entire Shoreline within Corporate Limits	*268
Maps available at the Town Office, Casco, Maine.				
Send comments to Honorable Dave Martin, Town Manager of Casco, Town Office, Casco, Maine 04015.				
Maine	Dayton, Town, York County	Saco River	Upstream Dayton-Biddeford Corporate Limits	*70
			Downstream Skelton Station Dam	*76
			Upstream Skelton Station Dam	*128
		Cooks Brook	Upstream Dennett Dam	*190
			Upstream Dyer Road	*192
			700' downstream of Clarks Mill Dam	*201
			Upstream Clarks Mill Dam	*224
			Upstream Route 5	*229
			Upstream Dayton-Waterboro Corporate Limits	*246
Maps available at the Town Offices, Route 35, Dayton, Maine.				
Send comments to Honorable David Hill, Chairman of the Board of Selectmen of Dayton, Town Offices, Dayton, Maine 04005.				
Maine	Raymond, Town, Cumberland County.	Sebago Lake	Entire Shoreline within the Town of Raymond	*268
		Panther Pond	Entire Shoreline within the Town of Raymond	*279
		Crescent Lake	Entire Shoreline within the Town of Raymond	*279
Maps are available at the Raymond Town Office, Raymond, Maine.				
Send comments to Honorable Carlton E. Edwards, Chairman of the Board of Selectmen of Raymond, Town Offices, Raymond, Maine 04071.				
Maryland	Crisfield, City, Somerset County	Chesapeake Bay	Entire shoreline of Crisfield	*5
Maps available at the City Hall, Main Street, Crisfield, Maryland.				
Send comments to Honorable Charles McClenahan, Mayor of Crisfield, City Hall, Main Street, Crisfield, Maryland 21817.				
Massachusetts	Yarmouth, Town, Barnstable County.	Cape Cod Bay	Mill Creek	*11
			Chase Garden Creek	*10
		Nantucket Sound	Lewis Bay	*10
			Confluence of Bass River	*10
		Bass River	Confluence with Nantucket Sound	*10
			Follins Pond	*5
		Parkers River	Confluence with Nantucket Sound	*10
			Swan Pond	*9
Certain areas of the community are subject to flood with velocity (wave action). See maps for designated Zones V3, V4, V8, and V9.				
Maps available for review at the Town Engineer's Office, Town of Yarmouth, Town Office, South Yarmouth, Massachusetts 02664.				
Send comments to Honorable Arthur Luke, Chairman of the Board of Selectmen of Yarmouth, Yarmouth Town Office, South Yarmouth, Massachusetts 02664.				
Michigan	Harrison (Township), Macomb County.	Clinton River	Intersection of Clinton River and center of Interstate Highway 94	*581
		Clinton River Spillway	Intersection of Clinton River Spillway and center of Interstate Highway 94.	*580
		Lake St. Clair	Intersection of Conger Bay Drive and North River Road	*579
Maps available at Township Hall, 38151 L'Anse Creuse, Mountt Clemens, Michigan.				
Send comments to the Honorable David Mercer, 38151 L'Anse Creuse, Mount Clemens, Michigan 48045.				
Michigan	(C) Imlay City, Lapeer County	North Branch Belle River	About 850 feet downstream Grand Trunk Western Railroad (near eastern corporate limits).	*801
			Just upstream State Highway 21 (near private driveway)	*810
			About 100 feet upstream Grand Trunk Western Railroad (near western corporate limits).	*816
Maps available at City Hall, 150 N. Main Street, Imlay City, Michigan.				
Send comments to Honorable Shirley Metcalf, Mayor, City of Imlay City, City Hall, 150 N. Main Street, Imlay City, Michigan 48444.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(C) Rochester, Oakland County	Clinton River	About 150 feet downstream of downstream corporate limit	*711
			Just upstream of Diversion Street	*730
			At the upstream corporate limit	*731
		Paint Creek	Mouth at Clinton River	*718
			Just upstream of Second Street	*723
			Just upstream of Rochester Road	*742
			About 1,300 feet downstream of Ludlow Street	*757
			Just upstream of Ludlow Street	*763
			At the upstream corporate limit	*770
		Sargent Creek	At the confluence with Paint Creek	*765
			At the upstream corporate limit	*775
			About 800 feet upstream of corporate limit	*778
			About 1,150 feet upstream of corporate limit	*784
Maps available at City Hall, 400 6th Street, P.O. Box 10, Rochester, Michigan.				
Send comments to Honorable Kenneth A. Johnson, City Manager, City of Rochester, City Hall, 400 6th Street, P.O. Box 10, Rochester, Michigan 48063.				
Michigan	(Twp.) Sumpter, Wayne County	North Branch-Swan Creek	About 100 feet downstream Judd Road	*648
			About 300 feet upstream Sumpter Road	*670
			Just downstream Elwell Road	*678
Maps available at Sumpter Township Hall, 23480 Sumpter Road, Belleville, Michigan.				
Send comments to Honorable Robert Demski, Supervisor, Township of Sumpter, Sumpter Township Hall, 23480 Sumpter Road, Belleville, Michigan 48111.				
Minnesota	(C) Dilworth, Clay County	County Ditch 41	Downstream corporate limits	*907
			Upstream corporate limits	*911
		County Ditch 50	Downstream corporate limits	*906
			Upstream corporate limits	*912
Maps available at City Hall, 107 Center Avenue East, Dilworth, Minnesota.				
Send comments to Honorable Arlo Brown, Mayor, City of Dilworth, City Hall, 107 Center Avenue East, Dilworth, Minnesota 56529.				
Minnesota	(C) Greenfield, Hennepin County	Crow River	At downstream corporate limit	*904
			About 2,000 feet downstream of City of Rockford northern corporate limit.	*912
			About 400 feet upstream of City of Rockford southern corporate limit	*915
		South Fork Crow River	At confluence with Crow River	*918
			At upstream corporate limit	*919
Maps available at the Office of the City Clerk, City Hall, P.O. Box 418, Rockford, Minnesota.				
Send comments to Honorable Gerald Schleif, Mayor, City of Greenfield, City Hall, P.O. Box 418, Rockford, Minnesota 55373.				
Minnesota	(C) Hanover, Wright County	Crow River	Downstream corporate limits	*891
			Just downstream from dam	*899
			Just downstream from County Highway 123	*902
			About 4,800 feet upstream of County Highway 123	*905
Maps available at City Hall, P.O. Box 406, 11250 Fifth Street, Hanover, Minnesota.				
Send comments to Honorable Immanuel Bursch, Mayor, City of Hanover, City Hall, P.O. Box 406, 11250 Fifth Street, NE, Hanover, Minnesota 55341.				
Minnesota	(C) Melrose, Stearns County	Sauk River	About 300 feet upstream of eastern corporate limit	*1,189
			Just downstream of Dam	*1,192
			Just upstream of Dam	*1,202
			Approximately 1,000 feet downstream of northwestern corporate limits	*1,203
Maps available at the Office of the City Clerk-Treasurer, City Hall, 225 East 1st Street North, Melrose, Minnesota.				
Send comments to Honorable Theodore Trutna, Mayor, City of Melrose, City Hall, 225 East 1st Street North, Melrose, Minnesota 56352.				
Minnesota	(Uninc. Sherburne County	Elk River	At City of Elk River western corporate limit	*882
			Just upstream Burlington Northern railroad	*900
			About 200 feet upstream County Highway No. 15	*910
			About 100 feet downstream County Road No. 43	*923
			About 200 feet downstream County Highway No. 5	*927
			Just upstream County Road No. 73	*934
			Just upstream County Highway No. 11	*939
			About 900 feet upstream County Highway No. 4	*947
		Mississippi River	At City of Elk River western corporate limit	*873
			About 14,400 feet upstream City of Elk River western corporate limits.	*863
		Big Elk Lake	At Shoreline	*966
		Rush lake	At Shoreline	*960
		Lake Briggs	At Shoreline	*968
		Lake Julia	At Shoreline	*960
Maps available at the County Auditor's Office, Sherburne County Administration Building, Elk River, Minnesota.				
Send comments to Honorable Lyle R. Smith, Chairman of the County Board, Sherburne County, Sherburne County Administration Building, Elk River, Minnesota 55330.				
Missouri	(C) Neelyville, Butler County	Poplar Bluff to Coming Landward Right Overbank Floodway.	Just north of Hart Street and 800 feet west of Old Highway 67	*302
			About 900 feet south of Hart Street to about 0.5 mile north of County Highway 270.	*301
			About 0.5 mile north of County Highway 270 south to 700 feet north of Highway 270.	*300
			Between Circle Drive and southern corporate limits	*300

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Between Marler Street and County Highway 268	*300
			Jut east of County Highway 271 at southern corporate limits	*300
			East of Missouri Pacific Railroad and north of Owen Street	*302
			South of Center Street and east of Old Highway 67 at the corporate limits.	*300
			East of Missouri Pacific Railroad and south of Owen Street	*301
Maps available at City Hall, P.O. Box 66, Neelyville, Missouri.				
Send comments to Honorable Ralph D. Shelton, Jr., Mayor, City of Neelyville, City Hall, P.O. Box 66, Neelyville, Missouri 63954.				
Missouri	(C) Troy, Lincoln County	Whitcomb Branch	Downstream corporate limits	*516
			Upstream corporate limits	*520
		Buchanan Creek	About 665 feet downstream of Lincoln Drive	*498
			About 740 feet upstream of Lincoln Drive	*504
			Just downstream of Old Moscow Mill Road	*513
			About 480 feet upstream of Old Moscow Road	*517
			About 2,280 feet upstream of Main Street	*541
		Town Branch Creek	About 500 feet downstream of U.S. Highway 61	*474
			Just downstream of U.S. Highway 61	*478
			About 350 feet upstream of U.S. Highway 61	*485
			Just upstream of State Highway 47	*491
			Just downstream of East Cherry Street	*492
			Just upstream of Lincoln Drive	*502
			About 350 feet upstream of abandoned bridge	*508
			About 2,000 feet upstream of abandoned bridge	*521
Maps available at City Hall, 451 Main Street, Troy, Missouri.				
Send comments to Honorable G. Howard Briggs, Mayor, City of Troy, City Hall, 451 Main Street, Troy, Missouri 63379.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 25, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-23845 Filed 8-6-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA- 5875]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Atlantic Highlands, Borough, Monmouth County.	Sandy Hook Bay	Entire shoreline	*12
			Tidal flooding on Wagner Creek downstream from upstream corporate limits.	*12
			Tidal flooding of Many Mind Creek downstream of State Route 36	*12
Maps available at the Office of the Borough Clerk, Atlantic Highlands, New Jersey.				
Send comments to Honorable J. Leonard Clark, Clerk Administrator of Atlantic Highlands, 100 First Avenue, Atlantic Highlands, New Jersey 07716.				
New Jersey	Deerfield, Township, Cumberland County.	Maurice River	Downstream Corporate Limits	*39
			Upstream Corporate Limits	*36
Maps available at the Municipal Building, Deerfield, New Jersey.				
Send comments to Honorable Anthony Stanzione, Mayor of Deerfield, P.O. Box 327, Municipal Building, Rosenhayn, New Jersey 08352.				
New Jersey	Township of Harmony, Warren County.	Delaware River	Downstream corporate limits	*202
			4,000 feet upstream of corporate limits	*203
			At Conrail Bridge 2,280 feet upstream of corporate limits	*213
			Confluence of Buckhorn Creek	*220
			At 2nd Conrail Bridge 42,350 feet upstream of corporate limits	*228
			1,650 feet upstream of 2nd Conrail Bridge	*230
		Lopatcong Creek	Downstream corporate limits	*334
			At dam 70 feet upstream of corporate limits	*345
			1,400 feet upstream from corporate limits	*358
			400 feet downstream from County Route 519	*363
			At County Route 519	*370
			At private road 1,000 feet upstream of County Route 519	*380
			At private road 2,000 feet upstream of County Route 519	*391
			1,000 feet downstream of Decker Road	*402
			400 feet downstream of Decker Road	*409
			Upstream side of Decker Road	*417
			800 feet upstream of Decker Road	*425
			Hartman Drive	*437
			800 feet upstream of Hartman Drive	*448
			1,400 feet upstream of Hartman Drive	*457
			1,800 feet upstream of Hartman Drive	*465
			1,400 feet downstream of Harmony Brass Castle Road	*474
			800 feet downstream of Harmony Brass Castle Road	*487
			Approximately 300 feet downstream of Harmony Brass Castle Road	*497
			Allen's Mill Road	*508
			270 feet upstream from Allen's Mill Road	*513
		Buckhorn Creek	At confluence with Delaware River	*220
			1,000 feet upstream of Hutchison State Road	*228
			2,000 feet upstream of Hutchison State Road	*238
			1,500 feet downstream of Reeder Road	*247
			300 feet downstream of Reeder Road	*255
			At Reeder Road	*265
			1,100 feet upstream of Reeder Road	*276
			2,500 feet upstream of Reeder Road	*286
			2,000 feet downstream of Roxburg Station Road	*296
			At confluence of Tributary No. 1 to Buckhorn Creek	*301
			At upstream corporate limits	*303
		Tributary No. 1 to Buckhorn Creek.	At confluence with Buckhorn Creek	*301
			200 feet upstream of confluence with Buckhorn Creek	*303
			200 feet downstream of County Route 519	*315
			At County Route 519 and Hill Road	*322
			300 feet upstream of County Route 519	*332
			600 feet upstream of County Route 519	*341
			700 feet upstream of County Route 519	*351
			800 feet upstream of County Route 519	*362
			900 feet upstream of County Route 519	*372
			1,000 feet upstream of County Route 519	*381
			1,100 feet upstream of County Route 519	*391
			1,200 feet upstream of County Route 519	*404
			1,300 feet upstream of County Route 519	*418
			1,400 feet upstream of County Route 519	*433
			1,500 feet upstream of County Route 519	*444
			1,650 feet upstream of County Route 519	*454
			1,745 feet upstream of County Route 519	*463
			1,880 feet upstream of County Route 519	*472
Maps available at the Harmony Township School, Harmony, New Jersey.				
Send comments to Honorable J. Richard Collins, Mayor of Harmony, Mounted Route 12, Phillipsburg, New Jersey 08865.				
New Jersey	Ocean Gate, Borough, Ocean County.	Tributary to Toms River	Upstream Chelsea Avenue	*6
			Upstream Point Pleasant Avenue	*6
			Approximately 800' upstream of Point Pleasant Avenue	*6
			Confluence with Toms River	*6
Maps available for review at the Office of the Borough Clerk, 153 East Longport Avenue, Ocean Gate, New Jersey.				
Send comments to Clarence G. Cashman, Mayor of Ocean Gate, 153 East Longport Avenue, Ocean Gate, New Jersey 08740				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Red Bank, Borough, Monmouth County.	Navesink River	Along entire shoreline including Swimming River	*9
Maps available at the Municipal Building, Red Bank, New Jersey.				
Send comments to Honorable Michael Aronone, Mayor of Red Bank, 32 Monmouth Street, Red Bank, New Jersey 07701.				
New York	Addison (Village), Steuben County.	Canisteo River	100 feet upstream from center of Main Street	*992
		Tuscarora Creek	100 feet upstream from center of South Street	*992
Maps available at Village Hall, 35 Tuscarora Street, Addison, New York.				
Send comments to Honorable Edward Fort, 35 Tuscarora Street, Addison, New York 14801.				
New York	Caledonia, Village, Livingston County.	Spring Creek	Downstream Corporate Limits	*635
			Downstream Conrail	*643
Maps available at the Village Hall, Caledonia, New York.				
Send comments to Honorable Edward Matthews, Mayor of Caledonia, Village Hall, 3095 Main Street, Caledonia, New York 14423.				
New York	Camillus (Town), Onondaga County.	Ninemile Creek	Upstream side of Airport Road over the channel	*366
			Meadow Lane	*403
			The southernmost intersection of Marbsco Road and State Highway 174.	*459
		Geddes Brook	Horan Road over the channel	*419
			Approximately 200 feet east along Myron Road from its intersection with Jones Street.	*432
			Intersection of Inwood Drive and Shrineview Drive	*479
		Unnamed Stream near Garden Terrace.	Intersection of Conrail and the channel	*386
			Upstream side of Pottery Road over the channel	*387
		Unnamed Stream East	Upstream side of State Highway 5 and 20 over the channel	*469
Maps available at Town Hall, Camillus, New York.				
Send comments to the Honorable Rocco C. Pirro, Town Hall, P.O. Box 217, Camillus, New York 13031.				
New York	Camillus (Village), Onondaga County.	Ninemile Creek	Intersection of MacLaughlin Street and Meadow Lane	*411
			Intersection of Genesee Street and New North Street	*413
			300 feet east of intersection of Union Street and Elm Street	*415
		Unnamed Stream East	Approximately 200 feet east along Green Street from its intersection with South Street.	*415
			Upstream side of Bingham Place over the channel	*440
			Intersection of Conrail and the channel	*458
Maps available at Village Hall, Main Street, Camillus, New York.				
Send comments to the Honorable Morris Rachlin, Main Street, Camillus, New York 13931.				
New York	Dresden, Village, Yates County	Keuka Lake Outlet	Confluence with Seneca Lake	*449
			Charles Street	*456
			Conrail (Downstream)	*459
			Conrail (Upstream)	*473
			State Route 14	*473
Maps available at the Village Clerk's Office, 70 Cornilius Street, Dresden, New York.				
Send comments to Honorable Burge Morris, Mayor of Dresden, P.O. Box 106, Dresden, New York 14441.				
New York	Stephentown, Town, Rensselaer County.	Kinderhook Creek	Upstream side of Gould Road	*795
			Downstream side of Stephentown Road	*832
			Upstream side of Stephentown Road	*835
			Downstream side of Presbyterian Hill Road	*841
			Upstream side of Presbyterian Hill Road	*842
			Confluence of East Brook and West Brook	*864
			Downstream side of State Highway 22	*907
			Upstream side of State Highway 22	*909
			Downstream of Pease Road	*945
			Upstream of Pease Road	*948
			State Boundary	*955
Maps available at the Office of the Town Clerk, 9 Garfield Road, Stephentown, New York.				
Send comments to the Honorable Joseph Manns, Town Supervisor of Stephentown, Staple Road, Stephentown, New York 12168.				
New York	Wellsburg, Village, Chemung County.	Chemung River	Upstream State Route 367	*824
			Upstream Corporate Limits	*828
		Bentley Creek	Upstream Conrail	*828
			Upstream State Route 427	*829
			Upstream Main Street	*856
			Upstream State Boundary	*871
Maps are available at the City Clerk's residence, 207 Main Street, Wellsburg, New York.				
Send comments to Honorable Dons Morris, Mayor of Wellsburg, 193 Main Street, Wellsburg, New York 14860.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
North Dakota	Casselton (City), Cass County	Tributary to Swan Creek Diversion.	Intersection of Third Street North and Twelfth Avenue North	*933
			Intersection of Ninth Avenue North and Second Street North	#1
			Intersection of Second Street, North and Fifth Avenue North	#2
		Swan Creek, Diversion	Northwest corner of intersection of First Street South and Third Avenue South.	*938
			Intersection of Diversion and County Route 637	*942
Maps available at City Auditor's Office, Box 548, Casselton, North Dakota.				
Send comments to the Honorable Dellis Schrock, Box 548, Casselton, North Dakota 58012.				
Ohio	(Uninc.), Clermont County	Little Miami River	Just upstream of Milford corporate limits	*530
			Just upstream of Conrail	*552
			Just downstream of Loveland-Miamiville Road	*557
			Just downstream of Loveland corporate limits	*585
		Stonelick Creek	Just upstream of confluence with East Fork Little Miami River	*538
			Just downstream of U.S. Route 50	*541
			About 2,000 feet upstream of U.S. Route 50	*550
			Just upstream of Stonelick-Williams Corner Road	*576
			About 3,700 feet upstream of Stonelick-Williams Corner Road	*584
			About 1.3 miles upstream of Stonelick-Williams Corner Road	*598
			Just downstream of State Route 132	*646
			About 4,700 feet upstream of State Route 132	*657
			About 1.92 miles upstream of State Route 132	*714
		Bullskin Creek	Just upstream of confluence with Ohio River	*510
			About 2.5 miles upstream of U.S. Route 52	*515
			Just downstream of Felicity-Cedron Rural Road (at upstream crossing).	*538
			About 300 feet upstream of Felicity-Cedron Rural Road (at upstream crossing).	*545
			At upstream county boundary	*553
		Ohio River	Downstream county boundary	*505
			Upstream county boundary	*511
		East Fork Little Miami River	Downstream county boundary (south of Milford)	*511
			About 300 feet downstream of Roundbottom Road	*527
			Just downstream Stonelick Road	*540
			About 2.0 miles upstream Stonelick Road	*556
			About 500 feet upstream State Route 32	*570
			Just upstream of State Route 222	*590
			About 2.3 miles upstream State Route 222	*608
			At the downstream Village of Williamsburg corporate limits	*604
			About 200 feet upstream of Norfolk & Western Railway	*607
			About 1.4 miles upstream of McKeever Road	*617
			About 3.4 miles upstream of McKeever Road	*632
		Twelvemile Creek	Mouth at Ohio River	*505
			About 0.7 mile upstream of U.S. Route 52	*505
Maps available at the Clermont County Administration Building, South Riverside Drive, Batavia, Ohio.				
Send comments to Honorable Jerome Wisenhahn, President of the County Commission, Clermont County Administration Building, South Riverside Drive, Batavia, Ohio 45103.				
Ohio	(Uninc.), Greene County	Little Miami River	About 1.4 miles downstream of Roxanna Road	*740
			About 0.5 mile upstream of Roxanna Road	*750
			About 0.2 mile upstream of U.S. Route 42	*757
			About 0.4 mile downsteam of State Route 725	*763
			Just downstream Upper Bellbrook Road	*783
			About 1.4 miles downstream of Indian Ripple Road	*789
			Just upstream of Indian Ripple Road	*795
			Just upstream of Conrail	*800
			Just upstream of Fairgrounds Road	*816
			About 0.2 mile upstream of State Route 235	*826
			About 0.5 mile upstream of Grinnell Road	*864
			Just downstream of Wilberforce-Clifton Road	*987
			Just upstream of Wilberforce-Clifton Road	*991
			Just downstream of Dam	*994
			Just upstream of Dam	*1002
			About 1.6 miles upstream of Dam	*1008
		Glady Run	About 0.5 mile downstream of State Route 725	*759
			Just upstream of Schnebly Road (first of two crossings)	*773
			About 200 feet upstream of Richland Road	*788
			Just downstream of Schnebly Road (second of two crossings)	*801
			About 0.1 mile downstream of Conrail (first of three crossings)	*808
			About 0.5 mile upstream of Conrail (first of three crossings)	*820
			Just upstream of Conrail (second of three crossings)	*838
			Just upstream of Conrail (third of three crossings)	*850
			Just upstream of Hedges Road	*857
			About 0.7 mile upstream of Hedges Road	*879
			About 0.9 mile upstream of Hedges Road	*885
			At City of Xenia Bypass	*897
		Sperling Lane Brook	About 0.1 mile upstream of confluence with Little Miami River	*789
			About 0.15 mile upstream of confluence with Little Miami River	*798
			Just upstream of private road	*805
			About 0.25 mile upstream of private road	*821
			About 0.5 mile upstream of Private Road	*841
		Ripple Road Brook	About 0.7 mile upstream of confluence with Little Miami River	*796

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Ripple Road	*825
			About 0.4 mile upstream of Ripple Road	*847
		Beaver Creek	About 0.6 mile upstream of confluence with Little Miami River	*796
			Just downstream of U.S. Route 35	*802
			Just upstream of U.S. Route 35	*806
			Just upstream of Dayton-Xenia Road	*808
			Just upstream of Fairgrounds Road	*817
			About 0.6 mile upstream of Trebein Road	*835
			Just upstream of Yellow Springs Road	*839
			Just downstream of Interstate 675	*840
		Little Beaver Creek	About 150 feet upstream of Factory Road	*807
			Just downstream of Fairfield Road	*830
			Just upstream of Fairfield Road	*834
			Just upstream of U.S. Route 35	*841
			Just upstream of Grange Hall Road	*859
			About 1.0 mile upstream of Grange Hall Road	*869
		Fairbrook School Tributary	About 0.1 mile upstream of mouth	*812
			Just upstream of Farm Road	*832
			Just upstream of Shakertown Road	*853
			About 0.4 mile upstream of Shakertown Road	*867
			Just upstream of Bellbrook Road	*900
			About 0.2 mile upstream of Bellbrook Road	*908
		Shawnee Creek	About 0.3 mile upstream of mouth	*809
			Just upstream of Hawkins Road	*820
			About 0.8 mile upstream of Hawkins Road	*842
			About 1.3 miles upstream of Hawkins Road	*868
			About 1.7 miles upstream of Hawkins Road	*880
			About 0.2 mile downstream of Orphanage Road	*935
			Just downstream of Dam	*942
			Just upstream of Dam	*950
			Just upstream of South Columbus Street	*954
			Just upstream of Cheesie System (about 0.8 mile upstream of Columbus Street).	*970
			Just upstream of South Bickett Road	*998
			About 0.25 mile upstream of South Bickett Road	*1002
		Ludlow Creek	About 0.2 mile upstream of Hilltop Road	*811
			Just upstream of Fairgrounds Road	*834
			Just upstream of Ludlow Road	*849
			Just upstream of Linebaugh Road	*859
			About 1.1 mile upstream of Linebaugh Road	*874
		Oldtown Creek	About 0.2 mile downstream of Brush Row Road	*826
			Just upstream of Brush of Row Road	*831
			About 0.5 mile downstream of Kinsey Road	*854
			Just upstream of Kinsey Road	*880
			About 0.1 mile upstream of Stevenson Road	*937
			Just downstream of U.S. Route 42	*970
			Just upstream of U.S. Route 42	*973
			About 700 feet upstream of U.S. Route 42	*980
			Just upstream of University Park Road	*988
			Just upstream of South Bickett Road	*996
			Just downstream of Conrail	*1009
			Just upstream of Conrail	*1013
			Just downstream of U.S. Route 35	*1028
		Massies Creek	At confluence with Little Miami River	*824
			Just upstream of Conrail	*826
			Just upstream of Stevenson Road	*861
			Just upstream of Wilberforce-Clifton Road	*879
			Just upstream of Charleton Mill Road	*896
			Just upstream of Tarbox Cemetary Road	*935
			Just upstream of private road	*944
			About 0.2 mile upstream of private road	*947
			About 0.8 mile downstream of Cedarville Bridge Street	*960
			About 0.4 mile downstream of Cedarville Bridge Street	*999
			About 0.1 mile downstream of Cedarville Bridge Steeet	*1014
		North Fork	At corporate limits with Cedarville	*1035
			Just downstream of Barber Road	*1037
		North Wilberforce Brook	About 0.1 mile upstream of confluence with Massies Creek	*892
			Just upstream of Charleton-Mill Road	*946
		Yellow Springs Creek	About 0.1 mile upstream of Grinnell Road	*859
			About 0.4 mile upstream of Grinnell Road	*867
			About 0.9 mile upstream of Grinnell Road	892
			Just upstream of Fairfield Road	*947
			Just upstream of Dam	*953
			Just upsteam of Conrail	*957
			About 0.3 mile upstream of Ellis Park Dam	*961
		New Germany Branch	About 600 feet downstream of New Germany-Trebein Road (downstream crossing)	*829
			Just upstream of eastbound Interstate 675 (downstream crossing)	*849
			About 0.1 mile upstream of eastbound Interstate 675 (upsteam crossing)	*873
			Just upstream of Locke Drive	*898
			Just upstream of New Germany-Trebien Road (upstream crossing)	*932
			Just downstream of Fairfield Road	*951

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		West Jr. High Fork	Just downstream of Conrail	*880
			About 0.6 mile upstream of Conrail	*888
		Caesar Creek	Just downstream of New Jasper-Paintersville Road	*970
			Just downstream of Jasper Road	*992
			Just downstream of dam	*1005
			Just upstream of dam	*1025
			Just upstream of Shawnee Trail	*1027
			Just upstream of Chessie System	*1038
			Just upstream of State Route 72	*1055
			About 1.5 miles upstream of State Route 72	*1068
		South Branch Caesar Creek	Just upstream of Jasper Road	*1021
			Just upstream of Parker Road	*1031
			Just downstream of Chessie System	*1040
			About 1.0 mile upstream of Chessie System	*1059
		Township High Tributary	About 0.2 miles upstream of mouth	*1058
			About 1.0 mile upstream of mouth	*1072
		Estate Brook	Mouth at Caesar Creek	*1044
			About 0.65 mile upstream of mouth	*1061
		Zimerman Brook	Just downstream of Conrail (first of two crossings)	*837
			Just upstream of Conrail (first of two crossings)	*840
			Just upstream of Dayton-Xenia Road	*868
			About 300 feet upstream of Dayton-Xenia Road	*870
		Hebble Creek	About 0.6 mile downstream of Black Lane	*850
			About 600 feet upstream of Armstrong Road	*865
		South Fork Massies Creek	Just upstream of Conrail	*1034
			About 0.2 mile upstream of Conrail	*1037
			About 1.0 mile upstream of Conrail	*1047
			Just downstream of Weimer Road	*1052
		Fairgrounds Road Tributary	Mouth at Beaver Creek	*813
			Just upstream of Fairgrounds Road	*817
			Just upstream of Beaver Valley Road	*835
			About 0.6 mile upstream of Beaver Valley Road	*865
			About 100 feet upstream of Hanes Road	*925
		Painters Creek	About 1.0 mile downstream of Bone Road	*983
			Just upstream of Bone Road	*998
			Just downstream of Hussey Road	*1007
		Shawnee Creek Right Bank Tributary.	About 0.3 mile downstream of Hoop Road	*951
			Just downstream of Hoop Road	*969
		Shawnee Park Tributary	About 0.70 mile downstream of U.S. Route 42	*920
			About 0.5 mile downstream of U.S. Route 42	*922
			Just downstream of U.S. Route 42	*943
		Little Miami River By-Pass	Confluence with Sugar Creek	*773
			Divergence with Little Miami River	*776
		Sugar Creek	Confluence with Little Miami River	*765
			Just upstream Waynesville Road	*774
			About 1.6 miles upstream Waynesville Road	*791
		Little Sugar Creek	Confluence with Sugar Creek	*773
			About 130 feet upstream Waynesville Road	*775
			Aboput 1.1 miles upstream Waynesville Road	*812
			Just downstream Little Sugar Creek Road	*845
			Just downstream Feed Wire Road	*870
			Just upstream Swigart Road	*907
			About .25 mile upstream Real Road	*956
		Possum Run	Downstream corporate limits	*913
			Just downstream Wilmington Pike	*947
		Brewsters Run	About 200 feet downstream of downstream corporate limits	*945
			About 150 feet upstream of upstream corporate limits	*950

Maps available at Greene County Courthouse, 69 Greene Street, Xenia, Ohio.

Send comments to Mr. Donald Brezne, County Administrator, Greene County, Greene County Courthouse, 69 Greene Street, Xenia, Ohio 45385.

Oklahoma	City of Choctaw, Oklahoma County.	North Canadian River	NE 50th Street (extended)	*1100
		Chocktaw Creek	Just upstream of Indian Meridian Road	*1099
			Just upstream of Henney Road	*1118
			Just downstream of Anderson Road	*1147
			Just downstream of Mayer Drive	*1164
			Just downstream of S.E. 15th Street	*1203
		Chocktaw Creek, Tributary 1	Just upstream of Chicago, Rock Island and Pacific Railroad	*1099
			Just downstream of N.E. 10th Street	*1137
		Chocktaw Creek, Tributary 2	Just downstream of N.E. 10th Street	*1111
			Just upstream of N.E. 10th Street	*1117
			Just downstream of East Reno Avenue	*1132
			Just upstream of East Reno Avenue	*1139
			Just downstream of S.E. 15th Street	*1169
		Chocktaw Creek, Tributary 2, East Branch.	Just upstream of East Reno Avenue	*1134
			Just upstream of S.E. 15th Street	*1154
		Chocktaw Creek, Tributary 2, West Branch.	Just downstream of S.E. 15th Street	*1174
		Chocktaw Creek, Tributary 3	Just downstream of N.E. 10th Street	*1146
			Just upstream of N.E. 10th Street	*1151

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
	City of Jenks, Tulsa County	Arkansas River	Just upstream of East Main Street	*615
		Polecat Creek	Just upstream of S. Peoria Avenue	*620
			Just upstream of S. 33rd W. Avenue	*633
		Posey Creek	Just upstream of Missouri Pacific Railroad	*606
			Just upstream of 141st Street	*620
		Coal Creek	Approximately 100 feet downstream of 121st Street	*644
Maps available at City Planner's Office, City Hall, 123 East Main Street, Jenks, Oklahoma 74037.				
Send comments to Mayor R. O'Donley or Mr. Richard Hall, City Planner, City Hall, 123 East Main Street, Jenks, Oklahoma 74037.				
Oregon	Barlow (City), Clackamas County	Pudding River	At western most corporate limits (approximately 1,200 feet west of South Barlow Road) 150 feet north of Fred Anderson Road.	*95
		Molalla River	100 feet west of the intersection of Railroad Drive and the northern corporate limits.	*97
Maps Available at 103 South Main Street, Barlow, Oregon.				
Send comments to Honorable Michael Barnett, 103 South Main Street, Barlow, Oregon, Oregon 97013.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 25, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-23843 Filed 8-6-80; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 45, No. 154
Thursday, August 7, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake National Forest, Juab, Millard, Sanpete, Sevier, Beaver, Piute, Iron, Garfield, and Wayne Counties, Utah; Intent To Prepare an Environmental Impact Statement for Proposed Forest Land and Resource Management Plan

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for the proposed Forest Land and Resource Management Plan for the Fishlake National Forest. The Management Plan for the Fishlake will encompass 1,525,412 acres.

Preparation of the Plan will follow direction outlined in the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976. The Forest Plan will be prepared according to regulations promulgated by the Secretary of Agriculture. The regulations implement section 6 of the National Forest Management Act of 1976.

The resulting Plan will provide for multiple use and sustained yield of products and services from the Fishlake National Forest. The Plan will guide all natural resource management activities and establish management standards and guidelines. It will determine resource management practices, harvesting levels, and procedures under the principles of multiple use and sustained yield, and the availability and suitability of lands for resource management.

The Forest Plan will be selected from among representative alternatives which will include at least: (1) a no-change in existing resource outputs alternative, (2) a range of alternatives that displays possible outputs of resources available at each of several expenditure levels, and (3) alternatives designed to resolve the identified major public issues and management concerns.

Public participation will be an integral part of the planning process. Small "scoping" meetings to identify issues to be addressed will be held early in the process. Times and places for these meetings will be announced by notices in area newspapers, news releases to news media, and announcements mailed to other agencies, organizations, and individuals known to have interest in management of the Fishlake National Forest. Four general meetings will be held in 1980 at the following places: Fillmore Ranger District, 390 S. Main, Fillmore; Beaver Ranger District, 190 N. 100 E., Beaver; and Richfield Ranger District, 55 S. 100 E., Richfield, Utah, 1:00 to 5:00 p.m. and 7:00 to 9:00 p.m., September 3. Loa Ranger District will hold their meeting in conjunction with the Teasdale Ranger District of the Dixie National Forest at Wayne High School (lunch room), 55 N. Center, Bicknell, 7:00 to 10:00 p.m., August 12 and 13.

Jeff M. Sirmon, Regional Forester, is the responsible official for this Plan.

Further information about the planning and Environmental Impact Statement process or comments on the Notice of Intent should be directed to Andrew E. Godfrey, Forest Planning Staff Officer, Fishlake National Forest, 70 North Main Street, Richfield, UT 84701, (801) 896-4491.

The estimated date for filing the Draft Environmental Impact Statement is December 1981; and the anticipated date for filing the Final Environmental Statement is August 1982.

Dated: July 31, 1980.

Richard K. Griswold,

Director, Planning and Budget, Intermountain Region.

[FR Doc. 80-23813 Filed 8-6-80; 8:45 am]
BILLING CODE 3410-11-M

Land and Resource Management Plan National Forests and National Grasslands in Texas; Angelina, Fannin, Houston, Jasper, Montague, Montgomery, Nacogdoches, Newton, Sabine San Augustine, San Jacinto, Shelby, Trinity, Walker and Wise Counties, Tex.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement on the Land and Resource Management Plan for the National Forests and National Grasslands in Texas which include the Angelina, Davy Crockett, Sabine, and Sam Houston National Forests and the Caddo and LBJ National Grasslands.

The Land and Resource Management Plan is being prepared in accordance with requirements of the Secretary's regulations promulgated pursuant to the National Forest Management Act of 1976. The resulting plan will provide for the multiple use and sustained yield of goods and services from the National Forests and National Grasslands in Texas.

The planning process will integrate all resource planning—timber, range, fish and wildlife, water, wilderness, and recreation—together with resource protection and resource use activities. The process will be issue-oriented, i.e., public issues, management concerns, and development opportunities will be analyzed continually throughout the process.

A reasonable range of alternatives will be formulated by an interdisciplinary team to provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during this planning process.

Alternatives will reflect a range of resource outputs and expenditure levels. In formulating these alternatives, the following criteria will be met:

(1) Each alternative will be capable of being achieved.

(2) A no-action alternative will be formulated, that is the most likely condition expected to exist in the future if current management direction continues unchanged.

(3) Each alternative will provide for orderly elimination of backlogs of needed treatment for the restoration of renewable resources as necessary to achieve the multiple-use objectives of that alternative.

(4) Each identified major public issue and management concern will be addressed in one or more alternatives; and

(5) Each alternative will represent to the extent practicable the most cost efficient combination of management practices examined that can meet the objectives established in the alternative.

Each alternative will state at least:

(1) The condition and uses that will result from long-term application;

(2) The goods and services to be produced, and the timing and flow of these outputs;

(3) Resource management standards and guidelines; and

(4) The purposes of the management direction proposed.

As an early step in the planning process, Federal, State, and local agencies, organizations, and individuals who may be interested in, or be affected by the decision will be invited to participate in a scoping process which includes:

(a) identification of those issues to be addressed;

(b) identification of those issues to be analyzed in depth; and

(c) elimination from detailed study those issues which are not significant, or which have been covered by prior environmental review. To accomplish this scoping effort, the National Forests and National Grasslands in Texas will send out information packets in late Fall 1980. The packets will be sent to and comments solicited from Federal, State, and local agencies, organizations, and individuals who may be interested or have expressed an interest in National Forest and National Grassland Planning. Public input on this packet will be received for 60 days.

Written comments should be sent to: Mr. Gordon Steele, National Forest in Texas, P.O. Box 969, Lufkin, Texas 75901. The Supervisor's Office is located at the corner of Third Street and Lufkin Avenue in Lufkin. The commercial telephone number is 713-632-4446.

The draft environmental impact statement and plan will be available by March 1983 for a 90 day comment period. The final environmental impact statement and plan is scheduled for completion by December 1983.

Lawrence M. Whitfield, Regional Forester, Southern Region on the Forest Service, is the responsible official for approval of the environmental impact statement and plan.

For further information about the planning process or the environmental impact statement, contact: Gordon Steele, I. D. Team Leader, National Forests in Texas (713-632-4426).

Dated: July 30, 1980.

James S. Sabin, Jr.,

Acting Regional Forester.

[FR Doc. 80-23774 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-11-M

Lumber Price Index Trends; Sugar Pine

AGENCY: Forest Service, USDA.

ACTION: Final policy.

SUMMARY: This policy sets forth Forest Service procedures for the replacement of the current sugar pine index based upon a 1971 recovery study used for adjustment of contract rates in timber sale contracts with a sugar pine index based upon a 1977-1978 recovery study. The Western Wood Products Association (WWPA) discontinued the 1971 basis sugar pine index after publication of the March 1980 data.

FOR FURTHER INFORMATION CONTACT: James Thorne or George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013 (202) 447-4051.

SUPPLEMENTARY INFORMATION: On February 26, 1980, the Chief, Forest Service, published a Notice of Intent (45 FR 12463) which set forth procedures for replacing the Western Wood Products Association (WWPA) Sugar Pine Index based upon a 1971 recovery study with a new index based upon a 1977-1978 recovery study. This index is used by Government agencies in the appraisal of public timber and to adjust prices paid for timber under certain timber sale contracts. There were no responses to the notice.

IMPLEMENTATION OF THE REPLACEMENT INDEX: It has been determined that the 24-month period, January 1977 through December 1978 is appropriate to establish the differential for replacing the 1971 basis sugar pine base indices in existing timber sale contracts. This 24-month period will properly alleviate any seasonal bias. The differential is calculated as follows:

24-mo Average Index (Weighted) January 1977-December 1978

	Board feet	Value (dollars)	Dollars per thousand board feet
Sugar pine (1971 basis)	363,958,967	151,807,861.57	417.10
Sugar pine (1977-78 basis)	2,209,334,994	800,133,967.66	362.32
Per thousand board feet difference			−27.78

The formula to adjust present contract base indices for sugar pine is:

New base Index = (present contract base index) + (−27.78).

Transition of present contracts with a 1971 basis sugar pine base index to the new 1977-1978 sugar pine base index will be made for the second quarter of calendar year 1980.

The 1971 basis sugar pine index was used for sugar pine sold during April 1980, until base period values for the new 1977-1978 basis sugar pine index could be prepared. New sale offerings advertised after April 30, 1980, have used or will use the new index. Publication of the Sugar Pine Index (1971 basis) was discontinued by WWPA after March 30, 1980.

Holders of existing contracts that are subject to base index changes are being notified in writing of the change by the appropriate Forest Service Official.

Dated: July 28, 1980.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 80-23832 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Donaldson Creek Watershed, Kentucky

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of availability of a record of decision.

FOR FURTHER INFORMATION CONTACT: Mr. Glen E. Murray, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky 40504, telephone number (606) 233-2749.

NOTICE: Pursuant to the National Environmental Policies Act (Pub. L. 91-90), Regulations for Implementing the Provisions of the National Environmental Policies Act (40 CFR 1500-1508), and Soil Conservation Service Regulations for Compliance with NEPA (7 CFR 650), Glen E. Murray gives notice of availability of his record of decision as the responsible Federal official for the Donaldson Creek Watershed project, a project planned under authority of Pub. L. 83-566 (16 USC 1001-1008) and located in Caldwell and Crittenden Counties, Kentucky. Single copies of the record of decision may be obtained by writing Mr. Glen E. Murray, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky 40504, telephone number (606) 233-2749.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, 16 U.S.C. 1001-1008)

James W. Mitchell,

Associate Deputy Chief for Natural Resource Projects.

[FR Doc. 80-23781 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-16-M

East Finley Township Park Public Water-Based Recreation and Critical Area Treatment R.C. & D. Measure, Pennsylvania

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Room 820, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania, 17108, telephone 717-782-2202.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Finley Township Park Public Water-Based Recreation and Critical Area Treatment R.C. & D. Measure, Washington County, Pennsylvania.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for recreation facilities and critical area treatment. The planned works of improvement include picnic tables, grills and benches, a picnic shelter, a water well, comfort station, and a parking area. Conservation practices include subsurface drains, diversions, a stone waterway, streambank stabilization, and seeding.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Room 820, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone 717-782-2202. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until September 8, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q)

James W. Mitchell,

Associate Deputy Chief for Natural Resource Projects.

July 18, 1980.

[FR Doc. 80-23766 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-16-M

Grant-Shanghai Watershed, Chautauqua County, Kans.

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Tippie, State Conservationist, Soil Conservation Service, 760 South Broadway, P.O. Box 600, Salina, Kansas 67401, telephone number (913) 825-9535.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Grant-Shanghai Watershed project, Chautauqua County, Kansas.

The environmental evaluation of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. John W. Tippie, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The remaining project works include one single-purpose flood prevention dam to be implemented under the authority of the Watershed Protection and Flood Prevention Act (Pub. L. 566, 83d Congress, 68 Stat. 666) as amended.

The Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by interested parties at the Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401, telephone number (913) 825-9535. The Finding of No Significant Impact and environmental assessment report have been reviewed by various Federal, State, and local agencies and interested parties. A limited number of copies are available to fill single copy requests.

Implementation of the proposal will not be initiated until September 8, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 U.S.C. 1001-1008)

James W. Mitchell,

Associate Deputy Chief for Natural Resource Projects.

July 16, 1980.

[FR Doc. 80-23762 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-16-M

Hudson River Supplemental Watershed Plan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Dwight M. Treadway, State Conservationist, Soil Conservation Service, Robert G. Stephens Federal Building, 355 East Hancock Avenue, Athens, Georgia 30603, Telephone 404-546-2273.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Supplemental Watershed Plan for the Hudson River Watershed project located in Madison, Banks, and Franklin Counties, Georgia.

The environmental assessment of this Federal action indicates that the project will not create significant local, regional, or national impacts on the environment and that no significant controversy is associated with the planned measure. As a result of these findings, Mr. Dwight M. Treadway, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The supplemental watershed plan concerns a plan for the land stabilization measures on 144 acres of critically eroding gully areas. These measures are planned to reduce erosion that is causing damage to property and the environment.

A Finding of No Significant Impact (FNSI) has been prepared and sent to various Federal, State and local agencies, and interested parties. The Notice of a Finding of No Significant Impact has been forwarded to the

Environmental Protection Agency. The environmental assessment and basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Dwight M. Treadway, State Conservationist, 206 Federal Building, 355 East Hancock Avenue, Athens, Georgia 30603, Telephone: 404-546-2273. A limited number of copies of the assessment and FNSI are available from the same address to fill single copy requests.

Implementation of the proposal will not be initiated until September 8, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 U.S.C. 1001-1008)

Dated: July 15, 1980.

James W. Mitchell,

Associate Deputy Chief for Natural Resource Projects.

[FR Doc. 80-23760 Filed 8-6-80; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 80-7-203]

South Bend-Chicago Subpart Q Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause.

SUMMARY: The Board is instituting the *South Bend-Chicago Subpart Q Proceeding* and is proposing to grant unrestricted authority to Air Wisconsin in the South Bend-Chicago market under expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed.

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 September 4, 1980, 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.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 38343, which we have entitled the *South Bend-Chicago Subpart Q Proceeding.* They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served upon Air Wisconsin; South Bend-Mishawaka Area Chamber of Commerce; the Indiana Aeronautics Commission; the Governor of Illinois; the Mayors of Chicago and South Bend; the Airport authority, Chicago-O'Hare International Airport and the airport authority, Michiana Regional Airport, South Bend, Indiana.

FOR FURTHER INFORMATION CONTACT: Lucille J. Mellema, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5105.

SUPPLEMENTARY INFORMATION: The complete text of order 80-7-203 is available from our 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 80-7-203 to that address.

By the Bureau of Domestic Aviation: July 31, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-23837 Filed 8-6-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38496]

Southeast Airlines, Inc., Enforcement Proceeding; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Alexander N. Argerakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., August 1, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-23838 Filed 8-6-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Electronic Instrumentation Technical Advisory Committee will be held on Tuesday, August 26, 1980, at 9:30 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, October 21, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilaterial controls in which the United States participates, including proposed revisions of any such multilateral controls.

The Committee meeting agenda has four parts:

General Session

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of automatic test equipment (ATE) in the infrastructure of manufacturing.

(4) Discussion of keystone technology in the ATE system.

Executive Session

(5) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

With respect to agenda item (5), the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical Advisory

Committee and of any subcommittees thereof was published in the Federal Register on December 27, 1978 (43 FR 60328).

Copies of the minutes of the open portions of the meeting will be available by calling Mrs. Margaret Cornejo, Office of the Director of Licensing, Office of Export Administration, International Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202-377-2583.

For further information, contact Mrs. Cornejo, either in writing or by phone at the address or number shown above.

Dated: August 4, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80-23851 Filed 8-6-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Intent To Conduct Reviews of Government Versus Contract Operation of Commercial or Industrial Activities and Service Contracts

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: Pursuant to Office of Management and Budget (OMB) Circular A-76 and the Department of Commerce Administrative Order 201-41 implementing OMB Circular A-76, notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) intends to conduct reviews of the feasibility and/or cost of contract operation versus Government operation of commercial and industrial activities listed below under Supplemental Information. Specific invitation for bids or request for proposals will be announced in the Commerce Business Daily. A contract or contracts may or may not result from each feasibility or cost comparison study. Results of each study will be made available to responding bidders or offerors and other interested parties.

DATES: See specific dates in table under Supplemental Information.

FOR FURTHER INFORMATION CONTACT: Samuel A. Lawrence, Assistant Administrator for Management and Budget, 6010 Executive Boulevard, Rockville, Maryland 20852, 443-8134.

SUPPLEMENTARY INFORMATION: Studies to be made are identified in the following tabulation:

Name of activity	Location of activity	Review start date	Review end date
Operation of ship chapman [1]	Seattle, Washington	07/31/80	07/31/81
Imagery processing laboratory [2]	Washington, D.C.	07/31/80	07/31/81
Central distribution	Rockville, Maryland	10/01/80	10/01/81
Duplicating plant	Rockville, Maryland	10/01/80	10/01/81
Central logistics supply center	Kansas City, Missouri	01/01/81	01/01/82
Airport obstruction surveys	Rockville, Maryland	10/31/80	10/31/81
Data entry	Asheville, North Carolina	10/01/80	10/01/81
Microfilming	Boulder, Colorado	10/01/80	10/01/81
Repair of weather equipment	Kansas City, Missouri	10/01/80	10/01/81
Aeronautics drafting	Silver Spring, Maryland	12/01/80	12/01/81
Photography laboratory	Suitland, Maryland	03/01/81	03/01/82
Radiosonde reconditioning	Kansas City, Missouri	03/01/81	03/01/82

[1] Previously published at FR 38432, 6/9/80. [2] Previously published at FR 39883, 6/12/80.

Service Contracts

Description of activity	Location of activity	Contract end date	Options end date	Review start	Review end
Lease of aircraft for flying aerial photography.	Washington, D.C.	09/30/80	09/30/81	09/30/80	06/30/81
Photographic reproduction of imagery from environmental and experimental satellites.	Prince Georges County, Md.	11/30/80	09/30/81	09/30/80	06/30/81
Maintenance services for CDC 6600 computer system.	Boulder, Colo	09/30/80	09/30/81	09/30/80	06/30/81
On-site maintenance of UNIVAC 1108 computer system.	Miami, Fla	09/30/80	09/30/81	09/30/80	06/30/81
Operation and maintenance of the GOES Central Distribution System.	Various locations across United States.	09/30/80	09/30/81	09/30/80	06/30/81
Engineering and technical services	Rockville, Md	04/07/81	04/06/82	01/07/81	01/07/82
Operation and maintenance of Control Tide Stations.	Various parts of Florida	11/13/80	11/13/82	08/13/81	08/13/82
Maintenance of UNIVAC 1100/10 Computer System.	Asheville, N.C.	09/30/80	09/30/83	06/30/82	06/30/83
Calibration of Oceanographic Instruments.	Bellevue, Wash	10/31/80	10/31/84	06/01/83	06/01/84
Technical support services for the NOAA Data Buoy Office.	Bay St. Louis, Miss	04/30/81	03/31/85	12/31/83	12/31/84
Maintenance and repair services for NOAA Weather Radio RF transmitters.	Nationwide	06/30/80	06/30/86	03/30/84	03/30/85

Date: August 1, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Services.

[FR Doc. 80-23769 Filed 8-6-80; 8:45 am]

BILLING CODE 3510-12-M

Pacific Fishery Management Council, Scientific and Statistical Committee and Salmon Subpanel; Public Meeting With Partially Closed Session; Rescheduling

AGENCY: National Marine Fisheries Service.

SUMMARY: The Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) and its Salmon Subpanel have changed meeting dates and times (FR Vol. 45, No. 144, July 24, 1980, page 49312):

From

Salmon Subpanel (open meeting) August 19-20, 1980 (2 p.m. to 5 p.m. on August 19; 8 a.m. to 5 p.m. on August 20)

To

August 20 (2 p.m. to 5 p.m.) and August 21 (8 a.m. to 12 noon)

From

Council (open meeting) August 20, (9 a.m. to 5 p.m.) and August 21 (8 a.m. to 5 p.m.)

To

August 20 (9 a.m. to 5 p.m.) and August 21 (11 a.m. to 5 p.m.)

From

Council (closed meeting) August 20, (8 a.m. to 9 a.m.)

To

August 21 (9 a.m. to 11 a.m.)

All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

Dated: August 4, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-23854 Filed 8-6-80; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss status of groundfish fishery; oversight committee reports for lobster, scallops, and herring, as well as other business.

DATE: The meetings, which are open to the public, will convene on Wednesday, August 27, 1980, at approximately 10 a.m., and will adjourn on Thursday, August 28, 1980, at approximately 5 p.m. The meetings may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Samoset Resort, Rockport, Maine.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617) 231-0422.

Dated: August 4, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-23853 Filed 8-6-80; 8:45 am]

BILLING CODE 3510-22-M

Sea Lion Promotions Ltd.; Issuance of Permit

On May 30 1980, Notice was published in the Federal Register (45 FR 36466), that an application had been filed with the National Marine Fisheries Service by Sea Lion Promotions Limited, 9 Auckland Terrace, Parliament Street, Ramsey, Isle of Man, for a permit to take two (2) California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on July 31, 1980, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Public Display Permit for the above taking to Sea Lion Promotions Limited subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 31, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-23852 Filed 8-6-80; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Joint Audit Plan, Correction

In FR Doc. 80-21785, appearing at page 48682 in the Federal Register of Monday, July 21, 1980, the following changes should be made:

1. On page 48683, in the third column, immediately below the boldface heading, "Chicago Board of Trade-FCM's," the FCM "Aardvark Financial Inc." should be added. Also, on the fourteenth line under that boldface heading, the FCM denoted as "Brown & Co., Inc., K.J.," should be deleted.

2. On page 48684, the first column, on line 28, the name "Shearson Loeb Rhoades, Inc." should be inserted in lieu of "Shearson Hayden Stone, Inc." and on line 36, the name "Gill & Duffus Services, Inc." should be inserted in lieu of "Truebner & Company, Inc." Also, immediately below line 36, the following two FCMs should be added: "Virginia Trading Corporation" and "Western Farm Commodities Company."

Issued in Washington, D.C., on August 4, 1980.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80-23835 Filed 8-6-80; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members; Addition

AGENCY: Department of the Air Force, DOD.

ACTION: Addition of names to notice on "Performance Review Boards List of Members."

SUMMARY: In FR Doc. 80-22455, appearing on pages 49970-49972 of the July 28, 1980 Federal Register add the following names: Under *Air Force Logistics Command (AFLC):* Armond Meacham, Deputy for Contracting and Manufacturing, AFALD, AFLC. Under *Air Force Systems Command (AFSC):* George Huffman, R&D Executive Chief Scientist, Air Force Aero Propulsion Lab, AFSC. Under *Air Force Systems Command (AFSC):* Michael Salkind, Director, Electronic and Solid State Sciences, AFOSR, AFSC. Under *Other:* Marion Williams, Scientific Advisor (Test and Evaluation), AFTEC.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol M. Rose, telephone: (202) 697-1861.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-23773 Filed 8-6-80; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review that were received and accepted for hearing by the Education Appeal Board between May 3, 1980, and June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW (Room 2141, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 456 of the General Education Provisions Act (20 USC 1234), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For

information concerning the Board and its procedures, see the Board's final regulations published in the Federal Register on April 3, 1980 (45 FR 22634).

This notice lists the applications for review that were received and accepted for hearing by the Education Appeal Board between May 3, 1980, and June 30, 1980.

Two applications for review involved programs conducted under Title I of the Elementary and Secondary Education Act of 1965, as amended:

(1) *Appeal of the State of Nevada,* Docket No. 6-(61)-80. The State appealed a final audit determination that the Washoe County School District had no supporting documentation for its fiscal year 1975 and 1976 comparability reports and could not demonstrate that services provided from State and local funds to schools serving Title I project areas were comparable to the services provided schools not serving Title I project areas. The Department of Education requested a refund from the State in the amount of $640,699.00.

(2) *Appeal of the State of Illinois,* Docket No. 7-(62)-80. The State appealed final audit determinations that the Chicago Board of Education (1) used Title I funds in fiscal years 1975 and 1977 to support a project for the education of pregnant girls that was not eligible for Title I funds, and supplanted State and local funds that should have been used to support the project; (2) approved projects in fiscal year 1977 at two schools that did not meet the Title I comparability requirements, and (3) overclaimed indirect costs in fiscal years 1975 through 1977. The Department of Education requested a refund from the State in the amount of $3,335,680.00.

Two applications for review involved programs conducted under the Emergency School Aid Act:

(1) *Appeal of the City of Detroit, Michigan,* Docket No. 5-(60)-80. The city appealed final determinations that some of the funds made available to the city under the Emergency School Aid Act were improperly used for out-of-State trips and space rental costs under one grant, and for additional costs and activities that were unauthorized under a second grant. The Department of Education requested a refund from the city in the amount of $116,729.00.

(2) *Appeal of Community School District 22, Brooklyn, New York,* Docket No. 8-(63)-80. The school district appealed a final determination that some of the funds made available to the school district under an Emergency School Aid Act grant were used to hire additional personnel without the prior approval of the Grants Officer. The Department of Education requested a refund from the school district of $105,362.00.

Section 100d.43 of the Board's final regulations provides that an interested person, group, or agency may, upon application to the Board Chairperson, intervene in appeals before the Education Appeal Board, including the four listed above.

The application must indicate to the satisfaction of the Board Chairperson or, as appropriate, the Panel Chairperson, that the intervenor has an interest in and information relevant to the specific issues raised in the appeals. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

All such applications or questions should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW (Room 2141, FOB-6), Washington, D.C. 20202, telephone (202) 245-7835.

(Catalog of Federal Domestic Assistance Number not applicable. Part I of one circular A-95 does not apply.)

(20 U.S.C. 1234)

Dated: August 4, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-23886 Filed 8-6-80; 8:45 am]

BILLING CODE 4000-01-M

Education Appeal Board; Final Decisions Adopted

AGENCY: Department of Education.

ACTION: Summaries of Final Decisions of the Education Appeal Board.

SUMMARY: This notice contains summaries of the two decisions of the Education Appeal Board which were adopted at the final decisions of the Department of Education between January 5, 1980, and June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 456 of the General Education Provisions Act (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations published in the Federal Register on April 3, 1980 (45 FR 22634).

This notice summarizes the two decisions of the Education Appeal Board that were adopted as the final decisions of the Department of Education between January 5, 1980, and June 30, 1980. Summaries of the Board's decisions are published on a semiannual basis in order to keep the public informed as to the Board's activities.

The summaries are prepared as a convenience to the public and are intended only to highlight the holdings of the Education Appeal Board. The summaries are not official parts of the decisions and should not be relied upon as guidance from the Department of Education or legal precedent. Copies of the full decisions of the Education Appeal Board are available at the address given above on request and with payment of the full costs of reproduction.

Summary of Final Decision: *Appeal of the State of Michigan,* Docket No. 9-(24)-76, February 26, 1980.

Michigan appealed a final audit determination, made by the Deputy Commissioner for School Systems, that during the summer of 1970, the Traverse Bay Area Intermediate School District improperly charged the shared costs of a State-funded day care program and a Federally-funded migrant youth education program solely to the Federal program. The Federal program was funded under Title I of the Elementary and Secondary Education Act of 1965, as amended. The Deputy Commissioner requested a refund from the State in the amount of $55,557.00.

On February 12, 1979, the Hearing Panel issued an interim decision holding that Michigan was required to refund the amount of Title I migrant funds improperly expended on the day care program, but leaving open the issue of how to properly compute that amount. In the Panel's concluding decision issued on December 19, 1979, the Panel approved the auditors' use of average daily attendance figures as the basis for prorating the shared costs of the two programs, and noted that the State had not met its burden of proving that the average daily attendance figures were inaccurate.

The Panel held that Michigan was required to refund $55,557.00 to the Department of Education. On February 26, 1980, the Panel's decision was adopted as the final decision of the Department.

Summary of Final Decision: *Appeal of the State of New Jersey,* Docket No. 14-(29)-76, May 3, 1980.

New Jersey appealed final audit determinations, made by the Deputy

Commissioner for Elementary and Secondary Education, that the Newark local educational agency misspent funds under Title I of Elementary and Secondary Education Act of 1965, as amended, in fiscal years 1971 and 1972. After applying the statute of limitations, the amount of Title I funds remaining in dispute was $1,031,304.00.

In a decision issued February 19, 1980, the Hearing Panel ruled that the Commissioner of Education was not limited to withholding future Title I funds but could recover funds improperly spent within the applicable limitation period. The Panel found that the Newark local educational agency spent Title I funds at schools which the Newark local educational agency, by using an eligiblity formula that inflated the percentages of children from low-income families attending the schools, improperly classified as eligible for Title I services. The Panel also ruled that recalculations of the percentages submitted during the appeal proceedings failed to show that the schools were eligible. The Panel further rejected New Jersey's argument that all the Newark schools were disadvantaged and therefore eligible to receive Title I services.

The Panel ruled that New Jersey was required to refund $1,031,304.00 to the Department of Education. On May 3, 1980, the Panel's decision was adopted as the final decision of the Department.

(Catalog of Federal Domestic Assistance Number not applicable. Part I of OMB Circular A-95 does not apply.)

Dated: August 4, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-23887 Filed 8-6-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act; Intent To Prepare Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the potential use of a group of salt domes in the Gulf of Mexico off the coast of Texas and Louisiana for crude oil storage by the Strategic Petroleum Reserve.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS to assess the environmental implications of a proposed DOE action to use one of three salt domes located in the Gulf of Mexico approximately 40–65 miles off the coast of Texas and Louisiana for storage of up to 200 million barrels (MMB) of crude oil as a part of the Strategic Petroleum Reserve (SPR).

Interested agencies, organizations, and members of the general public desiring to submit commnts or suggestions for consideration in connection with this EIS are invited to do so. Upon completion of the EIS, its availability will be announced in the Federal Register, at which time comments will again be solicited.

Written comments may be submitted to: Harry A. Jones, Deputy Assistant Secretary, Strategic Petroleum Reserve Office, U.S. Department of Energy, 1726 M St. NW., Washington, DC 20461 (202) 634–5521.

For general information on the DOE Environmental Impact Statement (EIS) process contact: Ms. Mary E. Shaughnessy, NEPA Affairs Division, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Room 4G–064, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585 (202) 252–4610.

BACKGROUND INFORMATION: Congress mandated the SPR in Title I, Part B, of the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163) to provide the United States with sufficient petroleum reserves to minimize the effects of any future oil supply interruption. SPR Plan Amendment No. 2, submitted to the Congress in May 1978, increased the goal of the Reserve from 500 million to 1 billion barrels by 1985 and provided for implementation of a 750 million barrel Government Reserve.

A final programmatic EIS addressing the effects of SPR implementation was made available in December 1976. A final supplement updating the programmatic EIS and addressing the expansion of the SPR to a billion barrel program was made available in January 1979. The programmatic EIS and its supplement addressed the establishment of several different types of reserves (e.g. Industrial Petroleum Reserve, Regional Product Reserve, and the Early Storage Reserve) as well as several different types of storage media (e.g., surplus tanker ships, conventional steel surface tanks, underground storage in salt domes and rock caverns). In addition, the programmatic EIS addresses cumulative effects expected from use of varying combinations of media types.

Five sites are presently being developed in Gulf coastal areas of Texas and Louisiana as a part of the SPR. These include: solution-mined salt dome sites at Bryan Mound, Texas, and West Hackberry, Bayou Choctaw and Sulphur Mines, Louisiana, and one mechanically mined site at Weeks Island, Louisiana. Site specific EIS's are available for each of these sites. With an increased goal of the SPR of one billion barrels, additional storage sites must be identified and evaluated. The development of storage below the floor of the Gulf of Mexico in an offshore group of salt domes is proposed as one alternative to provide up to 200 MMB of the total SPR capacity.

The purpose of this Notice is to present, pertinent background information regarding the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Environmental effects of this proposal will be assessed in the EIS. This offshore group of salt domes is proposed for storage of up to 200 MMB although full utilization of all three sites could provide up to 600 MMB of storage. The offshore sites under consideration have been named for the lease blocks in which they are located. The three sites are identified as Galveston Island Block, 86 (GA86), Galveston Island Block 64, (GA64) and East Cameron Block 192 (EC192). Site GA86 lies approximately 45 miles south of Freeport, Texas; site GA64 lies approximately 50 miles southwest of Freeport; and site EC192 lies approximately 65 miles southwest of Cameron, Louisiana.

Development of 200 MMB of storage capacity at any one of the sites would require leaching 24 storage caverns from the salt dome. Each cavern would be planned for a 10 MMB net capacity; however, since unforeseen construction or geological conditions might result in less than desired capacity in some caverns, planning would assume development of 16 caverns at 10 MMB and 8 caverns at 5 MMB. Erection of 24 drilling platforms would be required for cavern entry wells to be used for leaching, oil fill and oil withdrawal. Water for leaching would be withdrawn from the Gulf of Mexico, and the brine produced during cavern development would be discharged into the Gulf through two discharge ports positioned 15 feet apart and 25 feet below the water surface at each platform. Return of the brine to a central pumping platform for discharge is not proposed because of (1) the extensive piping required, (2) the potentially greater effect on the water column of a larger concentration of brine discharge at one location, and (3) the potential for brine recirculating through the leach water intake and adversely affecting the rate of cavern leaching.

Additional principal facilities at an offshore salt dome site would include a large pumping platform for seawater intake (leach water), oil pumping, offshore control center, and living quarters; connecting pipelines; and six single point moorings (SPM). Establishment of anchorages and shipping safety fairways to provide tanker access to the SPM's would also be required.

Onshore support facilities would be provided at either Freeport or Port Arthur, Texas. Principal onshore support base components would include a small boat harbor and docking facility, a warehouse and storage area, heliport, an administration center, and oil spill control equipment.

A primary advantage of using offshore sites is that very large crude carriers could be moored at a site for offloading directly into storage caverns. Oil withdrawn from storage could be transported by small and/or large tankers to refineries in the northeastern United States and/or in the Caribbean. Tankers could also transport oil to Gulf Coast refineries.

Identification of Environmental Issues

Issues which will analyzed during preparation of the DEIS include but are not limited to the following list which is not intended to be a predetermination of effects:

(1) Effects resulting from site preparation and operation of oil storage facilities including a permanent loss of salt resources, adverse effects on local water quality due to sediment suspension, effects of brine disposal, and effects of accidents resulting in oil spills and/or on-site fires;

(2) Effects on biota resulting from construction and operation including disruption of bottom sediments and resultant loss of benthos, creation of a favorable reef habitat at the platforms, and entrainment and impingement of organisms by intake structures;

(3) The release of hydrocarbon emissions due to tanker venting during withdrawal may result in exceeding air quality standards for up to 20 miles from SPM's;

(4) Cumulative effects of cavern area preemption from commercial fishing and oil/gas development; and

(5) Effects resulting from development of a 10-acre onshore support base which would include loss of terrestrial and aquatic habitats with indirect effects on fish and wildlife.

ALTERNATIVES: The DEIS for the proposed development of offshore domes for use in the SPR will examine the environmental effects of that development and compare them to effects of reasonable alternatives. The DEIS will consider this proposal from the standpoint of various development options. The DEIS will also consider these alternatives: storage underground in caverns developed in Gulf Coast and inland salt domes, storage underground in hard rock mines, and a "no action" alternative whereby no additional storage would be developed for the SPR beyond that already provided in SPR Gulf Coast facilities.

All suggestions, comments and questions submitted to DOE on or before August 27, 1980, will be carefully considered in the preparation of the DEIS. Comments received after that date will also be considered to the maximum extent practicable.

Dated at Washington, DC, this 1st day of August 1980.

For the United States Department of Energy.

Lynda L. Brothers,

Acting Assistant Secretary for Environment.

[FR Doc. 80-23888 Filed 8-6-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following contract:

WC-CA-20, United States to Canada, fuel rods containing 245 kilograms uranium, with 7.3 kilograms of U-235 (2.98%), to be used for a loss of coolant accident study at the NRU reactor, Atomic Energy of Canada, Limited, Chalk River, Canada. This study is sponsored by the U.S. Nuclear Regulatory Commission. It is intended that this material will be returned to the United States within two years after completion of the study.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 22, 1980.

For the Department of Energy.

Dated: August 1, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Programs.

[FR Doc. 80-23784 Filed 8-6-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan and the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/JA(EU)-21, from West Germany to Japan, two prototype material test reactor fuel elements, one of which contains 520 grams uranium enriched to 92.65% in U-235, and one of which contains 980 grams of uranium enriched to 19.99% in U-235, to be utilized in the material test reactor at the Japan Atomic Energy Research Institute.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 22, 1980.

For the Department of Energy.

Dated: August 1, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-23785 Filed 8-6-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Entitlements Program Crude Oil Cost Data, November 1978 Through May 1980

The Economic Regulatory Administration (ERA) hereby issues its bi-monthly notice of crude oil cost data. The purpose of this notice is to make available to the public information on the effect of the entitlements program on the crude oil costs of the various segments of the refining industry. Table I (attached) sets forth the pre-entitlements costs of crude oil to (1) the

major refiners (Amoco, Arco, Chevron, Citgo, Conoco, Exxon, Getty, Gulf, Marathon, Mobil, Phillips, Shell, Sunoco, Texaco, and Union-Oil), (2) large independent refiners (Ameriada Hess, Sohio, Ashland, Coastal, Tosco, Kerr-McGee, and Champlin), and (3) small refiners. Table II (attached) shows the post-entitlements crude oil cost distribution for the 22 major and large independent companies. Table III (attached) shows the pre-entitlements imported crude oil cost distribution for the same 22 companies.

The data are based on the reports filed each month on the Form ERA–49 by all refiners in the entitlements program.

Issued in Washington, D.C. on July 31, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

FOR FURTHER INFORMATION CONTACT:

David A. Welsh (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128, Washington, D.C. 20461 (202/653–3475).

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B–110 Washington, D.C. 20461 (202/653–4055).

Table I.—*Crude Oil Costs Before and After Entitlement Payments*

[Dollars per Barrel]

	Majors (top 15)**		Large independents***		Small refiners	
	Pre	Post*	Pre	Post*	Pre	Post*
1978:						
Nov	$12.51	$12.91	$13.26	$12.95	$13.07	$12.23
Dec	12.68	13.06	13.78	13.25	13.22	12.43
1979:						
Jan	$12.76	$13.24	$14.06	$13.48	$13.60	$12.65
Feb	13.17	13.65	14.22	13.60	13.72	12.77
Mar	13.40	13.82	14.60	14.55	14.11	13.23
Apr	14.15	14.60	15.85	15.27	14.82	13.96
May	14.82	15.42	17.10	16.41	15.89	14.78
Jun	16.43	16.93	18.61	17.39	17.76	17.17
Jul	18.13	18.71	20.74	19.19	18.74	18.11
Aug	19.11	19.62	21.73	20.25	20.52	20.06
Sep	19.29	19.85	21.43	20.10	21.43	20.78
Oct	20.02	20.68	22.63	23.89	21.60	20.62
Nov	21.03	21.81	25.87	24.61	22.92	21.97
Dec	22.71	23.55	26.00	23.65	24.96	24.23
1980:						
Jan	23.96	24.90	26.19	25.15	26.81	24.62
Feb	25.22	26.13	28.60	26.15	27.32	26.51
Mar	25.85	26.88	29.23	26.87	28.69	27.34
Apr	26.16	27.02	29.41	27.96	28.90	27.22
May	26.96	28.00	29.33	29.22	29.89	27.04
Change Jan 1979 to May 1980	14.20	14.76	15.27	15.74	16.29	14.39

*Post entitlements payment costs show the effect of the entitlements payments in the month for which the notice is published even though the payments take place two months later For example, November 1979 data are shown in the entitlement notice for November 1979 published in January 1980.

**(Amoco, Arco, Chevron, Citgo, Conoco, Exxon, Getty, Gulf, Marathon, Mobil, Phillips, Shell, Sunoco, Texaco and Union-Oil).

***(Hess, Sohio, Ashland, Coastal, Tosco, Kerr-McGee & Champlin)

Table II.—*Post Entitlement Crude Oil Cost Distribution for 22 Major and Large Independent Companies**

Number of companies with per barrel costs of	Nov 78	Dec 78	Jan 79	Feb 79	Mar 79	Apr 79	May 79
$11.00 to $11.99	2	1	1	0	0	0	0
12.00 to 12.99	6	6	8	2	3	2	0
13.00 to 13.99	13	11	7	12	5	0	2
14.00 to 14.99	1	4	5	8	13	10	5
15.00 to 15.99	0	0	1	0	0	7	5
16.00 to 16.99	0	0	0	0	1	3	6
17.00 to 17.99	0	0	0	0	0	0	2
18.00 to 18.99	0	0	0	0	0	0	1
19.00 to 19.99	0	0	0	0	0	0	1
20.00 to 20.99	0	0	0	0	0	0	0
21.00 to 21.99	0	0	0	0	0	0	0
22.00 to 22.99	0	0	0	0	0	0	0
23.00 to 23.99	0	0	0	0	0	0	0
24.00 to 24.99	0	0	0	0	0	0	0
25.00 to 25.99	0	0	0	0	0	0	0
26.00 to 26.99	0	0	0	0	0	0	0
27.00 to 27.99	0	0	0	0	0	0	0
28.00 to 28.99	0	0	0	0	0	0	0
29.00 to 29.99	0	0	0	0	0	0	0

Table II.—*Post Entitlement Crude Oil Cost Distribution for 22 Major and Large Independent Companies*—Continued*

Number of companies with per barrel costs of	Nov 78	Dec 78	Jan 79	Feb 79	Mar 79	Apr 79	May 79
30.00 to 30.99	0	0	0	0	0	0	0

	Jun 79	Jul 79	Aug 79	Sep 79	Oct 79	Nov 79	Dec 79	Jan 80
$11.00 to 11.99	0	0	0	0	0	0	0	0
12.00 to 12.99	0	0	0	0	0	0	0	0
13.00 to 13.99	0	0	0	0	0	0	0	0
14.00 to 14.99	2	0	0	0	0	0	0	0
15.00 to 15.99	3	1	0	0	0	0	0	0
16.00 to 16.99	4	0	1	2	1	0	0	0
17.00 to 17.99	5	4	2	1	1	0	0	0
18.00 to 18.99	6	5	5	1	1	1	0	0
19.00 to 19.99	0	4	2	4	3	1	1	0
20.00 to 20.99	2	6	7	6	1	2	1	0
21.00 to 21.99	0	0	1	3	7	3	4	2
22.00 to 22.99	0	0	3	3	3	5	3	3
23.00 to 23.99	0	2	0	1	2	6	2	1
24.00 to 24.99	0	0	1	1	2	3	5	1
25 00 to 25.99	0	0	0	0	0	0	2	4
26.00 to 26.99	0	0	0	0	1	0	2	5
27.00 to 27.99	0	0	0	0	0	0	1	2
28.00 to 28.99	0	0	0	0	0	0	0	4
29.00 to 29.99	0	0	0	0	0	1	1	0
30.00 to 30.99	0	0	0	0	0	0	0	0

	Feb 80	Mar 80	Apr 80	May 80
$11.00 to $11.99	0	0	0	0
12.00 to 12.99	0	0	0	0
13.00 to 13.99	0	0	0	0
14.00 to 14.99	0	0	0	0
15.00 to 15.99	0	0	0	0
16.00 to 16.99	0	0	0	0
17.00 to 17.99	0	0	0	0
18.00 to 18.99	0	0	0	0
19.00 to 19.99	0	0	0	0
20.00 to 20.99	0	0	0	0
21.00 to 21.99	0	0	0	0
22.00 to 22.99	0	0	0	0
23.00 to 23.99	4	1	1	0
24.00 to 24.99	3	3	2	2
25 00 to 25.99	4	5	5	0
26.00 to 26.99	1	1	2	3
27.00 to 27.99	4	2	1	4
28.00 to 28.99	1	1	3	2
29.00 to 29.99	3	6	2	5
30.00 to 30.99	1	3	2	5
31.00 to 31.99	0	0	3	0
32.00 to 32.99	1	0	0	1
33.00 to 33.99	0	0	0	0
34.00 to 34.99	0	0	1	0

Table III.—*Pre-Entitlement Imported Crude Oil Cost Distribution for 22 Major and Large Independent Companies**

Number of companies with per barrel crude oil cost of	Nov 78	Dec 78	Jan 79	Feb 79	Mar 79	Apr 79	May 79
$13.00 to 13.99	4	1	0	0	0	0	0
14.00 to 14.99	10	10	5	2	2	0	0
15.00 to 15.99	7	9	7	10	3	1	0
16.00 to 16.99	1	1	8	6	11	8	2
17.00 to 17.99	0	1	0	2	3	2	6
18.00 to 18.99	0	0	1	1	2	3	3
19.00 to 19.99	0	0	0	0	1	5	5
20.00 to 20.99	0	0	0	1	0	2	2
21.00 to 21.99	0	0	0	0	0	0	2
22.00 to 22.99	0	0	0	0	0	0	0
23.00 to 23.99	0	0	0	0	0	0	1
24.00 to 24.99	0	0	0	0	0	0	1
25.00 to 25.99	0	0	0	0	0	0	0
26.00 to 26.99	0	0	0	0	0	0	0
27.00 to 27.99	0	0	0	0	0	0	0
28.00 to 28.99	0	0	0	0	0	0	0
29.00 to 29.99	0	0	0	0	0	0	0

Table III.—*Pre-Entitlement Imported Crude Oil Cost Distribution for 22 Major and Large Independent Companies*—Continued*

Number of companies with per barrel crude oil cost of	Nov 78	Dec 78	Jan 79	Feb 79	Mar 79	Apr 79	May 79
30.00 to 30.99	0	0	0	0	0	0	0
31.00 to 31.99	0	0	0	0	0	0	0
32.00 to 32.99	0	0	0	0	0	0	0
33.00 to 33.99	0	0	0	0	0	0	0
34.00 to 34.99	0	0	0	0	0	0	0
35.00 to 35.99	0	0	0	0	0	0	0
36.00 to 36.99	0	0	0	0	0	0	0
37.00 to 37.99	0	0	0	0	0	0	0
38.00 to 38.99	0	0	0	0	0	0	0

	Jun 79	Jul 79	Aug 79	Sep 79	Oct 79	Nov 79	Dec 79	Jan 80
$13.00 to 13.99	0	0	0	0	0	0	0	0
14.00 to 14.99	0	0	0	0	0	0	0	0
15.00 to 15.99	0	0	0	0	0	0	0	0
16.00 to 16.99	1	0	0	0	0	0	0	0
17.00 to 17.99	0	0	0	0	0	0	0	0
18.00 to 18.99	2	1	0	0	0	0	0	0
19.00 to 19.99	5	0	1	0	0	0	0	0
20.00 to 20.99	1	2	2	2	1	1	0	0
21.00 to 21.99	2	3	2	0	1	0	0	0
22.00 to 22.99	4	4	3	1	4	1	0	0
23.00 to 23.99	1	3	1	5	2	1	1	0
24.00 to 24.99	3	3	4	3	1	2	3	1
25.00 to 25.99	0	1	3	4	0	3	1	0
26.00 to 26.99	1	2	3	2	6	2	2	2
27.00 to 27.99	0	0	1	1	2	4	1	1
28.00 to 28.99	0	2	1	2	2	4	4	3
29.00 to 29.99	0	0	0	2	1	0	2	1
30.00 to 30.99	0	0	0	0	0	1	4	2
31.00 to 31.99	0	0	0	0	0	0	0	3
32.00 to 32.99	0	0	0	0	0	0	1	1
33.00 to 33.99	0	1	1	0	0	0	0	0
34.00 to 34.99	0	0	0	0	0	2	2	3
35.00 to 35.99	0	0	0	0	1	1	1	3
36.00 to 36.99	0	0	0	0	0	0	0	0
37.00 to 37.99	0	0	0	0	0	0	0	1
38.00 to 38.99	0	0	0	0	0	0	0	1

	Feb 80	Mar 80	Apr 80	May 80
$13.00 to 13.99	0	0	0	0
14.00 to 14.99	0	0	0	0
15.00 to 15.99	0	0	0	0
16.00 to 16.99	0	0	0	0
17.00 to 17.99	0	0	0	0
18.00 to 18.99	0	0	0	0
19.00 to 19.99	0	0	0	0
20.00 to 20.99	0	0	0	0
21.00 to 21.99	0	0	0	0
22.00 to 22.99	0	0	0	0
23.00 to 23.99	0	0	0	0
24.00 to 24.99	0	0	0	0
25.00 to 25.99	0	0	0	0
26.00 to 26.99	0	0	1	0
27.00 to 27.99	1	0	0	0
28.00 to 28.99	1	1	1	0
$29.00 to $29.99	3	3	0	0
30.00 to 30.99	0	0	2	2
31.00 to 31.99	2	1	1	4
32.00 to 32.99	2	1	1	1
33.00 to 33.99	5	1	1	0
34.00 to 34.99	1	5	3	2
35.00 to 35.99	0	3	4	1
36.00 to 36.99	4	2	2	6
37.00 to 37.99	0	3	5	3
38.00 to 38.99	1	0	1	2
39.00 to 39.99	2	2	0	0
40.00 to 40.99	0	0	0	1

*(Amoco, Arco, Chevron, Citgo, Conoco, Exxon, Getty, Gulf, Marathon, Mobil, Phillips, Shell, Sunoco, Texaco, Union-Cal, Hess, Sohio, Ashland, Coastal, Tosco, Kerr-McGee & Champlin).

[FR Doc. 80-23788 Filed 8-6-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51106; FRL 1564-1]

Isocyanate Terminated Urethane Prepolymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by September 19, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: George Bagley, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202/426-3936.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture

notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before September 19, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51106]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: August 1, 1980.

Warren R. Muir,

Acting Deputy Assistant Administrator for Chemical Control.

PMN 80-178

Close of Review Period. October 19, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided. Isocyanate terminated urethane prepolymer.

Use. Claimed confidential.

Production Estimates. Claimed confidential.

Physical/Chemical Properties. Claimed confidential.

Toxicity Data. Claimed confidential.

Exposure. Claimed confidential.

Environmental Release/Disposal. Claimed confidential.

[FR Doc. 80-23800 Filed 8-6-80; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1563-8]

Regional Implementation of EPA Policy for Increased Use of Minority Consultants and Construction Contractors

The U.S. Environmental Protection Agency (EPA) announces these regional goals for utilization of minority consultants and construction contractors in the four States of Region 10: Alaska, Idaho, Oregon and Washington. This action implements EPA's Policy for "Increased Use of Minority Consultants and Construction Contractors" published in the Federal Register, Vol. 43, No. 248, page 60220 (Tuesday, December 26, 1978). These goals shall become effective thirty (30) days after publication in the Federal Register.

I. Introduction

Public hearings were held in each of the four Region 10 States to assist EPA in identifying and establishing goals for minority business enterprises (MBE) in the Region. Notice of these hearings was published in five major newspapers, including one newspaper in each of the four Region 10 States. In addition, notice of these hearings was mailed to more than 700 MBE's, contractors, material suppliers, engineering firms and others interested in the MBE program in Region 10. The hearings were held in Boise, Idaho on January 8, 1980, Anchorage, Alaska on January 15, 1980, Seattle, Washington on January 17, 1980, and in Portland, Oregon on January 24, 1980.

Based on the comments and testimony received, the Regional Administrator, Region 10, establishes a variable goal which takes into account the type, size and location of EPA-assisted projects. This notice also establishes regional policy and procedures regarding non-minority controlled firms to curb the potential abuse of non-MBE firms taking a share of business which otherwise would go to MBE under the policy.

The goals announced are established for three separate components of the engineering, planning and construction industry: (1) Architectural and engineering (A/E) services; (2) construction contracting; and (3) the supply of equipment and materials. Region 10 has established a separate goal and a separate method of computing MBE participation for material and equipment suppliers based on testimony from MBE and the industry generally that construction contractors have used non-minority manufactured equipment and mateials, supplied by minority firms, to totally meet the MBE goal without taking further positive efforts to retain MBE in other construction related areas.

The EPA policy was issued prior to the final promulgation by the Office of Management and Budget (OMB) of Revised Attachment O to OMB Circular A-102, Federal Register, Vol. 44, No. 159, page 47874 (August 15, 1979). However, the EPA policy is based upon and consistent with the positive efforts requirements contained in Revised Attachment O.

II. Summary of Comments and Agency Response

The four hearings held in Idaho, Alaska, Washington and Oregon were conducted by the EPA Region 10, Office

of Regional Counsel, Water Division and Office of External Affairs (civil rights office). Participants at the hearings included both minority and non-minority architects and engineers, material and equipment suppliers and construction contractors from the private sector as well as public officials associated with State and local governments implementing MBE programs.

Persons testifying at each of the hearings stated that the EPA Policy has increased opportunities for MBE participation in all segments of the construction industry and has been effective to a greater or lesser extent in overcoming past discrimination and lack of minority involvement in the industry. Nevertheless, numerous commenters stated that discrimination against minorities is continuing in the construction and architectural and engineering industry, and that additional efforts are needed to overcome this problem.

Oregon Hearing

The hearing in Oregon was held in Portland on January 24, 1980.

Testimony was received on each of the questions asked in the notice of public hearing, and on other issues involving the MBE program. Witnesses expressed concern over implementation of a uniform regional goal, given the diversity of population in areas and number of minority owned firms in those areas. There was discussion regarding "importing" minority firms and workers to do jobs that "locals" could do. Many expressed the view that there should be no relationship between minority population in an area and goal-setting for that area.

Those present expressed a belief that some majority contractors were not contracting with MBE's because MBE's would not travel. MBE's stated that they were willing to travel for work, wherever it was, but expected to be compensated for travel like any other contractor.

Commentors stated they wanted the opportunity to bid jobs fairly, rather than submitting bids that are never responded to, which are extremely time consuming and costly to prepare. It was suggested that the EPA engineers be more involved in working with grantees, prime contractors, and MBE's.

Some minority group members testified that non-minority contractors tried to avoid using minority contractors by delaying jobs to be performed and calling them at the last minute to submit bids. It was also stated that prime A/E firms were making minority firms bid against one another for A/E work rather than selcting minority firms on their qualifications.

Commentors suggested that the goal should either remain at the same percentage of total project costs or be increased. Persons testifying also requested that changes in the goal not be based solely on availability of minority contractors in a give locality.

Many of those present stated that women-owned businesses should have either a separate goal or no goal at all and not be allowed to compete with the MBE program. It was also stated that the MBE program should be extended to all EPA grant programs.

Washington Hearing

The hearing was intially scheduled for January 8, 1980, but was deferred until January 17, because of inclement weather.

Some commenters stated that the minority work force was adequate in size, skills and interest to increase our present goals to about 30 percent. They argued that the minorities are able and willing to travel and therefore, goals should be uniform throughout the Region. Some present expressed opposite beliefs; i.e., that the minority work force is limited, MBE's cannot competitively travel from urban areas to all remote areas and that goals should vary with location and trade. Some said minority population or number of minority business enterprises should be considered by area in setting goals. Others said there was no relationship between population or number of MBE's and realistic goals.

Some comments were received indicating minority A/E firms wanted to be selected on the basis of qualifications as are non-minority firms but were requested to submit bids to prime A/E firms to obtain work. They did not believe the prime A/E firm should be hired based on qualifications and a different process be used for A/E subcontractors. Other commenters indicated that some A/E subcontractors gave responses to potential work offers which were not conclusive and could not be readily used in completing a proposal. Based upon these comments, it appears that minority and non-minority A/E firms are not cooperating with one another at times.

Problems were identified in measuring activities of MBE material and equipment brokerage firms to meet MBE goals. Specifically criticized was the practice of purchasing supplies from a minority supplier as a means of totally meeting the MBE requirements. Also, concerns were expressed about sham MBE's not being identified and administrative actions to identify such shams not being initiated by EPA as rapidly as possible.

Testimony was received regarding setting MBE goals separately from goals for women's business enterprises.

One commenter suggested a direct incentive bonus grant program of 85 percent federal financial participation in sewage treatment project costs be implemented for grantees who excelled in achieving "maximum" MBE participation.

Alaska Hearing

Most of those present at the January 15, 1980 hearing in Anchorage, Alaska, testified that the present Region 10 goal of 10 to 15 percent minority business enterprise participation has been instrumental in creating opportunities for minority businesses. Participants stated that this percentage goal should be maintained or increased for all segments of the architectural engineering and construction industry.

It should be noted that EPA has no statutory authority to increase the share of Federal financial participation in sewage treatment projects beyond seventy-five per cent (75%) on the basis of excellent MBE performance.

The most frequently mentioned problems with the program were: (1) Financial difficulties for small minority firms due to delays between submission of a bid and approval of the contract by the grantees, State and EPA, or due to delays in submitting and processing requests for payment: (2) "sham" or non-minority controlled firms obtaining work by claiming to be minority businesses; and (3) lack of timely knowledge by minority businesses of potential EPA projects or projects going to bid.

Several persons testified that the MBE program should be extended to all grant programs administered by EPA, and that a separate goal should be established for utilization of women's business enterprises (WBE).

Idaho Hearing

At the Idaho hearing held in Boise on January 8, 1980, virtually all substantive testimony focused on (a) the past tendency of Region 10's Office of Civil Rights to apply goals as if they were quotas, and (b) the difficulty encountered in trying to meet such goal/quotas in areas which are relatively remote from population centers where minority firms tend to be concentrated. Suggestions for improvement focused on having the EPA provide a clear, advance indication of what levels of minority business participation are viewed as acceptable if positive efforts to increase MBE participation prove inadequate to achieve the goal in any given project.

Witnesses also emphasized reluctance by grantees in the State of Idaho to use contractors or any sort who do not maintain offices in the State of Idaho, or to help to increase the number of minority business enterprises that might meet the grantee's qualifications.

III. Specific Comments and Agency Response

In the notice of the public hearings, EPA Region 10 requested testimony and comment on six areas of particular concern in developing MBE goals. There were:

a. What has been the experience of municipal, state or other agencies in the establishment of MBE goals?

b. Should different goals be established for A/E's, equipment and material suppliers, construction firms, and planning consultants?

c. Most MBE's are located in urban areas. Should this have an impact on the establishment of goals?

d. To what extent are MBE's willing to travel throughout the Region to compete for EPA funded contracts? Are MBE's interested in relocating to serve relatively rural projects?

e. What major factors should EPA consider to setting goals and how should these factors be used? For example, to what extent should population ratios impact MBE goals?

f. What goals should be set for MBE utilization in grantee procurements under EPA-assisted programs other than Title II Clean Water Act grants?

The public's comments on these areas of concern and EPA's responses are as follows:

(a) We received limited response regarding public entities implementing MBE goals. One effective local agency appears to be The Municipality of Metropolitan Seattle (Seattle Metro) which implements a dual-envelope bidding program. At bid opening the contractor's MBE participation commitment is evaluated first: only those with qualifying MBE commitments have the bid envelope stating their dollar-bid opened.

Henceforth, EPA will "delegate" its MBE contract approval responsibilities to grantees who demonstrate an "equivalent or better" MBE program than EPA's. Thus the Region has accepted Metro's MBE program as a grantee sponsored equivalent program.

(b) A wide range of suggestions regarding setting different goals for A/E, construction, and supply firms has been received, including suggestions for combined and individual goals for these categories. A particular target of concern is suppliers, where repeated reference has been made to "pass through" brokers or sales offices and allegedly "sham" MBE corporations. Some commenters desired goals based on the number of firms available, while others suggested a flat goal of three percent (3%) of total project costs. Region 10 believes that a flat goal of three percent (3%) or less would be a retreat from current performance of minority contractors in the Region and would not be appropriate.

Testimony was received regarding abuse of MBE goals in the area of materials and equipment supply or brokerage. Region 10 is clarifying what it will consider to be an acceptable supplier and what percentage of costs will be credited toward meeting the MBE goals. The credit will vary depending on whether the procurement is through a manufacturer, distributor with supply and service or a pass-through agency. EPA Region 10 solicited information from seven pipe manufacturers and other EPA regions to assist in establishing appropriate credits toward achievement of the goal through the use of material and equipment suppliers.

(c) Based on both written and oral comments, EPA Region 10 has reviewed the concept of separate goals for rural and urban areas. The complexities of (1) population ratios; (2) location of a project versus location of the majority of minority businesses; and (3) availability of minority business enterprises, affects regional areas differently. With these variables in mind, EPA regards the task of developing goals which reflect area needs as vital to a working program. EPA Region 10 is hereby establishing a varying goal with a basic core covering all projects and meeting the needs of the programs as well as the grantees as discussed in Section III.

(d) Although travel is viewed by some firms as a constraint to achieving MBE participation, EPA has received many responses that MBE are willing to travel. Travel expenses naturally impact the total price required for goods and services. Since cost is one of the items that is considered in procurement negotiations, the expense of travel like any other expense has a bearing on the selection of contractors and subcontractors. EPA agrees with commenters who suggested travel needs be identified and discussed with all interested parties at pre-bid or early negotiation phases of procurement. It is also recognized that portions of A/E work are usually performed in home offices of A/E firms, while construction work is primarily performed at the construction site. Therefore travel may have a larger impact on availability of MBE involved in construction. MBE have expressed a willingness to relocate which is dependent upon the size of the project and the amount of their participation.

(e) Many commenters said the Region 10 Office had applied goals in the past as if they were quotas. The MBE program which the EPA administers is a goal-oriented system. The main difference between a goal-oriented system and a quota system lies in the manner in which the sanction contract disapproval is applied. In EPA's goal-oriented system a contractor may be approved for award even though a stated percentage goal is not met as long as the contractor can demonstrate to the grantee and the EPA that it has undertaken the required efforts to enlist MBE participation in good faith. In a quota system, contract approval would not be obtained unless the stated percentage MBE participation has in fact been achieved. EPA Region 10 operates its MBE program as a goal-oriented system and will continue to approve proposed contract awards where the goal has not been reached as long as the contractor demonstrates adequate efforts to meet the goal.

Several commenters suggested that EPA Region 10 set different goals for different geographic areas based, among other variables, on the ratio of minorities to the local area population, the ration of minority enterprises to all other enterprises, the ratio of minority construction enterprises to other construction enterprises, the ratio of minorities to others in the construction business, or other similar ratios. Exclusive use of these ratios would result in goals that perpetuate historical performance rather than improve opportunities for MBE participation.

We recognize that it may be more difficult to obtain minority construction contractors in some areas than in others, for some jobs than others, and for some trades than others. Region 10 believes, however, that such increases must occur. Testimony received indicated that substantial and continuing discrimination against minorities has occurred and is occurring in the construction industry within Region 10. EPA's 1980–81 goal is based on need to insure that serious efforts are made to use suitable minority business enterprises wherever they can be found, and to the degree that they are able and willing to participate. We believe, however, that grantees and prime contractors should have a more precise indication of the level of participation that EPA thinks may be possible in

different situations, and our goal seeks to provide this flexibility.

(f) Both written and oral comments were received stating that goals should be established for EPA grantee procurements in areas other than in Title II Clean Water Act Construction Grant Program. Those testifying stated that, because this is a goal-oriented system rather than a set aside, the goal for such procurements should be the same as that established for construction grants. Based on comments received it is the intent of the Region to extend the goal-oriented system to program other than the Title II Construction Grants Program. However, this will be a new program and consequently implementation of the goal system must be delayed until internal procedures can be developed.

A number of commenters have offered views on the possibility of having a goal for women's business enterprises participation in federal projects, a program currently being reviewed by the Federal Government. *See* Federal Register, Vol. 45, No. 78, page 26934, Monday, April 21, 1980. Most of the minority testimony received favored a separate goal, or favored requiring female minority business enterprises to be given the opportunity to choose whether they wish to be considered as MBE or WBE. EPA will shortly announce a Women's Business Enterprise. Comments should be directed to Ms. Joan Arnold, Office of the Deputy Administrator (A-101), EPA, 401 M Street SW., Washington, D.C. 20460.

III. Statement of the Goal

Based on the above public discussion and after considering all comments received, EPA Region 10 establishes the following varying goal to measure positive efforts for including minority business enterprises on federally funded programs.

It is each grantee's responsibility to assure that positive efforts are taken to provide opportunity to minority business enterprises in all aspects of grant funded projects.

A core goal of 13 to 15 percent is sought generally on all projects by EPA, two subgoals are established within an 8 to 20 percent range for projects of various sizes and in various locations to provide flexibility in determining compliance with the EPA policy. In the case of participation of certain MBE equipment or material suppliers, a reduced credit toward meeting the goal may apply. *See* Section IV, 4 below.

A goal is established of between eight percent (8%) to fifteen percent (15%) for projects which are:

1. Small-sized projects ($300,000 and under in total construction costs); and
2. Located in rural areas well removed from urban areas.

For example, in remote rural areas where construction would constitute a project of less than $300,000 consideration would be given to achieving the low end of the goal. Smaller projects, regardless of location, that do not readily lend themselves to being segmented into smaller parts are included in this category.

A goal of between thirteen and twenty percent (13–20%) is established for projects which are:

1. Large projects (over $2,000,000 in total construction costs) or
2. Located in large urban areas; and
3. Projects which can be broken down into multiple contracts suitable for MBE participation.

For example, a large construction job in urban areas where the greatest MBE resources exist should achieve the maximum goals. EPA will encourage grantees and their contractors to obtain maximum MBE participation on *all* jobs, but with understanding of the difficulty of attracting MBE's to small specialty jobs.

IV. Regional Implementation of Policy Regarding Minority Control and Management of MBE Firms.

The EPA Policy for Increased Utilization of Minority Consultants and Construction Contractors (43 FR 60,220, December 26, 1978) defines a minority business enterprise (MBE) as:

> "a business, at least 51 percent of which is owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management."
> *Id.* at 60,221.

The actual implementation of this definition has lead to several instances where EPA Region 10 and its grantees have been called upon to interpret this definition. Based upon this experience, we believe it advisable to set forth the following criteria which EPA Region 10 will typically consider in determining whether a purported MBE meets EPA's definition of MBE.

Day-to-Day Management and *actual control* will be determined by the following standards:

a. The ownership by the minority owner or owners must be real, substantial and continuing and must go beyond the nominal ownership of the business as reflected in its ownership documents, (e.g. partnership stock control.) The minority owner or owners must enjoy the customary incidents of ownership, including risks and profits commensurate with their ownership interests. These interests must not be subject to the over-riding control of the non-minority owner or owners.

b. The minority owner or owners must actively participate in the management policy decisions and the direction of operations of the business. The participation must be commensurate with the ownership interests, taking into consideration the size and work performed by the business. The minority owner or owners' control shall not be subject to any formal or informal restrictions which limit the customary discretion of a controlling partner or other owner.

c. The business must be an independent and continuing enterprise. Recognition of a business as a separate entity for tax or corporate purposes may not be sufficient for recognition as an MBE. In determining whether a firm is independent and continuing, all relevant factors will be considered, including:

(1) Date business was established;

(2) Adequacy of resources for work contracted;

(3) The degree to which financial, equipment leasing and other relationships between the business and other non-minority firms vary from normal industry practice.

d. The contribution of capital, equipment or expertise made by minority owners to acquire their interests in a business must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minority owners, or the mere participation as an employee.

e. All securities which evidence ownership and/or control of a business for purposes of establishing it as a minority business enterprise under this program shall be held directly by minority owners. No securities held in trust, or by a guardian for a minor, shall be considered as held by a minority group member in determining the ownership or control, unless the trustee or guardian is qualified as a minority owner.

f. The determination as to whether the minority owners possess sufficient ownership and control will be made by reviewing the substance rather than the form of arrangements and balancing all relevant factors. The following facts, although not in themselves cause to disqualify a business, will make the business subject to especially close scrutiny.

(1) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract.

(2) The presence of past or continuing employer-employee relationships among the owners of the business.

4. Suppliers of Materials or Equipment

In response to concerns and comments by the overall construction industry, Region 10 will employ the following criteria to determine whether a supply firm is a MBE as defined by the Policy:

A firm will be considered a supplier when it:

a. Assumes the actual and contractual responsibility for furnishing the supplies and materials and is the manufacturer of those supplies and materials; or

b. Is recognized as a distributor by the industry involved in the contracted supplies and materials; and

c. Owns or leases warehouse, yard buildings or whatever other facilities are viewed as customary or necessary by the industry; and

d. Distributes, delivers and services products with its own staff.

Where a MBE supplier is not the manufacturer, but has assumed the actual and contractual responsibility for furnishing the required supplies or materials and is performing a commercially useful function, a credit of twenty percent (20%) of the value of the contract will be awarded toward the MBE goal.

Where a MBE is performing a commercially useful function as a manufacturer's sales representative, ten percent (10%) of the value of the contract will be awarded toward the MBE goal.

A commercially useful function or service is one, such as a sales function, which is customarily performed as a distinct and necessary part of the supply process.

If the service is commercially unnecessary, such as the case when a firm acts only as a passive conduit in the supply process or duplicates a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the MBE goal. Where the MBE is a manufacturer, one hundred percent (100%) of the furnished supplies and materials will be credited toward the MBE goal.

V. Use of EPA Roster of MBE

Over the past five years EPA Region 10 has maintained a roster of minority business in the Region. This roster is maintained as a service to grantees. A/E firms, construction contractors and MBE's.

EPA does not require that a business be included on the roster to be considered an MBE. However, the roster provides contractors and grantees ready access to MBE. MBE are encouraged to submit information to EPA in order that they may be included on this roster, and also in order that the process of confirming the status of the firm as an MBE does not delay contract award or approval.

VI. Procedures for Appeal of Civi Rights Office Determinations Regarding MBE Status

EPA Region 10 has established procedures for appeal of Civil rights office determinations made outside of the grantee procurement review process regarding the eligibility of a firm for meeting goals for MBE utilization. These procedures are in addition to the procedure for appeals of responsibility determinations of bidders or offerors under 40 CFR 35.939, as set forth in the Policy. These procedures are:

1. The regional civil rights office will notify the firm, in writing, that it is not considered an MBE, including a brief statement of reasons for that determination. If the firm has previously been considered an MBE by EPA Region 10, it shall continue to be treated as an MBE until a final administrative decision has been rendered by Region 10 in accordance with these procedures.

2. If a firm intends to appeal a civil rights office determination, it must file a written notice of appeal with the Director, Office of External Affairs, within thirty (30) days of receipt of the notification regarding MBE status by the regional civil rights office. The notice of appeal must include brief written contentions of the firm as to its qualifications as an MBE under the policy.

3. Upon receipt of a timely notice of appeal, the Director, Office of External Affairs, shall confer with the civil rights office regarding the determination. If the Director disagrees with the civil rights office determination, the Director shall reverse the determination and communicate such action to the affected business in writing. If the Director agrees with the civil rights office determination, he shall forward it to the Regional Administrator. The Director shall either reverse the determination or forward the appeal to the Regional Administrator within seven (7) days of receipt of the notice of appeal.

4. Upon receipt of the notice of appeal from the Director of External Affairs, the Regional Administrator shall appoint an EPA Region 10 attorney not associated with the case as hearing officer. The hearing officer shall conduct an informal administrative hearing on the matter. Review of the matter shall be *de novo*, with the firm having the burden of producing evidence that it is a qualified minority business under the Policy, and also having the burden of persuasion on this issue.

5. One or more prehearing conferences may be held, at the discretion of the hearing officer. The rules of evidence applicable to judicial proceedings shall be relaxed so as to develop a full record to facilitate administrative review. However, in the event oral presentation of evidence or oral argument is offered, any witnesses shall be under oath and a verbatim transcript of the hearing shall be made. Written testimony shall not be received in lieu of oral testimony.

6. The parties shall have one week or such extended period of time as the hearing officer deems appropriate to present proposed findings, conclusions and order to the hearing officer. The hearing officer shall submit a complete report of proceedings and official file together with a recommended decision to the Regional Administrator within thirty (30) days of receipt of proposed findings, conclusion and order from the parties. Within ten (10) days thereafter, the Regional Administrator shall either adopt the recommended decision, or reverse or modify it. The decision of the Regional Administrator shall constitute the final decision of the Agency.

7. Summary Dismissal of Appeal

The Regional Administrator may summarily dismiss an appeal or one or more claims made in an appealing party's letter of appeal. Such summary dismissal may be made by the Regional Administrator without the proceedings set forth above, if it is determined that such appeal or issue is untimely, frivolous, or without merit. Any such determination shall refer briefly to the facts supporting the determination.

EPA's MBE policy contemplates an annual review of the regional goals. While the goals set forth above will be diligently applied by Region 10, we will continue to learn from the experiences of the community as to improvements or refinements which might create a substantially better program. We invite your observations on a contemporary basis during the year; and we will appreciate your participation at the annual review hearings. Comments concerning further improvements to the program should be addressed to: Director, Office of External Affairs, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Dated: July 29, 1980.
Donald P. Dubois,
Regional Administrator.
[FR Doc. 80-23881 Filed 8-6-80; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-52]

Agreements Filed for Approval; Order of Investigation and Hearing

In the matter of Agreements Nos. 10186, as amended, 10332, as amended, and 10371, as amended; order of investigation and hearing and pendente lite approval; Agreement No. 10377, order of investigation and hearing and denial of petition for pendente lite approval; and Agreements Nos. 10364 and 10329, order of investigation and hearing.

The following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916:

Agreement No. 10186-4 seeks to amend Agreement No. 10186, a space chartering agreement between Orient Overseas Container Line, Inc. (OOCL) and Korea Shipping Corporation (KSC) in the trade between the United States and the Far East. The purpose of Agreement No. 10186-4 is to extend the term of the basic agreement through June 30, 1985 and to also extend its geographic scope to include Malaysia.

Notice of the filing of Agreement No. 10186-4 appeared in the Federal Register on February 6, 1980. Lykes Bros. Steamship Co., Inc. (Lykes) subsequently protested the agreement and requested a hearing. American President Lines, Ltd. (APL) and United States Lines, Ltd. (USL) filed comments adopting Lykes' protest and request for hearing.

Agreement No. 10332-1 proposes to amend the basic agreement, Agreement No. 10332, a space charter arrangement between Korea Marine Transport Company (KMTC) and Nippon Yusen Kaisha (NYK) which permits each party to operate a 1,050 TEU container vessel in a direct service between Korea and the U.S. Pacific Coast, including Hawaii and Alaska. Each party is permitted to charter space aboard its vessel to the other on terms as they may agree, and may also charter and/or subcharter up to 420 TEUs per calendar month to Showa Line, Ltd. (Showa).[1]

The purpose of Agreement No. 10332-1 is to extend the term of the basic agreement for three years, through July 1, 1983 and modify the basic agreement by removing the limitation on NYK from transporting cargoes to/from Far Eastern counties other than Korea,[2] excluding NYK's non-Korean/U.S. carryings from revenue sharing, and including NYK's non-Korean/U.S. carryings in the current reporting requirements.

Notice of the filing of Agreement No. 10332-1 appeared in the Federal Register on March 19, 1980. Protests and comments were received from Sea-Land Service, Inc. (Sea-Land), USL, Lykes and APL.

Agreement No. 10371-1 seeks to extend the basic agreement, Agreement No. 10371, for three years through July 1, 1983. Agreement No. 10371 provides for KMTC and NYK to collectively subcharter up to 420 TEUs per month to Showa, per the enabling authority of Agreement No. 10332.

Notice of the filing of Agreement No. 10371-1 appeared in the Federal Register on March 19, 1980. Protests and comments were received from USL, Lykes and APL.

Agreement No. 10377 proposes a space chartering arrangement which provides for the charter by Toko Kaiun-Kaisha, Ltd. (Toko) of unused space on its conventional type vessel to Suh Jin Shipping Co., Ltd. (Suh Jin) for loading of iron and steel products, plywood and other general cargoes in Korean ports for discharge in U.S. West Coast ports. Toko and Suh Jin are restricted from transporting any cargoes in containers from Korean or Japanese port to the U.S. West Coast ports. The agreement seeks approval until October 30, 1983, unless cancelled by mutual assent of all the parties.

Notice of the filing of Agreement No. 10377 appeared in the Federal Register on September 5, 1979.[3] On September 25, 1979, Seatrain Pacific Services S.A. (Seatrain) filed a protest and request for a hearing. Proponents filed a reply to Seatrain's protest on October 10, 1979. On October 23, 1979, Seatrain submitted further comments and subsequently withdrew its protest on December 4, 1979.

Position of Proponents

Agreement No. 10186-4

In justification of Agreement No. 10186-4, Proponents state that during the 3½ years that KSC has been functioning as a common carrier by water of containerized cargo, it has acquired considerable operational skill and proficiency. KSC believes that it is fully competent to operate its own vessels and to enjoy the economic rewards emanating therefrom. However, KSC contends that its present fleet will not support a viable containerized service. KSC argues that in order to conduct such a service, with the frequency of calls required to induce shipper patronage, additional sailings are required. KSC argues that with space chartered aboard the 10 ships owned by OOCL and available to KSC pursuant to Agreement No. 10186, KSC can readily offer its shippers one sailing every seven to eight days, thus operating an economically viable service.

Agreement Nos. 10332-1 and 10371-1

In statements submitted in support of the agreements, Proponents state that additional shipping opportunities and more efficient service result from the direct, evenly-spaced sailings under Agreement No. 10332, that Agreement No. 10332 avoids overtonnaging and lessens fuel consumption, that the use of common terminal facilities reduces costs and avoids terminal congestion, that the ability to serve directly reduces in-transit handling problems, and that access to bi-weekly sailings reduces inventory requirements and storage expenses while allowing a prompt and dependable cash flow to shippers from consignees. Proponents contend that Agreement No. 10332 has not given the parties an unreasonably strong competitive position, citing their low (less than 50 percent) utilizations and the competition posed by conference and nonconference carriers.

Proponents claim that the change proposed by Agreement No. 10332-1, concerning NYK carriage of Far East cargo, will be limited to Taiwan and Hong Kong, will afford NYK the same privilege as KMTC, will enable NYK to improve the frequency of its Taiwan and Hong Kong feeder services, will improve KMTC's and NYK's low utilizations, and will increase the efficiency of their two-vessel operation.

As to Agreement No. 10371, Proponents state that the agreement provides an additional direct service with shorter transit times and reduced delays in delivery and has also aided KMTC's and NYK's generally low utilizations. Proponents believe that the

[1] In its Order of Conditional Approval of Agreement No. 10332, dated November 9, 1978, the Commission set forth certain modifications to be made to Agreement No. 10332, *inter alia*, the inclusion of a sentence that no "continuing charter arrangement with Showa" would be implemented without prior FMC approval. This condition resulted in the filing of an interim arrangement, Agreement No. 10366 and subsequently Agreement No. 10371.

[2] While the involved provision prohibits NYK from transporting cargo booked, forwarded, transhipped or feeder-fed from or to Japan or any other Far Eastern nation, the modification would make the restriction continue to apply to Japan.

[3] Pursuant to the notice, USL commented that it has no objections to the agreement based on cargo restrictions which preclude, among other restrictions, the carriage of cargoes in containers.

service has resulted in less loss and damage, has avoided the need for more tonnage, has saved energy, and has resulted in cost savings.

Agreement No. 10377

In support of Agreement No. 10377, Proponents contend that the agreement will provide Suh Jin, which presently lacks market identity, access to a greater sailing frequency than it could maintain by itself while helping it to establish a service record with shippers.

Proponents assert that Toko will be acquiring a means of utilizing otherwise empty vessel space and that the economies of the neo-bulk trade require that operators have full, or nearly full, ship loads of cargo in order to be profitable.

Proponents also state that shippers have indicated an interest in this frequent service at nonconference rates. This, they argue, means that sales' margins of relatively low value commodities will not be reduced to the point where it no longer pays to deal in these products. Proponents also state that steel mills in Japan and Korea have limited storage capacity for their output and need frequent vessel calls to avoid inventory storage problems.

Position of Commentators/Protestants

Agreement No. 10186–4

Lykes

Lykes filed a protest and request for an investigation and hearing on Agreement No. 10186–4. In its protest Lykes states that the Commission has approved several space charter agreements, one by one, without addressing, in its orders, any consideration of their cumulative impact on the trade. Specific objections to the agreement include: (1) the fact that there is no limitation on the number of ships that may be employed by the parties and no limit on the capacity that may be cross-chartered, other than the number of vessels that KSC may at any given time decide to operate; (2) that a five-year term is too long; (3) that the agreement is far too broad as to the range of countries and ports served and that there is no justification for expanding the scope to include Malaysia; and (4) that the arrangement contemplates joint scheduling of services and, perhaps, joint advertising of vessels not provided for in the agreement.

APL and USL

APL and USL filed comments essentially adopting Lykes' protest and request for hearing.

Agreements Nos. 10332–1 and 10371–1

Sea-Land

Sea-Land protests only Agreement No. 10332–1, stating that it does not oppose a three-year extension but does object to removal of the limitation on NYK from transporting other Far East cargoes under the agreement. Sea-Land contends that the parties have not shown that the proposed change is necessitated by a serious transportation need or is necessary to secure an important public benefit, that the justification contains no data to warrant approval, that the Proponents' statements as to the limitation of additional service to Taiwan and Hong Kong and a 10 percent container capacity dedicated to these countries does not appear in the agreement, and that additional capacity will result from the proposed change.

USL

USL does not object to the agreements or their continuation. It does, however, believe that only a one-year extension is supported because revenue sharing in agreements of this nature leads to a common approach in rate-making and also to conference bloc voting.

Lykes

Lykes believes that, as stated in its protest of Agreement No. 10186–4, the Commission should review the total impact of space charter arrangements in the Korean trade. Lykes contends that the subject agreements have contributed to overtonnaging and that the parties' operating reports should be made part of the record.

Lykes suggests that a staff investigation should be initiated and distributed for comment which would focus on the following: total impact on the service and competition from expansion of Agreement No. 10332 to allow NYK to transport other Far East cargo in the service; possibility of limiting the parties' authority in certain regards; the parties' voting rights in conferences; the possibility that subchartering to Showa, per Agreement No. 10371, perpetuates overtonnaging; an explanation by the parties as to Korean maritime policy and the relation between the agreements and the Korean Maritime Transportation Promotion Law (Korean Law); and a precise statement by KMTC or the Korean Maritime and Port Administration as to how the waiver system under the Korean Law operates.

APL

APL opposes any long-term approval of Agreements Nos. 10332–1 and 10371–1 without a general investigation and hearing of space charter agreements in the Pacific trade.

Response to Protests

Agreement No. 10186–4

With respect to the issue of space chartering agreements contributing to overtonnaging, Proponents retort that Lykes presents no facts to support this assertion and that the issue is the approvability of the instant agreement, not the impact of all space charters on the trade.

Proponents point out that Agreement No. 10186 was of a five-year fixed duration when it was originally approved and that Agreement No. 10186–2 added the termination date of June 30, 1980. Proponents argue that since the agreement was permitted to run for four years during which no problems surfaced, Proponents believe that a five-year renewal term is reasonable.

As to the broadenings of the geographic scope, Proponents state that they serve the Gulf via mini-land bridge operation by rail between the Gulf and Pacific Coasts. Although the major portion of the carryings are to Korea, Japan, Hong Kong and Taiwan, reports filed with the Commission will reflect carryings to other destinations included within the trade. Proponents argue that reports will also show that Proponents have made carryings from Thailand and Singapore, countries which are contiguous to Malaysia. Proponents see no reason why this extension to Malaysia should not be approved.

Insofar as joint advertising of vessels is concerned, Proponents claim that they have not engaged in this practice and do not plan to. As to the joint scheduling of services, Proponents reply that the specifics of these arrangements will be filed with the Commission as they are developed pursuant to Article 1, paragraph D of the agreement.

Agreements Nos. 10332–1 and 10371–1

Response to Sea-Land

Proponents claim that extending NYK's service will result in more efficient use of space in a direct service, would only have a minor impact on the trade, would afford shippers an additional shipping opportunity, and would put NYK on equal footing with KMTC. Proponents are willing to accept a condition whereby NYK would limit transshipment authority to Taiwan and Hong Kong, with such carryings not to exceed 10 percent of NYK's allocated capacity.

Response to USL

Proponents do not believe there is any reason to limit the term of approval to one year. They also argue that any instability in the Pacific trade would constitute greater reason and need for approval. They further argue that the Commission can reexamine the agreements at any time, and short-term approval leads to uncertainty while a three-year approval would establish stability. Finally, Proponents argue that the agreements have not led to bloc voting and in the event they did, it would not obstruct voting in conferences.

Response to Lykes

Lykes has not shown how it will be harmed by the agreements nor has it tendered a justifiable reason for the institution of a general trade investigation. The parties have no intention of withdrawing from the Korean trade if their agreements are not approved. There continues to be a need for the quality of the parties' services and their recent low utilization is attributable to the recent intensity of rate competition. The Commission has rejected the contention that revenue sharing renders parties to a space charter and pooling arrangement "one," and each party maintain its own, separate common carrier business. Proponents claim that NYK could carry no more than 79 additional TEUs per month under the modification to include Taiwan and Hong Kong, which would assist the parties' direct service operation but could not reasonably have an adverse impact on the Taiwan, Hong Kong or Japan trades. Proponents assert that the information Lykes demands relative to the Korean Law is not relevant to Commission approval of the subject agreements.

Response to APL

Proponents believe that APL has failed to advance reasons to limit approval of the agreement to less than three years, refers to comments which are not directed to the parties or the subject agreements, and has offered no commentary regarding the subject agreements.

Further Comments/Reply

Agreement Nos. 10332-1 and 10371-1

Lykes' Comments

Lykes filed further comments in which it states that Proponents have offered no convincing reason why the Commission should not undertake a comprehensive investigation, and further states that Lykes would not oppose a 90-day extension. Lykes contends that Proponents have an understanding, not filed pursuant to section 15, in which they agree to limit any additional tonnage as long as they obtain the approvals they deem necessary. Lykes also asserts that statements filed in support of the instant agreements are inconsistent with statements filed with the basic agreement and that approval will only further overtonnage the trade.

Proponents' Reply

Proponents responded by stating that the requested investigation is hardly suitable for exercise of the section 15 approval process and that Lykes has failed to delineate any harm or adverse impact the agreements are having upon it. Proponents believe that space chartering is a sensible means of addressing overtonnaging, and that any contention that they contribute to overtonnaging would reverse prior Commission holdings. As to unfiled agreement activity, Proponents assert that their supporting statements were merely advising the Commission of the probable result should continued approval not be granted. Proponents state that there is no inconsistency in the current and past statements and that each speaks for itself at the particular time that it was made.

Discussion

In exercising its statutory authority to approve and disapprove agreements subject to section 15, the Commission is required to consider competitive conditions in the affected trades and the antitrust implications of proffered agreements. *U.S. Lines* v. *Federal Maritime Commission*, 584 F.2d 519, 528 (D.C. Cir. 1978). In this instance, protestants have contended that previous Commission considerations of space charter arrangements in the Korean trade have been unduly narrow and have failed to take into account the cumulative impact of these agreements on the trade. Protestants have also questioned whether adequate justification has been presented for certain of the agreements.

Also relevant to the consideration of these agreements is the Korean Law. Passed on February 28, 1967, and revised and implemented through presidential decree, the Promotion Law was designed to increase greatly the participation of Korean-flag vessels in the Korean trade. To achieve this goal, the law calls for 100 percent carriage of the Korea trade in Korean-flag vessels. The only way of avoiding this requirement is to obtain either an exemption or a waiver.

While it is clear that the Promotion Law plays a significant role in the ocean borne trade between Korea and its trading partners, the precise nature of its impact upon the agreements before the Commission is not. Because the Commission has been unable to define satisfactorily the relationship between the Promotion Law and the space charter agreements, it has decided to order an investigation, which will, among other things, more fully explore this issue.

As part of the effort to define more precisely the relationship between the Promotion Law and these agreements, the Commission would like the parties to address the issue of whether approval of any or all of the agreements will significantly affect the availability of waivers to shippers seeking to transport cargo on non-Korean flag vessels. Economic issues which require consideration are the effects of the proposed agreements on rate stability and cargo capacity in the trade between the U.S. and Korea. It is also important to determine whether approval of any or all of these agreements will lead to unjust discrimination or unfairness against non-signatory carriers and what impact approval would have on voting patterns within the conferences which now serve the U.S./Korea trade. A question also exists as to whether approval of the agreements would be consistent with existing treaties of friendship, commerce, and navigation between the U.S. and other nations with interests in the U.S./Korea trade.

During the Commission's examination and analysis of the Promotion Law and the agreements, the status of the agreements themselves came into question. Although they were presented to the Commission as standard commercial agreements, the impact which the Korean Promotion Law had upon them could not be ignored. In fact, is is possible that the agreements have been so influenced by the Promotion Law that they are not commercial agreements at all, but rather products of unilateral action by the Korean Government. Accordingly, the Commission may not have the authority to approve or disapprove such agreements. Indeed, the executive branch, which has the responsibility for negotiating intergovernmental agreements, may be the proper forum for these agreements, instead of the Commission. Therefore, the investigation instituted by this Order will also address the issue of whether these agreements are so tied to the unilateral action by the Korean Government as to be outside the Commission's jurisdiction.

Pending the resolution of the issues presented and the ultimate disposition of the agreements submitted for approval, the Commission has determined to permit the continuation of the existing arrangements on the same terms reflected in the presently approved agreements on file with the Commission. The protesting parties have not alleged nor does the Commission have reason to believe that these parties are being injured by the agreements currently in effect, while the abrupt cessation of these activities is likely to injure the carriers involved and be highly disruptive to the U.S./Korea trade in general. Under such circumstances the public need for stable trading conditions warrants the preservation of the *status quo* for the relatively brief period necessary to complete the instant investigation. The measures being taken by the Commission to insure the prompt disposition of this matter include the imposition of strict time limitations on the conduct of the proceeding. Agreement No. 10377 is not be be approved *pendente lite*, however. This agreement has not been previously approved and no shippers have grown dependent on its service. Because no other valid reason for granting interim approval has been presented, the "Petition for Interim Approval" of Toko-Kaiun Kaisha, Ltd. and Suh Jin Shipping Company, Ltd. will be denied.

Although Agreements Nos. 10329 and 10364 stand approved through June 30, 1982 and January 8, 1983 respectively, the Commission has also decided to include them in this proceeding. This is because these agreements are integrally related to the matters placed at issue and to the general scope of the investigation. *Marine Space Enclosures, Inc.* v. *FMC*, 420 F.2d 577, 585 (D.C. Cir. 1969).

The Commission's decision to permit the continuation of the existing arrangements beyond their present termination dates will require proponents of these agreements to submit appropriate amendments which conform the proposed agreements to the presently approved agreements. Failure to so act within the time limitations specified below will void the *pendente lite* approval granted.

Therefore, It Is Ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916, a proceeding is hereby instituted to determine whether: (1) Agreements Nos. 10186, 10186–4, 10332, 10332–1, 10371, 10371–1, and 10377 are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest, or are in violation of the Shipping Act, 1916, and, therefore, whether they should be approved, disapproved, or modified; and (2) whether Agreements Nos. 10364 and 10329 are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest or are in violation of the Shipping Act, 1916, and, therefore, whether they should be disapproved or modified; and

It Is Further Ordered, That Agreements Nos. 10186, 10186–4, 10332, 10332–1, 10371, and 10371–1 are approved *pendente lite* effective from July 31, 1980 on the condition that they are amended to conform precisely to the terms of the respective agreements approved by and on file with the Commission, and that such amendments be submitted to the Commission within 30 days from the date of this Order; and

It Is Further Ordered, That the *pendente lite* approval accorded by this Order will become null and void 31 days from the date of this Order if the conforming amendments required by the preceding paragraph are not timely filed; and

It Is Further Ordered, That the Petition for Approval *Pendente Lite* of Agreement No. 10377 is denied; and

It Is Further Ordered, That the parties, in addressing the approvability of these Agreements under the standards of section 15 specifically address the following issues:

1. Whether and to what extent approval of any or all of the subject agreements will significantly affect the availability of waivers to shippers seeking to transport cargo on non-Korean flag vessels.

2. Whether and to what extent approval of any or all of the subject agreements will significantly affect cargo capacity in the United States trades with Korea.

3. Whether approval of any or all of the subject agreements will adversely affect rate stability in the United States trades with Korea.

4. Whether approval of any or all of the subject agreements will result in unjust discrimination or unfairness against non-signatory carriers serving the United States trade with Korea.

5. The manner in which approval of any or all of the subject agreements will affect voting patterns within steamship conferences operating in the United States trades with Korea.

6. Whether approval of any or all of the subject agreements is consistent with existing treaties of friendship; commerce, and navigation between the United States and other nations whose interests are represented in the United States trades with Korea.

7. Whether the imposition of the waiver system by the Korea Government under its Maritime Transportation Promotion Law and other Governmental cargo control activities have forced third flag carriers to enter into these space charter agreements in order to have reasonable access to cargo in the U.S.-Korean trades.

8. If the waiver system and other cargo control activities of the Korean Government have forced third flag carriers to enter these space charter agreements, whether the agreements are so impregnated with unilateral government action as to be, in reality, non-commercial agreements over which the Commission should take no jurisdiction under Section 15 of the Shipping Act, 1916; and

It Is Further Ordered, That the carriers listed in the Appendix attached hereto are hereby made proponents and protestants as so designated in the Appendix; and

It Is Further Ordered, That Hearing Counsel shall be a party to this proceeding; and

It Is Further Ordered, That a public hearing shall be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge.

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record; and

It Is Further Ordered, That the Presiding Administrative Law Judge issue his Initial Decision in this proceeding on or before December 31, 1980; and

It Is Further Ordered, That notice of this Order be published in the Federal Register, and a copy thereof be served upon Proponents and Protestants as listed in the Appendix hereto and the Commission's Bureau of Hearing Counsel; and

It Is Further Ordered, That persons having an interest and desiring to participate in this proceeding file a petition for leave to intervene in accordance with section 502.72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72); and

It Is Further Ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It Is Further Ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with section 502.118 of the Commission's Rules (46 CFR 502.118) as well as being mailed directly to all parties of record.

By the Commission.[1]

Francis C. Hurney,

Secretary.

Appendix

Proponents:

Orient Overseas Container Line, Inc.
Korea Shipping Corporation
Korea Marine Transport Company, Ltd.
Nippon Yusen Kaisha
Showa Line, Ltd.
Toko Kaiun Kaisha, Ltd.
Suh Jin Shipping Co., Ltd.
Korea Line Corporation
Hanjin Container Lines, Limited
Sea-Land Service, Inc. (for Agreement No. 10364 only)

Protestants:

Lykes Bros. Steamship Co., Inc.
American President Lines, Ltd.
United States Lines, Inc.
Sea-Land Service, Inc.

[FR Doc. 80-23781 Filed 8-6-80; 8:45 am]

BILLING CODE 6730-01-M

[1] Chairman Daschbach, dissenting:

I dissent from the issuance of this Order of Investigation and Hearing because it fails to provide an adequate basis for inquiry into legal or factual issues. It focuses instead upon matters of policy which should be addressed by the Commissioners themselves rather than by an investigative proceeding.

FEDERAL RESERVE SYSYTEM

Bosque Corp.; Formation of Bank Holding Co.

Bosque Corporation, Meridian, 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 of the voting shares of Bosque County Bank of Meridian. The factors that are considered in acting on the application are set forth in § 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 September 2, 1980. 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, July 31, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23798 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

Citizens Investment Co., Inc.; Proposed Continuation of General Insurance Agency Activities

Citizens Investment Co., Inc., Glenville, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in general insurance activities in a town with less than 5,000 population. These activities would be performed from Applicant's offices in Glenville, Minnesota, and the geographic area to be served is Glenville, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 2, 1980.

Board of Governors of the Federal Reserve Systems, July 31, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23815 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

Citizens State Agency of Tyler, Inc.; Proposed Continuation of Insurance Agency Activities

Citizens State Agency of Tyler, Inc., Tyler, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in general insurance agency activities in a town with less than 5,000 population. These activities would be performed from offices of Applicant in Tyler, Minnesota, and the geographic area to be served is Lincoln County, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, ikdentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of

Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 29, 1980.

Board of Governors of the Federal Reserve System, July 30, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23798 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

First Decatur Bancshares, Inc.; Formation of Bank Holding Co.

First Decatur Bancshares, Inc., Decatur, Illinois, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to The First National Bank of Decatur, Decatur, Illinois. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 29, 1980. 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, July 30, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23797 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

Illini Bancshares, Inc.; Formation of Bank Holding Co.

Illini Bancshares, Inc., Girard, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares (less directors' qualifying shares) of State Bank of Girard, Girard, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than September 2, 1980. 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, August 1, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23814 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

Shawnee Mission Bancshares, Inc.; Formation of Bank Holding Co.

Shawnee Mission Bancshares, Inc., Fairway, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First National Bank of Shawnee Mission, Fairway, Kansas. 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 Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than September 2, 1980. 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, August 1, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23816 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

Shelbyville Bancshares, Inc.; Formation of Bank Holding Co.

Shelbyville Bancshares, Inc., Shelbyville, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The Citizens Bank, Shelbyville, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than September 2, 1980. 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, July 31, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23795 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

Tradewater Bancshares, Inc.; Formation of Bank Holding Co.

Tradewater Bancshares, Inc., Providence, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Providence State Bank, Providence, Kentucky. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than September 2, 1980. 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, August 1, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-23817 Filed 8-6-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were accepted by the Regulatory Reports Review Staff, GAO, on August 1, 1980 (NRC), and August 4, 1980 (FMC). 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 acceptances.

The notice includes the title of each 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 FMC and NRC requests 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 requests, comments (in triplicate) must be received on or before August 25, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group 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 Maritime Commission

The FMC requests clearance of a new, single-time, voluntary questionnaire to be sent to survey conferences and water borne common carriers in the U.S. foreign commerce with the dual rate contract system. The purpose of the questionnaire is to secure information for internal FMC decisionmaking on current practices and experiences under this contract system. The Commission estimates that the one-time only questionnaire will be sent to approximately 46 respondents and that response time will average 8 hours per questionnaire.

Nuclear Regulatory Commission

The NRC is requesting clearance of a new, single-time letter requesting additional information from its licensees regarding degree of compliance with NUREG/CR 0660, "Enhancement of onsite emergency diesel generator reliability." Therefore a letter requesting a detailed response to each of the recommendations contained in Section 5 of NUREG/CR 0660 will be issued to all operating power reactor licensees. The NRC estimates approximately 63 plants fall within the scope of this generic letter and that response burden is expected to average 240 hours per plant.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-23836 Filed 8-6-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Automated Data and Telecommunications Service

Freedom of Information Act (FOIA); Information Available to the Public/ Pilot Test

The Brooks Bill, Pub. L. 89-306, tasks the General Service Adminisration (GSA) to provide, directly or by delegation, for the economic and efficient acquisition of automatic data processing (ADP) resources. Vital to this end is GSA's responsibility to promote open competition, wherever practicable, by ensuring a ready exchange of information while still protecting information critical to the Federal procurement process.

Accordingly, GSA established a pilot program which was announced in the Federal Register on April 9, 1980 to make certain ADP procurement information promptly and routinely available to the public. The information posted is:

1. Weekly listing of Agency Procurement Requests (including requesting agency, GSA control number, and brief description of planned acquisition.),

2. Copies of synopses of major procurements, and

3. Copies of Delegations of Procurement Authority.

Portions of the documents which contain information which would normally be withheld under FOIA procedures are also withheld under these procedures.

This notice extends the pilot program for 60 days. It is anticipated that the program will continue but will be relocated to space in GSA's Central Office at 18th and F Streets, NW.

The program is currently operatonal at GSA's Region W Business Service Center (7th and D Streets SW., Washington, DC). Question about this program may be directed to Ms. Ann Costello on (202) 566-1133.

Dated: July 30, 1980.

Robert A. Coyer,

Acting Commissioner, Automated Data and Telecommunications Service.

[FR Doc. 80-23759 Filed 8-6-80; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

Extracellular Products and Genetic Characteristics of "Staphylococcus aureus"; Open Meeting

The following meeting will be convened by the Center for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Date: August 14, 1980.

Time: 9 a.m.

Place: Building 3, B-19, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia.

Purpose: To discuss extracellular products and genetic characteristics of *Staphylococcus aureus* and their relationship to possible changes in the clinical manifestations of infections caused by these organisms.

Additional information may be obtained from: Kathy Shands, M.D., Bacterial Diseases Division, Bureau of Epidemiology, Center for Disease Control, Atlanta, Georgia 30333. Telephones: FTS: 236-3687; Commercial: 404/329-3687.

Dated: August 4, 1980.

William C. Watson, Jr.,

Acting Director, Center for Disease Control.

[FR Doc. 80-22922 Filed 8-6-80; 8:45 am]

BILLING CODE 4110-86-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Administration

[Docket No. N-80-969]

Indian Programs Reorganization

AGENCY: Department of Housing and Urban Development/Office of the Assistant Secretary for Administration.

ACTION: Notice of Indian programs reorganization.

SUMMARY: The Department is restructuring its field organization to improve the delivery and administration of Indian Programs. The purpose of the restructuring is to provide a more centralized and focused, coherent, and productive emphasis on Indian Programs.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Lynn, Office of

Organization and Management Information, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5206.

SUPPLEMENTARY INFORMATION: A description and cost benefit analysis of the reorganization was published in the Federal Register on Monday, January 14, 1980, in accordance with section 908 of the Housing and Community Development Amendments of 1978, Public Law 95-557, 95th Congress, 2nd Sess. This document reflects no changes from the version published on January 14, 1980.

A. Introduction and Background

The Department of Housing and Urban Development is restructuring its field organization to improve the delivery and administration in Indian programs. The purpose of the restructuring is to provide a more centralized and focused, coherent, and productive emphasis on Indian programs.

The Department is making these changes in response to the expressed concerns of Indian clients regarding the level and quality of service provided by HUD. Because of these concerns, the Department examined the manner in which Indian programs are delivered and determined that the current delivery system is ineffective. It was determined that staff is spread too thin, that Indian programs are more staff intensive than non-Indian programs, that Indian program staffing is being diverted to non-Indian programs, that Indian programs require direct sustained personal contact with clients and that Indian programs require special knowledge, skills and training.

B. Description of Changes

Responsibility for administering and deliverying all Departmental Indian programs will be vested in five Offices of Indian Programs, plus the Anchorage Area Office. The location and jurisdiction of these offices follow:

A new Office of Indian Programs is being established in the Regional Office of Region V (Chicago) serving all locations in Region I (Boston), Region II (New York), Region III (Philadelphia), Region IV (Atlanta), and Region V (Chicago), plus all locations in the State of Iowa.

The existing Office of Indian programs in the Regional/Area Office of Region VIII (Denver) will serve all locations in that Region, plus all locations in the State of Nebraska.

A separate Division of Indian Programs is being established within the Oklahoma City Area Office which will continue serving all locations in the State of Oklahoma and in addition will serve Kansas, Missouri, Texas, Arkansas, and Louisiana. This Division will report to the Area Manager.

The existing Office of Indian Programs in the Regional Office of Region IX (San Franciso) will continue to serve all locations in that Region, plus all locations in the State of New Mexico. Some staff of this Office will continue to be duty stationed in field offices located in Phoenix and Albuquerque to provide localized service in Arizona and New Mexico.

A new Office of Indian Programs is being established in the Regional Office in Region X (Seattle) serving all locations in that Region, except for the State of Alaska. A group of Indian Program specialists which is now a part of the Seattle Area Office serving the State of Washington only, will be included in this new Office.

The existing Anchorage Area Office will serve all locations in the State of Alaska.

All Indian activities for the Department's housing and community planning and development programs will be administered through the Offices indicated above, rather than through the Department's normal field structure.

At Headquarters a position has been established in the Office of Policy Planning under the Assistant Secretary for Community Planning and Development (CPD) to work exclusively with Indian and Alaska Native CPD programs. Indian Housing Programs will continue to be administered by the recently established Office of Indian Housing under the Deputy Assistant Secretary for Public Housing and Indian Programs. The position and functions of Special Assistant for Indian Programs will continue without change. Affected clients will receive 30 days advance notice of the actual effective date.

C. Comments Received

Sixteen comments were received. While the concept of separate consoldiated Indian Offices was generally well received, concerns were raised regarding the great distance and resulting costs some tribes would incur in dealing with the new Offices of Indian Programs. Small tribes were also concerned about their ability to compete successfully for Community Development Block Grant funds with large tribes also being served by the new Offices. CPD will assure that small tribes can compete effectively for CDBG funds by developing selection criteria which do not discrimiante against them. Access to HUD will be assured by providing adequate travel funds to HUD staff and by improved processing which will result in less need for clients to visit HUD Offices.

(Sec. 107(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d) and sec. 908 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 95th Congress, 2nd Session)

Issued at Washington, D.C., July 11, 1980.

William A. Medina,

Assistant Secretary for Adminsitration.

[FR Doc. 80-23828 Filed 8-6-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Dr. Jerome Jackson, Mississippi State University, Mississippi State, MS 39762.

The applicant requests a permit to capture red-cockaded woodpeckers (*Picoides borealis*) in Mississippi, Alabama, Georgia, and South Carolina, for banding and marking for scientific research and enhancement of survival.

Humane care and treatment of captured birds has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-6868. Interested persons may comment on this application on or before September 8, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: August 1, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-23755 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Ronald L. Walker, Hawaii Division of Forestry and Wildlife, Honolulu, HI 96813.

The applicant requests a permit to capture for the purposes of scientific research and enhancement of propagation and survival one or more of the following endangered species, and to

band, mark, tag, and release or retain in a propagation program:

Nene goose *(Branta Sandivicensis)*
Koloa *(Anas wyvilliana)*
Hawaiian stilt *(Himantopus mexicanus knudseni)*
Hawaiian coat *(Fulica americana alai)*
Hawaiian gallinule *(Gallinula chloropus sandivicensis)*
Laysan duck *(Anas laysanensis)*
Marianas mallard *(A. oustaleti)*

Humane care and treatment of captured birds has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-6744. Interested persons may comment on this application on or before September 8, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: August 1, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-23754 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: San Antonio Zoological Gardens and Aquarium, 3903 North Saint Mary's Street, San Antonio, TX 78212. (PRT 2-6724)

The applicant requests a permit to import one male and one female captive born maned wolf (*Chrysocyon brachyurus*) from West Germany for the enhancement of propagation.

Applicant: Zoological Society of San Diego, P.O. Box 551, San Diego, CA 92112. (PRT 2-6737)

The applicant requests a permit to import 2 male and 1 female captive born Pampas deer (*Ozotoceras bezoarticus*) from West German for the enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish & Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications on or before September 8, 1980 by submitting written data, views, or arguments to the Director at the above address.

Dated: July 30, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish & Wildlife Service.

[FR Doc. 80-23756 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

Pipeline Application; McFaddin National Wildlife Refuge, Tex.

Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 576), that the Florida Gas Transmission Company has applied for a right-of-way permit to construct and operate a 22-inch natural gas pipeline across McFaddin National Wildlife Refuge in Jefferson County, Texas.

The purpose of this notice is to inform the public that the U.S. Fish and Wildlife Service will be proceeding with consideration of whether this application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so within 30 days by sending their comments with their name and address to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Gordon H. Hansen,

Acting Deputy Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 80-23765 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

Intent To Prepare Environmental Impact Statement

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice.

SUMMARY: The Heritage Conservation and Recreation Service will prepare an Environmental Impact Statement to evaluate the impact of designating five California rivers as part of the National Wild and Scenic Rivers System pursuant to Section 2(a)(ii) of the Wild and Scenic Rivers Act, Pub. L. 90-542, as amended. Designation by the Secretary would preclude any department or agency of the United States from assisting by loan, grant, license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which the river was established. The five rivers, including tributaries, are described as follows:

(a) *Klamath River.* The main stem from 100 yards below Iron Gate Dam to the Pacific Ocean; the Scott River from the mouth of Shackleford Creek west of Fort Jones to the river mouth near Hamburg; the Salmon River from Cecilville Bridge to the river mouth near Somesbar; the North Fork of the Salmon River from the intersection of the river with the south boundary of the Marble Mountain Wilderness Area to the river mouth; Wooley Creek, from the western boundary of the Marble Mountain Wilderness Area to its confluence with the Salmon River.

(b) *Trinity River.* The main stem from 100 yards below Lewiston Dam to the river mouth at Weitchpec; the North Fork of the Trinity from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth at Helena; New River from the intersection of the river with the Southern Boundary of the Salmon Trinity Primitive Area downstream to the river mouth near Burnt Ranch; South Fork of the Trinity from the junction of the river with State Highway 36 to the river mouth near Salyer.

(c) *Smith River.* All its tributaries from the Oregon-California State boundary to the Pacific Ocean.

(d) *Eel River.* The main stem from 100 yards below Van Arsdale Dam to the Pacific Ocean; the South Fork of the Eel from the mouth of Section Four Creek near Branscomb to the river mouth below Weott; Middle Fork of the Eel from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the river mouth at Dos Rios; North Fork of the Eel from Old Gilman Ranch downstream to the river mouth near Ramsey; Van Duzen River from Dinsmores Bridge downstream to the river mouth near Fortuna.

(e) *American River.* The Lower American from Nimbus Dam to its junction with the Sacramento River.

These five rivers are designated components of the California Wild and Scenic Rivers System, and would remain under the administration of the State (except for Federal lands) if the application is approved by the Secretary of the Interior. The Environmental Impact Statement will consider the alternatives of designation and no

designation for each of the five rivers. The Heritage Conservation and Recreation Service will assess whether the rivers quality for inclusion in the National System.

This notice is to announce that the Heritage Conservation and Recreation Service will hold scoping meetings at the following times and locations:

August 13, 1980—1:30 p.m.—San Francisco.
7:00 p.m.—California Hall, 625 Polk Street, Rm. 101.
August 14, 1980—1:30 p.m.—Junipero Serra State Office Bldg., Los Angeles.
7:00 p.m.—South Broadway, Rm. 1138.
August 15, 1980—1:30 p.m.—Eureka.
7:00 p.m.—CalTrans Building, 1656 Union Street, Rms. 57 and 58 and 59.
August 19, 1980—1:30 p.m.—Fresno.
7:00 p.m.—Federal Building, 1130 O Street, Public Rm. 4104.

The purpose of the scoping meetings is to solicit comments on a) identification of those issues to be addressed; b) identification of those issues to be analyzed in depth; and c) identification of those issues which are not significant. All Federal, State and local agencies, organizations and individuals who may be interested in, or be affected by the decision are invited to participate in the scoping process.

Comments may be submitted orally or in writing, preferrably both. Those not able to attend any of the meetings may submit written comments to the Regional Director, Pacific Southwest Regional Office, Heritage Conservation and Recreation Service, U.S.D.I., 450 Golden Gate Avenue, San Francisco, California 94102. Comments should be received no later than August 20, 1980.

Further public comment will be sought on the draft NEPA document through a later Federal Register notice.

FOR FURTHER INFORMATION CONTACT: John Haubert, Outdoor Recreation Planner, Heritage Conservation and Recreation Service, U.S.D.I., Washington, D.C. 20243 (202-343-4793). The primary author of this notice is John Haubert.

Dated: August 4, 1980.

Chris Therral Delaporte,

Director.

[FR Doc. 80-23794 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-03-M

Request To Designate Certain California Rivers as Components of the National Wild and Scenic Rivers System

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that by letter dated July 18, 1980, the Governor of California requested that certain California rivers be designated as units of the National Wild and Scenic Rivers System pursuant to Section 2(a)(ii) of the Wild and Scenic Rivers Act (Pub. L. 90-542, as Amended). Section 2(a)(ii) provides for the inclusion into the National System of those rivers which are protected by (or pursuant to) an act of the State legislature, and which will be administered permanently by an agency or political subdivision of the State without expense to the Federal Government (other than for administration and management of federally-owned lands.)

The following rivers are included in the request:

(a) *Klamath River.* The main stem from 100 yards below Iron Gate Dam to the Pacific Ocean; the Scott River from the mouth of Shackleford Creek west of Fort Jones to the river mouth near Hamburg; the Salmon River from Cecilville Bridge to the river mouth near Somesbar; the North Fork of the Salmon River from the intersection of the river with the south boundary of the Marble Mountain Wilderness Area to its confluence with the Salmon River.

(b) *Trinity River.* The main stem from 100 yards below Lewiston Dam to the river mouth at Weitchpec; the North Fork of the Trinity from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth at Helena; New River from the intersection of the river with the Southern Boundary of the Salmon Trinity Primitive Area downstream to the river mouth near Burnt Ranch; South Fork of the Trinity from the junction of the river with State Highway 36 to the river mouth near Salyer.

(c) *Smith River.* All its tributaries from the Oregon-California State boundary to the Pacific Ocean.

(d) *Eel River.* The main stem from 100 yards below Van Arsdale Dam to the Pacific Ocean; the South Fork of the Eel from the mouth of Section Four Creek near Branscomb to the river mouth below Weott; Middle Fork of the Eel from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the river mouth at Dos Rios; North Fork of the Eel from Old Gilman Ranch downstream to the river mouth near Ramsey; Van Duzen River from Dinsmores Bridge downstream to the river mouth near Fortuna.

(e) *American River.* The Lower American from Nimbus Dam to its junction with the Sacramento River.

Before approving or disapproving an application for inclusion of a State designated river in the National System, the Secretary of the Interior is required under Section 4(c) of the Act to circulate the proposal for review and comment by affected Federal agencies. No action will be taken on this application until compliance with the National Environmental Policy Act has been completed.

Questions concerning this application may be addressed to the Heritage Conservation and Recreation Service, U.S. Department of the Interior, 450 Golden Gate Avenue, San Francisco, California 94102 (phone 556-8313) or 440 G Street, NW, Washington, D.C. (phone 202-343-4793).

The primary author of this notice is John Haubert, Heritage Conservation and Recreation Service, 440 G Street, NW, Washington, D.C. 20243.

Dated: August 4, 1980

Chris Therral Delaporte,

Director.

[FR Doc. 80-23793 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-03-M

Bureau of Indian Affairs

Indian Tribes Performing Law Enforcement Functions; Determination

July 25, 1980.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Section 601(d), Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, places responsibility on the Secretary of the Interior to determine those Indian tribes which perform law and order functions.

The listing published beginning on page 13758 of the May 25, 1973 issue of the Federal Register (38 FR 13758) identified all eligible Indian tribes and the specific law enforcement functions they have responsibility to perform. Determination and certification of those tribes not listed will be made on an individual basis upon application by such tribes.

It has been determined by the Assistant Secretary—Indian Affairs that the Nooksack Indian Tribe of Washington, has responsibility to exercise the functions listed below:

Therefore, the listing published, beginning on page 13758 of the May 25,

1973 Federal Register, is further amended by adding the entry for the Nooksack Indian Tribe in the State of Washington to read as follows:

Tribal entities recognized by the Federal Government and listed by State	Employ tribal police	Establish a tribal court	Adopt a tribal law and order code	Undertake correction function	Prevent adult crime and juvenile delinquency	Adult and juvenile rehabilitation programs
Washington. Nooksack Indian Tribe	X	X	X	X	X	X

Ralph R. Reeser,
Assistant Secretary, Indian Affairs.
[FR Doc. 23763 Filed 8-6-80; 8:45 am]
BILLING CODE 4310-02-M.

Bureau of Land Management

[INT NOI]

Bennett Hills-Timmerman Hills Management Framework Plan Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of a proposed amendment to the Bennett Hills-Timmerman Hills Management Framework Plan (MFP) and invitation for public participation.

SUMMARY: In accordance with 43 CFR 1601.3(g) the Shoshone BLM District is proposing to amend the Bennett Hills-Timmerman Hills MFP concerning the potential change of a utility corridor to facilitate the construction of a 138 kv power line through the Timmerman Hills Planning Unit.

DATE: A public meeting will be held at the Shoshone District BLM Office at 7:30 p.m. on September 10, 1980. Written or oral comments may be submitted at the public meeting, or letters may be mailed to the Shoshone District BLM Office no later than close of business on September 25, 1980.

ADDRESS: Comments should be sent to: BLM District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Ervin R. Cowley, Monument Resource Area Manager, Bureau of Land Management, Shoeshone District Office, P.O. Box 2B, Shoshone, ID 83352. Telephone: (208) 886-2208 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: Idaho Power Company has proposed to construct a new 138 kv power line from the Midpoint Substation to a substation near Picabo, Idaho. The utility corridor identified in the Bennett Hills-Timmerman Hills MFP runs almost directly from the vicinity of Richfield, Idaho, north to the Big Wood River Valley. The proposed corridor would run in a northeastly direction from the vicinity of Richfield, Idaho, parallel to U.S. Highway 93, then northwesterly to the Wood River Valley. Idaho Power has proposed to remove the existing line from the abandoned corridor after completion of the new line.

An Environmental Assessment will be completed to identify and mitigate adverse impacts prior to issuing a right-of-way. Anticipated adverse impacts of constructing the new line in the proposed corridor would include visual intrusions and additional road construction. Benefits of the proposal would include removal of the existing line from a crucial deer winter area, improving the dependability of electrical power for the Wood River Valley, and providing capability for increasing power transmission capacity in the future by upgrading rather than new construction.

Dated: July 29, 1980.
Charles J. Haszier,
District Manager.
[FR Doc. 80-23622 Filed 8-6-80; 8:45 am]
BILLING CODE 4310-84-M

Dickinson District, North Dakota District Advisory Council Meeting

July 31, 1980

The first meeting of the Dickinson District Advisory Council will be held September 12, 1980, beginning at 9:00 A.M. at the Dickinson State College Student Center, Dickinson, North Dakota. This council has been established by, and will be managed in accordance with, the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976 and the Public Rangelands Improverment Act of 1978.

The agenda for the first meeting will include: discussion of the function of the council; introduction of council members; election of officers; arrangements for future meetings; and an orientation to the Bureau of Land Management in general and to specific Dickinson District programs. The main topics will be coal-related planning in Golden Valley County and west-central North Dakota; the Fort Union Regional Coal Environmental Impact Statement; BLM surface lands in North Dakota; and federal oil and gas leasing in the State.

The public is welcome to attend the meeting and may make oral statements before the council between 3:00 and 4:00 p.m. A per-person time limit may be imposed depending on the number of people wishing to speak. The meeting will be adjourned at 4:00 P.M.

Minutes of the meeting will be prepared and made available for review within 30 days following the meeting.

Charles E. Steele,
District Manager
July 31, 1980.
[FR Doc. 80-23619 Filed 8-6-80; 8:45 am]
BILLING CODE 4310-84-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with 43 CFR Part 1780 that a meeting of the Medford District Advisory Council will be held on September 12, 1980.

The meeting will begin at 9:00 a.m. in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon.

The agenda for this meeting will include:

1. A discussion of the functions of the Council.
2. An election of a chairperson and vice chairperson.
3. An orientation to Medford District programs and current issues.
4. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2:00 and 3:00 p.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97501, telephone 503-776-4187, by close of business September 5, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction at the cost of duplication.

Dated: July 28, 1980.

George Francis,

District Manager.

[FR Doc. 80-23825 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

Montana, North Dakota, South Dakota; Redelegation of Authority

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Section 1.1(a)(2) of Bureau Order No. 701 dated July 23, 1964, as amended by notice published at 45 FR 6177 on Friday, January 24, 1980 (FR Doc. 80-2428 filed 1-24-80; 8:35 a.m.), authorizes the Bureau of Land Management State Directors the opportunity to redelegate the authority to grant, renew, reassign or revoke rights-of-way under the Federal Land Policy and Management Act of 1976 to Bureau of Land Management District and Area Managers.

That authority with respect to temporary road rights-of-way issued for a term of not more than 2 years is hereby redelegated to Montana and North Dakota District Managers. This authority may, without approval, be redelegated to Area Managers.

This notice has no other effect on the provisions of FR Doc. 80-2428.

EFFECTIVE DATE: This redelegation will become effective August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Montana State Office, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107, (406) 657-6291.

Michael J. Penfold,

State Director.

[FR Doc. 80-23826 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

Multiple Use Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Multiple Use Advisory Council; Meeting.

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Yuma District Multiple Use Advisory Council will be held Wednesday and Thursday, September 10 and 11, 1980, beginning at 10 a.m. at the Bureau of Land Management Office, 2450 South Fourth Avenue, Yuma, Arizona.

The agenda for the meeting will include:

1. Introductions and biographical sketches of members.
2. Overview of the purpose of the Council.
3. Discussion of the history of the Yuma District and its special programs.
4. Overview of programs by Resource Area.
5. Discussion of Council functions.
6. Organizational discussion and election of officers.
7. Close out and arrangement and next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by September 5, 1980. Depending on the number of people wishing to make an oral statement, a time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty days following the meeting.

H. M. Bruce,

District Manager.

[FR Doc. 80-23604 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

Status of Wilderness Review of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Status of Wilderness Review of Public Lands.

SUMMARY: This notice summarizes the present status of the wilderness review of roadless public lands and islands required by the Federal Land Policy and Management Act (FLPMA), section 603(a). The purposes of this notice and calendar of events are to provide (1) one source of information summarizing current wilderness review activities, and (2) advance notice of upcoming decisions, and public review periods.

DATE: All information in this notice is current through August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Bureau of Land Management, Division of Wilderness and Environmental Areas, 18th and C Streets, NW., Washington, D.C. 20240, Telephone: (202) 343-6064.

SUPPLEMENTARY INFORMATION: This calendar of events is the seventh of a series whose last notice appeared in the Federal Register July 14, 1980, (p. 47247). The calendar of events focuses only on the current status of all ongoing wilderness review activities. Those inventories whose final decisions are in effect, as well as studies or reports not yet initiated, are not reported in this notice. For detailed information regarding each specific activity, reference is made either to the appropriate notice previously appearing in the Federal Register, or to notices which are anticipated to be published in the upcoming 30 days. It must be noted that "anticipated" dates are projected only, and thus are subject to change.

The Bureau of Land Management wilderness review includes (1) an inventory of public lands to identify roadless lands and islands having wilderness characteristics; (2) a study of those areas found to have wilderness characteristics (wilderness study areas or "WSA's"); and (3) a report from the Secretary of the Interior to the President as to whether each WSA is more suitable for wilderness or other resource uses. The President will send his recommendations to Congress. Only Congress can actually designate and area as wilderness.

The inventory process has two stages: (1) an initial inventory designed to quickly identify and release from wilderness review those lands which clearly and obviously lack wilderness characteristics; and (2) an intensive inventory for those lands which may possess wilderness characteristics. The initial inventory process was completed in the contiguous Western States by October 1, 1979. In instances where important resource use decisions are pending, the inventory process may be accelerated in order to reach final decisons as quickly as possible. Such inventories are referred to as "special project inventories" or "accelerated intensive inventories."

The FLPMA also requires early study of 55 natural and primitive areas which were formally identified by the Secretary of the Interior prior to November 1, 1975. They are referred to as "instant study areas" (ISA's). As of August 1, 1980, the reports are under administrative review.

The wilderness inventory deadline of September 30, 1980, for the contiguous Western States has been extended to November 15, 1980, as announced in the Federal Register on June 17, 1980 (p. 41074).

The statistical summary table reflects both proposed and final intensive inventory decisions in the contiguous Western States and Minnesota. Other Eastern States will be listed in future statistical summaries as decisions are announced. All acreages are presented

by State political boundaries and not BLM administrative boundaries. Some final decisions listed under the "inventory completed" column may be under protest or appeal. In those instances, decisions are not yet in effect. It has been determined as a matter of Bureau policy that the appropriate means to handle any appeals of the State Directors' intensive inventory decisions are the procedures outlined in Title 43 Code of Federal Regulations, Part 4. This regulation identifies the Interior Board of Land Appeals as the office to hear and evaluate such appeals.

Dated: August 4, 1980.

James W. Monroe,

Assistant Director, Recreation and Environmental Areas.

Calendar of Events

Arizona

Statewide Intensive Inventory

—Proposed decision announced in Federal Register May 30, 1980 (p. 36525); supplemental information published in Federal Register July 24, 1980 (p. 49364); 90-day public comment period ends August 28, 1980.

Accelerated Intensive Inventory

—Hualapai-Aquarius awaiting final decision. Affects units 2-37, 2-43, 2-46, 2-48, 2-50, 2-51, to 2-54, 2-56 to 2-63, 2-65, 2-67.

—Awaiting State Director's announcement of decision on protests for the Overthrust Belt. Affects units: 1-105 to 1-109, 1-12 to 1-115, 1-119 to 1-124, 1-127 to 1-130, 1-134, 1-135.

—Safford District units contiguous to Coronado National Forest final decision announced in Federal Register July 11, 1980 (p. 46913) initiating protest period which ends August 18, 1980. Affects units 4-66, 4-70, 4-72, 4-73, 4-79, 4-80, 4-81.

Study/Reporting

—Aravaipa Canyon Instant Study Area final environmental impact statement and suitability report complete; under administrative review.

—Paiute, Paria, and Vermillion Cliffs ISA's draft suitability report and draft environmental impact statement availability announced in Federal Register April 22, 1980 (p. 27022); public comment period extended until 30 days after the U.S. Geological Survey and Bureau of Mines report is made available to the public as announced in Federal Register May 8, 1980 (p. 30547).

California

Statewide Intensive Inventory

—State Director's announcement of decision on protests for 9 units anticipated August 28, 1980. Affects non-CDCA units: 010-064, 075; 020-211, 609, 1013; 030-402, 501, 504; 060-026.

—Proposed decision for Oregon-California interstate units announced in Federal Register April 3, 1980 (p. 22198); 90-day public comment period ended June 25, 1980; final decision anticipated November 15, 1980.

—Proposed decision for Nevada-California interstate units announced in Federal Register April 3, 1980 (p. 22198); 90-day public comment period ended June 30, 1980; final decision anticipated November 15, 1980.

Units Under Appeal to IBLA

—Notice of appeal announced in Federal Register January 7, 1980, (p. 1456). Affects CDCA intensive inventory units: 117, 131, 136, 137A, 143, 150, 156, 158, 172, 207, 217, 221, 222, 227, 242, 251, 251A, 263, 264, 265, 266, 271, 299, 305, 321, 325, 334, 343, 348, 376.

—Notice of appeal announced in Federal Register January 7, 1980, (p. 1457). Affects non-CDCA initial inventory units: 010-031, 033, 047, 069, 087, 101; 020-701; 901, 1001; 030-300, 400, 500.

—Notices of appeals filed with State Director late July; to be announced in the Federal Register August 28, 1980. Affects non-CDCA intensive inventory units 010-040, 060, 063, 065, 068; 050-131, 134, 135, 211.

Study/Reporting

—Proposed CDCA plan expected to be released September 30, 1980.

Colorado

Statewide Intensive Inventory

—Proposed decision announced in Federal Register February 1, 1980 (p. 7312); 90-day public comment period ended April 30, 1980; public comments being analyzed prior to final decision.

Units under Appeal to IBLA

—Notice of appeal filed January 21, 1980. Affects initial inventory unit 070-031.

Study/Reporting

—Powderhorn ISA draft environmental impact statement and draft suitability report availability announced in Federal Register May 7, 1980 (p. 30141); public comment period ended July 1, 1980.

Eastern States

Statewide Intensive Inventory (Minnesota Only)

—Proposed decision on remaining 174 islands announced in Federal Register May 20, 1980 (p. 33730); began 90-day public comment period which ends August 18, 1980.

Idaho

Statewide Initial Inventory

—State Director's proposed intensive inventory decision on unit 23-1 announced in Federal Register June 4, 1980 (p. 37738) initiating 90-day comment period which ends September 2, 1980; State Director's decision on protests announced in Federal Register June 30, 1980 (p. 43876), initiating 30-day appeal period. Affects units 35-3, 35-4, 35-5.

Statewide Intensive Inventory

—Proposed decision announced in Federal Register April 3, 1980 (p. 22195); 90-day public comment period ended July 3, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—State Director's announcement of decision on protests for Owyhee Planning Area anticipated August 1980. Affects units 16-26, 16-28, 16-36, 16-40 to 16-42, 16-44, 16-45, 16-47, 16-49 a, b, d, e, 16-52.

Study/Reporting

—Great Rift (Grassland Kipuka) ISA draft environmental impact statement availability announced in Federal Register March 5, 1980 (p. 14251); public comment period ended May 27, 1980; under administrative review.

Units Under Appeal to IBLA

—Notice of Appeal filed April 11, 1980, affecting stateline initial inventory units 16-48a, b, and c, 16-53, 16-56a, 16-59, 16-70e, 17-19, 17-21, 17-26, 22-1.

—Two Notices of Appeal filed April 11, 1980, affecting Challis Planning Area intensive inventory units 46-11, 46-13, 46-14, 46-14a.

Montana

Statewide Intensive Inventory

—Proposed decision announced in Federal Register March 28, 1980 (p. 20570); public comment period ends August 30, 1980.

Accelerated Intensive Inventory

—Bitter Creek (unit 064-356) as affected by proposed Alaska Natural Gas Transportation System final decision

announced in Federal Register April 9, 1980 (p. 24254); protest period ended May 9, 1980; protests received; awaiting State Director's announcement of decision on protests.

—State Director's announcement of Overthrust Belt decision on protests anticipated August 15, 1980. Affects units 074–151a and b, 155; 075–102, 105 to 107, 110, 114, 115, 123, 133, 138; 076–001 to 003, 006 to 008, 011, 015, 022, 025, 026, 028, 029, 033, 034, 059, 063, 069, 070, 079.

Units Under Appeal to IBLA

—Notice of appeal filed June 11, 1980. Affects intensive inventory unit 076–026.

—Notice of appeal filed July 27, 1980. Affects accelerated intensive inventory units 075–123; 076–003, 011, 025.

Study/Reporting

—Humbug Spires and Bear Trap Canyon ISA's draft environmental impact statements and draft suitability reports availability announced in Federal Register April 18, 1980 (p. 26477) and April 30, 1980 (p. 28823); public comment period ended June 17, 1980.

Nevada

Statewide Intensive Inventory

—Proposed decision announced in the Federal Register April 1, 1980 (p. 21356); 90-day public comment period ended June 30, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—State Director's announcement of Overthrust Belt decision on protests announced in the Federal Register July 31, 1980 (p. 50942), initiating 30-day appeal period. Affects units 0161, 0231, 0233, 0235, 0236, 0238, 0411, 0412, 0423, 0438, 04R–15.

New Mexico

Statewide Intensive Inventory

—Proposed decision announced in Federal Register March 28, 1980 (p. 20572); corrections announced in Federal Register May 2, 1980 (p. 29417); public comment period ended July 21, 1980; public comments being analyzed prior to final decision.

Oregon

Statewide Intensive Inventory (includes Washington)

—Proposed decision announced in Federal Register March 27, 1980 (p. 20167); 90-day public comment period ended June 25, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—State Director's announcement of decision on protests anticipated August 5, 1980. Affects units: 1–76, 1–77, 1–105, 2–1, 2–11, 2–23E, 2–26, 2–74E, 2–74N, 2–81L, 2–82H, 3–154, 5–14.

Units Under Appeal to IBLA

—Notice of appeal announced in the Federal Register November 29, 1979 (p. 68526); affects initial inventory unit 11–6.

Utah

Statewide Intensive Inventory

—90-day public comment period ended June 30, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—Joshua Tree and Book Cliffs ISA's, final intensive inventory decision in effect as announced in Federal Register June 18, 1980 (p. 41223); protests received on Devil's Garden and Link Flats ISA's; awaiting final decision by the State Director.

Units Under Appeal to IBLA

—Notice of appeal filed January 24, 1980. Affects accelerated intensive inventory units 050–233; 060–007, 011, 012.

—Notice of appeal announced in the Federal Register July 17, 1980 (p. 47936). Affects accelerated intensive inventory unit 050–236.

Wyoming

Statewide Intensive Inventory

—Proposed decision announced in Federal Register April 4, 1980 (p. 23073); public comment period extended to August 19, 1980, as announced in Federal Register on June 5, 1980 (p. 37894).

Units Under Appeal to IBLA

—Three notices of appeal filed April 14, 1980. Affects accelerated intensive inventory units 040–110, 221, 222, 223.

Statistical Summary Table—BLM Wilderness Inventory Results (Shown in Acres) as of Aug. 1, 1980

1. Contiguous Western States

State	Public lands subject to wilderness inventory	Proposed intensive inventory decisions: Announced subject to public review: Not yet announced	Lacking wilderness characteristics	With wilderness characteristics	Inventory completed Final Decisions Announced: Lacking wilderness characteristics	Wilderness study areas
AZ	12,596,000	0	2,705,000	2,164,000	7,210,000	517,000
CA	16,585,000	0	120,000	9,000	10,118,000	6,338,000
CO	7,996,000	0	491,000	765,000	6,690,000	50,000
ID	11,949,000	252,000	1,090,000	804,000	8,983,000	620,000
MT	8,140,000	0	1,357,000	475,000	6,000,000	308,000
NV	49,118,000	17,000	11,319,000	3,079,000	33,077,000	1,626,000
NM	12,847,000	0	1,327,000	886,000	10,486,000	148,000
ND	68,000	0	0	0	68,000	0
OK	7,000	0	0	0	7,000	0
OR	*13,965,000	0	4,192,000	1,750,000	7,584,000	439,000
SD	277,000	0	5,000	0	272,000	0
UT	22,076,000	0	3,190,000	1,752,000	16,707,000	427,000
WA	310,000	0	14,000	15	296,000	0
WY	17,793,000	0	562,000	497,000	16,678,000	56,000
Totals	173,727,000	269,000	26,372,000	12,181,000	124,176,000	10,729,000

2. Eastern States

State	Public lands subject to wilderness inventory	Proposed intensive inventory decisions: Announced subject to public review: Not yet announced	Lacking wilderness characteristics	With wilderness characteristics	Inventory Completed Final Decisions Announced: Lacking wilderness characteristics	Wilderness study areas
MN	**45,000	0	701	0	44,299	0

*Does not include 1,759,200 acres of Oregon and California Grant Lands which are exempt from wilderness review.
**Includes an estimated 2,000 acres of unsurveyed islands.

[FR Doc. 80-23801 Filed 8-6-80; 8:45 am]
BILLING CODE 4310-84

Montana Wilderness Inventory; Announcement of Decision on Protests for Overthrust Belt Units

July 30, 1980.

This notice announces the Montana State Director's final decision on protests received on Overthrust Belt wilderness inventory units.

Background

A notice appeared in the Friday, February 22, 1980, Federal Register (Vol. 45, No. 37, pages 11920 and 11921) announcing the Montana State Director's final wilderness inventory decision for 48 wilderness inventory units located in the Rocky Mountain overthrust belt. The wilderness inventory for these units was accelerated ahead of the statewide schedule because of potential conflicts with energy exploration and development. The overthrust belt in Montana is located entirely within the Butte BLM District.

This notice described 21 inventory units totaling 131,768 acres which were proposed to be designated wilderness study areas. The remaining 27 inventory units totaling 249,360 acres were proposed to be dropped from further wilderness consideration.

A follow-up notice appeared in the Friday, March 28, 1980, Federal Register (Vol. 45, No. 62, Page 20570) which established a 30 day protest period beginning March 30 and ending April 30, 1980. A total of 42 protests were received during the protest period which expressed disagreement with the State Director's final decision for all but 15 inventory units which were to be dropped from further wilderness consideration.

Current Status

The final decision for the following inventory units was not protested and the decision to drop these units from further wilderness consideration is now in effect:

Unit No.	Unit name	Acreage dropped from wilderness consideration
MT-076-004	Big Spring Gulch	43,327
MT-076-009	Antelope Flats	14,130
MT-076-010	Basin Creek South	10,815
MT-076-024	Camp Creek South	7,200
MT-076-031	Cold Spring Creek	7,100
MT-076-042	Red Rock River Island #2.	3
MT-076-043	Red Rock River Island #1.	0
MT-076-047	Jimmy New Creek	6,275
MT-076-051	Madon Rock Islands	1
MT-076-054	Nez Perce Hollow	12,743
MT-076-071	Elk Gulch	10,032
MT-075-124	Missouri River Island	12
MT-075-125	Missouri River Island	5
MT-075-126	Missouri River Island	17
MT-075-134	Yellowstone River Island.	23
Total		111,943

Protest letters were received on the decision for the following inventory units. The State Director's final decision for these units remains unchanged. Those lands proposed to be dropped from wilderness consideration will continue to be managed under the guidelines provided by the BLM Wilderness Interim Management Policy until a 30 day notice of appeal period has elapsed for all protestors. The responses to the protests have been handled on a case-by-case basis.

Unit No	Unit name	Acreage identified for WSA status	Acreage dropped from wilderness consideration
MT-076-001	Ruby Mountains	26,357	5,643
MT-076-007	E. Fork of Blacktail Deer Cr.	6,180	
MT-076-022	Hidden Pasture Creek.	15,475	
MT-076-034	Farlin Creek	1,060	80
MT-076-063	Tobacco Root Tack-On.	860	
MT-076-069	Axolotl Lakes	6,578	866
MT-076-079	Madison Tack-Ons	1,469	51
MT-075-102	Blind Horse Creek	4,927	
MT-075-105	Chute Mountain	3,085	
MT-075-106	Deep Creek/Battle Creek.	3,086	
MT-075-107	N. Fork of Sun River	198	
MT-075-110	Beaver Meadows	595	
MT-075-114	Elkhorn	3,585	2,113
MT-075-115	Black Sage	5,978	
MT-075-133	Yellowstone River Island.	53	
MT-074-151a	Hoodoo Mountain	11,380	1,293
MT-074-151b	Gallagher Creek	4,257	1,670
MT-074-155	Quigg West	520	
MT-076-003	Blacktail Mountains West.		2,120
MT-076-006	White Hills South		8,850
MT-076-008	Basin Creek North		17,960
MT-076-011	Lima Reservoir		5,360
MT-076-015	Red Rocks Refuge North.		440
MT-076-025	McCartney Mtn./Sandy Hollow		16,380
MT-076-029	Bachelor Mountain		13,000
MT-076-033	Garnett Hill		1,120
MT-076-059	Block Mountain		6,700
MT-076-070	Sweetwater		7,749
MT-075-123	Missouri River Island		22
MT-075-138	Missouri River Island		40
	Total	95,833	91,467

The following inventory unit decisions have been changed as a result of new information provided in protest letters:

Unit No and unit name	Acreage identified for WSA status	Acreage dropped from wilderness consideration
MT-076-002—		
Former Decision: Blacktail Mountains	19,189	2,261
Present Decisions: (−1,550)	17,639	3,811
MT-076-026—		
Former Decision: Bell/Limekiln Canyons	6,629	16,100
Present Decision: (+2,959)	9,588	13,141
MT-076-028—		
Former Decision: Henneberry Ridge	10,111	27,589
Present Decision: (−355)	9,756	27,944
Total, present decision	36,983	44,896

Individual's Right of Protest

Any individual who disagrees with the changed decisions for the three above-mentioned units and has information which may influence the decision, may file a protest with the Montana State Director. A 30 day protest period is hereby established beginning August 15 and ending September 15, 1980. Protests must be filed with the Montana State Director by 4:30 p.m. September 15, 1980, and identified as follows: "Protest to Montana State Director's Final Wilderness Inventory Decision—Overthrust Belt Units." No specific forms are required.

Protests should be submitted to: State Director (931), Montana State Office, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Additional information may also be obtained by writing this office or calling (406) 657-6474.

Kannon Richards,

Acting State Director.

[FR Doc. 80-23072 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

Washington; Filing of Plats of Survey

Plats of survey of the islands located within the townships described below

will be officially filed in the Oregon State Office, Portland, Oregon, effective at 10:00 a.m. on September 5, 1980.

Willamette Meridian

T. 37 N., R. 4 W.,
Island No. 1, Bare Island; Island No. 2, Un-named Island; Island No. 3, Skipjack Island; Island No. 4, White Rock Island; and Island No. 5, Danger Rock.
T. 36 N., R. 4 W.,
Island No. 1, Sentinel Rock; Island No. 2, Battleship Island; Island No. 3, Posey Island; and Island No. 4, Barren Island.
T. 37 N., R. 4 W.,
Island No. 1, Pudding Island; Island No. 2, Ripple Island; Island No. 3, Un-named Rock; and Island No. 4, Gull Reef.
Some islands are barren rock or partly submerged, and others have vegetation consisting of brush, grass or trees.
All the islands within T. 37 N., R. 3 W., T. 36 N., R. 4 W., and Islands 2, 3, and 4 of T. 37 N., R. 4 W., are withdrawn for the San Juan Islands National Wildlife Refuge, and are administered by the U.S. Fish and Wildlife Service.

Roger F. Dierking,
Chief, Branch of Records and Data Management.

July 31, 1980.

[FR Doc. 80-23764 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

[OR 49; 2310 (943.4)]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes that the existing land withdrawal made by Public Land Order 4132 on January 3, 1967, be continued in its entirety for a 20-year period, pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714. The withdrawn land is described as follows:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 35 S., R. 6 W.,
Sec. 9, NW¼ and NW¼SE¼.

The area described contains 200 acres in Josephine County, Oregon.

The purpose of the withdrawal is to protect the Sprague Tree Seed Orchard, established for the production of pine and fir seed. The land is currently segregated from location and entry under the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

On or before September 16, 1980, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned before September 16, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the Federal Register giving the time and place of such hearing. Public hearings are scheduled and conducted in accordance with BLM Manual Sec. 2351.16B.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 2965, Portland, Oregon 97201.

Dated: July 31, 1980.

Harold A. Berends,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-23757 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

[ORE 015487; 2310 (943.4)]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes that the existing land withdrawal made by Public Land Order 3609 on April 8, 1965, be continued in its entirety for a 20-year period, pursuant to section 204 of the Federal Land Policy and Managment Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714. The withdrawn land is described as follows:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 4 S., R. 3 E.,
Sec. 13, W½.

The area described contains 320 acres in Clackamas County, Oregon.

The purpose of the withdrawal is to protect the Horning Tree Seed Orchard. the land is currently segregated from location and entry under the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

On or before September 16, 1980, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned before September 16, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the Federal Register giving the time and place of such hearing. Public hearings are scheduled and conducted in accordance with BLM Manual Sec. 2351.16B.

The authorized officer of the Bureau of Land Managment will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is

reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. box 2965, Portland, Oregon 97208.

Dated: July 31, 1980.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-23758 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Preliminary findings on Mower Lumber Company's request for determination of valid existing rights to conduct underground coal mining operations in the Upper Shavers Fork Sub-Unit of the Monongahela National Forest, in Randolph County, West Virginia.

SUMMARY: The Mower Lumber Company is seeking a determination that its proposed underground coal mining operations on Federal lands in the Monongahela National Forest are not prohibited or limited by Section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1272(e). Specifically, Mower Lumber Company has requested the Director of OSM to determine that the Company has "valid existing rights" under that Section of the Act. The Director is giving notice of this preliminary finding determining valid existing rights and requesting public comments thereon.

DATES: Interested persons may submit written comments on the preliminary findings. Comments must be received on or before August 22, 1980.

ADDRESSES: Written comments should be addressed to the Director, Office of Surface Mining, U.S. Department of the Interior, Room 233, South Interior Building, 1951 Constitution AVenue, N.W., Washington, D.C. 20240, with one copy to the Regional Director, Office of Surface Mining, Region I, U.S. Department of the Interior, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301. Copies of the Mower Lumber Company's "Request for Determination Pursuant to Section 522(e) of the Surface Mining Control and Reclamation Act of 1977" are available for inspection in the OSM Region I, Charleston, West Virginia, office and in Room 153, South Interior Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Patrick Boggs, Regional Director, Region I, Office of Surface Mining, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301, (304) 342-8125, or Carl Close, Assistnat Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington,D.C. 20240, (202) 343-4225.

SUPPLEMENTARY INFORMATION: Background. Section 522 of the Surface Mining Control and Reclamation Act of 1977 prohibits "surface coal mining operations" on Federal lands within the boundaries of any national forest subject to "valid existing rights" and another exemption not relevant here. The term "surface coal mining operations" is defined in Section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28)) and 30 CFR 700.5 and includes the surface impacts incident to underground coal mining operations. The term "valid existing rights" is defined at 30 CFR 761.5, as modified by the February 26, 1980, opinion of the District Court for the District of Columbia, *In re: Permanent Surface Mining Regulation Litigation*, No. 79-1114, Slip Opinion at p. 17-18.

By letter dated March 13, 1980, the Mower Lumber Company requested the Office of Surface Mining, Region I, for a determination of valid existing rights for their planned underground mining activities on Federal lands in the Upper Shavers Fork Sub-Unit of the Monongahela National Forest in Randolph County, West Virginia. Mower Lumber Company's request was filed with the Regional Director in which the lands involved are located (Region I) pursuant to informal procedures previously prepared by OSM to implement 30 CFR 761.4(a)(2). The geographical area of the Company's request is also included within the area which is the subject of a petition to designate all federally owned lands in the Shavers Fork Basin as unsuitable for all types of coal mining filed by the West Virginia Highlands Conservancy under Section 522(c), 30 USC 1272(e), and 30 CFR Part 769. Notice of receipt of that petition was published by OSM at 45 FR 41542, June 19, 1980.

Mower Lumber Company alleges that it owns the mineral rights including coal under approximately 28,000 acres of Federal lands in the Monongahela National Forest. The Company's March 13, 1980, filing contains three separate and alternative requests for determinations that the development plan submitted for the entire mineral estate by the Company to the U.S. Forest Service and described in the Forest Service's Upper Shavers Fork Sub-Unit Plan and Environmental Impact Statement is: (1) within the "valid existing rights" of Mower as that term is used in Section 522(e) of the Surface Mining Control and Reclamation Act; or (2) is an "existing" surface coal mining operation as that term is used in the Section 522(e) of the Surface Mining Control and Reclamation Act; or (3) is "not incompatible" with the values enumerated in Section 522(e)(2) of the Surface Mining Control and Reclamation Act.

The Director has reached a preliminary decision that Mower Lumber Company does have valid existing rights, and proposes to issue a letter-decision similar to that which appears below. This decision would mean that compatibility determinations under Section 522(e)(2) would be unnecessary in order for Mower to mine in areas with valid existing rights. The proposed determination of valid existing rights will also exempt those specified areas from the petition to designate Federal lands in the Shavers Fork Basin as unsuitable for all underground coal mining filed by the Highlands Conservancy. All of Section 522 concerns the designation of lands unsuitable for mining. Under Section 522(e) and 30 CFR 761.11, those operations with valid existing rights are exempt from the Congressionally mandated prohibitions in Section 522(e); under Section 522(1)(6) and 30 CFR 762.13(e) lands where substantial financial and legal commitments were made in coal mining operations are exempt from designation by the petition process outlined in Section 522(c). The relationship between these two phrases is discussed in the preamble to the permanent regulations, 44 FR 14991-14992 (March 13, 1979). There it is made clear that valid existing rights is a greater property right than significant financial and legal commitments:

First, OSM decided that the VER phrase must be distinguished from the definition of substantial legal and financial commitments . . . in order for property owners to qualify for VER and thereby mine in the prohibited areas of Section 522(e), they must have a property interest in the mine that is even greater than the substantial legal and financial commitments needed to mine despite a designation by petition under Section 522(a). Thus, OSM believes that VER must be more than "significant investments, that have been made on the basis of a long-term coal contract, in powerplants, railroads, coal preparation, extraction, handling and storage facilities, and other capital intensive activities," as substantial legal and financial commitments is defined in Section 762.5.

Therefore, a finding of valid existing rights will also include a finding of substantial financial and legal commitments, and thereby exempt those areas with VER from further consideration for designation as unsuitable for mining. However, any finding of valid existing rights and significant financial and legal commitments will in no way affect the responsibility of Mower to comply with the permitting and performance standards requirements of the interim and permanent Federal lands programs, 30 CFR Part 211 and 30 CFR Part 740, respectively.

OSM is in the process of obtaining additional information in order to determine precisely the physical extent of the valid existing rights claimed by Mower and specifically solicits public comment on this issue. As set forth below, even though Mower claims valid existing rights on its entire 28,000 acre mineral holding, OSM's proposed finding of VER is limited to five underground mines for which Mower submitted operating plans to the Forest Service prior to August 3, 1977. These operating plans are on file at the U.S. Forest Service headquarters, Sycamore Street, Elkins, West Virginia. OSM is considering basically two alternatives in delineating the exact extent of the VER: (1) have VER cover only the surface area affected by the face-up and support activities incident to the underground mining; or (2) have VER cover only those areas (including surface overlying underground workings) contemplated to be affected under the operating plans submitted to the Forest Service prior to August 3, 1977.

Finally, pursuant to 30 CFR 761.5(b) OSM is proposing to include a finding of VER for haul roads serving the five mines and existing as of August 3, 1977. This determination would not extend to new roads constructed after that date.

Preliminary Decision

Mr. Richard A. Flye, Sellers, Conner & Cuneo, 1625 K Street, N.W., Washington, D.C. 20006.

Re: The Mower Lumber Company

Dear Mr. Flye:

This is in response to your letter of March 14, 1980, written on behalf of your client, Mower Lumber Company, in which you requested certain determinations pursuant to Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 relating to Mower's planned underground mining activities on Federal lands in the Upper Shavers Fork Sub-Unit of the Monongahela National Forest in Randolph County, West Virginia. Our analyses and determination of the existence of valid existing rights for mining operations are described below:

Legal Requirements

Section 522(e) of the Act states:

After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted . . . (2) on any Federal lands within the boundaries of any national forest (proviso omitted). . . .

Further, 30 CFR 761.5(a) defines "valid existing rights" as

(a) Except for haul roads,

(1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal by a surface coal mining operation; and

(2) The person proposing to conduct surface coal mining operations on such lands either

(i) Had been validly issued, on or before August 3, 1977, all State and Federal permits necessary to conduct such operations on those lands, or

(ii) Can demonstrate to the regulatory authority that the coal is both needed for, and immediaely adjacent to, an on-going surface coal mining operation for which all permits were obtained prior to August 3, 1977;

(b) For haul roads, valid existing rights means:

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977 . . .

The "all permits" requirement of 30 CFR 761.5(a)(2)(i) was later modified by an opinion rendered by Judge Flannery in *In re Permanent Surface Mining Regulation Litigation*, No. 79-1114, February 26, 1980, such that ". . . a good faith attempt to obtain all permits before the August 3, 1977, cut-off date should suffice for meeting the all permits test." Slip opinion at 17–18.

Mower Lumber Company has not requested a determination under 30 CFR 761.5(a)(2)(ii). As a result, the Company will qualify for valid existing rights if it possesses a valid conveyance, lease or other document (30 CFR 761.5(a)(1)) and all required permits for operation or can show a good faith attempt to secure all permits prior to August 3, 1977 (30 CFR 761.5(a)(2)(i)). For haul roads, the company will possess valid existing rights on roads which were existing, which were under permit or which were covered by a recorded easement as of August 3, 1977 (30 CFR 761.5(b)).

Conveyance of Right to Mine

The area within the scope of Mower's request was previously owned by the West Virginia Pulp and Paper Company. On December 10, 1936, the West Virginia Pulp and Paper Company, by two separate deeds, conveyed the relevant tracts of land to the United States, reserving for 40 years from the 15th day of August, 1935, the right to extract minerals under the land. The deed also stated that at the end of the 40-year period the parcel would revert to fee simple ownership by the United States unless the minerals had been actively extracted for an average of 50 days over the preceding five years. If the minerals were being extracted, then the deed called for automatic five-year extensions of the mineral reservation. The forty-year period was originally scheduled to expire on August 15, 1975. On August 18, 1943, West Virginia Pulp and Paper Company conveyed its mineral rights to F. Edwin Mower. On September 17, 1943, F. Edwin Mower conveyed these rights to the Mower Lumber Company. Underground mining on these tract began in the 1940's and continued until the 1960's.

It is my conclusion that the aforementioned documents validly conveyed to the Mower Lumber Company the right to the coal under these Federal lands, and that they contemplated that the coal would be mined by undergrouind methods, as is seen from the actual mining which took place for approximately thirty years. Therefore, the first element of the valid existing rights test is satisfied.

All Permits Test

The next question is whether on August 3, 1977, Mower possessed all permits required to conduct mining operations, or had made a good faith effort to obtain such permits prior to that date. During the late 1960's and early 1970's, Mower and its lessees mined, or made preparation to mine, five separate underground sites. The three sites on Shavers Fork were known as Linan Nos. 1, 2 and 3, while two sites on Glade Run were known as Mower Nos. 1 and 2. At the present time, Mower is attempting to begin mining at two sites known as Enviro No. 1 and Enviro No. 2. Enviro No. 1 is the same mine as Mower No. 2, and Enviro No. 2 is the same mine as Linan No. 2. Mower has already received permits and authorizations to operate these mines from West Virginia Department of National Resources (DNR) Reclamation Division, DNR Water Resources Division and the U.S. Forest Service. Applications for other permits have been made and are presently pending before Environmental Protection Agency (EPA) and the West Virginia Department of Mines.

All of these permit applications outlined above were made after August 3, 1977, and they alone could not constitute valid existing rights. It is the activities of Mower at the same sites prior to August 3, 1977, which must vest Mower with valid existing rights. On March 2, 1973, Mower entered into a

moratorium agreement with the Federal Government whereby Mower agreed to suspend its mining opertions in the entire upper Shavers Fork Sub-Unit area until September 2, 1978, in order to allow the Forest Service to develop an environmental impact statement concerning all contemplated development in the watershed, including coal mining. The moratorium agreement also acted to toll the running of Mower's forty-year period within which to develop the mineral resources of the area under the terms of the 1936 deed to the United States. At pages 2 and 3 of the moratorium agreement it is stated:

It is in the interest of the United States that mining operations in the reserved minerals be suspended as hereinafter provided pending completion of the environmental impact statements, the mineral survey and the Shavers Fork unit plan . . .

2. The United States hereby extends the forty (40) year mineral reservation contained in each of said deeds to the United States and in said condemnation judgment to Midnight, August 15, 1982, and waives performance by Mower of all acts necessary to preserve title to the Reserved Minerals in Mower during the period of suspension from September 3, 1971, to September 2, 1978, inclusive, and agrees that title to the Reserved Minerals is now and will remain vested in Mower until Midnight, August 15, 1982.

Since the August 3, 1977, cutoff date for valid existing rights occurred during the pendancy of moratorium, Mower's valid existing rights, if any, must be determined by its actions to obtain permits prior to the moratorium.

Because of the proliferation of regulatory programs affecting coal mining prior to the passage of the Surface Mining Control and Reclamation Act, the types of permits required for operation of a mine in West Virginia varied according the date the mining was contrmeplated to begin. When Mower originally applied for approval to mine in the early 1970's, the actions of the following State and Federal Agencies were relevant.

(1) Since 1905, the West Virginia Department of Mines has required a license to operate a deep mine. In 1958 the statute, *W. Va. Code*, Section 22-2-63, was amended to require an identification number for deep mines. In 1971 the subsection (a) of this statute was again amended to require "prior approval" by the Director of the Department before a mine could be opened. In 1976, subsections (e) and (g) of the statute were amended to require the posting of a reclamation bond to cover surface disturbance at deep mines and vest the West Virginia (DNR), Reclamation Division, with jurisdiction over reclamation and restoration of deep mine sites.

(2) Pursuant to *W. Va. Code*, Section 20-5A-5. in 1969 the West Virginia DNR, Water Resources Division, received the power to require permits for point source discharges of industrial wastes, which included discharges from coal mines.

(3) In addition to State permits, all mining operations in national forests had to receive authorization to operate from the Forest Service pursuant to the 1911 Rules of the Secretary of Agriculture and their successor, 36 CFR Part 251.

At the Linan Nos. 1, 2 and 3 mines prior to the moratorium agreement, Mower had obtained permits or authorizations to operate from the West Virginia Department of Mines, and the West Virginia DNR, Walter Resources Division. Mower also applied for Forest Service authorization, and on September 2, 1971, the operating plan for Linan No. 1 was approved. However, on the same date the Forest Service informed Mower that a federally funded mineral evaluation study and environmental study prescribed by the National Environmental Policy Act of 1969 should be completed before the operating plans for Linan Nos. 2 and 3 were approved. Although Linan No. 1 possessed all necessary authority to operate, Mower decided not to put the mine into production until approval was received from the U.S. Forest Serice to operate Linan Nos. 2 and 3 mines.

Concerning Mower Nos. 1 and 2 mines prior to the moratorium agreement, Mower had received permits and authorizations to operate from the West Virginia Department of Mines and the Forest Service. As in the case of the Linan mines, the Forest Service approved the operating plan for Mower Nos. 1 and 2 and then decided to prepare an extensive environmental impact statement on the entire watershed area. Mower also applied for permits from the West Virginian DNR, Water Resources Division, on March 23, 1972. After requesting and receiving additional information from Mower, the Division took no action on the permit application prior to the moratorium. Additionally, in regard to each of the mines discussed above, Mower has alleged that a number of haul roads were actually constructed in connection with these mines in the early 1970s.

Even though Mower did not actually possess each and every permit required to operate the mines, it is my preliminary decision that Mower Lumber Company had made a good faith effort to obtain all such permits and to put its mines into operation prior to August 3, 1977. Based upon the information supplied to OSM by the Company, I conclude that Mower has "valid existing rights" as to these five (5) mines, and their associated haul roads existing as of August 3, 1977. However, OSM reserves the right to further define the parameters of the valid existing rights of these mine sites in my final decision. It should be understood that I have not determined at this time whether or not valid existing rights would extend to the entire 28,000-acre mineral estate. When this determination is made, you will be notified.

This decision does not constitute agreement with or a favorable decision on all of the statements and arguments in Mower's request. However, it should be noted that a final decision granting valid existing rights means that the Company need not seek a determination of compatibility with values pursuant to Section 522(e)(2) of the Surface Mining Act and 30 CFR 761.12(c) prior to commenncing operations at these five (5) mines. The Company must still comply with the permitting and performance standards requirements of the interim and permanent Federal lands programs, 30 CFR Part 211 and 30 CFR Chapter VII respectively.

Following the close of the comment period, a final decision will be issued which takes into account additional information and any comments received on the preliminary decision. The Director's final decision will be administratively reviewable under 30 CFR 787.11.

Dated: July 31, 1980.

Paul L. Reeves,

Acting Director.

[FR Doc. 80-23864 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

Petition To Designate Certain Federal Lands Unsuitable for Surface Coal Mining Operations; Public Meeting

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

ACTION: A public meeting on issues raised by a petition to designate certain Federal lands in West Virginia as unsuitable for surface coal mining and reclamation operations.

SUMMARY: A public meeting is scheduled for August 12, 1980, to evaluate a petition to designate certain Federal lands in the Monongahela National Forest of West Virginia as unsuitable for surface coal mining and reclamation operations in accordance with Section 522(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and implementing regulations at 30 CFR Part 769. The public meeting is intended to elicit information on the range of issues raised by the petition which should be analyzed by OSM in order to render a decision on the petition and to publish a detailed statement as may be required by Section 522(d) of SMCRA.

DATES: The meeting will be held on August 12, 1980. Written statements must be received by August 15, 1980, at the address below by no later than 5 p.m.

ADDRESSES: The public meeting will be held on Tuesday, August 12, 1980, in two sessions (2 p.m. and 7 p.m.) at the National Guard Armory, Flood Control Road, Elkins, Virginia.

Written statements must be mailed or hand-carried to the Division of State and Federal Programs, Office of Surface Mining, Region I, 950 Kanawha Blvd., East, Charleston, West Virginia 25301. The file on the petition is available for public review during normal working hours at the above address of OSM.

Region I and also at the United States Forest Service Headquarters, Sycamore Street, Elkins, West Virginia. Copies of the petition and the information sheet presenting the issues to be studied may be obtained from OSM, Region I, at the address given above.

FOR FURTHER INFORMATION CONTACT: David Halsey, Division of State and Federal Programs, Office of Surface Mining, Region I, 950 Kanawha Blvd., East, Charleston, West Virginia 25301; telephone: (304) 344-2331.

SUPPLEMENTARY INFORMATION: The public meeting is intended to identify relevant issues to be addressed by OSM in processing the petition to designate as unsuitable for surface coal mining certain Federal lands within the Monongahela National Forest, located in the watershed of Shavers Fork from Cheat Bridge, Randolph County, to Parsons, Tucker County. The petitioner is the West Virginia Highlands Conservancy. The location of the petitioned lands was given in the notice of recript of the complete petition published in the Federal Register on page 41542 on June 19, 1980.

Major allegations set forth in the petition include the adverse impacts of surface coal mining operations on: water quality, black bear habitat, rare plants and animals, and recreational activities.

At this meeting, the public is invited to identify other issues that should be considered by OSM in evaluating the petition and to comment on other environmental impacts of the proposed designation. OSM also seeks comments on the other issues to be analyzed under Section 522(d): Potential coal resources of the area, demand for coal resources, and impact of the designation on the economy and the supply of coal.

Participation of the public and all interested government agencies at the public meeting is encouraged. Individual comments at the meeting will be limited to 10 minutes except where the number of persons to comment allows for more time. Anyone who wishes to comment will be given the opportunity to do so. A court reporter will be present to record all comments. Filing of a written statement at the time of giving oral comments would be helpful and would ensure proper consideration. Submission of written statements in advance of the meeting date, whenever possible, would greatly assist OSM officials who will conduct the meetings. Advance submission will give these officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person commenting. However, written statements may be mailed to OSM, Region I, at Charleston, West Virginia, address listed above, after the meeting, but must be received no later than the time indicated under "Dates" in order to be considered.

OSM has prepared an information release which outlines the issues raised by the petition. Copies of this release may be obtained from the OSM, Region I address given above, additional copies will also be made available at the meeting. OSM seeks comments on the proposed issues to be studied either by submission of a written statement or by oral comments at the meeting.

Dated: August 4, 1980.

Paul L. Reeves,

Acting Director.

[FR Doc. 80-23978 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Delegation of Authority No. 7

Section 1-201(a)(11) of Executive Order 12163 of September 29, 1979 (44 FR 56673) (hereinafter referred to as the "Executive Order") vested the President's authority under Section 620(s) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(s)) (hereinafter referred to as the "Act") in the Secretary of State. Pursuant to the authority vested in him by Section 1-201(d) of the Executive Order, the Secretary of State has redelegated the functions conferred on the President by Section 620(s) of the Act to me as Director of the United States International Development Cooperation Agency, by State Department Delegation of Authority No. 145-1 of July 15, 1980 which amends State Department Delegation of Authority No. 145 of February 4, 1980.

By virtue of the authority vested in me by Section 3(e)(1) of State Department Delegation of Authority No. 145 I hereby redelegate the functions conferred on the President by Section 620(s) of the Act to the Administrator of the Agency for International Development (hereinafter referred to as "AID"), with authority further to redelegate successively any of such functions. The Administrator is to exercise these functions in consultation with the Under Secretary of State for Security Assistance, Science and Technology.

This delegation shall be deemed effective as of July 15, 1980.

Dated: July 29, 1980.

Thomas Ehrlich,

Director, United States International Development Cooperation Agency.

[FR Doc. 80-23789 Filed 8-6-80; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

[Eighty-Seventh Revised Exemption No. 90]

Service Date: August 4, 1980.

To all railroads:

It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC RER 6410-D, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a) and 2(b).

Aberdeen and Rockfish Railroad Company
Reporting Marks:
The Ahnapee & Western Railway Company
Reporting Marks: AHW
Amador Central Railroad Company
Reporting Marks: AMC
Ann Arbor Railroad System, Michigan Interstate Railway Company, Operator
Reporting Marks: AA
Apalachicola Northern Railroad Company,
Reporting Marks: AN
Arkansas & Louisiana Missouri Railway Company
Reporting Marks: ALM
The Arcata and Mad River Railroad Company
Reporting Marks: AMR
The Atchison, Topeka and Santa Fe Railway Company
Reporting Marks: ATSF
Atlanta & Saint Andrews Bay Railway Company
Reporting Marks: ASAB
Bath and Hammondsport Railroad Company
Reporting Marks: BH
Berlin Mills Railway, Inc.
Reporting Marks: BMS

Boston and Maine Company
Reporting Marks: BM
*Burlington Northern Inc.
Reporting Marks: BN–CBQ–GN–NP–SPS
Cadiz Railroad Company
Reporting Marks: CAD
Camino, Placerville & Lake Tahoe Railroad Company
Reporting Marks: CPLT
Central Vermont Railway, Inc.
Reporting Marks: CV
Chesapeake Western Railway
Reporting Marks: CHW
Chippewa River Railroad
Reporting Marks: CVSR
City of Prineville
Reporting Marks: COP
The Clarendon and Pittsford Railroad Company
Reporting Marks: CLP
Columbia & Cowlitz Railway Company
Reporting Marks: CLC
Columbus and Greenville Railway Company
Reporting Marks: CAGY
Delaware and Hudson Railway Company
Reporting Marks: DH
Delray Connecticut Railroad Company
Reporting Marks: DC
Delta Valley & Southern Railroad Company
Reporting Marks: DVS
*Denver and Rio Grande Western Railroad Company
Reporting Marks: DRGW
Detroit and Mackinac Railway Company
Reporting Marks: D&M–DM
Detroit, Toledo and Ironton Railroad Company
Reporting Marks: DT&I–DTI
Duluth, Missabe and Iron Range Railway Company
Reporting Marks: DMIR
East Camden & Highland Railroad Company
Reporting Marks: EACH
East St. Louis Junction Railroad Company
Reporting Marks: ESLJ
Ferdinand Railroad Company
Reporting Marks: FRDN
Galveston Wharves
Reporting Marks: GWF
Genessee and Wyoming Railway Company
Reporting Marks: GNWR
Green Bay and Western Railway Company
Reporting Marks: GBW
Green Mountain Railroad Corporation
Reporting Marks: GMRC
Greenville and Northern Railway Company
Reporting Marks: GRN
The Hutchinson and Northern Railway Company
Reporting Marks: HN
Helena Southwestern Railroad Company
Reporting Marks: HSW
Illinois Terminal Railroad Company
Reporting Marks: ITC
Indiana Eastern Railroad and Transportation, Inc. D/B/A The Hoosier Connection
Reporting Marks: HOSC
Iowa Terminal Railroad Co.
Reporting Marks: IAT
Lake Erie, Franklin & Clarion Railroad Company
Reporting Marks: LEF
Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI
Lamoille Valley Railroad Company
Reporting Marks: LVRC
Lancaster and Chester Railway Company
Reporting Marks: LC
Lenawee County Railroad Company, Inc.
Reporting Marks: LCRC
Longview, Portland & Northern Railway Company
Reporting Marks: LPN
Louisiana Midland Railway Company
Reporting Marks: LOAM
The Louisiana and North West Railroad Company
Reporting Marks: LNW
Louisville and Wadley Railway Company
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Manufacturers Railway Company
Reporting Marks: MRS
Maryland and Delaware Railroad Company
Reporting Marks: MDDE
McCloud River Railroad Company
Reporting Marks: MR
Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ
Minneapolis, Northfield and Southern Railway
Reporting Marks: MNS
Mississippian Railway
Reporting Marks: MISS
Missouri-Kansas-Texas Railroad Company
Reporting Marks: MKT–BKTY
Missouri Pacific Railroad Company
Reporting Marks: MP–C&EI–MI–TP
Moscow, Camden & San Augustine Railroad
Reporting Marks: MCSA
New Hope and Ivyland Railroad Company
Reporting Marks: NHIR
New Jersey, Indiana & Illinois Railroad Company
Reporting Marks: NJII
New Orleans Public Belt Railroad
Reporting Marks: NOPB
New York, Susquehanna and Western Railroad Company
Reporting Marks: NYSW
Norfolk and Western Railway Company
Reporting Marks: ACY–N&W–NKP–WAB
Norfolk, Franklin and Danville Railway Company
Reporting Marks: NFD
North Louisiana & Gulf Railroad Company
Reporting Marks: NL&G
Octararo Railway, Inc.
Reporting Marks: OCTR
Ontario Midland Railroad Corp.
Reporting Marks: OMID
Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
Oregon, California & Eastern Railway Company
Reporting Marks: OCE
Oregon, Pacific and Eastern Railway Company
Reporting Marks: OPE
Pearl River Valley Railroad Company
Reporting Marks: PRV
Peninsula Terminal Company
Reporting Marks: PT
Pittsburgh, Allegheny & McKees Rocks Railroad Company
Reporting Marks: PA&M
The Pittsburgh and Lake Erie Railroad Company
Reporting Marks: P&LE
Port Huron and Detroit Railroad Company
Reporting Marks: PHD
Port of Tillamook Bay Railroad
Reporting Marks: POTB
Prairie Trunk Railway
Reporting Marks: PARY
Rahway Valley Railroad Company
Reporting Marks: RV
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NSL
St. Louis Southwestern Railway Company
Reporting Marks: SSW
St. Marys Railroad Company
Reporting Marks: SM
Sandersville Railroad Company
Reporting Marks: SAN
Savannah State Docks Railroad Company
Reporting Marks: SSDK
Seattle and North Coast Railroad Company
Reporting Marks: SNCT
Sierra Railroad Company
Reporting Marks: SERA
Southern Pacific Transportation Company
Reporting Marks: SP
Southern Railway Company
Reporting Marks: CG–NS–SA–SOU
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TM
Tidewater Southern Railway Company
Reporting Marks: TS
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Transkentucky Transportation Railroad, Inc.
Reporting Marks: TTIS
Union Railroad of Oregon
Reporting Marks: UO
Upper Merion and Plymouth Railroad Company
Reporting Marks: UMP
Valley and Siletz Railroad Company
Reporting Marks: VS
Vermont Railway, Inc.
Reporting Marks: VTR
The Virginia and Maryland Railroad Company
Reporting Marks: VAMD
Virginia Central Railway
Reporting Marks: VC
Warwick Railway Company
Reporting Marks: WRWK
Wabash Valley Railroad Company
Reporting Marks: WVRC
WCTU Railway Company
Reporting Marks: WCTR
Western Pacific Railroad Company
Reporting Marks: WP
Winchester and Western Railroad Company
Reporting Marks: WW
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

*Additions.

Effective July 15, 1980, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., July 11, 1980.

Interstate Commerce Commission.
Joel E. Burns,
Agent.
[FR Doc. 80-23791 Filed 8-6-80; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 24]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

Interstate Commerce Commission, MC 137032 (notice of filing an application for a postal certificate of public convenience and necessity), filed June 11, 1980, as amended July 9, 1980. Applicant: B & B INDUSTRIES, INC., 825 S. Fellows St., South Bend, IN 46618. Representative: Thomas Rollins, 3480 Lacon Rd., Hilliard, OH 43026. By application filed June 11, 1980, applicant seeks a Postal Certificate of Public Convenience and Necessity to transport *Mail* in the following territory: (1) Columbus, OH to Chicago, IL—Rt. 33 West to Ft. Wayne, IN, then Rt. 30 West to Merillville, IN, then Rt. 65 North to Gary, IN, then I-94 West to Chicago, IL, (2) Cincinnati, OH to Cleveland, OH—I-71 North to intermediate stop at Columbus, OH Post Office then continue on I-71 North to Cleveland, OH, (3) Chicago, IL to New York City, NY—I-94 East to I-65 South To Rt. 30 East to I-71 North to I-76 East to I-80 East to intermediate stop at Kearny, NJ off Rt. 280 then Rt. 1 & 9 West through Lincoln Tunnel to NY Main Post Office then Rt. 1 & 9 to I-80 West to I-76 West to I-71 South to Columbus, OH terminal, (4) South Bend, IN to Chicago, IL—Rt. 2 West to Rt. 20 West to I-94 West to I-65 North to intermediate stop at Gary, IN Post Office then back to I-94 West to Chicago, IL Post Office, (5) South Bend, IN to Warsaw, IN—Rt. 31 South to Rt. 30 East to Rt. 15 South into Warsaw, IN Post Office, (6) Chicago, IL to Toledo, OH—I-94 East to Rt. 20 East to Rt. 2 East to intermediate stop at South Bend, IN, then Rt. 20 East to Toledo, OH Post Office, and (7) South Bend, IN to Ft. Wayne, IN— Rt. 31 South to Rt. 30 East to Ft. Wayne, IN Post Office. Appended to the application are copies of the postal contracts held by applicant were in effect on July 1, 1971, the critical "grandfather" date. Any interested person desiring to oppose the application may file with the Commission an original and one copy of his written representations, views or arguments in opposition to the application on or before September 8, 1980. A copy of each such pleading should be served upon applicant's representative.

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

Notice

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications will be rejected.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 124245 (Sub-10 M1F) and MC 124245 (Sub-14 M1F), filed April 21, 1980 (notice of filing of petition to delete restrictions). Petitioner: ACE REFRIGERATED TRUCKING SERVICE, INC., 219 East Tutt St., South Bend, IN 46618. Representative: Bernice A. Carney, 3231 Cottonwood, R.R. 4, Bremen, IN 46506. Petitioner holds *common carrier* authority in MC 124245 (Sub-10) and (Sub-14), served February 20, 1968 and May 5, 1972, respectively. MC 124245 (Sub-10) authorizes the transportation over irregular routes, of *meats, meat products, and meat by-products, dairy products,* and *articles distributed by meat packinghouses,* as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides, skins and pieces thereof), between South Bend, IN, on the one hand, and, on the other, points in Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Tipton, Union, Vermillion, Vigo, Warren, and Wayne Counties, IN, restricted against (1) tacking with any other authority now held by carrier, and (2) interchange at Muncie, IN. MC 124245 (Sub-14) authorizes over irregular routes, the transportation of *meats, meat products, and meat by-products, dairy products,* and *articles distributed by meat packinghouses* as described in sections A, B, and C of Appendix I to the report in *Description in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles, and hides), from South Bend, IN, to points in Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Ohio, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Switzerland, Vanderburgh, Warrick, and Washington Counties, IN, and points in Allen, Auglaize, Butler, Champaign, Clark, Clinton, Darke, Defiance, Fulton, Greene, Hamilton, Hancock, Hardin, Henry, Logan, Mercer, Miami, Montgomery, Paulding, Preble, Putnam, Shelby, Van Wert, Warren, and Williams Counties, OH, restricted against tacking or joinder with any authority presently held by carrier for the purpose of performing a*

through movement. By the instant petitioner, petitioner seeks to delete (1) both restrictions in MC 124245 (Sub-10) which involves tacking and interchange, and (2) the restriction in MC 124245 (Sub-14) which involves tacking or joinder.

MC 134145 (Sub-75 M1F), filed June 2, 1980 (notice of filing of petition to modify the commodity description). Petitioner: NORTH STAR TRANSPORT, INC., Route #1, Hwy 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack (same address as applicant). Petitioner holds *contract carrier* authority in MC 134145 (Sub-75), served April 21, 1980, which authorizes over irregular routes, the transportation of (1) *computing machine parts* and (2) *materials and supplies* used in the manufacture and operation of computing machines (except commodities in bulk), between points in the U.S. (except AK and HI), on the one hand, and, on the other, the facilities of Control Data Corporation, at or near (a) Merced, Los Angeles, LaJolla, San Francisco, and San Diego, CA, (b) Campton, KY, (c) Arlington, TX, (d) Rochester, MI, (e) Omaha and Lincoln, NE, (f) Rapid City, SC, (g) Washington, DC, (h) Baltimore, MD, (i) Manchester, CT, (j) Morristown, PA, (k) Minneapolis, MN, (l) Oklahoma City, OK, under continuing contract(s) with Control Data Corporation, of Minneapolis, MN. By the instant petition, petitioner seeks to modify the commodity description to include *"computers"* in (1) above.

MC 134574 (Sub-14 M1F), filed May 20, 1980 (notice of filing of petition to modify the territorial description). Petitioner: FIGOL DISTRIBUTORS LIMITED, P.O Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. Petitioner holds common carrier authority in MC 134574 (Sub-14), served October 31, 1974. MC 134574 (Sub-14) authorizes over irregular routes, in foreign commerce, the transportation of foodstuffs (except in bulk), from points in CA, OR, and WA, to ports of entry on the U.S.-Canada Boundary line located in WA, ID, and MT, restricted to the transportation of traffic destined to points in the Provinces of Alberta and Saskatchewan, Canada. By the instant petition, petitioner seeks to modify the above territorial description to read: "from points in CA, OR, and WA, to ports of entry on the U.S.-Canada Boundary line," and the restriction deleted.

MC 134574 (Sub-21 M1F), filed May 27, 1980 (notice of filing of petition to modify the territorial description). Petitioner: FIGOL DISTRIBUTORS LIMITED, P.O Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. Petitioner holds common carrier authority in MC 134574 (Sub-21), served November 14, 1978. MC 134574 (Sub-21) authorizes over irregular routes, in foreign commerce, the transportation of fertilizer and fertilizer ingredients, in bags, from the ports of entry on the international boundary line between the U.S. and Canada located at Sweetgrass, MT, Eastport, ID and Orville, and Sumas, WA, to points in CA and AZ, restricted to the transportation of traffic originating at points in the province of Alberta, Canada. By the instant petition, petitioner seeks to modify the territorial description to read: "from ports of entry on the international boundary line between the U.S. and Canada to points in CA and AZ," and the restriction deleted.

MC 138335 M1F and MC 138335 (Sub-1 M1F), filed May 28, 1980 (notice of filing of petition to modify permits). Petitioner: HARTLEY TRUCKING COMPANY, INC., P.O. Box 398, Rte. 2 South, Ravenswood, WV 26164. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Petitioner holds *contract carrier* authority in MC 138335 and MC 138335 (Sub-1), served February 3, 1978 and February 5, 1979, respectively. MC 138335 authorizes over irregular routes, the transportation of (1) *telephone cable*, on reels, from the facilities of Hartley Oil Company, Inc., at Ravenswood, WV, to points in WV, under contract with the Chesapeake & Potomac Telephone Company, of WV; (2) *electric cable* on reels and in coils, from Newington (Fairfax County), VA, to points in WV; (3) *electric cable*, on reels and in coils, from the facilities of Hartley Oil Company, Inc., at Ravenswood, WV, to points in WV, limited in (3) above to the transportation of traffic having a prior movement by rail and motor carrier; and (4) *empty reels, surplus cable, and junk cable*, on reels, or loose, from points in WV, to Newington (Fairfax County), VA, and points in Arlington County, VA; in (2), (3) and (4) above under continuing contracts with Western Electric Company, New York, NY, and Chesapeake and Potomac Telephone Company of West Virginia. MC 138335 (Sub-1) authorizes the transportation, over irregular routes, of (1) electric cable, on reels and in coils, from Baltimore, MD, to points in WV, and (2) empty reels, in the reverse direction, under continuing contract with Western Electric Company, Inc., of New York, NY. By the instant petition, petitioner seeks to modify both permits. The commodity description in both permits by the instant petition would read: "telephone equipment, materials and supplies used in the construction, installation, maintenance and repair of telephone systems, including junk cable, used equipment, materials and supplies, and empty reels." The territorial description and restriction as modified in MC 138335 would read: "between Ravenswood, WV and Newington (Fairfax County), VA and points in Arlington County, VA, on the one hand, and, on the other, points in WV, under continuing contract(s) with Western Electric Company, Inc. of New York, NY, and The Chesapeake and Telephone Company of West Virginia. The territorial description and restriction as modified, in MC 138335 (Sub-1) would read: "between Baltimore, MD, on the one hand, and, on the other, points in WV, under continuing contract(s) with Western Electric Company, Inc., of New York, NY, and The Chesapeake and Potomac Telephone Company of West Virginia."

Republications of Grants of Operating Rights Authority Prior to Certification Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission on or before September 8, 1980. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 142508 (Sub-59F) (republication), filed March 19, 1979, published in the Federal Register issue of August 28, 1979, and republished this issue. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. A Decision of the Commission, Division 1, decided June 19, 1980, and served July 8, 1980, finds that the present and future

public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier* by motor vehicle, over irregular routes, transporting *foodstuffs*, and *materials, equipment and supplies* used in the manufacture, distribution and sale of foodstuffs (except commodities in bulk, in tank vehicles) between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Ocean Spray Cranberries, Inc., that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 143971 (Sub-1F) (republication), filed November 10, 1977, previously noticed in the Federal Register issue of January 5, 1978. Applicant: JESSEE TRUCKING CO., INC., Route 1, P.O. Box 100, Dryden, VA 24243. Representative: Harry J. Jordan, 1000 16th Street NW, Washington, DC 20036. A Decision by the Commission, Division 1, acting as an Appellate Division, decided January 14, 1980, and served January 25, 1980, finds on reopening and further consideration that applicant is authorized to operate as a *contract carrier*, transporting *surface mining and construction equipment* (a) between Norton, VA, on the one hand, and, on the other, points in Pike, Harlan, Lecher, and Bell Counties, KY and Greenbrier, Summers, McDowell, Pocahontas, Mingo, Monroe, Mercer, Wyoming, and Logan Counties, WV, under a continuing contract(s) with Carter Machinery Company, Inc., of Norton, VA, (b) between Wise, VA, on the hand, and, on the other, points in Greenbrier, Summers, McDowell, Pocahontas, Mingo, Monroe, Mercer, Wyoming, and Logan Counties, WV, and Pike, Harlan, Leslie, Johnson, Knott, Letcher, Bell, Perry, Floyd, and Knox Counties, KY, under a continuing contract(s) with Shelton-Witt Equipment Corporation, of Wise, VA, and (c) between Kingsport, TN, on the one hand, and, on the other, Bristol, VA, and points in Scott Wise, Buchanan, Tazewell, Smyth, Pulaski, Washington, Lee, Dickenson, Russell, Wythe, and Roanoke Counties, VA, under a continuing contract(s) with Power Equipment Company, of Kingsport, TN. The purpose of this republication is to broaden the territorial scope from a one-way radial movement to a two-way radial movement.

MC 145541 (Sub-1F), (Republication), filed February 5, 1979, previously noticed in the Federal Register issue of May 9, 1979. Applicant: SUNWAY CORPORATION, 118 W. Main St., Thomasville, NC 27360. Representative: Stephen L. Ervin, Fairview Ch. Rd., P.O. Box 22, Trinity, NC 27370. A Decision by the Commission, Review Board Number 1, decided February 12, 1980, and served February 21, 1980, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a *common carrier*, by motor vehicle over irregular routes transporting (1) *new furniture and new furniture parts* from the facilities of Thomasville Furniture Industries, Inc., at Thomasville, Pleasant Garden, Winston-Salem, Hickory and Lenoir, NC, and Appomattox, VA, to points in Arizona, California, and Texas, and (2) *furniture parts and materials used in the manufacture of furniture*, in the reverse direction, restricted to the transportation of traffic originating at or destined to the facilities of Thomasville Furniture Industries, Inc. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to indicate the authority actually granted.

MC 145980 (Sub-2F), (Republication), filed March 16, 1979, previously noticed in the Federal Register issue of July 18, 1979. Applicant: H. C. COOK & BOBBY JOE COOK, d.b.a. COOK TRUCKING, 2200 Willow Creek Road, Casper, WY 82601. Representative: Bobby Joe Cook (same address as applicant). An Initial Decision by the Commission, Administrative Law Judge, decided April 10, 1980, and served April 16, 1980, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a *common carrier*, by motor vehicle over irregular routes transporting (1) *well drilling muds and compounds*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution and utilization of the commodities in (1) above, between points in Colorado, Idaho, Montana, Nevada, Utah and Wyoming. Applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republican is to add Utah as a destination state.

MC 146231F (Republication), filed January 26, 1979, previously noticed in the Federal Register issue of May 7, 1979. Applicant: SEATON SMITHSON FLEGEL AND JERRY DEAN FLEGEL d.b.a. S. S. FLEGEL TRUCKING, Route 1, Box 867, Prineville, OR 97754. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Avenue, Portland, OR 97210. A Decision by the Commission, Administrative Law Judge, decided March 3, 1980, and served March 11, 1980, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wood products* (except wood residuals in bulk), and lumber, between points in Jefferson, Deschutes, Crook, Grant, Union, and Baker counties, OR, on the one hand, and, on the other, points in Shasta, Tehama, and Lassen Counties, CA, Yakima, Okanogan, Klickitat, and Walla Walla Counties, WA, and Canyon, Payette, Ada, and Gem Counties, ID. Applicant is fit, willing and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. The purpose of this republication is to include Gem County, ID, in the territorial description.

Permanent Ex-Water Authority; Decision-Notices

Decided: June 30, 1980.

The following applications are governed by 49 CFR 1062.3. Applicants seek to obtain motor common carrier authority to perform service within the commerical zone of port cities where the shipment has a prior or subsequent movement by maritime carrier. The full text and explanation of the rules are contained at 44 FR 7965, as corrected at 44 FR 37230.

The sole issue upon which these applications can be protested is the applicant's fitness to perform the service. Protests (an original and one copy) must be filed with the Commission on or before September 8, 1980. The protest must contain the *specific facts* being relied upon to challenge fitness, and must contain a certification that it has been served concurrently upon applicant's representative, or, if none is listed, upon the applicant. Applicant may file a reply statement to any protest. The filing of these statements will complete the record, unless it is later determined that more evidence must be supplied.

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.gs., 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.

Each applicant is fit, willing, and able to properly perform the service proposed and to conform to the requirements of Tile 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the 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 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 the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only 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 1, Members Carlton, Joyce, and Jones.

MC 126420 (Sub-15F), filed June 16, 1980. Applicant: FOSS L & T CO., 660 W. Ewing St., Seattle, WA 98119. Representative: Donald W. Hearn (same address as applicant). To operate as a *common carrier*, by motor vehicle, interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives), between points in the commerical zone of Unalaska, AK, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

MC 127090 (Sub-7F), filed June 2, 1980. Applicant: PACIFIC STORAGE, INC., 440 East 19th St., Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. To operate as *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives), between points in the commerical zones of (a) Seattle, WA, and (b) Tacoma, WA, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

MC 150431F, filed March 26, 1980. Applicant: WILLIAM J. ANDREWS, d.b.a. ABG CARTAGE CO., P.O. Box 3051, Jacksonville, FL 32206. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives), between points in the commerical zones of Jacksonville, FL, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Jacksonville, FL.)

Permanent Authority Deicisions; Decision-Notice

Decided: July 22, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission 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 shall 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 specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it 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 this 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. 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, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) 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 the absence of legally sufficient protests, filed on or before September 8, 1980 (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 1, Members Carleton, Joyce, and Jones.

MC 130151 (Sub-1F), filed June 26, 1980. Applicant: FRONTIER ENTERPRISES, INC., d.b.a. FRONTIER TRAVEL & TOURS, 1923 North Carson St., Carson City, NV 89701. Representative: Mike Soumbeniotis, 402 North Division St., P.O. Box 646, Carson City, NV 89701. To engage in operations, in interstate or foreign commerce, as a broker, at Carson City, NV, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in the U.S. (including AK and HI).

MC 130890F, filed May 6, 1980. Applicant's name and address are ANTHONY S. COTTA, 176 King Street, Hanover, MA 02339. The name under which operations will be performed is ASCOTT ASSOCIATES CO. Applicant is represented by A. C. Gardner in this proceeding whose address is 176 King Street, Hanover, PA. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Anthony S. Cotta, President, Director, and shareholder, Anthony F. Cotta, Vice President, Director, and shareholder, Alton C. Gardner, Vice President, Director, and shareholder, M. B. Kemp, Vice President, Director, Treasurer, and shareholder (same address as applicant), Thomas H. Murphy, Director and clerk, 84 State Street, Boston, MA 02100. The daily operations will be managed by Michael P. DeFelice whose business address is 378 Commercial Street, Malden, MA 02148. Applicant is affiliated with the following shipper or warehouse: None.

MC 130950F, filed June 17, 1980. Applicant: AMERICAN TRAVEL CORPORATION, 404 Hillsborough St., P.O. Box 25399, Raleigh, NC 27612. Representative: George F. Newsom (same address as applicant). To engage in operations, in interstate or foreign commerce, as a broker, at Raleigh, NC, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in Wake County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 130960F, filed November 7, 1979. Applicant's name and address are STEVENS VAN LINES, INC., 121 S. Niagara St., Saginaw, MI 48603. The name under which operations will be performed is STEVENS TRANSPORTATION SYSTEMS. Applicant is represented by Robert J. Gallagher, in this proceeding whose address is 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first four principal shareholders, with their appropriate titles: Archie H. Stevens, Sr., Chairman of the Board Morrison M. Stevens, President, Member of the Board, Archie H. Stevens, Jr., Vice President, Member of the Board, and James R. Stevens, Secretary, Member of the Board (same address as applicant). The daily operations will be managed by Morrison M. Stevens, whose business address is 121 S. Niagara St., Saginaw, MI 48602. Applicant is affiliated with the following shipper or warehouse: None.

MC 130961F, filed November 7, 1979. Applicant's name and address are STEVENS FORWARDERS, INC., 121 S. Niagara Street, Saginaw, MI 48602. The name under which operations will be performed is STEVENS FORWARDERS, INC. Applicant is represented by Robert J. Gallagher, in this proceeding whose business address is 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners) and first three principal shareholders, with their appropriate titles: Morrison M. Stevens, President, Member of the Board Archie H. Stevens, Jr., Vice President, Member of the Board, and James R. Stevens, Secretary, Member of the Board (same address as applicant). The daily operations will be managed by Morrison M. Stevens whose business address is 121 S. Niagara Street, Saginaw, MI 48602. Applicant is affiliated with the following shipper or warehouse: Stevens Van Lines, Inc.

MC 130967F, filed June 18, 1980. Applicant: AMERICANA TRAVEL BUREAU INC., 833 North Main St., Fall River, MA 02720. Representative: Gerald H. Silva (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Falls River, MA, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in Bristol County, MA, on the one hand, and, on the other, points in the U.S., including AK and HI.

W 406 (Sub-15F), filed May 19, 1980. Applicant: OHIO BARGE LINE, INC., 600 Grant St., Pittsburgh, PA 15219. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *contract carrier*, by water, by non-self propelled vehicles, which the use of towing vessels, in interstate or foreign commerce, transporting *refractories*, from Newell, WV, to ports and points along the Illinois Waterway, the Mississippi and Ohio Rivers, and the Gulf Intra-coastal Waterway. (Hearing site: Washington, D.C. or Pittsburgh, PA.)

W 547 (Sub-4F), filed April 18, 1980. Applicant: THE GREAT LAKES TOWING COMPANY, 1800 Terminal Tower, Cleveland, OH 44113. Representative: Gregory G. Binford, 650 Terminal Tower, Cleveland, OH 44113. To operate as a *common carrier*, by water, by non-self-propelled vessels with the use of separate towing vessels, in interstate or foreign commerce, transporting *general commodities*, between all ports and points on the Great Lakes and all connecting tributary waterways, except the Illinois Waterway. (Hearing site: Cleveland, OH or Washington, D.C.

W 1326 (Sub-F), filed May 7, 1980. Applicant: HUNTER MARINE TRANSPORT, INC., 6820 Charolotte Ave., Nashville, TN 37209. Representative: Peter A. Greeno, 900—17th St., NW., Washington, D.C. 20006. To operate as a *common carrier*, by water, by non-self propelled vessels with the use of separate towing vessels, in interstate or foriegn commerce, transporting (1) *general commodities* and (2) the performance of general towage by towing vessels, between ports and points on the Cumberland, Tennessee, Ohio and Illinois Rivers, and the Mississippi River between its confluence with the Illinois River at Grafton, IL, and its confluence with the

Ohio River at Cairo, IL. (Hearing site: Nashville, TN or Washington, D.C.)

FF 128 (Sub-4F), filed June 26, 1980. Applicant: CLIPPER EXXPRESS COMPANY, A Corporation, 3401 W. Pershing Rd., Chicago, IL 60602. Representative: Charles A. Webb, 1828 L St., NW., Suite 1111, Washington, DC 20036. To operate as a *freight forwarder*, in interstate commerce, in the transportation of *general commodities*, (1) from points in ME and NH to points in AZ, CA, CO, ID, LA, MT, NV, NM, OR, TX, UT, WA, and WY, (2) from points in CA, OR, and WA, to points in ME, NH, NC, and TN, (3) from points in DE, KY, ME, MD, NH, NC, RI, TN, VT, VA, WV, MO, and DC, to points in HI, (4) from points in ME, MD, NH, NC, TN, VT, VA, WV, WI, MO, and DC, to points in AK, and (5) from points in AZ, ID, NV, and UT, to points in CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, MO, MN, NE, NH, NJ, NY, NC, OH, PA, RI, TN, VT, VA, WV, WI, and DC, restricted to the use of facilities of common carriers by motor vehicle and rail.

Motor Carrier Alternate Route Deviations Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before September 8, 1980.

Each applicant states that here will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 29910 (Deviation No. 47), ARKANSAS-BEST FREIGHT SYSTEM, INC., P.O. Box 48, Ft. Smith, AR 72902, filed July 14, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Luddock, TX over US Hwy 84 to Santa Rosa, NM, then over US Hwy 66 to Clines Corners, NM, and (2) From Luddock, TX over US Hwy 84 to Ft. Summer, NM, then over US Hwy 60 to Encino, NM, then over US Hwy 285 to Clines Corners, NM and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Lubbock, TX, over US Hwy 87 to Amarillo, TX, then over US Hwy 66 to Clines Corners, MN and return over the same routes.

MC 41432 (Deviation No. 34), EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway, P.O. Box 10125, Dallas, TX 75207, filed July 22, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicles, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Pyote, TX over TX Hwy 115 to Andrews, TX, then over US Hwy 62 to Brownfield, TX, and (2) From Pyote, TX over TX Hwy 115 to Andrews, TX, then over US Hwy 62 to Lubbock, TX and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: (1) From Pyote, TX over US Hwy 80 to Big Spring, TX, then over US Hwy 87 to Lamesa, TX, then over TX Hwy 137 to Brownfield, TX, and (2) From Pyote, TX over US Hwy 80 to Big Spring, TX, then over US Hwy 87 to Lubbock, TX, and return over the same routes.

Motor Carrier Alternate Route Deviations Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before September 8, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 61615 (Deviation No. 41), MIDWEST BUSLINES, INC., Suite 415, 1500 Jackson St., Dallas, TX 75201, filed July 18, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers over a deviation route as follows: From St. Louis, MO over Interstate Hwy 70 to junction US Hwy 54 near Kingdom City, MO, then over US Hwy 54 to Jefferson City, MO and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From St. Louis, MO over US Hwy 50 to Jefferson City, MO and return over the same routes.

Motor Carrier Intrastate Application(s) Notice

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

New York Docket No. T-958, filed April 15, 1980. Applicant: SPEED MOTOR EXPRESS, 11 Botsford Place, Buffalo, NY 14216. Representative: Willian J. Hirsch, 43 Court Street, Buffalo, NY 14202. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities, between all points in Erie and Niagara Counties. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, time, and place not yet fixed. Requests for procedural information should be addressed to Department of Transportation, 1220 Washington Ave., State Campus Bldg. #4, Room G-21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

Permanent Authority Notices

Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2). These proposals are published as "service sought", (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2 (For example questions may be raised relating to applicant's

contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decision on the merits, regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form or verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission on or before September 8, 1980.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the varacity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An orginal 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.

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.*

MC 142335 (Sub-13F), filed April 25, 1980. Applicant: C & E TRUCKING CO., INC., 11910 Greenstone Ave., Santa Fe Springs, CA 90670. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *machinery* and (2) *materials, equipment, and supplies* incidental to, or used in mining, milling, building construction, and highway building and maintenance, between points in CA, on the one hand, and, on the other, points in AZ. *The sole purpose of this application is to substitute single-line for joint-line operations.* (Hearing site: Los Angeles or San Francisco, CA.)

Note.—The single-line service proposed in this application in lieu of joint-line service connects with applicant's existing authority to transport the same commodities between CA, on the one hand, and, on the other, points in NV.

Permanent Authority Decisions Decision-Notice

Substitution Applications: Single-Line Service for Existing Joint-Line Service

July 22, 1980.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occured within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

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.

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.s., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. 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 September 8, 1980 (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 be construed as conferring only 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 4, Members Fitzpatrick, Fisher, and Dowell.

MC 1977 (Sub-39F), filed August 28, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe St., Denver, CO 50216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. To operate as common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring the use of special equipment); Regular routes: (1) Between Pasco, WA and Olympia, WA, serving the intermediate points of Seattle and Tacoma, WA, and points between Pasco and Ellensburg, WA (including the designated termini), and, as off route points, Moxee City, WA and the WA counties of: Clark, Clallam, Cowlitz, Grays Harbor, Jefferson, King, Kitsap, Lewis, Mason, Pierce, Snohomish (on and west of Washington Hwy 9) and Thurston. (a) From Pasco over WA Hwy 14 to Kennewick, then from Kennewick over U.S. Hwy 12 to junction WA Hwy 22 then over WA Hwy 22 to junction U.S. Hwy 97, then over U.S. Hwy 97 to junction I-82, then over I-82 to junction I-90, then over I-90 via Ellensburg to Seattle, then via I-5 to Olympia and return over the same route. (b) From Pasco over WA Hwy 14 to Kennewick, then from Kennewick over U.S. Hwy 12 to junction I-82, then over I-82 to junction I-90, then over I-90 via Ellensburg to Seattle, then via I-5 to Olympia and return over the same route. (2) Between Pasco, WA and Portland, OR, serving the intermediate points of Kennewick, WA and Hood River, OR and, as off route points, Dallas, Mommouth, Independence, Stayton, West Stayton, Keizer and Salem, OR and those located in the Oregon counties of: Clackamas, Clatsop, Columbia, Multnomah, Tillamook, Washington, and Yumhill. From Pasco over WA Highway 14 to Kennewick, then via Highway 14 and unnumbered Oregon Highway to Umatilla, OR, then via U.S. Highway 730 to junction I-80 N, then via I-80 N to Portland, and return over the same route. Restricted in (1) and (2) above against any traffic having both an origin and a destination in the states of Washington or Oregon, or either, and further restricted against any local traffic between Boise, ID and Portland, OR. *Alternate routes:* (for joinder and operating convenience only) (1) Between Boise, ID and Portland, OR. From Boise over I-80 N to junction U.S. Highway 26, then via U.S. Highway 26 to Portland and return over the same route. (2) Between Spokane, WA and Seattle, WA. From Spokane over I-90 to Seattle and return over the same route. (3) Between Boise, ID and Kennewick, WA. From Boise over I-80 N to junction U.S. Highway 395, then via U.S. Highway 395 to junction U.S. Highway 730, then over U.S. Highway 730 to Umatilla, OR, then over unnumbered highway to junction WA Highway 14, then via WA Highway 14 to Kennewick and return over the same route. (4) Between Boise, ID and Portland, OR. From Boise over I-80 N to Portland and return over the same route. (5) Between Portland, OR, and Olympia, WA. From Portland over I-5 to Olympia and return over the same route. Restricted in (1) through (5) inclusive above against traffic having both an origin and a destination in the states of Washington, or Oregon or either of them; and further restricted against any local traffic between Boise, ID and Portland, OR. (Hearing site: Portland, OR, or Seattle, WA.)

Note.—The purpose of this application is to substitute single line for joint line operations. Applicant proposes to tack this authority with its existing regular-route authority.

MC 2473 (Sub-21F), filed March 11, 1980. Applicant: BILLINGS TRANSFER CORP., INC., Green Needles Rd., Lexington, NC 27292. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave. NW., Washington, DC 20036. To operate as *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from New York, NY and points within 20 miles of New York, NY; points in that part of PA, on, south, and east of a line beginning at Easton and extending along U.S. Hwy 22 to Harrisburg and then along the Susquehanna River to the PA-MD state line; points in NJ and Baltimore, MD, to points in NC and SC (except those in Forsyth, Guilford, Davidson, and Stokes Counties, NC, and points in NC and SC within 100 miles of the named NC counties).

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

MC 2473 (Sub-24F), filed May 8, 1980. Applicant: BILLINGS TRANSFER CORP., INC., Green Needles Rd., Lexington, NC 27292. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave. NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *textiles and textile products*, (1) from Richmond, Hopewell and Norfolk, VA, and points in SC and VA within 100 miles of Forsyth, Guilford, Davidson and Stokes Counties, NC, to Washington, DC, Baltimore, MD, Wilmington, DE, and points in NJ, points in NY within 20 miles of New York, NY, including New York, NY and to Union County, PA, and points in PA on and within the boundaries of a line along the west bank of the Susquehanna River beginning at the PA-MD state line and extending north to U.S. Hwy 6, then east along U.S. Hwy 6 to the PA-NJ state line, then south along the PA-NJ state line to the PA-MD state line, then west along this line to the point of beginning, and (2) between Richmond, Hopewell and Norfolk, VA and points in NC, SC, and VA, within 100 miles of Forsyth, Guilford, Davidson and Stokes Counties NC.

Note.—The sole purpose of this application is to substitute single-line service for joint-line operations on traffic involved.

MC 4963 (Sub-122F), filed June 18, 1980. Applicant: JONES MOTOR CO., INC., Bridge St. and Schuylkill Rd., Spring City, PA 19475. Representative: Roland Rice, Suite 501, Perpetual Bldg., 111 E St. NW., Washington, DC 20004. To operate in interstate or foreign commerce, as a *common carrier* over irregular routes transporting, *general commodities*, (except those of unusual value, livestock, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between points in AL on and north of U.S. Hwy 278, points, in GA on, north and east of a line beginning at the GA-SC state line extending along Interstate 16 to Junction Interstate 75, then along Interstate 75 to the GA-TN stateline, points in SC, on the one hand, and, on the other, NC.

Note.—Applicant presently holds authority for all NC points and intends to tack at those points. Applicant seeks substitution of single

line service for its existing joint line operations.

MC 29910 (Sub-261F), filed May 2, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th St., Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Ave., Fort Smith, AR 72902. Authority sought 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, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), (1) between Danville and Little Rock, AR, over AR Hwy 10, serving all intermediate points, (2) between Fort Smith and Booneville, AR, from Fort Smith, over U.S. Hwy 71 to Greenwood, AR, then over AR Hwy 10 to Booneville, and return over the same route, serving no intermediate points, and (3) between Booneville and Danville, AR, over AR Hwy 10, serving all intermediate points. (Hearing site: Little Rock, AR, or Washington, DC.)

Note.—Applicant intends to tack this authority with its existing authority. The sole purpose of this application is to substitute single-line for joint-line operations.

MC 36517 (Sub-9F), filed May 12, 1980. Applicant: JAMES J. KEATING, INC., P.O. Box 830, Perth Amboy, NJ 08862. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, from Bayonne, Cateret, Elizabeth, and Jersey City, NJ, and Springfield, MA, to points in CT, MA, NY, and RI. (Hearing site: Newark, NJ.)

Note.—The sole purpose of this application is to substitute single line for joint line operations.

MC 42487 (Sub-985F), filed March 21, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *classes A, B, and C explosives*, from Rockdale, IL, to Norfolk, VA, and Sunny Point Military Ocean Terminal, NC. *Condition:* To the extent the certificate to be issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue. (Hearing site: Chicago, Il.)

Note.—The sole purpose of this application is to substitute single line for joint line operations. Applicant intends to tack the authority herein with its existing authority.

MC 55777 (Sub-12F), filed April 24, 1980. Applicant: MILLS TRANSFER CO., a corporation, 234 Pike St., Marietta, OH 45750. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: (1) *structural steel and iron and steel articles*, between points in OH, PA, VA, and WV, on the one hand, and, on the other, points in IL, IN, MI, AR, TN, IA, KS, MO, NM OK, TX, and UT; and (2) *parts for coal mining machinery, coal handling machinery, and coal preparation machinery*, (a) between points in IL, IN and MI, on the one hand, and, on the other, points in AL, KY, OH, PA, TN and WV; and (b) between points in OH, PA and WV, on the one hand, and, on the other, points in TN.

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 71652 (Sub-45F), filed March 25, 1980. Applicant: BYRNE TRUCKING, INC., 4669 Crater Lake Hwy, P.O. Box 280, Medford, OR 97501. Representative: David J. Stewart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: *building materials* between the facilities of Empire Pacific Industries, customers, and suppliers, at points in CA, OR, ID, and WA, on the one hand, and, on the other, points in CA, ID, OR, and WA. The sole purpose of this application is to substitute single-line for joint line operations. (Hearing site: Portland or Medford, OR.)

MC 76266 (Sub-135F), filed April 2, 1980. Applicant: ADMIRAL MERCHANTS MOTOR FREIGHT, INC., 215 S. 11th St., Minneapolis, MN 55403. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce. Over 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 Cleveland, OH and New York City, NY: from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 280, then over Interstate Hwy 280 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 495, then over Interstate Hwy 495 to New York City, NY, and return over the same route. (Hearing site: St. Paul, MN, or Washington, DC.)

Note.—Applicant intends to tack the authority sought with its existing authority at Cleveland, OH. The sole purpose of this application is to substitute single line for joint line operations.

MC 99656 (Sub-4F), filed January 21, 1980. Applicant: IDDINGS TRUCKING, INC., State Route 60, Box 388, Lowell, OH 45744. Representative: Paul F. Beery, 275 E. State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ferro alloys*, in bulk in dump vehicles, from the plant site of Interlake Incorporated, Washington County, OH, to points in IN, IL, KY, MD, MI, MO, NY, PA, and WV. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidential cancellation, at applicant's written request, or its certificate of registration authority. (Hearing site: Columbus, OH.)

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 108962 (Sub-5F), filed May 8, 1980. Applicant: MIDWEST SPECIALIZED HAULERS, INC., P.O. Box 753, Dubuque, IA 52001. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate in interstate and foreign commerce as a *common carrier*, over irregular routes, transporting *heavy machinery and contractors' machinery, equipment, materials, and supplies*, and *commodities* the transportation of which, because of size or weight, requires the use of special equipment or special handling, from points in WI and MN to points in the U.S. (except AK, HI, OH, WV, VA, MD, PA, DE, NJ, NY, CT, and DC).

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

MC 119176 (Sub-32F), filed June 26, 1980. Applicant: THE SQUAW TRANSIT COMPANY, a corporation, 6211 South 49th West Avenue, P.O. Box 9368, Tulsa, OK 74107. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *machinery, equipment, materials and supplies*, used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (b) *machinery*,

equipment, materials and supplies, used in, or in connection with, the construction, operations, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof (except in connections with main pipelines and (2) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from commodities into or from holes or wells, between CA and AZ, on the one hand, and, on the other, TX, LA, KS, IL, IN, WV, AR, MI, OH, OK, PA, GA, MO, CO, NE, KY, NM, NV, TN, AL, FL, MS, and ports of entry on the international boundary line between the U.S. and Canada at points in MN and ND. (Hearing site: Columbus, OH.)

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 120116 (Sub-5F), filed March 17, 1980. Applicant: J. W. HUMBERT, INC., Kansas St., Green Springs, OH 44836. Representative: Keith D. Warner, 420 Security Blvd., Toledo, OH 43604. To operate as a common carrier, by motor vehicles, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in OH, on the one hand, and, on the other, points in PA on and west of U.S. Hwy 219, and points in WV on and north of U.S. Hwy 50. (Hearing site: Columbus or Cleveland, OH.)

Note.—The purpose of this application is to substitute single-line for joint-line operations. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of its certificate of registration authority.

Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before August 18, 1980. A copy must also be served upon applicant or its representative Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier,* by motor vehicles, over irregular routes.

MC 106407 (Sub-No. E6) (correction), filed June 4, 1974, published in the Federal Register March 3, 1976. Applicant: T. E. MERCER TRUCKING CO., INC., P.O. Box 1809, Fort Worth, TX 76101. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006. *Pipe, pipeline material, machinery,* and *equipment* incidental to and used in connection with the construction, repairing, or dismantling of gas, gasoline or oil pipelines, restricted to traffic moving to or from pipeline rights-of-way, between points in CA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WI, WV, and DC. (Gateway eliminated: points in MS) Purpose of replublication-show entire territory.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-23792 Filed 8-6-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions Volume No.; Decision-Notice

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 petiton 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, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) 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, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) 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 rule may be rejected. An original and one copy of the petiton to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, 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 to timely 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 August 7, 1980.*

Any authority granted may reflect administrative 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.gs., 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 regulation. 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 September 8, 1980 (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 be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before September 8, 1980. Or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce over irregular routes, except as otherwise noted.

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Decided: June 24, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 7555 (Sub-76F), filed May 21, 1980. Applicant: TEXTILE MOTOR FREIGHT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street, N.W., Washington, DC 20006. Transporting (1) *foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, (a) from the facilities of M&M/Mars, Snack-Master Division, at or near Albany, GA, to points in FL, NC, SC, TN, MD, NJ, MA, OH, MI, IL, CT, DE, NY, PA, RI, and IN; (b) from Jacksonville, FL, to points in GA, NC, SC, TN, MD, NJ, MA, OH, MI, IL, CT, DE, NY, PA, RI, and IN; and (c) from points in NJ to points in FL, GA, NC, SC, TN, MD, MA, OH, MI, IL, CT, DE, NY, PA, RI and IN; and (2) *roasted peanuts* from Sylvester, GA to Cleveland, TN. (Hearing site: Washington, DC.)

MC 7555 (Sub-77F), filed June 12, 1980. Applicant: TEXTILE MOTOR FREIGHT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street, N.W., Suite 300, Washington, DC 20006. Transporting *foodstuffs* (except commodities in bulk), and *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in NY, on the one hand, and, on the other, points in AL, FL, GA, NC, SC, and TN. (Hearing site: Washington DC.)

MC 8535 (Sub-120F), filed June 4, 1980. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street, Washington, DC 20036. Transporting *plastic pipe and pipe fittings,* from Vestal, NY, to points in IL, IN, and MI. (Hearing site: Binghamton, NY or Washington DC.)

MC 22065 (Sub-5F), filed June 9, 1980. Applicant: COMMERCIAL TRANSFER, INC., 3475 West Franklin Avenue, P.O. Box 12004, Fresno, CA 93776. Representative: John Paul Fischer, 256 Montgomery Street, Fifth Floor, San Francisco, CA 94104. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, households goods as defined by the Commission, commodities in bulk, and those requiring special equipment): (1) between San Francisco, CA and junction U.S. Hwy, 101 and Interstate Hwy.5 at or near Los Angeles, CA, over U.S. Hwy 101, (2) between San Francisco, CA and junction CA Hwy 1 and Interstate Hwy 5 at or near Capistrano Beach, over CA Hwy 1, (3) between Sacramento, CA and San Ysidro, CA over Interstate Hwy 5, (4) between Yuba City, CA and junction CA Hwy 99 and Interstate Hwy 5 at or near Wheeler Ridge, CA over CA Hwy 99, (5) between junction CA Hwy 33 and Interstate Hwy 205 at or near Banta, CA and junction CA Hwy 33 and U.S. Hwy 101 at or near Ventura, CA, over CA Hwy 33, (6) between junction CA Hwy 65 and CA Hwy 198 and junction CA Hwy 65 and CA Hwy 99, over CA Hwy 65, (7) between junction CA Hwy 63 and CA Hwy 180 and junction Hwy 63 and CA Hwy 198, over CA Hwy 63, (8) between junction CA Hwy 245 and CA Hwy 198 and junction CA Hwy 245 and CA Hwy 180, over CA Hwy 245, (9) between junction CA Hwy 198 and U.S. Hwy 101 and the boundary of Sequoia National Park over CA Hwy 198, (10) between junction CA Hwy 180 and CA Hwy 33 and the boundary of Kings' Canyon National Park, over CA Hwy 180, (11) between Clovis, CA and Pineridge, CA, over CA Hwy 168, (12) between junction CA Hwy 1 and CA Hwy 41 to the boundary of Yosemite National Park, over CA Hwy 41, (13) between junction CA Hwy 43 and CA Hwy 99 and junction CA Hwy 43 and Interstate Hwy 5, over CA Hwy 43, (14) between junction Interstate Hwy 5 and CA Hwy 140 over CA Hwy 140 to the boundary of Yosemite National Park, over CA Hwy 140, (15) between junction CA Hwy 145 and CA Hwy 33 and junction CA Hwy 145 and CA Hwy 41, over CA Hwy 145, (16) between Watsonville, CA and junction CA Hwy 152 and CA Hwy 99, over CA Hwy 152, (17) between junction CA Hwy 156 and CA Hwy 1 and junction CA Hwy 156 and CA Hwy 152, over CA Hwy 156, (18) between Paso Robles, CA and junction CA Hwy 46 and CA Hwy 99, over CA Hwy 46, (19) between junction CA Hwy 58 and U.S. Hwy 101 and junction CA Hwy 58 and CA Hwy 99, over CA Hwy 58, (20) between Bakersfield, CA and Trona, CA, over CA Hwy 178, (21) between junction CA Hwy 166 and CA Hwy 1 and junction CA Hwy 166 and CA Hwy 99, over CA Hwy 166, (22) between Gorman, CA and junction CA Hwy 138 and CA Hwy 14, over CA Hwy 138, (23) between junction CA Hwy 14 and Interstate Hwy 5 and junction CA Hwy 14 and U.S. Hwy 395, over CA Hwy 14, (24) between junction CA Hwy 126

U.S. Hwy 101 and junction CA Hwy 126 and Interstate Hwy 5, over CA Hwy 126, (25) between junction U.S. Hwy 395 and CA Hwy 89 and junction U.S. Hwy 395 and Interstate Hwy 15, over U.S. Hwy 395, (26) between Interstate Hwy 15 and its intersection with the CA-NV border, and junction Interstate Hwy 15 and Interstate Hwy 8, at or near San Diego, CA over Interstate Hwy 15 and Interstate Hwy 15E, (27) between junction Interstate Hwy 8 and Interstate Hwy 5 at or near San Diego, CA, and Winterhaven, CA, over Interstate Hwy 8, (28) between Barstow, CA and Needles, CA, over Interstate Hwy 40, (29) between junction U.S. Hwy 95 and Interstate Hwy 40 and junction U.S. Hwy 95 and Interstate Hwy 10, over U.S. Hwy 95, (30) between junction Interstate Hwy 10 and Interstate Hwy 15 and Blythe, CA, over Interstate Hwy 10, (31) between junction CA Hwy 86 and Interstate Hwy 10 and junction CA Hwy 86 and Interstate Hwy 8, over CA Hwy 86, (32) between Brawley, CA and junction CA Hwy 78 and Interstate Hwy 10 at or near Blythe, CA, over CA Hwy 78, (33) between junction CA Hwy 78 and Interstate Hwy 5 and junction Hwy 78 and CA Hwy 86, over CA Hwy 78, (34) between Cloverdale, CA and San Francisco, CA, over U.S. Hwy 101, (35) between junction U.S. Hwy 101 and CA Hwy 128 at or near Geyserville, CA and junction CA Hwy 29 and Interstate Hwy 80, from junction U.S. Hwy 101 and CA Hwy 128 at or near Geyserville, CA over CA Hwy 128 to Calistoga, CA, then over CA Hwy 29 to junction CA Hwy 29 and Interstate Hwy 80, and return over the same route, (36) between San Jose, CA and Santa Cruz, over CA Hwy 17, (37) between Saratoga, CA and Santa Cruz, CA over CA Hwy 9, (38) between San Francisco, CA and Saratoga, CA, from San Francisco, CA over CA Hwy 1 to junction CA Hwy 92, then over CA Hwy 92 to junction CA Hwy 35, then over CA Hwy 35 to junction CA Hwy 9, then over CA Hwy 9 to Saratoga, CA, and return over the same route, (39) between San Francisco, CA and Oakland, CA over Interstate Hwy 80, (40) between Oakland, CA and Sacramento, CA, over Interstate Hwy 80, (41) between Oakland, CA and junction Interstate Hwy 205 and Interstate Hwy 5 from Oakland, CA over Interstate Hwy 580 to junction Interstate Hwy 205, then over Interstate Hwy 205 to junction Interstate Hwy 205 and Interstate Hwy 5, and return over the same route, (42) between Sacramento, CA and junction U.S. Hwy 50 and CA Hwy 89, over U.S. Hwy 50, (43) between Placerville, CA and junction CA Hwy 49 and Interstate Hwy 80, over CA Hwy 49, (44) between junction CA Hwy 89 and U.S. Hwy 50 and junction CA Hwy 89 and U.S. Hwy 395, over CA Hwy 89, (45) between Yuba City, CA and Marysville, CA, over CA Hwy 20, (46) between Marysville, CA and junction CA Hwy 65 and Interstate Hwy 80 at or near Roseville, CA, over CA Hwy 65, (47) between Sacramento, CA and junction Interstate Hwy 80 and CA Hwy 174 at or near Colfax, CA, over Interstate Hwy 80, (48) between junction Interstate Hwy 80 and CA Hwy 49, and Grass Valley, CA, over CA 49, (49) between Grass Valley, CA and junction CA Hwy 174 and Interstate Hwy 80 at or near Colfax, CA, over CA Hwy 174, (50) between Pinole, CA and Stockton, CA over CA Hwy 4, (51) between Oakland, CA and Walnut Creek, CA over CA Hwy 24, (52) between junction Interstate Hwy 680 and Interstate Hwy 80 and junction Interstate Hwy 680 and U.S. Hwy 101 over Interstate Hwy 680, (53) between junction CA Hwy 12 and Interstate Hwy 80 and junction CA Hwy 12 and CA Hwy 99, over CA Hwy 12, (54) between junction CA Hwy 88 and CA Hwy 99 and junction CA Hwy 88 and CA Hwy 49, over CA Hwy 88, (55) between junction CA Hwy 12 and CA Hwy 88 and junction CA Hwy 12 and CA Hwy 49, over CA Hwy 12, (56) between junction CA Hwy 26 and CA Hwy 99 and junction CA Hwy 26 and CA Hwy 12, over CA Hwy 26, (57) between Stockton, CA and junction CA Hwy 4 and CA Hwy 49, over CA Hwy 4, (58) between Bakersfield, CA and Barstow, CA over CA Hwy 58, serving all intermediate points, serving points in Imperial, San Diego, Orange, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, San Bernardino, Kings, Tulare, Inyo, Fresno, San Benito, Monterey, Merced, Madera, Mariposa, Mono, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, San Mateo, Alameda, San Francisco, Contra Costa, San Joaquin, Calaveras, Alpine, Amador, Sacramento, Solano, Marin, Napa, Sonoma, Yolo, Sutter, Yuba, Nevada, Placer, Eldorado, Sierra, Colusa, Lake and Mendocino Counties, CA, as off-route points. (Hearing site: Fresno or San Francisco, CA.)

Note.—Applicant intends to tack the authorities in (1) through (55) above with one another and with its outstanding regular route authority.

MC 29555 (Sub-107F), filed June 4, 1980. Applicant: BRIGGS TRANSPORTATION CO., a corporation, N-400 Griggs-Midway Bldg., St. Paul, MN 55104. Representative: Winston W. Hurd (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Columbus, Oconomowoc, and Portage, WI as off-route points in connection with applicant's existing regular route operations. (Hearing site: Madison or Milwaukee, WI.)

MC 31675 (Sub-29F), filed June 12, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Garland V. Moore (same address as applicant). Transporting *beer* and *materials and supplies* used in the distribution of beer, between Williamsburg, VA, and Shelby, NC. (Hearing site: Charlotte, NC, or Washington, DC.)

MC 50935 (Sub-34F), filed June 4, 1980. Applicant: WOLVERINE TRUCKING COMPANY, 1020 Doris Road, Pontiac, MI 48057. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Transporting *malt beverages* from Milwaukee, WI, to points in Saginaw County, MI. (Hearing site: Detroit or Lansing, MI or Washington, DC.)

MC 50935 (Sub-35F), filed June 4, 1980. Applicant: WOLVERINE TRUCKING COMPANY, a corporation, 1020 Doris Road, Pontiac, MI 48057. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Transporting (1) *malt beverages*, and *malt beverage containers*, between Milwaukee, WI and Perry, GA, and (2)(a) *malt beverages*, from Perry, GA, to Neward, NJ, and (b) *malt beverage containers*, in the reverse direction. (Hearing site: Detroit or Lansing, MI.)

MC 50935 (Sub-36F), filed June 9, 1980. Applicant: WOLVERINE TRUCKING COMPANY, a corporation, 1020 Doris Road, Pontiac, MI 48057. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Transporting *wine* (except in bulk), from New York and Hammondsport, NY, to Detroit, MI. (Hearing site: Detroit or Lansing, MI.)

MC 56244 (Sub-107F), filed May 21, 1980. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. #2, Gardners, PA 17324. Representative: J. Bruce Walter, 410 North Third St., P.O. Box 1146, Harrisburg, PA 17108. Transporting (1) *such commodities* as are dealt in by grocery and food business houses (except commodities in bulk), between the facilities of Duffy-Mott Company, Inc., in Adams, Cumberland, Dauphin, Franklin and York Counties, PA, on the one hand, and, on the other, points in TN, restricted to traffic originating at the named origins and destined to the

indicated destinations; and (2) *materials, supplies and equipment* used in the manufacturing, packing and distribution of the commodities in (1) above (except commodities in bulk), from points in IL, IN, IA, KY, MO, MI, OH, PA, and those in WV on and north of U.S. Hwy 50, Baltimore, MD, and New York, NY, to the facilities of Duffy-Mott Company, Inc., in Adams, Cumberland, Dauphin, Franklin, and York Counties, PA, restricted to traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 60014 (Sub-188F), filed May 28, 1980. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *tank components and tank parts*, from the facilities of R.F.I. Services, Inc., at The Woodlands, TX, to points in the U.S. (except AK and HI). (Hearing site: Washington, DC.)

MC 73165 (Sub-516F), filed June 6, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd Street, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *commodities*, which because of size or weight require special handling or equipment, (2) *self-propelled articles*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above (except commodities in bulk) between the facilities of W. H. Manufacturing Co., at or near Pocatello, ID, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Salt Lake City, UT.)

MC 73165 (Sub-517F), filed June 9, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd Street, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *aluminum and aluminum products*, from points in Berkely County, SC, to points in the U.S. (except AK, HI, MI, IN, OH, OK, TX, AR, LA, MS, FL, AL, GA, NC, SC, and TN), and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk) from points in the U.S. (except AK and HI) to points in Berkely County, SC, restricted in (1) and (2) to traffic originating at or destined to the facilities of Alumax of South Carolina, Inc. (Hearing site: Atlanta, GA or Washington, DC.)

MC 93224 (Sub-26F), filed May 21, 1980. Applicant: S & N FREIGHT LINE INC., P.O. Box 12147, Norfolk, VA 23502. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St. NW., Washington, DC 20005. Transporting *malt beverages* from Williamsburg, VA, to points in PA and NY. (Hearing site: Washington, DC.)

MC 94265 (Sub-354F), filed June 9, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting *meats, meat products and meat by products, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles) from Denver, CO, Amarillo, TX and Omaha, NE to points in IL and IN. (Hearing site: Chicago, IL or Washington, DC.)

MC 105984 (Sub-26F), filed May 19, 1980. 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. Transporting (1) *wire products*, from Madill, OK, to points in AR, AL, IA, IL, IN, KY, KS, LA, MI, NM, MO, MS, NE, ND, OH, SD, TN, TX, and WI, and (2) *materials and equipment* used in the manufacture of wire products, in the reverse direction. (Hearing site: Dallas or Fort Worth, TX.)

MC 107295 (Sub-985F), filed June 11, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Dale L. Cox (same address as applicant). Transporting (1) *chimney assemblies, pipe, venting, and air conditioners*, from Wichita, KS, to points in the U.S. (except AK and HI), and (2) materials, equipment, and supplies used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Kansas City, MO or Dallas, TX.)

MC 107295 (Sub-986), filed June 9, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Dale L. Cox (same address as applicant). Transporting *lumber and wood products*, from points in AL, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 107555 (Sub-5F), filed June 6, 1980. Applicant: CLARENCE ALLEN, JR., d.b.a. BROWN'S TRANSFER, 405 Main St., Ronceverte, WV 24970. Representative: John M. Friedman, 2930 Putnam, Ave., Hurricane, WV 25526. Transporting *electronic equipment, and household goods* as defined by the Commission between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC. (Hearing site: Charleston, WV.)

MC 110325 (Sub-152F), filed June 5, 1980. 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. 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 junction U.S. Hwy 75 and Interstate Hwy 10, (at Houston, TX), and junction Interstate Hwy 59 and U.S. Hwy 78 (at Birmingham, AL), from junction U.S. Hwy 75 and Interstate Hwy 10 over Interstate Hwy 10 to junction Interstate Hwy 12, then over Interstate Hwy 12 to junction Interstate Hwy 59, then over Interstate Hwy 59 to junction U.S. Hwy 78, and return over the same route, (2) between junction Interstate Hwy 59 and U.S. Hwy 78 and junction of Interstate Hwy 24 and U.S. Hwy 27 (at Chattanooga, TN), from junction Interstate Hwy 59 and U.S. Hwy 78 over Interstate Hwy 59 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction U.S. Hwy 27, and return over the same route, (3) between junction Interstate Hwy 24, and U.S. Hwy 27 and junction Interstate Hwy 81 and U.S. Hwy 11-W (near Bristol, VA), from junction Interstate Hwy 24 and U.S. Hwy 27 over Interstate Hwy 24 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction Interstate Hwy 40, then over Interstate Hwy 75 to junction Interstate Hwy 40, then over Interstate Hwy 75 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction U.S. Hwy 11-W, and return over the same route, and (4) between junction Interstate Hwy 81 and U.S. Hwy 11-W and junction Interstate Hwy 81 and combined U.S. Hwys 22 and 322 (at Harrisburg, PA), over Interstate Hwy 81, serving no intermediate points and serving the termini for purposes of joinder only, as alternate routes, for operating convenience only, in connection with applicant's otherwise authorized regular route operations. (Hearing site: Los Angeles, CA.)

Note.—Applicant intends to tack this authority with its otherwise authorized regular-route authority.

MC 110325 (Sub-153F), filed June 9, 1980. Applicant: TRANSCON LINE, a Corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. 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), betwwen junction Interstate Hwy 55 and Interstate Hwy 70 at St. Louis, MO and junction Interstate Hwy 30 and Interstate Hwy 45 (at Dallas, TX), from junction Interstate Hwy 55 and Interstate Highway 70 over Interstate Hwy 55 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 45, and return over the same route, serving no interstate points, but serving the termini and junction Interstate Hwy 55 and Interstate Hwy 40 (at Memphis, TN) for purposes of joinder only, as an alternate route for operating convenience only in convenience only in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Los Angeles, CA.)

Note.—Applicant intends to tack this authority with its otherwise authorized regular route authority.

MC 112595 (Sub-91F), filed June 11, 1980. Applicant: FORD BROTHERS, INC., P.O. Box 727, Ironton, OH 45638. Representative: Jerry B. Sellman, 50 W. Broad ST., Columbus, OH 43215. Transporting *liquid chemicals*, in bulk, in tank vehicles, between the facilities of Union Carbide Corporation, at or near Charleston, WV, on the one hand, and on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, LA, MA, MI, MN, MO, MS, NH, NJ, NY, OH, PA, RI, TN, VT, and WI. (Hearing Site: Columbus, OH or Washington, DC.)

MC 113325 (Sub-136F), filed June 5, 1980. Applicant: SLAY TRANSPORTATION CO., INC., 2001 South Seventh Street, St. Louis, MO 63104. Representative: T. M. Tahan, (same address as applicant). Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Ralston Purina Company. (Hearing Site: St. Louis, Mo.)

MC 113855 (Sub-513F), filed June 4, 1980. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, MN 55901. Representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, ND 58126. Transporting *lumber and wood products*, from points in WA, ID, MT, OR, CA, and AZ, to those points in MO west of U.S. Hwy 65. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 113974 (Sub-72F), filed May 28, 1980. Applicant: PITSBURGH & NEW ENGLAND TRUCKING CO., A Corporation, 211 Washington Ave., Dravosburg, PA 15034. Representative: James D. Porterfield (same address as applicant). Transporting (1) *metal articles*, and (2) *equipment, materials and supplies* used in the manufacture or production of metal articles, between points in the U.S. (except AK and HI). (Hearing site: Philadelphia, PA or Washington, DC.)

MC 114334 (Sub-85F), filed May 19, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY, a Corporation, 3710 Tulane Rd., Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting *wire products*, and *materials* used in the manufacture of wire products, between Madill, OK, on the one hand, and, on the other, points in AR, MO, TN, MS, AL, KY, IL, IN, IA, and WI. (Hearing site: Memphis, TN.)

MC 118535 (Sub-152F), filed June 5, 1980. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Jim Tiona, Jr. (same address as applicant). Transporting (1) *agricultural chemicals, animal and poultry feed* and *feed supplements* and (2) *materials, equipment and supplies* used in manufacturing and marketing of the commodities in (1) above (except liquid commodities in bulk), between points in AL, AR, AZ, CO, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, ND, NE, NM, OH, OK, SD, TN, TX, WI, and WY, restricted to traffic originating at or destined to the facilities of American Cyanamid Company. (Hearing site: Kansas City, MO.)

MC 118745 (Sub-26F), filed May 21, 1980. Applicant: JOHN PFROMMER, INC., P.O. Box 307, Douglassville, PA 19518. Representataive: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Contract carrier*, transporting *overburden and crushed stone*, in dump vehicles, from the facilities of Glasgow, Inc., in Upper Marion Township and Plymouth Township, Montgomery County, PA, to points in DE, MD, NJ, and NY, under continuing contract(s) with Glasgow, Inc. of Glenside, PA. (Hearing site: Philadelphia, PA.)

Note.—Dual operations may be involved.

MC 118745 (Sub-28F), filed May 2, 1980. Applicant: JOHN PFROMER, INC., P.O. Box 307, Douglassville, PA 19518. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Contract carrier*, transporting *scrap metal*, in dump vehicles, from points in CT, DE, MD, NJ, and NY to points in PA, under continuing contract(s) with Mayer Pollock Steel Corporation of Pottstown, PA 19464. (Hearing site: Philadelphia, PA.)

Note.—Dual operations may be involved.

MC 118745 (Sub-29F), filed May 28, 1980. Applicant: JOHN PFROMER, INC., P.O. Box 307, Douglassville, PA 19518. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Contract carrier*, transporting (1) *slag, sand, and gravel*, from the facilities of the Warner Company, Falls Township, PA, to points in DE, MD, NJ, and NY, (2) *sand and gravel*, from the facilities of New Jersey Silica Sand Company, (subsidiary of Warner Company), at Millville, NJ, to points in CT, DE, MD, NC, NH, NY, OH, PA, RI, VA, WV, and DC, and (3) *lime, limestone, and limestone products*, from the facilities of the Warner Company, at or near Devault, PA, to those points in the U.S. in and east of MN, IA, MO, AR, and LA (except CT, ME, NC, SC, NY, and DC), under continuing contract(s) with the Warner Company, of Bala Cynwyd, PA. (Hearing site: Philadelphia, PA.)

Note.—Dual operations may be involved.

MC 119634 (Sub-52F), filed May 19, 1980. Applicant: DICK IRVIN, INC., 218 12th Ave., N. P.O. Box F, Shelby, MT 59474. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS. 66612. Transporting *dry urea*, from the facilities of Cominco American, Inc., at or near Borger, TX, to points in OK, CO, KS, NE, WY, and MT. (Hearing site: Kansas City, MO.)

MC 119955 (Sub-8F), filed June 4, 1980. Applicant: RUDOLPH LaBRANCHE, INC., P.O. Box 23, 394 North Main St., West Franklin, NH 03235. Representative: Raymond P. D'Amante, 246 Loudon Rd., P.O. Box 494, Concord, NH 03301. *Contract carrier*, transporting (1) *tools, jigs, machine parts, sating sand, castings, rods, ingots, forgings, and casting scrap*, and (2) *such commodities* as are dealt in or used by manufacturers of valves, between points in the U.S. (except AK and HI), under continuing contract(s) with Watts Regulator Company, of Lawrence, MA. (Hearing site: Concord, NH, or Boston, MA.)

MC 123405 (Sub-81F), filed June 13, 1980. Applicant: FOOD TRANSPORT, INC., R.D. No. 1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 N.

Front, St., Harrisburg, PA 17101. Transporting *confectionery* (in vehicles equipped with mechanical refrigeration), from the facilities of Katharine Beecher Candies at or near Manchester, PA, to points in the U.S. (except AK and HI). (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 126555 (Sub-79F), filed June 4, 1980. Applicant: UNIVERSAL TRANSPORT, INC., Box 3000, Rapid City, SD 57709. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. Transporting *lumber and lumber mill products,* from points in ID, MT, OR, and WA to points in CO. (Hearing site: Denver, CO.)

Note.—Dual operations may be involved.

MC 126555 (Sub-80F), filed June 4, 1980. Applicant: UNIVERSAL TRANSPORT, INC., Box 3000, Rapid City, SD 57709. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. Transporting (1) *concrete products* between points in MN, ND, MT, WY, IA, NE, CO, and SD and (2) *masonry suppliers* from points in CO to points in WY and MT. (Hearing site: Rapid City, SC, or Casper, WY.)

Note.—Dual operations may be involved.

MC 134755 (Sub-220F), filed June 10, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson (same address as applicant). Transporting *such commodities* as are used, manufactured or distributed by manufacturers and distributors of plastic articles, between Winchester, VA, on the one hand, and, on the other, points in MO, KS, NE, IA, IL, AR, OK, TX, CO, WI, MN, ND, and SD. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 135524 (Sub-43F), filed August 30, 1979, previously noticed in the T4Federal Register issue of March 5, 1980, and May 1, 1980. Applicant: G. F. TRUCKING CO., P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. Transporting *doors, doorskins, and lumber,* from Mobile, AL, Tupelo, MS, and Cameron, TX, to those points in the United States in and east of MT, WY, UT, and AZ. (Hearing site: Columbus, OH, or Phoenix, AZ.)

Note.—This republication indicates the correct destinations.

MC 136605 (Sub-154F), filed May 12, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). Transporting *aluminum and aluminum products,* from the facilities used by Aluminum Company of America in CA, to points in WA, OR, IA, KS, and TX. (Hearing site: Pittsburgh, PA.)

MC 140665 (Sub-109F), filed June 4, 1980. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting (1) *meat, meat products, and meat by-products,* and *articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Mason City, Britt, and Sioux City, IA, St. Paul, Mankato, Worthington, and Fairmont, MN, Omaha, Madison, and Fremont, NE, St. Joseph and Kansas City, MO, and Huron, SD, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, (2) *frozen foods,* and *materials and supplies* used in the production and marketing of frozen foods, from Monroe, Eau Clair, Portage, and Green Bay, WI, to the destinations in (1) above, and (3) *dairy products,* from points in WI, to the destinations in (1) above. (Hearing site: Washington, DC, or San Francisco, CA.)

MC 141804 (Sub-423F), filed May 12, 1980. Applicant: WESTERN EXPRESS, division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *general commodities* (except foodstuffs requiring refrigeration, meats, packinghouse products, and commodities used by packinghouses, as described in Appendix I to the report in Description 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 points in NC, SC, GA, and FL, and those points in the U.S. in and west of ND, SD, NE, KS, OK, and TX (except AK, HI, and CA), restricted to traffic having a prior or subsequent movement by water and restricted further to traffic originating at the facilities used by Arthur J. Fritz & Co. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-430F), filed May 22, 1980. Applicant: WESTERN EXPRESS, division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *drilling mud, drilling mud compounds,* and *drilling mud additives,* in containers, between Houston, TX, and Garden City, LA, on the one hand, and, on the other, points in CA, MI, FL, OR, RI, and WA. (Hearing site: Los Angeles, CA.)

MC 142935 (Sub-16F), filed May 19, 1980. Applicant: PLASTIC EXPRESS, a corporation, 2999 La Jolla St., Anaheim, CA 92633. Representative: Richard C. Celio, 2300 Camino del Sol, Fullerton, CA 92633. 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 those points in the U.S. in and west of MT, WY, CO, OK, and TX, restricted to traffic originating at or destined to the facilities used by the Ralston Purina Company. (Hearing site: Los Angeles, CA.)

MC 144715 (Sub-12F), filed June 9, 1980. Applicant: ANDERSON & WEBB TRUCKING CO., INC., P.O. Box 1523, 542 West Independence Blvd., Mt. Airy, NC 27030. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. Transporting *synthetic twine and cord,* and *materials and supplies* used in the manufacture and distribution of synthetic twine and cord (except commodities in bulk), between Mt. Airy, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Charlotte, NC.)

MC 145315 (Sub-3F), filed June 10, 1980. Applicant: CHARLES LINCOLN VICKERS, d.b.a. C. O. VICKERS TRANSFER, Route 2, Albemarle, NC 28001. Representative: Charles Lincoln Vickers (same address as applicant). Transporting *fertilizer* and *fertilizer materials,* in bulk, in dump vehicle, between points in NC, SC, GA, VA, TN, and KY. (Hearing site: Charlotte, NC.)

MC 146494 (Sub-2F), filed June 9, 1980. Applicant: BILL JACKSON RIG COMPANY, INC., 1813 S.E. 25th St., Oklahoma City, OK 73143. Representative: Paul Ross Jackson (same address as applicant). Transporting (1) *oilfield equipment and supplies,* (2) *iron and steel articles,* and (3) *commodities* which because of size or weight require the use of special equipment, between points in OK and TX. (Hearing site: Oklahoma City or Tulsa, OK.)

MC 147315 (Sub-4F), filed June 3, 1980. Applicant: TRIWAYS, INC., 2455 East 27th St., Los Angeles, CA 90058. Representative: William Davidson (same address as applicant). *Contract carrier,* transporting *such commodities* as are dealt in by retail department stores, from Los Angeles, CA, to Salt Lake City, UT, under continuing contract(s) with Sears, Roebuck & Co., of Los Angeles, CA. Condition: The

person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Los Angeles, CA.)

MC 149165 (Sub-2F), filed June 4, 1980. Applicant: DAYTON VALLEY BUS LINES, INC., 6224 Janice Pl., Dayton, OH 45414. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Auglaize, Butler, Clark, Clermont, Darke, Greene, Hamilton, Warren, Mercer, Miami, Montgomery, Preble, and Shelby Counties, OH, and extending to points in the U.S. (including AK, but excluding HI). (Hearing site: Dayton, OH.)

MC 150145 (Sub-1F), filed June 9, 1980. Applicant: RALPH L. NORTON, P.O. Box 27, Route 15, Jericho, VT 05465. Representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY 12801. Transporting *paper*, and *materials, equipment, and supplies* used in the manufacture of paper, between Gilman, VT, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, MD, MA, MI, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, and DC. (Hearing site: Montpelier, VT, or Plattsburgh, NY.)

Note.—Dual operations may be involved.

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Decided: June 30, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 475 (Sub-6F), filed June 23, 1980. Applicant: WYMORE TRANSFER CO., a corporation, P.O. Box 448, Oregon City, OR 97045. Representative: Earle V. White, 2400 S.W. Fourth Avenue; Portland, OR 97201. Transporting *potato starch*, in bags; and *potato preparations*, in bags or cartons, from those points in ID in and south of Fremont, Clark, Lemhi, Valley, and Adams Counties, to Longview, WA, and Portland, OR. (Hearing site: Portland, OR.)

MC 2484 (Sub-56F), filed June 23, 1980. Applicant: E & L TRANSPORT COMPANY, a corporation, 23420 Ford Road, Dearborn Heights, MI 48127. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Transporting *motor vehicles*, in secondary movements, in truckaway service, from (1) Elkhart, IN, to points in the U.S. (except AK and HI); and (2) from Cassopolis, MI, to points in the U.S. (except AK and HI), restricted to traffic having a prior movement from the facilities of the Ford Motor Company. (Hearing site: Detroit, MI.)

MC 60014 (Sub-191F), filed June 16, 1980. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *lumber* and *lumber products*, from points in CA, NV, OR, WA, ID, and MT, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

MC 69024 (Sub-4F), filed June 9, 1980. Applicant: H. B. RUSSELL TRUCK SERVICE, INC., 104 Orange St., Red Bud, IL 62278. Representative: Gale H. Stellhorn (same address as applicant). Transporting (1) *heat exchangers*, and *equalizers* for air, gas or liquids; (2) *equipment* for heating, cooling, conditioning, humidifying, dehumidifying, and moving of air, gas or liquids; and (3) *materials, equipment and supplies* used in the manufacture, distribution, installation, or operation of those items named in (1) and (2) above (except commodities in bulk and those requiring the use of special equipment), between the facilities of The Singer Company Climate Control Div., at or near Red Bud, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: St. Louis, MO, or Springfield, IL.)

MC 85934 (Sub-121F), filed June 23, 1980. Applicant: MICHIGAN TRANSPORTATION COMPANY, a corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *liquid commodities*, in bulk, in tank vehicles, from the facilities of the Neatsfoot Oil Refineries Corp., at or near Philadelphia, PA, to points in CT, CA, IL, IN, ME, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TX, VT, WV, and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 96165 (Sub-16F), filed June 13, 1980. Applicant: T. DEL FARNO TRUCKING CO., a corporation, 30 Lockbridge Street, Pawtucket, RI 02860. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting (1) *iron and steel articles*, between points in RI, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, MS, and LA; (2) *steel piling*, (a) between Old Bridge, NJ, on the one hand, and, on the other, points in CT, ME, MA, NH, NY, and VT; and (b) from Bridgeport, CT, to points in CT, ME, MA, NH, and VT; and (3) *pile driving equipment and parts and accessories* for pile driving equipment between Old Bridge, NJ, and Pawtucket, RI, on the one hand, and, on the other, points in CT, ME, MA, NH, NY, RI, and VT. (Hearing site: Providence, RI, or Boston, MA.)

MC 106674 (Sub-492F), filed June 11, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *iron* and *steel articles*, and *furniture parts*, and *materials* and *supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Leggett & Platt, Inc. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-493F), filed June 16, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *plywood, plywood wall paneling*, and *composition board*, from the facilities of Plywood Panels, Inc., at or near Norfolk, VA, to points in IN, IL, MI, OH, PA, CT, MD, NJ, WV, and DE. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 107295 (Sub-988F), filed June 17, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Dale L. Cox (same address as applicant). Transporting (1) *building and insulating materials, pipe, pipe fittings, and couplings*, and (2) *materials, equipment, and supplies* (except commodities in bulk) used in the manufacture or distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by CertainTeed Corporation. (Hearing site: Washington, DC.)

MC 107515 (Sub-1371F), filed June 13, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road NE., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in the U.S. (except AK and HI), restrict to the transportation of traffic originating at or destined to the facilities used by Minnesota Mining and Manufacturing Company or its subsidiaries. (Hearing site: St. Paul, MN.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1372F), filed June 20, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road NE., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *petroleum products, and paints,* (except commodities in bulk), in packages and containers, from facilities of Mobil Oil Corporation, at or near Beaumont, TX, to points in AL, AR, CA, GA, IL, KS, LA, MA, MI, MN, MO, NE, NJ, NY, NM, OH, PA, TX, OK, and WI. (Hearing site: Dallas, TX.)

Note.—Dual operations may be involved.

MC 113434 (Sub-156F), filed May 28, 1980. Applicant: GRA-BELL TRUCK LINE, INC., A5253 144th Avenue, Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), between points in IL, IN, IA, KY, MD, MI, MN, MO, NJ, NY, OH, PA, TN, VA, WV, WI, and DC, restricted to traffic originating at or destined to the facilities used by Ralston Purina Co. (Hearing site: Chicago, IL, or Detroit, MI.)

MC 114284 (Sub-95F), filed June 23, 1980. Applicant: FOX-SMYTHE TRANSPORTATION CO., a corporation, P.O. Box 82307, Oklahoma City, OK 73108. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Transporting *foodstuffs,* between the facilities used by Geo. A. Homel & Co., at (a) Oklahoma City, OK; (b) Austin, MN; (c) Fremont, NE; and (d) Ottumwa and Ft. Dodge, IA, restricted to traffic originating at and destined to the above-named points. (Hearing site: Oklahoma City, OK.)

MC 117384 (Sub-8F), filed June 16, 1980. Applicant: PAUL E. DAVIDSON, MAHLON E. DAVIDSON, AND HAROLD DAVIDSON, d.b.a. DAVIDSON BROTHERS, R.D. No. 3, Bellefonte, PA 16823. Representative: J. Bruce Walter, 410 North Third Street, Harrisburg, PA 17108. Transporting (1) *limestone products,* and (2) *matrials, equipment, and supplies* used in the production, storage and distribution of limestone products, between points in Centre County, PA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, MS, and LA, restricted to the transportation of traffic originating at the indicated origin of and destined to the indicated destinations. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 129645 (Sub-83F), filed June 23, 1980. Applicant: SMEESTER BROS., INC., 1330 South Jackson Street, Iron Mountain, MI 49801. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting (1) *iron and steel articles* and *iron ferrous metal alloys,* and (2) *mining, ore milling* or *smelting equipment, materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), between the facilities of Lake Shore, Inc., at Kingsford, Marquette and Negaunee, MI, on the one hand, and, on the other, points in AZ, CA, IA, IL, IN, MN, NC, NM, OH, OR, PA, WA, and WI. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 133194 (Sub-21F), filed June 13, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Rd., P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr. (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Little Rock, AR, and Freeport, TX, serving the intermediate points of Dallas and Houston, TX, and the off route point of Fort Worth, TX, from Little Rock, over Interstate Hwy 30 to Dallas, TX, then over Interstate Hwy 45 to Houston, then over U.S. Hwy 288 to Freeport and return over the same route, and (2) between Memphis, TN, and Little Rock, AR, serving no intermediate points in AR, over Interstate Hwy 40. (Hearing site: Little Rock, AR, or Memphis, TN.)

Note.—Applicant intends to tack the above rights with each other and its existing authority. Applicant also intends to interline with other carriers at Springdale, Harrison, Ft. Smith, Little Rock, AR, Memphis, TN, Freeport, Dallas, Fort Worth, and Houston, TX.

MC 134064 (Sub-44F), filed June 20, 1980. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Transporting (1) *such commodities as are dealt in by nursery and horticulture supply stores* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), between the facilities of Stim-U-Plant, Inc., at or near (a) Columbus, OH, (b) Atlanta, GA, (c) Dallas, TX, (d) Victory Gardens, NJ, (e) Lenexa, KS, and (f) Milwaukee, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Columbus, OH, or Atlanta, GA.)

MC 134855 (Sub-7F), filed June 17, 1980. Applicant: GEORGE A. LaBAGH, 713 North St., Middletown, NY 10940. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglasville, PA 19518. Transporting (1) *fruit juices* and *fruit drinks* (except frozen, or in bulk); and (2) *materials, equipment, and supplies* used in the packaging, and distribution of the commodities in (1) above, between Middletown, NY, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, VA, GA, NC, SC, FL, AL, MS, LA, NT, KY, WV, OH, IN, IL, MI, WI, MN, TX, KS, MO, and DC. (Hearing site: Middletown, NY.)

MC 135524 (Sub-139F), filed June 16, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44510. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *lumber, particleboard, composition board, poles, piling, pallets, timbers, crossties, and wallboard,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, NC, NE, NY, OH, OK, PA, SC, TN, TX, VA, WV, and WI. (Hearing site: Tampa, FL.)

MC 135524 (Sub-140F), filed June 6, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44510. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *fencing,* and (2) *supplies and materials* used in the installation of fencing, between Alpena, Gladstone, and Stephenson, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Tampa, FL.)

MC 135524 (Sub-141F), filed June 20, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *wheels, wheel parts, and accessories* for wheels, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of wheels, between points in Los Angeles and Orange Counties, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Tampa, FL.)

MC 135524 (Sub-142F), filed June 20, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *log homes, lumber and lumber products, metal* and *metal products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in NC, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Tampa, FL.)

MC 135524 (Sub-143F), filed June 20, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *drilling fluids and drilling mud,* and (2) *drilling fluid and drilling mud ingredients,* between points in AR, CO, FL, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NJ, NM, NV, NY, OH, OK, PA, SD, TN, TX, UT, WA, WI, WV, and WY. (Hearing site: Tampa, FL.)

MC 135524 (Sub-144F), filed June 20, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *brick and clay products,* and (2) *materials, supplies, and equipment* used in the manufacture and distribution of the commodities in (1) above, (a) between points in GA, NC, SC, and VA, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, MA, MD, MI, NJ, NY, OH, PA, RI, and WV, and (b) between Flemington, NJ, on the one hand, and, on the other, points in CT, IL, IN, KY, MA, MI, NY, OH, PA, and RI. (Hearing site: Tampa, FL.)

MC 135524 (Sub-145F), filed June 23, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *plastic, plastic products, rubber, and rubber products,* and (2) *materials, supplies and equipment* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Grand Prairie, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Tampa, FL.)

MC 135684 (Sub-103F), filed June 24, 1980. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Flemington, NJ 08822. Representative: Herbert Alan Dubin, 818 Connecticut Avenue NW., Washington, DC 20006. Transporting (1) *chemicals, plastics, paints, and oils,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI). (Hearing site: Washington, DC.)

MC 135895 (Sub-104F), filed June 16, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting (1) *chemicals, toilet preparations, shampoo, soap,* and *such commodities* as are dealt in by department, grocery and hardware stores (except foodstuffs, meat, and commodities in bulk), and (2) *materials and supplies* used in the manufacture of the commodities described in (1) above, (except commodities in bulk), between the facilities of American Cyanamid Company, at or near Jackson, MS, on the one hand, and, on the other, points in FL, OK, and TX. (Hearing site: Jackson, MS, or Houston, TX.)

MC 135895 (Sub-105F), filed June 16, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting (1) *non-electric reflective traffic control products,* and *glass abrasive products* (except commodities in bulk and those requiring special equipment), and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Cataphote Division, Ferro Corporation, at or near Flowood, MS, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM. (Hearing site: Jackson, MS.)

MC 136315 (Sub-133F), filed June 17, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O Box 22807, Jackson, MS 39205. Transporting (1) *paper, paper products,* and *wood pulp,* from the facilities of Weyerhaeuser Company, at or near Trinity, MS, to points in the U.S. (except AK and HI); and (2) *equipment, materials, and supplies* used in the manufacture, and distribution of the commodities named in (1) above (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Jackson, MS, or Washington, DC.)

Note.—Dual operations may be involved.

MC 138415 (Sub-22F), filed June 24, 1980. Applicant: TRAILER EXPRESS, INC., Box No. 327, Topeka, IN 46571. Representative: Michael M. Yoder, Box No. 157, Topeka, IN 46571. *Contract carrier,* transporting (1) *mobile homes,* from the facilities of Redman Homes, Inc., at Topeka, IN, to points in OH, WV, KY, WI, MI, IL, MO, and PA; and (2) *materials* used in the manufacture of mobile homes, from points in GA, NC, MN, and IA, to the facilities in (1) above, under continuing contract(s) in (1) and (2) with Redman Homes, Inc. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 140484 (Sub-80F), filed June 13, 1980. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant). Transporting *foodstuffs,* from points in IL, IA, KS, MI, MN, NE, TN, TX, and WI, to points in Collier and Lee Counties, FL. (Hearing site: Tampa, FL, or Washington, DC.)

MC 140484 (Sub-81F), filed June 23, 1980. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant). Transporting *meats, meat products,* and *meat by-products, dairy products,* and *articles distributed by meat packinghouses,* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company, at (a) points within the Chicago Commercial Zone, and (b) at or near Rochelle and East St. Louis, IL, to points in MI, NJ, NY, OH, and PA. (Hearing site: Chicago, IL, or Washington, DC.)

MC 140635 (Sub-29F), filed June 24, 1980. Applicant: ADAMS LINES, INC., 2619 "N" St., Omaha, NE 68107. Representative: John L. Hornung (same address as applicant). Transporting (1) *glass* and *glass products,* from the facilities of General Glass International Corp., at or near (a) Jeannette, PA, (b) South Kearny, NJ, and (c) Clarksburg, WV, to those points in the U.S. in and west of WI, IL, MO, AR, and LA, and those points in IN in the Chicago Commercial Zone; and from Kingsport, TN, to points IL, and WI, and those points in IN in the Chicago Commercial Zone; and (2) *meats, meat products, meat by-products,* and *articles distributed* by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the facilities of Spencer Foods, Inc., at or near Oakland, IA, to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, WV, and DC; and from Fort

Dodge, IA, to points in OH. (Hearing site: Omaha, NE.)

MC 141385 (Sub-7F), filed May 30, 1980. Applicant: PENNER FEED & SUPPLY, INC., Inman, KS 67546. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. *Contract carrier,* transporting *plastic and plastic products,* (1) from points in LA and NJ to McPherson, KS, and (2) from McPherson, KS, to points in the U.S. (except AK and HI), and *materials, supplies, and equipment* used in the manufacture and sale of plastic and plastic products (except commodities in bulk), in the reverse direction, under continuing contract(s) with Vanguard Plastics, Inc., of McPherson, KS. (Hearing site: Topeka, KS.)

MC 141804 (Sub-455F), filed June 23, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *computers* and *parts and accessories* used in the manufacture and maintenance of computers, between Richardson, TX, Charlotte, NC, and Sudbury, MA, and points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Apple Computer, Inc. (Hearing site: Los Angeles, CA.)

MC 142064 (Sub-3F), filed June 13, 1980. Applicant: CAROLINA CARPET CARRIERS, INC., P.O. Box 6, Williamston, SC 29697. Representative: Mitchell King, Jr., P.O. Box 1628, Greenville, SC 29602. *Contract carrier,* Transporting *floor coverings, materials and supplies* used in the installation, manufacture, packaging, and sale of floor coverings, and *yarn,* (1) from the facilities of Bigelow-Sanford, Inc., at points in GA and SC to those points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI); and (2) between the facilities of Bigelow-Sanford, Inc., at points in GA and SC, under continuing contract(s) with Bigelow-Sanford, Inc. (Hearing site: Columbia, SC.)

MC 144054 (Sub-13F), filed June 23, 1980. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 E. Vilas Road, Medford, OR 97210. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting (1) *horticultural implements,* (2) *plastic articles,* and (3) *insecticides, plant foods,* and *fertilizer,* from Des Moines, IA, Duluth, MN, and Newton, IA, to those points in the U.S. in and west of ND, SD, NE, KS, MO, OK, and TX (except AK and HI). (Hearing site: Des Moines, IA, or Medford, OR.)

MC 145574 (Sub-3F), filed June 17, 1980. Applicant: RUSS'S MOTOR SERVICE, INC., 5070 West Lake Street, Melrose Park, IL 60160. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. Transporting *wire, screws, rivets, and fasteners,* between Chicago, IL, on the one hand, and, on the other, Frankfort, MI. (Hearing site: Chicago, IL.)

MC 145695 (Sub-4F), filed June 24, 1980. Applicant: MAZCO SYSTEMS, INC., 200 Route 17 South, Mahwah, NJ 07430. Representative: Roy A. Jacobs, 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract carrier,* Transporting *refined copper* between New Haven, CT, and New York, NY, on the one hand, and, on the other, those points in the U.S. and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Cerro Sales Corp. of New York, NY. (Hearing site: New York, NY.)

MC 145904 (Sub-32F), filed June 23, 1980. Applicant: SOUTH WEST LEASING, INC., P.O. Box 152, Warterloo, IA 50704. Representative: Roger D. Herman (same address as applicant). Transporting *such commodities* as are dealt in by grocery stores (except commodities in bulk), from the facilities used by Hunt-Wesson Foods, Inc., at Shakopee, MN, to points in IA, restricted to traffic originating at the named origin and destined to the named State. (Hearing site: Chicago, IL, or Washington, DC.)

MC 146964 (Sub-11F), filed June 9, 1980. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Michael Valencik (same address as applicant). Transporting *margarine, shortening and peanut butter,* from the facilities of Sunnyland Refining Co., Inc., at or near Birmingham, AL, to points in CT, DE, FL, GA, MA, MD, ME, NH, NJ, NY, PA, VA, VT, and DC. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 147585 (Sub-6F), filed June 25, 1980. Applicant: DICK WELLER, INC., Shoham Road, P.O. Box 313, Warehouse Point, CT 06088. Representative: Gerald A. Joseloff 80 State Street, Hartford, CT 06103. 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), from the facilities of Charter Oak Shippers Cooperative Association, Inc., at Berlin, CT, to points in GA, FL, TX, IL, MN, CA, MI, OH, and PA. (Hearing site: Hartford, CT, or Boston, MA.)

MC 148135 (Sub-2F), filed June 16, 1980. Applicant: C. C. CASTOR, 64 Dandridge Ct., Antioch, CA 94509. Representative: Thomas M. Loughran, 100 Bush St., 21th Floor, San Francisco, CA 94104. *Contract carrier,* transporting *gypsum wallboard,* from Sigurd, UT, to Elk Grove, CA, under continuing contract(s) with Capp Homes, a division of Evans Products, of Elk Grove, CA. (Hearing site: San Francisco, CA.)

MC 148485 (Sub-3F), filed June 16, 1980. Applicant: EARL P. SMITH, d.b.a. Smith Cartage Company, 104 South Vine Avenue, Marshfield, WI 54449. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Contract carrier,* transporting *clay,* in containers, from Ochlocknee, GA, to points in IL, IA, MI, MN, ND, SD, and WI, under continuing contract(s) with Oil-Dri Corporation. (Hearing site: Madison, WI.)

MC 149244 (Sub-2F), filed June 23, 1980. Applicant: PEAKE, INC., P.O. Box 855, Des Moines, IA 50304. Representative: E. Check (same address as applicant). Transporting *cement,* from Rapid City, SD, to points in NE. (Hearing site: Omaha, NE, or Des Moines, IA.)

MC 150884F, filed May 23, 1980. Applicant: FROZEN TRANSPORTATION, INC., 11 Taft Road, P.O. Box 384, Totowa, NJ 07512. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. *Contract carrier,* transporting *foodstuffs* (except commodities in bulk), between the facilities of Swift & Company, at Totowa, NJ, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, and WV, under continuing contract(s) with Swift and Company. (Hearing site: Chicago, IL.)

MC 151074F, filed June 16, 1980. Applicant: LA MONTANA MOVING & STORAGE INC., 1976 Crotona Parkway, Bronx, NY 10460. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. Transporting *household goods,* as defined by the Commission, between New York, NY, on the one hand, and, on the other, points in CT, NJ, and NY, restricted to traffic having a prior or subsequent movement by water or air. (Hearing site: New York, NY.)

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Decided: July 8, 1980
By the Commission, Review.
Board Number 2, Members Chandler, Liberman and Eaton.

MC 13134 (Sub-94F), filed June 16, 1980. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: Joe Haydon (same

address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, and household goods as defined by the Commission), between those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, restricted to traffic originating at or destined to facilities of C-E Industrial Products Group Division of Combustion Engineering, Inc. (Hearing site: Columbus, OH, or Philadelphia, PA.)

MC 30114 (Sub-10F), filed June 16, 1980. Applicant: MOLA TRUCKING, INC., d.b.a Mitchko Trucking, 650 Myrtle Ave., Boonton, NJ 07005. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *chemicals,* and *materials, equipment, and supplies* used in the manufacture and sale of chemicals (except commodities in bulk), between Kearny, Harrison, Booton, and Middlesex, NJ. on the one hand, and, on the other, points in IN, MA, MD, NJ, TN, NY, PA, CT, ME, VT, NH, OH, IL, VA, WV, DE, NC, and DC. (Hearing site: New York, NY, or Washington, DC.)

MC 39395 (Sub-8F), filed September 17, 1979. Applicant: NEHALEM VALLEY MOTOR FREIGHT, INC., P.O. Box 10304, Portland, OR 97210. Representative: Curtis E. McCracken (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between Astoria, OR, and Oysterville, WA: from Astoria over U.S. Hwy 101 to junction WA Hwy 103, then over WA Hwy 103 to Oysterville and return over the same route, serving all intermediate points, and (2) between Astoria, OR, and Naselle, WA: from Astoria over U.S. Hwy 101 to junction WA Hwy 401 then over WA Hwy 401 to Naselle, and return over the same route, serving all intermediate points.

Note—Applicant intends to tack with existing authority.

Passenger

MC 60325 (Sub-10F), filed April 25, 1979, previously noticed in the FR issue of January 17, 1980. Applicant: JEFFERSON LINES, INC., 1206 Currie Ave., Minneapolis, MN 55403. Representative: Elvin S. Douglas, Jr., P.O. Box 280, 117 South Lexington, Harrisonville, MO 64701. Transporting passengers and their baggage, in the same vehicle with passengers, in special operations, beginning and ending at points in (a) Hennepin, Scott, Dakota, Rice, Steel, Freeborn, Washington, LeSueur, Blue Earth, Sibley, Nicollet, Fairbault, Olmstead, and Goodhue Counties, MN; (b) Worth, Cerro Gordo, Franklin, Wright, Hamilton, Story, Polk, Warren, Madison, Clarke, Decatur, Mitchell, Floyd, Bremer, Black Hawk, Butler, Hardin, Linn, and Benton Counties, IA; (c) Harrison, Daviess, Caldwell, Clinton, Clay, Jackson, Cass, Bates, Vernon, Barton, Jasper, Newton, McDonald, Greene, Worth, Mercer, Grundy, Gentry, Ray, Platte, Lafayette, Dade, Cear and DeKalb Counties, MO; and (d) Benton, Washington, Crawford, Sebastion, Scott, Polk, Sevier, Little River, Miller, Pulaski, Perry, Yell, and Logan Counties, AR; (e) Bowie Country, TX; and extending to points in the United States (including AK but excluding HI).

Note.—This application correct the territorial description.

MC 85934 (Sub-116F), filed March 28, 1980. Applicant: MICHIGAN TRANSPORTATION COMPANY, A Corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *tractors and tractor attachments; snow blowers, and snow blower attachments* between Milwaukee, WI on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 85934 (Sub-123F), filed June 16, 1980. Applicant: MICHIGAN TRANSPORTATION COMPANY, A Corporation, 3601 Wyoming, P.O. Box 248, Northville, MI 48167. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *chemicals,* in bulk, in tank vehicles, from the facilities of Petrochem Services, Inc., at or near Lemont, IL, to points in IN, IA, KY, LA, MI, MN, MO, NJ, OH, PA, TN, TX, and WI. (Hearing site; Chicago, IL, or Washington, DC.)

MC 94265 (Sub-355F), filed June 20, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *general commodities* (except commodities in bulk) between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Union Camp Corporation. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring five years from its date of issue. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 94265 (Sub-356F), filed June 16, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *meats and 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 Smithfield, VA, to points in AL, FL, GA, NC, SC, NY, NJ, NH, ME, DE, PA, MD, MS, LA, and TX. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 96324 (Sub-42F), filed June 13, 1980. Applicant: GENERAL DELIVERY, INC., P.O. Box 1816, Fairmont, WV, 26554. Representative: Mel P. Booker, Jr., 110 S. Columbus St., Alexandria, VA 22314. Transporting *can ends, metal containers,* and *equipment, materials and supplies* used in the manufacture and distribution of can ends and metal containers, between those points in the U.S. in and east of MN, IA, MO, AR, and LA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 107295 (Sub-987F), filed June 23, 1980. Applicant: PRE-FAB TRANSIT CO., a Corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Dale L. Cox (same address as applicant). Transporting *plastic pipe and fittings and accessories* for plastic pipe, from Broken Arrow, OK, to points in the U.S. (except AK and HI). (Hearing site: Kansas City, MO.)

MC 109634 (Sub-8F), filed June 11, 1980. Applicant: TRAILER CONVOYS, INC., 1248 Highway 31, Jeffersonville, IN 47130. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier,* transporting *trailers and trailer chassis,* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by the contracting shippers named below and their subsidiaries, under continuing contract(s) with Polar Tank Trailers, Inc., Brenner Tank, Inc., Transportation Equipment Corp., Phelan Manufacturing Co., and Blackburn Trailer & Equipment Sales, Inc. (Hearing site: Washington, DC.)

MC 116544 (Sub-213F), filed June 16, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting *such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk, in tank vehicles), from the facilities of Colgate-Palmolive Company at Berkeley, CA, to points in AZ, OR, and

WA, restricted to traffic originating at the named facilities and destined to the indicated States. (Hearing site: San Francisco, CA, or Washington, DC.)

MC 116544 (Sub-214F), filed June 16, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. 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 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company at Chicago, Rochelle, and St. Charles, IL, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC. (Hearing site: San Francisco, CA, or Chicago, IL.)

MC 117384 (Sub-7F), filed June 13, 1980. Applicant: DAVIDSON BROTHERS, a partnership, R.D. No. 3, Bellefonte, PA 16823. Representative: J. Bruce Walter, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. Transporting (1) *electrical equipment, iron and steel articles, machinery, machine parts,* and *tools,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Sutton Engineering Company, at Spring Township, Centre County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 126555 (Sub-81F), filed June 16, 1980. Applicant: UNIVERSAL TRANSPORT, INC., Box 3000, Rapid City, SD 57709. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. Transporting *beer, carbonated beverages, bar supplies, and bar accessories,* from points in the U.S. (except AK, HI, and SD) to Rapid City, SD. (Hearing site: Rapid City, SD.)

Note.—Dual operations may be involved.

MC 127625 (Sub-38F), filed June 16, 1980. Applicant: SANTEE CEMENT CARRIERS, INC., P.O. Box 638, Holly Hill, SC 29059. Representative: Frank B. Hand, Jr., Box C, Berryville, VA 22611. Transporting (1) *lumber,* and (2) *building and construction board,* from points in SC, to Georgetown and Charleston, SC. (Hearing site: Columbia, SC, or Washington, DC.)

MC 133194 (Sub-16F), filed March 25, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Rd., P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr. (same address as applicant). Transporting *rough forgings, iron and steel pipe fittings, iron, steel,* and *seats,* (except commodities in bulk, and those requiring special equipment), between the facilities of Ladish Company at or near (a) Russellville, AR, and (b) Houston, TX.

MC 133565 (Sub-20F), filed March 24, 1980. Applicant: TRUE TRANSPORT, INC., 15 Stockton St., Newark, NJ 07101. Representative: Carles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. Transporting (1) *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), and (2) *empty containers, trailers,* and *trailer chassis,* between points in CT, MA, MD, NJ, NH, NY, PA, RI, and VA, restricted in (1) above to traffic having a prior or subsequent movement by water.

Note.—Applicant intends to tack this authority with its existing authority at New York, NY, to provide service between the points named above, on the one hand, and, on the other, points in DE.

MC 134224 (Sub-16F), filed June 19, 1980. Applicant: HAUSER TRUCKING CORP., P.O. Box 241, Cobleskill, NY 12043. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12207.Transporting (1) *molding sand,* from points in Albany County, NY, to points in OH, WV, VA, MD, and DE; (2) *coke* and *pig iron,* from points in Erie and Niagara Counties, NY, to points in ME, VT, NH, MA, CT, and RI; and (3) *coal,* from points in PA, to points in Albany County, NY; and (4) *aggregates,* from points in Albany County, NY, to points in MD. (Hearing site: Albany, NY.)

MC 136285 (Sub-36F), filed June 16, 1980. Applicant: SOUTHERN INTERMODAL LOGISTICS, INC., P.O. Box 1375, Thomasville, GA 31792. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, commodities requiring special equipment, household goods as defined by the Commission, and motor vehicles), and (2) *containers, trailers and trailer chassis,* between Wilmington and Morehead City, NC, on the one hand, and, on the other, points in NC, SC, VA, WV, TN, AL, FL, and GA, restricted in (1) to traffic having an immediately prior or subsequent movement by water. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 138714 (Sub-6F), filed June 13, 1980. Applicant: VIRGINIA TRANSPORTATION, INC., Box 26449, Richmond, VA 23261. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. *Contract carrier,* transporting *general commodities* (except those of unusual value, commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), between Richmond and Ashland, VA, on the one hand, and, on the other, points in FL and MI, restricted to traffic originating at or destined to the facilities of Best Products Company, Inc., under continuing contract(s) with Best Products Company, Inc. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

Note.—Dual operations may be involved.

MC 140294 (Sub-13F), filed May 9, 1980. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting (1) *printed matter,* and (2) *materials and supplies* used in the manufacture and distribution of printed matter (except commodities in bulk), between the facilities of Regency Greetings, Inc., at or near Waynesboro, PA, and Hagerstown, MD.

Note.—Applicant intends to tack this authority with its existing authority at Hagerstown, MD, to provide service to Washington, DC, and Baltimore, MD.

MC 140615 (Sub-54F), filed November 16, 1979, previously noticed in the FR of March 27, 1980. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Dennis C. Brown (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Chicago, IL, Philadelphia, PA, and Hoboken, NJ, to those points in the United States in and east of ND, SD, NE, CO, OK, and TX.

Note.—This republication deletes a restriction. (Hearing site: Philadelphia, PA.)

MC 140665 (Sub-111F), filed June 24, 1980. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *salad dressings* (except frozen and in

bulk), from the facilities of Swiss Chalet Food Products Co., at or near Wichita, KS, to Fredericksburg, VA, Atlanta, GA, and Orlando, FL.

MC 141804 (Sub-400F), filed March 31, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant.) Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, frozen foods, and commodities requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Reichhold Chemicals, Inc.

MC 141804 (Sub-446F), filed June 12, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *motor vehicle parts* and *motor vehicle accessories, between points in the U.S. (except AK and HI.)*

MC 141804 (Sub-447F), filed June 12, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant.) Transporting *paper*, from Dallas, TX, to points in CA, restricted to traffic originating at the facilities of Texas Stock Tab, Inc.

MC 141804 (Sub-448F), filed June 16, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *glass articles*, (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, and (3) *rigid polypropylene sheets*, from the facilities of PPG Industries, Fiberglass Division at or near Lexington and Shelby, NC, to points in AZ, CA, ID, IN, MI, MT, NV, OR, and WA, restricted to traffic originating at the named facilities.

MC 141804 (Sub-449F), filed June 16, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *such commodities* as are dealt in or used by book stores, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of B. Dalton Book Seller. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-450F), filed June 16, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *flour, flour products* and *equipment, materials, and supplies* used in the manufacture and sale of flour and flour products, between Kent, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Continental Mills, Inc. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-451F), filed June 23, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *electric refrigeration units* and *parts and accessories* for refrigeration units, between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-452F), filed June 25, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, (same address as applicant). Transporting *non-powered kitchen hand tools* and *security hardware*, between Los Angeles, CA, Chicago and Franklin Park, IL, Canton, Massillon and Byesville, OH, Locke Mills, ME, Holyoke, MA, and Lancaster, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted (1) to traffic originating at or destined to the facilities of Ekco Housewares Corporation, and (2) against traffic moving from Chicago, IL, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-453F), filed June 25, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *sewing articles*, between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 142485 (Sub-8F), filed June 24, 1980. Applicant: KENDRICK MOTOR FREIGHT, INC. (FORMERLY KENDRICK MOVING & STORAGE, INC.), P.O. Box 209, Lebanon, OH 45036. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215.Transporting (1) *mattresses, upholstered or stuffed furniture, batting, padding, frames, springs, and molds;* (2) *equipment, materials and supplies* used in the manufacture or distribution of the commodities in (a) between the facilities of Sterns & Foster Co., at or near Lockland and Mason, OH, on the one hand, and, on the other, points in WI; and (b) between the facilities of Sterns & Foster Co., at or near Pontotoc, MS, on the one hand, and, on the other, points in AR, IL, IN, KY, MI, MO, NY, OH, PA, TN, WI, and WV; and (3) *equipment, materials and supplies* used in the manufacture or distribution of the commodities in (1) above, from points in AR, IL, IN, KY, MI, MS, MO, NY, PA, TN, and WV, to the facilities of Sterns & Foster Co., at or near Lockland and Mason, OH. (Hearing site: Columbus, OH.)

Note.—Dual operations may be involved.

MC 142715 (Sub-102F), filed May 30, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). Transporting *building materials, equipment, and supplies* (except commodities in bulk, and commodities requiring special equipment), between Plymouth, MN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: St. Paul, MN.)

MC 142715 (Sub-103F), filed June 13, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). Transporting (1) *metal products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of metal products (except commodities in bulk), between Minneapolis, MN, on the one hand, and on the other, points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, restricted to traffic originating at or destined to the facilities of DeBourgh Mfg. Co., at Minneapolis, MN. (Hearing site: St. Paul, MN.)

MC 142715 (Sub-104F), filed June 13, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). Transporting (1) *clothing*, and (2) *materials, equipment, and supplies* used in the sale and distribution of clothing, between Minneapolis, MN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: St. Paul, MN.)

MC 142715 (Sub-105F), filed June 13, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). Transporting (1) *foodstuffs*, and (2) *materials and*

supplies used in the manufacture and distribution of foodstuffs (except commodities in bulk), between Minneapolis, MN, and Cincinnati, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, CO, OK, and TX. (Hearing site: St. Paul, MN.)

MC 142715 (Sub-106F), filed June 13, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). Transporting (1) *metals and metal products,* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of metals and metal products (except commodities in bulk, and those requiring special equipment), between those points in the U.S. in and east of ND, SD, NE, KS, CO, OK, and TX. (Hearing site: St. Paul, MN.)

MC 142765 (Sub-10F), filed June 13, 1980. Applicant: AMERICAN TRANSPORTATION, INC., 797 Amity Rd., Bethany, CT 06460. Representative: Harold G. Hernly, Jr., 110 S. Columbus St., Alexandria, VA 22314. *Contract carrier,* transporting *such commodities* as are dealt in by bakeries, between Baltimore, MD, and Clifton, NJ, under continuing contract(s) with Silber's Bakery, Inc., of Baltimore, MD. (Hearing site: Washington, DC, or New York, NY.)

MC 142835 (Sub-7F), filed June 24, 1980. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Auburndale, FL 33823. Representative: A. Charles Tell, 100 E. Broad St. Columbus, OH 43215. Transporting *bakery products* from the facilities of Nabisco, Inc., at Richmond, VA, to points in CT, FL, ME, MA, NH, NJ, NY, PA, RI, and VT. (Hearing site: Washington, DC.)

MC 144574 (Sub-5F), filed May 21, 1980. Applicant: RUSSELL TRANSFER COMPANY; INC., P.O. Box 829, Washington, GA 30673. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. Transporting *wood residuals,* from Washington, GA, to points in Charleston, County, SC. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 142994 (Sub-10F), filed June 20, 1980. Applicant: VIRGINIA COURIER SERVICE, INC., P.O. Box 287, Harrisonburg, VA 22801. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St., NW., Washington, DC 20005. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), between points in Augusta, Rockingham, and Page Counties, VA, and Hardy, Grant, and Pendleton Counties, WV. (Hearing site: Harrisonburg, VA.)

MC 145544 (Sub-7F), filed June 19, 1980. Applicant: W. & M., INC., P.O. Box 2237, East Chicago, IN 46312. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. *Contract carrier,* transporting (1) *air moving control equipment,* and (2) *materials, equipment, and supplies* used in the manufacture of air moving control equipment, between Niles, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Garden City Fan & Blower Co., of Niles, MI. (Hearing site: Chicago, IL.)

MC 145974 (Sub-9F), filed June 19, 1980. Applicant: HIDATCO, INC., P.O. Box 356, New Town, ND 58763. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract carrier,* transporting *lumber and wood products,* from points in WA, OR, ID, MT, and CA, to points in MD, SD, MN, and WY, under continuing contract(s) with Louisiana Pacific. (Hearing site: Minneapolis, MN.)

MC 146015 (Sub-10F), filed June 13, 1980. Applicant: MUMMA FREIGHT LINES, INC., 6495 Carlisle Pike, Mechanicsburg, PA 17055. Representative: E. J. Mumma, Jr. (same address as applicant). *Contract carrier,* transporting *glass,* from the facilities of Lamilite, Inc., at Saratoga Springs, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Lamilite, Inc., of Saratoga Springs, NY. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 147264 (Sub-6F), filed June 19, 1980. Applicant: JAT EXPRESS, INC., 4002 N. Rosewood, Muncie, IN 47302. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *bananas and commodities* otherwise exempt from economic regulation under 49 U.S.C. 10526(a)(6), when transported in mixed loads with bananas, from Mobile, AL, to points in OH, IN, IL, MI, KY, MO, KS, and WI. (Hearing site: Chicago, IL.)

MC 147724 (Sub-1F), filed June 4, 1980. Applicant: TYRONE SCHULZ, d.b.a. TY SCHULZ TRUCKING, Rt. 1, Box 221, Ione, CA 95640. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89601. *Contract carrier,* transporting *refractories, brick, crude clay* and *equipment, materials, and supplies* used in the manufacture, distribution and installation of refractories, brick and crude clay, (1) between Pittsburg, CA, and the facilities of C. E. Cast Industrial Products and Interpace Corp., in Amador County, CA, on the one hand, and, on the other, Carson City, NV, and points in CA, OR, and WA, and (2) in foreign commerce only, between Pittsburg, CA, and the facilities of C. E. Cast Industrial Products and Interpace Corp., in Amador County, CA, under continuing contract(s) with C. E. Cast Industrial Products and Interpace Corp.

MC 148604 (Sub-3F), filed June 13, 1980. Applicant: FALCON MOTOR TRANSPORT, INC., 1250 Kelly Avenue, Akron, OH 44306. Representative: Paul A. Englehart (same address as applicant). Transporting, (1) *soap and cleaning compounds, fuel oil conditioners, ice control compounds, specialty cleaners and chemicals, automotive cleaners and waxes, fuel oil additives, and household deodorants and disinfectants* (except commodities in bulk); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between those points in the U.S. east of ND, SD, WY, CO, and NM, restricted to traffic originating at or destined to facilities of Malco Products, Inc. (Hearing site: Columbus or Akron, OH.)

Note.—Duel operations may be involved.

MC 148874 (Sub-2F), filed May 7, 1980. Applicant: PROFICIENT FOOD CO., 17872 Cartwright Rd., Irvine, CA 92705. Representative: Floyd L. Farano, 2555 E. Chapman Ave., Suite 415, Fullerton, CA 92631. *Contract carrier,* transporting *such commodities* as are dealt in or used by donut houses, from points in NM, CO, NE, IA, MO, TN, KS, OK, AR, LA, MS, CA, and IL, to Arlington, TX, restricted to traffic originating at and destined to facilities used by Winchell's Donut Houses, under continuing contract(s) with Winchell's Donut Houses. Conditions: (1) Applicant must conduct for-hire transportation activities and other business activities independently and maintain separate records for each. (2) the person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C 11343, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Los Angeles, CA; Dallas, TX.)

MC 149105 (Sub-2F), filed June 20, 1980. Applicant: BAYOU STATE TRUCKING, INC., 639 S. Rendon Street, Suite 303, New Orleans, LA 70119. Representative: Brian S. Stern, 2425 Wilson Boulevard, Suite 367, Arlington, VA 22201. Transporting (1) *canned foodstuffs* and *canned animal foods,*

from the facilities of Campbell Soup Company at or near Paris, TX, to points in AR, LA, and MS, and (2) *frozen foodstuffs*, from the facilities of Campbell Soup Company at or near Fayetteville and Springdale, AR, to points in AR, LA, and MS. (Hearing site: Camden, NJ; Washington, DC.)

Note.—Dual operations may be involved.

MC 14935 (Sub-1F), filed March 24, 1980. Applicant: C. MAXWELL TRUCKING COMPANY, 9108 Reeds Dr., Overland Park, KS 66206. Representative: John C. Picardy (same address as applicant). *Contract carrier*, transporting (1) *lubricating oils, greases, carbon, gum and sludge-removing compounds, automotive filters, valves and valve parts, fender covers, brake fluids, compressor oils, and antifreeze engine coolants*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) above, from the facilities of STP Corp., at (a) Chicago, IL, (b) Evansville, IN, (c) Dallas, TX, and (d) Kansas City, KS, to points in IL, KS, MO, IN, OK, TX, NM, CA, WA,and OR, under continuing contract(s) with STP Corporation, of Fort Lauderdale, FL.

MC 149305 (Sub-2F), filed June 20, 1980. Applicant: REBEL EXPRESS, INC., Route 1, Box 66, Dry Prong, LA 71423. Representative: Gerald F. Nugent, Sr. (same address as applicant). *Contract carrier*, transporting *valves* from the facilities of Dresser Industrial Valve & Instruments, at or near Alexandria, LA, to points in AR, AL, FL, GA, MS, OK, TN, and TX, under continuing contract(s) with Dresser Industries, of Alexandria, LA.

MC 150315 (Sub-1F), filed June 10, 1980. Applicant: SCOTT BROTHERS BUS SERVICE, INC., 233 Sands Street, Brooklyn, NY 11201. Representative: Larsh B. Mewhinney, 555 Madison Avenue, New York, NY 10022. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip charter operations beginning and ending at New York, NY, and extending to points in the U.S. (except AK and HI). (Hearing site: New York, NY.)

MC 150924F, filed June 23, 1980. Applicant: HAROLD M. LAMM, d.b.a. HML COMPANY, 6107 Malibu Drive, Raleigh, NC 27603. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. *Contact carrier*, transporting *fabrics and yarn*, between points in NC, SC, and GA, under continuing contract(s) with Know-How Knits, Inc., of Belmont, NC. (Hearing site: Raleigh, NC.)

MC 151004F, filed June 9, 1980. Applicant: WARNACO TRUCKING CORP., 350 Lafayette Street, Bridgeport, CT 06602 Representative: William J. Meuser, 86 Cherry Street, P.O. Box 507, Milford, CT 06460. Transporting *Clothing* (except on hangers), *piece goods, feathers, boots, shoes, garment hangers, pulpboard, sewing machines*, and *textile machinery*, between points in AL, AZ, AR, CA, CT, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, and WI. (Hearing site: New York, NY, or Hartford, CT.)

MC 151005F, filed June 9, 1980. Applicant: MOTOR CARGO, INC., 12872 Brady, Redford, MI 48239. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and commodities requiring the use of special equipment), between the facilities of Detrex Chemical Industries, Inc., at or near Detroit, MI, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA. (Hearing site: Detroit, MI.)

MC 151015F, filed June 24, 1980. Applicant: DON SWART TRUCKING, INC., P.O. Box 49, Route 2, Wellsburg, WV 26070. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Contract carrier*, transporting (1) *concrete block* from Tiltonsville, OH to Monongah, WV, and (2) *cement*, from Bessemer, PA to Monongah, WV, under continuing contract(s) with Belot Concrete Industries, Inc. (Hearing site: Columbus, OH.)

Note.—Dual operations may be involved.

MC 151044F, filed June 23, 1980. Applicant: MIELE'S EXPRESS, INC., 23 William Road, Holbrook, MA 02043. Representative: Robert G. Parks, 20 Walnut Street, Suite 101 Wellesley Hills, MA 02181. *Contract carrier*, transporting (1) *processed, cured, or smoked meats and poultry*, and (2) *equipment, materials, and supplies* used in the processing and distribution of the commodities named in (1) above in vehicles equipped with mechanical refrigeration, between the facilities of Colonial Provision Co., Inc., at Boston, MA, on the one hand, and, on the other, points in DE, MD, NJ, NY, PA, and VA, under continuing contract(s) with Colonial Provision Co., Inc., of Boston, MA. (Hearing site: Boston, MA.)

MC 150705 (Sub-4F), filed June 23, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Contract carrier*, transporting *such commodities* as are dealt in or used by manufacturers or distributors of containers between those points in the U.S. in and east of ND, SD, NE, KS, and TX, under continuing contract(s) with Smith Container Corporation. (Hearing site: Atlanta, GA; Washington, DC.)

Note.—Dual operations may be involved.

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Decided: July 18, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 8515 (Sub-40F), filed June 25, 1980. Applicant: TOBLER TRANSFER, INC., Junction Interstate 80 and Illinois 89, Spring Valley, IL 61362. Representative: Leonard R. Kofkin, 39 South La Salle Street, Chicago, IL 60603. Transporting *general commodities* (except commodities in bulk, household goods as defined by the Commission, commodities which because of size or weight require the use of special equipment, and classes A and B explosives), between points in IL and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 40915 (Sub-53F), filed June 30, 1980. Applicant: BOAT TRANSIT, INC., P.O. Box 1403, Newport Beach, CA 92663. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of fiberglass and fiberglass products (except commodities in bulk), from points in WA to points in the U.S. (except AK and HI).

MC 44735 (Sub-54F), filed June 25, 1980. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th St., Kansas City, MO 64126. Representative: John E. Jandera, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601. Transporting (1) *pipe, pipe fittings and couplings*, (2) *building and insulation materials*, and (3) *material and supplies* used in the installation, distribution and manufacture of the commodities in (1) and (2), (except commodities in bulk), between points in AR, CO, IN, IA, IL, KS, KY, LA, MO, MN, NE, OK, TN, TX, and WI, restricted to traffic originating at or destined to the facilities of CertainTeed Corporation.

MC 53965 (Sub-177F), filed June 30, 1980. Applicant: GRAVES TRUCK LINE, INC., P.O. Box 838, Salina, KS 67401. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Transporting *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 MCC 209 and 766 (except hides and commodities in bulk), from the facilities used by John Morrell & Co., at or near Ft. Smith, AR, to points in IA, IL, MO, NE, OH, OK, SD, TX and WI, restricted to traffic originating at the facilities of John Morrell & Co.

MC 65475 (Sub-38F), filed June 27, 1980. Applicant: JETCO, INC., 4701 Eisenhower Ave., Alexandria, VA 22304. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22304. Transporting (1) *batteries,* (2) *equipment, materials, and supplies* used in the manufacture of batteries (except commodities in bulk), and (3) *scrap batteries,* between points in the U.S. in and east of MN, IA, MO, OK, and TX. Restricted to traffic originating at or destined to facilities used by Gould, Inc.

MC 97394 (Sub-31F), filed June 25, 1980. Applicant: BOWLING GREEN EXPRESS, INC., P.O. Box 13303, Louisville, KY 40231. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *such commodities as are dealt in by automotive parts stores,* between Bowling Green, KY, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, MS, NC, OH, SC, TN, VA, and WV.

MC 97394 (Sub-32F), filed June 27, 1980. Applicant: BOWLING GREEN EXPRESS, INC., P.O. Box 13303, Louisville, KY 40231. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004. Transporting (1) *wheel balancing materials,* and (2) *equipment and supplies used in the manufacture, and distribution or wheel balancing material,* between Bowling Green, KY, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, MS, NC, OH, SC, TN, VA and WV.

MC 106674 (Sub-495F), filed June 19, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *plastic containers,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of plastic containers, between Langhorne, PA and Worcester, MA, on the one hand, and, on the other, points in DE, MA, CT, RI, NY, NJ, VA, MD, ME, NH, VT, PA, and DC.

MC 107515 (Sub-1378F), filed June 25, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.W., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *malt beverages* (except in bulk) (1) from points in AR and TX, to points in the US in and east of LA, AR, MO, IA and MN; and (2) from points in VA, MD, and PA to points in TX.

MC 107515 (Sub-1379F), filed June 25, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.W., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *General Commodities* (except those of unusual value, household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, and those which because of size or weight require the use of special equipment), from New York City, NY and Philadelphia, PA, to points in CA, TX, MO, GA, and FL, restricted to traffic on bills of lading of West Coast Shippers Association, Inc., a nonprofit shippers' association under 49 USC § 10562(3).

MC 107515 (Sub-1380F), filed June 25, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *petroleum, and petroleum products, chemicals, vehicle body sealer and sound deadening compounds (except in bulk),* (1) from points in PA on and west of U.S. Hwy 219 to points in the U.S. (except AK and HI), and (2) from St. Louis, MO, to points in AL, AR, FL, GA, LA, MS and TN.

MC 107515 (Sub-1381F), filed June 30, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *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, from the facilities used by MBPXL Corporation at Tolleson, AZ, to points in the U.S. (except AK and HI).

MC 107515 (Sub-1382F), filed June 30, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *(1) cleaning compounds, buffing and polishing compounds, textile softener, lubricants, hypochlorite solution, deodorants, disinfectants, paints, plastic bags and fillers (except commodities in bulk, and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) (except commodities in bulk),* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Economics Laboratory, Inc.

MC 111375 (Sub-125F), filed February 15, 1980, previously noticed in the Federal Register issue of May 29, 1980. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Bernard J. Kompare, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. Transporting (1) *such commodities* as are dealt in or used by grocery, drug and hardware business houses and retail chain stores; (2) *industrial products, institutional products,* and *swimming pool products;* and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), between points in AZ, CA, CO, ID, IL, NV, NM, OH, OR, TX, UT, and WA, restricted to traffic originating at or destined to the facilities of the Purex Corporation. (Hearing site: Los Angeles, CA.)

Note.—This republication correctly states the restriction.

MC 116725 (Sub-28F), filed June 26, 1980. Applicant: INDIAN VALLEY ENTERPRISES, INC., 855 Maple Ave., Harleysville, PA 19438. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. (1) Transporting *foodstuffs (except commodities in bulk),* and (2) *materials, supplies, and equipment* used in the manufacture and distribution of foodstuffs, between the facilities of La Choy Food Products, Div. of Beatrice Foods Co., at Archbold and Napoleon, OH, on the one hand, and, on the other, points in U.S. in and east of MT, WY, CO and NM, restricted to traffic originating at the named origins and destined to the indicated destinations.

MC 121205 (Sub-2F), filed June 24, 1980. Applicant: SPECIAL SERVICE DELIVERY COMPANY, INC., 2514 Bridge Ave., Cleveland, OH 44113. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting *(1) such commodities as are dealt in or used by manufacturers of photographic products* (except commodities in bulk), and (2) *laundry care products, home care products, beauty care toiletry products, stainless steel cookware, cutlery and food supplements* (except commodities in bulk), between Cleveland, Columbus and Toledo, OH, on the one hand, and,

on the other, points in OH, restricted to traffic having a prior or subsequent movement in interstate commerce.

MC 121654 (Sub-39F), filed June 30, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., 5th Floor, Lenox Towers South, Atlanta, GA. Transporting *air pollution equipment* (except that which because of size or weight requires the use of special equipment), from Jacksonville, FL, to Bakersfield, CA.

MC 124624 (Sub-6F), filed June 30, 1980. Applicant: EXPRESSWAY, INC., 1105 St. Louis Ave., Louisville, KY 40210. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. Transporting *household appliances, floor covering, furniture, computer and electronic equipment, radios, television sets, phonographs, sound recorders, sound players, amplifiers, loud speakers, electric games, and electric toys,* from Louisville KY, to points in IN on and south of IN Hwy 46 and points in IL on and south of U.S. Hwy 50.

MC 124705 (Sub-4F), filed June 25, 1980. Applicant: SWAN MESSENGER SERVICE, INC., P.O. Box 2042, Princeton, NJ 08540. Representative: Harold G. Hernly, Jr., 110 S. Columbus St., Alexandria, VA 22314. Transporting *general commodities* (except Classes A and B explosives, commodities in bulk, commodities requiring special equipment, household goods as defined by the Commission, cash letters, articles of unusual value, radio pharmaceuticals and medical isotopes and exposed and processed film and prints) between Laurel, MD and Washington, DC, on the one hand, and on the other, points in NJ, those in CT on and west of Interstate Highway 91, those in New York State on and south of Interstate Highway 84, Wilmington, DE and Philadelphia, PA, restricted against the transportation (1) of any package weighing more than 250 pounds each and (2) of packages weighing in the aggregate more than 5,000 pounds from one consignor to one consignee on any one day.

MC 125335 (Sub-106F), filed June 4, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *insulated copper wire cable,* and (2) *equipment, materials and supplies* used in the manufacture and distribution of the commodities named in (1), above, between Schuylkill Haven, PA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, IA, KY, ME, MD, MA, MI, MN, MS, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WI, WV, and DC.

MC 126635 (Sub-3F), filed June 25, 1980. Applicant: CHRISTIE-LAMBERT VAN & STORAGE CO., INC., 1010 6th Avenue North, Kent, WA 98031. Representative: Michael D. Duppenthaler, 211 South Washington Street, Seattle, WA 98104. Transporting *Used household goods,* between points in MT, ID, OR, WA, ND and SD, restricted to shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic.

MC 128484 (Sub-3F), filed June 20, 1980. Applicant: BOWEIL STORAGE & TRANSIT CO., a corporation, 5850 Center Hill, Cincinnati, OH 45232. Representative: Richard D. Mathias, 1100 Connecticut Ave., NW., Washington, DC 20036. Transporting *household goods* as defined by the Commission, (1) between points in Dayton, KY, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IN, IA, KS, MD, MA, MI, MO, NJ, NY, NC, PA, RI, SC, VA, WI, and DC; (2) between points in Hamilton County, OH, on the one hand, and, on the other, points in AL, CT, FL, GA, IL, IA, KS, KY, MD, MA, MI, MN, MO, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, WI, and DC; and (3) between points in KY (except Dayton), points in OH (except Hamilton County), and points in IN, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, IA, KS, KY, MD, MA, MI, MN, MO, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, WI, and DC. (Hearing site: Cincinnati, OH.)

MC 129974 (Sub-20F), filed June 25, 1980. Applicant: THOMPSON BROS., INC., P.O. Box 1283, Sioux, Falls, SD 57101. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. Contract carrier transporting *meat, meat products and meat by-products,* and *articles distributed by meat packinghouses,* from West Fargo, ND, to points in the U.S. (Except AK and HI), under contract(s) with Held Beef Industries, West Fargo, ND.

MC 135524 (Sub-147F), filed June 19, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs, Road, Youngstown, OH 44509. Transporting (1) *metal shelving, tables, check-out counters and display cases,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Maytex Manufacturing Co., at or near Terrell, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 135524 (Sub-148F), filed June 25, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *polyethylene pallets and bins,* and (2) *parts, attachments, and accessories* for the commodities in (1), between Tacoma and Enumclaw, WA on the one hand, and, on the other points in the U.S. (except AK and HI).

MC 135524 (Sub-149F), filed June 27, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting *Commodities, the transportation of which, because of size or weight, requires the use of special equipment or special handling, and when moving in connection therewith, related commodities, the transportation of which because of size or weight, does not require the use of special equipment or special handling, and iron or steel articles,* between points in Bradley and Hamilton, Counties, TN, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 135524 (Sub-150F), filed June 30, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting *(1) iron and steel articles* and *(2) materials, equipment and supplies* used in the distribution, and manufacture of iron and steel articles (except commodites in bulk), between the facilities of North Star Steel Corp., at, or near Wilton, IA, on the one hand, and on the other points in the U.S. (except AK and HI).

MC 135524 (Sub-151F), filed June 30, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting *(1) Plastic and plastic articles* and *(2) materials and supplies* used in the manufacture and distribution of plastic articles (except commodities in bulk, in tank vehicles) between Evansville, IN, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 135895 (Sub-106F), filed June 27, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204 Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting *(1) paper and paper articles* and *(2) equipment, materials and supplies* used in the manufacture, and distribution of paper and paper articles, (except commodities in bulk and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Olinkraft, Inc.

MC 138635 (Sub-108F), filed June 27, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton, P.O. Box 3995, Gastonia, NC 28052. Transporting *(1) store furnishings, fixtures, furniture, shelving,* and *(2) materials, equipment, and supplies used in the manufacture, and distribution thereof,* between points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the facilities of Maytex Manufacturing Company.

MC 139495 (Sub-532F), Filed June 30, 1980. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dublin, 818 Connecticut Avenue, NW, Washington, DC 20006. Transporting (1) *heating and air conditioning equipment,* and (2) *materials and supplies* used in the manufacture, repair, installation, and distribution of heating and air conditioning equipment, from Wichita, KS, to points in the U.S. (except AK and HI).

MC 139495 (Sub-538F), Filed June 30, 1980. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 818 Connecticut Avenue, NW, Washington, DC 20006 transporting *canoes, camping equipment, outdoor recreational equipment,* and *car top carriers,* from New Braunfels, TX, to points in the U.S. (except AK and HI).

MC 140645 (Sub-17F), Filed June 27, 1980. Applicant: UNITED TRUCKING, INC., P.O.Box 398, Tallapoosa, GA 30716. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Contract carrier,* transporting *cleaning, buffing, polishing compounds, textile softeners, lubricating oils and deodorants and disinfectants* (except in bulk), from the facilities of Economics Laboratory, Inc., at or near South Holland, IL, to points in GA, AL and TN, under continuing contracts(s) with Economics Laboratory, Inc.

MC 141804 (Sub-456F), Filed June 25, 1980. Applicant: WESTERN EXPRESS, DIVISION, OF INTERSTATE RENTAL, INC., P.O. Box 2488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *general commodities* (except foodstuffs requiring refrigeration 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), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by The Pillsbury Company, and its subsidiaries.

MC 141804 (Sub-457F), Filed June 25, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *Chemicals, fabrics,* and *products,* and (2) *materials and supplies* used by Olin Chemical Group (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Olin Chemical Group.

MC 145635 (Sub-2F), filed June 25, 1980. Applicant: THOMAS R. REED, d.b.a. RANDLE REED TRUCKING, Route 4, Box 50C, Louisville, MS 39339. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *Contract carrier,* transporting *brick and structural tile,* (1) between the facilities of Delta Brick & Tile Co., Inc., at or near Indianola, MS, on the one hand, and, on the other, points in DE, IA, IL, IN, KS, MD, MI, MN, NC, NE, NJ, NY, OH, PA, SC, VA, WI and WV; and (2) between the facilities of Delta Shuqualak Brick & Tile Co., Inc., at or near Shuqualak, MS, and the facilities of Delta-Macon Brick & Tile Company, Inc., at or near Macon, MS, on the one hand, and, on the other, points in AL, AR, DE, FL, GA, IA, IL, IN, KS, KY, LA, MD, MI, MN, MO, NC, NE, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WI and WV, under a continuing contract(s) with Delta Brick & Tile Co., Inc., Indianola. MS.

MC 145855 (Sub-4F), filed March 28, 1980. Applicant: JOHN RAY TRUCKING COMPANY, INC., P.O. Box 206, Eastaboga, AL 36260. Representative: John W. Cooper, 200 Woodward Bldg., 1927 1st Ave., North, Birmingham, AL 35203. *Contract carrier,* transporting (1) *pipe, and pipe fittings,* and (2) *accessories* for the commodities named in (1) above, from Anniston, AL, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and (3) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities named in (1) and (2) above, in the reverse direction, under continuing contract(s) with Southeastern Specialty & Manufacturing Co., of Anniston, AL. (Hearing site: Birmingham, AL.)

MC 147074 (Sub-19F), filed June 27, 1980. Applicant: E Z FREIGHT LINES, 70 Gould Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *such commodities* as are dealt in by retail department stores (except foodstuffs and commodities in bulk), between the facilities of Zayre Corp., at Alsip, IL, and points in IL, on the one hand, and, on the other, points in IN, IA, KY, MI, OH and WI.

MC 147654 (Sub-3F), filed June 27, 1980. Applicant: TORNETTA'S MOTOR TRUCK, INC., P.O. Box 349, Conshohocken, PA 19428. Representative: Barry D. Kleban, 1430 Land Title Building, Philadelphia, PA 19110. *Contract carrier,* transporting *iron and steel articles,* (1) between the facilities of Dynacure pre-Coated Steel, Inc., at or near Cornwells Heights (Bucks County), PA, on the one hand, and, on the other, points in CT, MA, MD, NJ, NY, OH and WV; and (2) from Baltimore, MD, and Weirton, WV, to the facilities of Penco Products, Inc., at Oaks (Montgomery County), PA, under a continuing contract(s) with Dynacure Pre-Coated Steel, Inc. and Penco Products, Inc.

MC 148655 (Sub-6F), filed June 25, 1980. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44114. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting (1) *carpet strip and carpet adhesives,* from Asheville, NC, to points in the U.S. east of MT, WY, CO, and NM; and (2) *nails,* from Savannah, GA, to Asheville, NC.)

MC 149195 (Sub-7F), filed June 25, 1980. Applicant: ARCADIAN MOTOR CARRIERS, 1831 Simpson, Kingsburg, CA 93631. Representative: James F. Hauenstein (same address as applicant). Transporting (1) *malt beverages* and (2) *materials, supplies and equipment* used in the manufacture or distribution of malt beverages, (except commodities in bulk or in tank vehicles), between Portland, OR, on the one hand, and, on the other, points in CA.

MC 149195 (Sub-8F), filed June 25, 1980. Applicant: ARCADIAN MOTOR CARRIERS, a corporation, 1831

Simpson, Kingsburg, CA 93631. Representative: James F. Hauenstein (same address as applicant). Transporting (1) *labels*, (2) *bottle filling and labeling machines*, and (3) *material and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Avery Label.

MC 149195 (Sub-9F), filed June 27, 1980. Applicant: ARCADIAN MOTOR CARRIERS, a corporation, 1831 Simpson, Kingsburg, CA 93631. Representative: James F. Hauenstein (same address as applicant). Transporting (1) *plastic expanded foam and products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), from points in CA, to points in the U.S. (except AK and HI).

MC 149195 (Sub-10F), filed June 25, 1980. Applicant: ARCADIAN MOTOR CARRIERS, a corporation, 1831 Simpson, Kingsburg, CA 93631. Representative: James F. Hauenstein (same address as applicant). Transporting *fiberboard*, from the facilities of Aurora Paper Board, at Aurora, IL, to Jefferson City, Kansas City, and Marceline, MO, and Iola, Topeka, and Kansas City, KS.

MC 149195 (Sub-11F), filed June 25, 1980. Applicant: ARCADIAN MOTOR CARRIERS, a corporation, 1831 Simpson, Kingsburg, CA 93631. Representative: James F. Hauenstein (same address as applicant). Transporting *such commodities* as are dealt in or used by clothing stores, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Foxmoor Casuals and Chess King Products.

MC 149195 (Sub-12F), filed June 25, 1980. Applicant: ARCADIAN MOTOR CARRIERS, a corporation, 1831 Simpson, Kingsburg, CA 93631. Representative: James F. Hauenstein (same address as applicant). Transporting (1) *welders, welder parts, welder systems, welding compounds and welding supplies*, and (2) *material and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or consigned to the facilities of the Stoody Company and the Stoody International Company.

MC 149325 (Sub-2F), filed June 30, 1980. Applicant: WALTS TERMINAL, INC., 401 West South Street, Indianapolis, IN 46225. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. Transporting *precast structural concrete*, from the facilities of American Precast Concrete, Inc., and its subsidiary Span-Deck, Inc., at or near Indianapolis, IN and Westfield, IN, to points in IL, KY, MI, MO, OH, and WI.

MC 149344 (Sub-2F), filed June 27, 1980. Applicant: JERRY R. WHITE, WILLIAM CROSS & KENNETH J. STOTTS, a Partnership d.b.a. WHITE, CROSS AND STOTTS REFRIGERATED FREIGHT LINES, 329 E. 157th St., Gardena, CA 90247. Representative: Donald R. Hedrick, Post Office Box 88, Norwalk, CA 90650. *Contract carrier*, transporting *such commodities as are used in hair care; hair conditioning concentrate, in drums;* and *fibre-board cartons*, from Gardena, CA, to Philadelphia, PA, under continuing contract(s) with Best-Way Hair Products Co., Gardena, CA.

MC 150714 (Sub-1F), filed June 30, 1980. Applicant: SHAW TRUCKING, INC., 2201 Riverside Blvd., Norfolk, NE 68701. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Contract carrier*, transporting (1) *non-alcoholic beverages* and (2) *materials and supplies* used in the manufacture and distribution of non-alcoholic beverages, between the facilities of The Shaw Company, at Norfolk, NE, on the one hand, and, on the other, points in AR, CO, IL, IA, KS, MN, MO, NE, ND, OK, SD, WI, and WY, under continuing contract(s) with The Shaw Company, at Norfolk, NE.

MC 150925F, filed May 27, 1980. Applicant: MORING, INC., R.R. #1, Baileyville, IL 61007. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *liquid fertilizer*, from (a) LaSalle and Fulton, IL, to points in WI, and (b) from Dubuque, IA, to points in IL and WI, and (c) from Burlington and Muscatine, IA, to points in IL, and (2) *fertilizer*, from Albany, Amboy, Cordova, East Dubuque, Fulton, Lemont, Marseilles, Pekin, Riverdale and Seneca, IL, and Clinton, IA, to points in IA, IN and WI.

MC 151065F, filed June 19, 1980. Applicant: KANSAS CITY PIGGYBACK, INC., P.O. Box 15236, Fairfax Sta., Kansas City, KS 66115. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *general comomodities* (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 Kansas City, MO, on the one hand, and, on the other, points in AR, IA, KS, MO, NE and OK, restricted to traffic having a prior or subsequent movement by rail piggyback.

MC 151075F, filed June 16, 1980. Applicant: WEST-CONN TRANSPORTATION SERVICE, INC., Anarock Drive, Somers, NY 10589. Representative: Sidney J. Leshin, 575 Madison Ave., New York, NY 10022. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in Westchester, Putnam and Dutchess Counties, NY and Fairfield County, CT, on the one hand, and, on the other, White Plains, NY.

MC 151085F, filed June 19, 1980. Applicant: FREDERICK M. OPPEL, 145 South Enola Drive, Enola, PA 17025. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting (1) *bananas* and (2) *agricultural commodities* otherwise exempt from economic regulations when transported in mixed loads with bananas, from Baltimore, MD, Wilmington, DE, and Philadelphia, PA, to points in PA.

Volume No. 285

DECIDED: July 16, 1980.

By the Commission Review Board Number 1, Members Carleton, Joyce and Jones.

The following twenty-four (24) applications filed April 7, 1980 involve authority to transport (A) *glass articles, metal articles, plastic articles, and clay articles*, (B) *molds and machinery* used in the production of glass articles, plastic articles and metal articles, (C) *bottle coating systems*, (D) *parts and accessories* for the commodities in (A), (B), (C) and, above, (E) *Feldspar products* and *talc products*, and (G) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (A), (B), (C), (D), and (E) above, between the facilities of Wheaton Industries, at or near Springfield, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI). (1) MC-7840 Sub 29F. Applicant: ST. LAWRENCE FREIGHTWAYS, INC., 650 Cooper St., Watertown, NY, 13601. (2) MC-48441 Sub 60F. Applicant: R.M.E. Inc., P.O. Box 418, Streator, IL, 61364. (3) MC-65626 Sub 38F. Applicant: FREDONIA EXPRESS, INC., P.O. Box 222, Fredonia, NY, 14063. (4) MC-73688 Sub 116F. Applicant: SOUTHERN TRUCKING CORPORATION, 1500 Orenda Ave., P.O. Box 7195, Memphis, TN, 38107. (5) MC-78687 Sub 108F. Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. Box 751, Moravia, NY 13118. (6) MC-106920 Sub 96F. Applicant: RIGGS FOOD EXPRESS, INC., West Monroe

St., P.O. Box 26, New Bremen, OH 45869. (7) MC-115331 Sub 542F. Applicant: TRUCK TRANSPORT, INCORPORATED, 11040 Manchester Rd., St. Louis, MO 63122. (8) MC-119349 Sub 38F. Applicant: STARLING TRANSPORT LINES, INC., P.O. Box 2148, Fort Pierce, FL 33450. (9) MC-120636 Sub 8F. Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust Streets, P.O. Box 577, Chatsworth, IL 60921. (10) MC-127303 Sub 77F. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. (11) MC-133085 Sub 18F. Applicant: TRENCO, INCORPORATED, 2109 Marydale Ave., P.O. Box 697, Williamsport, PA 17701. (12) MC-136161 Sub 32F. Applicant: ORBIT TRANSPORT, INC., P.O. Box 163, Spring Valley, IL 61362. (13) MC-136511 Sub 100F. Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 9640 Timberlake Rd., Lynchburg, VA 23502. (14) MC-141914 Sub 79F. Applicant: FRANKS & SONS, INC., Route 1, Box 108A, Big Cabin, OK 74332. (15) MC-142873 Sub 5F. Applicant: DEWEY L. WILFONG, d/b/a D & W TRUCK LINES, 209 First St., Parsons, WV 26287. (16) MC-144676 Sub 8F. Applicant: M & S TRANSPORT LINES, INC., P.O. Box 417, Sultana, CA 93666. (17) MC-145950 Sub 81F. Applicant: BAYWOOD TRANSPORT, INC., Route 6, P.O. Box 2611, Waco, TX 76706. (18) MC-146573 Sub 12F. Applicant: LA SALLE TRUCKING, INC., P.O. Box 46, Peru, IL 61354. (19) MC-146890 Sub 24F. Applicant: C & E TRANSPORT, INC., d/b/a/ C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. (20) MC-147452 Sub 4F. Applicant: W.D.W. TRUCKING, INC., 2620 S.W. 66th Terrace, Miramar, FL 33023. (21) MC-148600 Sub 4F. Applicant: TRANSHIELD TRUCKING, INC., 1470 N. Farnsworth Ave., P.O. Box 1617, Aurora, IL 60507. (22) MC-148655 Sub 4F. Applicant: ERIEVIEW CARGAGE, INC., 1200 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44114. (23) MC-0149370 Sub 4F. Applicant: SEABOARD EXPRESS, INC., 5724 New Peachtree Rd., Atlanta, GA 30341. (24) MC-150265 Sub 1F. Applicant: GUY J. JOHNSON TRANSPORTATION COMPANY, INCORPORATED, 5 Timberline Dr., Newark, DE 19711. Representative for all applicants above: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001.

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Decided: June 26, 1980.

By the Commission Review Board No. 3, Members Parker, Fortier and Hill.

MC 20582 (Sub-8F), filed June 18, 1980. Applicant: HENRY H. STEVENS. INC., 1273 Broadway, Flint, MI 48506. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Transporting *household goods* as defined by the Commission, between points in UT and NV, on the one hand, and, on the other, points in the U.S. (except ND, SD, MT, WY, ID, AK and HI). (Hearing site: Detroit, MI, or Washington, DC.)

MC 59292 (Sub-40F), filed June 19, 1980. Applicant: THE MARYLAND TRANSPORTATION COMPANY, a corporation, 1111 Frankfurst Ave., Baltimore, MD 21225. Representative: Charles J. Braun, Jr. (same address as applicant). Transporting (1) *iron and steel articles* from the facilities of Commercial Shearing, Inc., at Berkley Springs, WV, to points in the U.S. in and east of WI, IL, KY, TN, MS, and LA; (2) *iron and steel articles* from the facilities of Commercial Stamping and Forging Co. at Bedford Park, IL, to points in the U.S. in and east of WI, IL, KY, TN, MS and LA; (3) *iron and steel articles* from the facilities of Syro Steel Co. at Girard, OH, to points in the U.S. in and east of WI, IL, KY, TN, MS and LA; (4) *iron and steel articles* from the facilities of Young Galvanizing, Inc., at Pulaski, PA, to points in the U.S. in and east of WI, IL, KY, TN, MS and LA; (5) *iron and steel articles* from the facilities of Lane Metal Products, Co., Inc., at Pulaski, PA, to points in the U.S. in and east of WI, IL, KY, TN, MS and LA; (6) *machinery and machinery parts* from the facilities of Commercial Shearing, Inc., at Youngstown, OH, to points in the U.S. in and east of WI, IL, MO, AR and LA; and (7) *machinery and machinery parts* from the facilities of Commercial Shearing, Inc., at Benton, AR, to points in U.S. in and east of AR, LA, MO, IA and MN, restricted in (1) through (7) to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 69052 (Sub-43F), filed June 12, 1980. Applicant: REED TRUCKING CO., P.O. Box 216, Milton, DE 19968. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue & 13th St., N.W., Washington, D.C. 20004. Transporting (1) *dry chemicals* (except in bulk), from points in NJ to Cambridge, MD, and (2) *empty drums*, from South Brunswick, NJ, to Cambridge, MD. (Hearing site: Cambridge, MD.)

MC 71652 (Sub-48F), filed June 16, 1980. Applicant: BYRNE TRUCKING, INC., P.O. Box 280, Medford, OR 97501. Representative: David J. Stewart (same address as applicant). Transporting *building materials*, from the facilities of Guardian Industries at or near Kingsburg, CA, to points in AZ, CO, MT, NM, NV, UT, and WY. (Hearing site: San Francisco, CA or Portland, OR.)

MC 80262 (Sub-4F), filed June 17, 1980. Applicant: SOUTH ATLANTIC BONDED WAREHOUSE, a corporation, 2020 E. Market St., Greensboro, NC 27402. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting *such commodities as are dealt in by wholesale, retail and chain, grocery, drug and food business houses*, between Greensboro, NC, on the one hand, and, on the other, points in VA and Morehead City and Wilmington, NC. (Hearing site: Greensboro, NC or Wash, DC.)

MC 103993 (Sub-1052F), filed June 10, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting *railway track material*, from the facilities of Midwest Steel Division, Midwest Corporation, at or near Pomeroy, OH, and Nitro, WV, to points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Charleston, WV.)

MC 103993 (Sub-1053F), filed June 16, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting *lumber and wood products*, from the facilities of Allied Forest Products at or near Fredonia, AZ, Alamagordo, NM, and Panquitch and Escalante, UT, to points in OK, TX, AR, MO, IA, IL, IN, OH, MI, MN, KY and TN. (Hearing site: Portland, OR.)

MC 107403 (Sub-1324F) (correction), filed March 3, 1980, published in the Federal Register, issue of May 9, 1980, and republished, as corrected, this issue. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (address same as applicant). The commodity restriction in part (1) thru (4) should read as follows: *"In bulk, in tank vehicles"*, instead of except bulk, in tank vehicles. (Hearing site: Chicago, IL, or Washington, DC.) The purpose of this republication is to correct the restriction in part (1) thru (4). The rest of the publication remains the same.

MC 111672 (Sub-13F), filed June 6, 1980. Applicant: R & M TRUCK LINE, INC., P.O. Box 422, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting *plastic articles*, from the facilities of Holloway Industries, Inc., at

or near Japan, MO, to points in IL and MI. (Hearing site: Des Moines, IA.)

MC 111812 (Sub-731F), filed June 16, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). Transporting: (1) *automobile accessories, home canning kits, cleaning compounds,* and *plastic, metal, wooden and rubber articles,* and (2) *equipment* and *supplies* used in the manufacture of the commodities in (1) above, between Huron, SD and Savage, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 115162 (Sub-532F), filed June 16, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate, (same address as applicant). Transporting *(1) plastic and steel articles* (except commodities in bulk, in tank vehicles) from Mexico, MO, to points in the U.S. (except AK and HI); and *(2) materials, equipment and supplies used in the manufacture, sale and distribution of plastic and steel articles* (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: St. Louis, MO or Washington, DC.)

MC 118142 (Sub-248F), filed June 13, 1980. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. 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 MCC 209 and 766 (except hides and commodities in bulk), from the facilities utilized by MBPXL Corporation, at or near Phoenix, AZ, to points in the U.S. on and west 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 U.S. and Canada. (Hearing site: Wichita, KS or Kansas City, MO.)

MC 119493 (Sub-386F), filed June 16, 1980. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting *wood products and lumber, and materials and supplies* used in the manufacture and distribution of the foregoing commodities (except commodities in bulk), between points in MO, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: St. Louis, or Kansas City, MO.)

MC 120822 (Sub-6F), filed June 18, 1980. Applicant: INDUSTRIAL FREIGHT SYSTEM, INC., 9120 San Fernando Road, Sun Valley, CA 91352. Representative: Gary W. Wigand, 13031 San Antonio Dr., Suite 214, Norwalk, CA 90650. Transporting *general commodities* (except those of unusual value, Classes A and B explosive, household goods as defined by the Commission, commodities in bulk and motor vehicles), moving on bills of lading of freight forwarders, between points in CA, AZ, NV, NM, OR, and WA. (Hearing site: Los Angeles, CA.)

MC 121272 (Sub-7F), filed June 10, 1980. Applicant: HESS TRUCKING CO., 1000 West Chocolate Avenue, Hershey, PA 17033. Representative: J. Bruce Walter, Esquire, P.O. Box 1146, Harrisburg, PA 17108. Transporting *such commodities as are dealt in by grocery and food business houses* (except commodities in bulk) from the facilities of Dauphin Distribution Services Co. in Camp Hill Borough Hampden Township, Cumberland County, PA, to points in Adams and York Counties, PA, and that portion of Cumberland, County that lies west of PA Hwy 34. (Hearing site: Harrisburg, PA or Washington, DC.)

MC 125433 (Sub-423F), Filed June 16, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *camping equipment and supplies, sporting goods and supplies,* and *outdoor and recreational furniture, goods and supplies,* and (2) equipment, *material and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S. (except AK and HI). (Hearing: Dallas, TX.)

MC 125433 (Sub-424F), Filed June 16, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *equipment, material and supplies* used in the manufacture, hydrogenation, gasification and processing of coal and coal byproducts, and (2) *equipment, material and supplies* used in the manufacture or processing of petro-chemicals, shale oil, tar sands, sulfuric acid, dust collectors, pulp, inorganic chemicals, ferrous and nonferrous metals, fibers and textiles, coatings, extractors and separators, detergents, oils and fats, hydrogen (except in bulk), betwen points in the U.S. (except AK and HI). (Hearing: San Francisco, CA.)

MC 125433 (Sub-425F), filed June 16, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *iron and steel roofing,* and (2) *iron, steel, and aluminum building sections,* from Stockton, CA, to points in the U.S. (except AK and HI), restricted to traffic originating at the facilities of the H. H. Robertson Company. (Hearing: San Francisco, CA.)

MC 126822 (Sub-94F), Filed June 18, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, Kansas 66061. Representative: John T. Pruitt (same address as applicant). Transporting *canned goods* from Terminal Island, CA, to points in the U.S. (except AK and HI). Hearing site: Los Angeles, CA.

Note.—Common control may be involved.

MC MC 128273 (Sub-396F), Filed June 19, 1980. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, in tank vehicles), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities utilized by The Mead Corporation, its subsidiaries and affiliates. (Hearing site: Columbus, OH, or Washington, DC.)

MC 129712 (Sub-31F), filed June 12, 1980. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough GA 30253. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract carrier* transporting *such commodities as are dealt in of used by manufacturers, distributors and dealers or (1) agricultural equipment; (2) construction equipment; (3) forestry equipment; (4) industrial equipment; (5) irrigation equipment; (6) lawn and leisure products; and, (7) equipment used in the maintenance, feeding and housing of hogs, livestock, and poultry (except commodities in bulk),* between points in the U.S. in and east of MT, WY, CO, and NM, under continuing contract(s) with Ford Motor Company, Ford Tractor Operations, Troy, MI. (Hearing site: Atlanta, GA.)

MC 133182 (Sub-4F), filed June 16, 1980. Applicant: JOSEPH H. IRBY and LEON E. CROENNE, a partnership d.b.a. MISSISSIPPI COAST LIMOUSINE SERVICE, P.O. Box 222, Gulfport, MS

39501. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *passengers and their baggage, express, newspapers and mail, in special operations,* between points in Hancock, Harrison and Jackson Counties, MS, on the one hand, and, on the other, New Orleans, LA, the New Orleans, LA, International Airport, points in St. Tammany Parish, LA, Mobile, AL, and the Mobile Airport, restricted to traffic having a prior or subsequent movement by air. (Hearing site: Gulfport or Biloxi, MS.)

MC 136343 (Sub-219F), (correction), filed May 2, 1980, published in the Federal Register, issue of July 10, 1980, and republished, as corrected, this issue. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. Transporting *floor coverings and equipment, materials, and supplies* used in the manufacture, distribution, installation, and maintenance of floor covering (except commodities in bulk), between the facilities of Armstrong World Industries, Inc., at or near Lancaster, PA and East Hempfield Township, Lancaster County, PA, Kankakee, IL and Jackson, MS, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA, restricted to traffic originating at the named origins or destined to the indicated destinations.

Note.—The purpose of this republication is to correctly state the name of the shipper.

MC 136713 (Sub-23F), filed June 16, 1980. Applicant: AERO LIQUID TRANSIT, INC., 1717 Four Mile Road NE., Grand Rapids, MI 49505. Representative: Daniel J. Kozera, Jr., The McKay Tower, Suite 2-A, Grand Rapids, MI 49503. Transporting *liquified petroleum gas,* in bulk, in tank vehicles, from the port of entry of the International Boundary Line between the United States and Canada, at or near Port Huron, MI, to points in IL. (Hearing site: Lansing or Detroit, MI, or Chicago, IL.) (Condition: Any certificate issued shall be limited to a period of 5 years from its date of issuance.)

Note.—Dual operations may be involved.

MC 138772 (Sub-9F), filed June 12, 1980. Applicant: ALL WAYS FREIGHT LINES, INC., 215 North 18th, Leavenworth, KS 66048. Representative: Marvin D. Robertson, P.O. Box 2426, Kansas City, KS 66110. 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 Beatrice, NE, and Marysville, KS, serving all intermediate points, from Beatrice, NE, over NE Hwy 4 to jct NE Hwy 103, then over NE Hwy 103 to NE Hwy 41, then over NE Hwy 41 to U.S. Hwy 81, then over U.S. Hwy 81 to KS Hwy 9, then over KS Hwy 9 to KS Hwy 15, then over KS Hwy 15 to U.S. Hwy 36, then over U.S. Hwy 36 to Marysville, KS, and return over the same route; (2) Between Marysville, KS, and Belleville, KS, over U.S. Hwy 36, serving all intermediate points between Beatrice, NE, and Hebron, NE over U.S. Hwy 136, serving all intermediate points; (4) between the junction of NE Hwy 15 and NE Hwy 41 and the junction of KS Hwy 15W and U.S. Hwy 36, over NE Hwy 15-KS Hwy 15W, serving all intermediate points; (5) serving off-route points in Marshall, Washington, Republic, and Cloud Counties, KS, and off-route points in Jefferson and Thayer Counties, NE, and those in Fillmore and Saline Counties, NE, lying south of NE Hwy 41, east of U.S. Hwy 81 and west of NE Hwy 103; and (6) between Leavenworth, KS, and St. Joseph, MO, as an alternate route for operating convenience only, from Leavenworth, KS, over KS Hwy 92 to junction MO Hwy 45, then over MO Hwy 45 to junction with U.S. Hwy 59, then over U.S. Hwy 59 to St. Joseph, MO, and return over the same route. Applicant intends to join this authority at Marysville, St. Joseph, MO, and Beatrice, NE, with present authority. (Hearing site: Kansas City, MO.)

MC 139112 (Sub-21F), filed June 10, 1980. Applicant: ALEX EXPRESS, INC., 149 Warden Avenue, Trucksville, PA 18708. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting (1) *pools, toys, and lawn and garden furniture and parts and accessories* for the foregoing commodities and (2) *plastic articles, paint and paint products, and materials, equipment and supplies* used in the manufacture, sale and distribution of the foregoing commodities, between points in the U.S. (except AK and HI). (Hearing site: Harrisburg, PA or Washington, DC.)

MC 139552 (Sub-1F), filed June 19, 1980. Applicant: R.L.C. TRUCKING, INC., 21 Edythe Lane, Peabody, MA 01960. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting *such commodities as are used or dealt in by wholesale and retail grocery and department stores and food business houses* (except in bulk), between Augusta and Portland, ME, and Lawrence, MA, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MO, NJ, NY, NC, OH, PA, SC, TN, TX, and VA. (Hearing site: Boston, MA.)

MC 140243 (Sub-12F), filed June 17, 1980. Applicant: APPLE HOUSE, INC., 3726 Birney Ave., Scranton, PA 18505. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. Transporting *rope, synthetic cording and strapping and tools, seals and buckles used with synthetic strapping, oakum and packing and synthetic twine* (1) from Honesdale, PA, to New Orleans, LA, and Jacksonville and Tampa, FL, (2) from New Orleans and Lafayette, LA, to Jacksonville and Tampa, FL, and (3) from Lafayette, LA, to Honesdale, PA. (Hearing site: Wilkes Barre, PA.)

MC 141962 (Sub-2F), filed June 11, 1980. Applicant: NORTHEAST REFRIGERATED DISTRIBUTION CO., INC., 1650 Shawsheen Street, Tewksbury, MA 01876. Representative: Joseph M. Klements, Richardson & Tyler, 84 State St., Boston, MA 02109. Transporting (1) *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Section 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),* in vehicles equipped with mechanical refrigeration, and (2) *food and food products,* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Northeast Refrigerated Distributing Co., Inc., at or near Tewksbury, MA, to points in RI. (Hearing site: Boston, MA.)

MC 142672 (Sub-145F), filed June 13, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 27701. Transporting *such commodities* as are dealt in by wholesale and retail food business houses, (except in bulk, in tank vehicles), from the facilities utilized by Lever Brothers Company at or near St. Louis, MO, to points in AR, IA, LA, NE, TN and TX. (Hearing site: St. Louis, MO or Ft. Smith, AR.)

MC 143702 (Sub-14F), filed June 16, 1980. Applicant: ALL FREIGHT SYSTEMS, INC. (a Kansas corporation), 1026 South 10th Street, Kansas City, KS 66106. Representative: Donald J. Quinn, Attorney at Law, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *canned goods,* from the facilities of Lakeside Packing Company at Manitowoc, WI, and Plainview, MN, to points in AZ, CO, KS, LA, MO, MS, NE, NM, OK and TX. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 143702 (Sub-15F), filed June 18, 1980. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66106. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *candles and candles in containers and metal holders,* from the facilities of Muench-Kreuzer Candle Company at Liverpool, NY, on the one hand, and, on the other, points in CO, IA, KS, MN, MO, NE and ND. (Hearing site: Syracuse, NY.)

Note.—Dual operations may be involved.

MC 143702 (Sub-16F), filed June 16, 1980. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66106. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *canned goods and non-alcoholic mixes* (except in bulk), from the facilities of Master of Mixes, Inc., at Byhalia, MS, to points in IA, IL, IN, KS, MI, MN, NE, MO and OH, restricted to traffic originating at the facilities of Master Mixes, Inc., at Byhalia, MS, and destined to the named points. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 144572 (Sub-42F), filed June 13, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80631. Representative: Steven K. Kuhlmann, 2600 Energy Center, 717 17th Street, Denver, CO 80202. 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), from Los Angeles, CA, to Salt Lake City, UT, and Denver, CO, restricted to traffic moving on bills of lading of freight forwarders. (Hearing site: New York, NY, or Denver, CO.)

Note.—Dual operations may be involved.

MC 144603 (Sub-8F), filed June 16, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). Transporting *paper and paper products, and materials, equipment, and supplies* used in the manufacture and sale of foregoing commodities, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by American Pad and Paper Co. (Hearing site: St. Louis, MO or Washington, DC.)

MC 145102 (Sub-64F), filed June 16, 1980. Applicant: FREYMILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Transporting *canned goods and pet food* from Terminal Island, CA, to points in IL, IN, MN, OH, OR, UT, WA, and WI. (Hearing site: Madison, WI or Terminal Island, CA.)

MC 146032 (Sub-8F), filed June 17, 1980. Applicant: SKYCAB, INC., 137 North 4th Street, Philadelphia, PA 19106. Representative: Steven M. Tannenbaum, Esquire, 135 North 4th Street, Philadelphia, PA 19106. Transporting *medical test kits,* between the facilities of Roche Diagnostics at Belleville, NJ, and points in the U.S. (except AK and HI). (Hearing site: Philadelphia, PA.)

MC 146643 (Sub-49F), filed June 16, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Marc J. Blumenthal, 39 S. LaSalle St., Chicago, IL 60628. Contract carrier, transporting *foodstuffs,* except in bulk, from the facilities of Fearn International, Inc., at Franklin Park, IL, to points in IN, IA, KS, MI, MN, MO, OH, PA, and WI, under continuing contract(s) with Fern International, Inc. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 146643 (Sub-50F), filed June 16, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60628. Contract carrier, transporting *paper and paper products, and materials and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk), between the factilities of International Paper Compnay at or near Indianapolis, IN, on the one hand, and, on the other, points in IL, KS, MI, MN, MO, NY, OH, OK and PA, under continuing contract(s) with International Paper Co. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 146892 (Sub-13F), filed June 10, 1980. Applicant: R & L TRANSFER, INC., P.O. Box 271, Wilmington, OH 45177. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except those of unusual value, Classes A and B explosive, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Brown, Clinton, Fayette and Highland Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted to traffic originating at or destined to points in Brown, Clinton, Fayette, and Highland Counties, OH. (Hearing sites: Columbus or Cincinnati, OH.)

MC 147042 (Sub-2F), filed June 16, 1980. Applicant: SEARS TRUCKING, INC., 8023 East Slauson Avenue, Montebello, CA 90640. Representative: Robert Evans (same address as applicant). Transporting *brass, bronze, and copper, strips, bars, rods, and tubing,* from points in AZ and NV. (Hearing site: Los Angeles or Santa Ana, CA.)

MC 147312 (Sub-2F), filed June 16, 1980. Applicant: DALOR TRANSIT, INC., 7520 Ryan Road, Franklin, WI 53132. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. Contract carrier, transporting *printed matter,* from the facilities of Moebius Printing Co. at Milwaukee, WI, to points in MI, OH, IN, IL, IA and MN, under continuing contract(s) with Moebius Printing Co. (Hearing site: Chicago, IL or Milwaukee, WI.)

MC 148083 (Sub-3F), filed June 9, 1980. Applicant: SELLARS TRANSPORT SERVICE, 1620 Parnell Drive, Eugene, OR 97404. Representative: Robert W. Sellars (same address as applicant). Transporting *pneumatic filter systems, bins and conveyors, veneer stackers, and pipe and parts and accessories* for the foregoing commodities, from the facilities of Clarke Sheet Metal Inc., at Eugene, OR, to points in the U.S. (except AK and HI). (Hearing site: Eugene, OR.)

MC 147462 (Sub-1F), filed June 16, 1980. Applicant: CLAYTON H. TEN PAS, d.b.a. C. H. TEN PAS TRANSPORT, Route 1, Plymouth, WI 53073. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Contract carrier, transporting *liquid concrete additives,* bulk, in tank vehicles, from Port Washington, WI, to points in CO, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, and TX, under continuing contract(s) with Sika Chemical Corporation, of Lyndhurst, NJ. (Hearing site: Milwaukee, WI.)

MC 148362 (Sub-4F), filed June 11, 1980. Applicant: HAR-BET, INC., 7209 Tara Boulevard, Jonesboro, GA 30236. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Rd., NE., Atlanta, GA 30326. Contract carrier, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the facilities of Gulf Atlantic Distribution Services at New Orleans, LA, Houston and Arlington, TX, Memphis, TN, Birmingham, AL, Charlotte, NC, Greenville, SC, Denver, CO, and Seattle and Spokane, WA, on

the one hand, and on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Gulf Atlantic Distribution Services. (Hearing site: Atlanta, GA.)

MC 148502 (Sub-3F), filed June 13, 1980. Applicant: L. F. CARTER, INC., Field Avenue, P.O. Box 224, Pittsford, VT 05763. Representative: Jack R. Abell, 27 South Main Street, P.O. Box 782, Rutland, VT 05701. *Contract carrier,* transporting (1) *dry reclaimed alumina oxide,* in bulk, from Worcester, MA, to Proctor, VT, and (2) *limestone ground products* (except in bulk, in tank vehicles), from the facilities of OMYA, Inc., at Florence, VT, to points in ME, NH, NY, MA and CT, under continuing contract(s) in (1) with Vermont Marble Company, and in (2) with OMYA, Inc. (Hearing site: Rutland or Burlington, VT.)

MC 148632 (Sub-1F), filed June 16, 1980. Applicant: DIXON LEASING CO., INC., a corporation, 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Robert B. Einhorn, 3220 P.S.F.S. Building, 12 South 12th Street, Philadelphia, PA 19102. Transporting *paper* and *paper products,* and *equipment, materials, and supplies* used in the manufacture and distribution of the foregoing commodities, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of the Scott Paper Company. (Hearing site: Philadelphia, PA or Washington, DC.).

MC 150052 (Sub-1F), filed June 13, 1980. Applicant: SEAPORT TRANSPORTATION COMPANY, 312 West End, Detroit, MI 48209. Representative: Alex J. Miller, Fabrizio, Miller & Graham, P.C., 1520 N. Woodward Ave., P.O. Box 244, Bloomfield Hills, MI 48013, (313) 642-1012. Contract Carrier, transporting *self contained room air conditioners,* between Jonesville and Detroit, MI, restricted to traffic having a prior or subsequent movement by rail, under continuing contract(s), with York Division, Borg Warner Corp. (Hearing site: Detroit or Lansing, MI, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 150292 (Sub-1F), filed June 16, 1980. Applicant: PITTS TRUCKING, INC., R.R. No. 2, Hutchinson, KS 67501. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides), from the facilities of DPM of Kansas, Inc. at or near Wichita, KS, to points in OR, CA, and WA. (Hearing site: Kansas City, MO.)

MC 150322 (Sub-1F), filed June 16, 1980. Applicant: WILLIAM NOEL, d.b.a. GREGORY MOTOR EXPRESS, 1221 West Madison St., Chicago, IL 60607. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601. Transporting *store, tavern, and restaurant fixtures and equipment,* between points in WI, IN, IL, IA, MI, MO, OH, KY and MN. (Hearing site: Chicago, IL.)

MC 150512 (Sub-1F), filed June 18, 1980. Applicant: B & M TRANSIT, INC., Route 603, Plymouth, OH 44865. Representative: Lewis S. Witherspoon, 88 East Broad St., Columbus, OH 43215. Contract carrier transporting *fresh meats* between the facilities of The Dicillo Corp. at Cleveland, OH on the one hand, and, on the other, points in MA, MD, NJ, NY, and PA, under continuing contracts with The Dicillo Corp., of Cleveland, OH. (Hearing site: Cleveland, OH.)

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Decided: June 26, 1980.

By the Commission Review Board No. 1, Members Carleton, Joyce and Jones.

MC 107012 (Sub-556F), filed June 24, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop, P.O. Box 988, Fort Wayne, IN 46801, (219) 429-2110. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: parts, materials and supplies used in the manufacture of toys and games (except commodities in bulk and commodities which because of size or weight require the use of specialized equipment), from the facilities of Mattel Toys located at or near Edison and South Plainfield, NJ, to Canonsburg and Houston, PA to points in Los Angeles and Orange Counties, CA, and from the facilities of Mattel Toys located in Los Angeles and Orange Counties, CA, to Edison and South Plainfield, NJ and Canonsburg and Houston, PA. (Hearing sites: Los Angles, CA, or Washington, DC.)

Note.—Common control may be involved.

MC 107012 (Sub-557F), filed June 25, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop, P.O. Box 988, Fort Wayne, IN 46801, (219) 429-2110. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: absorbent cotton, cotton or rayon balls, and bandages or dressings, from the facilities of National Patent Development Corporation located at or near Dayville, CT to points in the United States (except AK, HI and CT). (Hearing sites: Hartford, CT, or Washington, DC.)

Note.—Common control may be involved.

MC 107012 (Sub-558F), filed June 24, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop, P.O. Box 988, Fort Wayne, IN 46801, (219) 429-2110. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Vending machines, and such commodities as are sold in or used in conjunction with vending machines, and parts for vending machines* between the facilities of Fawn Sales Corp. located at or near Des Moines, IA, on the one hand, and, on the other, points in AZ, CA, CO, NV, NM, OK, OR, TX, UT, WA, NC, VA, KY, TN, AR, ID, MN and KS.

MC 107012 (Sub-562F), filed June 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Forty Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). transporting *furniture and parts for furniture,* from the facilities of Burlington Industries Inc., Burlington Furniture Division, at or near Robbinsville, NC, to points in IN, IL, MI, MN, NY, OH, and PA.

MC 107012 (Sub-563F), filed June 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Forty Wayne, IN 46801. Representative: Bruce W. Boyarko, P.O. Box 988, Fort Wayne, IN 46801, (219) 429-2224. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) dried, silk, and plastic flowers and foliage; dried, silk, and plastic flower arrangements, and (2) decorations, accessories, supplies, and materials used in the manufacture, assembly, and distribution of the commodities named in (1) above, from Atlanta, GA; New Albany, IN; Bolivar, MO; and Dallas, TX to points in AR, GA, IL, IN, IA, MN, NE, TX, and WI. (Hearing sites: Springfield, MO or Washington, DC.)

Note.—Common control may be involved.

MC 107012 (Sub-564F), filed June 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Forty Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). Transporting *tires and tire tubes,* from

Conshohocken, Frazer, Montgomery Ville, Norristown, and Royersford, PA, to points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NC, OH, SC, TN, VA, WV, and WI.

MC 107012 (Sub-565F), filed June 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Forty Wayne, IN 46801. Representative: Bruce W. Boyarko. Transporting *books*, from the facilities of Encyclopaedia Britannica Inc., at (a) Chicago, IL, (b) Willard, OH, and (c) Kingsport, TN, to points in the U.S. (except AK and HI).

MC 119522–49F, filed June 25, 1980. Applicant: McLAIN TRUCKING, INC., 2425 Walton Street, P.O. Box 2159, Anderson, IN 46011. Representative: John B. Leatherman, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and Petroleum Products, automotive chemicals, and cleaning compounds*, and such equipment, materials, and supplies, as are used by automotive service centers (except in bulk). Between the facilities of Valvoline Oil Company, a division of Ashland Oil, Inc. located at Willow Springs, IL on the one hand, and, on the other, points in AR, CO, IN, IA, KY, KS, LA, MI, NM, MO, MT, NE, MN, ND, OH, OK, PA, SD, TN, TX, WI and WY. restricted to traffic originating at or destined to named facilities. should a hearing be deemed necessary, applicant requests it be held in Chicago, IL or Washington, D.C.

MC 119632 (Sub-118F). Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Representative: Wayne C. Pence (same as applicant). Transporting: *Animal and pet foods, (except frozen or in bulk)* between the facilities of Benco Pet Foods, Inc., at Zanesville, OH and points in the states of DC, DE, IL, IN, KY, MD, MI, MO, NJ, NY, PA, VA, and WV. Restricted to shipments originating at or destined to facilities of Benco Pet Foods, Inc. (Hearing site: Columbus, OH.)

MC 119632 (Sub-119F). Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Representative: Wayne C. Pence (same as applicant). Transporting Foodstuffs (except frozen or in bulk) from the facilities of D'Amico Company at Steger and Park Forest, IL to points in the states of DE, IN, KY, MD, MI Commercial Zone of St. Louis, MO, NJ, NY, OH, PA, VA, WV and DC. (Hearing site: Chicago, IL.)

MC 119632 (Sub-120F). Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Representative: Wayne C. Pence, 634 Ralston Avenue, Defiance, OH 43512. Transporting *Such commodities as are dealt in by grocery and food business houses (except frozen or in bulk)*, from Milton, PA to points in the states of KY, NY and OH. Restricted to traffic originating at facilities of American Home Foods and destined to the named states. (Hearing site: New York, NY or Washington, DC.)

MC 119632 (Sub-121F), filed June 27, 1980. Applicant: REED LINES, INC., 634 Ralston Ave., Defiance, OH 43512. Representative: Wayne C. Pence (same address as applicant). Transporting *Toilet preparations*, from St. Louis, MO. to points in MD, MI, NY, and PA, restricted to traffic originating at the facilities of Vi-Jon Laboratories, Inc.

MC 124692 (Sub-336F), filed June 30, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT. 59806. Representative: J. David Douglas (same address as applicant). Transporting *Modular panels* from Centralia, IL to points in the United States (including AK and HI). (Hearing site: Chicago, IL or St. Louis, MO.)

MC 124813 (Sub-226), filed June 9, 1980. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Commodities used in the construction and operation of soybean processing plants and power generating plants, from points in the United States (except AL and HI) to Eagle Grove, IA. (Hearing site: St. Paul, MN; Omaha, NE.)

MC 126822 (Sub-96F), filed June 25, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, Kansas 66061. Representative: John T. Pruitt (same as applicant). *Foodstuffs* from Laredo, TX, to points in CA, CO, FL, IL, IN, KS, MO, NE, NJ and NY. Supporting shipper: A.T.M. Gamesa, P.O. Box 188, Laredo, Texas 78040.

MC 126822 (Sub-97F), filed June 26, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, Kansas 66061. Representative: John T. Pruitt (same as applicant). *Paper and paper articles* between the facilities of Texas Stock Tab, Inc. at Dallas, TX, on the one hand, and points in the United States (except AK and HI) on the other. Supporting shipper: Texas Stock Tab, Inc., 8808 Sovereign Row, Dallas, Texas 75247.

MC 126822 (Sub-98F), filed June 26, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, Kansas 66061. Representative: John T. Pruitt (same as applicant). *Wooden doors, wooden screens, wooden blinds, compressed wood fire logs and other wood products* from Fort Worth and Mt. Pleasant, TX, to points in AL, AR, GA, KS, MO, NC, OK and TN. Supporting shipper: McLeland-Harris Door Company, Inc., P.O. Box 11482, Fort Worth, Texas 76109.

MC 129032 (Sub-127F), filed June 23, 1980. Applicant: TOM INMAN TRUCKING, INC., 5656 South 129th East Avenue, Tulsa, Oklahoma 74121. Representative: Mr. John P. Fischer, Silver, Rosen, Fischer & Stecher, 256 Montgomery Street, 5th Floor, San Francisco, CA 94104. Common carrier, irregular routes, transporing *canned and preserved foodstuffs from the facilities of Heinz USA at or near Muscatine and Iowa City, IA to points in AR, KS, LA, MO, OK, TN and TX, restricted to traffic originating at the named facilities and destined to the named States*. Supporting shipper: Heinz USA, Div. of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. (Hearing site: Pittsburgh, PA or St. Louis, MO.)

MC 134922 (Sub-329F), filed June 23, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting *general commodities* (except commodities in bulk, household goods as defined by the Commission, articles of unusual value, Classes A and B explosives and those which because of size or weight require the use of special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Velsicol Chemical Corporation.

Note.—Applicant states the purpose of this Application is to replace interline service it is presently providing (in part) in conjunction with other carriers.

MC 134922 (Sub-330F), filed June 27, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting *such commodities* as are dealt in by retail and discount department stores (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Dayton-Hudson Corporation and its divisions.

MC 134922 (Sub-331F), filed June 27, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting *Wine and Brandy and*

materials and supplies used in the manufacturing and distribution of Wine and Brandy (except in bulk), between points in the U.S. (except AK and HI), restricted to traffic moving from, to or through the facilities of Paul Masson Vineyards.

Note.—Common control may be involved. If a hearing is deemed necessary, it is requested it be held at San Francisco, CA or Little Rock, AR.

MC 134922 (Sub-332F), filed June 27, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *Potatoes, fresh frozen or cooked frozen and Potatoes, cooked, diced, flaked, sliced, other than frozen*, from Quincy, Richland, and Connell, WA, Hermiston, OR, American Falls, ID, and Clearfield, UT to Moline and Rock Island, IL and points in IA.

Note.—Common control may be involved. If a hearing is deemed necessary, it is requested it be held at Chicago, IL or Little Rock, AR.

MC 141532 (Sub-80F), filed June 25, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Highway, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104. Transporting commodities of the type dealt in or used by manufacturers of heating and cooling systems (except in bulk), and *solar energy heating and cooling systems*, between points in the U.S. (except AK and HI). Restricted to shipments originating at or destined to the facilities of Lennox Industries. (Hearing site: Dallas, TX.)

MC 141532 (Sub-82), filed July 1, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Highway, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104. Transporting *flat glass*, from the facilities of PPG Industries, Inc., located at Cumberland, MD and Crystal City, MO to points in WA, OR, ID, MT, CA, NV, AZ, UT, CO and WY. (Hearing site: Los Angeles, CA.)

MC 141532 (Sub-83), filed June 17, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Highway, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104. Transporting *iron and steel articles and construction equipment, materials and supplies* from KS, OK, TX, NM, UT, AZ and CA to points in CA, AZ, OR, WA, NV, ID, UT and MT. (Hearing site: Los Angeles, CA.)

MC 142672 (Sub-150), filed June 30, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *clothing, NOI*—from the facilities of Sidney Bernstein & Son, at or near Lancaster, PA—to points in AZ, CA, MO, NM, NV, OK, OR, TX and WA. (Hearing site: Philadelphia, PA or Ft. Smith, AK.)

MC 142672 (Sub-151), filed June 30, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *foodstuffs* (except in bulk), from the facilities of Anderson Clayton Foods, at or near Sherman, TX, to Memphis, TN, and points in AR, LA, MS, and OK.

MC 144122 (Sub-75F), filed June 26, 1980. Applicant: CARRETTA TRUCKING, INC., S 160 Route 17, Paramus, NJ 07652. Representative: Joseph Carretta, President, S 160 Route 17, Paramus, NJ 07652. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *toilet preparations and health and beauty aids* (except in bulk), from Northvale, NJ to points in GA and IL.

MC 144572 (Sub-45F), filed June 30, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, a corporation, P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting *malt beverages*, from St. Paul, MN, San Antonio, TX, Omaha, NE, and Tumwater, WA, to the facilities of Murray Brothers Distributing Company, at Denver, CO.

MC 145042 (Sub-6F), filed June 25, 1980. Applicant: ZEELAND FARM SERVICES, INC., 2468 84th St., Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting, *vetetable oil*, in bulk, in tank vehicles, from the facilities of Cargill, Incorporated, at or near Chicago, IL, to points in IL, IN, KY, MI, and OH.

MC 145722 (Sub-2F), filed July 1, 1980. Applicant: REM LEASING, INC., 114 Royal Road, Jamestown, NC 27282. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th Street N.W., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Textile products and materials used in the manufacture thereof*, from points in NC and SC to Atlanta, GA; Tulsa, OK and points in CA. (Hearing site: Atlanta, CA.)

MC 145782F (Sub-4F), filed July 1, 1980. Applicant: MERCHANTS HOME DELIVERY SERVICE OF TEXAS, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: David B. Schneider, Morgan Brown & Schneider, P.O. Box 1540, Edmond, OK 73034. *New furniture, furnishings and appliances*, from the facilities of Levitz Furniture Corporation of the Pacific at or near Milwaukee, OR to points in Cowlitz, Clark and Skamania counties, WA, for 180 days. An underlying temporary authority is pending. (Hearing site: Miami, FL; Ft. Lauderdale, FL.)

MC 146343 (Sub-9F), filed March 18, 1980. Applicant: SOUTHERN EXPRESS CORPORATION, 308 South Ocean Blvd., Pompano, FL 33062. Representative: Mr. Daniel Sumner, 131 Airport Rd., Warwick, RI 02889, 401-739-0333. *Contract carrier*, Transporting *garden supplies, machinery and equipment; agricultural products as garden supplies:* Between Providence RI and Points in the U.S. (except AK and HI) under a continuing contract or contracts with the Crawford Garden Supplies Company of Providence, RI. (except in bulk). (Hearing site: preferred: Washington DC; alternate: Florida.)

MC 146402 (Sub-23), filed July 1, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske, (address same as applicant). Authority granted to engage in operations in interstate or foreign commerce as a *common carrier* by motor vehicle, over irregular routes, transporting: *Wooden Reels* between the facilities of Wood Fabricators, Inc. at Yelm, WA and points in the United States (except Alaska and Hawaii). Restricted to traffic originating at or destined to facilities owned, utilized, or operated by Wood Fabricators. (Hearing site: Atlanta, Georgia or Washington, DC.)

MC 148392 (Sub-3F), filed May 8,1980. Applicant: SERVICE TRANSPORT, INC., P.O. Box 2749, Cookeville, Tennessee 38501. Representative: James Clarence Evans, Attorney, 1800 Third National Bank Building, Nashville, Tennessee 37219. General commodities, with the exception of household goods, classes A and B explosives, commodities in bulk, and those requiring specialized equipment, over the following described routes, all of which

are to be used in conjunction with each other and with other authority which applicant may hold: (a) Between Crab Orchard, Tennessee and Memphis, Tennessee via Interstate Hwy. 40, and serving all intermediate points between Crab Orchard and the junction of Interstate Hwy. 40 and TN Hwy. 56, and serving Nashville, Tennessee for the purpose of joinder only. (b) Between Cookeville, Tennessee and Jamestown, Tennessee over the following described route: From Cookeville, TN, via TN Hwy. 42 to the junction of TN Hwy. 52, thence TN Hwy. 52 to Jamestown and return over the same route, serving all intermediate points. (c) Between Monterey, Tennessee and Livingston, Tennessee, via TN Hwy, 84, serving all intermediate points. (d) Between Crossville, Tennessee and Jamestown, Tennessee, via U.S. Hwy. 127, serving all intermediate points. (e) Between Monterey, Tennessee and Clarkrange, Tennessee, via TN Hwy. 62, serving all intermediate points. (f) Between Crab Orchard, Tennessee and Cookeville, Tennessee over the following described route: From Crab Orchard, TN to Crossville, TN via U.S. Hwy. 70, thence via U.S. Hwy. 70N to Cookeville and return over the same route, serving all intermediate points. (g) Between Spencer, Tennessee and Cookville, Tennessee, via TN Hwy. 111, serving all intermediate points. (h) Between Fall Creek Falls State Park and the junction of TN Hwy. 30 and U.S. Hwy. 70S, near McMinnville, TN, via TN Hwy. 30, serving all intermediate points. (i) Between Sparta, Tennessee and McMinnville, Tennessee, via U.S. Hwy 70S, serving all intermediate points. (k) Between McMinnville, Tennessee and the junction of TN Hwy. 56 and Interstate Hwy. 40, via TN Hwy. 56, serving no intermediate points and serving the said junction for joinder only. (1) Between McMinnville, Tennessee and Nashville, Tennessee over the following described route: From McMinnville via TN Hwy. 55 to its junction with Interstate Hwy. 24, thence via Interstate Hwy. 24 to Nashville and return over the same route, serving all intermediate points between McMinnville and Morrison, Tennessee, including Morrison, and serving Nashville for the purpose of joinder only. The authority sought includes all of the commercial zones of all points, irrespective of the states in which a portion thereof might lie. All the foregoing shall include authority to tack or join any of these aforesaid routes, or portions thereof, at intersections between any of them, and also authority over any convenient streets and highways between any point on Interstate Hwy. 40 and any point at which service is otherwise authorized, but with no authority to serve any intermediate point along such streets and highways unless otherwise authorized. Authority includes authority to interline.

MC 148432 (Sub-2F), filed May 27, 1980. Applicant: MARGO TRANSPORT, INC., 1317 East Scott, Olney, IL 62450. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract carrier,* transporting: *Paper, paper products, and materials and supplies* used in the manufacture and distribution of paper products (except in bulk), between Fenton, MO on the one hand, and on the other, points in AR, IL, IN, IA, KY, KS and TN under continuing contract(s) with: Inland Container Corporation of: 151 North Delaware, Indianapolis, IN 46206. (Hearing site: St. Louis, MO; Chicago, IL.)

MC 148732 (Sub-3F), filed June 30, 1980. Applicant: L & J TRUCKING, INC., P.O. Box 1325, Wisconsin Rapids, WI 54494. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *such commodities* as are dealt in or used by manufacturers, converters, printers and distributors of paper and paper products (except commodities in bulk), from points in Wood and Portage County, WI to points in AZ, CA, CO, ID, MT, WV, NM, OR, UT, WA and WY.

MC 150942 (Sub-1F), filed June 11, 1980. Applicant: STAGE COACH LEASING CO., INC., d.b.a. STAGE COACH CHARTERING SERVICES CO., 3536 Windermere Drive, Hephzibah, GA 30815. Representative: Jeffrey Kohlman, Born, Kohlman & Duvall, P.C., Suite 508, 1447 Peachtree Street, NE., Atlanta, GA 30309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting *passengers and their baggage,* in charter and special operations, in round-trip movements, beginning and ending at points in Richmond County, GA, and Aiken and Orangeburg Counties, SC, and extending to points in AL, FL, GA, LA, MS, NC, SC, TN, VA and DC. (Hearing site: Augusta, GA or Atlanta, GA.)

MC 150952 (Sub-1F), filed June 23, 1980. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Terrence D. Jones, 2033 K St., NW., Suite 300, Washington, DC 20006. *Contract carrier,* transporting *dairy products,* between points in UT, and those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, under continuing contract(s) with Cheese Specialties Services, Inc., of Wisconsin Rapids, WI.

MC 151072F, filed June 16, 1980. Applicant: NORTH CANTON TRANSFER CO., 7836 Freedom Ave., N. Canton, OH 44720. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215. *Petroleum products,* from Freedom, McKees Rocks, and Washington, PA, and Congo, WV, to points in OH, PA on and west of U.S. Hwy. 219, and points in WV on and north of Interstate Hwy. 70. (Hearing site: Columbus, OH; Pittsburgh, PA; or Washington, DC.)

MC 151142F, filed June 24, 1980. Applicant: H & H TRANSPORTATION, INC., 1425 East Main ST., Newark, OH 43055. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. Transporting (1) *containers,* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of containers (except commodities in bulk), between Bridgewater, NJ, on the one hand, and, on the other, points in OH, IN, KY, WV, PA, and those in the Lower Peninsula of MI.

MC 151142 (Sub-1F), filed June 24, 1980. Applicant: H & H TRANSPORTATION, INC., 1425 East Main ST., Newark, OH 43055. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. Transporting (1) *Plastic and plastic articles* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Newark, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

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 September 8, 1980 (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 be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before September 8, 1980, or the application shall stand denied.

By the Commission, Review Board Number, Members.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 300

Decided: July 17, 1980.

By the Commission, Review Board No. 2, Members Chandler, Liberman, and Eaton.

FF 252 (Sub-6F), filed May 19, 1980. Applicant: CHI-CAN FREIGHT FORWARDING. LTD., 3600 S. Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 10 South LaSalle St., Suite 1600, Chicago, IL 60603. *Freight forwarder*, in foreign commerce, through the use of rail and motor carriers, transporting *general commodities* (except commodities in bulk, motor vehicles, used household goods, classes A and B explosives, and unaccompanied baggage), between ports of entry on the international boundary line between the U.S. and Canada in MN, MT, and ND, on the one hand, and, on the other, points in NC, restricted to import and export traffic only.

FF 252 (Sub-7F), filed June 24, 1980. Applicant: CHI-CAN FREIGHT FORWARDING, INC., 3600 S. Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 10 South LaSalle St., Suite 1600, Chicago, IL 60603. Freight forwarding, in interstate commerce, through the use of rail and water carriers, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, motor vehicles, unaccompanied baggage, commodities in bulk, and those requiring special equipment) between ports of entry, on the international boundary line, between the U.S. and Canada in MN, MT, ND, MI, NY, VT, NH, and ME, on the one hand, and, on the other, points in NC, FL, SC, GA, KY, TN, AL, and AR, restricted to import-export traffic only.

MC 732 (Sub-16F), filed June 3, 1980. Applicant: ALBINA TRANSFER CO., INC., 4320 N. Suttle Rd., Portland, OR 97217. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *general commodities* (except classes A and B explosives), in cargo containers, between points in OR, WA, ID, CA and MT, restricted to traffic having a prior or subsequent movement by water.

MC 2232 (Sub-15F), filed June 23, 1980. Applicant: CREGER FREIGHT LINES, INC., a NJ corporation, Old Tyburn Rd. and Corbin Lane, Morrisville, PA 19067. Representative: Daniel C. Sullivan, Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of foodstuffs or pet foods (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities of Nabisco, Inc.

MC 3062 (Sub-53F), filed June 20, 1980. Applicant: INMAN FREIGHT SYSTEM, INC., 321 North Spring Ave., Cape Girardeau, MO 63701. Representative: G. H. Boles (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Wayne City, IL as an off-route point in connection with carriers otherwise authorized regular route operations.

MC 14702 (Sub-86F), filed June 23, 1980. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, OH 43215. Transporting (1) *electrical wiring harnesses*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of electrical wiring harnesses (except commodities in bulk), between the facilities of the General Motors Corporation, Packard Electric Division, in OH, on the one hand, and, on the other, the facilities of General Motors Corporation, Packard Electric Division, in TX. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file and application under 49 U.S.C. § 11343 or submit an affidavit indicating why such approval is unnecesary.

MC 52793 (Sub-65F), filed June 23, 1980. Applicant: BEKINS VAN LINES CO., NEW PRODUCTS DIVISION, a corporation, 3090 Via Mondo, Compton, CA 90221. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., 1800 United California Bank Bldg., Los Angeles, CA 90017. Transporting *new furniture and furnishings*, from Fall River, MA, to points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 57992 (Sub-9F), filed June 25, 1980. Applicant: SEWELL MOTOR EXPRESS, INC., 149 South Mulberry St., Wilmington, OH 45177. Representative: Joe F. Asher, 88 East Broad St., Columbus, OH 43215. Transporting *gneral commodities* (except those of unusual value and classes A and B explosives), between Columbus, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, OH, PA and WV, restricted to traffic having a prior or subsequent movement by rail.

MC 64932 (Sub-616F), filed June 19, 1980. Applicant: ROGERS CARTAGE CO., a corporation, 10735 So. Cicero Avenue, Oak Lawn, IL 60453. Representative: Carl L. Steiner, 39 So. LaSalle Street, Chicago, IL 60603. Transporting *Chemicals*, in bulk, in tank or hopper type vehicles, from the facilities of United States Steeel Corporation at or near Haverhill, OH, to points in the U.S. (except AK and HI).

MC 96813 (Sub-6F), filed March 10, 1980. Applicant: FISK TRUCKING & TRANSFER COMPANY, a corporation, 716 San Fernando Rd., P.O. Box 65978, Los Angeles, CA 90065. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting *general commodities* (except household goods as defined by the Commission, automobiles, trucks, buses, classes A and B explosives, commodities in bulk, and those requiring special equipment), between points in Los Angeles County, CA. Condition: Issuance of this Certificate is subject to prior or coindidental cancellation, at applicant's written request, of Certificate of Registration No. MC-96813 (Sub-1), issued December 17, 1963.

MC 103993 (Sub-1057F), filed June 23, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting *asphalt handling equipment*, from Kansas City, MO, to points in the U.S. (except AK and HI).

MC 107012 (Sub-559F), filed July 1, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). Transporting *hunting and camping products*, from Henryetta, OK, to points in the U.S. (except AK and HI).

MC 107012 (Sub-560F), filed June 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). Transporting *such commodities* as are used in the operation of restaurants

(except commodities in bulk and those which because of size and weight require the use of special equipment), from points in Orange County, CA, to points in the U.S. (except AK and HI).

MC 107012 (Sub-561F), filed July 1, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting (1) *ranges, prefabricated fireplaces, and heaters,* and (2) *accessories and materials* used in the manufacture of the commodities in (1) above, (a) from points in the U.S. (except AK and HI), to Wisconsin Rapids and Stevens Point, WI, and San Bernardino, CA, and (b) from the facilities of Preway Inc., at San Bernardino, CA, to points in the U.S. (except AK and HI).

MC 107403 (Sub-1271F), filed October 1, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting *liquid chemicals, in bulk, in tank vehicles,* from Cartersville, GA, to points in AR, and, TX, those in LA west of the Mississippi River, and those in the U.S. 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 U.S. and Canada.

MC 108452 (Sub-10F), filed June 27, 1980. Applicant: ATWOOD'S TRANSPORT LINES, INC., 5500 Tuxedo Rd., Tuxedo, MD 20781. Representative: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, beginning and ending at Baltimore, MD, and extending to points in the U.S. (including AK, but excluding HI).

Note.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary.

MC 110012 (Sub-74F), filed June 27, 1980. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting (1) *new furniture and furniture parts,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles) (a) between Houston, TX, on the one hand, and, on the other, points in LA, MS, and AR, (b) between Clifton, NJ, on the one hand, and, on the other, points in PA, MD, DE, and DC, (c) between Atlanta, GA, on the one hand, and, on the other, points in NC, VA, KY, TN, and SC, and (d) between Chicago, IL, on the one hand, and, on the other, points in IN and OH.

MC 112713 (Sub-294F), filed November 30, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Avenue, P.O. Box 7270, Overland Park, KS 66207. Representative: Robert E. DeLand (same as applicant). Regular route, 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 Coldwater, MI, as an off-route point in connection with carrier's otherwise authorized regular-route operations.

MC 112713 (Sub-306F), filed June 12, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: R. E. Delund (same address as applicant). Regular route, 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, TN Evansville, IN: from Nashville over U.S. Hwy 31W to Junction U.S. Hwy 231, then over U.S. Hwy 231 to Owenboro, KY, then over U.S. Hwy 60 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Evansville, and return over the same route, serving the intermediate point of Owensboro, KY.

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) or submit an affadavit indicating why such approval is unnecessary.

MC 112822 (Sub-483F), filed July 1, 1980. Applicant: BRAY LINES INCORPORATED, P.O. Box 1191, 1401 N. Little St., Cushing, OK 74023. Representative: Dudley G. Sherrill (same address as applicant). Transporting *plastic articles,* and (2) *materials* and *supplies* used in the manufacture of plastic articles, from Houston, TX, to points in the U.S. (except AK and HI).

MC 113362 (Sub-399F), filed July 1, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting *such commodities* as are dealt in or used by retail stores (except commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, CO, and NM, restricted to traffic originating at or destined to the facilities of Ardan, Inc.

MC 114632 (Sub-289F), filed June 19, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, and VT, to points in the U.S. (except AK and HI), restricted to traffic originating at the facilities of New England Shipping Association Cooperative and its members.

MC 115092 (Sub-110F), filed July 1, 1980. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box O, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Dr., St. Charles, IL 60174. Transporting (1) *building materials,* and (2) *equipment* and *supplies* used in the manufacture or distribution of the commodities in (1) above, on the facilities of the Celotex Corp., a Jim Walter Company, at Fremont, CA, to those points in the U.S. and west of MT, WY, CO, and NM (except AK and HI).

MC 119632 (Sub-122F), filed June 27, 1980. Applicant: REED LINES, INC., 634 Ralston Ave., Defiance, OH 43512. Representative: Wayne C. Pence (same address as applicant). Transporting (1) *rubber products* (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment), from the facilities of B.F. Goodrich Company, at or near Woodburn, IN, to points in AL, GA, NC, OH, SC, and TN, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of rubber products (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment), in the reverse direction.

MC 121372 (Sub-9F), filed May 29, 1980. Applicant: EXPRESS TRANSPORT CO., INC., 1333 West Seventh St., Cincinnati, OH 45203. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. Transporting *pipe and pipe fittings, couplings, connectors, and accessories,* from the facilities of Armco, Inc., at Bowling Green, OH, to those points in the U.S. and east of ND, SD, NE, KS, OK, and TX.

MC 123872 (Sub-116F), filed June 30, 1980. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting (1) *cellulose wadding and padding* (2) *paper products,* and (3) *extruded plastic foam and film* (except commodities in bulk), from East Hartford, CT, Grenada, MS, Patterson, NC, and Paxinos and Lititz, PA, to those points in the U.S. in and west of MN, IA, NE, KS, OK, and TX.

MC 124212 (Sub-109F), filed June 27, 1980. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Rd., P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *cement,* in bulk, between points in CT, restricted to traffic having an immediately prior movement by rail.

MC 134922 (Sub-333F), filed June 25, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting (1) *such commodities* as are dealt in by home improvement centers, and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) above (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Color Tile Supermart, Inc.

MC 136343 (Sub-221F), filed June 11, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. Transporting *paper and paper products,* between those points in the U.S. in and east of MN, IA, MO, AR, and LA, restricted to traffic originating at or destined to the facilities of Simon Miller Sales Company, Inc.

MC 136713 (Sub-24F), filed June 23, 1980. Applicant: AERO LIQUID TRANSIT, INC., 1717 Four Mile Rd. N.E., Grand Rapids, MI 49505. Representative: Daniel J. Kozera, Jr., The McKay Tower, Suite 2-A, Grand Rapids, MI 49503. Transporting *liquified petroleum gas,* in bulk, in tank vehicles, from Blue Island, IL, to points in MI, IN, and WI. Condition: Any certificate issued in this proceeding shall be limited in term to a period expiring 5 years from its date of issue.

MC 136713 (Sub-25F), filed June 23, 1980. Applicant: AERO LIQUID TRANSIT, INC., 1717 Four Mile Rd. N.E., Grand Rapids, MI 49505. Representative: Daniel J. Kozera, Jr., The McKay Tower, Suite 2-A, Grand Rapids, MI 49503. Transporting *fertilizers,* from Burns Harbor, IN, to points in MI.

MC 138882 (Sub-370F), filed June 27, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting (1) *rubber articles and plastic articles,* (except commodities in bulk, in tank vehicles), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of commodities in (1) above (except commodities in bulk, in tank vehicles) between points in the U.S. (except AK and HI).

MC 139663 (Sub-9F), filed June 23, 1980. Applicant: HASKINS & SON, INC., 815 Max Ave., Lansing, MI 48915. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting *scrap plastic materials,* in dump vehicles, from the facilities of Dow Chemical U.S.A., at or near Midland, MI, to points in OH.

MC 139663 (Sub-9F), filed June 23, 1980. Applicant: HASKINS & SON, INC., 815 Max Ave., Lansing, MI 48915. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting *scrap plastic materials,* in dump vehicles, from the facilities of Dow Chemical U.S.A., at or near Midland, MI, to points in OH.

MC 139892 (Sub-2F), filed June 23, 1980. Applicant: M.E. TRANSFER & STORAGE, INC., P.O. Box 1095, Moses Lake, WA 98837. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *petroleum products,* in containers, from Moses Lake, WA, to points in Hood River, Wasco, Crook, Jefferson, Dechutes, Wheeler, Gilliam, Sherman, Lake, Harney, Grant, Morrow, Umatila, Union, Wallowa, and Baker Counties, OR, and Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nez Perce, Lewis, and Idaho Counties, ID.

MC 139923 (Sub-63F), filed October 1, 1979. Applicant: MILLER TRUCKING CO., INC., P.O. Box Drawer D, Stroud, OK 74079. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *household appliances and parts* for household appliances, from the facilities of The Maytag Company, at Newton, IA, to points in AZ, CA, CO, MT, NV, NM, TX, UT, and WY.

MC 141532 (Sub-81F), filed July 1, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Highway, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104. Transporting (1) *commodities* which because of size or weight require the use of special equipment, (2) *self-propelled vehicle* (except motor vehicles), (3) *metal articles,* (4) *pipe* (except meal) and *pipe fittings,* (5) *construction, road building, and mining equipment, materials, and supplies;* (6) *agricultural machinery and implements,* and (7) *lumber, lumber products, and wood products,* between points in OR, WA, UT, CA, ID, MT, CO, WY, AZ, and NV, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted in (1) through (7) above against the transportation of commodities in bulk, in tank vehicles, commodities of unusual value, and classes A and B explosives.

MC 141532 (Sub-84F), filed June 27, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Hwy., Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting *tanks, machinery, construction equipment, mining equipment, and commodities* which because of size or weight require the use of special equipment, between the facilities of Klein Products, Inc., at or near (a) Jacksonville, TX, and (b) Ontario, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141532 (Sub-85F), filed June 24, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., a WA corporation, 10244 Arrow Hwy., Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting (1) *aluminum articles,* and (2) *equipment, materials,* and *supplies* used in the manufacture and distribution of aluminum articles, between the facilities of Martin-Marietta at or near Lewisport, KY, on the one hand, and, on the other, those points in the U.S. in and west of LA, AR, MO, IA and MN (except AK and HI).

MC 142873 (Sub-6F), filed June 24, 1980. Applicant: D & W TRUCK LINES, INC., 209 First St., Parsons, WV 26287. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *adhesives, cleaning, preserving and sealing products, solvents, stains, plastic carpeting, carpet strip, and moldings, and equipment and supplies* used in the installation of the commodities (?) from Kalamazoo, MI, and Dayton, OH, to those points in the U.S. in and east of MT, WY, CO and NM.

MC 142873 (Sub-8F), filed May 29, 1980. Applicant: D & W TRUCK LINES,

INC., 209 First St., Parsons, WV 26287. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *animal feed and animal feed ingredients,* except commodities in bulk), and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near (a) Columbus, OH, and (b) Mattoon, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the above named facilities.

MC 143152 (Sub-7F), filed June 3, 1980. Applicant: HODGE TRUCKING COMPANY, a corporation, P.O. Box 386, Hoxie, AR 72433. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201. Transporting *ground clay,* from Ripley, MS, and Ochlocknee, GA, to points in IL, IN, AR, IA, NE, KS, AL, TX, LA, OK, MN, WI, MO, TN, NC, and SC.

MC 143522 (Sub-4F), filed June 27, 1980. Applicant: CONSOLIDATED CARRIERS, INC., 123 Sunrise Dr., Irwin, PA 15642. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68102. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of McGraw-Edison.

MC 144293 (Sub-15F), filed June 23, 1980. Applicant: DUANE McFARLAND, P.O. Box 1006, Austin, MN 55912. Representative: Thomas J. Beener, 67 Wall St., New York, NY 10005. Transporting *beverages* (except in bulk), between the facilities of Shasta Beverages, at (a) Columbus, OH, (b) Kansas City, KS, and (c) St. Louis, MO, on the one hand, and, on the other, points in IA, IL, IN, KY, MI, MN, ND, SD and WI.

MC 141742 (Sub-13F), filed June 26, 1980. Applicant: FLOWERS TRANSPORTATION, INC., P.O. Box B, Station A, Auburn, CA 95603. Representative: Ronald C. Chauvel, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting (1) *lumber* from points in AZ, CA, and OR to Douglas, AZ, and the port of entry on the international boundary line between the U.S. and Mexico at Calexico, CA; and (2) in foreign commerce only, *box shook, moulding, millwork, and lumber products,* from the ports of entry on the international boundary line between the U.S. and Mexico at Douglas, AZ and Calexico, CA to points in AZ, UT, CO, MN, and CA.

MC 144572 (Sub-43F), filed June 30, 1980. Applicant: MONFORT TRANSPORTATION CO., a corporation, P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting (1) *steel doors and steel door accessories,* (2)(a) *fireplaces, chimneys, and chimney assemblies,* and (b) *accessories and supplies* for the commodities in (2)(a) (except commodities in bulk), and (3)(a) *plumbing fixtures and fittings,* and (b) *accessories and supplies* for the commodities in (3)(a), (except commodities in bulk) from Cincinnati, Tiffin, and Salem, OH, Huntington, IN, Louisville, KY, and New Orleans, LA, to points in CO, restricted to traffic originating at the facilities of American Standard, Inc.

MC 144622 (Sub-177F), filed June 9, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J.B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *such commodities* as are dealt in or used by manufacturers of paper, (except commodities in bulk), between the facilities used by International Paper Co., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144622 (Sub-178F), filed June 30, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219 Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *foodstuffs* (except in bulk) between Birmingham, AL, Atlanta, GA, Starkeville, MS, Chester and Rock Hill, SC, Columbus and Van Wert, OH, Wellsboro, PA, Linden, NJ, Syracuse, NY, Pine Point, ME, Plymouth, WI, St. Paul, MN, Chicago and North Brook, IL, Los Angeles, CA, Dallas, TX, and Milwaukie, OR, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 144622 (Sub-179F), filed June 26, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *refractories, foundry supplies, and chemicals* (except commodities in bulk), (1) from Chicago, IL, to points in OR, WA, TX, and UT, and (2) from points in OR, WA and UT, to Cleveland, OH.

MC 144653 (Sub-2F), filed August 10, 1979. Applicant: A & D HITCHCOCK TRUCKING, INC., 2990 Gramer Road, Webberville, MI 48892. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Contract carrier,* in foreign commerce only transporting *sunflower oil meal, soya bean oil meal, linseed oil meal,* and *rapeseed meal,* from the ports of entry on the international boundary line between the U.S. and Canada at Detroit, Port Huron, and Sault Ste. Marie, MI, to points in MI, under continuing contract(s) with Michigan Elevator Exchange, Division of Farm Bureau Services, Inc., of Lansing, MI.

MC 145102 (Sub-65F), filed June 27, 1980. Applicant: FREYMILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting *foodstuffs,* (1) from Le Mars, IA, Milwaukee, WI, Omaha, NE, and Mankato and Wichita, KS, to points in AZ, CA, NV, OK, OR, TX, UT, WA, and WI, and (2) from San Francisco, CA to points in AZ, IA, KY, OK and TX.

MC 145442 (Sub-2F), filed June 30, 1980. Applicant: COSSAIR MARINE, INC., 8217 Lankershim Boulevard, Suite 8, North Hollywood, CA 91605. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Transporting *boats and boating equipment, and accessories* for boats and boating equipment, between points in Orange County, CA on the one hand, and, on the other, points in OR, WA, MN, WI, IN, MI, OH, NY, RI, PA, ME, VT, NH, MA, CT, FL, NJ, DE, VA, NC, SC, GA, AL, MS, LA, TX, and MD.

MC 145812 (Sub-1F), filed May 7, 1980. Applicant: MARYLAND CONTINENTAL EXPRESS, INC., 129 Overhill Dr., Hagerstown, MD 21740. Representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier,* transporting (1) *veneer,* from Martinsburg, WV, to points in NY and VT, and (2) *lumber,* from Martinsburg, WV, to points in WA, OR, CA, ID, AZ, CO, KS, OK, TX, IL, MO, LA, MI, WI, OH, TN, MS, AL, GA, under continuing contract(s) in (1) and (2) with Erath Veneer Corporation.

MC 145872 (Sub-7F), filed May 19, 1980. Applicant: TREVIS BERRY TRANSPORTATION, a corporation, 655 Luchessa, P.O. Box 1802, Gilroy, CA 95020. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Contract carrier,* transporting (1) *fibreboard, paper, and pulpboard products (2) materials and supplies used in the manufacture and distribution of fibreboard, paper and pulpbord products, and (3) waste paper products,* between the facilities of Crown Zellerbach Corporation, at or

near Antioch and Gilroy, CA, on the one hand, and, on the other, points in Carson City, Humboldt and Washoe Counties, NV, under continuing contract(s) with Crown Zellerbach Corporation.

MC 145912 (Sub-4), filed June 30, 1980. Applicant: TRUCK SERVICE, INC., 303 Vance St., Forest City, NC 28043. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. *Contract carrier,* transporting *plastic containers and plastic container lids,* from the facilities of Genpak Corporation, 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, WV, and DC, under continuing contract(s) with Genpak Corporation.

MC 146643 (Sub-51), filed June 19, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Joel H. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Contract carrier,* transporting *refractory products,* and *steel mill and foundry supplies,* between Cleveland, OH, and Chicago, IL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK and TX, under continuing contract(s) with Foseco, Inc., of Brookpark, OH.

MC 146782 (Sub-33), filed July 1, 1980. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 First Ave. South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Bldg., Nashville, TN 37201. Transporting (1) *aluminum articles,* and (2) *equipment, materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of Alumax of South Carolina, Inc., in Berkeley County, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the named facilities.

MC 147323 (Sub-25), filed June 12, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: John P. Haddad (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers, distributors, and processors of iron and steel articles, between points in the U.S. (except AK and HI).

MC 148512 (Sub-3), filed June 26, 1980. Applicant: WESTERN TANK LINE, INC., 2222 North 11th St., Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *asphalt emulsion,* in bulk, in tank vehicles, from Alton, IA, to points in MN, SD, and NE.

MC 148542F, filed October 4, 1979. Applicant: KLINSTIVER'S, INC., R.R. 1, Elizabeth, IN 47117. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *sand, gravel dirt, crushed stone, and blacktop,* in dump vehicles, from points in Harrison and Floyd Counties, IN, to points in Jefferson, Beckinridge, Hancock, Hardin, Bullit, and Meade Counties, KY.

MC 149173 (Sub-2F), filed June 2, 1980. Applicant: NATIONAL EXPRESS, INC., 8138 Balson Ave., St. Louis, MO 63130. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting (1) *malt beverages,* (except in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages (except commodities in bulk), between the facilities of Anheuser-Busch, Inc., on the one hand, and, on the other, Columbus, OH.

MC 149232 (Sub-1F), filed April 15, 1980. Applicant: MARION D. DAY d.b.a. DAY'S EXPRESS, 1942 7th St., Columbus, IN 47201. Representative: Stephen M. Gentry, 1502 Main St., Speedway, IN 46224. Transporting *such commodities* as are dealt in by grocery houses, department stores, drug stores and hardware stores, from the facilities of Colgate-Palmolive Company, at near Jeffersonville, IN to points CA, NV, and OR.

MC 149432F, filed March 13, 1980. Applicant: MARC BAGGAGE LINES, INC., 9033 Hollyberry Ave., Des Plaines, IL 60016. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016. *Contract carrier, transporting electric products and electronic products,* between the facilities of GTE Products Corporation, at or near Elk Grove Village, IL, on the one hand, and, on the other, points in IL, IN, IA, MN, WI, and those in the Upper Peninsula of MI, under continuing contract(s) with GTE Products Corporation, of Danvers, MA.

MC 150262 (Sub-1F), filed June 26, 1980. Applicant: S AND Q TRUCK AND TRACTOR SERVICE, INC., P.O. Box 477, Odin, IL 62870. Representative: Edward D. McHamara, Jr., 907 South Fourth St., Springfield, IL 62703. Transporting (1) *panels* for earthen-covered structures, and (2) *parts and machinery* used in the construction and erection of earthenware covered structures, mixed loads with the commodities in (1) above, between the facilities of American Solartron Corp., at or near Centralia, IL, on the one hand, and, on the other, points in WA, TX, AZ, NE, MO, IA, IN, MN, AL, TN, PA, NY, CO, CA and CT.

MC 150372 (Sub-1F), filed May 5, 1980. Applicant: DALE C. FINCK, P.O. Box 263, Black Hawk, SD 57718. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. Transporting *such commodities* as are dealt in by retail and catalogue order stores, between Rapid City, SD, on the one hand, and, on the other, points in Crook, Campbell and Weston Counties, WY.

MC 150413 (Sub-1F), filed May 19, 1980. Applicant: JOE COSTA TRUCKING, a corporation, Hwy 299 at Arlington Way, P.O. Box 748—Drawer BB, Arcata, CA 95521. Representative: Marvin Handler, 100 Pine St, Suite 2550, San Francisco, CA 94111. *Contract carrier,* transporting *wood residuals, from Brookings, OR, to Fairhaven Smith River, and Crescent City, CA, under continuing contract(s) with South Coast Lumber Company of Brookings, OR.*

MC 150432 (Sub-1F), filed June 13, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1800 M Street, N.W., Suite 800—South, Washington, DC 20036. *Contract carrier,* transporting *such commodities* as are used in the construction and installation of tennis and racketball courts from Columbus, OH, to points in the U.S. (except AK and HI), under continuing contract(s) with Wilson Courts, Inc., of Columbus, OH.

MC 150592 (Sub-1F), filed April 15, 1980. Applicant: SUNFLOWER CARRIERS, INC., P.O. Box 561, York, NE 68467. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting *Meats, meat products and meat by-products and articles distributed by meat-packing houses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from Kingston, NY, to points in IL, MI, OH and PA, and (2) from Hawarden, IA, to Kingston, NY.

MC 150642 (Sub-1F), filed June 30, 1980. Applicant: RENNIE & CLARK, INC., 7100 N. Ritchie Highway, Glen Burnie, MD 21061. Representative: Robert L. Flanagan, Esquire, 10 Light Street, Baltimore, MD 21202. Transporting *wrecked, abandoned, disabled, and stolen motor vehicles, and replacement vehicles* in truckaway service, by use of wrecker equipment only, between points in MD, on the one hand, and, on the other, points in CT, DE, NJ, NY, NC, PA, SC, OH, VA, WV, GA, IL, IN, KY, MS, TN, WI, and DC.

MC 151063 (Sub-1F), filed June 19, 1980. Applicant: LODWICK TRANSPORT LIMITED, R.R. No. 1,

Brechin, Ontario, Canada LOK 1B0. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202. *Contract carrier,* in foreign commerce only, transporting (1) *automobile jacks and handles,* and (2) *materials, supplies and equipment,* used in the manufacture and distribution of commodities in (1) above, between ports of entry on the international boundary line between the U.S. and Canada in MI, and NY, on the one hand, and, on the other, points in DE, IL, IN, MD, MA, MI, NY, OH, WI, under continuing contract(s), with Seeburn Metal Products Limited, see Metal Product Limited.

MC 151222F, filed July 1, 1980. Applicant: AIRPORTS SERVICE LINES, INC., 2925 Lapeer Road, Pontiac, MI 48057. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, between points in Wayne, Oakland, Macomb, Washtenaw, and St. Clair Counties, MI, on the ond hand, and, on the other, points in the U.S. (including AK, but excluding HI).

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Decided July 25, 1980.

By the Commission, Review Board No. 3, Members Parker, Fortier and Hill.

MC 20992 (Sub-62F), filed June 13, 1980. Applicant: DOTSETH TRUCK LINE, INC., Knapp, WI 54749. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *Such commodities as are dealt in or used by agricultural, industrial, recreational and materials handling equipment dealers and manufacturers* (except commodities in bulk), between points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 20992 (Sub-63F), filed June 9, 1980. Applicant: DOTSETH TRUCK LINE, INC., Knapp, WI 54749. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *Such commodities as are dealt in by home improvement centers* (except commodities in bulk), between points in MN, IA, ND, SD, NE, IL, WI and IN, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Plywood Minnesota, Inc.

MC 47583, (Sub-129F), filed June 9, 1980. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, 66115. Representative: D. S. HULTS, P.O. Box 225, Lawrence, KS 66044. Transporting *paper and paper products and materials, equipment and supplies used in the manufacture and distribution of paper and paper products* (except in bulk) between points in the U.S. restricted to traffic originating at or destined to facilities of Olinkraft, Inc.

MC 87103 (Sub-83F), filed June 12, 1980. Applicant: MILLER TRANSFER AND RIGGINS CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko (same as applicant). Transporting (1) *Construction equipment, machinery and parts,* (2) *road construction equipment, machinery and parts,* (3) *contractors' equipment,* (4) *equipment, materials and supplies* used in the manufacture or distribution of the commodities in (1), (2) and (3) above (except commodities in bulk) (a) between the facilities of L. B. Smith Incorporated at Camp Hill, PA on the one hand, and, on the other, points in the U.S. (except AK and HI) and (b) between points in the U.S. (except AK and HI) restricted in (b) above to traffic originating at or destined to the facilities of L. B. Smith Incorporated.

MC 87103 (Sub-84F), filed June 12, 1980. Applicant: MILLER TRANSFER AND RIGGINS CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko (same as applicant). Transporting (1) *Boilers and boiler parts, heat exchangers, pressure vessels, tanks, tubing, pressure piping and commodities* which, because of size or weight, require the use of special handling or special equipment and (2) *equipment, materials and supplies* used in the manufacture or distribution of the commodities named in (1) above (except commodities in bulk) between the facilities of R. Munroe & Sons Manufacturing Corporation at Pittsburgh, and Oakmont, PA, and Youngstown, OH on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the named facilities.

MC 87103 (Sub-85F), filed June 12, 1980. Applicant: MILLER TRANSFER AND RIGGINS CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko (same as applicant). Transporting (1) *Industrial fans and blowers, parts, attachments and accessories* and (2) *equipment, materials and supplies* used in the manufacture or distribution of the commodities named in (1) above (except commodities in bulk), between the facilities of TLT Babcock at Medina, OH on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the named facilities.

MC 103993 (Sub-1050F), filed June 13, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same as applicant). Transporting *building materials,* from (1) Port Allegany, PA and (2) Sedalia, MO, to points in the U.S. (except AK and HI).

MC 103993 (Sub-1051F), filed June 13, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same as applicant). Transporting (1) *steel shelving, pallet racks, and (2) parts and accessories* utilized in the erection of steel shelving and pallet racks (except commodities in bulk), between North East, PA, on the one hand, and, on the other, points in the U.S, in the east of ND, SD, NE, KS, OK, and TX.

MC 107012 (Sub-547F), filed June 10, 1980. 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 as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the US (except AK and HI), restricted to traffic originating at or destined to the facilities of Ralston Purina Co.

MC 107012 (Sub-548F), filed June 10, 1980. 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 as applicant). Transporting (1) *kitchen utensils and cookware,* (a) from Sheridan, AR to points in the US (except AK and HI), and (b) from Jackson, MS, Sparks, NV, and Trenton, NJ to West Bend and Oak Creek, WI, and (2) *appliances,* from Sheridan, AR, to points in AL, AZ, CA, CO, FL, GA, ID, IA, KS, KY, LA, MN, MS, MT, NV, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, VA, WA and WY.

MC 107012 (Sub-549F), filed June 12, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). Transporting *plastic articles* from the facilities of Visual Design, at or near Houston, TX to points in the US (except AK and HI).

MC 107403 (Sub-1338F), filed June 12, 1980. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes,

Jr. (same address as applicant). Transporting (1) *chemicals*, in bulk, from the facilities of United States Steel Corporation, at or near Haverhill, OH, to points in the U.S. (except AK and HI).

MC 108453 (Sub-38F), filed June 10, 1980. Applicant: G & A TRUCK LINE, INC., 404 W. Peck Ave., White Pigeon, MI 49099. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract carrier*, transporting *paper, paper products and scrap paper*, (except commodities in bulk), between the facilities of Continental Forest Industries, Consumer Products Division, at Three Rivers, MI, on the one hand, and, on the other, points in PA, IA, NY, NJ, MN, KY and MO, under a continuing contract(s) with Continental Forest Industries, Consumer Products Division of Three Rivers, MI.

MC 111812 (Sub-728F), filed June 16, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same as applicant). Transporting *Confectionery products*, (1) from Boston, MA and North Grosvenordale, CT to points in AZ, AR, CA, CO, ID, LA, MT, NM, OK, OR, TX, UT, WA and WY; and (2) from North Grosvenordale, CT to points in MN and WI.

MC 111812 (Sub-729F), filed June 16, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same as applicant). Transporting *Petroleum and petroleum products, automotive chemicals and cleaning compounds, and such equipment, materials and supplies* as are used by automotive service centers (except in bulk), between the facilities of Valvoline Oil Company, a division of Ashland Oil, Inc. at Willow Springs, IL, on the one hand, and, on the other, points in AR, CO, IL, IN, IA, KY, KS, LA, MI, MN, MO, MT, NE, NM, ND, OH, OK, PA, SD, TN, TX, WI and WY, restricted to traffic originating at or destined to the facilities of Valvoline Oil Company.

MC 111812 (Sub-730F), filed June 16, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same as applicant). Transporting *Such commodities* as are dealt in by wholesale and retail grocery store outlets, between Indianapolis, IN, Dorsey, MD, Lyons, IL, and Kansas City, KS, on the one hand, and, on the other, points in the U.S. in and East of ND, SD, NE, KS, OK and TX.

MC 111882 (Sub-2F), filed May 9, 1980. Applicant: SERV U, INC., 6640 Quad Avenue, Baltimore, MD 21237. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting *general commodities, chassis or trailer, and empty containers*, having prior or subsequent movements by water, between Baltimore, MD, on the one hand, and, on the other, points in DE, MD, NJ, PA, VA and DC.

MC 112223 (Sub-133F), filed June 10, 1980. Applicant: QUICKIE TRANSPORT COMPANY, a corporation, 1700 New Brighton Boulevard, Minneapolis, MN 55413. Representative: Earl Hacking (same as applicant). Transporting *liquid fertilizer*, in bulk, in tank vehicles, from Minneapolis, St. Paul, and Pine Bend, MN, to points in IA and WI.

MC 113362 (Sub-395F), filed June 12, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting (1) *floor tile*, and (2) *equipment, materials and supplies* used in the installation, manufacture and distribution of the commodities in (1) above, (except in bulk), from the facilities of Kentile Floors, Inc., at Chicago, IL, to points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic originating at the named origins and destined to the indicated destinations.

MC 113362 (Sub-396F), filed June 10, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the *Report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766*, from the facilities of Wilson Foods Corporation, at Omaha, NE, to points in IL, KY, MI, MO, TN, WV, and WI, restricted to traffic originating at the named origins and destined to the indicated destinations.

MC 114273 (Sub-749F), filed June 12, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting (1) *tool and utility boxes, chests, work benches, cabinets and shelving*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, from Pocahontas, AR, Sedalia, MO and Waterloo, IA, to points in CT, DE, IL, IN, IA, KS, KY, MD, MI, MN, MO, NE, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, WI and DC.

MC 114273 (Sub-750F), filed June 12, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) from points in CT, DE, IN, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, VT, and VA to the facilities of Venture Stores in IL, IN, IA, KS, MO, and DC.

MC 114273 (Sub-751F), filed June 12, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting: *foodstuffs* and such articles as are dealt in by wholesale, retail and chain grocery and food business houses (except in bulk), between points in IA, IL, IN, KS, KY, MA, MD, MI, MN, MO, NC, NE, NJ, NY, OH, PA, and VA, restricted to traffic originating at or destined to the facilities of John Sexton and Co., Division of Beatrice Foods.

MC 114273 (Sub-752F), filed June 12, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *paper and paper products*, (except in bulk), from Niagara Falls, NY, to points in WI, and IL.

MC 114273 (Sub-753F), filed June 12, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting: (1) *chemicals, starch, and* (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, (except in bulk) from the facilities of National Starch and Chemical Co. at or near Meredosia, IL and Indianapolis, IN, to points in CT, DE, IA, IL, IN, KS, KY, MA, MD, MI, MN, MO, NE, NJ, NY, OH, and PA.

MC 114273 (Sub-754F), filed June 12, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *paper and paper articles* (except in bulk), from Menominee, MI, Potsdam, NY, Mosinee and Rhinelander, WI, to Ft. Madison, IA.

MC 114273 (Sub-755F), filed June 10, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *silicon carbide and aluminum oxide* (except in bulk), from the facilities of

General Abrasive at or near Niagara Falls, NY to points in the U.S. in and east of ND, SD, NE, KS, CO, OK, and TX.

MC 114273 (Sub-756F), filed June 10, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *plastic materials* (except in bulk), from Leominster, MA to points in IA, IL, IN, KY, MI, MO, OH, PA, TN, and WI.

MC 114273 (Sub-757F), filed June 10, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *foodstuffs* (except in bulk), from Buffalo, NY to points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 114273 (Sub-758F), filed June 10, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in 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, ND, OH, OK, PA, RI, SC, SD, IN, TX, VT, VA, WV, WI, and DC, Restricted to traffic originating at or destined to the facilities of Minnesota Mining and Manufacturing Company (3 M Company) or its wholly owned subsidiaries.

MC 114273 (Sub-759F), filed June 10, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *plastic articles and rubber articles*, from points in NJ, NY, OH, and PA to points in KS and IA.

MC 116763 (Sub-672F), filed June 12, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *containers and plastic articles* (except commodities in bulk, in tank vehicles), between points in the US in and east of MN, IA, MO, OK, and TX, restricted to traffic originating at or destined to the facilities of Paramount Packaging Company.

MC 118202 (Sub-158F), filed June 12, 1980. Applicant: SCHULTZ TRANSIT, INC., 323 Bridge St., P.O. Box 406, Winona, MN 55987. Representative: Thomas J. Beener, 67 Wall St., New York, NY 10005. Transporting *beverages* (except in bulk), from (1) New Bedford, MA to points in NY, NJ, PA, and MD; (2) Columbus, OH, to points in IL, PA, NY, IN, and MI; (3) Kansas City, KS to points in CO, IA, MN, ND, and SD; (4) Union, NJ to points in OH and PA; (5) Tampa, FL to Charlotte, NC, and (6) St. Louis, MO to points in IL, IA, MN, and KY, restricted to traffic originating at or destined to the facilities of Shasta Beverages.

MC 125433 (Sub-422F), filed June 10, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission), between points in the U.S. (except AK and HI), restricted to traffic originating at the facilities used by Southern Bonded Warehouse and Transtop Incorporated. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a term expiring 5 years from the date of issuance.

MC 127042 (Sub-299F), filed June 10, 1980. Applicant: HAGEN, INC., P.O. Box 98, Leeds Station, Sioux City, IA 51108. Representative: Joseph B. Davis (same address as applicant). 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 Hospers, IA to points in AZ, CA, CO, ID, IN, MI, MT, ND, NE, NV, OR, SD, UT, WA, and WY.

MC 128273 (Sub-395F), filed June 10, 1980. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). Transporting *such commodities*, as are used or dealt in by processors and distributors of diatomaceous earth and diatomaceous earth products, between Maricopa, CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, NM, OR, TX, UT, WA and WY.

MC 138882 (Sub-367F), filed June 10, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting (1) *roofing and roofing materials*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in Frederick County, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138882 (Sub-368F), filed June 13, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting *construction materials*, between the facilities of Kemp Furniture Industries, Inc., at or near Goldsboro, NC, on the one hand, and, on the other, Jasper and Salem, IN, Ft. Smith, AR, Watsontown, PA, and Memphis and Knoxville, TN. (Hearing site: Raleigh, NC or Birmingham, AL.)

MC 138882 (Sub-369F), filed June 13, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting (1) *electric storage batteries, spent batteries, accessories and supplies* used in connection with batteries, and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1) above, (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of ESB, Incorporated division of Exide Corporation and its subsidiaries.

MC 141932 (Sub-35F), filed June 10, 1980. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA 02339. Representative: Alton C. Gardner (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. in and east of ND, SD, NE, KS, OK and TX, restricted to traffic originating at or destined to the facilities of W. R. Grace & Co. Condition: Issuance of this certificate is subject to prior or coincidental cancellation at applicant's written request of the outstanding Certificate in MC-141932 Sub 14, issued April 21, 1980.

MC 141932 (Sub-36F), filed June 13, 1980. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA 02339. Representative: Alton C. Gardner (same address as applicant). Transporting *carbon, charcoal, carbon wood products, charcoal briquets, chips, hickory*, and *equipment, materials and supplies* used in the distribution or manufacture of charcoal and charcoal briquets, and fluid lighter (except commodities in bulk, and articles which because of size or weight require the use of special equipment), between Atlanta, GA, Branson, MO, Isanti, MN, Ocala and Romeo, FL, Pachuta, MS, Scotia and Stamford, NY, and Waupaca, WI, on the

one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Husky Industries, Inc.

MC 142423 (Sub-7F), filed June 12, 1980. Applicant: BIG D. CARTAGE, INC., 20891 Kingberry Drive, Mt. Clemens, MI 48045. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Transporting *malt beverages* from the facilities of the Miller Brewing Company, or near Trenton, OH, and Albany, GA to points in MI.

MC 142423 (Sub-8F), filed June 12, 1980. Applicant: BIG D CARTAGE, INC., 20891 Kingberry Drive, Mt. Clemens, MI 48045. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Transporting *malt beverages* from Columbus, OH to Detroit, MI.

MC 142423 (Sub-9F), filed June 12, 1980. Applicant: BIG D CARTAGE, INC., 20891 Kingberry Drive, Mt. Clemens, MI 48045. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Transporting *malt beverages* (a) from Fulton, NY to points in MI, (b) from Milwaukee, WI to points in the Lower Peninsula of MI.

MC 144622 (Sub-176F), filed June 16, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *petroleum products, chemicals, and plastic materials (except in bulk) in vehicles equipped with mechanical refrigeration* between Big Spring, TX, Calumet City and Chicago, IL, Orange and Los Angeles, CA, Hammond, IN, Windsor and Trenton, NJ on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146402 (Sub-22F), filed June 13, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (address same as applicant). Transporting *malt beverages* (except commodities in bulk, in tank vehicles) from Williamsburg, VA, to the facilities of Mirablile Beverage Company in Bucks and Montgomery Counties, PA.

MC 147323 (Sub-26F), filed June 12, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: John P. Haddad (same as applicant). Transporting *such commodities* as are used by or dealt in by manufacturers, distributors or processors of iron and steel articles (except commodities in bulk) (1) between the facilities of North Atlantic Steel Co., Inc. at New York, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI) and (2) between points in the U.S. (except AK and HI), restricted in (2) above to the transportation of traffic for North Atlantic Steel Co., Inc. of New York, NY.

MC 148292 (Sub-8F), filed June 11, 1980. Applicant: J. POSA, INC., P.O. Box 335, Elmont, NY 11003. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting *malt beverages*, and *equipment and supplies* used in the production and distribution of malt beverages, between Trenton, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148292 (Sub-9F), filed June 13, 1980. Applicant: J. POSA INC., P.O. Box 335, Elmont, NY 11003. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting: *paper and paper products and woodpulp* from West Point, VA to points in CT, DE, MA, ME, MD, MI, NH, NJ, NY, OH, PA, RI, VT, and WV.

MC 148292 (Sub-10F), filed June 16, 1980. Applicant: J. POSA, INC., P.O. Box 335, Elmont, NY 11003. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Union Camp Corporation.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-23652 Filed 8-6-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Hispanic Advisory Committee to the Attorney General; Open Meeting

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), there will be a meeting of the Hispanic Advisory Committee to the Attorney General. The Committee will meet on September 18 from 9:00 a.m. until 5:00 p.m., and on September 19 from 9:00 a.m. until 12:00 noon in Conference Room B, First Floor of the Main Justice Building. The Building is located between Pennsylvania and Constitution Avenues, NW and Ninth and Tenth Streets, Washington, D.C. Please enter at Tenth Street and Constitution Avenue, NW. The agenda will include the following topics:

1. Equal Employment Opportunity.
2. Civil Rights Units, U.S. Attorneys Offices.
3. Education.
4. Immigration.

The members of the Hispanic Advisory Committee to the Attorney General are:

Armando De Leon (Phoenix, Arizona)
Jose Enrique Amadeo (San Juan, Puerto Rico)
Joaquin Avila (San Antonio, Texas)
Ruben Bonilla (Corpus Christi, Texas)
Adelfa Callejo (Dallas, Texas)
Maria Cerda (Chicago, Illinois)
Victoria Diaz (Palo Alto, California)
Manolo Fernandez (Elizabeth, New Jersey)
Father Jose J. Gallego (Chicago, Illinois)
Dr. Hector P. Garcia (Corpus Christi, Texas)
Robert Gonzales (San Francisco, California)
Lorenzo Patino (Sacramento, California)
Ana Maria Perera (Washington, D.C.)
Ben Reyes (Houston, Texas)
Hector Roman (New York, New York)
Pablo Sedillo (Washington, D.C.)
M.D. "Lita" Taracido (New York, New York)
Arnhilda Gonzalez-Quevedo (Miami, Florida)

Both sessions will be open to the public and will be held in rooms that accommodate approximately 50 people. On September 18 after the Committee members finish discussing the items on the agenda, there may be time for statements by non-members. If you want to make a statement at this meeting or if you would like the Committee to consider a written statement, please call or write to the Special Assistant to the Attorney General, Department of Justice, Room 5132, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Lupe Salinas, Special Assistant to the Attorney General, Department of Justice, (202) 633-2927 (not toll free).

Dated: August 1, 1980.

Lupe Salinas,

Special Assistant to the Attorney General, Department of Justice.

[FR Doc. 80-23771 Filed 8-6-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Design Arts (Design Communication); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Panel (Design Communication) to the National Council on the Arts will be

held August 25, 1980 from 9:00 a.m. to 5:30 p.m., and August 26, 1980 from 9:00 a.m. to 5:30 p.m. in Room 1426, Columbia Plaza Office Complex, 2401 E St., N.W. Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

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.

July 28, 1980.

[FR Doc. 80-23823 Filed 8-6-80; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts 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 Expansion Arts Panel to the National Council on the Arts will be held August 27, 1980 from 9:00 a.m. to 7:00 p.m., August 28, 1980 from 9:00 a.m. to 7:00 p.m., August 29, 1980 from 9:00 a.m. to 6:00 p.m. at the School of American Research, 660 Garcia Street, Santa Fe, New Mexico.

This meeting will be open to the public on a space available basis. The topic for discussion will be guidelines, questions and answers with the public, on-site visits.

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 Operation, National Endowment for the Arts.

[FR Doc. 80-23824 Filed 8-6-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-Ar 80-32]

Safety Recommendations and Responses; Availability

Highway Safety Recommendation Letter

H-80-45 and -46 to the Arkansas State Highway and Transportation Department, July 28, 1980.—The National Transportation Safety Board has issued two "Class I, Urgent Action" recommendations in view of the accident which occurred June 5, 1980, when a chartered bus carrying 33 people accelerated out of control while descending a curved, steep, long grade on State Route 7, south of Jasper, Ark. The northbound bus ran off the road into a drainage ditch and traveled partially in the ditch until it struck a culvert, where the bus was redirected across the road. It left the road at a high rate of speed and plunged down an embankment. The front of the bus came to rest 40 feet below the highway. Twenty people were killed.

As a result of previous accidents on this hill, an escape ramp is being constructed 1,000 feet south of the accident site. The estimated completion date for the ramp is mid-August. About 1 mile farther south, a brake check area has been completed but not signed or marked. The Safety Board believes that safety benefits could accrue immediately from utilizing the completed brake check area if all trucks, buses, and cars with trailers were required to pull off and check their vehicle's brakes.

The Safety Board states that the drivers of these vehicles should be confronted with a large advance warning sign directing them to check their brakes at the brake check area. Another sign at the brake check area should advise them to use low gear, maintain their braking capability, and drive at a safe speed while descending the hill. The latter sign could be enhanced by a diagrammatic depiction of the sharp curves ahead, the steep grades, and the length of the grades. When the escape ramp is completed, its location should be shown on the sign.

Therefore, the Safety Board recommends that the Arkansas State Highway and Transportation Department:

Install signs on State Route 7 to require northbound trucks, buses, and cars with trailers to pull off and check their brakes at the brake check area south of Jasper. (H-80-45)

Install signs in the brake check area to inform the drivers of these vehicles of the roadway alignment ahead. The signs should include percentage of grades, length of grades, horizontal curvature, maximum safe speeds, and other pertinent information which will aid motorists to safely negotiate the roadway ahead. (H-80-46)

Pipelines Safety Recommendation Letters

P-80-59 to the Research and Special Programs Administration of the U.S. Department of Transportation, July 15, 1980.—At 11:36 a.m. last October 30, a natural gas explosion and fire demolished a townhouse at 215 Third Street, SE., in Washington, D.C., and damaged nearby buildings and cars. No one was inside the townhouse at the time, but three persons in a stopped car were injured when debris from the explosion shattered a car window.

After the accident, an inspection of the gas service line that served the townhouse revealed that it had been struck by excavating equipment. The investigation determined that the 1-inch plastic service line inside of a 1¼-inch steel line had been pulled out of a transition compression coupling, allowing the natural gas to leak under low pressure and migrate into the townhouse where it was ignited by an unknown source. Shortly after the accident, gas company employees removed the plastic line from the steel casing before exposing the coupling. This prevented Safety Board investigators from determining the distance the plastic pipe had been pulled from the coupling and the amount of slack provided in the line to compensate for contraction and expansion of the plastic pipe.

The Safety Board notes that the gas company has established procedures for analyzing accidents and failures that comply with 49 CFR 192.617, "Investigation of failures." Removing evidence prematurely during onsite investigations makes it more difficult for investigators to determine the cause of an accident. In this case, the lines should not have been disturbed until both the Safety Board and gas company personnel had completed the onsite investigation. Therefore, the Board recommends that the Research and Special Programs Administration:

Amend 49 CFR 192.617 to require that operators preserve to the extent practicable the accident site and its affected gas facilities until onscene investigations have been completed. (P-80-59)

P-80-60 to the Washington Gas Light Company, July 15, 1980.—A separate letter, containing identical background information as that provided above regarding the October 30, 1979, Washington pipeline accident, recommended that the gas company:

Instruct its employees to comply with company policy requiring the preservation of evidence at the accident site until onscene investigations have been completed. (P-80-60)

Both of the above recommendations are designated "Class II, Priority Action." The Safety Board's formal investigation report concerning this accident is being prepared for distribution, and copies will be available in the near future.

Responses to Safety Recommendations

Aviation

A-79-86, from the Federal Aviation Administration, July 25, 1980.—Letter is a followup to FAA's response of February 12 (45 FR 13237, February 28, 1980) concerning one of two recommendations issued by the Safety Board as a result of investigation of the crash on March 3, 1979, of a Beech Travel Air into mountains east of Elko, Nev. The aircraft was on an instrument flight rules flight plan and under the control of the Salt Lake City Air Route Traffic Control Center. The recommendation asked FAA to require all terminal facilities located in designated mountainous areas to install and use emergency obstruction video radar maps (EOVM).

FAA's July 25 response reports completion of terminal radar facilities in designated mountainous areas (14 CFR Part 95, Subpart B), and FAA has determined the availability of resources to produce EOVM's for these sites. Based on its findings, FAA has decided to adopt recommendation A-79-85. To fully implement the recommendation, an EOVM would be required at 77 terminal radar facilities. Since approximately half of these facilities do not have space in their 5-channel video mappers to accommodate another map, FAA says it cannot guarantee that all 77 facilities will employ an EOVM. Additionally, several of the identified facilities are operated by the military and may elect not to participate. FAA will, however, require that those facilities which now employ all video mapper channels evaluate alternatives such as combining existing maps, merging EOVM's with their minimum vectoring altitude maps or eliminating maps considered to be lower priorities than the EOVM's.

A list of the 77 facilities in priority order is attached to FAA's letter. The priorities within each region were determined by FAA's regional offices and the overall list structured to avoid impacting a regional office with excessive EOVM coordination workload. Specifically, no more than two EOVM's per month should be delivered to a region. FAA expects EOVM delivery to the lead site within 120 days and then continued deliveries at the rate of two to three facilities per month, dependent on resources at the National Ocean Survey.

FAA notes that future automation enhancements such as the Discrete Address Beacon System/Data Link and the Automatic Traffic Advisory and Resolution Service will probably dictate radar operation in the full digital mode. In this event, FAA may no longer have the capability to display a map in the EOVM format (i.e., contour lines) at a number of FAA's major facilities in mountainous areas such as Denver, Oakland, Los Angeles, and Pittsburgh in the not too distant future. Eventually, FAA expects that all radar facilities will be operating in the full digital mode. However, FAA will investigate alternative map formats such as a gross outline of mountainous terrain through straight-line depictions or grid mapping which appear to be viable strategies for a digital EOVM.

The Safety Board on March 18 acknowledged FAA's February 12, 1980, response to recommendation A-79-86 and companion recommendation A-79-87. FAA's July 25 followup is directed only to A-79-86.

A-80-32 through -34, from the Federal Aviation Administration, July 18, 1980.—Response is to recommendations issued April 24 as a result of investigation of the crash at sea of a Sikorsky S-76A, PT-HKB, operating off the coast of Brazil, South America, last March 20. (See 45 FR 30573, May 8, 1980.) The Safety Board's metallurgical examination of the recovered main rotor head spindle section from the accident aircraft revealed a fatigue crack with multiple origins. FAA notes that this finding, as understood by FAA, was not related to the accident cause.

With respect to recommendation A-80-32, which asked FAA to issue an airworthiness directive (AD) to require, prior to further flight, a one-time detailed inspection of the inboard threaded area of the main rotor spindles for evidence of cracks on all Sikorsky-76A model helicopters, FAA reports that a telegraphic AD, T8ONE-21, was issued by FAA's New England Regional Office on April 24. Issuance of the AD adopts the recommendation with some minor differences which FAA discusses in the response letter; a copy of the AD is provided. Telegraphic AD T8ONE-21 action requires:

1. Prior to further flight, inspection of the P/N 76102-08000-041 main rotor blade spindle assemblies in accordance with Sikorsky Alert Service Bulletin 76-65-13A, paragraphs G(1) through G(3), dated April 24.

2. Within the next 25 hours time-in-service after receipt of AD T8ONE-21, the P/N 76102-08000 main rotor blade assemblies are modified in accordance with Sikorsky Alert Service Bulletin 76-65-13A, paragraphs G(4) and G(5).

3. Main rotor blade spindles with more than 200 hours time-in-service, unless already accomplished within the last 50 hours time-in-service, will be fluorescent penetrant inspected within the next 5 hours time-in-service in accordance with Sikorsky Alert Service Bulletin 75-65-13A, paragraph G(6).

Specific requirements of these inspections are detailed in FAA's July 18 response letter.

In response to recommendation A-80-33, which asked FAA to notify Foreign Regulatory Agencies of this action, FAA reports that a listing of all domestic and foreign owners/operators of the Sikorsky Model S-76A was forwarded to the Aircraft Engineering Division in FAA's Office of Airworthiness for that purpose when the AD was issued. Telegrams were sent to the respective Civil Aviation Authorities (CAA) or equivalent of foreign-registered aircraft as part of the FAA telegraphic AD procedures. Additionally, requested background information pertaining to AD T8ONE-21 was supplied via airmail to the CAA (Australia) on May 2 and via telegram to the Brazilian Consulate (Atlanta) and the Technical Airspace Center (CTA) (Brazil) on April 30.

FAA concurs with recommendations A-80-34, which called for evaluation of the need for a recurring spindle inspection based on the initial inspection results. FAA indicates that this was its intent in issuing AD T8ONE-21. Paragraph 3 of AD T8ONE-21 requires that *all* of the results of the inspections required per the AD be reported to FAA's New England Regional Office. These data, in conjunction with other investigations, will be utilized to make a finding with respect to a need for a recurrent fluorescent penetrant spindle inspection.

FAA notes that further investigations have taken place to confirm the existing fatigue substantiation of the spindle and to further assess the consequences of a missing or displaced spindle shear bearing inner race. FAA has now completed this work and preliminary findings indicate that there is no requirement for a recurring spindle inspection. This determination is based on FAA investigation which reveals that the problem lies not with the spindle itself, but rather with the main rotor blade spindle shear bearing inner race. This inner race cracks, then moves out and fully displaces the droop stop ring. Once this happens, the inner race tends to crack more and subsequently fully departs from the spindle, resulting in a

very high stress situation which tends to shorten the spindle life. Fatigue of the spindle occurred under loads caused by the bearing inner race having moved out to full displacement, resulting in fatigue and subsequent complete static failure of the spindle. FAA has worked closely with Sikorsky Aircraft in conducting appropriate laboratory tests to substantiate this sequence of events. Sikorsky Company is currently working on a redesign of the inner race as a result of this investigation and resultant findings, FAA reports. In the interim, AD T8 ONE-21 ensures that appropriate corrective action relative to the shear bearing inner race is required on a continuing basis.

Marine

M-79-39 through -47, from the United States Coast Guard, June 4, 1980.—Response is to recommendations developed as a result of investigation of the capsizing and sinking of the self-elevating mobile offshore drilling unit (MODU) OCEAN EXPRESS in the Gulf of Mexico on April 15, 1976. The recommendations were issued April 17, 1979 (44 FR 24657, April 26, 1979), and the Safety Board last October 1 asked to be informed of Coast Guard's action on the recommendations.

Recommendation M-79-39 asked Coast Guard to require that operation manuals for MODU's include guidance regarding: (1) The stability of the unit for the complete range of mat-platform separations; (2) the number of tugs and the horsepower required for towing the unit, and the recommended towing arrangements and equipment; (3) contingency plans for emergencies afloat, including towing mishaps and severe weather; (4) transit preparations, including an appropriate checklist; (5) the expected results of exceeding the design limits for jacking operations; and (6) the minimum wind speeds, sea conditions, and unit motions which would result in instability or structural failure.

With reference to item (1) of recommendation M-79-39, Coast Guard concurs with the need for stability guidance. The new MODU regulations 46 CFR 109.121, according to Coast Guard, contain sufficient wording to include all loading and operating conditions. As to item (2), Coast Guard will propose amendments to 46 CFR 109.121 to include towing plans with required number of towing vessels, minimum horsepower, and recommended towing equipment. Procedures for emergency conditions will be included. Concerning item (3), Coast Guard notes that § 109.121 requires guidance for safe operations of the unit under normal and emergency conditions. The emergency conditions requirement is interpreted to include severe weather and loss of towing force.

Coast Guard, with reference to item (4) of recommendation M-79-39, notes that § 109.121 of the new MODU regulations covers instructions for operation of the unit while changing operating conditions including preparations prior to making a move (§ 109.121(9)(ii)). Concerning item (5), Coast Guard believes that to require additional information on expected results of going beyond design limitations could implicitly condone such operations and that, in the interest of safety, such information should not be included. In connection with item (6), Coast Guard states that minimum wind speeds resulting in instability can be specified in an operating manual. The new MODU regulations require that each unit meet 70 knots (normal) and 100 knots (severe storm) wind speeds in intact condition and knots in damaged condition. Coast Guard notes that sea conditions, related to unit motions, are not deterministic at this time. Coast Guard will not require the operating manual to specify operational limits with respect to structural failure.

In response to recommendation M-79-40, which asked Coast Guard to require self-elevating MODU's to be equipped with a recording fathometer and a recording anemometer, Coast Guard states that it recognizes the need for water depth information when a MODU is in transit, either in an oil field or ocean. For this reason, 46 CFR 108.701 requires all self-propelled MODU's to be equipped with a sounding apparatus. Similarly, because of the need for accurately navigating and positioning non-self-propelled MODU's, virtually every tug employed in MODU service is fathometer equipped. Coast Guard cannot see any need for replacing these installations with recording fathometers or for adding recorders to existing fathometers. Coast Guard objects to these installations if they are to be justified primarily for accident investigation. Seldom are all witnesses lost in a marine casualty involving MODU's, and events leading up to a casualty can usually be reconstructed. Coast Guard also said that if stability criteria for all MODU's in severe storm conditions are met, there would be little need to identify wind speeds while the unit is bottom bearing. While underway, the safety of the MODU's is the responsibility of the towing vessel operator. Coast Guard notes that the Safety Board's report (NTSB-MAR-79-5) states that the OCEAN EXPRESS had a recording anemometer yet the testimony of the crew contained no statement that it was a necessary instrument. Coast Guard says it cannot support a requirement for expensive, maintenance-intensive equipment only for accident reconstruction.

Coast Guard does not concur with recommendation M-79-41 which called for requiring that critical operating limits for self-elevating MODU's be specified in terms of motion amplitudes and periods, and requiring on-board motion sensing and recording instruments to determine the actual unit motions. In response, Coast Guard says it does not feel that the state of present technology can fulfill the intent of this recommendation. Although the technology exists to measure, process, and display a real time analog of the motions or accelerations of marine vehicles, problems arise when attempting to develop a total system that can reliably provide meaningful non-misleading information that is free from electronic and mechanical drift and does not desensitize the operator to his responsibility. Coast Guard believes that sensor and display units may serve in a monitoring capacity. Commercially available response and prediction units which utilize wave buoy data and motion sensor input are intended only for determination of the lifting performance of shipboard cranes. This represents a much less complex problem than the prediction of limiting values, Coast Guard states.

Coast Guard concurs in part with recommendation M-79-42 which called for a study of the feasibility of predicting self-elevating MODU's by on-board computer analysis of data from motion sensors and wave-measuring instruments. Coast Guard's response refers to its ongoing studies of stress/motion monitoring being conducted in response to the Safety Board's recommendations resulting from the 1972 TEXACO OKLAHOMA accident investigation. Coast Guard believes that the results can be applied to recommendation M-79-42. Upon completion of the long-range study, consideration will be given to a similar study of MODU's.

Recommendation M-79-43 asked Coast Guard to expedite the promulgation of regulations for personnel qualifications and manning standards for the self-elevating MODU's and require that industrial personnel who perform seafaring duties obtain appropriate training and licenses. Coast Guard partially concurs with this recommendation and reports that manning and crew qualifications are

being applied to MODU's of the bottom-bearing, non-self-propelled type as they come under the 46 CFR I-A inspection process in the next several years. These standards will apply only while the unit is being navigated. It is contemplated that the standard manning will consist of: 1-Designated Person in Charge; 2-Able Seaman; 1-Ordinary Seaman; and Lifeboatman (number appropriate for the installed lifesaving equipment necessary to accommodate the number of persons on board). The Outer Continental Shelf Act limits the Coast Guard's ability to fulfill the intent of this recommendation while the unit is in the botton-bearing mode.

Coast Guard concurs with recommendation M-79-44, which asked the agency to determine and require a functional chain of command on mobile offshore drilling units to effectively cope with extreme situations. Coast Guard says that an effective chain of command, while the vessel is in navigation, is inherent in the manning scale discussed in M-79-43.

With respect to recommendation M-70-45, which asked Coast Guard to develop appropriate survival capsule performance standards, including standards for safe towing, Coast Guard states that a more complete understanding of the rough water characteristics of all types of totally enclosed lifeboats and liferafts is needed. A program of research and development for enclosed lifeboats, rescue boats, and inflatable liferafts is presented. The program will include studies of towing, capsizing and self-righting characteristics and rough water performance. Also, Coast Guard discusses its activities in representing the United States at the Inter-Governmental Maritime Consultative Organization in the revision of Chapter III, "Life-saving Appliances," of the Safety of Life at Sea Convention. Coast Guard reports that the program schedule for the research and development to satisfy the recommendation is set up to cover a 5-year period, to be completed in 1984. Significant findings that develop during the course of the program may be used before the program is completed.

To the extent of its comments regarding M-79-45, Coast Guard concurs with recommendation M-76-46, which called for model tests and computer simulations to be conducted with Whittaker Corporation to determine the survival capsule's capsizing characteristics and behavior in storm seas.

Recommendation M-79-47 asked Coast Guard to require that survival capsules be equipped with accessible towing and mooring fittings, proper fendering, and markings to indicate the location of the towing and mooring points. Coast Guard concurs in part with this recommendation, and notes that the Wittaker Company has offered a retrofit towing kit since the accident. Coast Guard has directed Whittaker to install towing fitting on new 14 and 28 passenger capsules and to continue to offer retrofit kits for existing capsules and to make installation of the kits a standard procedure during overhauls. Coast Guard plans no action for "proper fendering," since the capsule is adequately fendered by a flange that runs completely around the perimeter of the capsule. Coast Guard states that neither its Marine Board of Investigation nor the Safety Board's report (NTS B-MAR-75-5) identified any shortcomings in the performance of the flange.

Railroad

R-76-55 and R-78-35, from the Federal Railroad Administration, July 15, 1980.—Response is made to the Safety Board's letter of June 3 which commented on FRA's previous response forwarded last February 6 (45 FR 13238, February 28, 1980).

With respect to recommendation R-76-55, which rcommended that FRA revise the Code of Federal Regulations to insure tha wheels exposed or suspected of being exposed to critical temperatures are removed from service, the Safety Board's June 3 letter notes that the Railroad Freight Car Safety Standards provide that a car may not be continued in service if:

> (b) A wheel on the car shows signs of having been overheated as evidenced by a reddish brown discoloration on the front or back face of the rim, that extends more than four inches into the plate area measured from the botton of the back face of the rim; . . . .

The Safety Board states that discoloration does indicate that a wheel has been overheated; however, broken wheels as a result of thermal cracks have been found in numerous derailments with no discoloration. At present, discoloration may be the only method available to detect wheels that have been overheated; however, better methods of detection should be explored. The Board requested the FRA study this problem further and attempt to establish a positive means of identifying any wheel that has been exposed to thermal abuse.

FRA's July 15 response indicates agreement with the Board's objectives. FRA notes that thermal abuse can cause undesirable residual stress changes in the wheel which can lead to abrupt wheel failure. For 5 years or more, FRA's Office of Research and Development has aimed to develop a practical means for detecting tensile and compressive stress fields in wheels. Further, FRA and the Federal Highway Administration are working together obtaining stress measurement tools for bridge members as well as rail wheels. FRA states that despite some early encouragement in the laboratory, no nondestructive techniques which can address the typical railroad environment either in the shops or over-the-road are currently available. A joint committee of FRA and FHWA is overseeing an investigation of combinations of new techniques which might be applicable in detecting the significant stress levels in rail wheels and bridges. Although there is no guarantee of success, it is anticipated that initial survey information for the preliminary development stage will be compiled by the last quarter of 1982. FRA does not recommend a change in the regulations until a more effective system for determining wheel stress states is defined and proven. At present, wheel discoloration is still the most reliable way for non-destructively assessing the likelihood of potential wheel failure due to thermal abuse, FRA stated.

With respect to recommendation R-78-35, which called on FRA to identify critical car component failure rates and assure that they are properly addressed either by regulation or emergency order as required and to expand communication channels with the Association of American Railroads (AAR) to facilitate this program, the Safety Board's June 3 letter states the Railroad Freight Car Safety Standards do not satisfy this recommendation nor does reliance on the voluntary cooperation of the railroad industry. The Board notes that the Southern wheel failures due to high carbon content are illustrative of the type of car component failure rates the Board intended to be identified by recommendation R-78-35. The Board states that the railroad industry and AAR knew about the problem of failures of this wheel, but were responding slowly even though some very serious accidents occurred. The Board notes that FRA did not have a system to identify that the Southern wheel was failing at a much higher rate than other rail wheels. The Board believes that FRA, in connection with its establishment of freight car safety standards, must establish a method to determine when a car component demonstrates a high failure rate and must take appropriate action on the basis of failure rates identified. Reconsideration of recommendation R-78-35 was requested.

FRA's June 3 response refers to the February 6 response which stated that FRA will rely heavily on the voluntary cooperation of the railroad industry and its employees to identify critical safety problems. This cooperation included an assessment of available technical information collected by AAR. FRA states that the AAR statistical monitoring program consists of data reported by the larger member roads on a voluntary basis relative to defective components removed from freight cars in service. Also, manufacturers report total numbers of components sold to railroads. FRA says this system, however, does not include reliable information relative to the number of components in sevice. Therefore, reliable failure rates of the various critical components cannot be readily indentified. FRA is exploring the feasibility of developing a system utilizing FRA accident and field data and information provided by AAR under voluntary arrangement. This action is expected to be accomplished in the first quarter of 1981.

The Safety Board's June 3 letter additionally commented on recommendations R-76-52 and -53, both of which have now been classified as "Closed—Acceptable Action," predicated on FRA's February 6, 1980, response.

R-80-23 and -24, from The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), June 23, 1980.—Response is to recommendations issued June 3 following investigation of an Amtrak passenger train derailment last October 2 which occurred as the train was moving through a 7° curve on the Santa Fe tracks at Lawrence, Kans. The recommendations asked that Santa Fe establish rules and procedures to verify that locomotive engineers are familiar with a district so that they can operate safely in the event any fixed or other pertinent sign is inoperative or missing (R-80-23), and establish special rules which explain and identify the location of automatic train stop indicators that are not located at automatic block signals (R-80-24). (See 45 FR 39988, June 12, 1980.)

Santa Fe's response first refers to recommendation R-80-26, addressed to the Federal Administration. The recommendation asked FRA to determine and advise if test procedures being employed by Santa Fe at all locations are sufficient to determine if automatic train stop apparatus is functioning properly for in-service operation. Santa Fe's June 23 response points to its letter of last February 20 (45 FR 22314, April 3, 1980), sent in response to earlier Safety Board recommendations stemming from the subject accident. That letter expressed Santa Fe's belief that the testing of automatic train stop (ATS) equipment at initial terminals is properly the responsibility of Amtrak. Santa Fe notes that testing is being conducted by Amtrak at Chicago and Los Angeles, and that Santa Fe require the engineman to determine that ATS devices have been tested and to properly report in the event that an ATS cut-out cock is not sealed or the cab fails to indicate a proper test has been made. A Santa Fe Mechanical Department employee also checks the cab card to see if the ATS has been tested and makes sure that the ATS cut-out cock is sealed before an Amtrak locomotive departs on a passenger train over Santa Fe territory equipped for ATS.

With reference to recommendation R-80-23, Santa Fe notes that at the time of this occurrence, the Railway Company had in effect Bulletin 308 requiring an engineer to take a familiarization trip over the district during the year preceding an assignment over that district. In November 1979, the Eastern and Middle Divisions initiated procedures requiring the road foreman of engines to review the trip assignments of engineers and furnish a list to the crew callers' offices identifying the engineers who are eligible for assignment over the various districts based on their compliance with Bulletin 308. In addition, engineman are now required to report semi-annually their actual trip experience over various districts on which they may be called to operate engines.

With respect to recommendation R-80-24, Santa Fe believes that any "special rules" would have no more impact than the timetable itself, which clearly identifies by mile post locations all speed restrictions, including those protected by inert ATS inductors. Thus, Santa Fe states, any "special rules" would be nothing more than a reiteration of the information already contained in the timetable.

Santa Fe's June 23 letter refers further to the February 20 response, wherein was set forth Fanta Fe's practices and policy regarding postacknowledgement of all ATS inductor locations, as well as Santa Fe practices prior to the Amtrak era of equipping its locomotives with preacknowledgment devices. Santa Fe notes that this policy emphasizes the importance of promptly determining whether a particular ATS device is operating properly.

R-80-25, from National Railroad Passenger Corporation (Amtrak), June 20, 1980.—Response is to a recommendation also issued June 3 as a result of investigation of the Amtrak derailment at Lawrence, Kans. The recommendation asked Amtrak to redesign automatic train stop equipment to provide an audible and visual alarm which will indicate that the system is functioning during both preacknowledgment and postacknowledgment procedures. (See 45 FR 39989, June 12, 1980.)

Amtrak reports that on May 20 the recommendation was reviewed at a meeting with the Union Switch and Signal Company, vendor of the ATS equipment used on locomotives operating over the Santa Fe Railroad. The Union Switch and Signal Company has been requested to review this equipment and to advise Amtrak of the modifications required to provide audible and visual indications recommended by the Safety Board. Amtrak assumes at this time that the present equipment can accommodate additional indicators.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

August 4, 1980.

[FR Doc. 80-23827 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389-A]

Florida Power & Light Co., City of Orlando, Fla., and the Orlando Utilities Commission Receipt of Additional Antitrust Information Time for Submission of Views on Antitrust Matters

Florida Power and Light Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, (the Act), filed on June 13, 1980, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns the addition of the City of Orlando, Florida and the Orlando Utilities Comission, as an owner of the St. Lucie Plant, Unit 2, located on Hutchinson Island in St. Lucie County, Florida. The Orlando Utilities Commission was created by the Florida State Legislature and is a part of the City of Orlando, Florida.

The information was filed in connection with Florida Power and Light Company's application for an amendment to Construction Permit No. CPPR-144 to the St. Lucie Plant, Unit 2. Construction Permit No. CPPR-144 was issued on May 2, 1977 and construction of the plant is underway.

The original Notice of Receipt of application for construction permit and operating license included the antitrust aspects of the application and was published in the Federal Register on June 16, 1971, (36 FR 11473).

A copy of the Florida Power and Light Company letter, dated June 13, 1980 and above stated documents are available for public examination and copying for a fee at the Commission's Public Document Room located at 1717 H Street, NW, Washington, D.C. and at the Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Any person who wishes to have his views on the antitrust matters with respect to the City of Orlando, Florida and Orlando Utilities Commisson presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Utility Finance Branch, Division of Engineering, Office of Nuclear Reactor Regulation on or before September 29, 1980.

Dated at Bethesda, Maryland this 18th day of July 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-22794 Filed 7-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-445A, 50-446A, 50-498A, and 50-499A]

Houston Lighting & Power Co., et al. (South Texas Project, Units 1 and 2) and Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Hearing

July 31, 1980.

Please take notice that a hearing on all pending motions and other matters will be held on Friday, August 8, 1980 at 10:00 a.m., local time, in the Nuclear Regulatory Commission's Hearing Room, located at 4350 East-West Highway, 5th floor, Bethesda, Maryland.

It is so ordered.

Dated at Bethesda, Maryland this 31st day of July 1980.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman.

[FR Doc. 80-24003 Filed 8-6-80; 10:08 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

July 30, 1980

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available):

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503

DEPARTMENT OF AGRICULTURE

(Agency Clearance Officer—Richard J. Schrimper—447-6201)

New Forms

Farmer's Home Administration
Farm Labor Housing Loan and Grant Policies, Regulations
7 CFR 1944-D
On occasion
Farm owners and family farm corporations, 1,530 responses; 3,360 hours
Charles A. Ellett, 395-7340

Revisions

Animal and Plant Health Inspection Service
7 CFR 319, 321, 352—Foreign Quarantine Notices
PPQ 587, 546 and 368
On occasion

Importers of plants and plant products
5,865 responses; 997 hours
Charles A. Ellett, 395-7340

DEPARTMENT OF COMMERCE

(Agency Clearance Officer—Edward Michals—377-3627)

Revisions

Departmental and other Privacy Act Information Request
CD-316
On occasion
Individuals requesting info under the Privacy Act, 2,122 responses; 106 hours
William T. Adams, 395-4814

Maritime Administration
War Risk Insurance Reports
MA-828
On occasion
Vessel owners and operators 350 responses; 450 hours
William T. Adams, 395-4814

DEPARTMENT OF DEFENSE

(Agency Clearance Officer—John V. Wenderoth—697-1195)

Revisions

Department of the Air Force
Maintenance Data Collection Record and Repair
AFTO 349, 349-3 and 350
On occasion
MFG. and maintenance contractors 342,623 responses; 17,131 hours
Edward C. Springer, 395-4814

Department of the Navy
Application for scholarship Program (NP 1750/7) High School and College Transcript Request (NP 1750/9)
NAVPERS 1750/7 and 1750/9
Annually Students (Ages 16-22) hi school & college officials) 12,500 responses; 10,000 hours
Edward C. Springer 395-4814

Departmental and Other DOD Working Dog Program
AF 534, 549, 558
On occasion
Proffers of military working dogs 3,900 responses, 1,833 hours
Kenneth B. Allen, 395-3785

DEPARTMENT OF ENERGY

(Agency Clearance Officer—Diane W. Lique—633-8526)

New Forms

Annual Report of the Origin of Natural Gas Liquids
Production
EIA-64A
Annually
Natural gas processing plant operators 682 responses; 6,138 hours
Jefferson B. Hill, 395-7340

DEPARTMENT OF HEALTH AND HUMAN SERVICES

(Agency Clearance Officer—Joseph J. Strand—245-7488)

New Forms

Center for disease Control
Survey of State Epidemiologists—Evaluation of Surveillance
Single time
State Epidemiologists 52 Responses, 9 hours
Richard Eisinger, 395-6880

Center for Disease Control
Fluoridation Quarterly Report
Quarterly
Fluoridation grantees 200 responses, 1,300 hours
Richard Eisinger, 395-6880

Food and Drug Administration
Source Plasma (Human) Amendment to Storage Temperature Requirements
On Occasion
Source plasma suppliers
Richard Eisinger, 395-6880

Reinstatements

Alcohol, Drug Abuse and Mental Health Administration
Annual Census of Patient Characteristics—1979 State and County Mental Hospital Inpatient Services
ADM 45-1
Annually
State and county mental hospitals 123 Responses; 246 hours
Official of Federal Statistical Policy and Standard, 673-7974

DEPARTMENT OF THE INTERIOR

(Agency Clearance Officer—William L. Carpenter—343-6716)

Revisions

Departmental and Other
Youth Conservation Corps Medical History Form
Annually
YCC participants their parents, and physician 25,000 responses; 25,000 hours
Charles A. Ellett, 395-7340

NATIONAL SCIENCE FOUNDATION

(Agency Clearance Officer—Herman Fleming—357-7811)

Revisions

Reviewer Background Information
428, 1028, 1084, 1090, 1092, 1093, 1096, 1105, & 1112
Weekly
Scientists 50,000 responses; 4,166 hours
Marsha D. Traynham, 395-7340

RAILROAD RETIREMENT BOARD

(Agency Clearance Officer—Pauline Lohens—312-751-4692)

New Forms

Pilot Study—Disability Monitoring Program
T-13
Single time
Disability annuitants
Barbara F. Young, 395-6880

SMALL BUSINESS ADMINISTRATION

(Agency Clearance Officer—John Anderson—653-6890)

New Forms

Client Response Card/Attendee Response Card
On occasion
Small Business Clients 15,000 responses; 2,500 hours
Edward C. Springer, 395-4814

C. Louis Kincannon,
Acting Deputy Assistant Director For Reports Management.

[FR Doc. 80-23146 Filed 8-6-80; 8:45 am]
BILLING CODE 3110-01-M

Agency Forms Under Review

Background

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The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

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DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447-6201

New Forms

Food and Nutrition Service
National Evaluation of school nutrition programs: Cross sectional study household survey
Single time
Stud. In grade 1-12, their parents, nutrition prog. staff, 21,044 responses; 24,715 hours
Charles A. Ellett, 395-7340

Revisions

Farmer's Home Administration
7 CFR 1980-E, Business and Industrial Loan Program
FMHA 449-22
On occasion
Small local businesses, 35,505 responses; 307,679 hours
Charles A. Ellett, 395-7340

Farmer's Home Administration
7CFR 1980-A, Guaranteed Loan Program
449-14, 18, 30, 35, 36 and 1980-19, 24, 43, and 44
On occasion
Small local businesses, 28,265 responses; 25,087 hours
Charles A. Ellett, 395-7340

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—472-2655

New Forms

Office of Education
Call Report Request for Payment of Interest—GSL
ED 1166 and ED 1166-2
Quarterly
Lending institutions, 87,500 responses; 105,000 hours
Laverne V. Collins; 395-6880

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245-7488

New Forms

Health Care Financing Administration (Medicare) Home Dialysis Target Rate Agreement and Instructions
HCFA-119A
On occasion
Part. ESRD facilities furnishing home dialysis, 100 responses; 33 hours
Richard Eisinger, 395-6880

Office of Human Development
Program Review Manual for Child Welfare Services
Other (See SF-83)
Staff of State child welfare agencies; 20 responses; 4,500 hours
Barbara F. Young, 395-6880

Office of the Secretary
Section 504 Regional Technical Assistance Priorities
OS-14-80
Annually
Disabled individuals; 400 responses; 100 hours
Barbara F. Young, 395-6880

Revisions

Health Care Financing Administration (Medicaid)
Third Party Resource Worksheet Medicaid
HCFA-301C (Test)
Single time
Title XIX Beneficiaries, 188,000 responses; 10,967 hours
Maria Gonzalez, 395-6132

Health Resources Administration
Survey Instrument for Health Planning Performance Evaluation Program
On occasion
Health systems agencies staff, 40 responses; 120 hours
Maria Gonzalez, 395-6132

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523-6341

New Forms

Employment and Training Administration
Impact Evaluation of Youth Incentive Entitlement Pilot Projects
ETA-13
Single time
Youth in pilot and control sites, 4,350 responses; 3,625 hours
Arnold Strasser, 395-6880

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426-1887

Revisions

Federal Highway Administration
Certification of Enforcement of Vehicle Size and Weight Laws
Annually
State agencies designated by Governor, 52 responses; 104 hours
Susan B. Geiger, 395-7340

Reinstatements

Federal Aviation Administration
Examiner Designation and Qualification Record
FAA Form 8710-6
On occasion
Individual candidates for designation as FAA pilot, 2,100 responses; 1,050 hours
Susan B. Geiger, 395-7340

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Mr. Mel Kollander—287-0747

New Forms

DMS Community Impact Survey
Single time
Sewage treatment authorities, 1 response; 250 hours
Edward H. Clarke, 395-7340

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Clearance Officer—Thomas P. Goggin—634-6983

New Forms

ABAR Needs Assessment Questionnaire
On occasion
Private attorneys, 8,000 responses; 2,000 hours
Laverne V. Collins, 395-6880

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632-7737

Revisions

PATC-LOB Spring 1981 Survey
Annually
Private establishments with over 100 employees, 1,500 responses; 3,750 hours
Edward C. Springer, 395-4814

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312-751-4692

Reinstatements

Appeals From Determination Under the Railroad Unemployment Insurance Act
UI-85, UI-86
On occasion
Railroad employees, 100 responses; 34 hours
Barbara F. Young, 395-6880

C. Louis Kincannon,
Acting Deputy Assistant Director For Reports Management.

[FR Doc. 80-23857 Filed 8-6-80; 8:45 am]
BILLING CODE 3110-01-M

Office of Federal Procurement Policy

Request for Comment on Proposed Policy Letter

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Request for comment on proposed OFPP Policy Letter.

SUMMARY: The Office of Federal Procurement Policy is requesting public and Government agency review and comment on a proposed Policy Letter to clarify certain issues which have been raised in connection with the existing policy guidance on Labor Surplus Area (LSA) set-asides.

DATE: Comments must be received on or before September 30, 1980.

ADDRESS: Submit comments to Owen Birnbaum, Deputy Assistant Administrator for Procurement Practices, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Owen Birnbaum (202) 395-3455.

SUPPLEMENTARY INFORMATION: Questions have been raised by several Federal agencies as to whether certain types of procurements can be counted towards their goals for LSA awards. The following proposed policy letter is intended to clarify these issues.

Dated: August 1, 1980.

LeRoy J. Haugh,
Associate Administrator for Regulatory Policies and Practices.

Executive Office of the President,
Office of Management and Budget,
Washington, D.C. 20503.

Policy Letter 80-.
To: The Heads of Executive Departments and Establishments.
Subject: Policy Guidance for the Labor Surplus Area Program.

Background

Public Law 95-89, August 4, 1977, amended section 15 of the Small Business Act to authorize Federal agencies to set-aside procurements for concerns agreeing to perform a substantial proportion of the contract work in labor surplus areas (LSA's). The President included the LSA Program as part of the National Urban Policy announced in March 1978. Executive Order 12073, August 16, 1978, provides the framework for Government-wide operation of the LSA Program. Regulations implementing the LSA program are contained in Section I, Part 8 of the Defense Acquisition Regulation (DAR), the Federal Procurement Regulations (FPR), and the National Aeronautics and Space Administration Regulation (NASAPR). The Labor Surplus Area classification procedures of the Department of Labor are set forth in 20 CFR 654.

Action

Government procurement policy should be uniform and consistent in application. This directive provides uniform policy applicable to the Labor Surplus Area Set-Aside Program. The following policy statements clarify certain issues which have been raised under existing regulations concerning LSA set-asides. If any amendment to the DAR, FPR and NASA PR is appropriate to conform to this policy guidance, such amendment shall be uniform.

1. *Target Setting and Performance.* In accordance with Executive Order 12073, the Administrator of General Services shall establish annual LSA targets in consultation with the heads of executive agencies. These targets shall be based on total estimated dollars to be *obligated* under LSA set-aside contracts during a fiscal year.

2. *GSA Multiple Award Schedule Contracts.* Agencies are encouraged to use LSA firms to the maximum extent possible when placing orders against GSA multiple award schedule contracts. The Federal Procurement Data System report on LSA contracts will contain a separate category identifying all agency orders against GSA multiple award schedules. GSA will establish Government-wide LSA targets for each agency for these schedule contracts, based on past performance and estimated future potential. Each agency will report its individual performance on the basis of actual obligations under these schedules. GSA will be responsible for monitoring agency performance and encouraging agencies to achieve the schedule targets.

3. *Construction and Other "Site Specific" Contracts.* The requirements of Public Law 95-89 apply to construction and other "site specific" contracts.

4. *GOCO Subcontracting.* Subcontracts by Government-owned/Contractor Operated (GOCO) facilities shall be counted toward an agency's LSA performance when these subcontracts are performed in LSA's and are designated as set-asides.

5. *Section 8(a) Contracts, Purchases From the Blind and Handicapped, Federal Prison Industries, and Other Single Source Contracts.* Public Law 95-89 indicates that LSA set-asides are to be made when there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns to ensure that awards will be made at reasonable prices. In view of this statutory procedure designed to assist Labor Surplus Areas, noncompetitive 8(a) contracts, purchases from blind and handicapped workshops and Federal Prison Industries, shall not be counted toward an agency's LSA set-aside performance. However, if an agency or the Small Business Administration is able to find adequate competition for a particular product or service among firms in labor surplus areas who are also in the 8(a) program, such contracts may be counted toward LSA set-aside performance.

Karen Hastie Williams,
Administrator.

[FR Doc. 80-23787 Filed 8-6-80; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11283; 812-4532]

Beneficial National Life Insurance Co. et al.; Filing of Application To Amend an Order of Exemption Approving Certain Offers of Exchange

July 31, 1980.

In the matter of Beneficial National Life Insurance Co., Dreyfus Rainbow Annuity Variable Account A, Two Park Avenue, New York, NY 10016, Dreyfus

Liquid Assets, Inc., and Dreyfus A Bonds Plus, Inc., 767 Fifth Avenue, New York, NY 10153.

Notice Is Hereby Given that Beneficial National Life Insurance Company ("Beneficial") a stock life insurance company organized under the laws of the State of New York, The Dreyfus Rainbow Annuity Variable Account A (the "Separate Account"), a separate account of Beneficial registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, Dreyfus Liquid Assets, Inc. ("DLA") and Dreyfus A Bonds Plus, Inc. ("A Bonds") (collectively the "Funds") diversified, open-end management companies registered under the Act (hereinafter, Beneficial, the Separate Account, and the Funds are collectively referred to as "Applicants") filed an application on July 2, 1980 for an order amending an existing order of exemption pursuant to Section 11 of the Act approving certain offers of exchange (Investment Company Act Release No. 11173, May 19, 1980).

Applicants' existing order pursuant to Section 11 of the Act permits shareholders of the Funds to exchange their shares for variable annuity contracts (the "Contracts"). However, only purchase payments for the Contracts in the form of shares of DLA are invested by the Separate Account in DLA. Purchase payments for the Contracts in the form of cash or shares of A Bonds are invested by the Separate Account in A Bonds. Also, Contract owners who have DLA as the investment underlying their Contracts may reallocate such underlying investment to A Bonds. However, Contract owners who have A Bonds as the investment underlying their Contracts may not reallocate such underlying investment to DLA. The exchange privilege, according to Applicants, was limited in this way because of a recent regulation of the Federal Reserve Board placing reserve requirements on any increase in average assets of money market funds subsequent to March 14, 1980. As a result of this regulation, the Board of Directors of DLA decided to limit future sales of additional shares of DLA.

Subsequent to the Order being granted, the Federal Reserve Board announced a series of changes in its credit restraint program concerning money market funds and other similar investment media. As a result, investments in DLA by the Separate Account are exempt from the definition of "covered credit" in the Federal Reserve Board's regulations. Pursuant to such change, the Board of Directors of DLA has decided to allow the sale of shares of DLA to the Separate Account.

Applicants request that their existing Order be amemded to permit Applicants to offer shareholders to A Bonds the option to exchange their shares for Contracts under which they would designate DLA as the underlying investment and to allow Contract owners to have investments which underlie the Contracts reallocated from A Bonds to DLA.

Applicants submit that the proposed exemption fully consistent with the policy and purposes of the Act, and that it will permit Applicants to make a desirable contractual feature available to Contract owners.

Applicant assert that the requested exemption is appropriate and in the public interest, is consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Notice Is Further Given that any interested person may, no later than August 26, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or that person may request notification if the Commission should 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 personnally or by mail upon Applicants at the address stated above. Proof of such service (by Affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 80-23858 Filed 8-6-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-17039; File No. SR-CSE-80-3]

The Cincinnati Stock Exchange; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 20, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows: The Cincinnati Stock Exchange's Statement of the Terms of Substance of the Proposed Rule change.

Effective July 1, 1980, the Board of Trustees of The Cincinnati Stock Exchange ("CSE") is revising the National Securities Trading System ("NSTS") fee schedule to alter the per share charges for non-members and contributing dealer members acting as principals and public agency transactions of both members and non-members. The revision would also set $150 as the maximum charge for any single transaction executed by an indiidual firm. The Cincinnati Stock Exchange's Statement of Basis and Purpose.

At a meeting held on May 15, 1980, the Board ot Trustees approved the amended schedule of fees charged for the NSTS. The restructured schedule would more accurately reflect NSTS access cost and usage, and would attract new agency order flow to the System. Deeper and tighter markets are expected to be created through these economic incentives.

Section 6(b)(4) of the Act is the basis for these fees since specified charges are reasonable and equitably allocated to those who avail themselves of such Exchange services.

No comments were solicited from Member nor were any received.

Fees as set forth impose no burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the proteciton of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written

submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number references in the caption above and should be submitted on or before August 28, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23863 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17040; File No. SR-DTC-80-3]

The Depository Trust Co.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on July 3, 1980 the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits National Securities Clearing Corporaton (NSCC) Sponsored Participants to utilize the Collateral Loan Program of The Depository Trust Company (DTC). The proposed rule change is attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-80-3.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to permit NSCC Sponsored Participants to utilize DTC's Collateral Loan Program. An NSCC Sponsored Participant is an NSCC member who is not a direct DTC Participant but who is able to participate in DTC under the sponsorship of NSCC. NSCC maintains a separate DTC account for each Sponsored Participant.

The proposed rule change would carry out the purposes of Section 17A of the Securities Exchange Act of 1934 by enabling NSCC Sponsored Participants to effect book-entry pledges in DTC's Collateral Loan Program, which reduces the need for physical movement of securities certificates.

Discussions were held with Pledgees regarding the proposed rule change. All Pledgees in DTC's Collateral Loan Program will be notified of the proposed rule change by the DTC Important Notice attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-80-3.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written Submissions will be available for inspection and copying in the public reference room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before August 28, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1980.

George A. Fitzsimmons,

Secretary

[FR Doc. 80-23860 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11284; 811-1823]

Edie Special Growth Fund, Inc.; Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company

July 31, 1980.

Notice is hereby given that Edie Special Growth Fund, Inc. ("Applicant"), 100 E. Pratt St., Baltimore, Maryland 21202, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 19, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant registered under the Act on March 6, 1969 and filed a registration statement pursuant to Section 8(b) of the Act on May 26, 1969. An S-5 registration statement was filed on March 6, 1969 with respect to 7,500,000 shares of stock and became effective on August 21, 1969.

On June 28, 1979, Applicant transferred substantially all of its assets, amounting to $25,898,211.20, to Rowe Price New Horizons Fund, Inc. ("New Horizons Fund"), and in exchange therefor, New Horizons Fund issued to Applicant a number of shares based on the companies' respective net asset values. The number of shares Applicant received from New Horizons Fund was determined by dividing the aggregate value of Applicant's net assets transferred by the net asset value per share of New Horizons Fund. Applicant's Board of Directors had approved the form, terms and provisions of the reorganization and the liquidation thereafter at a regular meeting held on January 31, 1979. At a special meeting of stockholders held on June 27, 1979, Applicant's stockholders approved the reorganization and authorized the liquidation and dissolution of Applicant and the distribution of shares of New Horizons Fund to the holders of shares of Applicant. The shares of New Horizons Fund issued to Applicant's shareholders were issued as book shares of New Horizons Fund. Applicant filed a certificate of dissolution in the State of Delaware on July 12, 1979, which became effective on August 15, 1979.

Applicant indicates that it currently retains no assets and has no debt outstanding. Further, Applicant asserts

that it no longer has any security holders, is not a party to any litigation or administrative proceeding and does not propose to engage in any activity other than necessary for winding up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegateld authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23859 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17030; SR-MSRB-80-2]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

July 31, 1980.

On March 26, 1980, the Municipal Securities Rulemaking Board (the "MSRB") Suite 507, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036 filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change which would amend its Arbitration Code, MSRB rule G-35. The proposed rule change would establish a simplified procedure for the resolution of intra-industry disputes involving $5000 or less. MSRB rule G-35 currently provides that all intra-industry disputes subject to the Arbitration Code be submitted to a panel of at least three arbitrators, and that a hearing be held unless waived in writing by all the parties. Under the proposed rule change, such intra-industry disputes ordinarily would be decided without a hearing by a single arbitrator from the securities industry.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16726 (April 8, 1980)) and by publication in the Federal Register (45 FR 25981 (April 16, 1980)). No comments with respect to the proposed rule change have been received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23862 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17038; File No. SR-NYSE-80-2]

New York Stock Exchange Inc.; Order and Statement of Reasons Disapproving Proposed Rule Change of the New York Stock Exchange, Inc.

August 1, 1980.

On April 3, 1980, the Commission instituted proceedings pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] to determine whether to disapprove a proposed rule change (SR-NYSE-80-2) of the New York Stock Exchange, Inc. ("NYSE") Eleven Wall Street, New York, New York 10005 which would amend Articles IX, Section 1(b) of the NYSE constitution, regarding physical access annual membership, to permanently limit the number of physical access memberships to two.[2]

After considering the proposed rule change together with all comments and submissions filed with the Commission regarding the filing, the Commission cannot conclude, for the reasons discussed below, that the proposed rule change is consistent with Sections 6(b)(5) and (8) of the Act,[3] and, therefore, has determined to disapprove the proposed rule change.

Background

1. Physical Access Annual Membership

Physical access annual membership was one of several means adopted by the NYSE to increase access to that exchange following the enactment of the 1975 Amendments.[4] When the Commission approved the creation of annual memberships on March 7, 1978, it found that the establishment of annual physical presence membership was consistent with the provisions of the Act and the rules and regulations thereunder, particularly Section 6(b)(5) of the Act, and stated that in making available electronic access and physical presence annual memberships, the NYSE was providing a "means of increasing access to most or all of the range of benefits (and obligations) attendant upon ownership of a NYSE seat (historically limited in number)."[5]

Article IX, Section 1(b) of the NYSE constitution provides for the Board of Directors to establish the number of physical access memberships based on periodic determinations as to the space and facilities available on the floor.[6]

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[1] 15 U.S.C. § 78a *et seq.*, as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975) ("1975 Amendments").

[2] Notice was given by a Commission release (Securities Exchange Act Release No. 16721 (April 3, 1980)), and publication in the Federal Register, 45 FR 24743 (April 10, 1980).

[3] 15 U.S.C. § 78f(b) (5), (8) (1975).

[4] In December 1976, the NYSE Committee on Access, *Report on Achieving Greater Access to the New York Stock Exchange* (December 1976) recommended, among other things, that the NYSE create both electronic and physical access annual memberships, and permit equity members to lease seats in order to enhance "the NYSE's ability to compete within the emerging national market system * * *." *Id.* at 8.

[5] Securities Exchange Act Release No. 14535 (March 7, 1978), 14 SEC Docket 383, 384 (March 21, 1978).

[6] Article IX, Section 1(b) of the NYSE constitution provides that the exchange's membership shall consist of: Such number of members of the Exchange, as the Board of Directors may from time to time determine, consistent with available physical floor space and facilities, each of whom shall have paid an annual dues, which shall entitle

Footnotes continued on next page

Persons interested in becoming physical access members are subject to the same application procedures and must meet the same qualifications as individuals who purchase equity memberships ("seatholders"). Physical access members pay annual dues of $35,000,[7] which entitles them to go on the trading floor to carry out business in any of the capacities available to seatholders, but they have no equity interest in the exchange. Presently, physical access membership provides the only means, other than by NYSE constitutional amendment, by which the number of NYSE members permitted to maintain physical presence and facilities on the NYSE trading floor can be increased beyond the traditional 1,366 equity members.[8]

2. The Proposed Rule Change

The proposed rule change would amend the NYSE constitution to permanently limit the number of physical access members to no more than two, the number in effect on August 31, 1979, when the NYSE was presented with a membership petition, pursuant to Article XX, Section 3b of the NYSE constitution, to obtain a membership vote on the proposed limitation.

The proposed limitation on physical access membership was sponsored by the Alliance of Floor Brokers, Inc. ("Alliance")[9] and was strongly opposed by the NYSE Board of Directors.[10] It was approved by a membership vote in November 1979, and filed as a proposed rule change with the Commission on January 7, 1980, pursuant to Section 19(b)(1) of the Act.[11]

3. Institutions of Disapproval Proceedings

After considering the proposed rule change together with the comments filed by the Alliance,[12] the Commission determined that it could not find that the proposal was consistent with the Act and that it would be necessary to institute proceedings to determine whether to disapprove the proposed rule change. The Commission's order instituting the present proceedings stated that the grounds for disapproval under consideration were Section 6(b)(8) of the Act, which requires that exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and Section 6(b)(5), which requires, among other things, that exchange rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Interested persons were invited to submit written data, views, and arguments, and to submit a rebuttal to any other person's submission. The Commission received two submissions during the hearing period which are summarized below.[13]

II. Summary of Submissions Received

In addition to certain arguments it made to the Commission during the comment period for the proposed rule change, the Alliance raises one new, essentially procedural, argument in its submission. The Alliance states that since Section 6(c)(4) of the Act expressly grants a securities exchange the qualified right to impose numerical limitations on its membership,[14] the exclusive means by which the Commission may remove or modify such a limitation is pursuant to Section 19(c) of the Act which grants the Commission authority to abrogate, add to and delete from self-regulatory organization rules.[15]

In the Alliance's view, in order to amend an exchange's limitation on membership (under Sections 6(c)(4) and 19(c)), the Commission must find that, under the circumstances, the limitation—"independently of the numerical limitation itself"—imposes a burden on competition not necessary or appropriate under the Act.[16] As a result, the Alliance states that the instant 19(b)(2) proceedings as well as any reference to the standards embodied in Section 6(b) of the Act are inappropriate.

The Alliance also restates several arguments it previously made to the Commission. It points out that there is numerical underutilization of the exchange floor (only about 51 percent of the equity members are present at any one time), and states that this "underutilized capacity of the Exchange clearly indicates that there is no need for forcing an exchange to theoretically permit unlimited numbers of physical

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such member, during the period for which dues have been paid and while such member remains in good standing, to enter physically upon the trading floor and to have facilities thereon for the execution of orders.

[7] NYSE Constitution, Article X, Section 1(b). The dues were raised from $25,000 (the original rate) on October 4, 1979, pursuant to Section 19(b)(3)(A)(ii) of the Act (SR-NYSE-79-43). Securities Exchange Act Release No. 16279 (October 15, 1979) 44 FR 60463 (October 19, 1979).

[8] *See* NYSE Constitution, Article IX, Section 1.

[9] The grounds for the membership petition—which subsequently were submitted to the Commission in support of the instant proposed rule change—were summarized in the Commission's order instituting proceedings to determine whether to disapprove the proposed rule change. Briefly, the Alliance argued that the physical access program had not been successful and thus had not improved either competition on the NYSE floor or the NYSE's ability to attract or process increased order flow. The Alliance took the position that the exchange had the right to eliminate physical access membership because it was not required by the Act. It maintained that elimination of physical access membership would not be anticompetitive because other forms of access, such as leasing, exist and that, in any event, the 1,366 equity members already provide more than adequate competition on the NYSE floor. It also alleged that the availability of the relatively low-priced physical access memberships would depress the value of equity seats. Moreover, the Alliance stated that the NYSE floor already was overcrowded and could not support additional personnel.

[10] The NYSE Board of Directors' position also was summarized in the order instituting disapproval proceedings. The Board took the position that as part of a comprehensive effort to provide varying forms of membership opportunities, offering physical access annual membership had enhanced the public credibility of the exchange as a progressive and competitive component of the capital raising mechanism of the country. The NYSE Board disputed the claim that there was insufficient space on the NYSE floor to accommodate new physical access members, stating that as many as 20 additional physical access members could be accommodated in the near term.

[11] *Notice of the proposed rule change was given* by publication of a Commission Release (Securities Exchange Act Release No. 16538) in the Federal Register (45 FR 7022 (January 31, 1980)).

[12] The Alliance filed extensive comments on a Form 19b-4A. The NYSE incorporated substantial portions of those comments into item 3 (purpose of the proposed rule change), item 4 (basis under the Act), and item 6 (burden on competition) of its Form 19b-4A by an amendment to the Form filed with the Commission on January 25, 1980. The remainder of the Alliance's filing was placed in the public file as comments on the proposed rule change.

[13] Thomas G. Kahn, an individual equity member of the NYSE, and the Alliance of Floor Brokers, Inc., submitted views supporting approval of the proposed rule change.

[14] Section 6(c)(4) of the Act, 15 U.S.C. 78f(c)(4), provides:

A national securities exchange may (A) limit the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: Provided, however, That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: And, provided further, That the Commission, in accordance with the provisions of section 19(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this title.

[15] Section 19(c) of the Act provides that the Commission, by rule, may abrogate, add to and delete from the rules of a self-regulatory organization as it deems necessary or appropriate to ensure the fair administration of the self-regulatory organization, or to conform the organization's rules to the requirements of the Act and the rules and regulations thereunder.

[16] Alliance at 11.

access memberships."[17] It also states that any qualified broker or dealer can obtain access by leasing or buying a seat from an equity member. The Alliance argues further that vigorous competition currently exists among floor brokers and among all members of the exchange, and that there is no evidence in the record which would support the proposition that competition on the NYSE would be advanced by increasing the number of members entitled to go on the NYSE trading floor beyond 1,368.[18] Finally, the Alliance argues that Commission disapproval of the proposed rule change would chill the development of other innovative programs by the exchanges.

The other commentator states that the proposed rule change represents "reasonable self-regulatory procedures designed to protect the at-risk equity capital of exchange members, while providing for reasonable physical access to any qualified individual on fair and reasonable terms."[19] It points out that any qualified person currently can obtain access to the NYSE floor by buying or leasing a seat, and notes that if conditions so warrant, the number of physical access memberships available could be increased in the future.

III. Discussion

A. Statutory Criteria

Under Section 19(b)(2) of the Act, the Commission must approve a proposed rule change of an exchange if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to exchanges, in particular Section 6(b) of the Act which establishes substantive requirements governing exchange rules. It must disapprove a proposed rule change if it does not make these findings.

Contrary to the Alliance's argument that the Commission must institute Section 19(c) proceedings to disapprove the proposed rule change, the Commission believes that the current proceedings were correctly instituted under Section 19(b) of the Act. The Act provides different procedures for Commission consideration of self-regulatory organization-initiated rule changes and changes to self-regulatory organization rules that are initiated independently by the Commission. Section 19(b) of the Act specifies the procedures applicable to self-regulatory organization rule changes proposed by the organizations. With respect to proceedings instituted by the Commission, Section 19(c) of the Act specifies the procedures which govern the Commission's actions.

Section 6(c)(4) does not modify the statutory scheme. While Section 6(c)(4) specifies that 19(c) proceedings are necessary for Commission-instituted amendments to limitations on exchange membership, the section is silent on the procedures which must be followed in considering limitations proposed by an exchange. The commentators argued that the Congress intended, in Section 6(c)(4), to permit exchanges to impose numerical limitations on their membership irrespective of the requirements of Section 6(b)(8) of the Act and without Commission approval under Section 19(b). However, in the Commission's view, nothing in Section 6(c)(4) permits an exchange unilaterally to alter restrictions on membership without obtaining Commission approval under Section 19(b) of the Act.[20] And, in determining whether to approve or disapprove proposed rule changes affecting restrictions on membership, the Commission must apply the substantive standards under Section 6(b) of the Act, which defines the rulemaking authority of securities exchanges.[21]

Moreover, the fact that Section 6(c)(4) permits exchanges to impose limitations on membership does not, in the Commission's view, constitute a determination by the Congress either that such limitations are not burdens on competition or that any burdens resulting from such limitations are necessary or appropriate under the Act. Rather, the section should properly be read to sanction limitations on access (particularly those existing at the time of the 1975 Amendments) and to leave any determination with respect to the competitive aspects of those limitations to the Commission on a case-by-case basis—either in the context of a proposed rule change filed by an exchange pursuant to Section 19(b) or in proceedings instituted by the Commission under Section 19(c).

B. Grounds for Disapproval

The Commission is unable to find that the proposed rule is consistent with the requirements of the Act and, therefore, must disapprove the proposed rule change. In particular, the Commission is unable to find that the proposed rule is consistent with Section 6(b)(8) of the Act which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate under the Act.

While the Act does not expressly require the creation of new types of memberships (including annual memberships with physical access privileges), an exchange may limit or eliminate existing forms of membership by rule only if such action would not impose any burden on competition not necessary or appropriate under Section 6(b)(8) of the Act. It appears that the proposed rule change, by placing an arbitrary limit on the number of persons entitled to physical access under its annual membership program, would result in a burden on competition by restricting existing and potential competition for floor brokerage and other business requiring physical presence on the NYSE floor.

The proponents of the proposed rule change claim that alternative means of access to the NYSE exist—such as leasing, electronic annual access, "other market" access through the Intermarket Trading System ("ITS"), and "economic access" through negotiated commission rates. The Commission notes, however, that, of those "alternatives," only leasing provides the right to go on the NYSE floor and compete directly with equity members for business.[22] However, leasing does not provide the potential for increasing the number of members entitled to compete on the NYSE floor, and, thus, cannot be viewed as a substitute for physical access

[17] *Id.* at 19.

[18] This figure represents the 1,366 equity members plus two physical access members.

[19] Submission of Thomas G. Kahn at 2. Mr. Kahn states that the arbitrary nature of the proposed rule change does not constitute a sufficient ground for disapproval since many government rules and regulations are arbitrary.

[20] The Commission notes that the Alliance's interpretation of Section 6(c)(4) would lead to the anomalous result by that the Commission would be forced to approve an exchange rule filing limiting the number of members on the ground that it was consistent with the Act (including Section 6(b)(8)) and then institute 19(c) proceedings to remove or amend the limitation on the ground that the proposal imposed an undue burden on competition.

[21] At most, Section 6(c)(4) may be read to restrict the circumstances under which the Commission could eliminate or increase an existing numerical limitation on exchange membership, in the course of a Section 19(c) proceeding, to those instances in which the Commission concludes that the limitations imposes a burden on competition not necessary or appropriate under the Act. However, the Commission has independent authority to place restrictions on exchange membership under Section 19(c).

[22] The other alternatives affect only the ability to execute transactions on the NYSE at lower costs and are not substitutes for the right of physical presence on the floor. Electronic access annual members obtain only a right of access to the NYSE's Designated Order Turnaround System, the Intermarket Trading System ("ITS") or the facilities of an equity member. Similarly, while so-called "economic access" through negotiated commission rates and "other market" access through ITS do provide a means for effecting trades on the NYSE, these forms of access do not provide the time and place execution advantages arising from physical presence on the floor or the opportunity to compete with equity members for floor brokerage or other business which depends on the floor presence.

annual membership.[23] Moreover, even though only a small number of persons have thus far applied for physical access membership, the arbitrary limitation which would result from adoption of the proposal may, in the long run, adversely affect potential competition on the floor of the nation's primary stock market.[24]

It does not appear, and the proponents of the proposed rule change have not demonstrated, that the burden on competition that would result from limitation of physical access membership is necessary or appropriate to achieve any purpose in furtherance of the Act. Commentators on the proposed rule change argued, in effect, that to the extent the proposed rule change would impose a burden on competition, the burden is justified by space limitations on the floor of the NYSE. While the Act permits an exchange, subject to Commission oversight, to limit the number of memberships and the number of personnel permitted on its trading floor at any given time (in order, for example, to assure the comfort and safety of its members and employees), the proposed rule change, by placing a permanent limitation on physical access membership, seems to be wholly unrelated to space considerations on the NYSE. The Commission notes that, in October 1979, the NYSE Board of Directors determined that the floor was capable of accommodating as many as 20 additional physical access members in the near term.[25]

The commentors suggest that the present 1,366 seatholders provide adequate competition and fair prices on the exchange and that there is no indication that an increase in the number of members entitled to go on the trading floor would result in an increase in competition. But, the NYSE Board of Directors believes that the physical access membership program has enhanced the credibility of the exchange as a public institution, and that the proposed rule change would not promote the best interests of the exchange, the membership or the investing public.[26] The exchange also believes that certain key factors which prompted it to create physical access membership in 1978 are still relevant today—in particular that new forms of membership are essential if the exchange is to implement new products and meet increasing competition for order flow and that easier access to the exchange would provide an economic incentive for new members to bring capital, expertise and additional business to the NYSE.[27] The Commission has considered these views in concluding that it cannot find that the burden on competition which would result from adoption of the proposed rule change would be necessary or appropriate in furtherance of the purposes of the Act.

The Commission also has concluded that the proposed rule change, by permanently limiting the number of physical access memberships to two, irrespective of the availability of space and facilities on the NYSE floor, would restrict access to the NYSE the nation's "primary" stock market. As volume on the NYSE increases, it becomes more difficult to justify limitations on access to that exchange in light of the competitive objectives of the Act of ensuring free and open markets.[28] Thus, the Commission cannot find that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the result today is consistent with its continued belief that a securities exchange should enjoy considerable latitude to develop—and terminate—regulatory experiments if the exchange can demonstrate that such experiments or their termination would be consisent with the Act. In light of the fact that the NYSE Board of Directors favors the continuation of the physical access membership program on the ground that the program makes the NYSE a more competitive and, therefore, more attractice marketplace, it appears unlikely that disapproval of the proposed rule change will deter the self-regulatory organizations from developing experiments designed to achieve the Act's broader goals as well as their own regulatory objectives. Finally, disapproval of the proposed rule change should reaffirm the Commission's strong commitment to the removal of artificial barriers to marketplaces and the fostering of competition within and among exchange markets.

IV. Findings

The Commission is unable to find that the proposed rule change is consistent with Section 6(b)(8) of the Act. The Commission concludes that the proposed rule change would impose a burden on competition by limiting access to the NYSE floor. On the basis of the data, views and arguments before the Commission, it cannot conclude that those burdens are either necessary or appropriate in furtherance of the purposes of the Act. The Commission also is unable to find that the proposed

[23] In addition, leasing does not require that all qualified individuals be given an "equal" opportunity to obtain access to the NYSE. While the NYSE must, under Section 6(b)(2) of the Act, permit any qualified person to become a member of the exchange, seatholders possess virtually unlimited discretion to determine to whom, and under what terms they will lease their seats. As a result, if physical access membership is eliminated, individuals who meet the NYSE membership qualification standards may be denied access to the exchange floor by seatholders for an arbitrary reason even though leases would be available. Moreover, there may be periods of time when no seats are available for leasing. And, if physical access membership is eliminated, persons seeking physical access to the floor during such periods could obtain access only through the purchase of a seat. The price of seats may be so high as to be, in effect, a barrier to entry for smaller, less well-capitalized brokers and dealers.

[24] The small number of physical access members may result, in part, from the controversy which has surrounded the program since its inception. Moreover, the opposition of certain floor members to the program caused the NYSE to impose an eight month informal moratorium on the granting of physical access memberships which was not lifted until September 1979. Finally, certain floor members filed suit in July 1980, in the New York State Court to enjoin the NYSE from granting physical access memberships. That suit was resolved in favor of the NYSE in January 1980. *Higgins* v. *Hall*, [Current] Fed. Sec. L. Rep. (CCH) ¶ 97,355 (N.Y. Sup. Ct., January 21, 1980). Thus, even if the physical access annual membership program were an experiment, as the Alliance argues, the Commission believes that the program has not thus far had a practical opportunity to develop.

[25] This determination was based on current estimates of the lead time required to provide the supporting personnel and services annual members need to conduct their activities, and on considerations arising from the NYSE's Facilities Upgrade Program which is currently being implemented.

[26] In creating physical access memberships in 1978, the NYSE Board stated that annual membership would increase the potential for access to the NYSE and encourage greater participation therein. The exchange urged that the creation of physical access membership was consistent with Section 6(b)(2) in enabling any qualified person to become a member of the exchange, and with Section 6(b)(5) in that the existence of various forms of membership tended to remove impediments to the mechanism of a free and open market. File No. SR-NYSE-77-21.

[27] NYSE Form 19b-4A, Exhibit B at 3-4 (Special Membership Bulletin: October 5, 1979), Exhibit C (Special Membership Bulletin: November 1, 1979).

[28] In 1979, the NYSE accounted for 88.13 percent of all consolidated volume compared to 85.34 percent in 1978 (NYSE 1980 *Fact Book* at 15).

The Commission notes that it does not appear that the existence of physical access membership has had an adverse effect on the price of NYSE seats. In 1977, the year physical access annual membership was approved (at $25,000/year) by the NYSE membership, the average price of NYSE seats was $54,100 (high of $95,000), and in 1978, the year the Commission approved the physical access rule, the average price of NYSE seats was $63,746 (high of $105,000). In 1979, the year the Alliance sued to have the NYSE enjoined from granting physical access membership and obtained a membership vote on the proposed limitation, NYSE seats sold for an average of $139,500 (high of $210,000). The NYSE raised physical access dues to $35,000 in late 1979. Seats presently are selling for approximately $205,000.

rule change is consistent with Section 6(b)(5), which requires the NYSE's rules to remove impediments to and perfect the mechanism of a free and open market and the development of a national market system. Rather, the Commission believes the proposed rule change would restrict access to the trading facilities of the NYSE in ways that appear to restrict free and open markets without providing countervailing benefits.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-80-2) to amend Article IX, Section 1(b) of the NYSE Constitution to limit physical access annual memberships to two, be, and hereby is, disapproved.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23861 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21668; 70-6481]

Georgia Power Co.; Proposed Acquisition of Undivided Ownership Interests in Coal-Fired Generating Units

July 31, 1980.

Notice is hereby given that Georgia Power Company ("Georgia") 270 Peachtree Street, N.W., Atlanta, Georgia 30302, a public utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Georgia is currently the owner of a 23.5% undivided ownership interest in two 810 MWe nominally rated coal-fired generating units under construction in Monroe County, Georgia, to be known as the Robert W. Scherer Units Numbers One and Two (collectively, the "Units"), the owner of an 83.5% undivided ownership interest in two additional 810 MWe nominally rated coal-fired generating units under construction at the same site to be known as the Robert W. Scherer Units Numbers Three and Four (collectively, the "Additional Units") and the owner of a 23.5% undivided ownership interest in certain property and facilities to be used in common by, or in connection with, the Units and the Additional Units (the "Common Facilities"). Georgia owns such interests in the Units, the Additional Units, and the Common Facilities as a tenant in common with Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("OPC"), the Municipal Electric Authority of Georgia, a public body corporate and politic and an instrumentality of the State of Georgia ("MEAG"), and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners ("Dalton"), the percentage ownership interests of which are as follows:

[In percent]

	Units	Additional units	Common facilities
OPC	60.0	0	60.0
MEAG	15.1	15.1	15.1
Dalton	1.4	1.4	1.4

Georgia proposes to purchase from MEAG and Dalton their respective 15.1% and 1.4% undivided ownership interests in the Additional Units and to sell to MEAG an additional 15.1% undivided ownership interest in the Units, pursuant to a Plant Robert W. Scherer Purchase, Sale and Option Agreement between Georgia and MEAG, dated as of May 15, 1980 (the "MEAG Purchase Agreement"), and a Plant Robert W. Scherer Purchase and Sale Agreement between Georgia Dalton, dated as of May 16, 1980 (the "Dalton Purchase Agreement"). As a result of such purchases and sales, Georgia will own an 8.4% undivided ownership interest in the Units, a 100 % undivided ownership interest in the Additional Units, and 23.5% undivided ownership interest in the Common Facilities; OPC will own a 60% undivided ownership interest in the Units and in the Common Facilities; MEAG will own a 30.2% undivided ownership interest in the Units and a 15.1% undivided ownership interest in the Common Facilities; and Dalton will own a 1.4% undivided ownership interest in the Units and in Common Facilities. Georgia will obtain a release of the 15.1% undivided ownership interest in the Units to be sold to MEAG from the lien of Georgia's First Mortgage Bond Indenture.

At the closing, in consideration for the sale by MEAG and Dalton of their respective ownership interests in the Additional Units, Georgia is to pay to MEAG and Dalton an amount equal to their respective costs of acquiring and constructing their undivided ownership interests in that portion of the Additional Units acquired constructed, or completed prior to the closing plus an amount in respect of MEAG's and Dalton's respective costs of bonds issued to finance such acquisition and construction. At the closing, in consideration of the sale by Georgia to MEAG of a 15.1% ownership interest in the Units, MEAG is to pay Georgia an amount equal to 15.1% of the cost incurred in the construction of the Units prior to the closing plus an amount in respect of Georgia's cost of long-term borrowings incurred to finance such construction.

Assuming the closing of such purchases and sale were to take place on August 15, 1980, Georgia estimates that it would pay MEAG approximately $2,196,000 for its 15.1% ownership interest in the Additional Units, that Georgia would pay Dalton approximately $202,000 for its 1.4% ownership interest in the Additional Units, and that Georgia would receive approximately $76,076,000 from MEAG for the 15.1% additional ownership interest which MEAG would acquire in the Units. Georgia expects to apply the net proceeds of such proposed transactions toward the cost of its construction program.

Under the MEAG Purchase Agreement, Georgia has given MEAG an option to purchase a 15.1% undivided ownership interest in the Additional Units exercisable by MEAG on or before December 31, 1990, but only following notice from Georgia to MEAG that the Additional Units will be built. Such option is subject, among other things, to Georgia's sole discretion as to whether the Additional Units will be completed and the schedule for construction and completion thereof. MEAG may exercise such option either by selling Georgia a 15.1% undivided ownership interest in the Units and purchasing from Georgia a 15.1% undivided ownership interest in the Additional Units or by purchasing from Georgia a 15.1% undivided ownership interest in the Additional Units with no transaction involving the Units. MEAG must pay Georgia compensation for the use of a 15.1% ownership interest in the Common Facilities in a declining amount which is a function of Georgia's carrying costs for such ownership interest in the common facilities and the historical periodic expenditures for construction of the Common Facilities. Georgia has given MEAG an option to terminate such payments by purchasing an additional 15.1% undivided ownership interest in the Common Facilities. The application states that the Act is not applicable to

any of the proposed for potential sales by Georgia to MEAG or Dalton because MEAG is an instrumentality of the State of Georgia and Dalton is a subdivision of the State of Georgia within the meaning of Rule 44.

The fees and expenses to be paid or incurred, directly or indirectly, in connection with the proposed transactions are to be filed by amendment. It is stated that no state and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

Notice is further given that any interested persons may, not later than August 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23752 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges; Opportunity for Hearing

July 31, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American General Corp. (AGC)
Common Stock, $1.50 Par Value (File No. 7-5684)
Benguet Corp. (BE)
Class B Common Stock (File No. 7-5685)
DMG, Inc. (DMG)
Common Stock, $.01 Par Value (File No. 7-5686)
Fishbach Inc. (FIS)
Common Stock, $1 Par Value (File No. 7-5687)
Gearhart Industries, Inc. (GOI)
Common Stock, $.50 Par Value (File No. 7-5688)
JWT Group Inc. (JWT)
Common Stock, $.10 Par Value (File No. 7-5689)
Metro-Goldwyn-Mayer Film Company (MGM)
Common Stock, No Par Value (File No. 7-5690)
Tri-South Investments, Inc. (TSI)
Common Stock, $.10 Par Value (File No. 7-5691)
Augat, Inc. (AUG)
Common Stock, $.10 Par Value (File No. 7-5692)
Black Hills Power & Light Co. (BHP)
Common Stock, $1 Par Value (File No. 7-5693)
Canadian Pacific Enterprises Ltd. (ENT)
Common Stock, No Par Value (File No. 7-5694)
Flight-Safety International Inc. (FSI)
Common Stock, $.10 Par Value (File No. 7-5695)
Horizon Bancorp (HZB)
Common Stock, $4 Par Value (File No. 7-5696)
James River Corp. of Virginia (JR)
Common Stock, $.10 Par Value (File No. 7-5697)
Keystone Foods Corp. (KFC)
Common Stock, $.10 Par Value (File No. 7-5698)
Naples Federal Savings & Loan Association (NAF)
Common Stock, $.01 Par Value (File No. 7-5699)
Nobel Affiliates, Inc. (NBL)
Common Stock, $3.33⅓ Par Value (File No. 7-5700)
Recognition Equipment Inc. (REC)
Common Stock, $.25 Par Value (File No. 7-5701)
Safeguard Business Systems, Inc. (SGB)
Common Stock, $.10 Par Value (File No. 7-5702)
Southwest Florida Banks, Inc. (SFB)
Common Stock, $1 Par Value (File No. 7-5703)
Ti-Caro, Inc. (TCX)
Common Stock, $1 Par Value (File No. 7-5704)
Tricentrol Limited (TCT)
American Depository Receipt for American Shares (File No. 7-5705)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR 80-23749 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17028; SR-NASD-80-14]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

July 30, 1980.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on July 18, 1980, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission copies of a proposed rule change. The proposed rule change would amend Article I, Section 7 and Article XV, Sections 4 and 5 of the NASD's By-Laws to provide that the NASD retains jurisdiction over members and associated persons who have resigned or been terminated until one year after the effective date of their resignation or termination. In addition, the proposed rule change would amend Appendix E under Article III, Section 5 of the NASD's Rules of Fair Practice to change the level at which members are required to report positions in options contracts. The reporting threshold would be increased from 100 to 200 contracts in a particular class of options on the "same side of the market."

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street,

Washington, DC 20549. Reference should be made to File No. SR-NASD-80-14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change would conform NASD rules to the rules of other self-regulatory organizations. Accordingly, the Commission believes that accelerated approval of the NASD proposal is necessary and appropriate in order to achieve a consistent and equal regulatory scheme.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23753 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11282; 812-4297]

UCB Financial Services, Ltd.; Filing of Application for Order Exempting Applicant From All Provisions of the Act

July 31, 1980.

Notice is hereby given that UCB Financial Services, Ltd. ("Applicant"), c/o United California Bank, 707 Wilshire Boulevard, Los Angeles, California 90017, an Ontario corporation, filed an application on April 27, 1978, and amendments thereto on June 26, 1979, and May 16, 1980, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Background

Applicant states that it incorporated as a financial service company under the Business Corporations Act of Ontario, Canada, on October 8, 1975, and that it is a wholly owned subsidiary of United California Overseas Investment Company ("Overseas"), a corporation organized pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. 611 *et seq.* ("Edge Act"). According to the application, Overseas is a wholly owned subsidiary of United California Bank ("UCB"), a bank chartered under the provisions of the California Financial Code. The application states that Overseas was organized for the purpose of holding equity investments made by UCB in non-bank financial institutions. UCB is a wholly owned subsidiary of Western Bancorporation ("WBC"), a publicly traded Delaware corporation which is a bank holding company.

Applicant states that its business consists of wholesale lending to both indigenous and foreign owned corporations in Canada and that each loan it makes is individually negotiated and memorialized in a written agreement. Such loans generally will be oriented to include companies engaged in developed and processing natural resources in Canada. In addition, Applicant proposes to provide term loans to Canadian commercial and industrial firms engaged in the exportation of Canadian products.

Applicant represents that WBC is subject to regulation under the Bank Holding Company Act and that WBC and its subsidiaries, including Applicant, are subject to examination by the Board of Governors of the Federal Reserve System ("Board"). Applicant further represents that UCB is subject to regulation and supervision by both federal and California banking authorities, and that WBC, Overseas and Applicant, as affiliates of UCB, are also subject to the supervision of such authorities. In addition, Applicant asserts that as a foreign owned financial service company incorporated pursuant to Ontario law, it is subject to the provisions of the Canadian Foreign Investment Review Act. in this regard, Applicant states that it has entered into an aggreement with the Foreign Investment Review Agency under which it has made certain undertakings with respect to its management, ownership, financial structure, capital structure, regulation and business objectives. This agreement is to remain in effect until such time as Applicant or any affiliate or associate of Applicant becomes subject to express regulation under the Canadian Bank Act. Applicant states that UCB intends to apply for a Canadian Bank Charter, and if such charter is granted, convert the operations of Applicant into those of a chartered bank subsidiary. Upon such conversion, Applicant would be regulated under the Canadian Bank Act.

Applicant states that, although it has a separate corporate existence, it is operated in substantially the same manner as if it were a foreign branch of UCB. All final credit decisions involving loans of more than $500,000 are made by a credit committee which is the same committee that oversees the lending operations of UCB. A complete file on each of Applicant's credit transactions, as well as complete and up-to-date financial information on Applicant, is maintained by UCB. Applicant asserts that, as a consequence of both internal controls applied by UCB and the supervision effected by the Board in its application of the federal banking laws, the operations of Applicant are supervised in a manner consistent with the supervision exercised over banks incorporated and operating under the California Financial Code.

Proposed Offerings

The application states that all of Applicant's equity securities are currently held, and will be held, by UCB, WBC or their wholly owned subsidiaries. The remainder of Applicant's capital is currently derived through the sale of notes with maturities of not more than 270 days ("Short-Term Notes"). The Short-Term Notes are sold through institutional intermediaries located in Canada in multiples of $1,000 with a minimum allotment of $50,000. They are guaranteed by UCB, payable in Canadian dollars (or the equivalent thereof in other currencies) and such notes may not be rolled over. Applicant states that from time to time it acquires other funds through individually negotiated borrowings from substantial and financially sophisticated entities doing business in Canada.

Applicant states that at the present time a substantial portion of the funds invested in its Short-Term Notes is derived from sources located in the United States. However, Applicant asserts that, because the Short-Term Notes are guaranteed by UCB, they are exempted from registration under the Securities Act of 1933 ("1933 Act") pursuant to Section 3(a)(2) thereof, and

because all of Applicant's securities (other than short-term paper) are held by a company which is excepted from the definition of "investment company," Applicant is currently excluded from the applicability of the Act by the provisions of Section 3(b)(3) thereof.

Applicant asserts that, if it is to compete effectively in the Canadian financial marketplace, it must have available sources of funds having maturities in excess of 270 days in order to enable it to offer certain types of long-term loans to its customers. Accordingly, Applicant proposes to commence the issuance and sale of debt securities having maturities of more than 270 days ("Long-Term Debt"). Such Long-Term Debt will be sold outside the United States, in denominations of $100,000 or more, pursuant to private placements with substantial and financially sophisticated investors located outside the United States. Purchasers of the Long-Term Debt will be required to provide written assurance to Applicant or its underwriters that they are purchasing for investment and not with a view toward resale. Further, Applicant states that underwriters offering and selling the Long-Term Debt will be required to provide written assurance to Applicant that they will not offer or sell such securities: (1) To persons residing in the United States, its territories or possessions, or to a national or resident thereof; (2) to persons other than substantial and financially sophisticated institutions; or (3) to persons unwilling or unable to provide written assurances that they are purchasing such securities for investment and not with a view toward resale. Applicant states that the certificates representing the Long-Term Debt will bear a prominent legend to the effect that such securities may not be transferred (except by operation of law to the successor of the holder thereof) without the prior written consent of Applicant or its underwriter.

Applicant further states that, because the Canadian short-term note market is an important source of funds, it desires to continue to sell its Short-Term Notes. Upon the issuance of an order granting the exemption Appliant requests, Applicant states that the minimum denomination of the Short-Term Notes will be increased to $100,000 to reduce the possibility that such notes might be purchased by investors other than substantial and financially sophisticated institutions.

Applicant states that the Short-Term Notes and Long-Term Debt will rank on a *pari passu* basis with one another and will constitute direct obligations of Applicant. The rights of the Short-Term Notes and Long-Term Debt will be superior to the rights of Applicant's equity shares, and will be equal or superior to the rights of any other debt securities issued by Applicant. The Short-Term Notes will continue to be guaranteed by UCB and, as a result, will have rights superior to the rights of equity shares issued by UCB.

Requested Exemption

Applicant states that once it proceeds to offer the Long-Term Debt, it will no longer be able to rely on Section 3(b)(3) of the Act. Accordingly, Applicant has requested that it be exempted from all provisions of the Act. Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, from any provisions of the Act, or of any rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that, prior to proceeding with any offering of Short-Term Notes without registration under the 1933 Act, it will obtain an opinion of its United States counsel that the offering will qualify for the exemption from registration provided by Section 3(a)(2) of the 1933 Act which exempts securities issued or guaranteed by U.S. banks. Applicant further represents that, in the event it makes any offering of short-term notes in the United States which are not guaranteed by UCB, such issue will be registered under the 1933 Act unless Applicant has received an opinion of its United States councel that the offering will qualify for an exemption from the registration provisions of the 1933 Act, such counsel having taken into account the doctrine of "integration" as it might apply. Applicant does not request Commission review or approval of such opinion letters, and the Commission expresses no opinion as to the availability of any such exemptions.

In addition, Applicant undertakes to insure that each offeree of the Short-Term Notes will be provided with a memorandum including the most recent publicly available consolidated financial statements of UCB (which statements include the assets and liabilities, and profits and losses, of Applicant). Such memorandum will be at least as comprehensive as memoranda customarily used in connection with the issuance of bank guaranteed short-term notes in Canada. A similar memorandum will be provided to each offeree in connection with any exempt offering in the United States by Applicant of short-term notes not guaranteed by UCB, and will describe the business of Applicant and contain its most recent publicly available financial statements prepared in accordance with generally accepted accounting principles in Canada. According to the application, the memoranda utilized in connection with such offerings of non-guaranteed short-term notes in the United States will be at least as comprehensive as those customarily used in connection with the issuance of short-term notes in the United States and will include a description of material differences between United States and Canadian generally accepted accounting principles, if any. The memoranda utilized in connection with both types of offerings of short-term notes will be updated periodically, and at least annually, to reflect material changes in Applicant's financial condition.

In the case of any offering in the United States of short-term notes not guaranteed by UCB, and not required to be registered under the 1933 Act, Applicant states that such notes shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating agencies. Applicant will advise in writing its U.S. counsel, in connection with the preparation of its opinion regarding exemption from the 1933 Act, that such rating has been received; provided, however, that if such notes are guaranteed by WBC, Applicant shall not be required to secure a rating so long as the outstanding commercial paper of WBC, at the time of the issuance of such notes, has received one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating agencies.

Applicant represents that it has no present intention to sell long-term debt securities in the United States. However, any public offering of such long-term debt securities in the United States will be registered under the 1933 Act. Applicant undertakes that it will comply with the prospectus delivery requirements of the 1933 Act in offering and selling such securities. In the case of any offering of long-term debt securities in the United States not requiring registration under the 1933 Act, Applicant undertakes to provide to each offeree in the United States a memorandum at least as comprehensive in its description of Applicant as those customarily used in such offerings of

long-term debt in the United States. All financial statements included in such memoranda will be prepared in accordance with generally accepted accounting principles in Canada and will include a statement describing the material difference, if any, between United States and Canadian generally accepted accounting principles. Such memoranda will be updated at the time of subsequent offerings to reflect material changes in Applicant's financial position.

Applicant states that any order granting its application may be expressly conditioned upon compliance with its undertakings regarding disclosure memoranda. It represents that, in connection with the issuance of the Short-Term Notes and any other securities, it will appoint UCB as agent to accept service of process in any action based upon the securities issued and brought by a holder thereof. Applicant will accept jurisdiction in any state or federal court in california with respect to such actions. The appointment of UCB as agent for service of process and the acceptance of jurisdiction shall be limited to suits brought by a holder of Applicant's securities and based upon the acts of Applicant in connection with the purchase and sale of such securities, or the performance of any of Applicant's obligations thereunder, and shall be irrevocable until the amounts due or to become due on the securities have been paid.

In view of the foregoing representations and undertakings, Applicant asserts that the granting of the requested exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than August 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23751 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-630]

Wacoal Corp.; Application and Opportunity for Hearing

July 30, 1980.

Notice is hereby given that Wacoal Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the reporting requirements of Section 15(d) of the 1934 Act.

The Application states, in part:

1. Applicant, a Japanese corporation, is a leading manufacturer and marketer in Japan of women's intimate apparel.

2. On January 11, 1977 the Applicant's registration statements for 6,000,000 shares of common stock and related American Depositary Receipts were declared effective.

3. As of September 1, 1979, the first day of Applicant's current fiscal year, the number of holders of Applicant's common stock and ADRs resident in the U.S. was 34.

In the absence of an exemption, Applicant is required to file certain reports with the Commission pursuant to Section 15(d) of the 1934 Act, including an annual report on Form 20-K for the fiscal year ended August 31, 1980. Applicant argues that no useful purpose would be served in filing the required periodic reports.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the office of the Commission at 1100 L Street, NW, Washington, D.C. 20549.

Notice is further given that any interested person not later than August 25, 1980 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23750 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-624]

Warner-Lambert International Capital Corp.; Application and Opportunity for Hearing

Notice is Hereby Given That Warner-Lambert International Capital Corporation (the "Applicant"), has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under Section 13 of the 1934 Act.

The Applicant states:

(1) The Applicant is a wholly owned subsidiary of Warner-Lambert Company which files periodic reports pursuant to Section 13 of the 1934 Act.

(2) The Applicant's 4¼% Guaranteed Debentures due 1981 (the "Debentures") are the only class of security issued by Applicant which is registered under the 1934 Act.

(3) The Applicant's parent, Warner-Lambert Company, has unconditionally guaranteed the Debentures.

(4) Holders of the Debentures can be fully informed by referring to the reports of Warner-Lambert.

(5) Applicant has undertaken to report any event which would materially affect the rights of the holders of the Debentures.

In the absence of an exemption, Applicant is required to file reports

pursuant to Section 13 of the 1934 Act and the rules and regulations thereunder. Applicant believes that its request for an order exempting it from the provisions of Section 13 of the 1934 Act is appropriate, in view of the fact that the time, effort and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice Is Further Given that any interested person no later than August 25, 1980, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued to this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-23798 Filed 8-6-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0390]

Cornell Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On February 11, 1980, a Notice was published in the Federal Register (45 FR 9146) stating that Cornell Capital Corporation, 405 Lexington Avenue, New York, New York 10017, had filed an application with the Small Business Administration pursuant to § 107.102 of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business February 26, 1980, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on July 18, 1980, issued License No. 02/02-0390 to Cornell Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: July 31, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-23866 Filed 8-6-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5368]

Hop Chung Capital Investors, Inc.; Issuance of a Small Business Investment Company License

On April 14, 1980, a notice was published in the Federal Register (45 FR 2506) stating that an application has been filed by Hop Chung Capital Investors, Inc., 214 Mott Street, New York, New York 10013, with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)) for a license as a small business investment company.

Interested parties were given until close of business April 29, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5368 on July 18, 1980 to Hop Chung Capital Investors, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 31, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-23867 Filed 8-6-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-5194]

Southern Venture Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an Application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.(1980) under the name of Southern Venture Corporation (Applicant) for a License to operate as a Small Business Investment Company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The Applicant is incorporated under the laws of the State of Florida and it will commence operations with a capitalization of $500,000 which will be obtained through the sale of 1000 shares of its Common Stock, $1.00 Par Value, to Mr. Alex Matway for $500 per share. The Applicant has authorized 500 shares of its Preferred Stock, Series A for possible issuance to the Small Business Administration.

The following are proposed to be the officer and directors of the Applicant:

Name and Title

Alex Matway, President and Director, 1196 Stephen Foster Drive, Largo, Florida 33540.

Robert L. Collins, Vice President and Director, 1629 Amerlea Drive So., Dunedin, Florida 33528.

Donald E. Sells, Secretary, Treasurer and Director, 9675 Commodore Drive, Seminole, Florida 33542.

The Applicant will have its principal place of business at Interair Complex, St. Petersburg—Clearwater Airport, Clearwater, Florida 33520. It intends to make investment principally in Penellas, Hillsborough, Pasco, Polk, Manateo and Sarasoto Counties of Florida, and will also seek and be receptive to investment opportunities elsewhere in the United States.

As a Small Business Investment Company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant 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 Small Business Investment Act and SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the Applicant to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice shall be published by the Applicant in a newspaper of general circulation in Clearwater, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 31, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-23868 Filed 8-6-80; 8:45 am]

BILLING CODE 8025-01-M

Roger Cox Small Business Investment Co.; License Surrender

[License No. 06/06-0221]

Notice is hereby given that Roger Cox Small Business Investment Co., 4121 Wyoming Boulevard, N.E., Albuquerque, New Mexico 87111 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Roger Cox Small Business Investment Co., was licensed by the Small Business Adinistration on September 27, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on July 25, 1980, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 31, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR 80-23880 Filed 8-6-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-98]

Study of Large Tank Barges and Solicitation of Information

AGENCY: Coast Guard, DOT.

ACTION: Notice.

PURPOSE: The purpose of this notice is—

1. To inform the public that the Coast Guard is conducting a study of the operation of large tank barges (tank barges of 20,000 DWT or more that carry crude oil and of 30,000 DWT or more that carry products) with particular emphasis on the causes of oil pollution from these barges;

2. To solicit information concerning the operation and potential environmental impact of large tank barges; and

3. To solicit information concerning certain operations at terminals serving large tank barges.

Discussion: In the November 19, 1979 Federal Register (44 FR 66502, 66531) the Coast Guard issued interim final rules to implement the vessel equipment and construction standards of the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973* (MARPOL Protocol), which were developed at the Tanker Safety and Pollution Prevention (TSPP) Conference held under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO) in London during February 1978. These regulations were issued under the authority of the Port and Tanker Safety Act of 1978 (92 Stat 1480, 1484; 46 USC 391a) and were adopted as final rules on June 30, 1980 (45 FR 43705, 43717).

These regulations do not differentiate between self-propelled and non self-propelled vessels regarding the applicability of the requirements for segregated ballast tanks (SBT), dedicated clean ballast tanks (CBT) and crude oil washing (COW) systems. Interpretations of the standards of the MARPOL Protocol are developed by the Marine Environmental Protection Committee of IMCO. To date the interpretations have focused upon the applicability of the standards to various types of typical self-propelled vessel operations, and have not given consideration to the differing operating procedures of large tank barges. The Coast Guard feels that the operating differences are sufficient to warrant exploring the development of specific interpretations for these large barges.

The standards of the MARPOL Protocol and the regulations require all existing tank vessels of over 40,000 DWT which carry oil in bulk to be provided with either SBT CBT or a COW system (as appropriate to the vessel's cargo). Since there are few, if any, existing tank barges of this size, this requirement has little effect. However, the MARPOL Protocol and the regulations further require that all new tank vessels of 20,000 DWT and above which carry crude oil be fitted with a COW system and protectively located segregated ballast tanks (PL/SBT), and that all new tank vessels of 30,000 DWT and above which carry product oils be provided with PL/SBT. There are several tank barges in these size ranges currently under construction in the U.S. or being contemplated by U.S. owners.

In the discussion contained in the November 19, 1979 Federal Register, the Coast Guard indicated that there was only limited data available to establish conclusions on the cause of oil pollution from tank barges of the DWT sizes addressed by those regulations, and that it could not be determined at that time whether there was a need for additional standards on tank barges in that size range. Further, the Coast Guard indicated that it had decided to undertake a study to determine the causes of oil pollution from these large tank barges.

Preliminary work by the Coast Guard on this study has been inconclusive and contradicts unsolicited information provided by some members of the tank barge industry. Therefore, in order to attempt to resolve these differences, and to aid in the development of interpretations of the MARPOL Protocol which may be more appropriate to the operation of large tank barges, the Coast Guard is asking knowledgeable and interested members of the public and industry to provide information regarding the design of new large tank barges and related terminal facilities, and the operation of existing large tank barges. Specifically the Coast Guard is interested in obtaining information regarding—

- The number and size of tank barges of over 20,000 DWT that are currently on order or contemplated for the carriage of crude oil.
- The number and size of tank barges of over 30,000 DWT that are currently on order or contemplated for the carriage of product oils.
- The trading routes of existing barges and those being contemplated for future expansion, especially those involving international trade.
- The anticipated impact of crude oil washing on the terminal facilities used by large tank barges.

• Whether provision for shore-supplied inert gas has been contempated at any terminal facilities for use by large crude oil carrying tank barges during crude oil washing.

• The practicality and feasibility of installing and operating COW systems on large tank barges which carry crude oil.

• The practicality and feasibility of installing and operating an inert gas system on large tank barges.

• How frequently existing large tank barges change from product oil trade to crude oil trade.

• Whether the large barges currently under construction or contemplated are being designed for the carriage of both crude and product oils.

• The amount of ballast required for sea-keeping on tank barges of 20,000 DWT and over.

• The number of existing large barges that normally ballast cargo tanks or, for sea-keeping purposes, have ballasted cargo tanks.

• The number of existing large barges that operationally discharge oil or oil residues at-sea for routine tank cleaning or tank cleaning prior to shipyard entry.

• The probable effect that a standard requiring all oily ballast, tank washings or cargo residues to be retained on board for discharge to reception/treatment facilities would have on the operation of those barges which ballast cargo tanks or conduct tank washing at sea.

• Alternatives other than a retain-on-board standard which would effectively reduce operational discharges by these barges.

• Probable market effects if standards for tank barges were to differ significantly from standards for self-propelled vessels.

If the results of the study indicate that regulatory action is warranted the public will be informed by means of an appropriate notice in the Federal Register.

Person to Contact: For any questions regarding this Notice and the scope of the information desired, or to submit information contact LCDR Alan E. Spackman, Merchant Marine Technical Division (G-MMT-1/13), Room 1308 Trans Point Building, 2100 2nd St. S.W., Washington, D.C. 20593 (202-426-4431). To be most helpful, information or notice that information is forthcoming should be provided by October 1, 1980.

Dated: July 31, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-23611 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

McDonnell Douglas Corp.; Certification Status

On July 9, 1980, a Notice of Certification status was issued concerning the application for type certificate of the DC-9-80 series aircraft submitted by McDonnell Douglas Corporation in accordance with Part 21 of the Federal Aviation Regulations (FAR). The application was submitted on August 24, 1977. The July 9 notice stated that the type certification program for the DC-9-80 was entering the final phase, however, certain issues still had to be resolved prior to certification. In that notice it was stated that the type certificate for the DC-9-80 would be issued no sooner than August 8, 1980, however, it further cautioned that this process could take longer if all issues were not satisfactorily resolved.

Due to the complexity of the program, the considerable amount of time required to review recent data submission, and the conduct of flight tests needed to provide a basis for the redemonstration of continued safe flight and landing with a total failure of both hydraulic systems, it is necessary to extend the projected certification date.

While substantial progress has been made toward certification, the following procedural steps must be completed before the type certificate can be issued:

Compliance with the certification requirements established by the Federal Aviation Administration must be demonstrated, including specific compliance with applicable provisions of the following regulations:

1. • FAR Part 25, amendment 25-1 through 25-40 except that certain sections of FAR Part 25 are at amendment levels earlier or later than Amendment No. 40, effective May 7, 1977;

• Special Conditions No. 25-95-WE-77, as amended, dated April 3, 1980;

• Special Conditions No. 25-88-WE-25, dated March 9, 1979;

• FAR Part 36 amendments 36-1 through 36-11, including the retroactive requirements and acoustical change provisions of FAR Section 36.2 and 36.7, repectively;

• Special Federal Aviation Regulation 27, as amended and made applicable by 40 CFR 87 (Environmental Protection Agency) with regard to air pollutant emissions;

2. A comprehensive review of the safety aspects of DC-9-80 operation crew complement must be completed and the results presented for review to the FAA Administrator (Ref. FAR 25.1523, and FAR 25 Appendix D).

3. Plans must be reviewed for the conduct of a test to demonstrate continued safe flight and landing with a total failure of both hydraulic systems (Ref. Special Conditions No. 25-95-WE-27); and, this test must be successfully accomplished.

Upon completion of these steps, I will then review the entire process to determine, in accordance with my responsibilities under the Federal Aviation Act, whether the type certificate can be issued.

In light of the complexities involved, the type certificate for the DC-9-80 will be issued no sooner than August 18, 1980, and this process could take longer if all issues are not satisfactorily resolved.

Langhorne Bond,

Administator.

[FR Doc. 80-24008 Filed 8-6-80; 10:24 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Ballard, Carlisle, Hickman, Fulton Counties, Ky.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Ballard, Carlisle, Hickman and Fulton Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Ron George, Environmental Coordinator, Federal Highway Administration, P.O. Box 536, Frankfort, Kentucky 40602, Telephone: (502) 227-7321.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Kentucky Department of Transportation is preparing an environmental impact statement for the construction of approximately 50 miles of the Great River Road corridor located in Kentucky and the purchase and development of associated amenities by FHWA and the Kentucky Department of Transportation. The Great River Road is a scenic corridor along the Mississippi River from Canada to the Gulf of Mexico. Several alternate alignments are under

consideration, as well as, the "do-nothing" alternative.

This project has been on-going for many years and scoping meetings public meetings and an Interdisciplinary Team Meeting have been held. A Kentucky Great River Road Commission is established to expedite the development of this project. The project has been coordinated with various federal, state and local agencies and officials and private organizations and parties identified as being impacted by this project or having an interest in its development. No further scoping meetings are planned.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: July 30, 1980.

James W. Hilborn III,

Assistant Division Administrator, Frankfort, Ky.

[FR Doc. 80-23767 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Fairbanks, Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Glenn E. Johns, Environmental Coordinator, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska 99802, Telephone: (907) 586-7421. Mike Tinker, Alaska Department of Transportation and Public Facilities, 2301 Peger Road, Fairbanks, Alaska 99701, Telephone (907) 452-1911.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Farmers Loop Raod in Fairbanks, Alaska. The proposed improvement would involve the reconstruction of the existing Farmers Loop road between Mileposts 0 and 8. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) widening the existing two-lane highway to four lanes; and (3) constructing a two-lane or four-lane highway on new location within the area bounded by College Road on the south and Farmers Loop Road on the north.

Letters describing the proposed action and soliciting commments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Public meetings will be held in Fairbanks, Alaska between July, 1980, and March, 1981. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Alaska Department of Transportation and Public Facilities at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and Local Clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: July 31, 1980.

Gene Hanna,

regional Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 80-23770 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Jessamine and Fayette Counties, Ky.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement is being prepared for a proposed highway project in Jessamine and Fayette Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Ron George, Environmental Coordinator, Federal Highway Administration, P.O. Box 536, Frankfort, Kentucky 40602, Telephone: (502) 227-7321.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Kentucky Department of Transportation is preparing an environmental impact statement for the improvement of existing US 27 from the Kentucky River at Camp Nelson in Southern Jessamine County north to New Circle Road in Southern Fayette County, Kentucky. This improvement would include reconstruction of the existing two lanes of US 27 to four lanes and a possible four-lane bypass around the City of Nicholasville. There are presently 5 alternatives with varying alignments under consideration including the "do nothing" alternative. The total length of the project is about 16.6 miles. The improved US 27 would provide additional highway capacity needed to meet existing and future travel demands between the rapidly growing cities of Nicholasville and Lexington.

Early in the planning process, a Nicholasville Citizens Transportation Advisory Committee representing various interest groups within the community was formed to provide local input. Numerous meetings of this committee, scoping meetings, public meetings and interdisciplinary team meetings were held for this project. The project has been coordinated with various federal, state and local agencies and officials and private organizations identified as being impacted by this project or having an interest in its development. No additional scoping meetings are planned.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: July 30, 1980.

James W. Hilborn III,

Assistant Division Administrator, Frankfort, Ky.

[FR Doc. 80-23763 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement, Las Vegas, Clark County, Nev.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Las Vegas, Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT: J. L. Hirsch, Acting Division Administrator, Federal Highway Administration, 1050 East William Street, Suite 300, Carson City, Nevada 89701, Telephone: (702) 885-5320 or J. J. King, Supervisor, Roadside Development and Environmental Studies, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, Telephone: (702) 885-5680.

SUPPLEMENTARY INFORMATION: At the request of the Clark County (Nevada) Regional Transportation Commission and other entities, the Nevada Department of Transportation (NDOT) is preparing an Environmental Impact Statement. The purpose of this EIS is to determine the impacts of proposed Transportation modifications designed to improve the east/west movement of traffic in the Flamingo Road, Las Vegas corridor.

Possible alternatives for accomplishing the project objectives include (1) extension of Flamingo Road from Interstate 15 westward to Decatur Boulevard and construction of a full interchange on I-15 at Flamingo Road, (2) modification of the I-15 interchanges and other major intersections on any one or a combination of Sahara Avenue, Spring Mountain Road or Tropicana Avenue, (3) some combination of (1) and (2), and (4) taking no action at all.

The scoping process will begin with an "Intent to Study" letter to be sent to appropriate Federal, State and local agencies as well as interested private organizations and individuals. A formal scoping meeting will be held on August 6, 1980 at 10 o'clock a.m. in the NDOT District Office at 1200 North Main Street, Las Vegas. In addition, the scoping process will include the establishment and operation of an Inter-Agency Project Development Team, a Public Informational Meeting, the operation of a Project Office at 3305 West Spring Mountain Road, No. 38, Las Vegas, Nevada 89102 (702-873-4511) by the Project Consultant, and personal solicitation of input from concerned agencies, organizations and individuals by members of the consultant's staff. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments, suggestions or questions concerning this proposed action and the EIS should be directed to the FHWA or NDOT at the addresses provided above.

(CFDA Program Number 20.205. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: July 28, 1980.

J. L. Hirsch,

Acting Division Administrator, Carson City, Nev.

[FR Doc. 80-23820 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[BS-Ap-No. 1588]

National Railroad Passenger Corp.; Public Meeting

The National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for authority to modify a portion of the signal system which controls train operations between Baldwin, Pennsylvania and Regan, Delaware. The proposed modification involves the initial installation of the revised signal system that Amtrak intends to utilize on all portions of the Northeast Corridor trackage between Boston, Massachusetts and Washington, D.C. The proposed signal changes are part of a comprehensive improvement program which is designed to enhance the overall performance of rail service on this line.

The Amtrak request is contained in several related proceedings which are identified as FRA Block Signal Application 1588 and four waiver petitions designated RS&I Number 607, RS&I Number 608, RS&I Number 609 and RS&I Number 610. The Railroad Safety Board of the FRA (Board), which has been delegated responsibility to determine whether to grant the request contained in these proceedings, has previously held two public hearings in these proceedings. The hearings were held on October 16, 1979 in Philadelphia, Pennsylvania and on October 18, 1979 in Boston, Massachusetts in accordance with a public notice published in the Federal Register on September 10, 1979 (44 FR 52783).

The information obtained during those hearings as well as that obtained during a detailed investigation of the Amtrak request has convinced the Board that there is a need to hold a public meeting to explore some of the issues about the proposed modification that have been raised in these proceedings. Consequently, the Board has voted to schedule a public meeting. The public meeting will be held at 10:00 a.m. on August 26, 1980 in Room 8334 of the Nassif Building located at 400 Seventh Street, SW, in Washington, D.C.

The public meeting will be informal and will be conducted by a representative designated by the Board. The representative of the Board will make an opening statement concerning the scope of the meeting and any procedures necessary for the conduct of the meeting.

Issued in Washington, D.C. on July 30, 1980.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-23654 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-80-7]

Texas South-Eastern Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Texas South-Eastern Railroad (TSE) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the TSE be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The TSE seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-80-7, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590. Communications received before September 19, 1980, will be considered by the FRA before final action is taken. Comments received after that date will

be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 7th Street, SW, Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C. on July 30, 1980.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-23655 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-06-M

[Docket No. AMFG-1, Notice No. 1]

Federal Financing of Amtrak Under Sections 601 and 602 of the Rail Passenger Service Act of 1970; Proposed Guidelines

AGENCY: Federal Railroad Administration ("FRA"), Department of Transportation ("Department").

ACTION: Notice of Proposed Guidelines.

SUMMARY: These proposed guidelines implement sections 601(b) and 602(h) of the Rail Passenger Service Act, as amended, 45 U.S.C. 601(b), 602(h), ("the Act"). They establish a basis for a sound financial relationship between the National Railroad Passenger Corporation ("Amtrak") and the Department, acting through the FRA, by setting out the information to be acquired by Amtrak and evaluated by Amtrak and FRA in making financial planning decisions, the procedures through which federal funds will be made available to Amtrak, and the documentation required for the expenditure of those funds.

DATED: Written comments must be received before September 22, 1980. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

ADDRESS: Written comments should identify the docket number and notice number and should be submitted in triplicate to: Docket Clerk, Chief Counsel's Office, Federal Railroad Administration, Room 5101, Department of Transportation, Washington, D.C., 20590. Persons desiring to be notified that their written comments have been received by FRA shall submit a stamped, self-addressed post card with their comments. The Docket Clerk will indicate on the post card the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in Room 8211 of the Nassif Building, 400 7th Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Richard G. Wakeman, Rail Passenger Programs Division, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-755-9332. Principal Attorney: David M. Talley, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-472-5438.

SUPPLEMENTARY INFORMATION:

Background

Section 601(b) of the Act authorizes the Secretary of Transportaion ("the Secretary") to grant Amtrak funds for operating and capital expenses. Grant funds appropriated pursuant to section 601(b) are required to be expended in accordance with guidelines established by the Secretary. In addition, section 602(a) allows the Secretary to guarantee loans made to Amtrak for capital acquisitions and repairs. Section 602(i) requires that Amtrak's guaranteed loan requests comply with general guidelines drawn under section 602(h) by the Secretary to assist Amtrak with capital and budgetary planning.

These guidelines shall apply to both the Department's grants under section 601(b) and it loan guarantees under section 602(a). They set forth the procedures by which grant funds will be released or loan guarantees issued, and provide for Amtrak's annual submission to FRA of a comprehensive operating and capital plan.

The Secretary is required by section 308(c) of the Act to report on the effectiveness of the Act and include his or her findings in the Department's annual report to Congress. Amtrak's submissions pursuant to these guidelines will be utilized in the preparation of those annual reports.

The form and content of loan guarantee applications will continue to be regulated by 49 CFR Part 251.

Economic Impact

Since the procedural and reporting requirements of these guidelines impose no significant burden on Amtrak, these guidelines are not considered significant for the purposes of the Department's Regulatory Policies and Procedures Order (44 FR 11034, February 26, 1979) implementing Executive Order 12044. Procedural in nature, these guidelines specify the timing and content of submissions Amtrak has been required to provide to the Department pursuant to the terms and conditions of existing loan guarantees made under section 602(a) of the Act. Also, Amtrak is presently collecting for internal management purposes, or as a result of loan guarantee terms and conditions, the information required for inclusion in the Comprehensive Operating and Capital Plan referred to in section 2.1 of these guidelines. Consequently, the additional costs to Amtrak of compliance with these guidelines would be insignificant. Furthermore, the guidelines will not have an economic impact on any organization or individual other than Amtrak. Therefore, it is the determination of the FRA that these proposed guidelines will impose so minimal a regulatory burden that they do not warrant a full regulatory evaluation under the Department's Regulatory Policies and Procedures Order.

Small Business Impact

FRA has evaluated this document and determined that it does not have any special impact on small business.

In consideration of the foregoing, the following guidelines are proposed.

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Article One: Definitions and References

1.1 As used in these guidelines:

(a) "Act" means the Rail Passenger Service Act, as amended (45 U.S.C. 501 *et seq.*).

(b) "Administrator" means the Federal Railroad Administrator or his or her delegate.

(c) "Amtrak" means the National Railroad Passenger Corporation.

(d) "Approved Budget Request" means that document transmitted to Amtrak from FRA setting forth the Budget Request as approved or modified by Congress in appropriating funds pursuant to section 601(b) of the Act.

(e) "Budget Request" means those documents submitted to the Congress by the Department in justification of a request for an appropriation for Amtrak pursuant to section 601(b) of the Act.

(f) "Budget Year" means the second fiscal year commencing after April 1 of the then-current year.

(g) "Capital Authorization Request" or "CAR" means that document defined in section 3.2.

(h) "Capital Grant Funds" means Grant Funds appropriated for payment of Amtrak's captial expenditures pursuant to section 601(b) of the Act.

(i) "Comprehensive Operating and Capital Plan" or "Plan" means the Comprehensive Operating and Capital Plan referred to in section 2.1.

(j) "Cost reimbursement agreement" means any agreement in which Amtrak's obligation to pay is determined in whole or in part by the costs incurred by a third party in fulfilling the agreement.

(k) "Department" means the United States Department of Transportation.

(l) "Grant Funds" means any funds appropriated for Amtrak's use under section 601(b) of the Act.

(m) "Guaranteed Loan Funds" means sums borrowed by Amtrak on obligations guaranteed by the Administrator under section 602(a) of the Act.

(n) "Operating Grant Funds" means Grant Funds appropriated for the payment of Amtrak's operating expenses pursuant to section 601(b) of the Act.

(o) "Route and Service Criteria" means the Criteria and Procedures for Making Route and Service Decisions established pursuant to section 404(c) of the Act.

(p) "Secretary" means the Secretary of Transportation or his or her delegate.

Article Two: Planning and Analysis

2.1 Comprehensive Operating and Capital Plan

(a) Amtrak shall submit to the Administrator by April 1 of each year a Comprehensive Operating and Capital Plan that shall have been approved by Amtrak's Board of Directors.

(b) Amtrak shall submit to the Administrator by August 1 of each year a reconciliation of the Plan reflecting Congressional Appropriation Committee action on the Budget Request for the next fiscal year.

(c) The Plan shall present information for the past fiscal year, the then-current fiscal year and each of the succeeding six fiscal years. Each fiscal year shall commence October 1.

(d) For each of the years identified in section 2.1(c), the Plan shall present at least the following information:

(i) A source and application of funds statement

(ii) A pro forma income statement;

(iii) An operating statement presenting, for each train that Amtrak anticipates will operate during the Budget Year and the two following fiscal years, the information contained in Attachment I of these guidelines, together with a statement of the principles followed in allocating costs to each train to determine its avoidable and fully allocated costs, the calculations used to generate those costs for each train, and the assumptions used to estimate the passenger-miles generated by each train and its revenue yield per passenger mile;

(iv) A profit improvement (or loss minimization) plan, together with supporting detail for each of its elements including, without limitation, a narrative description of each element, the operating and capital expenses, if any, associated with each element and the adjustments each element is expected to produce in each year's pro forma and operating statements; and.

(v) A capital plan covering the then-current fiscal year and each of the succeeding six fiscal years, including the proposed timing of expenditures for each of its elements and an analysis demonstrating the merit of each capital plan item in excess of $100,000 that is not included as an element of the profit improvement (or loss minimization) plan prepared in response to section 2.1(c)(iv).

(e) For fiscal years prior to the earliest fiscal year identified in section 2.1(c), Amtrak shall provide the Administrator, upon request, with data comparable to that required under the Plan.

(F) Within thirty (30) days after submission of the Plan, the Administrator shall transmit his or her questions, comments, recommendations and intended actions to Amtrak. Within (30) days following receipt of that material, Amtrak will provide the Administrator with answers to his or her questions and responses to his or her comments, recommendations and intended actions.

2.2 Budget Request and Approved Budget Request

(a) The pro forma income statement and capital plan for the second fiscal year following the then-current fiscal year, submitted as a part of the Plan, shall constitute Amtrak's submission to the Department supporting the Department's annual Budget Request for appropriations to Amtrak.

(b) If the Budget Request for an appropriation to Amtrak submitted by the Department to the Congress is inconsistent with the pro forma income statement and capital plan submitted by Amtrak, the Department will provide Amtrak with a written explanation of the difference.

(c) Amtrak will provide the Administrator, upon request, with the information that the Administrator determines is necessary to analyze and substantiate any submission Amtrak makes to the Congress in connection with the Budget Request.

(d) Within thirty (30) days after enactment of appropriations for Amtrak pursuant to section 601(b) of the Act as a part of the Department's annual appropriations Act, the Administrator shall prepare and transmit to Amtrak the Approved Budget Request. The Approved Budget Request will be prepared in accordance with the same standards and practices employed by the Department in interpreting its own appropriations Acts.

2.3 Consistency of Assumptions

Any submission Amtrak makes to the Congress, including Amtrak's annual report, shall be consistent with the accounting, cost allocation and other assumptions used in preparing the Plan. In the vent that Congress requires specific alternative assumptions, Amtrak shall provide the Administrator with a reconciliation of any such submission with the Plan.

Article Three: Funding Procedures

3.1 General Principles

(a) All requests by Amtrak for funds shall be consistent with the Approved Budget Request in which the expenditure requested was projected.

(b) All expenditures of such funds shall be made solely for the purpose and in the amounts specified in Amtrak's request as approved by the Administrator.

3.2 Procedure for Requesting Grant Funds and Adjustments to Guaranteed Loan Drawdown Authority

(a) At least ten (10) business days prior to each fiscal quarter, Amtrak shall submit to the Administrator for such quarter a request for Grant Funds and Adjustments to Guaranteed Loan Drawdown Authority that shall detail the proposed use of such funds. Where it appears that the amount of Grant Funds

requested will exceed the quarterly apportionment authorized by the Office of Management and Budget, Amtrak shall submit its request at least thirty (30) days prior to the beginning of the fiscal quarter.

(b) Such request shall contain the certifications and information required in Attachment II of these guidelines.

(c) Requests for operating grants shall include a reconciliation with the source and application of funds statement in the most recent Plan unless a later statement, consistent with the Approved Budget Request, has been filed with the Administrator. Any variation in a line item that exceeds, by either twenty (20) percent or $2,000,000, the amount projected in the source and application of funds statement shall be explained in the request.

(d) Each request for funds for capital expenditures, whether for Capital Grants Funds or Guaranteed Loan Funds, shall reference the projected amounts coming due on an approved Capital Authorization Request.

(i) CARs shall have been approved by Amtrak's Board of Directors in accordance with Amtrak's corporate by-laws.

(ii) Any increase by more than either five (5) percent or $100,00 in the amount of an approved CAR shall be explained in detail and approved by the Board of Directors by means of a supplemental CAR.

3.3 Procedures for Issuance of Loan Guarantees

Loan guarantees will be issued upon filing of an application by Amtrak pursuant to 49 CFR Part 251, subject to approval by the Administrator. The Administrator may attach such terms and conditions to any loan guarantee as he or she may determine in his or her sole discretion to be necessary or appropriate. Any note guaranteed pursuant to section 602(a) shall provide that drawdowns under the note by Amtrak shall not exceed the loan drawdown authority established by the Administrator.

3.4 Release of Grant Funds

(a) Capital Grant Funds shall be released quarterly in an amount equal to the quarterly apportionment approved by the Office of Management and Budget. Capital Grant Funds shall not be used to defray operating expenses. To the extent that the quarterly capital funding needed to meet expenditures coming due during the quarter is less than the quarterly funding available for capital expenditure purposes (e.g. capital grant, unexpended loans or Penn Central settlement), the Administrator may reduce the aggregate amount of drawdowns authorized by him under section 3.3 hereof by the difference between the quarterly funding available for capital expenditure purposes and the amount of capital funding needed to meet expenditures coming due during the quarter. If capital funding needed to meet expenditures coming due during the quarter is in excess of the quarterly capital funding available, then the Administrator may increase the aggregate amount of drawdowns authorized by him by the difference between the amount needed to meet capital expenditures coming due during the quarter and the quarterly capital funding available.

(b) Operating Grant Funds shall be released quarterly in amounts not to exceed the quarterly apportionment approved by the Office of Management and Budget.

(c) All Grant Funds shall be paid by letter of credit in conformity with Treasury Department Circular 1075, and with the requirements of Office of Mangement and Budget Circular A-34.

3.5 Subsequent Justification of Expenditures

The Administrator may request, and the chief financial officer of Amtrak shall submit upon such request, documents substantiating that Amtrak has in fact expended Grant and Guaranteed Loan Funds for the purposes and in the amounts specified in its quarterly requests for funds.

Article Four: Administrative and Fiscal Requirements

4.1 Accounting

(a) Amtrak shall operate and maintain an effective accounting system and related internal controls, and insure that adequate records are being maintained, that all funds are being controlled and expended in accordance with these guidelines and the Approved Budget Requests, and that its accounting techniques are designed to allocate accurately its costs to the various aspects of its operations.

(b) Amtrak shall obtain the right to audit contractors, including cost reimbursement subcontractors, under any cost reimbursement agreement of $100,000 or more entered into subsequent to the effective date of these guidelines unless this requirement is waived in writing by the Administrator. Amtrak shall conduct regular audits under any cost reimbursement agreement that provides for such audit.

4.2 Retention of Records

Amtrak shall retain for a period of seven (7) years after the expiration of its fiscal year all financial records, including all summary and principal source documents, supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, reports of aduits, both internal and external, and all other related documents and records. The Administrator, the Inspector General of the Department, and their designated representatives shall have access to such documents and related memoranda and papers for purposes of audit, examination, and copying.

4.3 Reporting Requirements

Amtrak shall submit to the Administrator, within ninety (90) days after the close of each month, the monthly reports designated in Attachment III of these guidelines.

Article Five: Compliance

5.1 Expenditures in Compliance With Approved Budget Request and Guidelines

All Grant Funds expended by Amtrak shall be spent in accordance with Approved Budget Requests and with these guidelines.

5.2 Right to Defer or Refuse Funding

In the event the Administrator determines under the provisions of section 601(b) or 602(i) of the Act that Amtrak has failed to comply with the Approved Budget Request or with these guidelines, he may defer payment of funds appropriated for Amtrak's use either in part or in whole, or refuse to guarantee loans for Amtrak, until such time as Amtrak complies with the Approved Budget Request and these guidelines.

5.3 Waiver by Administrator

The Administrator may, upon request with good cause shown, waive or modify any requirement of these guidelines not required by law. Amtrak may not rely upon any purported oral waiver or modification. A waiver or modification of a requirement on one occasion may not be relied upon as an indication that such requirement will be waived or modified on any future occasion.

Article Seven: Effective Date

These guidelines shall become effective as of ————.

Attachment I—Train Revenue and Expense Statement

Train No.

Origin Point
Terminal Point
Frequency
Revenue:
  Transportation
  Food Service Car (includes Amdinette and Amcafe)
  Lounge Car
  Mail & Express
  Other
  Total Revenue
Expenses:
  Direct Expenses
  Train/Engine Crew
  Fuel & Lubrication
  On Board Labor
  On Board Supplies
  Subtotal
Contribution (Loss) Net of Direct Expenses
Avoidable Expenses
  Station Services
  Other Facility Expenses
  Switching
  Maintenance of Equipment
  Maintenance of Way
  Incentives/Penalties
  Other
Total Avoidable Expenses
Contribution (Loss) Net of Avoidable Expenses
Allocated Expenses
  Station Svcs.
  Other Facility
  Switching
  Maintenance of Equipment
  Maintenance of Way
  Depreciation
  Incentive/Penalties
  Other
  Total Allocated Expenses
Total Contribution (Loss) Net of Fully Allocated Expense
Total Passengers
Total Passenger miles
Total Train miles
Total Car miles
Total Locomotive miles

Attachment II—Quarterly Funding Requisitions

Quarterly funding requisitions shall contain the information and assurances set forth below:

1. The total amount of funds requested, detailed by operating grant, capital and labor protection grant and the proposed adjustment to drawdown authority under the guaranteed loan program.

2. An itemized statement of the proposed application of the funds requested.

3. A statement of estimated cash sources and application.

4. A statement of capital expenditures by CAR showing the projected expenditures in the coming quarter, the estimated expenditures in the current quarter, the actual expenditures in the previous quarter, the authorized amount of the CAR, the actual expended balance, the estimated expended balance at the end of the coming quarter, proceeds from the sale of rolling stock and the capital portion of lease obligations.

5. A projection of capital expenditures by quarter for the remainder of the fiscal year.

6. The certification of Amtrak's chief financial officer that the information contained in the request and supporting documents is true and accurate to the best of his knowledge, and that all funds provided by the Department of Transportation will be used only for the financial purposes permitted by law and in accordance with the document contained in the request.

7. A statement of capital expenditures paid or to be paid during the fiscal year out of sources other than grant or loan funds.

8. An opinion of counsel that all expenditures proposed in the quarterly funding requisition have been approved by Amtrak in accordance with its internal procedures, and that any funds provided pursuant thereto will be used only for the purposes stated therein.

Attachment III—Monthly Reporting

Amtrak shall submit the following report, certified by the Chief Financial Officer, 90 days after the close of each month:

(1) A source and application of funds statement.

(2) An obligation status report of capital expenditures including total expenditures to date for each approved project (CAR) OF $100,000 or more in Amtrak's capital plan.

(3) A responsibility report stating each corporate department's operating expenses.

(4) An income (profit and loss) statement, with a summary for the fiscal year to date, for the system and for the NEC showing the variance from the budget contained in the Plan.

(5) A balance sheet with a comparison with the same month of the previous year.

Issued in Washington, D.C. on July 31, 1980.

John M. Sullivan,

Administrator.

[FR Doc. 80-23865 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP80-01; Notice 2]

White Motor Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by White Motor Corporation of Eastlake, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.127, Motor Vehicle Safety No. 127, *Speedometers and Odometers*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 10, 1980 (45 FR 15360) and an opportunity afforded for comment.

Beginning September 1, 1979, paragraph S4.1.4 of Standard No. 127 requires the figure "55" to appear on speedometers and to be highlighted. White inadvertently produced nine vehicles before October 23, 1979, equipped with old style speedometers that do not comply with S4.1.4. It argued that the noncompliance is inconsequential because the vehciles are heavy duty diesel powered trucks fitted with governors, and are typically capable of top speeds varying from 50 and 60 mph. The trucks otherwise meet Standard No. 127. White also believes the noncompliance is not safety related and that a recall would inconvenience the owners and discourage them from having real safety problems corrected in the future.

No comments were received on the petition.

The NHTSA concurs with petitioner's argument that the noncompliance has an inconsequential relationship to safety because it occurs on a limited number of speed-governed vehicles. Petitioner has met its burden of persuasion, and its petition is hereby granted.

(Secs. 102, Pub. L. 93-492, 99 Stat. 1480 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 29, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-23518 Filed 8-6-80; 8:45 am]

BILLING CODE 4910-59-M

WATER RESOURCES COUNCIL

Appointment to the Performance Review Board, Senior Executive Service

AGENCY: U.S. Water Resources Council.

SUBJECT: Notice of appointment to the Performance Review Board, Senior Executive Service.

ACTION: Notice.

DATE EFFECTIVE: August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis A. Smith, Director, Management Programs Division, U.S. Water Resources Council, 2120 L Street, NW., Washington, DC 20037, Phone: (202) 254-6448.

Pursuant to the Civil Service Reform Act, (4314)(c)(4) requires that the appointment of Performance Review Board Members be published in the Federal Register.

The following person replaces Lewis D. Walker as a member of the U.S. Water Resources Council's Performance Review Board which oversees the utilization and evaluation of the Council's Senior Executive Service:

Frank H. Thomas

Dated: August 1, 1980.

Gerald D. Seinwill,

Deputy Director.

[FR Doc. 80-23834 Filed 8-6-80; 8:45 am]

BILLING CODE 8401-01-M

Schedule Awarding SES Bonuses

AGENCY: U.S. Water Resources Council.

SUBJECT: Notice of schedule awarding SES bonuses.

ACTION: Notice.

DATE EFFECTIVE: August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis A. Smith, Management Programs Division, U.S. Water Resources Council, 2120 L Street, NW., Washington, DC 20037, Phone: (202) 254-6448.

The Council has established the following schedule for awarding SES bonuses:

Process	Completion date
End of Rating Period	July 12, 1980.
Performance Appraisal	Aug. 1, 1980.
Assessment Conference	Aug. 11, 1980.
Performance Review Board	Aug. 14, 1980.
Compensation Decisions	Aug. 15, 1980.
Bonus Paid	Aug. 25, 1980.

Gerald D. Seinwill,

Deputy Director.

[FR Doc. 80-23833 Filed 8-6-80; 8:45 am]

BILLING CODE 8410-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 154
Thursday, August 7, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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[M-287 Amdt 1, Aug. 1, 1980]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of items to the August 7, 1980 meeting.

TIME AND DATE: 9:30 a.m. (after regular scheduled Board meeting) August 7, 1980.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

29. Docket 37730, Standard Foreign Fare Level Investigation (Instructions to staff) (OGC).

28. Docket 37951—Application of Pan American World Airways, Inc. for amendment of its certificate of public convenience and necessity for Route 132 to include Bombay, India (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S-1497-80 Filed 8-5-80; 3:10 pm]

BILLING CODE 6320-01-M

2

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: August 5, 1980, 2 p.m.

PLACE: 1121 Vermont Avenue NW., Washington, D.C. 20425.

STATUS: Conference call meeting, open to public.

MATTER TO BE CONSIDERED: Proposal for Miami hearing.

PERSON TO CONTACT FOR FURTHER INFORMATION: Charles Rivera or Barbara Brooks, Press and Communications Division (202) 254–6697.

[S-1488 Filed 8-5-80; 10:33 am]

BILLING CODE 6335-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., Thursday, July 31, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: Deletion of an item.

Agenda, Item Number, and Subject

Broadcast—7—*Title:* Requests for the formation of a new Government-Industry Advisory Committee, and for the inauguration of an omnibus proceeding to facilitate a comprehensive approach to AM and FM matters now being considered in separate dockets, and for the inauguration of rule making to discontinue the threshold requirements of Section 73.37(e)(2) of the rules. *Summary:* The Commission will consider staff recommendations for action upon the foregoing requests.

Additional information concerning this item may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: July 31, 1980.

[S-1496-80 Filed 8-5-80; 1:49 pm]

BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of change in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, August 4, 1980, the Board of Directors of the Federal Deposit Insurance Corporation determined, on motion of Chairman Irvine H. Sprague, seconded by Mr. Paul M. Homan, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of Item No. V.3, an appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier denial of a request for records.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: August 4, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1491-80 Filed 8-5-80; 11:51 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, August 4, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Mr. Paul M. Homan, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Bank of Miami, Miami, Florida, an insured State nonmember bank, for consent to merge, under its charter and title, with Interamerican Bank of Miami, Miami, Florida, and for consent to establish the three offices of Interamerican Bank of Miami as branches of the resultant bank.

An appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier denial of a request for records.

The Board further determined, by that same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 4, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-1492-80 Filed 8-5-80; 11:51 am]
BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of agency meeting.

Pursuant to the provisions to the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is here given that at 2:30 p.m. on Monday, August 11, 1980, the Federal Deposite Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10), of Title 5, United States Code, to consider the following matters:

Application for Federal deposit insurance:

Manatee Community Bank, a proposed new bank, to be located at 1700 59th Street West, Bradenton, Florida, for Federal deposit insurance.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,405-SR—Bank of Lake Helen, Lake Helen, Florida.
Case No. 44,414-SR—Bank of Lake Helen, Lake Helen, Florida.
Memorandum re: American City Bank and Trust Company, National Association, Milwaukee, Wisconsin.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclsoure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 4, 1980.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-1493-80 Filed 8-5-80; 11:51 am]
BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of agency meeting.

Pursuant to the provisions to the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is here given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, August 11, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Memorandum and Resolution re: Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Memorandum and Resolution re: City and County Bank of Campbell County, Jellico, Tennessee—Resolutions appointing officers and directors of Campbell County Leasing Company.

Memorandum and Resolution re: Delegation of Authority to Suspend Time Deposit Withdrawal Penalties for Disaster Areas.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Controller on the termination of the liquidation of The Cedar Vale National Bank, Cedar Vale, Kansas.
Report of the Controller regarding the Corporation's securities portfolio inventory as of June 30, 1980.
Reports of the Office of Corporate Audits regarding the inventory of Gateway National Bank of Chicago, Chicago, Illinois.
Report of the Office of Corporate Aduits regard the inventory of Guaranty Bank & Trust Company, Chicago, Illinois.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 4, 1980.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-1494-80 Filed 8-5-80; 11:51 am]
BILLING CODE 6714-01-M

8

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 50035, July 28, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., July 30, 1980.

CHANGE IN THE MEETING: The following item has been added:

Item Number, Docket Number, and Company

ER-19, ER80-422, Central Vermont Public Service Commission.

Kenneth F. Plumb,
Secretary.
[S-1490-80 Filed 8-5-80; 10:55 am]
BILLING CODE 6450-85-M

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., August 13, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
2. Agreements Nos. 8770-6 and 9988-5: Modification of the United Kingdom/U.S.A. Gulf Westbound Rate Agreement and the Continental/U.S. Gulf Freight Association, respectively to modify their membership provisions and Agreement No. 9984-12: Modification of the South Atlantic North Europe Rate Agreement to exclude certain service from its intermodal authority.
3. Consideration of Tariff Rule 26 (Control of Cargo)—West Coast of Italy, Sicilian and Adriatic Ports, North Atlantic Conference.

Portion closed to the public:

1. Docket No. 80-6: Specific Commodity Rates of Far Eastern Shipping Company in the Philippines/U.S. Pacific Coast Trade and U.S. Gulf/Australia Trade—Consideration of request of respondent for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S-1489-80 Filed 8-5-80; 10:33 am]

BILLING CODE 6730-01-M

10

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 11, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, August 12, 1980, at 10:00 a.m., and on Wednesday, August 13, 1980, following the 10:00 a.m. open meeting. An open meeting will be held on Wednesday, August 13, 1980, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522B(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Commissioner Friedman, as Duty Officer, determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 12, 1980, at 10:00 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory Authorities.
Litigation matter.
Freedom of Information Act appeal.
Formal order of investigation.
Subpoena enforcemnt action.
Institution and settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding and injunctive action.
Institution of injunctive actions.
Institution of injunctive action and access to investigative files by Federal, State, or Self-Regulatory Authorities.
Opinion.
Administrative proceeding of an enforcement nature.
Freedom of Information Act appeals and requests for Confidential Treatment.
Personnel security matter.

The subject matter of the closed meeting scheduled for Wednesday, August 13, 1980, following the 10:00 a.m. open meeting, will be:

Institution of injunction actions.

The subject matter of the open meeting scheduled for Wednesday, August 13, 1980, at 10:00 a.m., will be:

1. Consideration of whether to grant the application of Joel L. Halpern to become associated with Donald Sheldon & Co., Inc., a registered broker-dealer, as a registered representative. For further information, please contact David P. Tennant at (202) 272–2945.

2. Consideration of whether to affirm action, taken by the Duty Officer, granting Professor Thomas K. McCraw, Graduate School of Business Administration, Harvard University, access to Commission minutes from 1933 to 1940 and correspondence of Commissioners Landis and Douglas. For further information, please contact Shirley Hollis at (202) 272–2600.

3. Consideration of whether to adopt amendments to Regulation S-K and certain forms and rules under the Securities Act of 1933 and the Securities Exchange Act of 1934 relating to the filing of exhibits to certain frequently used forms. For further information, please contact Joseph G. Connolly, Jr. at (202) 272–3097.

4. Consideration of whether to grant the request of Randolph Phillips, pursuant to the Government in the Sunshine Act, for a copy of an official Commission minute dated June 18, 1980. For further information, please contact Myrna Siegel at (202) 272–2430.

5. Consideration of whether to adopt a rule setting forth procedures for determining requests for confidential treatment under the Freedom of Information Act. For further information, please contact Harlan W. Penn at (202) 272–2454.

6. Consideration of whether to propose for public comment a rule under the Public Utility Holding Company Act of 1935 (the "Act") which, if adopted, would exempt certain non-utility subsidiaries of registered holding companies from the duties, obligations, and liabilities imposed under the 1935 Act on a subsidiary company, if no more than 50% of the voting securities or other voting interests of any such company are owned, directly or indirectly, by any one or more registered holding companies. For further information, please contact Grant G. Guthrie at (202) 523–5156.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

Dated: August 4, 1980.

[S-1495-80 Filed 8-5-80; 12:39 pm]

BILLING CODE 8010-01-M

federal register

Thursday
August 7, 1980

Part II

Environmental Protection Agency

Pesticide Programs; Rebuttable Presumption Against Registration (RPAR) Proceedings and Hearings Under Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 162 and 164

[FRL 1491-6; OPP 60004]

Pesticide Programs; Rules Governing Rebuttable Presumption Against Registration (RPAR) Proceedings; Rules of Practice Governing Hearings Under Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: These proposed rules amend Part 162 of Title 40 of the Code of Federal Regulations by establishing a new Subpart which comprehensively revises the procedures for the issuance of notices of intent to deny or cancel registration or to change classification of pesticides uses.[1] The proposed rules also amend the title of Subpart A of Part 162 and redesignate and consolidate some of its existing sections, add definitions to Subpart A, and establish a new Subpart C of Part 162 by redesignating and consolidating other existing sections.

These proposed rules also amend Part 164 of Title 40 of the Code of Federal Regulations by comprehensively revising the rules of practice governing hearings under section 6 of FIFRA.

DATE: Comments must be received on or before November 5, 1980.

ADDRESS: Send comments to: Federal Register Section, Program Support Division (TS-757), Office of Pesticides Programs, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. All comments should bear the identifying notation "OPP-60004." All written comments will be available for public inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday.

It should be noted that since these regulations are procedural in nature, the Agency is not required to promulgate them through notice-and-comment rulemaking. However, because of the importance of these procedural reforms, the Agency has determined in its discretion to publish them in proposed form and to solicit comment on them.

FOR FURTHER INFORMATION CONTACT:

David E. Menotti, Associate General Counsel for Pesticides, Office of General Counsel (A-132), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-0794.

or

William F. Pedersen, Jr., Deputy General Counsel, Office of General Counsel (A-130), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 426-05058.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency is today proposing comprehensive revisions to the Rebuttable Presumption Against Registration ("RPAR") process set out in 40 CFR Part 162. The Agency also proposes to amend significantly the procedures specified in 40 CFR Part 164 for conducting adjudicatory hearings under Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended ("FIFRA") (7 U.S.C. 136 et seq.).

The objective of the proposal is to make the Agency's procedures for identifying and assessing potential problem pesticides, and making and implementing regulatory decisions concerning them, more open, responsive and efficient. The fundamental theme of the proposal is to create an integrated system in which decisions about registration or cancellation of problem pesticides are made in the RPAR process (as revised to facilitate informed participation by interested parties at all stages), and in which adjudicatory hearings are utilized primarily to probe and challenge decisions reached in the RPAR process, after appropriate screening to identify disputed fact questions which can profitably be illuminated through the use of trial-type procedures.

This document has five parts. Part I ("Introduction") and Part V ("Additional Issues on Which Comment is Solicited") are relative short sections whose titles are self-explanatory. Part II ("Background") provides background information concerning the proposal, including a discussion of the relevant statutory provisions and case law, and the Agency's experience in administering the RPAR process since its creation in 1975. Part III discusses in detail the principal revisions to the RPAR process which are included in the proposal. As indicated above, these changes are designed to enhance public participation in the process. Among other ways, this is accomplished by changes requiring the Agency to specify what decisions made during the process are based on, and by providing opportunities for comment at critical stages. Most of the changes reflect the Agency's accumulated experience with the RPAR process over the almost five year since its creation; many of the changes reflected have been used in the RPAR process on an informal basis already.

Part IV discusses the changes to the rules of practice governing adjudicatory procedures under FIFRA section 6 which are included in the proposal. While the changes to the RPAR process as it has evolved over time which are included in the proposal are relatively minor, the changes to the rules of practice contained in the proposal are, by comparison, broad and sweeping. As is explained in more detail below, this is primarily because the Rules of Practice have never been modified to provide for adjudicatory hearings which would follow informal procedures like the RPAR process in which decisions concerning registration or cancellation of pesticide uses were in fact reached. Instead, the Rules of Practice currently in place were designed for a much different purpose, *i.e.*, to serve as the mechanism for gathering information, assessing that information, and making decisions concerning the cancellation or denial of registrations for pesticide uses. The new hearing regulations include measures to reduce the excessive and crippling length of these hearings by providing alternative methods for resolution of issues where a trial-type approach is not appropriate; by setting time limits for completion of the hearing stage; and by linking the RPAR process closely to the hearing provisions to create an integrated mechanism for reaching final decisions on registration or cancellation of a pesticide use. Finally, the proposed revisions to the Rules of Practice provide mechanisms to allow the Administrator to make the maximum appropriate use of the Agency's expertise in various fields when final decisions are rendered at the conclusion of adjudicatory proceedings under FIFRA section 6.

II. Background

A. The Origins of the RPAR Process

The standard governing the registration or cancellation of a pesticide use requires the Administrator to balance the risks associated with a pesticide use with the benefits which flow from that use. Thus, the Administrator is required to determine the various risks associated with a pesticide use, to determine the benefits which flow from that pesticide use, and

[1] On August 7, 1979, the Agency proposed Regulations for Registration of Pesticides by States to Meet Special Local Needs (44 FR 46414) to be designated as Subpart B. Those regulations will instead be designated as Subpart D when they are made final.

to permit those pesticide uses whose benefits appear to be greater than the associated risks. He is similarly required to prohibit those pesticide uses whose risks appear to be greater than the benefits associated with the pesticide use. The standard remains the same whether the Administrator is considering the initial registration of a new pesticide use, or the cancellation of an existing registered pesticide use. In either case, the ultimate question is whether the risk/benefit balance favors the risks or the benefits; if risks are greater, then cancellation or denial of registration for the pesticide use is required. On the other hand, if benefits are greater, then a new registration may be approved, or an existing registration may be allowed to remain undisturbed. Labeling, classification for restricted use, and other mechanisms are available to the Administrator as tools to reduce the risks associated with a pesticide use. In some circumstances, these measures may be employed to produce a risk/benefit balance with respect to a particular pesticide use which satisfied the standard for registration, in a situation where without such measures the pesticide use would not satisfy the standard for registration.

The fact that the ultimate standard controlling registration requires a balancing of risks and benefits has never been seriously disputed or controversial. However, it was only relatively recently that the statute itself clearly and explicitly reflected that the benefits of the use of a pesticide were to be considered in deciding whether or not to register or cancel the pesticide use. This explicit statutory recognition of the requirement to consider benefits, and the role of risk/benefit balancing in decisions to register or cancel, occurred in the 1972 amendments. The 1972 amendments accomplished a wholesale reenactment of the statute creating the federal pesticide regulatory program. Among other things, the standard governing registration and cancellation was re-formulated to provide that registration should be cancelled or denied if it appeared that the pesticide when used as directed or in accordance with widespread and commonly recognized practice "generally causes unreasonable adverse effects on the environment * * *." (FIFRA sections 3(c)(5), 6(b)). "Unreasonable adverse effects on the environment" was then defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." (FIFRA section 2(bb)).

While the Administrator's authority to weigh risks and benefits in making registration or cancellation decisions prior to the 1972 amendments was never seriously doubted, the statutory tests governing registration nowhere expressly authorized such consideration. Instead, the various statutory rests appeared to require the Administrator to find that the pesticide was safe, i.e., that it posed no risks. Thus, in the statute which controlled immediately preceding the 1972 amendments, the Administrator was required to deny or cancel registrations for pesticides which were "misbranded" (7 U.S.C. 135b(c)(1979)). The pesticide was then defined to be misbranded in any of the following situations:

"If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public * * *." (7 U.S.C. 135(Z)(2)(c)(1970))

"If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation and invertebrate animals * * *." (7 U.S.C. 135(Z)(2)(d)(1970))

"If in the case of an insecticide, nematocide, fungicide or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison * * *." (7 U.S.C. 135(Z)(2)(g)(1970))

Thus, while the Administrator's authority to consider the benefits and the risks of pesticide uses in making registration decisions was not explicit prior to the 1972 amendments, his authority to do so was regarded as implicit, *Environmental Defense Fund v. Ruckelshaus*, 439 F.2d 584 (D.C. Cir., 1971), and strongly endorsed by at least one congressional subcommittee commenting on federal pesticide policy. (*Id.* at 594, fn. 36)

While the Administrator's authority to consider risks and benefits in finally deciding whether to register or cancel a pesticide use was never seriously challenged, there was considerable litigation under the version of the statute prior to the 1972 amendments concerning the *procedure* for assessing risks and benefits and reaching final regulatory decisions for those pesticide uses with respect to which some significant risks had been identified. The controversy concerned whether the Secretary could refuse to hold a cancellation hearing in situations where he identified significant risks associated with a pesticide use, or uses, but determined that the benefits associated with the pesticide use or uses in question exceeded these risks. In *EDF* v. *Ruckelshaus*, Chief Judge Bazelon of the D.C. Circuit gave what became the definitive answer to this question under the 1947 FIFRA, by announcing what came to be known as the "substantial question of safety doctrine."

EDF v. *Ruckelshaus* was one of a series of appellate opinions spawned by cancellation actions concerning the pesticide DDT. The Secretary of Agriculture had found that DDT posed significant risks to man and the environment, and had cancelled uses of DDT. However, with respect to a number of other uses, he had refused to issue cancellation notices on the basis that he had not yet concluded his study of the benefits of these uses. The court noted the authority of the Secretary to balance risks and benefits in making final cancellation decisions. However, it found that the Secretary's findings that DDT posed significant risks required the issuance of notices of intent to cancel to "trigger the administrative process" (*id.* at 593), and that any consideration of benefits information and the balancing of the benefits against the risks would have to occur in the cancellation hearing itself. Accordingly, the court issued a writ of mandamus requiring the Secretary to issue cancellation notices for the uses of DDT not covered by notices of intent to cancel already issued by the Secretary. (*id.* at 592).

EDF v. *Ruckelshaus* interpreted the statute prior to the 1972 amendments. Accordingly, after the enactment of comprehensive amendments to FIFRA in 1972, a question arose concerning whether the substantial-question-of-safety doctrine was still the law. Although the question was not altogether free from doubt, the Agency took the position that the substantial-question-of-safety doctrine had survived the 1972 amendments. The arguments in support of this position are developed at great length in the preamble to the regulations implementing the registration provisions of the 1972 amendments (40 FR 28242, July 3, 1975).

In its regulations implementing the registration provisions of the 1972 amendments, the Agency created the Rebuttable Presumption Against Registration (RPAR) process (40 CFR 162.11). The process at that stage in its evolution was designed primarily as a mechanism for identifying pesticide uses which might pose substantial questions of safety (which the regulations also termed a "rebuttable presumption against registration"), and providing for a relatively brief informal exchange between the Agency and interested persons on the question whether a

substantial question of safety in fact existed. If one was found to exist, i.e., if the presumption was found not to have been rebutted, the regulations required initiation of formal adjudicatory proceedings under FIFRA. Provision was made in the RPAR process for some consideration of benefits. However, it is important to note that benefits information was not relevant to rebutting a presumption against registration. Rather, the regulations provided for limited consideration of benefits information for the purpose of deciding what kind of cancellation proceeding should be initiated under FIFRA section 6—a proceeding initiated by an Agency notice of intent to cancel (a section 6(b)(1) hearing) or a proceeding initiated by a notice of intent to hold a hearing to determine whether or not a registration should be cancelled (a section 6(b)(2) hearing). In any event, the amount of time available for consideration of benefits information even for this purpose was extremely brief, and the clear thrust of the regulations was that the primary vehicle for assessing benefits information, and for that matter for making risk/benefit decisions, was to be an adjudicatory hearing.

B. The Administrator's 1975 Ad Hoc Review Panel and the 1975 Amendments to FIFRA.

The fundamental theme of the Agency's 1975 regulations implementing the registration provisions of the 1972 amendments was to continue the primary role of trial-type procedures in gathering information, assessing information ans making regulatory decisions on whether pesticide uses which pose some significant risk should be cancelled or denied initial registration. In the fall of 1975, however, only a few months after the promulgation of these regulations, procedural changes were accomplished by Congress and EPA which fundamentally altered the role of the adjudicatory hearing in pesticide decisionmaking.

The procedural changes instituted by the Agency resulted from an *ad hoc* review of Agency procedures for decisionmaking about problem pesticides which was directed by the Administrator personally. The *ad hoc* review panel made a number of recommendations for changes in Agency procedures. However, the central theme of these recommended changes was to de-emphasize the role of FIFRA adjudicatory hearings in decisionmaking about problem pesticides, and institute a system in which the Agency would make pesticide decisions prior to hearings, through procedures which maximize participation by all interested parties. The Administrator accepted the recommendations of the ad hoc review panel in a memorandum dated October 10, 1975.[2] While pointing out that he "remain[ed] convinced that our pesticide decisions have been sound," the Administrator accepted the fundamental conclusions of the ad hoc review panel concerning the need for a de-emphasis in the role of trial-type procedures in pesticide decisionmaking:

> "With regard to cancellation and suspension decisions, I believe that misconceptions by the public are attributable, in part, to our reliance on the adversary hearing process to ensure that all pertinent facts are brought out. While these procedures have been effective, they have inhibited full participation by the Office of Pesticide Programs in the decision process and have restricted effective public involvement in this aspect of the program. I have determined that the Agency should carry out a more open evaluation of risks and benefits in advance of decision to issue notices of intent to cancel or suspend. By involving interested parties and by soliciting external scientific and technical review of our data and analysis, as appropriate, we can ensure that our decisions continue to be based on the objective evaluation of all available data."

The key findings made by the Administrator in support of his decision to require procedural changes in the Agency's assessment of problem pesticides have continuing validity. First, it is clear that a system which is characterized by heavy reliance on trial-type procedures for decisionmaking inevitably inhibits participation by interested persons in the decisionmaking process. Trial-type procedures are the most time-consuming and expensive procedures which can be utilized. Accordingly, it is very easy to envision interested groups and individuals not participating, or participating in minimal ways, because of inability or unwillingness to go to the time, expense and inconvenience required to become a participant in the hearing. Moreover, the adversarial atmosphere inevitably generated by the use of trial-type procedures also inhibits participation. In the Agency's judgment, a substantial number of groups and individuals with information relevant to pesticide decisions will decline to participate in the decisionmaking process, if participation is understood to require a potentially unpleasant appearance at a trial. Finally, the use of trial-type procedures creates the impression that the Agency has made up its mind already about the fate of a given chemical; accordingly, many groups and individuals with relevant information may decline to participation simply in the belief that their participation would have no impact on the outcome of the proceeding.

The inhibiting effect of the use of trial-type procedures on participation by the Office of Pesticide Programs in the decisionmaking process is also worthy of further comment. In broad summary, the consequence of primary reliance on trial-type procedures for making decisions about problem pesticides is to emphasize the role of lawyers in the decisionmaking process, and to de-emphasize the role of program managers. This is primarily because it is inevitable that the group managing the decisionmaking process is necessarily going to have a great impact on the development of the record, and on the shape of the ultimate decision. In the course of a hearing, decisions must be made on an almost daily basis concerning what witnesses to call, what strategies to utilize in cross-examination, what motions to make, how to respond to motions filed by other parties, and the like. Each of these decisions inevitably involves choices of varying importance to the ultimate outcome. At the end of the hearing, massive briefs must be prepared, usually on extremely short notice. In many cases, key policy questions, often of first impression, must be addressed. Although procedures have been developed and utilized to ensure program involvement in key decisions arising during or at the conclusion of hearings, the sheer number of decisions which need to be made, and, in many cases, the extremely short deadlines under which decisions have to be made, inevitably inhibits full participation by the Agency's policy-making arm in the decision process.

Lastly, it is important to emphasize the significant inhibiting effect which the utilization of trial-type procedures for decisionmaking about problem pesticides had on the participation of other federal agencies, particularly the Department of Agriculture, in the decisionmaking process. A system utilizing trials for gathering and assessing information on the benefits of a pesticide use requires the Agency to use a courtroom for consultations with a sister federal agency with considerable expertise on benefits questions. The expense and inefficiency of trial-type

[2] In addition to accepting the recommendations of the *ad hoc* review panel in the October 10, 1975 memorandum, the Administrator also directed the creation of an action plan for the implementation of these recommendations. This action plan was prepared and submitted to the Administrator on December 9, 1975; it was accepted by the Administrator on December 17, 1975.

procedures, and the chilling effect which their use has on a free exchange of ideas, affect the Agency's relationship with another federal agency in the same way that these factors affect relationships within the private sector. Moreover, aside from the inhibiting effect which these procedures have on a free exchange of information on a particular problem chemical, a system which requires two agencies to deal with one another through their lawyers, in adversarial hearings, inevitably creates barriers of bitterness which inhibit cooperation and exchange of views on other matters important to successful accomplishment of both agencies' missions. Problems of both varieties have, unfortunately, affected the relationship between the Department of Agriculture and the Environmental Protection Agency in the past, and were attributable to a large extent on the reliance on trial-type procedures for decisionmaking about problem pesticides.

In summary, the Administrator's October 10, 1975 memorandum was a landmark in the history of the Agency's stewardship of the Federal pesticide control program. In it, the Administrator firmly committed the Agency to revise its procedures for decisionmaking about problem pesticides, in order to implement a system characterized by decisionmaking prior to hearings, using procedures which would maximize participation by all interested persons in the decisionmaking process, followed by hearings to challenge decisions reached prior to the hearing through such informal procedures.

Contemporaneous with the Agency's decision to de-emphasize trial-type procedures in pesticide decisionmaking, the Congress enacted changes to the statute which were based on the same fundamental theme. The changes to the statute became law on November 28, 1975 (Pub. L. 94-140, 89 Stat. 751). The changes require the Administrator to submit proposed cancellation actions under FIFRA section 6 for review prior to the initiation of trial-type hearings. The statutory changes require pre-hearing review by two separate entities. First, the Administrator is required to submit the proposed action, along with an analysis of its impact on the agricultural economy, to the Secretary of Agriculture for review. This submission must occur at least 60 days prior to making the action effective. (The action becomes effective when it is announced in such a way as to start the time periods running for registrants or other adversely affected persons to request hearings.) If the Secretary of Agriculture comments on the proposed action within 30 days, the Administrator is required to publish the comments of the Secretary, along with his responses to them, in the Federal Register, along with the notice activating the hearings rights of registrants and other adversely affected persons.

The second body to which the Administrator is required to submit proposed cancellation actions under FIFRA section 6 for prior review is a Scientific Advisory Panel (SAP), which the Administrator was required to establish pursuant to detailed procedures specified in FIFRA section 25(d). Referral of proposed cancellation actions to the Scientific Advisory Panel is for the purpose of receiving comment "as to the impact on health and the environment of the action proposed * * *." The procedures governing the timing of submissions to the SAP and response to any comments received from the SAP are identical to the procedures governing review by the Department of Agriculture.

The central theme of the procedural changes required by the 1975 amendments is essentially similar to the theme embodied in the procedural reforms directed by the Administrator in the October 10, 1975 memorandum. That theme is that the Agency should make decisions about problem pesticides prior to initiating adjudicatory cancellation hearings under FIFRA section 6, and that formal hearings should be used as vehicle to challenge and test decisions so reached. Moreover, it is clear that in order to comply with the external review requirements imposed by the 1975 amendments, the Agency must look at *both* risks and benefits in a reasonably thorough way *prior* to cancellation hearings. Accordingly, the Agency regards the 1975 amendments as overruling the substantial-question-of-safety doctrine set forth in *EDF* v. *Ruckelshaus*, to the extent that that doctrine required the Agency to "trigger" the cancellation hearing process by issuing a cancellation notice upon a finding that substantial question of safety existed, and leave to the hearing itself the consideration of benefits of the use, and the proper balance which should be drawn between risks and benefits.

C. Agency Experience in Running the RPAR Process from 1976 to the Present

In early 1976, a special organizational unit within the Agency's Office of Pesticide Programs was created to administer the RPAR process. This group was originally called the Office of Special Pesticide Review ("OSPR"). Recently, it has been renamed the Special Pesticide Review Division ("SPRD"). Since its creation, this group has been actively engaged in administering the RPAR process in accordance with the regulations set out at 40 CFR 162.11, the Administrator's directives implementing the pesticide decisionmaking reform proposals of the Ad Hoc Review Committee, and the amendments to FIFRA.

The activities of the Agency in implementing the RPAR process can best be summarized by briefly describing the various stages in the RPAR process, and listing the actions which have been taken at each stage.

The first stage in the process is the acceptance chemical as a candidate for the possible issuance of an RPAR. Approximately 190 chemicals have been nominated for RPAR candidate status by diverse groups of people including Agency employees, public interest groups, and Congressmen. Of these, approximately 55 have been accepted as candidate chemicals; approximately 86 have been rejected as candidate chemicals; and approximately 49 are currently pending determinations concerning acceptance or rejection as candidate chemicals.

Once a chemical has been accepted as a candidate, the next stage in the process involves deciding whether one or more risk criteria ("triggers") have been met. This stage generally involves collection of information bearing on the possible risk triggers, and the review of this information to determine whether a risk trigger has in fact been met. (This stage in the process also involves informal notification to registrants or applicants for registration that a pesticide has been accepted as an RPAR candidate, together with notification of the general nature of the Agency's concerns about the pesticide. Such notifications are typically followed by informal exchanges of information between the Agency and the registrant or applicant.)

In 36 cases, a decision was made to issue a notice of rebuttable presumption against registration for some or all uses of the chemical. The RPAR notices were each accompanied by a support document (called "Position Document No. 1") which sets forth the Agency's reasons for concluding that one or more risk criteria had been met and that issuance of an RPAR was warranted. These decisions to issue RPAR's were published in the Federal Register as follows: [3]

[3] In the case of one chemical, picloram, the Agency determined that no risk criterion had been met and that issuance of an RPAR was not warranted (41 FR 8824, March 1, 1976).

Amitraz 42 FR 18299 (April 6, 1977)
Benomyl 42 FR 61788 (December 6, 1977)
BHC (benzene hexachloride) 41 FR 46024 (October 19, 1976)
Cadmium 42 FR 56574 (October 26, 1977)
Calcium arsenate 43 FR 48267 (October 18, 1978)
Chlorobenzilate 41 FR 21517 (May 26, 1976)
Chloroform 41 FR 14588 (April 6, 1979)
Coal tar 43 FR 48154 (October 18, 1978)
Creosote 43 FR 48154 (October 18, 1978)
DBCP (dibromochloropropane) 42 FR 48026 (September 22, 1977)
Diallate 42 FR 27669 (May 31, 1977)
Dimethoate 42 FR 45806 (September 22, 1977)
EBDC (ethylenebisdithiocarbamates) 42 FR 40618 (August 10, 1977)
Endrin 41 FR 31316 (July 27, 1976)
EPN (ethyl p-nitcophenyl thionobenzenephosphonate) 44 FR 54384 (September 19, 1979)
Ethylene dibromide 42 FR 63134 (December 14, 1977)
Ethyleneoxide 43 FR 3800 (January 27, 1978)
Inorganic arsenicals 43 FR 63134 (October 18, 1978)
Kepone 41 FR 12333 (March 25, 1976)
Lead arsenate 43 FR 48267 (October 18, 1978)
Lindane 42 FR 9816 (February 18, 1977)
Maleic hydrazide 42 FR 56920 (October 28, 1977)
PCNB (pentachloronitcobenzene) 42 FR 61894 (December 7, 1977)
Pentachlorophenol 43 FR 48443 (October 18, 1978)
Pronamide 42 FR 32302 (June 24, 1977)
Silvex 43 FR 17116 (April 21, 1978)
Sodium arsenate 43 FR 48267 (October 18, 1978)
Sodium fluoroacetimide (1081) 41 FR 52792 (December 1, 1976)
Sodium fluoroacetate (1080) 41 FR 52792 (December 1, 1976)
Sodium pyroarsenate 43 FR 48267 (October 18, 1978)
Strychnine 42 FR 2714 (January 13, 1977)
Strychnine sulfate 42 FR 2714 (January 13, 1977)
2,4,5-T 43 FR 17116 (April 21, 1978)
2,4,5-TCP 42 FR 41268 (September 15, 1978)
Thiophonate methyl 42 FR 61970 (December 7, 1977)
Toxaphene 42 FR 26860 (May 27, 1977)

The next stage of the RPAR process involves the Agency's receipt of the information submitted by registrants, applicants for registration and other interested persons concerning the accuracy or sufficiency of the risk concerns and the benefits of the pesticide use or uses in question. After this information is assembled, the Agency critically reviews it and determines whether the presumption has been rebutted, and (if the determination is that the presumption has not been rebutted) whether the risks associated with the pesticide use in question are unreasonable. At this stage, in the event that the Agency determines that the presumption has not been rebutted, it also considers a number of regulatory options, which typically range in severity from unconditional cancellation to relatively minor changes in the terms and conditions of registration for a pesticide use. A key purpose for considering a range of options is to determine whether approaches short of full cancellation and total removal from the market can achieve exposure (and therefore risk) reductions which are sufficient to remedy the unreasonable adverse effect problem which the Agency has found to be presented by the pesticide use. The Agency announces its preliminary determinations in a Preliminary Notice of Determination, which is accompanied by a support document (called either "Position Document No. 2" or "Position Document No. 2-3").[4] If the Agency concludes in the Preliminary Notice of Determination that the presumption has not been rebutted and that some regulatory action is necessary, the Preliminary Notice of Determination will include a description of the regulatory actions which the Agency has decided to implement.

The Agency has issued the following Preliminary Notices of Determination, which were published in the Federal Register on the dates indicated:

Amitraz 44 FR 2678 (January 12, 1979)
Benomyl 44 FR 51166 (August 30, 1979)
Chlorobenzilate 43 FR 29824 (July 11, 1978)
Dimethoate 44 FR 66558 (November 19, 1979)
Endrin 43 FR 51132 (November 2, 1978)
Pronamide 44 FR 3083 (January 15, 1979)
Silvex 44 FR 41536 (July 17, 1979)
2,4,5-T 44 FR 41536 (July 17, 1979)
Thiophonate methyl 44 FR 58798 (October 11, 1979)
Trifluralin 44 FR 50911 (August 30, 1979)

The next stage in the process involves review of the Preliminary Notice of Determination by the Secretary of Agriculture, the FIFRA Scientific Advisory Panel, and interested members of the public.

Since the Scientific Advisory Panel is an advisory committee, its procedures are governed by the Federal Advisory Committee Act (5 U.S.C. Appendix section 1 et seq.). Among other things, the Federal Advisory Committee Act requires the committee to act in public sessions after appropriate notice, and to offer interested persons an opportunity to appear and to participate. Because of these procedural requirements, the Scientific Advisory Panel sessions are, in effect, informal hearings, at which presentations are made by the Agency and other interested persons. They typically involve a spirited give-and-take between panel members, Agency technical staff and scientists appearing on behalf of other interested persons. A transcript of the proceedings is taken and becomes a part of the public record of the RPAR proceeding. At the conclusion of the panel's deliberations, the panel typically prepares a report to the Agency containing its comments on the impact of the proposed action on health and the environment.

Since the Federal Advisory Committee Act does not apply to the Secretary of Agriculture's review of a Preliminary Notice of Determination, the procedures used by the Secretary are informal, and need not involve hearings or other opportunities for the formal presentation of views by persons outside the Department of Agriculture.

The Agency has adopted a policy of inviting comment from registrants, public interest groups and other interested members of the public at the same time that it solicits comments from the Scientific Advisory Panel and the Secretary of Agriculture. This policy has been adopted because it is consistent with the principal theme of the RPAR process, i.e., to facilitate the broadest possible public exchange of views on issues relevant to Agency decisionmaking concerning problem pesticides. The Agency has invited public comments through the publication of Federal Register notices and through other means; the time period for submission of public comments has generally been the same as the time period for submission of comments by the Secretary of Agriculture and the Scientific Advisory Panel.

The external review phase ends either with the submission of comments by the Scientific Advisory Panel, the Secretary of Agriculture, and/or interested members of the public, or by the expiration of time periods provided for comment (together with any extensions agreed upon) without the submission of comments. The Agency then reviews any comments which have been submitted, and decides whether to implement the regulatory action which was proposed, or to withdraw the proposal or modify it in some way. The Agency's determinations in this regard, and the reasons for them, are set forth in a Final Notice of Determination, and an accompanying position document (called "Position Document No. 4"). These documents are sent by registered mail to all registrants and applicants for registration, and published in the

[4] If the Agency concludes that the presumption has been rebutted, the Position Document will address risk issues only, and will be called "Position Document No. 2." If the Agency concludes that the presumption has not been rebutted, it generally proceeds to consider benefits issues and regulatory options, without stopping to prepare a separate position document on risk issues alone. Accordingly, in such cases (i.e., where the presumption is *not* rebutted) the position document is called "Position Document 2-3."

Federal Register. The Final Notice of Determination specifies the regulatory action which is being implemented, and provides notification to registrants and others concerning the hearing rights available under the statute, and what steps must be taken to perfect these hearing rights. (If the Agency has determined to initiate cancellation proceedings under section 6(b)(1) or section 6(b)(2) of FIFRA, the Final Notice of Determination is the document which effectuates this action.)

The Agency has issued the following Final Notices of Determination, which were published in the Federal Register on the dates indicated:

Amitraz 44 FR 32736 (June 7, 1979) 44 FR 59938 (October 17, 1979) (correction)
Chlorobenzilate 44 FR 9547 (February 13, 1979)
DBCP 43 FR 40911 (September 13, 1978) and 44 FR 65135 (November 9, 1979)
Endrin 44 FR 43631 (July 25, 1979)
Kepone 42 FR 18985 (April 11, 1977)
Pronamide 44 FR 61640 (October 26, 1979)
Silvex 44 FR 72316 (December 13, 1979)
2,4,5-T 44 FR 72316 (December 13, 1979)

(The Agency has also accepted voluntary cancellations of the following chemicals: acrylonitrile, aramite, arsenic trioxide, basic copper arsenate, benzac, BHC, chloranil, chlordecone, copper acetoarsenite, monuron, OMPA [acetamethylpyrophosphoramide], 10,10-oxbisphenoxarsine, phenarzinechloride, safrole, sodium arsenite, strobane and trysben.)

D. The 1978 Amendments to FIFRA

On September 30, 1978, the Federal Pesticide Act of 1978 was enacted and accomplished, for the third time in six years, significant amendments to FIFRA. Several provisions of the Federal Pesticide Act of 1978 are relevant to the RPAR process and the Agency's Rules of Practice for cancellation hearings. These provisions are as follows:

1. *Interim Administrative Review*—a. *FIFRA Section 3(c)(8).*—Section 6 of the Federal Pesticide Act of 1978 added new section 3(c)(8) to FIFRA, which provides as follows:

"*Interim Administrative Review.* Notwithstanding any other provision of this Act, the Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses prior to initiating a formal action to cancel, suspend, or deny registration of such pesticide, required under this Act, unless such interim administrative process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment. Notice of the definition of the terms 'validated test' and 'other significant evidence' as used herein shall be published by the Administrator in the Federal Register."

This section imposes requirements concerning the quality of the information which must be available to the Administrator to issue an RPAR. These requirements are similar to the requirements imposed in the 1975 regulations, to the effect that risk criteria must be met by:

"tests conducted with the animal species and pursuant to the test protocols specified in the Registration Guidelines, or by test results otherwise available. In making this determination, the Agency will take into consideration the type of effect, the statistical significance of the findings and whether the tests were conducted in accordance with the material requirements for valid tests as recognized by experts in the field." [40 CFR 162.11(a)(3)].

The requirement that the Agency publish a notice in the Federal Register defining the terms "validated tests" and "other significant evidence" was satisfied on February 14, 1979, by the publication of a notice titled "Proposed Definitions of 'Validated Tests' and 'Other Significant Evidence.'" (44 FR 9626, February 14, 1979.) This document provides that the definitions of these terms shall be the definitions given to them in the Conference Report on the Federal Pesticide Act of 1978 (S. Rep. No. 94-1188, 95th Cong., 2d Sess. 35 (1978)). Those definitions are as follows:

"The Administrator shall insure that the pesticide shall be subject to the RPAR process only on the basis of a validated test or other significant evidence (and not on the basis of unsubstantiated claims), and that the term 'validated test' be defined as a test conducted and evaluated in a manner consistent with accepted scientific procedures, and that the term 'other scientific evidence,' be defined as evidence that relates to the uses of a pesticide and their adverse risk to man or the environment. It is the intent of the conferees that 'other significant evidence' of risk means factually significant information and is not to include evidence based only on the misuse of a pesticide."

The Agency invited comments on these definitions by reminding interested persons that changes to the RPAR procedures were underway, and that comments on the definitions or other relevant matters would be welcome.

b. *RPAR Procedureal Guidance in the Conference Report.*—Section 3(c)(8) of FIFRA was originally proposed by Congressman Grassley, and became a part of the House version of what became the Federal Pesticide Act of 1978. The Senate version contained no comparable provision; in conference, the Senate Conferees deferred to the House on this matter.

In addition to agreeing to the inclusion of what became FIFRA section 3(c)(8) in the conference substitute, the Conferees agreed to the inclusion in the Conference Report of several paragraphs of procedural guidance concerning the RPAR process. (S. Rep. No. 95-1188, 95th Cong., 2d Sess. 35-36 (1978)). While the procedural guidance included in the Conference Report is not reflected in the statute, the Agency has decided as a policy matter to implement this procedural guidance to the extent practicable.

The first area addressed by the Conferees concerned early notice to registrants of the possibility that a pesticide may meet RPAR risk criteria, in order to facilitate an early exchange of views. In the view of the Conferees, this notification should be written, and should be a private communication between the Agency and the registrant.

As representatives of the Agency noted before the Conference Committee, the Agency has followed a practice in the past of notifying registrants by letters when a pesticide has been accepted as a candidate for the possible issuance of a rebuttable presumption against registration. Such leters have typically informed the registrant in general terms of the bases for the Agency's tentative conclusions that a pesticide may meet RPAR risk criteria. The letters have often been followed by both written and oral exchanges between the registrant and the Agency relating to the Agency's tentative risk concerns about the pesticide. Moreover, the Agency has typically made available the underlying data upon which its tentative risk concerns were based, to the extent these data were not protected from disclosure pursuant to FIFRA section 10.

In view of the practice which the Agency has developed of early notification to registrants of its tentative risk concerns, the Agency will have little difficulty in implementing the guidance of the Conferees in this regard. However, the Agency notes that it is probably not possible to conduct private written communications with registrants concerning this subject, since any documents prepared by the Agency would be subject to release to interested members of the public pursuant to the Freedom of Information Act.

The other subject addressed in the Conference Report concerned modifications to the RPAR process in situations where the Agency is convinced that exposure is insignificant. The Conferees' guidance in this area is primarily relevant to pesticides which meet the oncogenicity and mutagenicity risk triggers. These triggers do not take

exposure into account,[5] because it is generally recognized that these effects are effects with respect to which it is not possible to define a "threshold" below which it is unlikely that the effect would occur. In the view of the Conferees, if the Agency has information at the time that it is deciding whether to issue an RPAR which indicates that exposure is insignificant, it is wasteful to proceed with the normal RPAR procedures (which would require the Agency to issue an RPAR, and conclude at the end of the rebuttal period that the presumption had been rebutted, because exposure was insignificant). The conferees felt that in such situations the Agency should "rebut its own presumption."

The Agency agrees that this approach has merit in some situations, and, as discussed more fully below, has included in this proposal provisions authorizing use of abbreviated RPAR procedures (§ 162.29). Moreover, the Agency notes that it has recently announced an action in which it "rebutted its own presumption," by issuing a Preliminary Notice of Determination without first having issued a Notice of Rebuttable Presumption Against Registration. (44 FR 50911, August 30, 1979.)

2. *Conditional Registration.*—The Federal Pesticide Act of 1978 added a new section 3(c)(7) to FIFRA, authorizing the Agency to issue "conditional" registrations in certain circumstances, in addition to so-called "permanent" registrations under FIFRA section 3(c)(5). The considerations underlying the inclusion of this new section in the Act, and the manner in which the Agency intends to implement the section, are extensively developed in the preamble which accompanied the Agency's Interim Final Regulations implementing sections 3(c)(7) (A) and (B) 44 FR 27932, May 11, 1979).

In implementing the conditional registration provisions, the Agency decided not to utilize the RPAR process for purposes of making decisions concerning whether or not to grant conditional registrations. Accordingly, the implementing regulations amended 40 CFR 162.7 to provide, in effect, that conditional registrations could be approved under FIFRA sections 3(c)(7)(A) and (B) for chemicals which met RPAR risk criteria without resort to the RPAR process. A substitute process better designed to meet the needs of the conditional registration program was created in the implementing regulations. While the implementing regulations do not cover conditional registration actions under section 3(c)(7)(C), the preamble provides that decisions will be made under this section on a case-by-case basis. The implication is clear with respect to actions under section 3(c)(7)(C) that the RPAR process will not generally be utilized in taking action under this section.

There are sound reasons for excepting the conditional registration program from the RPAR process. Among other considerations, this decision reflects the fact that the RPAR process was designed to facilitate Agency decisionmaking about whether to grant new permanent registrations (or cancel existing registrations), by permitting in-depth public examination of any potential unreasonable adverse effects posed by such pesticides. Since the process is designed for making decisions which are expected to have lasting effect, the operation of the process requires considerable time and the expenditure of considerable resources by the Agency and participants in the private sector. Conditional registration decisions, on the other hand, are by definition decisions of less permanency, and procedures requiring smaller resource expenditures are therefore appropriate and in the public interest.

While the RPAR process will not be used for making decisions about whether to grant conditional registrations, the RPAR risk criteria will play important roles in the conditional registration program. Under section 3(c)(7)(B), the Agency may not approve a conditional amendment to permit an additional use of a currently registered pesticide if:

"the Administrator has issued a notice stating that such pesticide or ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure enumerated in regulations issued under this Act, and during the pendency of such risk-benefit evaluation initiated by such notice if (i) the additional use of such pesticide involves a major food or feed crop, or (ii) the additional use of such pesticide involves a minor food or feed crop and the Administrator determines, with the concurrence of the Secretary of Agriculture, there is available an effective alternative pesticide that does not meet or exceed such risk criteria."

In effect, this complicated section prohibits the Agency from permitting use of a registered pesticide on additional major food or feed crops if the pesticide is subject to an outstanding RPAR (or a cancellation proceeding following an RPAR) based upon risk concerns associated with human dietary exposure to the pesticide. If the requested use involves a minor food or feed crop, the Agency cannot approve the use if the Agency and the Secretary of Agriculture agree that an alternative pesticide is available which does not meet or exceed RPAR risk criteria.

Finally, the RPAR risk criteria play an important role in the operation of FIFRA section 3(c)(7)(C). This section authorizes the Administrator to grant a conditional registration for pesticides including active ingredients not included in any currently registered pesticide, under certain limited conditions. However, the section goes on to provide expressly that one of the conditions shall be that the data "not meet or exceed risk criteria enumerated in regulations issued under this Act * * *." In effect, this provision means that the conditional registrations granted under this section on the condition that certain additional studies be done can be cancelled if these studies meet or exceed an RPAR risk criterion. Thus, for example, if a required chronic study is conducted which demonstrates that a pesticide conditionally registered under this section is oncogenic, then the pesticide would meet or exceed an RPAR risk criterion, and the conditional registration could be cancelled for that reason.

3. *Simplified Registration Procedures.*—The 1978 amendments added new section 3(c)(2)(C) to the Act, which requires the Administrator to "by regulation, prescribe simplified procedures for the registration of pesticides * * *."

The Agency intends to implement this provision by establishing a generic registration system, called the Registration Standards System. As presently conceived, the Registration Standards System will develop a document containing a comprehensive statement of the Agency's regulatory position on all pesticide products containing the same active ingredient(s). This document, or registration standard, will describe the data (including all limitations and deficiencies in the data) upon which the Agency's regulatory position is based, and the conditions

[5] The oncogenicity trigger, for example, provides that an RPAR shall arise if a pesticide ingredient, metabolite, or degradation product

"[i]nduces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure * * *" [40 CFR 162.11(a)(3)(ii)(A)].

In contrast, the risk trigger for chronic effects other than oncogenicity or mutagenicity provides that an RPAR shall arise if a pesticide ingredient, metabolite or degradation product

"[p]roduces any other chronic or delayed toxic effect in test animals at any dosage up to a level, as determined by the Administrator, which is substantially higher than that to which humans can reasonably be anticipated to be exposed, taking into account ample margins of safety * * *" [40 CFR 162.11(a)(3)(ii)(B)].

which must be met to register (or reregister) a product under the standard. The Agency has described its plans for the Registration Standards System in detail in an Advanced Notice of Proposed Rulemaking ("ANPRM"), 44 FR 76311, December 26, 1979.

One of the Agency's goals is to merge the RPAR process with the Registration Standards System. Under such a system, the intensive review given to certain uses of a pesticide would occur as part of the review of all uses of any product containing that particular pesticide. However, merger of the RPAR process and the Registration Standards System would not affect either the thoroughness of the Agency's evaluation of RPAR chemicals, or the opportunities for public participation in the RPAR process. Many details of how and when the merger of the RPAR process and the Registration Standards System will occur have yet to be resolved. Persons interested in informing the Agency of their views on the merger question should do so by submitting comments in this rulemaking proceeding.

III. Proposed Changes to the RPAR Rules

This section discusses the significant aspects of the revised RPAR regulations which are being proposed. As indicated earlier, the changes which the Agency is proposing to these regulations will not make broad or sweeping changes in the program. Rather, this part of the proposal has as its central theme modification of the existing regulations to reflect the experience with the Agency has gathered over the past several years in running the RPAR process under the 1975 regulations. In addition, the proposal reflects the Agency's efforts to conform its rules to the changes in the Act since the 1975 regulations were promulgated, and to implement, to the extent practicable, the procedural guidance of the Conferees, as reflected in the Conference Report accompanying the 1978 amendments to FIFRA.

A. The Pesticide Use—the Basic Building Block

The regulation of pesticides involves decisions about whether specific *uses* of a pesticide are likely to pose unreasonable adverse effects on the environment. In making a decision about a pesticide use, the Administrator considers the biological and chemical characteristics of the compound. This information by itself, however, can only suggest potential problems. To focus the regulatory decision which must be made, the Administrator must have a great deal of practical information about such subjects as how the pesticide is applied, by whom and in what amounts, where and when it is applied, the purpose for which it is applied, and the importance of using the pesticide for this purpose. Information about these and other subjects is necessary to define what groups of people or what plant or animal species may be at risk and to what extent, and to assess the value of the pesticide as a tool for accomplishing a particular purpose. For registered pesticides, the basic starting point for analysis of these subjects is the regulatory restrictions currently in effect as reflected in the labeling of the pesticide and elsewhere. (For pesticides for which applications for registration are pending, the restrictions which have been proposed by the applicant serve the same purpose.) Taken together, the restrictions in effect (in the case of registered pesticides) or proposed (in the case of applications for registration) comprise the terms and conditions of registration or proposed terms and conditions of registration for the use; these restrictions define the legal limits on what can be done with the pesticide.

In addition to playing a central role in focusing regulatory decisionmaking about pesticide uses, the terms and conditions of registration shape the final decision about problem pesticide uses in another way. In the course of reaching a decision about a particular use of a pesticide, the Administrator often must consider whether exposure (and therefore risk) reductions can be achieved by imposing restrictions more stringent than those that exist or are proposed, but less stringent than the ultimate statutory remedy of full cancellation. This is because the Act provides the Administrator with a wide variety of tools for dealing with the situations where a particular pesticide use appears to pose unreasonable risks, including, in appropriate circumstances, imposition of additional restrictions to remedy unreasonable adverse effect problem.

Since the basic unit in pesticide decisionmaking is the pesticide use, and since the existing or proposed array of restrictions associated with a use (together with possible changes to these restrictions) are central in evaluating the registrability of the use, the proposed regulations include definitions for the terms "pesticide use" and "terms and conditions of registration" (§ 162.3(ss) and § 162.3(tt)). The proposed regulations are built around these defined terms, in order to insure that regulatory decisionmaking in the RPAR process remains focused on its basic objectives—identification and assessment of unreasonable adverse effect problems with particular pesticide uses, evaluation of the options available to the Administrator under the Act for resolving such problems, and the selection and implementation of a solution.

B. Criteria for Beginning RPAR Proceedings

1. Proposed § 162.22 incorporates the requirement imposed by new section 3(c)(8) of the Act that an RPAR not be initiated except in situations where the Administrator is persuaded that a risk criterion has been met, based upon a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment. Definitions for the terms "validated test" and "other significant evidence" are included in the proposal (§ 162.3(ww) and § 162.3(xx)). These definitions are the same as the ones which were published in the Federal Register on February 14, 1979 (44 FR 9626).

2. The specific risk criteria included in the 1975 regulations are utilized again in the proposal, without change. There have been suggestions for changes in some of the risk criteria; however, the Agency working group on this topic felt that the question whether substantive changes should be made in the risk criteria should be left for consideration later, in another rulemaking proceeding. The Agency reached this conclusion because it felt that consideration of substantive changes in the risk criteria in this rulemaking proceeding could seriously delay the accomplishment of the Agency's primary objective for this rulemaking proceeding, which is to accomplish procedural changes to the RPAR rules and the Rules of Practice for cancellation proceedings.

3. The proposal does, however, add an additional basis for initiating an RPAR proceeding. (§ 162.21(a)(2)). This section provides, in effect, that the Administrator may issue an RPAR when a specific risk criteria is not met, but the Administrator otherwise determines that it is necessary to consider publicly whether a use poses a potential unreasonable adverse effect. This additional basis for initiating an RPAR proceeding has been included in order to better serve the fundamental objectives of the RPAR process.

The basic purpose of the RPAR process is to allow the Agency to conduct open and public debates concerning pesticide uses which may pose unreasonable adverse effects, and therefore warrant regulatory action. In the 1975 regulations, the Agency attempted to define as many situations

as it could where unreasonable adverse effects problems may be presented. However, in any effort of this sort it is inevitable that situations will arise later which are not anticipated, where the Agency feels that an unreasonable adverse effect may be presented. The solution to this problem adopted in the 1975 regulations was to permit the Agency in such situations to initiate cancellation proceedings, without prior resort to the RPAR process [*see*, 40 CFR 162.11(a)(6)]. In the Agency's judgment, this was not a sound solution. Where the Agency determines that it has risk concerns which warrant public consideration, it should not have to convene cancellation proceedings in order to consider these concerns. Instead, it should be able to deal with them through the RPAR process, in the same manner as it would use the RPAR process to address other risk concerns. Accordingly, the proposed regulations include a section which would allow the Agency to begin RPAR proceedings in situations where no specific risk criterion has been met, but the Agency nonetheless finds that a potential unreasonable adverse effect may be presented.

C. New FIFRA section 3(c)(8) and the procedural guidance of the Conferees

1. *New FIFRA section 3(c)(8).*—As discussed in Section II ("Background"), the Federal Pesticide Act of 1978 inserted a new section 3(c)(8) in FIFRA, which prohibits the Administrator from starting an RPAR unless it is based upon a validated test or other significant evidence raising prudent risk concerns about pesticide. Section 3(c)(8) also required the Administrator to publish notice of his definitions of the terms "validated test" and "other significant evidence" in the Federal Register. As discussed above, the Administrator published a Federal Register notice on February 14, 1979 (44 FR 9626) adopting as his definitions for the terms "validated test" and "other significant evidence" the definitions for these terms included in the conference report accompanying the Federal Pesticide Act of 1978. Moreover, the Administrator solicited comments concerning these definitions in that Federal Register notice. The present proposal repeats these definitions (§ 162.3(ww) and § 162.3(xx)).

2. *The Procedural Guidance of the conferees.*—As also discussed in Section II ("Background"), the conference report accompanying the Federal Pesticide Act of 1978 contained guidance to the Agency concerning procedures to be utilized in the RPAR process. While this guidance is not reflected in the statute, the Agency has nonetheless decided as a policy matter to implement it to the extent feasible. Accordingly, the proposed regulations include provisions concerning preliminary communications with registrants and applicants for registration prior to the beginning of an RPAR proceeding (§ 162.22) and concerning alternate, simplified procedures in situations where such simplified procedures appear to the Agency to be in the public interest (§ 162.29).

Proposed § 162.22 deals with the subject of preliminary, informal notification to registrants prior to the beginning of RPAR proceedings. In concept, this section builds upon current practice and the guidance of the Conferees, by generally requiring the Administrator to notify registrants at an early stage of the Agency's concerns about a pesticide. The proposed section also would require the Administrator to consider information received from registrants in deciding whether or not to begin an RPAR.

Several points should be made concerning proposed § 162.22 and the policy underlying it. First, its preliminary notification provisions envision that the Administrator would communicate to registrants in writing the *general* nature of the Agency's tentative concerns about a pesticide. This kind of notice should be contrasted with the detailed explanation of the Administrator's position which the proposed regulations require in RPAR decision documents, once it is determined to issue an RPAR (see proposed § 162.33). In the Agency's view, preliminary notification to registrants is designed primarily to facilitate exchange of views with respect to a preliminary position of the Agency, and to determine whether the position is generally within reasonable bounds. If the Agency determines that is is in fact within reasonable bounds, the RPAR process itself is the place for thorough explication of the Agency position and detailed and thorough presentation of positions by registrants and other interested persons in response to the Agency position.

Second, proposed § 162.22 provides that the period of time for preliminary exchanges of views between the registrant and the Agency should generally not exceed 90 days. The notification itself will specify the length of the response period (on a case-by-case basis), but the 90-day limit is in keeping with the overall theme that the preliminary notification phase should primarily consist of general and relatively informal exchanges. Moreover, it is consistent with the instructions from Senator Leahey in the floor debates in the Senate accompanying passage of the 1978 amendments to the effect that in conducting preliminary exchanges with registrants prior to public RPAR proceedings, the Agency should keep in mind the need for expedition, since time expended in private discussions with registrants about potential public health or environmental problems is inevitably time during which the public is deprived of notice of potential problems and an opportunity to participate in discussions about matters affecting them (123 Cong. Rec. 13,095 (1977)).

Proposed § 162.29 provides for the utilization of simplified RPAR procedures in situations where simplified procedures appear to be in the public interest. The discussion in the conference report concerning simplified procedures dealt solely with situations where the Agency was able to resolve its risk concerns prior to initiating an RPAR, because available exposure information established that exposure (and therefore risk) was minimal. In such situations, the conferees concluded that it would be wasteful to issue an RPAR since the question which would be answered in the rebuttal phase—whether the pesticide posed significant risk concerns—appeared to be resolvable without requiring the submission of exposure information by registrants as part of a rebuttal.

Proposed § 162.29 deals with this situation, and also provides authority for abbreviating the RPAR process in other situations where abbreviated procedures would be in the public interest. Specifically, it permits the Administrator to abbreviate the RPAR process and immediately issue a Preliminary Notice of Determination without previously having issued a Notice of Rebuttable Presumption Against Registration in any situation where he determines that the information in his possession on risks and/or benefits is complete and dispositive of the issues for resolution in the RPAR process, and he determines that no significant and novel policy questions are presented. However, the Administrator would be required to set out in any such Preliminary Notice of Determination the findings which he has made which warrant the use of abbreviated procedures.

Moreover, the general requirement for public comment on Preliminary Notices of Determination (in proposed § 162.30) would apply to a Preliminary Notice of Determination issued under this

proposed section. Accordingly, the primary goal of the RPAR process—public discussion about potential problem pesticides—would be fulfilled. If, in the public comment period, additional information is brought to the Administrator's attention which warrants a different conclusion than the one announced in the Preliminary Notice of Determination, the Administrator would have authority to take appropriate action. In such a situation, the Administrator could issue a revised Preliminary Notice of Determination, could begin a new RPAR proceeding by issuing a Notice of Rebuttable Presumption Against Registration, or could utilize the saving provision in proposed § 162.20 to fashion other procedures appropriate to the case at hand.

D. Rebuttal Criteria

Proposed § 162.25 sets forth the Agency's proposed revisions to the rebuttal criteria. As is the case with other provisions in the proposed RPAR regulations, the revisions to the rebuttal criteria reflect the experience which the Agency has gained in running the RPAR process under the 1975 regulations over the past almost five years. In the Agency's judgment, the revised rebuttal criteria are a significant improvement over the rebuttal criteria contained in the 1975 regulations, because the revised rebuttal criteria more accurately set forth the matters which the proponents of registration must establish in order to lay to rest the Agency's concerns about a pesticide use.

1. The proposal lists three separate standards for rebutting an RPAR. The first standard (§ 162.25 (a)(1) and (b)(1)) requires proponents of registration to establish that the Agency was wrong in concluding that a risk criterion had been met. For the most part, this rebuttal standard would be applicable to those situations where applicants or registrants desire to attack the Agency's assessment of the toxicology and other adverse effects data which supported the Agency's decision to issue an RPAR.

2. The second rebuttal standard (§ 162.25(a)(2) and (b)(2)) addresses the question of whether a risk of significant proportion is in fact posed by the pesticide use in question even assuming that a risk criterion has been met. There are two components in any risk analysis: (1) the likelihood that a compound will cause an effect in an organism, i.e., its toxic properties, and (2) the likelihood that a susceptible organism will be exposed to the compound in question. The proposed rebuttal standard requires the proponent of registration to establish that no significant risk would result from use of the pesticide in accordance with the terms and conditions of registration and widespread and commonly recognized practice, taking into account all factors relevant to assessing risk and pertinent to the risk concerns underlying the RPAR proceeding.

The proposed rebuttal standard articulates the major risk factors which proponents of registration would have to address in their rebuttals. For example, proponents of registration are required to take into account exposure to the pesticide ingredient, degradation product or metabolite of concern by all routes of exposure (including exposures resulting from the concentration, persistence or accrual of the pesticide ingredient, degradation product or metabolite in man or the environment). However, the rebuttal standard is carefully drawn in order not to exclude any factor which would be applicable in a given situation in the future. This is accomplished by including a paragraph requiring proponents of registration to address all factors relevant to assessing the risks posed by the pesticide use in question.

Applying this rebuttal standard will, of course, require the Agency to make decisions about whether the risks posed by a pesticide use are significant or not. In this regard, the Agency intends to continue to follow the approach it has taken in its previous RPAR decisions—to determine on a case-by-case basis whether the risks associated with a use are of sufficient magnitude to require the Agency to consider the social, economic and environmental benefits of the use, and to make a specific finding that the risks are not unreasonable, in light of the social, economic and environmental benefits of the use.

3. The last of the rebuttal standards requires proponents of registration to prove that the risks of the pesticide use are not unreasonable (§ 162.25(a)(3) and (b)(3)). The inclusion of this ground as a basis for rebuttal of a rebuttable presumption against registration is a significant addition to the rebuttal standards included in the 1975 regulations. In the 1975 regulations, the rebuttal standards solely addressed risk issues. Economic data and other information relevant to assessing the reasonableness of a risk posed by a pesticide use could be submitted by proponents of registration of the use; however, such information was not relevant to rebuttal of the presumption.

The 1975 regulations were structured in this way because the purpose of the RPAR process originally was to identify "substantial questions of safety" requiring the convening of cancellation proceedings pursuant to FIFRA § 6. As discussed in detail in Section II ("Background"), the fundamental changes in the law which occurred shortly after the promulgation of the 1975 regulations, and contemporaneous decisions made by the Administrator concerning how the PRAR process should function, have resulted in a situation where benefits information is always solicited in the RPAR process, and routinely considered in cases where the Agency's risk concerns were not resolved by the rebuttal submissions. Since information bearing on the reasonableness of any risk is now clearly relevant to determining what if any regulatory action should be taken at the conclusion of the RPAR process, the Agency is proposing to make the reasonableness of the risk a basis for rebuttal of the presumption.

The rebuttal standard concerning the reasonableness of the risk posed by a pesticide use directs proponents of registration of a pesticide use to demonstrate two things. First, they must establish that the benefits of the use outweigh the risks which are associated with it. Secondly, they must establish that the risk cannot be reduced further by modifications to the terms and conditions of registration without costs which are unreasonable in light of the risk reductions which could be achieved. The Agency has required that both conditions be satisfied because it has consistently taken the position that a risk may be unreasonable *either* because the level of risk is not justified by the benefits which derive from having the chemical available as a tool to society, *or* because the risks which are posed by the use are higher than they need to be, in light of available risk reduction possibilities.

E. Consequences of not Rebutting an RPAR

The purpose of the RPAR process is to identify unreasonable adverse effect problems, and to make decisions about the appropriate regulatory response. Accordingly, the rebuttal standards have been designed so that if a rebuttal attempt is successful (i.e., proponents of registration establish that one or more of the rebuttal standards have been satisfied), it will follow that there is no unreasonable adverse effect problem requiring a regulatory response. On the other hand, if the proponents of registration fail to establish that one of the rebuttal standards has been met in full, it follows that an unreasonable adverse effect problem requiring some regulatory response has been identified.

Proposed § 162.26 is designed to set forth the consequences of failures to

successfully rebut a rebuttable presumption against registration. The concept underlying proposed § 162.26 is relatively simple. If an unreasonable adverse effect problem has been demonstrated, and the Administrator has not found that the problem can be remedied by changes to the terms or conditions of registration of the pesticide use, the Agency will initiate proceedings to cancel the pesticide use unconditionally or, in the case of uses for which applications for registration are pending, to deny registration for the pesticide use. On the other hand, if it appears to the Administrator that an unreasonable adverse effect exists, but that the problem can be adequately remedied by specific changes to the terms and conditions of registration, then the Agency will take appropriate action to implement those changes to the terms and conditions of registration. Finally, if the Administrator determines that there is uncertainty surrounding any issue relevant to determining whether or not the presumption should be considered to have been successfully rebutted, or whether an unreasonable adverse effect problem can be remedied by changes to the terms and conditions of registration, the Agency will take appropriate action to initiate cancellation or change in classification proceedings under § 6(b)(2) of FIFRA.

With respect to pesticide uses which pose unreasonable adverse effect problems which may be remedied by changes to the terms and conditions of registration, the proposal provides merely that the Agency shall initiate appropriate action to implement the changes to the terms or conditions of registration which it has determined are necessary. In drafting this part of the proposal, the Agency considered but rejected an approach which would have set forth much more precise instructions concerning the type of administrative proceeding which should be used to implement specific kinds of changes to the terms and conditions of registration which the Agency had decided upon. This approach was rejected primarily because the statute provides the Administrator with a number of mechanisms for accomplishing changes to the terms and conditions of registration, and in some instances more than one statutory proceeding is available for accomplishing a given change.

For example, initial classification decisions can be accomplished either through conditional concellation actions under FIFRA section 6(b)(1) [see, *e.g.*, 44 FR 9547 (February 13, 1979) (chlorobenzilate)], or through rulemaking proceedings under existing § 162.30. Moreover, in many instances, the Administrator will decide to impose a number of changes in the terms and conditions of registration, requiring the use of several statutory procedures simulaneously. For example, the Administrator could decide to change the directions for use of a particular pesticide use, by a conditional cancellation action under FIFA section 6(b)(1), and at the same time to initially classify the pesticide use for restricted use and impose an "other regulatory restriction" through a rulemaking proceeding under FIFRA section 3(d)(1)(C)(ii).

In short, it did not appear possible to provide meaningful and clear instructions concerning which statutory procedures should be utilized to accomplish particular changes to the terms and conditions of registration, in light of the complexities of the statute and the number of factors bearing on the use of particular statutory tools in actual cases. Accoringly, the Agency selected the option of prescribing the outcome—effectuation of changes to the terms and conditions of registration. The proposal then leaves to the Administrator on a case-by-case basis the selection of appropriate statutory procedures for accomplishing those changes to the terms and conditions of registration.

The proposal also gives the Administrator the flexibility to utilize the statutory option of initiating cancellation or change in classification proceedings under section 6(b)(2) rather than under section 6(b)(1). Under the statute, a section 6(b)(2) hearing is "open-ended" in the sense that it commences without a specific proposal to cancel a pesticide use, but instead is called "to determine whether or not" cancellation or change in classification is necessary. However, although a section 6(b)(2) hearing begins without the Agency's having taken a position on the ultimate regulatory questions at issue, it can still result in the issuance after its completion of unconditional or conditional cancellation orders if the record generated supports that result. Similarly, it may culminate in a determination that existing terms and conditions of registration are adequate and that no modifications or further regulatory actions are necessary.

The proposal directs the Administrator to make the choice between section 6(b)(1) proceedings and section 6(b)(2) proceedings on the basis of his evaluation, after reviewing the administrative record, of the extent to which formal evidentiary proceedings are likely to change his final decision regarding the uses at issue. If he concludes that the administrative record appears to establish that regulatory action should be taken and that formal proceedings are not likely to change that determination, he will issue a section 6(b)(1) notice. The regulatory actions proposed in that notice will then become final unless a person adversely affected requests a formal hearing. If he concludes that the administrative record fails to resolve certain questions which could be answered in a decisionally significant way by formal proceedings, he will issue a section 6(b)(2) notice requiring those issued to be explored in an adjudicatory hearing. Such hearing will then automatically be held; even if no one else participates, an agency trial staff will be named, and will make a record on the issues designated. Finally, if the administrator determines that no regulatory action is called for, he will state that position in his final Notice of Determination. No further regulatory proceedings will be held, but his decision will be subject to review in a United States Court of Appeals under section 16(b) of FIFRA.

The Agency's purpose in proposing these distinctions is to make the standards for use of section 6(b)(1) and section 6(b)(2) notices parallel the reforms being made to the hearing procedures in Part 164.

The centerpiece of those reforms, described in detail below, is a set of "screening tests" that will be applied in hearings following a section 6(b)(1) notice to establish the extent to which introduction of additional evidence, cross-examination, and the referral of issues to the National Academy of Sciences will be permitted. The broad purpose of these tests is to ensure that formal hearings are focussed on the types of issues they are best qualified to address, and do not expend time and resources on matters which have little prospect of being further clarified or achieving decisional significance.

Against this background, issuance of a section 6(b)(1) notice places a burden on those who request hearings to show that the screening tests have been satisfied and that further proceedings are justified. The Agency anticipates that in many cases the tests will be satisfied at least in part. In these cases the effect of issuance of the section 6(b)(1) notice will be to trigger party efforts to meet the screening tests, thus resulting in a more focussed hearing than would otherwise have resulted. And, in cases where no hearing is requested, or further proceedings are not justified, issuance of a section 6(b)(1) notice allows the Agency to implement without hearings

the decision it reached when it issued the section 6(b)(1) notice.

In other cases, however, the Agency may become convinced before the end of the RPAR process that these screening tests have been satisfied. In such cases it would serve no purpose to require parties to argue for a result which the Agency had already accepted. It is in these circumstances that section 6(b)(2) notices providing for an automatic hearing will be issued. To preserve consistency in the operation of these regulations, the tests for issuing a section 6(b)(2) notice closely parallel the tests for screening requests for further proceedings received in 6(b)(1) hearings.

Two additional points should be made concerning the interplay of this provision with the proposed changes to Part 164. First, the Agency interprets the term "adversely affected"—as used in the context of standing to request a hearing in response to section 6(b)(1) notices—to include any persons who want to prevent proposed actions from becoming effective, and to litigate with the Agency an unreasonable adverse effects problem. The term does not include persons who believe that the Agency did not go far enough and who therefore want the Agency to take actions more restrictive than those proposed in the section 6(b)(1) notice.

Accordingly, the proposal would afford this latter class of persons an opportunity to demonstrate to the Administrator—during the RPAR process—that an action which he has proposed is inadequate, based on a showing that the RPAR has failed to satisfactorily resolve substantial factual issues which could have a significant impact on the final regulatory outcome. This showing would most likely be made by such a person during the public comment period (under proposed § 162.28) on a Preliminary Notice of Determination which proposed the action claimed to be inadequate, or during SAP consideration of that notice. If the Administrator then made the requisite findings described above, the Final Notice of Determination would initiate section 6(b)(2) [6] hearings on the issues to be resolved concerning the pesticide use at stake.

Second, the proposed "screening stage" of the Part 164 regulations would not apply to the issues specified in a section 6(b)(2) notice. As explained more fully below, the purpose of screening issues before the presentation of evidence commences in a formal evidentiary public hearing is to streamline the hearing to eliminate issues which are not genuinely in dispute, which are not significant to the decision, or which may be better resolved on the basis of official notice of accumulated Agency expertise. A person requesting further proceedings on a section 6(b)(1) notice would be required to show that the issues which he wants to explore meet these criteria; he would also be required to show why the issues were not satisfactorily resolved in the RPAR process.[7]

But in deciding to initiate section 6(b)(2) proceedings on a particular issue, the Administrator necessarily would have already decided that the factual uncertainty was not satisfactorily resolved in the RPAR process, and that the uncertainty was of ultimate decisional significance—in other words, that it was an issue which could and should be profitably explored in an adjudicatory context. Accordingly, the proposed Part 164 regulations provide for an automatic "pass-through" of the issues specified by the Administrator in a section 6(b)(2) notice. This is accomplished by limiting the application of the screening process to requests for further proceedings in response to section 6(b)(1) notices, and by not including any parallel screening process for issues designated by the Administrator in a section 6(b)(2) notice.

F. Review of Preliminary Notices of Determination

Proposed § 162.30 deals with review by the Scientific Advisory Panel (SAP) and the Secretary of Agriculture (USDA) of Preliminary Notices of Determination by requiring their referral to those bodies for review and comment. The proposal also provides for the solicitation of comments from interested members of the public concerning Preliminary Notices of Determination.

The Act only requires the Agency to forward proposed cancellation actions (under FIFRA section 6) and proposed and final regulations (under FIFRA section 25) for review by the SAP and by USDA. Accordingly, the Agency has no obligation to refer decisions not to initiate cancellation actions, or decisions to deny registration, which result from the RPAR process. However, the Agency clearly has discretion to refer additional matters to the SAP and to USDA and to request comments; moreover, the Agency believes that it would be useful to have the views of the SAP and USDA on all decisions which are reached at the conclusion of the RPAR process, and not just those decisions which involve the initiation of cancellation actions, or proposed or final regulations. Accordingly, the proposal provides for referral of all Preliminary Notices of Determination to the SAP and USDA for comment.

The proposal also calls for the solicitation of comments from interested members of the public concerning Preliminary Notices of Determination. In this regard, the proposal restates the Agency's longstanding practice of soliciting public comment on RPAR decisions, at the same time that comment is solicited from the SAP and USDA. The Agency adopted this practice because, in its view, it was consistent with the broad aim of the RPAR process of maximizing public participation in Agency decisionmaking concerning problem chemicals. This rationale has, of course, continuing validity. Moreover, since meetings of the SAP must be open anyway under the Federal Advisory Committee Act, this practice simply extends an opportunity for public comment to those who might lack the time or resources to attend and participate in that meeting of the SAP.

The proposal establishes a flexible approach toward the establishment of deadlines for the submission of comments by the SAP, USDA, and interested members of the public, which is designed to eliminate some of the problems which the Agency has experienced to date in running this aspect of the RPAR process. First, the proposal requires the Administrator to establish a deadline for the submission of comments by the SAP and USDA. The proposal provides that the deadline shall not be less than thirty days from the date of referral of the Preliminary Notice of Determination, unless the SAP and USDA agree to a shorter period. However, the proposal provides no fixed maximum period for comment.

This approach reflects the Agency's interpretation of the deadline aspects of the referral provisions in FIFRA as imposing minimum periods which cannot be altered except with the concurrence of the SAP or USDA. At the same time, however, it is the Agency's view that the law does not prohibit it

[6] It is conceivable that the Administrator could determine that certain minimum actions are warranted in any event (e.g., specific modifications to the terms and conditions of registration), and that the only uncertainty concerns whether *additional* restrictions or modifications are necessary. In those circumstances, the Final Notice of Determination could propose certain actions under section 6(b)(1)—which would take effect by operation of law if no requests for a hearing were received—and could also initiate a section 6(b)(2) hearing on specified issues in order to decide whether the more restrictive actions were necessary.

[7] In the case of requests to introduce new material, he would have to show good cause for not including the material in the RPAR administrative record; in the case of requests for cross-examination, he would have to show why the examination of the issue in the RPAR process has not provided adequate clarification.

from extending the comment periods beyond this thirty day minimum, in appropriate circumstances. In fact, it has been the Agency's practice to allow for longer comment periods in appropriatae circumstances. For example, the Agency has frequently extended to the SAP more than thirty days to submit comments, in order to accommodate the inevitable scheduling problems which it faces. The scheduling problems arise both because the SAP is not continually in session, but rather schedules meetings periodically, and also because of the public notice requirements which it must adhere to in scheduling meetings. These public notice requirements arise under the Federal Advisory Committee Act which requires advisory committees like the SAP to give reasonable public notice of scheduled meetings, and to afford interested persons an opportunity to attend and present views.[8] Scheduling problems brought on by satisfying the public notice requirement, and the need for scheduling meetings on a periodic basis have made it practically impossible to require the SAP to submit comments within thirty days. Accordingly, the proposal adopts a common sense, flexible approach to scheduling deadlines which the Agency believes will work well in practice.

The proposal also provides for establishing a deadline for the submission of public comments which is earlier than the deadline for submission of comments by the SAP and by USDA. This is in order to permit the public comments to be considered by the SAP and USDA in the process of formulating their comments for the Agency on a specific proposal. Thus, proposed § 162.30 provides that the working record for the final position document shall be made available to the SAP and USDA; proposed § 162.34 provides that the working records shall include any comments submitted to the Agency in accordance with the instructions of the Administrator.

The Agency envisions that in implementing proposed § 162.30 it will select a deadline for the submission of public comments which is also in advance of the planned date for the SAP public meeting at which the Preliminary Notice of Determination is to be considered. This would be accomplished through close coordination with the Executive Secretary for the SAP. Of course, interested persons desiring to appear and make oral presentations before the SAP would still be permitted to do so; and the administrative record for the Final Notice of Determination will include the transcript of the SAP public meeting.

G. Final Notices of Determination

Proposed § 162.31 provides for the issuance of a Preliminary Notice of Determination to conclude an RPAR proceeding. The concept behind this section is relatively simple: the Agency will assimilate the comments which are received in accordance with the Act and the instructions of the Administrator, and make such changes in the Preliminary Notice of Determination as are appropriate in light of these comments and the Agency's analysis of them. In effect, the Preliminary Notice of Determination is a re-play of the Preliminary Notice of Determination, with one significant change—the record has been augmented by the comments received on the Preliminary Notice of Determination from the SAP, USDA, and interested members of the public.

The proposal provides that the Agency will issue a Final Notice of Determination in all situations where it has issued a Preliminary Notice of Determination, with two exceptions. The first exception is in cases where the Preliminary Notice of Determination announced a decision that a presumption had been rebutted on risk grounds, *i.e.*, either because the Agency had erred in issuing the RPAR notice in the first place (§ 162.25(a)(1) and (b)(1)) or because no significant risks would result from the pesticide use, when used in accordance with the existing (or the proposed) terms and conditions of registration and widespread and commonly recognized practice. (§ 162.25(a)(2) and (b)(2)). The proposal provides for the issuance of a revised Preliminary Notice of Determination in a situation where the Agency determines, based upon public comment or the comments of the SAP or the Secretary of Agriculture, to withdraw such a determination and substitute a determination that the presumption has not been rebutted. This is because in such situations the Agency will typically not have considered the benefits of the pesticide use, or whether any risks associated with the pesticide use are unreasonable, because consideration of such issues would have been irrelevant. Accordingly, the RPAR proceeding has to be rerouted back to the Preliminary Notice of Determination stage, in order to permit consideration of issues which have become relevant because of the Agency's decision that the presumption has *not* been rebutted on risk grounds.

The proposal also calls for the issuance of a revised Preliminary Notice of Determination instead of a Final Notice of Determination in a situation where the Agency selects a regulatory option which is not within the range of regulatory options considered and discussed in the first Preliminary Notice of Determination. The Agency expects this will rarely occur. However, in situations where it does occur, the Agency's view is that the underlying purpose of the requirements for referring proposed cancellation actions to the SAP and USDA—that is, to obtain the views of the SAP and USDA on the risk and benefit impacts of proposed regulatory actions—require, in effect, a re-cycling of the RPAR proceeding back through those bodies. The Agency's standard practice in Preliminary Notices of Determination, however, is not to discuss a single regulatory option, but rather to discuss a range of regulatory options which the Agency has considered, from which the final decision is selected. It is the Agency's view that all of the options which are considered and discussed in detail in the documents which are referred to the SAP and USDA for review and comment are in fact before the SAP and USDA for consideration. Moreover, in practice, the SAP and USDA appear to have taken a view of their roles in commenting on Preliminary Notices of Determination which is consistent with the Agency's position on this matter.

In any event, the Agency thinks that it would be foolish and inconsistent with the Congressional purpose behind these review provisions to re-refer a matter to the SAP or USDA in a situation where the Agency decides, based upon comments received during the review process, to select an option which is within the range of options discussed and considered in the Preliminary Notice of Determination. Such a re-referral policy would serve no useful purpose. It is obvious that Congress intended the referral provisions to be taken seriously and expected that the Agency would sometimes change its actions as a result of comments received during the comment periods; however, it is also clear the Congress did not intent the referral provisions to paralyze the Agency by becoming an endless merry-go-round of purposeless activity. Accordingly, the Agency intends only to re-refer RPAR proceedings to the SAP and USDA when such a re-referral is necessary to serve the purposes of the referral provisions—i.e., in those situations where the regulatory option finally selected is outside the range of options considered and discussed in the Preliminary Notice of Determination.

[8] Agency and Office of Management and Budget guidance generally requires the notice period to be at least 60 days. (Exec. Order No. 12,044, 43 Fed. Reg. 12,661 (1978)).

H. Administrative Records and Standards for Decision Documents and Comments

Section 162.34 of the proposal requires clearly defined administrative records for each RPAR decision document. In addition, the section requires the establishment of working records for pending decisions on chemicals for which RPAR proceedings are in progress. The proposal then provides for public access to the administrative records to the maximum extent permitted by law.

Establishment of clearly defined administrative records for Agency decisions has been suggested in recent years both for agencies generally and for this Agency specifically. Pedersen, *Formal Records and Informal Rulemaking*, 85 Yale L.J. 38 (1975); Verkuil, *A Study of Informal Adjudication Procedures*, 43 U. Chi. L. Rev. 739, 790 (1976). The Food and Drug Administration has adopted regulations requiring "records" for virtually every decision it makes. 42 Fed. Reg. 4680 (January 25, 1977).

Two complementary themes underly the call for clearly defined records: the desire to make agencies more accountable for their actions by clearly identifying the underlying information upon which the decision is based, and a desire to improve the quality of agency decisionmaking in the first instance by insuring that it is as rational and orderly as possible.

While the existing RPAR regulations do not require the maintenance of administrative records, the Agency has adopted informally a practice of maintaining reasonably well defined administrative records for RPAR proceedings. Accordingly, the requirements which are reflected in the proposal for maintenance of administrative records do not constitute significant or dramatic departures from current practice. Instead, they restate and in some respects refine and improve administrative practices which the Agency has adopted in the course of administering the RPAR process over the past several years.

Two kinds of administrative records are required to be maintained by the proposal. First of all, the Agency would be required to maintain records for RPAR decisions which it has announced. These records would include the information which the Agency relied upon in making the decisions which it announced in an RPAR decision document; the information would be available to individuals desiring to participate in the RPAR process by fully understanding the information upon which the Agency has acted. The record would be compiled no later than the time the decision in question is announced, and the documents in it would not change except as the result of further separate stages of the RPAR process.

The proposal also provides for the maintenance of another kind of administrative record, called a "working administrative record." A "working administrative record," in essence, contains documents which will be considered by the Agency in making its next decision on a chemical which is in the RPAR process. This record may change from day to day, even within a single stage of the RPAR process, as new material is added to it. The requirement for maintaining working records in addition to records for completed RPAR decision documents was included in order to maximize public participation in RPAR decisionmaking as it unfolds through the various steps in the RPAR process. The Agency felt that it was desirable to make it possible for participants in the RPAR process to keep as current as possible on the information which is being submitted to the Agency, and on the completed staff analyses created by the Agency in the course of an RPAR proceeding.

Thus, for example, an individual preparing a rebuttal submission in response to an RPAR notice would be entitled to review the administrative record for the Notice of RPAR. In addition, the working record for the preliminary Notice of Determination would also be available for the individual to consult. By consulting the working record, the interested person would be kept reasonably abreast of information developed and submitted by other participants in the process, and staff analyses which had been completed by the Agency on issues which were relevant to the issues to be decided in the Preliminary Notice of Determination. By becoming familiar with the record for the Notice or RPAR, and by keeping current on additions to the working record for the Preliminary Notice of Determination, a participant in the process can effectively and efficiently marshal its resources and energies towards preparing the most effective presentation possible on behalf of the interests it is attempting to represent.

It is also hoped that by providing for Agency inclusion of completed staff analyses in the working record, that participants in the process will find it less necessary to expend their time and the time of Agency staff personnel in constant telephonic and written communications with project managers concerning the progress of Agency staff analyses of relevant issues, and requesting copies of completed projects. It is the Agency's hope that the frequency of such contacts will diminish with the provision of a mechanism for the inclusion of completed projects in the working record from time to time as they become available.

While the Agency is requiring the maintenance of working records in order to maximize public participation, it does not intend to sacrific orderly and efficient decisionmaking in the process. Specifically, the Agency intends to require rigid adherence to the comment periods which it has allowed for submission of comments during the process. Thus, if a completed staff analysis on an issue is put in the working record after the expiration of the deadline for comments on that issue, the Agency will not regard this action as tantamount to reopening the comment period on that particular issue. Instead, the Agency will be giving participants in the process advance knowledge of positions which it has tentatively reached, and which will affect the next decision to be made in the process. The time to comment on the next decision, however, is *after* the decision is announced, and in accordance with the instructions for submission of comments which are to accompany that decision. Attempts to "jump the gun" by submitting comments at an earlier time will generally result in the comments being returned to the submitter or commenter without consideration.

Proposed § 162.33 also includes some general standards for Agency decision documents, and for rebuttal submissions and comments. The purpose of these general standards is to insure that the overall goals of the RPAR process—informed, open, public decisionmaking about problem pesticides—are realized. Accordingly, the Agency has imposed on itself general requirements to disclose all relevant information, and to provide resonable explanations for the positions which it is taking. In imposing, in effect, the same requirements on participants in the process, the Agency is really underscoring the obvious—attempts to influence rational debate inevitably reach their own level. Informed and carefully put together submissions warrant and receive careful attention, while conclusory, poorly thought out submissions receive little weight.

I. Supplemental Notices of RPAR

Proposed § 162.24 provides for the use in appropriate circumstances of a

Supplemental Notice of Rebuttable Presumption Against Registration. This section addresses a problem which has occasionally occurred in the Agency's administration of the RPAR process: the situation where the Agency discovers that an additional risk criterion has been met after the issuance of a Notice of Rebuttable Presumption Against Registration. Proposed § 162.24 sets out a practical way of dealing with this problem. Specifically, it gives the Administrator two options: he may issue a Supplemental Notice of RPAR, or he may deal with the additional risk criterion in the Preliminary Notice of Determination, and provide time for comment on the additional risk criterion (and his response to it) after the Preliminary Notice of Determination has been issued.

The Administrator is given discretion to select either option, but generally speaking, the point in time in the process when the additional risk criterion comes to the Agency's attention will determine which option is selected. Thus, if the additional risk criterion comes to the Agency's attention shortly before the Agency is prepared to issue a Preliminary Notice of Determination, the Administrator would probably select the option of dealing with the risk criterion in the Preliminary Notice of Determination without issuing a Supplemental Notice of RPAR. On the other hand, if the additional risk criterion comes to the Agency's attention much earlier, it would be preferable to issue a Supplemental Notice of RPAR. In either, case, the Administrator would be balancing the need for orderly and expeditious conduct of the RPAR with the desirability of providing early notice to registrants and other interested persons of the full compass of his risk concerns respecting the pesticide uses which are subject to RPAR proceedings. It should be noted, however, that in the event that the Administrator selects the option of not publishing a Supplemental Notice of RPAR, the overall objective of the process of providing opportunities for public comment would be achieved, since full opportunity for comment on the additional risk criterion would be afforded after the Preliminary Notice of Determination had been issued.

The concepts reflected in proposed § 162.24 have been tested in actual practice. In the RPAR proceeding concerning the pesticide chlorobenzilate, for example, the Agency discovered an additional risk criterion—testicular atrophy—shortly before the publication of a Preliminary Notice of Determination. (43 FR 29824, July 11, 1978.) In this situation, the Agency chose to deal with the risk criterion initially in the Preliminary Notice of Determination, and to afford opportunities to comment on it prior to the Final Notice of Determination.

J. Dealines for RPAR Decision Documents

The 1975 regulations allow registrants 45 days to submit rebuttal information, with the possibility of a 60-day extension (§ 162.11(a)(1)(i)). They further provide 150 days for the preparation of a benefits analysis, and 180 days for the issuance of a Notice of Determination by the Administrator. (§ 162.11(a)(5)).

This scheme of deadlines has proven to be unworkable. The proposal includes a new system which has flexibility as its dominant theme. In this regard, proposed § 162.23 provides that a Notice of RPAR shall include a notification of the dealine which the Administrator has imposed for the issuance of a Preliminary Notice of Determination in that particular proceeding. In selecting a deadline, the proposal provides that the Administrator will take into account the many factors which are peculiar to a given proceeding which are relevant to settling a deadline, including the number and complexity of the issues which must be addressed and the extent to which expeditious conclusion of the RPAR proceeding is in the public interest. Proposed § 162.28, concerning Preliminary Notices of Determination, contains a similar provision requiring the establishment of reasonable deadlines for submission of information and comments and the issuance of a final Notice of Determination. Finally, as discussed earlier, the parts of the proposal dealing with deadlines for review by the SAP and USDA are drafted to provide flexibility to establish deadlines appropriate to the circumstances of a proceeding.

K. Federal Register Notices

The proposal provides for the publication of Federal Register notices at all major decision points in the RPAR process. Although the 1975 regulations do not require publication of Federal Register notices, the Agency has always followed the practice of publishing them. Accordingly, in this regard the proposal restates current practice. The proposal also specifies standardized formats for each Federal Register notice which is required, including provisions for specific guiadance to registrants and other intersted persons, in order to assist them in understanding the notice and in deciding what action to take in response to it. Again, for the most part, the format requirements included in the proposal restate current practice.

L. Saving Provision

Proposed § 162.20 provides that the Agency will generally utilize the RPAR process for making decisions about whether or not to initiate cancellation or denial proceedings concerning a problem pesticide use. However, proposed § 162.20 includes an important saving provision, to the effect that the Agency reserves authority to utilize modified procedures or other procedures in appropriate circumstances where the Agency determines that it would be in the public interest to do so. One situation in which the Agency envisions it will utilize other procedures to initiate a cancellation proceeding is where it is necessary to initiate cancellation proceedings in order to issue a suspension order. Under section 6(c) of FIFRA, the Agency may not issue a suspension order unless cancellation proceedings concerning the pesticide are already in progress, or are commenced at the same time that the suspension order is issued. In situations where the Agency finds it necessary to issue a suspension order, and a cancellation proceeding is not in progress already, it would be contrary to the public interest to delay the commencement of a cancellation proceeding by using the RPAR process. Accordingly, in such situations the Agency would use the authority it has reserved in proposed § 162.20 to commence cancellation proceedings without prior resort to the RPAR process.

M. Voluntary Cancellation and Withdrawal of Application

The proposal also provides that a registrant or applicant may petition the Administrator at any time to voluntarily cancel the registration of a pesticide use or to withdraw an application for registration of a pesticide use. It is important to note, however, that the Administrator has full discretion to either grant or deny such a petition in situations where the pesticide use is subject to an RPAR or a cancellation or denial proceeding and that he may elect to deny the petition and proceed in accordance with Parts 162 and 164.

N. Procedures for Denial of Registration

Although the statutory provision governing the procedures and time-frames for the denial of an application for registration (section 3(c)(6)) differs somewhat from the provision governing cancellations of registered pesticide uses (section 6(b)), the proposal treats both actions in a uniform procedural

fashion consistent with the statutory provisions.

Specifically, section 3(c)(6) of the Act directs that if the Administrator determines that an application for registration of a pesticide use cannot be approved because the pesticide use fails to meet the statutory criteria for registration, he shall so notify the applicant and provide him 30 days within which to correct the deficiencies. If the applicant fails to correct them, the Administrator then "may refuse to register the pesticide," in which case the applicant must *again* be so notified, and a notice of the denial of registration must be published in the federal register. At that point, the applicant has "the same remedies as provided for in section"—under which the applicant has *another* 30 days within which to make "the necessary corrections, if possible," or to request a hearing.

Under the proposal, the section 3(c)(6) notification that the statutory criteria for registration had not been met will be set forth in a Preliminary Notice of Determination. Applicants and other interested persons will then be invited to comment upon the bases (factual or otherwise) which support that determination; and the matte will be referred to the SAP and USDA for their consideration and comments. The Administrator would then consider all significant comments received from the applicant, USDA, SAP, or other interested persons, and would set forth his responses to them together with his final determination concerning granting or denial of registration in a Final Notice of Determination. At that point, the applicant would have the "remedies as provided for in section 6"—that is, the opportunity to either make "the necessary corrections, if possible" in accordance with the instructions set forth in the Final Notice of Determination, or to request a formal evidentiary public hearing.

It is important to understand, however, that if the applicant fails to take either of these actions in response to the Final Notice of Determination within the statutory 30-day period, the denial of registration will become final and effective—the Agency will *not* provide a "second" 30-day period for making corrections. This position is premised on the fact that the applicant will already have had its comment opportunity under section 3(c)(6), because the applicant will have had the chance to comment on the Preliminary Notice of Determination.

IV. Proposed Changes to Rules of Practice for Hearings (Part 164)

A. Background to the Proposal

1. *Statutory Changes.*—Since 1964, FIFRA has allowed pesticides to be removed from the market through formal agency hearings conforming to 5 U.S.C. secs. 554, 556 and 557. (Before that, court action was required).

These hearing requirements have not been directly amended since 1972. Since then, however, changes to other provisions of the statute have significantly altered the context in which they are set, and the functions that such a hearing should logically be expected to serve.

As discussed above, under both the 1964 and 1972 versions of FIFRA, EPA was required to begin the formal hearing process whenever information raised a "substantial question of safety" regarding a pesticide use, without waiting to consider benefits or the balance of risks and benefits. The hearing under this test would virtually have to begin before the questions relevant to a final decision had been deeply analyzed, and would itself be the primary vehicle for probing and balancing the relevant factors, and for generating the record for final decision.

Since 1975, however, Congress has required that in most circumstances the full range of questions relevant to final action be addressed, and an agency position formed, before a notice of intent to cancel is issued regarding a pesticide use.[9] In 1975 Congress required EPA to refer proposed pesticide use cancellations to two expert bodies, one to examine risks primarily and the other to examine benefits primarily. EPA then had to consider and respond to the views of these two bodies before taking final action. Congress thus overruled the "substantial question of safety" doctrine and required EPA to consider (and document) the full range of statutorily relevant factors before a hearing could begin. In 1978 Congress further specified the factors the agency should consider, and the procedure it should follow, before beginning the formal hearing process.

These changes should assure that pesticide uses come to formal hearing accompanied by a substantial background of fact, analysis, and discussion addressing the questions which are crucial under the statute. The issues should already be focussed and most of the material for their final resolution should already be on hand.

[9] This procedure is not required for cancellation notices issued in connection with a suspension action, or for cancellations for failure to comply with certain narrowly specified legal tests.

It would be unacceptably inefficient to conduct formal hearings as though the RPAR stages which generated this background had never taken place. That would mean that the work of these preliminary stages would have to be fully reconstructed from the ground up through the time-consuming formal mechanisms of an adjudicatory hearing. Such duplication of effort, particularly at a time of general concern for expedition and economy, has no place in a rational administrative process.

Yet the existing rules contain no mechanisms to prevent such a result. Since they were written to implement the "substantial question of safety" doctrine, they contain no references to any pre-existing stages of agency review of a pesticide use, and no procedures to take account of the results reached in those stages.

Accordingly, one major purpose of the changes to Part 164 is to ensure that the formal hearing takes the results of the RPAR process as a starting point, accepts the RPAR results in cases where the particular procedures of formal hearings would not be likely to change them, and devotes its energies to the types of questions which formal procedures are particularly qualified to address.

2. *The Nature of the Cancellation Decision.*—Pesticide use cancellations, we believe, rank among the most intricate policy decisions in the Federal government as measured by the number, varying nature, interdependence, and complexity of the issues involved. Considering risks, questions can arise concerning the impact on non-target species and their inter-relationship, the dispersion and persistence of the pesticide in the environment and certain parts of it, the conduct of animal feeding studies, the meaning of those studies for human health, arguments about and projections from other data concerning possible human health risks, and finally on what the upper and lower boundaries of any risks may be and how firmly they are established. Considering benefits, questions can be raised about the extent of use, the crops involved, the availability and effectiveness of substitutes both now and in the future, the value of non-agricultural uses, and the range of the probable economic impacts of banning or restricting some or all of the uses at issues in the light of all these factors.

All these factors are explicitly made relevant by the statute, which provides for cancelling any pesticide use that "generally causes unreasonable adverse effects on the environment" and then defines "unreasonable adverse effects

on the environment" in these encompassing terms:

The term "unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide. FIFRA sec. 2(bb).

Factual certainty even on individual factors in the required balancing analysis will rarely be attainable. Indeed, answers to some questions—like projecting cancer risk to man from animal studies, or projecting the future economic impact of present actions—are beyond our capacity to answer precisely in the current state of medical and economic science.[10] In addition, when so many factors must be considered, it is inevitable that the data available to address at least some of them will be less than fully satisfactory even in cases where it might theoretically be provided. Yet, under the statute, EPA must consider the full range of logically relevant factors—whether known, partly known, unknown, or unknowable—both as to risks and benefits in making a final decision either to cancel an old pesticide use or to register a new one.

Decisions of this nature cannot efficiently be made through complete reliance on the court-room type proceedings traditionally associated with formal hearings. To sort through all the issues involved using cross-examination can result in crippling delays, while the sheer weight of material introduced may lead participants to lose sight of the forest for the trees. And in many cases, there may be a sharp limit to the ability of cross-examination to clarify the issues. The issues may be issues of policy (such as how much risk of human health damage to accept) or, though factual, may be resolvable only through advances in the general state of knowledge, or through additional studies, not through clarification of the opinions of individual witnesses.

Often, in grappling with such issues, providing professional advice to the decisionmaker is more useful than providing him with a cold record. Indeed, if the Administrator of EPA were not free to consult staffers with expert knowledge of and experience with the highly technical and complex issues often involved in pesticide use cancellations, and were restricted to grappling with the record himself, with perhaps the assistance of one or two law clerks, his decision could hardly claim to be based on the expert knowledge and judgment which Congress expects when it assigns problems to an agency.

Accordingly, a second major purpose of these regulations is to provide expert assistance and advice to the Administrator and then allow him to use it, not just to analyze the record after the hearing is over, but to structure the questions to be addressed at the hearing. The Administrator, with such assistance, should be able to determine which policy questions are most significant and most in need of further probing; which factual issues are reasonable candidates for clarification through cross-examination, and which, by contrast, cannot be answered with more certainty by such methods. This approach should result in more structured proceedings than would the alternative of leaving the form of the hearing entirely to the discretion of a single Administrative Law Judge, who as a practical matter cannot be expert in all the technical questions involved and who will have no familiarity with the discussion of those questions during the various stages of RPAR proceedings. This approach seeks to ensure that the virtues of having technical issues addressed by technically expert groups, a practice Congress has required prior to issuance of cancellation notices are not lost at the formal hearing stage, and are not denied to the Administrator of EPA when he makes the final decision.

B. The Proposed Amendments

1. *General.*—In proposing comprehensive changes to the formal hearing procedures in Part 164, EPA is trying to better adapt these procedures both to the statutory changes during the past eight years, and to the nature of the decision they are used to make. The solution, discussed below, consists both of explicit measures to fuse the RPAR process and the formal hearing process into a single over-all proceeding, and of reforms to the procedures for conducting the formal hearing itself. The basic approach of the proposed rules is to resolve disputed questions in the least procedurally burdensome way permissible under the governing statutes. To achieve this, questions will be sifted through successive procedures of increasing formality, beginning with an exchange of written documents during RPAR and ending with formal cross-examination with only those questions that cannot be resolved by the less burdensome approaches passing on to the more formal stages.

2. *Coordinating the RPAR Proceedings and the Formal Hearing.*—The proposed rules contain two major reforms to coordinate RPAR proceedings with a formal hearing.

First, they provide, in section 164.52(b)(4), that no evidentiary material may be placed before the Agency in a formal hearing that was not previously presented for consideration during RPAR, unless "good cause" is shown for the failure to present it. The regulation goes on to provide that:

"Good cause" means either that the material was not available at the stage of the RPAR process at which it should have been presented, or that the material is of such a nature that it can only be presented meaningfully in a trial-type hearing.

EPA belives that the recent amendments to FIFRA demonstrate that Congress intended EPA to fully consider the entire range of issues relevant to a pesticide use before making any final decision whether or not to issue a notice of intent to cancel or deny registration. It will not be possible to achieve that purpose if interested persons are free to withhold relevant information without good cause until the formal hearing stage. In addition, such a practice would ensure that any issues raised by the new material would have to be considered entirely through the complex procedures of a formal hearing, without any chance for being focused or resolved by the relatively flexible procedures of RPAR. Inefficiency and delay would be bound to result from such a practice.

Second, the regulations provide in section 164.31 that the administrative record of the RPAR proceeding will automatically be introduced into evidence at the hearing and may not be stricken. This will make sure that the presiding officer and other decisionmakers are familiar with the prior course of the proceeding and the extent to which issues were raised and clarified during it, and will allow these persons to frame the course of subsequent proceedings accordingly.

It will also provide a store of factual material for use by the decisionmakers. EPA anticipates that in many cases the evidentiary value of items in the RPAR record will be clear from the face of that record, given the many opportunities for rebuttal and analysis which the RPAR process provides. However, one of the major purposes of the formal hearing is of course to provide an opportunity for cross-examination and the regulations explicitly provide that parties are free to contest the factual portions of the administrative record in the hearing, and to argue that portions of it should not be given weight unless sponsored by a witness who will be available for cross-examination. If the Administrator

[10] For further discussion of this point, see McGarity, "Substantive and Procedural Discretion in Administrative Resolution of Science Policy Questions Regulating Carcinogens in EPA and OSHA", 67 Geo. L. J. 729, 731–47 (1979).

or Presiding Officer grants such a request for a sponsoring witness, and the witness is not provided, the Presiding Officer may reduce the factual weight he gives to that piece of the administrative record accordingly.

3. *Changes to the Hearing Process Directly.*—The keystone of the changes made directly to the hearing procedures by this proposal (as opposed to changes made to relate it to the RPAR process) is the screening mechanism set forth in §§ 164.50 through 164.56. Though screening mechanisms for hearing issues have been adopted by a number of different agencies in recent years (most notably the Food and Drug Administration) several features of this proposal are new and warrant preamble discussion.

a. *General Approach.*—FDA's approach to screening issues is to apply a series of tests to determine whether a hearing will be granted at all, before the hearing has formally begun. See 41 FR 5170–6–51710, 51721–22 (Nov. 23, 1976). Courts have upheld this general approach, but have often required the agency to meet a high standard before denying the hearing. Since the Food, Drug and Cosmetic Act on its face requires a formal hearing before making certain decisions, it is certainly understandable that courts have restricted the agency's power to dispense with it in this manner.

In EPA's view, the FDA approach rests on a overly rigid conception of what a formal hearing must consist of. Nothing in the Administrative Procedure Act requires such hearings to consist exclusively of courtroom presentation of oral testimony and cross-examination of witnesses. These were certainly meant to be part of the record-building process, but the Presiding Officer and the agency were also meant to have discretion to mix these procedures with others to achieve the ultimate statutory goal—the provision of an adequate and adequately tested record for final decision. That general authority takes on additional weight in the FIFRA context because the statute now requires the formal hearing to be preceded in most cases by an informal sifting of the issues such as that which is accomplished in the RPAR process.

Accordingly, the proposed regulations provide, in § 164.32, for a formal hearing to be granted relatively automatically upon the filing of a timely request satisfying minimal requirements. Only *after* the hearing has begun will the issues be further sifted and detailed decisions made as to the future course of the proceedings.

b. *Screening Procedure.*—At present Presiding Officers of course have broad powers to structure the course of a formal proceeding through prehearing orders or through rulings during the course of the hearing. To some extent the screening criteria proposed here simply formalize and define the standards that should be applied in doing that.

The regulations, however, also depart from that pattern in an attempt to remedy one central defect of formal proceedings for making decisions such as those involved in pesticide use cancellations. That is lack of any provision for scientific advice to the decisionmaker. As discussed above, it is inefficient, and contrary to the purposes for which administrative agencies are established, to require the Administrator or the Presiding Officer, as laymen, to grapple with the full range of issues involved in a cancellation without any opportunity for informal consultation with technical experts.

Unfortunately, where Presiding Officers are concerned, a strong argument can be made that providing such advice is improper. 5 U.S.C. 554(d)(1) forbids a Presiding Officer to "consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate". The Supreme Court in dictum has indicated that this language should be given a literal reading. See *Butz* v. *Economu*, 98 S. Ct. 2894, 2915 (1978).

Accordingly, though arguments on the other side can be made, EPA has elected at present not take the legal risk of making informal expert advice available to Presiding Officers.

Instead, EPA has provided, in § 164.55, for providing expert advice to the Administrator when *he* makes decisions regarding cancellation of a pesticide use. This practice is unquestionably legal. 5 U.S.C. 554(d)(1) does not apply to agency heads, and, as the United States Court of Appeals for the First Circuit has stated, to shut agency experts out of the final decision would run:

> counter to the purposes of the administrative agencies which exist, in part, to enable government to focus broad ranges of talent on particular multidimensional problems. The Administrator is charged with making highly technical decisions in fields far beyond his individual expertise. "The strength [of the administrative process] lies in staff work organized in such a way that the appropriate specialization is brought to bear upon each aspect of a single decision, the synthesis being provided by the men at the top." 2 K. Davis, Administrative Law Treatise 84 (1958).

Seacoast Anti-Pollution League v. *Costle*, 572 F.2d 872 881 (1978). EPA believes that as a practical matter the absence of such advice probably increases the pressure on the Administrator to accept the views of agency trial staff by denying him the technical equipment with which to challenge it.

Many agencies provide staff advice to their heads to assist in writing final decisions after adjudicatory hearings. The novelty in these regulations is that the technical staff named to advise the Administrator will also be used to help structure the course of the hearing. EPA believes it will clearly be more efficient for the Administrator and his expert advisors to indicate in advance of a courtroom presentation on the basis of party submissions and the administrative record where further issues need to be addressed and what proceedings will be useful than to allow the hearing to proceed in ignorance of these basic views. Accordingly, the regulations provide in § 164.55 that the Presiding Officer may certify the task of framing the course of an adjudicatory hearing to the Administrator who in turn will act with the assistance of such a panel, and that if the Presiding Officer frames the course of the hearing himself, the result may be taken to the Administrator through an interlocutory appeal as of right. EPA anticipates that this same panel would be kept in existence throughout the hearing to deal with other issues as they arose and to advise on the final decisions.

C. *The Screening Tests*

A formal hearing in connection with the cancellation of a pesticide use can consist of one or more of three types of component procedures. These are: (i) presentation of direct evidence in addition to the administrative record, (ii) cross-examination of witnesses; and (iii) referral of issues of scientific fact to the National Academy of Sciences. The proposed regulations provide separate tests for screening requests for each of these possible types of further proceedings. They are contained in §§ 164.52 (additional evidence), 164.53 (cross-examination) and 164.54 (referral to the National Academy of Sciences).

Three criteria are common to each test. They are that the party requesting the further proceedings show that: (i) a genuine and substantial question of fact is involved; (ii) the proceedings at issue are likely to resolve the issue; and (iii) the resolution of the issue one way or another has the potential to change the change the outcome of the proceeding.

These criteria are designed to ensure that trial-stage proceedings held as part of a formal hearing serve the central function of a trial stage—to clarify disputed issues of material fact. There is no purpose in holding trial proceedings

that have no reasonable change of serving that end. This is true even in cases where substantial factual uncertainty does indeed exist, but trial proceedings will not reduce it. In those cases, the uncertainties must simply be presented to the decisionmaker for resolution as a matter of policy or expert judgment (accompanied, of course, by appropriate briefs from the parties.

These three criteria are taken directly from the "summary judgment" criteria of the Food and Drug Administration. They are further discussed in various preambles to FDA regulations, see 40 FR 40698–407010 (September 3, 1975); 41 FR 51708–51711 (November 23, 1976), and in a recent law review article, see Ames & McCracken, *Framing Regulatory Standards to Avoid Formal Adjudication: The FDA as a Case Study*, 64 Calif. L. Rev. 14–49 (1976).

A fourth criterion common to all three tests—that the matter not be one of which "official notice" can be taken—is discussed in the next section.

Finally, requests to introduce further direct evidence must, as stated above, demonstrate why that evidence was not introduced as part of the RPAR record. Similarly, requests to refer issues of scientific fact to the National Academy of Sciences must show why those issues were not adequately addressed by an independent scientific group in being referred to a Scientific Advisory Panel during the RPAR process. Both these tests aim to ensure that the formal hearing does not duplicate jobs which should have been done earlier.

d. *"Official Notice"*.—A central feature of this proposal is its use of "official notice" as a tool for setting limits to the courtroom nature of formal APA hearings. Because the approach is new, it will be discussed in some detail.

5 U.S.C. sec. 556(e) provides that "When an agency decision [after a formal hearing] rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary."

This language on its face demonstrates that in some cases—those in which "official notice" is proper—an agency may rest its decision on facts which have not gone through the full record-building procedures characteristics of a formal hearing. Otherwise the sentence would add nothing to the powers contained in other APA provisions which generally authorize an agency to make decisions provided it observes such procedures. Accordingly, the "opportunity to show the contrary" mentioned in this provision must mean something less than the otherwise applicable scope of rights to cross-examine witnesses and present testimony.

This provision must also be read in the light of four other factors.

First, the rules of "judicial notice" in court proceedings, on which the APA provision was modelled in part, provided a considerable degree of latitute for taking "official notice." Rule 201 of the Federal Rules of Evidence, which now governs the matter, only provides for judicial notice of "adjudicative facts." The reason, stated in the Advisory Committee's Note, is that courts may take notice of "legislative" facts—those relevant to general policy decisions—without affording parties any rebuttal opportunities at all of the sort Rule 201 provides. See K. Davis, Administrative Law of the Seventies, sec. 15.00–1 (1976).

Second, the definition of a fact as "legislative"—the type that may be noticed without process under the Rule 201 test—is not static, but varies with the nature of the proceeding. "Legislative" facts are supposed to be those that help tribunals decide questions of law or policy or discretion; it follows that the more heavily a decision involves these elements, the more each of the facts that goes into making it is likely to be classified as "legislative." Indeed, Professor Davis has recently stated that *all* facts in a notice-and-comment rulemaking are legislative by definition because the main purpose of such a proceeding is to determine the content of law or policy. See 2 K. Davis, Administrative Law Treatise, sec. 6.17 at 529 (2d. ed. 1978). This approach would support classification of the great majority of facts in a cancellation proceeding as "legislative".

Third, even within the sphere of "adjudicative" facts subject to the rebuttal requirements of the official notice rule, agencies probably have greater power to take official notice than do courts. Even formal administrative proceedings, after all, are meant to be less rigid than court proceedings, while agencies are created in large measure to be storehouses of information and to apply it in an expeditious and flexible manner to proceedings before them. According to the Attorney General's Manual on the Administrative Procedure Act (pp. 79–80), Congress in the APA meant to adopt the 1941 recommendations of the Attorney General's Committee on Administrative Procedure and allow agencies to take official notice of "all matters as to which the agency by reason of its function is presumed to be expert, such as technical or scientific facts within its specialized knowledge." See the Final Report of the Attorney General's Committee Administrative Procedure pp. 71–73 (1941).

Agency official notice rules since then have often provided for taking official notice of such specialized matters, and this result has been endorsed by such commentators as Professor Davis and Professor Nathanson. See K. Davis, Administrative Law of the Seventies sec. 15.00–7 (1976); Nathanson, *Probing the Mind of the Administrator: Hearing Variations and Standards of Judicial Review under the Administrative Procedure Act and Other Federal Statutes*, 75 Colum. L. Rev. 721, 738, 761 (1975).

Finally, as noted above, the agency and the Presiding Officer have inherent power, through evidentiary rulings and pretrial conferences, to structure the course of a proceeding quite apart from any "official notice" rule so as to generate a good record at the least procedural cost, and this concern is underlined in the case of FIFRA by the fact that a stage of informal review precedes the hearing in FIFRA cases.

Each of these four principles could probably be pushed to the point where it gave results contrary to the basic purpose of Congress in enacting FIFRA. But EPA believes that they can also each be applied in a way that furthers both that intent, and decisionmaking procedures under which issues are resolved by the most appropriate methods, without resort to highly formal methods of generating a record except where those methods are necessary.

EPA therefore proposes to apply these principles by requiring each person seeking further proceedings in the form of introducing additional evidence, cross-examination, or referral of an issue to the National Academy of Sciences, to show that the factual questions concerned are not ones of which official notice can be taken. The regulations provide a full opportunity to document any such showing.

The Presiding Officer (on the panel) will then rule on the request. "Official notice" will be taken of those matters, and only those matters, which the panel members, on review of the administrative record, conclude already have been established one way or another by that record and are not legitimately in dispute.

Under this approach the "opportunity to show the contrary" provided by the statute would be furnished both before and after official notice was proposed to be taken. It would be furnished before that tentative decision during the various stages of the RPAR process, and after it through the opportunity to comment on and contest the tentative

conclusions of the Presiding Officer or the panel before they become final.

"Offical notice" as the term is used here, becomes in effect a synthetic concept drawn from several different fields of administrative law. It is a principle which could be justified either as "official notice" under 5 U.S.C. sec. 556(e), on the basis that the facts at issue were "legislative", as part of the general authority of the agency to structure a hearing, or as an implementation of the special characteristics of FIFRA. Under each approach, however, EPA's intention would be the same—to set for hearing only those factual issues which seem open to decisionally significantly elucidation through the type of formal proceeding requested.

EPA anticipates that under this approach, requests for cross-examination will be granted far more readily than requests to introduce additional evidence or refer matters to the NAS. Cross-examination is, after all, the procedure for which formal hearings are particularly well adapted, while there is no reason why the other two procedures could not be performed just as well in the RPAR process.

Even where cross-examination is involved, however, it is very possible that in many cases requests for further proceedings may be denied. Courts have increasingly expressed skepticism as to whether cross-examination is the best methods of establishing the facts where scientific or technical questions are involved, or where large numbers of economic factors must be weighed, and many law review articles have seconded these conclusions. Pesticides cancellation hearings, of course, can be expected to involve such factors predominantly, and EPA intends to apply the tests for cross-examination in the light of that fact.

C. Secondary Features

The discussion above has outlined the two main purposes of the revisions to Part 164—to splice the RPAR process into the formal hearing procedures and to modernize and streamline the conduct of those hearings.

In addition, several other significant changes have been made in these regulations, which are set out below.

1. *Implementation of Use-Specific and Registration-Specific Cancellation Actions.*—Under FIFRA, pesticide products are registered and regulated on the basis of the uses for which the products are intended, and registration decisions, classification decisions, and cancellation decisions are all taken on the basis of specific uses. This use-specific approach to decisionmaking is embodied in § 3 of FIFRA as well as in the registration and RPAR provisions of Part 162, and reflects the fact that a single registration is comprised of severable, independent components, each relating to a different registered pesticide use. It is the Agency's position that since cancellation and denial decisions focus on specific individual components (uses) of specific registrations, a particular pesticide use of a product or application may be cancelled or denied under section 6 or section 3 of FIFRA without affecting the status of other pesticide uses of the same registered product or application. At the same time, a request for a hearing relating to one pesticide use of a product or application which is proposed to be cancelled or denied has no legal effect with respect to other pesticide uses which are also proposed to be cancelled or denied; the other pesticide uses will be cancelled or denied by operation of law unless a request is received which specifically relates to them.

On a related matter, it is the Agency's general practice to issue a single section 6(b)(1) (or section 3(c)(6)) notice to initiate cancellation (or denial) actions with respect to the affected pesticide uses of *all* pesticide products containing the active ingredient which is under consideration; each such pesticide product is identified in the notice by registration number or application file symbol. It is important to emphasize, however, that despite this consolidation into a single notice, separate cancellation and denial actions are being initiated with respect to the affected pesticide uses of *each* identified registration and application, and all of these cancellation and denial actions are legally independent of one another.

In other words, each affected pesticide use of each registration or application subject to the notice will be separately cancelled or denied by operation of law at the end of a specified 30-day period unless within that period certain actions (such as a request for a hearing) are taken with respect to *that specific* pesticide use of *that specific* registration or application. It is the Agency's position that a request for a hearing relating to a pesticide use of one registration or application will *not* be effective with respect to that same pesticide use of another (unidentified) registration or application, even if it is held by the same registrant or applicant.

Proposed § 164.20 formalizes this use-specific and registration-specific approach to implementation of cancellation and denial actions by requiring each request for a hearing under Section 6(b)(1) or Section 3(c)(6) to specifically identify both the pesticide registration number(s) or the application file symbol(s) *and* the particular pesticide use(s) of the particular registration(s) or application(s) as to which a hearing is being requested. If a particular pesticide use of a particular registration or application is not specified in any request for a hearing, the actions proposed in the notice relating to *that* pesticide use of *that* registration or application will become final and effective at the end of the specified 30-day period, notwithstanding that a hearing might have been requested with respect to other pesticide uses of the same registration or application or with respect to the same pesticide use of other registrations or applications.

These requirements of particularity and specific identification of pesticide uses and of registration numbers or application file symbols apply to *all* requests for hearings, including requests from adversely affected persons other than registrants. Moreover, the regulations explicitly provide that any request for a hearing which fails to specifically identify both a particular pesticide use and a registration number of application file symbol will be denied. The basis of such a denial would be that such a request would lack the requisite particularity under Section 6(b) of FIFRA for preventing specific proposed cancellation or denial actions from taking effect by operation of law.

This requirement does *not* apply, however, to requests to participate in a Section 6(b)(2) hearing under proposed § 164.23. Unlike the cancellation and denial actions proposed in Section 6(b)(1) or Section 3(c)(6) notices—which become final and effective at the end of 30 days unless corrections are made or a hearing is requested—a notice of hearing under Section 6(b)(2) is not a "self-executing" cancellation action. That is, a Section 6(b)(2) notice does nothing more than convey a hearing on certain issues specified by the Administrator; *at the conclusion* of that hearing, a final order of cancellation can be issued for any of the pesticide uses subject to the notice. Because hearing requests under Section 6(b)(2) do not prevent any action from taking effect automatically, there is no need for the hearing request to specify the actions which are stayed by it. Accordingly, identification of specific pesticide uses, including registration numbers or application file symbols, is not required by the proposal for Section 6(b)(2) hearings.

Instead, the proposal requires Section 6(b)(2) hearing requests to contain an exposition of the person's position on the factual, legal, and policy questions which he believes to be involved with respect to *each* of the issues specified by the Administrator in the notice. This requirement should not be construed, however, as allowing persons to expand the scope of the issues to be considered in the hearing beyond those specified by the Administrator. As explained earlier, the proper time to request such an expansion of issues is during the RPAR process—typically, in the comment period following issuance of a Preliminary Notice of Determination. Accordingly, the Agency has determined *not* to provide any mechanisms in Part 164 for motions to enlarge the issues in Section 6(b)(2) hearings beyond those specified by the Administrator in the Section 6(b)(2) notice.

2. *Status of Registered Pesticide Uses Following Issuance of Notice of Intent to Cancel.*—The regulations also set forth the Agency's approach to the issue of the status of registered pesticide uses as to which hearings have been timely and properly requested. It is clear that under Section 6(b) of FIFRA, the proposed cancellation of a particular registered pesticide use of a particular registration shall not become final and effective if a request for a hearing on that pesticide use is timely and properly made by any person adversely affected by the Section 6(b)(1) notice; such pesticide use will be lawfully registered until the conclusion of the hearing. A somewhat unique situation arises, however, when *only* a person *other* than the registrant (such as a user group) requests a hearing with respect to a particular registered pesticide use of a particular registration. This situation is most likely to occur in the case of so-called "minor" uses, where a registrant does not desire to defend its registration for a particular use, but a user group does want to defend it.

If the registrant is willing to market the product for the minor use if it is successfully defended by the user group, it is consistent with the purposes of FIFRA to allow the user group to defend the continued registration of the particular pesticide use in a hearing. On the other hand a registrant may decide that it is no longer interested in maintaining its license for a particular use in effect, and that it affirmatively wishes to relinquish its license for that particular use. There is no provision in FIFRA which requires a registrant to maintain in effect a registration for any particular pesticide use. Indeed, section 6(a)(1) of FIFRA, which provides for routine administrative cancellations after five years, states that only the registrant—or an interested person *with the concurrence of the registrant*—may request that a registration be continued in effect. If the registrant chooses to allow a registration to lapse, a user group is powerless to overrule that decision. Further, even if a registration is effective, the manufacturer has the sole discretion to determine whether or not to manufacture and distribute the product under its license. In light of these factors, it would generally not make any sense for the Agency and user groups to engage in a protracted hearing concerning the continued registration of a pesticide use which the registrant affirmatively wishes to discontinue. The proposed regulations (under Part 162) therefore provide that the registrant may *at any time* petition the Administrator to voluntarily cancel any registered pesticide use of its registration. This provision will apply even if a request for a hearing has been filed in accordance with Part 164 by an adversely affected person other than the registrant.[11] If a petition to voluntarily cancel registration for a pesticide use is accepted in such a situation, no section 6(b) hearing will be held on the pesticide use. See *McGill v. EPA*, 593 F.2d 631 (5th Cir. 1979).

The regulations also deal with the consequences of a request for a hearing in the somewhat more complicated context of a conditional cancellation or a conditional denial. As explained more fully elsewhere in this preamble, the Administrator may decide at the conclusion of an RPAR that a particular pesticide use will meet the requirements of FIFRA only if specific modifications to its terms and conditions of registration (or proposed terms and conditions of registration), as directed by the Administrator, are accomplished. In those situations, the notice which the Administrator would issue under section 6(b)(1) or section 3(c)(6) of FIFRA would provide that a particular pesticide use of a particular registration or application will be cancelled or denied unless the specific modifications to the terms and conditions of registration (or proposed terms and conditions of application) are accomplished.

However, section 6(b) of FIFRA provides that the actions proposed in a section 6(b)(1) notice of intent to cancel shall become final and effective at the end of a specified 30-day period unless *within that time:*

"either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice."

Accordingly, the Agency has determined that the modifications to the terms and conditions of registration (or proposed terms and conditions of registration) prescribed in a conditional cancellation or conditional denial notice must be accomplished *during* the statutory 30-day period. In other words, unless within the 30-day period either the "necessary corrections" (modifications to the terms and conditions of registration) are accomplished *or* a request for a hearing is made by a qualified person, the affected pesticide use of the affected registration or application will be finally cancelled or denied as a matter of law at the expiration of the 30 days.

The proposed regulations also lay to rest several issues which may arise when the Administrator issues conditional cancellation or conditional denial notices. First, a registrant may not itself unilaterally amend the terms and conditions of its registration; it must apply to the Agency for such amendments, and such amendments are not effective unless and until they are approved by the Agency in accordance with the provisions of Part 162. Moreover, the Agency process for consideration and approval of such applications for amended registration may extend well beyond the statutory 30-day period. Accordingly, the Agency has determined that the registrant shall be deemed to have made the "necessary corrections" within the applicable 30-day period, for the purposes of stopping the effectiveness of the proposed cancellation actions, if within that period it submits an application for amended registration which, if granted, would accomplish the specified modifications to the terms and conditions of registration.

The proposal also deals with the situation where the registrant responds to a section 6(b)(1) conditional cancellation notice by submitting the application for amended registration, and another party adversely affected by the notice, such as a user group, requests a hearing.[12] Although section 6(b) contemplates that *either* of these actions will prevent the cancellation

[11] The proposed regulations under Part 162 similarly provide that applicants may at any time petition the Administrator to withdraw an application for registration. The analysis above is equally applicable to that situation, especially since interested persons other than the applicant may request a hearing on a denial under § 3(c)(6) of FIFRA only "with the concurrence of the applicant."

[12] The parallel situation is not likely to occur in the denial context, since only "interested persons *with the concurrence of the applicant*" may request hearings to challenge denial decisions under section 3(c)(6).

action from becoming effective, the statute is silent on the consequences of *both* conditions being satisfied, each by a different party. The fundamental theme of section 6(b)(1) provides the answer to this problem of statutory interpretation. As pointed out earlier, section 6(b)(1) allows the Agency to act without hearings; hearing requests under this section operate to stop actions from taking effect, until the conclusion of a trial to test whether the action proposed is necessary. If a hearing request were submitted by a registrant, the Agency's proposed changes in terms or conditions of registration would not become effective, and a hearing would be held. In the Agency's view, the statute was intended to operate the same way if an adversely affected person other than a registrant requests a hearing, regardless of the action taken by the registrant. The fact that a registrant is willing to go along with the changes has no more bearing on the action *stopping* nature of a third party hearing request than a registrant's silence would have. In either case, the proposed changes in the terms or conditions of registration do not take effect until the conclusion of the hearing, and the proposed regulations so provide.

3. *Timeliness of requests for hearings.*—Proposed section 164.20 provides that the timeliness of requests for hearings by *all* non-registrants and non-applicants in response to Notices of Action (i.e., notices of intent to cancel or change classification and notices of intent to deny registration) will be determined *exclusively* by the date of publication of the notice in the Federal Register. In the case of registrants and applicants *only*, the proposal provides that the timeliness may be determined instead by the date of receipt of the notice when such receipt occurs *after* the publication in the Federal Register. This interpretation of section 6(b) of the Act has been previously upheld by the Administrator in the case of a request for a hearing on the conditional cancellation of the citrus uses of the pesticide chlorobenzilate, and the proposal merely embodies that decision (*Final Decision*, FIFRA Docket Nos. 411, et al., August 20, 1979).

In this regard, prior to 1972 only registrants could request a cancellation hearing. The version of FIFRA then in effect only required that a notice of cancellation be sent to the registrant, and the timeliness of a request for a hearing was determined by the date of service of the notice. In 1972, however, FIFRA was amended to provide in section 6(b) that a notice of intent to cancel "shall be sent to the registrant and made public"; section 6(b) also provides that unless a hearing is requested (or necessary corrections made), the action initiated by a section 6(b)(1) notice "shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of [the notice], whichever occurs later."

Thus, when the 1972 amendments expanded the class of persons who could request a hearing to include non-registrants, they continued in effect the requirement that a notice of intent to cancel be sent directly to a registrant, since the registrant's identity is known to the Administrator. They also provide that the date of *receipt* of the notice (instead of *service* of the notice) would determine the timeliness of a registrant's request for a hearing.

At the same time however, the amendments did *not* require the notice to be sent to non-registrants, since the number and identity of all persons with an interest in the continued registration of a pesticide could not generally be known or readily ascertained by the Administrator. Instead, Congress provided for publication of the section 6(b)(1) notice to inform the general public of the pendency of the cancellation action so that non-registrants who wanted to stop it from taking effect could do so by requesting a hearing.

By providing for publication, Congress achieved two objectives. First, it provided a mechanism for non-registrants to learn of pending cancellations so that they would not have to rely exclusively on communications with informed registrants. Since the very purpose of expanding the class of persons who could request a hearing was to allow non-registrants to defend a registration when the registrant chose not to, the provision for publication facilitated the ability of non-registrants to act independently of registrants. Second, and more significantly, the date of publication of a section 6(b)(1) notice provide a single, neutral, objective benchmark for determining the time that *all* non-registrants are put on constructive notice that a cancellation action is pending and will take effect unless stopped by a request for a hearing.

By including the phrase "whichever occurs later" to qualify the phrase "from receipt by the registrant, or publication," Congress merely intended to extend a grace period to a registrant in circumstances where it receives its copy of the notice prior to the pulication of the notice; it did *not* intend to measure the 30-day period for the entire class of non-registrants from the *latest* date of receipt by some registrant. Accordingly, the proposal provides *all* non-registrants (and non-applicants) 30 days from the date of publication of the Notice of Action within which to request a hearing. The provision for an alternative date for determining timeliness will *only* apply to registrants and applicants who receive their individual copies of the notice after the date of pulication in the Federal Register.

4. *Time Limits for Completing Hearings.*—The Agency believes the current state of affairs—where the cancellation hearings that have been held have typically taken over three years from start to finish—cannot be reconciled with any reasonable concept of administrative procedure.

Deadlines for the completion of these proceedings have been recommended by the National Academy of Sciences. National Academy of Sciences, Decisionmaking for Regulating Chemicals in the Environment, p. 30 (1975).

Accordingly, the regulations contain such a provision. Of course, no such deadline could properly be imposed if it would unduly abridge a person's right to clarify factual issues that were legitimately in controversy. The screening process described above, therefore, is an indispensable complement to any establishment of deadlines, since it aims at making sure that hearing time is used more efficiently than it often has been in the past. If the screening process works as it should, and if presiding officers and participants act in the knowledge that the time available to them is not unlimited, the Agency believes substantial economies in time and effort can be realized without any sacrifice in quality of results.

5. *Judicial Review.*—Section 164.90 provides that decisions concerning a pesticide cancellation made while screening requests for further participation shall be reviewed in the Circuit Court of Appeals as provided in Section 16(b) of FIFRA.

That section provides for Court of Appeals review of "any order issued by the Administrator following a public hearing." Even if this language meant a formal evidentiary public hearing as provided in 5 U.S.C. 554, 556 and 557, the Agency believes that § 164.90 would accurately state the law. The screening of requests for further participation is a means of implementing those statutory provisions for hearings.

However, it is clear that the reference to "public hearing" does not mean such formal adjudicatory hearings exclusively. During the 1975 consideration of FIFRA amendments, various changes to the language quoted

were considered. In the end, the conferees decided to leave the section as it was, and added the following legislative history:

"It is the intent of the conferees, however, that an adequate reviewable record be developed by the Environmental Protection Agency in each of its public hearing although such hearings need not necessarily be adjudicatory in nature." H.R. Rep. No. 94-668, 94th Cong., 1st. Sess. 6 (1975).

The reference to the record here echoes the 1972 Senate Report (p. 13).

The clear implication of this language that Court of Appeals review should follow any hearing at which an adequate record for review is developed also expresses the holding of the only courts to consider the question. *State of Louisiana v. Train*, 392 F. Supp. 564 (W.D. La. 1975), *aff'd*, 514 F.2d 1070 (5th Cir. 1975).

It is the Agency's position that the RPAR process set forth in the proposed revisions to Part 162—with its multiple opportunities for public input and with its requirements of carefully articulated decisions based on specifically identified records—together with the requirements of Part 164 for screening requests for further proceedings, together comprise the requisite "public hearing" for purposes of judicial review.

6. *Presentation of Evidence.*—These rules contain three reforms to the way evidence is presented at a formal adjudicatory public hearing which are designed to promote efficiency and reduce hearing time.

First, the filing of all exhibits, and of substantially all direct testimony by all parties in written form will be required (§ 164.61). In addition, the regulations contemplate that hearings will be divided into distinct stages (for example, a risk stage and a benefits stage) and that the exhibits and testimony relating to each stage will be introduced early in each stage. Use of written direct testimony has been the rule in previous cancellation hearings, and has resulted in substantial time savings. The Agency believes that it has authority to require filing of written direct testimony in cancellation hearings in cases where no showing can be made that elucidation of the issues involved depends on oral presentation. *See* 41 FR 51716-17 (Nov. 23, 1976). The regulations proposed today allow oral direct testimony if such a showing can be made.

Second, these regulations provide, § 164.62, for an initial screening of direct evidence to enforce comformity with the Hearing Order which determines the scope of the hearing. This will ensure that the hearing is run in conformity with the principles laid down for its conduct by the Administrator. At the same time, the Agency recognizes that new evidence may become available after a particular stage of a hearing has been completed (or after the time for filing evidence for a particular stage has expired) that is relevant to the issues involved in the proceeding. Accordingly, the same provision, § 164.62, also provides that such evidence may be admitted at a later stage upon a showing that it could not reasonably have been made available, or its relevance could not reasonably have been foreseen, at an earlier stage.

Finally, some provisions for control of excess cross-examination are made, though in general decisions here are left to the discretion of the Presiding Officer. The Conference Report and Order of the hearing conference will set a detailed schedule for all oral proceedings (§ 164.60), and in drawing it up the Presiding Officer is directed to consider alternatives to oral cross-examination if the issues could be more economically clarified by using them. It should also be noted in this regard that the proposal specifically contemplates that more than one hearing conference will be held. Hearing conferences are valuable opportunities to dispose of procedural and other matters, and both the parties and the Presiding Officer should view the hearing conference as an indispensable tool for expediting the hearing.

The general discovery provisions in the present regulations have been eliminated. This is not intended to result in any lesser degree of disclosure by parties to the hearing. Rather, the obligation to make disclosure has in effect been shifted forward to Part 162 proceedings by § 164.52.

7. *Burden of Proof.*—Section 164.3 restates the accepted view that the ultimate burden of persuasion always rests on the proponent of registration of a pesticide use. (*See*, e.g., *Environmental Defense Fund v. Environmental Protection Agency*, 548 F.2d 998 (1976), cert. denied, 431 U.S. 925 (1977).) It also states that the burden of producing evidence beyond the RPAR record shall be specified by the Presiding Officer. This provision does not rest on any legal conclusion as to where that burden rests in the abstract, which the Agency in any event would find to be of limited usefulness. Rather, it recognizes that the Presiding Officer will be working from the prior administrative record and documents based on it. Against that background, he will be able to discern where the areas of factual dispute lie, and on which party it is most fair to place the burden of clarifying them.

8. *Alternative Forms of Public Hearing.*—Under FIFRA, a person adversely affected by a notice of intent to cancel has the right to request a formal evidentiary public hearing as provided by these regulations. Given the variety of different types of questions and patterns of questions that may arise, however, it may be that all parties will be able to agree that some alternative approach will best fit their needs. Indeed, such alternative forms have been increasingly used under other statutes in recent years, and have been favorably mentioned in various contexts. For example, there has been repeated discussion of proposals for a "science court" which proponents believe could clarify technical issues in a more efficient and less adversarial way by adopting some of the mechanisms of scientific investigation rather than those designed for trial of issues of adjudicatory fact.

Accordingly, § 164.24 has been included to allow the parties to select such an alternative form if they wish, and to provide some guidance as to what the permissible choices are.

The section provides that persons with a right to request a formal hearing under FIFRA may instead elect to have the proceeding conducted under the rules of practice that apply to rulemakings under section 6 of the Toxic Substances Control Act, or in the form of a one-day proceeding before the Administrator personally, or before a panel of mutually acceptable persons not employed by EPA.

The Toxic Substances Control Act, 15 U.S.C. 2601 et seq., allows EPA to regulate problem chemicals other than pesticides. The factural and policy issues raised by these chemicals may often be very similar to those that arise in the pesticide context.[13] Under that statute, decisions involving such chemicals may be taken through "hybrid rulemaking" procedures rather than through a formal hearing.

EPA believes that the TSCA procedures will not result in any sacrifice in quality of decisions as compared to the FIFRA procedures, and are almost certain to be vastly shorter and cheaper than formal hearings. (TSCA section 6 rulemakings to date have averaged less than one year from start to finish, while FIFRA hearings have averaged more than three years.) Accordingly, EPA proposes to allow FIFRA hearings to be governed by these

[13] The similarity between FIFRA and TSCA has been recognized by members of the separate committees concerned with the two statutes. Legislative history of the Toxic Substances Control Act (Committee Print, House Committee on Interstate and Foreign Commerce), pp. 231-233 (1976) (dialogue of Sens. Allen, Talmadge, and Tunney).

procedures if those with a right to request them consent.

The second option—a hearing before the Administrator personally—recognizes that in some cases, predominantly those involving major policy choices, the parties may conclude that an opportunity to address personally the final decisionmaker—the Administrator—is what matters most to them. To date it has not been the practice for the Administrator to even hear oral argument personally in FIFRA proceedings, and, given the press of his other duties, this pattern is certainly understandable. However, if the Administrator knew that by devoting a day to hearing the contentions of the parties in a FIFRA proceeding, he could substantially reduce the burden of formal proceedings that would otherwise have to be borne by other parts of the Agency, the incentive for him to make the time available would obviously be greater. Accordingly, the regulations make this option available also.

The third alternative—a hearing before a panel of mutually acceptable persons—corresponds to the format generally suggested for a "Science Court." These suggestions often assume that the panel members would be scientists expert in the field. Though the EPA proposal is certainly consistent with that approach, it could encompass any panel of mutually acceptable persons, not one consisting of scientists only.

The regulations do not attempt to specify in elaborate detail the procedures for these latter two alternative types of public hearing. By their nature, they are somewhat experimental and the procedures may have to be worked out, at least during the first few tries, on a case-by-case basis. However, the regulations do provide for full publicity to be given in each case to the procedures that have actually been agreed on. This will safeguard the right of the public to know of and participate in alternative hearing forms as it could participate in the traditional form of public hearing.

The regulations also provide that any alternative form of public hearing must be approved by the Administrator.

D. *Suspension Prodecures.*—Section 6(c) of FIFRA allows the Administrator to suspend the registration of a pesticide—that is, to forbid temporarily its distribution, sale and use by abbreviated procedures—where he determines that an "imminent hazard" would result from its use. An "imminent hazard" exists where a pesticide would have unreasonable adverse effects on the environment during the time required for the completion of cancellation proceedings.

The statute makes suspension decisions subject to the same hearing rights as cancellation decisions, except that the time limits are shorter and the Presiding Officer need not be an Administrative Law Judge.

Most provisions of the regulations for suspension proceedings in Subpart C of Part 164 follow the procedures laid down for cancellation proceedings with whatever changes are necessary to accommodate the much tighter timetable and the preliminary nature of the decision.

As one such change, the stage of screening requests for further participation has been eliminated. It would be hard to reconcile such a stage with the very short timetables for decision specified in the statute. In addition, the usefulness of this stage really depends on the whole course of proceedings under Part 162 having been completed, and in many instances of suspension this will not be the case.

In addition, these regulations provide that a panel of agency employees with expert knowledge of or responsibility for the subject area of the proceeding may be named to preside at a suspension hearing either instead of or in cooperation with an Administrative Law Judge. The direct participation of such experts will make it easier for the Agency to assess the evidence and the issues, particularly under time pressure, and should lead to better final decisions through the principle of the division of labor. The Agency believes Congress had the possibility of some such approach in mind when it specified in section 6(c) of FIFRA that the person presiding over a suspension hearing need not be a certified Administrative Law Judge.

E. Implementation of Final Cancellations and Suspensions and Existing Stocks Problems

The proposal includes a provision (§ 164.140) requiring the preparation of a Notification of Cancellation after cancellation actions under section 6(b) have become final, either by operation of law or at the conclusion of hearings under Part 164. This Notification would be sent to all registrants of pesticide uses affected by the final cancellation action, and would be published in the Federal Register.

The Notification of Cancellation is designed to deal with certain "housekeeping" matters. Once a cancellation action has become effective, registrants need to know what actions are required of them in order to bring their pesticide products into compliance with it. For example, registrants need to know such things as whether, how and when they should submit amended product labeling to the Agency, and what practices the Agency will allow (in appropriate circumstances) for modifying the labeling of pesticide products currently in commerce (e.g., whether "stickering" of the labels of such products will be permitted, and whether obliteration of portions of the label will be permitted.) In the past, the Agency generally has sent instructions to registrants on these matters; accordingly, the Notification of Cancellation provision in the proposal in large measure codifies current practice.

The proposal also provides for a similar Notification of Suspension after suspension actions have become final (§ 163.142). With respect to implementation of suspension actions, however, it should be noted that any labeling and other changes required to comply with final suspension orders have validity only for the duration of the cancellation proceedings concerning the pesticide use in question. At the conclusion of cancellation proceedings, the Agency may impose different requirements, or may decide to permit registration for the use to continue without any changes to the terms and conditions of registration which existed at the beginning of the suspension and cancellation proceedings. Because suspension orders are limited in duration and effect, the Agency has always permitted registrants to make changes necessary to comply with suspension orders on an interim basis, and without prejudice to their right to contest the necessity for these changes in cancellation proceedings. This practice will, of course, not change.

The provisions in the proposal regarding existing stocks of products not in compliance with final cancellations or suspensions mark a departure from current Agency practice. In the past, the Agency has resolved in the cancellation or suspension proceedings whether and to what extent to permit the sale and use of existing stocks of pesticide products which do not comply with the cancellation or suspension action. This approach has not worked well, primarily because it is not possible to develop a record concerning the disposition of existing stocks of cancelled or suspended pesticides before it is known what pesticide uses are in fact going to be cancelled or suspended—which, of course, cannot be known until the end of the proceeding. In light of this problem, it is not surprising that the Agency's decisions concerning existing stocks have twice been overturned on appeal,

because the records supporting these orders were wholly inadequate. *Environmental Defense Fund v. Environmental Protection Agency*, 548 F.2d 908 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 925 (1977)); *Environmental Defense Fund v. Environmental Protection Agency*, 510 F.2d 1292 (D.C. Cir. 1975).

For cancellation proceedings, the proposal resolves this problem by providing for a *separate* proceeding, after a cancellation action under Part 164 has become effective, to deal with existing stocks problems (§ 164.141). Under the proposal, the Notification of Cancellation would include a discussion of the legal status of existing stocks of pesticide products which are not in compliance with the final cancellation action, together with the Agency's determination concerning the continued distribution, sale or other movement in commerce, and use, of such existing stocks. The Notification of Cancellation would then inform registrants and other interested persons that if they disagree with the Agency's determination, they may petition the Agency to modify it, and would specify where, how and when such petitions must be filed, and the information which must be included in them. The proposal then requires the Agency to dispose of such existing stocks petitions by promulgating a regulation, after complying with the procedural requirements applicable to rulemaking under FIFRA and the Administrative Procedure Act.[14]

The proposal does not provide for a separate proceeding to deal with existing stocks problems after final suspension orders. There are several reasons for not permitting separate existing stocks proceedings after suspensions. First, a suspension order is of limited duration and effect, and is intended in part to resolve whether existing stocks of products registered for a particular pesticide use should be sold or used while cancellation proceedings are in progress. Second, because suspensions are temporary, and last only until the conclusion of cancellation proceedings, existing stocks questions generally can be deferred until the conclusion of cancellation proceeding. Third, because the question of permission to use existing stocks is so closely intertwined with the merits of a suspension order, any provision allowing petitions to permit use of existing stocks of suspended pesticides would in effect allow petitions to modify the suspension order. The Agency already has procedures for petitions for modification of suspension orders (See 40 CFR Part 164, Subpart D). In the Agency's view, petitions for relief from suspension orders should continue to be governed by those procedures.

V. Questions on Which Comment is Particularly Requested

A. How should cancellation hearings not following an RPAR be handled?

As discussed above, the revised Part 164 procedures proposed today are specifically designed to graft together the increasingly important stage of decisionmaking through informal procedures in the RPAR process and the examination and testing of those decisions in a formal hearing.

EPA anticipates that the great majority of regulatory actions involving pesticides which pose unreasonable adverse effect problems will be made through the RPAR process followed by a hearing opportunity as described above. Under the statute, however, there are two major types of actions which may lead to a formal hearing and yet which may not or will not have been preceded by the full range of RPAR procedures. These are discussed below.

1. Cancellation in Connection With Suspension.—Suspension of the registration of a pesticide use, as explained above, is a preliminary remedy similar to a preliminary injunction. It is designed to be invoked rapidly when new information or new interpretations of old information, raises serious concerns about registrability of a pesticide use. Because of the nature of the procedure, it is quite likely that, if invoked, it will be invoked rapidly, and quite possibly before an RPAR proceeding concerning the pesticide use at issue has been completed. Yet the statute also provides that the Administrator may not issue a suspension order for a pesticide use without at the same time also initiating cancellation proceedings for the pesticide use at issue. The question then arises how to conduct a cancellation hearing on that pesticide use if one is requested.

Several possible solutions to this problem are suggested by past Agency practice. The first is to stay any hearing on the cancellation action until after final agency action on the suspension. (See e.g., the Agency's cancellation hearings on heptachlor/chlordane (FIFRA Docket Nos. 336 et al.) and aldrin/dieldrin (FIFRA Docket Nos. 145 et al.)) Without such a stay, the Agency would be conducting two hearings on closely related issues simultaneously, with all the duplication of effort that would require from all parties.

The second is to stay the cancellation hearing until the suspension hearing is over and then to automatically introduce the record of the suspension proceeding into evidence in the cancellation hearing. (See, e.g., the Agency cancellation hearing on heptachlor/chlordane (FIFRA Docket Nos. 336 et al.)) Such an approach provides the cancellation proceeding with a running start on at least some of the issues it will have to face. Indeed, the case for automatic introduction of the suspension record is stronger than the case, discussed above, for automatic introduction of the administrative record. Introducing the suspension record serves the same purposes as introducing the administrative record, while the suspension record has also been subject to examination in a prior evidentiary hearing.

The third possibility is to stay cancellation hearings when a notice of cancellation is issued in connection with a suspension, pending completion of RPAR proceedings on the use in question. Such RPAR proceedings would serve a purpose analogous to discovery in civil litigation. At the conclusion of the RPAR proceeding, the Administrator could (if appropriate) narrow or broaden the scope of the cancellation proceeding. This approach has been used by the Agency already in connection with its suspension of some uses of the pesticide DBCP (42 FR 57545, November 3, 1977). It proved acceptable to all sides, and allowed the issues involved in cancellation to be addressed in the flexible, informal RPAR setting before moving on to the rigidity and expense of formal proceedings.

The Agency recognizes that there are a number of alternatives available in connection with the second and the third possible solution. One would be to start the cancellation hearing at any time after the final suspension decision, without waiting for any RPAR or RPAR-type proceedings, but to retain the formal screening of issues before any new presentation of evidence or cross-examination. The screening could proceed on the basis of the suspension record, plus the submissions of the parties.

Another would be to start the hearing, once again, any time after suspension proceedings were over, but to move directly to the hearing conference, and to provide for screeing of issues in a

[14] FIFRA does not impose any procedural requirements governing the disposition of petitions to allow sale or use of cancelled or suspended pesticides. See FIFRA, §§ 6(a)(1), 15(b)(2). Accordingly, the procedural requirements applicable to existing stocks matters are those in the Administrative Procedure Act ("APA"). In the Agency's view, these matters are rulemaking matters within the purview of § 4 of the APA [5 U.S.C. § 553 (1976 edition)].

somewhat less structured fashion at the discretion of the Presiding Officer.

The Agency specifically invites comments on the approaches to this problem discussed above, and on any other approaches that might be utilized.

On a related matter, the Agency also solicits comments on the issue of whether a suspension order may be supported by a notice under section 6(b)(2) of the Act. Although section 6(c)(1) read literally requires the Administrator to issue a notice under section 6(b)(1) in order to support a suspension order, it is clear that Congress' concern in enacting section 6(c)(1) was only that proceedings which could result in cancellation of a pesticide use be initiated or in progress before that pesticide use was suspended (because suspension was only intended as an interim remedy *pending* such cancellation proceedings). See S. Rep. No. 92-838 (SUPPLEMENTAL REPORT), 92d Cong., 2d Sess. 47 (1972); S. Rep. No. 92-1540, 92d Cong., 2d Sess. 32 (1972). Since a hearing under section 6(b)(2) is a cancellation hearing in the fullest sense, and since it may culminate in an order of conditional or unconditional cancellation of any pesticide use subject to it, the Agency believes that such a hearing may serve as the predicate for issuance of a suspension order. Accordingly, the Agency specifically invites comments on this question.

2. *Cancellation Without Weighing of Risks and Benefits.*—Both cancellation or denial following RPAR, and cancellation in connection with suspension under the statute, must be based on a weighing of the risks of pesticide uses against their benefits, and on a final judgment by the Administrator as to whether the risks of each pesticide use at issue in the proceeding are unreasonable.

The statute also provides for cancellation or denial of registration on other grounds. Specifically, it allows cancellation under section 6(e) for failure to comply with the conditions on which conditional registration was granted under section 3(c)(7), cancellation under section 3(c)(1)(D) for failure to comply with the terms of data-sharing requirements, and cancellation under section 6(b) if it appears that a pesticide's labeling or other material required to be submitted does not comply with the provisions of the Act. With respect to denials, the Administrator may deny registration under section 3(c)(6) if the pesticide's composition is not such as to warrant the proposed claims for it (section 3(c)(5)(A)), or if the pesticide's labeling or other material required to be submitted does not comply with the requirements of the Act (section 3(c)(5)(B)). Finally, the Act provides for "suspension" under section 3(c)(2)(B)(iv) for failure to enter into data-sharing arrangements. Unlike suspension under section 6(c), suspension under section 3(c)(2)(B)(iv) is not analogous to a preliminary injunction, and there is no requirement for instituting cancellation proceedings under section 6 in conjunction with suspension proceedings under section 3(c)(2)(B)(iv).

As discussed in detail above, the revisions to the formal hearing rules proposed today are designed to create a unified procedural system under which large, technically complex policy decisions are made in the RPAR process and challenged and refined in formal hearings thereafter. Since the types of cancellation and denial proceedings described above would not follow RPAR proceedings, the rules of practice set out in the proposal would not be appropriate for them.

The Agency specifically solicits comment on the question of what rules should govern these "other" kinds of cancellation proceedings. One proposal which may have merit is to use the consolidated civil penalty regulations which the Agency recently has promulgated for these hearings. [See 45 FR 24360 (April 9, 1980).] The Agency specifically invites comment on the feasibility of this approach. If the Agency decides to adopt that approach, the necessary revisions to the consolidated civil penalty regulations will be promulgated directly without an intervening reproposal.

B. Briefing in Suspension Hearings

Suspension hearings are required by statute to be expedited proceedings, and, as a result, the time available for briefing is extraordinarily short. The Presiding Officer must recommend findings and conclusions to the Administrator within "ten days from the conclusion of the presentation of evidence" and the Administrator then has seven days to render a final order. Parties must await the conclusion of the presentation of evidence before they can prepare final briefs for the Presiding Officer, and must await the Presiding Officer's recommended decision before they can prepare briefs to the Administrator; the briefing schedules which result from this timetable subject the parties to excrutiating time pressures to create briefs which synthesize a highly technical record. Because of the compressed schedules, simultaneous briefing is a necessity, and almost no time is available for reply briefs.

The Agency believes that the past practice of briefing in suspension hearings, which has been continued in the proposal, may unnecessarily subject parties to an overwhelming burden to create a document which may come too late in the process to have any impact at all. Accordingly, we are specifically soliciting comments concerning alternative methods of advocacy in expedited hearings. In particular, we have two ideas under consideration, although we invite commenters to suggest other alternatives.

The first idea would be to eliminate the requirement of final written briefs, and replace it with an oral argument on the record before the Presiding Officer (and then before the Administrator) somewhat akin to the English system of advocacy. This alternative would relieve the parties from the crushing burden of creating extensive written briefs at the conclusion of suspension proceedings. Moreover, an on-the-record colloquy between the Presiding Officer and the parties, or even between the parties themselves, may sharpen the focus of the controversy much more efficiently than written presentations.

The second idea would be to give the Presiding Officer the discretion to require interim briefs at the conclusion of various stages of the hearing. Under this approach, parties would brief the issues involved at each stage as it was completed, so that only the final stage (and the overall decision urged) would require briefing at the "conclusion of the presentation of evidence." This would have the additional beneficial effect of having issues briefed while they are still fresh in everyone's minds, and would provide them to the Presiding Officer *before* he undertakes the arduous task of preparing his final decision covering all stages and all issues involved in the proceeding.

C. Subpart D

This proposal does not affect the existing regulations under Subpart D of Part 164, which govern petitions to reconsider previous cancellation or suspension orders, to allow use of a pesticide at a site and on a pest for which registration has been finally cancelled or suspended. Subpart D provides generally that reconsideration of a previous cancellation or suspension order is warranted only if the applicant presents substantial new evidence which may materially affect the prior order and which was not available to the Administrator at the time of that order, *and* such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension

proceeding prior to the issuance of the final order (40 CFR 164.131).

The Agency believes that Subpart D is based on sound policy considerations, but invites comments on any amendments, revisions, additions or deletions which might be made to those regulations consistent with other changes being proposed today.

D. Discovery

As explained earlier, the proposal eliminates the formal discovery procedures of the present regulations, since the obligation to make disclosure has in effect been shifted to the RPAR process. However, the Agency solicits comments as to whether any provision should be made allowing use of particular discovery devices, or some combination of discovery devices, after the initiation of formal proceedings under Section 6(b). Such comments should contain specific proposals for such discovery and explain why provision for such discovery in the rules of practice would further the Agency's overall procedural reform objectives.

E. Applicability of revised rules to RPAR proceedings and cancellation proceedings currently in progress.

As indicated in Part II above, the Agency currently has a number of RPAR proceedings in progress. In addition, there currently are two cancellation hearings in progress. The Agency solicits comment on whether, to what extent, and under what conditions it should make the revised RPAR rules applicable to ongoing RPAR proceedings and the revised Rules of Practice applicable to ongoing cancellation proceedings.

EPA presently intends to make these rules applicable to all RPAR proceedings in progress on the date the rules become effective, and to any hearings arising out of those RPARs. Those hearings will comprise the vast bulk of the formal proceedings under FIFRA for the next several years, and it would be unacceptably inefficient for the reasons discussed above to conduct them under rules that gave no formal recognition to the role of the RPAR process. Since the RPAR process is already conducted in essential conformity with the proposed requirements, no unfairness will result from such a step, particularly if EPA provides, as it currently intends to, a comment period during which interested persons can point out any inconsistencies between the actual form of an RPAR record and the form it would have under the proposed regulations, and EPA can correct them.

Note.—The Agency has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Orders 11821 and 11949 and OMB Circular A-107

Regulatory Analysis

Executive Order 12044 requires preparation of a Regulatory Analysis for major regulations and standardized development procedures for all significant regulations. In EPA's final report implementing the Order (44 FR 30988) we identified several categories of regulatory actions which we defined as "specialized" and not subject to the uniform procedural requirements. I have determined that this proposal is administrative and procedural in nature and does not significantly alter the stringency, compliance costs, or benefits of the pesticide regulatory program. I have therefore classified this proposal as a "specialized regulation."

Compliance With FIFRA Section 25

As required by FIFRA Section 25, copies of this proposed regulation were provided to the Department of Agriculture ("USDA"), the FIFRA Scientific Advisory Panel ("SAP"), the Committee on Agriculture of the House of Representatives, and the Committee of Agriculture, Nutrition and Forestry of the Senate on May 19, 1980. Notice of transmittal of a copy of this proposed regulation to the USDA was published in the Federal Register, as required by FIFRA Section 25(a)(2)(D). [See 45 FR 38087 (June 6, 1980).] USDA elected not to exercise its right to submit written comments within the prescribed period. However, EPA and USDA will consult informally during the course of this rulemaking proceeding. The SAP elected not to exercise its right to submit written comments during the prescribed period.

This notice of proposed rulemaking is issued under authority of section 25 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136w.

Dated: July 30, 1980.

Douglas M. Costle,

Administrator.

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

(1) It is proposed to revise 40 CFR Part 162 by:

Subpart A—[Amended]

(a) Amending the title of Subpart A to read "Registration and Reregistration Procedures" and by redesignating or deleting the existing sections (and amending the table of sections accordingly) as follows:

Present Section and New Section
162.11(a)(b)—Deleted
162.12—162.11
162.13—162.12
162.14—162.13
162.15—162.14
162.16—162.15
162.17—162.16
162.21—162.17
162.22—162.18
162.23—162.19

(b) Amending § 162.3 to add the following paragraphs (ss), (tt), (uu), (vv), (ww), (xx), and (yy):

§ 162.3 Definitions.

* * * * *

(ss) The term "pesticide use" means a use of a pesticide (described in terms of the target pest, the application site, and other applicable identifying factors) which is included in the labeling of a pesticide product which is registered, or for which an application for registration is pending, and the terms and conditions of registration or the proposed terms and conditions of registration for the use.

(tt) The term "terms and conditions of registration" means the terms and conditions governing lawful sale, distribution and use which were approved in conjunction with registration, including the approved labeling, the use classification, the composition, and the packaging.

(uu) The term "proposed terms and conditions of registration" means the terms and conditions of registration proposed by an applicant for registration in an application for registration.

(vv) The term "RPAR" means rebuttable presumption against registration.

(ww) The term "validated test" means a test conducted and evaluated in a manner consistent with accepted scientific procedures.

(xx) The term "other significant evidence" means evidence that relates to the uses of a pesticide and their adverse risk to man or the environment.

(yy) The term "Scientific Advisory Panel" means the FIFRA Scientific Advisory Panel established by the Administrator pursuant to Section 25(d) of the Act.

(c) Establishing a new Subpart C entitled "Classification of Pesticide Uses" to consist of §§ 162.40 through 162.42, by redesignating existing sections of Part 162 (and changing all references in those sections accordingly) as follows:

Present Section and New Section
162.11(c), (d)—162.40
162.30—162.41
162.31—162.42

The Table of Sections is also proposed to be amended accordingly to add the following:

Subpart C—*Classification of Pesticide Uses*

Sec.
162.40 Use classification criteria.
12.41 Optional procedures for classification of pesticide uses by regulation.
162.42 Pesticide use classification.

Because redesignation of present § 162.11(c) and (d) as new § 162.40 involves extensive renumbering of paragraphs and subparagraphs, the text of new § 162.40 is set out below. *No changes other than changes in the numbering of paragraphs and subparagraphs have been made in these provisions.*

§ 162.40 Use classification criteria.

(a) *Classification criteria for new registrations.* Except as provided in paragraph (d) of this section, a specific use(s) of a pesticide product not previously registered shall be classified for general use if each of the applicable criteria set forth in paragraph (a)(1)(a)(3) of this section is met. Otherwise, the product use(s) shall be classified for restricted use unless a review of the labeling pursuant to paragraph (c) of this section indicates that the product use may be classified for general use or the benefits from unrestricted use of the pesticide outweigh the risks of unrestricted use of the pesticide. Each of the separate criteria as set forth below must be applied for the product use(s) to be classified unless the formulation, packaging, or method of use of the product can reasonably be expected to eliminate the route of exposure. New data submitted to support classification must conform to the specifications of the Registration Guidelines.

(1) *Domestic applications.* A pesticide use(s) intended for domestic application will be a candidate for general use classification if the pesticide formulation:

(i) Has an acute dermal LD_{50} greater than 2,000 mg/kg;

(ii) Has an inhalation LC_{50} greater than 2 mg/liter;

(iii) Causes no corneal opacity, or causes eye irritation reversible within 7 days or less;

(iv) Causes no more than moderate skin irritation within 72 hours;

(v) Has an acute oral LD_{50} greater than 1.5 g/kg for the formulation as diluted for use; and

(vi) Causes, under conditions of label use or widespread and commonly recognized practice of use, only minor or no discernible subacute, chronic, or delayed effects on man or other nontarget organisms from single or multiple exposures to the product ingredient(s), their metabolite(s), or degradation product(s).

(2) *Nondomestic applications.* A pesticide use(s) intended for nondomestic application will be a candidate for general use classification if the pesticide formulation:

(i) Has an acute dermal LD_{50} greater than 200 mg/kg;

(ii) Has an acute dermal LD_{50} greater than 16 g/kg for the formulation as diluted for use as a mist or spray;

(iii) Has an inhalation LD_{50} greater than 0.2 mg/liter;

(iv) Is not corrosive to the eye or causes corneal opacity reversible within 7 days;

(v) Is not corrosive to the skin and causes no more than severe skin irritation within 72 hours; and

(vi) Causes under conditions of label use, or widespread and commonly recognized practice of use, only minor or no discernible subacute, chronic, or delayed toxic effects on man or other nontarget organisms, from single or multiple exposures to the product ingredient(s), their metabolite(s), or degradation product(s).

(3) *Outdoor applications.* A pesticide use(s) intended for outdoor application will be a candidate for general use classification if it meets the applicable set of criteria set forth immediately above for either domestic or nondomestic application, as appropriate, and if the pesticide:

(i) Occurs as a residue immediately following application in or on the feed of a mammalian species representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels less than ⅕ the acute LD_{50} measured in mammalian test animals as specified in the Registration Guidelines.

(ii) Occurs as a residue immediately following application in or on the feed of an avian species representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels less than ⅕ the subacute dietary LC_{50} measured in avian test animals as specified in the Registration Guidelines.

(iii) Results in a maximum calculated concentration following direct application to a 6-inch layer of water less than 1/10 the acute LC_{50} for aquatic organisms representative of the organisms likely to be exposed as measured in test animals as specified in the Registration Guidelines.

(iv) The pesticide causes, under conditions of label use, or widespread and commonly recognized practice of use, only minor or no discernible adverse effects on the physiology, growth, population levels, or reproduction rates of nontarget organisms, resulting from exposure to the product ingredients, their metabolites, or degradation products, whether due to direct application or otherwise resulting from application, such as through volatilization, drift, leaching or lateral movement in soil.

(b) *Classification criteria for previously registered products.* All pesticide products registered by this agency prior to October 21, 1974 have been assigned a Toxicity Category [see § 162.10(h)(1)]. Unless the applicant for reregistration submits or has submitted the toxicity data on the product use(s) required in paragraph (a) of this section, the existing Toxicity Category determinations shall be used to establish whether the pesticide use(s) is a candidate for general or restricted use classification. Except as provided in paragraph (d) of this section, specific use(s) of a product shall be classified for general use if the applicable criteria set forth in paragraph (b)(1)-(b)(3) of this section are met. Otherwise, the product use shall be classified for restricted use unless a review of the labeling pursuant to paragraph (c) of this section indicates that the use may be classified for general use or the benefits from unrestricted use of the pesticide outweigh the risks of unrestricted use of the pesticide. Each of the separate criteria as set forth below must be applied for the product use(s) to be classified unless the formulation, packaging, or method of use of the product can reasonably be expected to eliminate the route of exposure.

(1) *Domestic applications.* A pesticide use(s) intended for domestic application shall be a candidate for general use classification if the pesticide formulation:

(i) Does not meet the criteria of Toxicity Category I or II; and

(ii) Causes, under conditions of label use, or widespread and commonly recognized practice of use, minor or no discernible subacute, chronic, or delayed effects on man or other nontarget organisms from single or multiple exposures to the product ingredients, their metabolites, or degradation products.

(2) *Nondomestic applications.* A pesticide use(s) intended for nondomestic application shall be a

candidate for general use classification if the pesticide formulation:

(i) Does not meet the criteria of Toxicity Category I; and

(ii) Causes, under conditions of label use, or widespread and commonly recognized practice of use, only minor or no discernible subacute, chronic, or delayed toxic effects on man or other nontarget organisms from single or multiple exposures to the product ingredients, their metabolites, or degradation products.

(3) *Outdoor applications.* A pesticide use(s) intended for outdoor application will be a candidate for general use classification if it meets the applicable set of criteria set forth immediately above for either domestic or nondomestic application as appropriate, and if the pesticide:

(i) Occurs as a residue immediately following application in or on the feed of a mammalian species representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels less than ⅕ the acute oral LD_{50} measured in mammalian test animals as specified in the Registration Guidelines.

(ii) Occurs as a residue immediately following application in or on the feed of an avian species representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels less than ⅕ the subacute dietary LC_{50} measured in avian test animals as specified in the Registration Guidelines.

(iii) Results in a maximum calculated concentration following direct application to a 6-inch layer of water less than 1/10 the acute LC_{50} for aquatic organisms representative of the organisms likely to be exposed as measured in test animals as specified in the Registration Guidelines.

(iv) The pesticide causes, under conditions of label use, or widespread and commonly recognized practice of use, only minor or no discernible adverse effects on the physiology, growth, population levels, or reproduction rates of nontarget organisms, resulting from exposure to the product ingredients, their metabolites, or degradation products, whether due to direct application or otherwise resulting from the application, such as through volatilization, drift, leaching or lateral movement in soil.

(c) *Adequacy of label and labeling.* The directions, warnings, and cautions for any product use(s) not meeting the criteria set forth in paragraphs (a) and (b) of this section shall be further evaluated according to the criteria set forth below to determine the adequacy of the label or labeling to prevent unreasonable adverse effects on man or the environment. If these criteria are met, the labeling for the affected uses will be considered adequate to prevent unreasonable adverse effects on the environment without further regulatory restrictions, and the affected uses will be classified for general use. The criteria for evaluating labeling adequacy are as follows:

(1) To follow label directions, the user of a pesticide product would not have to perform complex operations or procedures requiring specialized training and/or experience;

(2) Failure to follow the use directions in any minor way would result in minor or no discernible adverse effects;

(3) Widespread and commonly recognized practices of use would not nullify label directions relative to prevention of unreasonable adverse effects on man and the environment;

(4) The directions do not call for specialized apparatus, protective equipment or material unless they would be expected to be available to the general public;

(5) Following directions for use would result in only minor or no discernible adverse effects of a delayed or indirect nature, such as through bioaccumulation, persistence, or pesticide movement from the original application site, on nontarget organisms.

(d) *Other Hazards.* Any product use(s) which meets the general use criteria of paragraph (a), (b), or (c) of this section shall nonetheless be classified for restricted use if the Agency determines that based on human toxicological data (including epideminological studies), use history, accident data, monitoring data, or such other evidence as the Administrator identifies the product use(s) may pose a serious hazard to man or the environment which can reasonably be prevented by classification for restricted use.

(e) *Other regulatory restrictions.* Any product use(s) classified for restricted use under the provisions above may be limited to use by or under the direct supervision of a certified applicator. The Administrator may additionally or alternatively impose other restrictions by regulation. Such regulatory restrictions may include, but not limited to, seasonal or regional limitations, limitation of use to approved pest management programs, or a requirement for monitoring or residue levels after use, and may be utilized to reduce human health and environmental hazards associated with persistent, bioaccumulative, or mobile, or highly toxic pesticides. Any such regulation shall be reviewable in the appropriate Court of Appeals upon petition of a person adversely affected filed within 60 days of the publication of such regulation in final form.

(f) *Change in classification from general to restricted use.* (1) *Determination and notification.* If the Administrator determines that a change in classification of any pesticide product use(s) from general to restricted use in necessary to prevent unreasonable adverse effects on man or the environment he shall, be certified mail, notify the registrant of such pesticide of such determination at least 30 days before reclassifying, and shall publish notice of the proposed reclassification in the Federal Register.

(2) *Appeal rights.* Within 30 days following publication of the notice in the Federal Register, the registrant or a person adversely affected by the notice may request a hearing as provided for in section 6(b) of the Act and Part 164 of these regulations.

(d) Establishing a new Subpart B entitled "Rules Governing Rebuttable Presumption Against Registration (RPAR) Proceedings" consisting of §§ 162.20 through 162.34 to read as follows:

Subpart B—Rules Governing Rebuttable Presumption Against Registration (RPAR) Proceedings

Sec.
162.20 Overview; alternate procedures.
162.21 Rebutable presumption against registration; criteria for issuance.
162.22 Preliminary notification to registrant(s) and applicant(s) for registration.
162.23 Notice of rebuttable presumption against registration.
162.24 Supplemental notice of RPAR.
162.25 Criteria for rebuttal of an RPAR.
162.26 Agency action if an RPAR is not rebutted.
162.27 Informal public hearings.
162.28 Preliminary notice of determination.
162.29 Alternative procedure for issuance of preliminary notice of determination.
162.30 Review of preliminary notice of determination; deadlines for comments.
162.31 Final notice of determination.
162.32 Voluntary cancellation and withdrawal of application.
162.33 General standards for documents in RPAR proceedings.
162.34 Administrative records.

Authority: Section 25 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136w.

Subpart B—Rules Governing Rebuttable Presumption Against Registration (RPAR) Proceedings

§ 162.20 Overview; alternate procedures.

This Subpart sets forth substantive standards and procedures for the

Rebuttable Presumption Against Registration ("RPAR") process. These procedures are the ones which the Agency generally will utilize in determining whether to cancel or deny registration for a pesticide use on the basis that the pesticide use causes unreasonable adverse effects on the environment. The Agency expressly reserves authority in particular cases to modify these procedures or utilize other procedures (including initiation or cancellation or denial proceedings without prior resort to the RPAR process), if it determines that modified procedures or other procedures are in the public interest.

§ 162.21 Rebuttable presumption against registration; criteria for issuance.

(a) An RPAR with respect to a pesticide use shall arise upon a determination by the Administrator that:

(1) A pesticide ingredient, metabolite or degradation product meets any risk criterion set out in paragraph (b) of this section, as indicated by (i) validated test(s) or (ii) other significant evidence; or

(2) A pesticide ingredient, metabolite or degradation product otherwise appears to pose a risk to man or the environment of sufficient magnitude, as indicated by (i) validated test(s) or (ii) other significant evidence, to require the Agency to make specific findings that the use offers offsetting social, economic or environmental benefits.

(b) *Risk criteria. (1) Acute toxicity. (i) Hazard to humans and domestic animals.* (A) Has an acute dermal LD_{50} of 40 mg/kg or less as formulated;

(B) Has an acute dermal LD_{50} of 6 g/kg or less as diluted for use in the form of a mist or spray; or

(C) Has an inhalation LC_{50} of 0.04 mg/liter or less as formulated.

(ii) *Hazard to wildlife.* (A) Occurs as a residue immediately following application in or on the feed of a mammalian species representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels equal to or greater than the acute oral LD_{50} measured in mammalian test animals as specified in the Registration Guidelines.

(B) Occurs as a residue immediately following application in or on avian feed of an avian species, representative of the species likely to be explosed to such feed in amounts equivalent to the average daily intake of such representative species, at levels equal to or greater than the subacute dietary LC_{50} measured in avian test animals as specified in the Registration Guidelines.

(C) Results in a maximum calculated concentration following direct application to a 6-inch layer of water more than ½ the acute LC_{50} for aquatic organisms representative of the organisms likely to be exposed as measured on test animals specified in the Registration Guidelines.

(2) *Chronic toxicity.* (i) Induces oncogenic effects in experimental mammalian species or in man as a result or oral, inhalation or dermal exposure; or induces mutagenic effects, as determined by multitest evidence.

(ii) Produces any other chronic or delayed toxic effect in test animals at any dosage up to a level, as determined by the Administrator, which is substantially higher than that to which humans can reasonably be anticipated to be exposed, taking into account ample margins of safety; or

(iii) Can reasonably be anticipated to result in significant local, regional, or national population reductions in nontarget organisms, or fatality to members of endangered species.

(3) *Lack of Emergency Treatments.* Has no known antidotal, palliative, or first aid treatments for amelioration of toxic effects in man resulting form a single exposure.

§ 162.22 Preliminary notification to registrant(s) and applicant(s) for registration.

(a) If it appears to the Administrator that an RPAR may have arisen with respect to a pesticide use, he shall notify the registrant(s) or applicant(s) in writing of the general nature of his concerns and the bases for them, and shall offer them an opportunity to respond. The time limit for submitting a response shall generally not exceed ninety (90) days.

(b) The Administrator shall consider any information submitted in response to a notification under this section in determining whether to issue a Notice of Rebuttable Presumption Against Registration under § 162.23, or a Preliminary Notice of Determination under § 162.28, as appropriate.

§ 162.23 Notice of rebuttable presumption against registration.

(a) Except as provided in § 162.29, the Administrator shall announce his determination that an RPAR has arisen with respect to a pesticide use in a Notice of Rebuttable Presumption Against Registration ("Notice of RPAR"). The Notice of RPAR shall be published in the Federal Register, and sent by certified mail to each registrant and applicant for registration of the pesticide use or uses subject to the Notice of RPAR.

(b) The Notice of RPAR shall include the following:

(1) Identification of the pesticide use or uses as to which an RPAR has arisen;

(2) For each pesticide use, identification of each risk criterion which has been met;

(3) With respect to each risk criterion which has been met, a discussion which satisfies the requirements of § 162.33 of the Agency's reasons for so concluding;

(4) The name, address and telephone number of the Project Manager or other person within the Agency who should be contacted for information concerning the RPAR;

(5) The location of the administrative records for the RPAR proceedings (see § 162.34) and the times during which the administrative records will be available for inspection and copying;

(6) An invitation to all registrants and applicants for registration of pesticide uses subject to a Notice of RPAR, and all other interested persons, to submit information relevant to determining whether any rebuttal criterion in § 162.25 has been satisfied;

(7) A statement that proponents of registration of pesticide uses subject to a Notice of RPAR have an affirmative burden of proving that one or more of the rebuttal criteria have been satisfied, and that failure to satisfy this burden will result in initiation of proceedings to cancel or deny registration, or modify the terms and conditions of registration or proposed terms and conditions of registration, as appropriate;

(8) The deadline for submission of rebuttal information and the date on which the Agency contemplates that it will announce its preliminary deteminations by issuance of a Preliminary Notice of Determination under § 162.28. In selecting these dates, the Agency shall take into consideration the facts unique to each RPAR proceeding which are relevent to scheduling, including the number and complexity of the issues which must be addressed, and the extent to which expeditious conclusion of the RPAR proceeding is in the public interest.

§ 162.24 Supplemental notice of RPAR.

(a) Subject to paragraph (b), if the Administrator determines that an additional risk criterion has been met for a pesticide use after the publication of a Notice of RPAR with respect to that pesticide use, he shall prepare a Supplemental Notice of RPAR with respect to the additional risk criterion. The Supplemental Notice of RPAR shall contain the information specified in § 162.23, and shall be published and distributed as provided in § 162.23. The Administrator shall afford registrants,

applicants for registration and other interested persons sufficient time to submit information in rebuttal of the additional risk criterion.

(b) If the Administrator determines that an additional risk criterion has been met for a pesticide use after publication of Notice of RPAR with respect to that pesticide use, he may elect not to publish a Supplemental Notice of RPAR if he determines it is in the public interest not to do so. In such situations, the Administrator shall address the additional risk criterion in the Preliminay Notice of Determination, and make such determinations as are appropriate based upon information which is available to the Agency. The Administrator shall afford registrants, applicants for registration and other interested risk criterion addressed in this fashion, by providing additional time for comment on the Preliminary Notice of Determination.

§ 162.25 Criteria for rebuttal of an RPAR.

(a) *Registered pesticide uses.* Registrants and other interested persons may rebut an RPAR with respect to a registered pesticide use by sustaining the affirmative burden of proving that one of the following rebuttal criteria has been satisfed for each risk criterion which has been met by the pesticide use:

(1) The determination by the Agency that the pesticide use meets the risk criterion was in error.

(2) When used in accordance with its terms and conditions of registration and with widespread and commonly recognized practice, the pesticide use will not pose any significant risk to man or to any plant or animal species of concern with respect to any adverse effect caused by the pesticide ingredient, degradation product or metabolite, taking into account:

(i) Exposure to the pesticide ingredient, degradation product or metabolite by all routes of exposure (including exposure resulting from the concentration, persistence or accrual of the pesticide ingredient, degradation product or metabolite in man or the environment);

(ii) The potency of the pesticide ingredient, degradation product or metabolite; and

(iii) All other factors relevant to assessing the risks posed by he pesticide ingredient, degradation product, or metabolite.

(3) The risks posed by the pesticide use are not unreasonable, when used in accordance with its terms and conditions of registration and with widespread and commonly recognized practice, taking into account the economic, social and environmental costs and benefits of the pesticide use. In order to establish that risks are not unreasonable under this paragraph, the registrant or other interested person must prove:

(i) That the benefits of the pesticide use are greater than the risks of the pesticide use; and

(ii) That the risks cannot be reduced, by modifications to the terms and conditions of registration, without costs which are unreasonable in light of the risk reductions which would be achieved.

(b) *Pesticide uses for which applications for registration are pending.* Applicants for registration and other interested persons may rebut an RPAR with respect to a pesticide use for which an application for registration is pending by sustaining the affirmative burden of proving that one of the following rebuttal criteria has been satisfied for each risk criterion which has been met by the pesticide use:

(1) The determination by the Agency that the pesticide use meets the risk criterion was in error.

(2) When used in accordance with its proposed terms and conditions of registration and with widespread and commonly recognized practice, the pesticide use will not pose any significant risk to man or to any plant or animal species of concern with respect to any adverse effect caused by the pesticide ingredient, degradation product or metabolite, taking into account:

(i) Exposure to the pesticide ingredient, degradation product or metabolite by all routes of exposure (including exposure resulting from the concentration, persistence or accrual of the pesticide ingredient, degradation product or metabolite in man or the environment);

(ii) The potency of the pesticide ingredient, degradation product or metabolite; and

(iii) All other factors relevant to assessing the risks posed by the pesticide ingredient, degradation product, or metabolite.

(3) The risks posed by the pesticide use are not unreasonable, when used in accordance with its proposed terms and conditions of registration and with widespread and commonly recognized practice, taking into account the economic, social and environmental costs and benefits of the pesticide use. In order to establish tht risks are not unreasonable under this paragraph, the applicant for registration or other interested person must prove:

(i) That the benefits of the pesticide use are greater than the risks of the pesticide use; and

(ii) That the risks cannot be reduced, by modifications to the proposed terms and conditions of registration, without costs which are unreasonable in light of the risk reductions which would be achieved.

§ 162.26 Agency action if an RPAR is not rebutted.

(a) Subject to paragraphs (b) and (c) of this section, if the Administrator determines that an RPAR with respect to a pesticide use has not been rebutted, he shall take appropriate action to cancel or deny unconditionally the registration of the pesticide use.

(b) If the Administrator determines that an RPAR with respect to a pesticide use has not been rebuted, and also determines that specific modifications to the terms and conditions of registration or proposed terms and conditions of registration of the pesticide use will remedy the unreasonable adverse effect problem posed by the pesticide use, he shall take appropriate action to implement those specific modifications to the terms and conditions of registration or proposed terms and conditions of registration.

(c) If the Administrator determines that an RPAR with respect to a registered pesticide use has not been rebutted, and also determines that there is factual uncertainty regarding any issue under consideration in the RPAR proceedings (including, but not limited to, determinations whether rebuttal criteria have been satisfied or whether modifications to the terms and conditions of registration will remedy an unreasonable adverse effect problem), he shall take appropriate action to initiate cancellation or change in classification proceedings under section 6(b)(2) of the Act, if he finds that:

(1) There is a genuine and substantial factual uncertainty to be resolved;

(2) The factual uncertainty may not properly be resolved on the basis of official notice of matters within the expert knowledge of the Agency;

(3) The factual uncertainty is capable of being resolved or substantially reduced through use of adjudicatory, trial-type proceedings; and

(4) Resolution or reduction of the factual uncertainty would have a significant impact on the final regulatory action taken with respect to the registered pesticide use.

§ 162.27 Informal public hearings.

(a) At any time prior to the issuance of a Preliminary Notice of Determination under § 162.28, the Administrator may

conduct an informal public hearing to gather relevant information or otherwise assist Agency decision-making.

(b) The Administrator shall announce a decision to hold an informal public hearing under this section by publishing a notice in the Federal Register, which shall contain the following information:

(1) The time, date, and place of the hearing;

(2) A brief description of the procedures to be followed in the hearings, including the procedures governed participation in the hearing by registrants, applicants for registration, and other interested persons; and

(3) A statement of the issues to be considered at the hearing.

(c) A verbatim transcript of the hearing shall be prepared, which shall become part of the administrative records under § 162.34.

§ 162.28 Preliminary notice of determination.

(a) The Administrator shall announce his determination whether or not an RPAR has been rebutted in a Preliminary Notice of Determination. The Preliminary Notice of Determination shall be published in the Federal Register and sent by certified mail to each registrant and applicant for registration of the pesticide use or uses subject to the Notice of RPAR.

(b) The Preliminary Notice of Determination shall include the following:

(1) With respect to each risk criterion found to have been met for any pesticide use, a determination whether registrants, applicants for registration or other interested persons have rebutted the RPAR by proving that any of the rebuttal criteria set forth in § 162.25 have been satisfied, accompanied by a discussion which satisfies the requirements of § 162.33 of the reasons for the determination.

(2) With respect to each pesticide use for which a determination is reached that an RPAR has not been rebutted, a clear statement of the regulatory action which the agency intends to initiate with respect to the pesticide use in question under § 162.26, accompanied by a discussion which satisfies the requirements of § 162.33 of the reasons for initiating that regulatory action.

(3) With respect to each registered pesticide use for which the Administrator announces (i) an intention to cancel registration, (ii) an intention to cancel registration unless modifications to the terms and conditions of registration are accomplished in accordance with the directions of the Administrator, (iii) an intention to change the classifications from general use to restricted use, or (iv) an intention to hold a hearing to determine whether or not its registration should be cancelled or its classification changed, an analysis of the impact of the proposed action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

(4) Notification to registrants, applicants for registration and other interested persons:

(i) that the Preliminary Notice of Determination will be referred to the Secretary of Agriculture and the Scientific Advisory Panel for review and comment, in accordance with the Act and these regulations;

(ii) that comments from registrants, applicants for registration and other interested persons may be submitted, provided that they are submitted in accordance with instructions for submission of comments included in the Preliminary Notice of Determination;

(iii) that the Administrator will consider any comments from the Scientific Advisory Panel, the Secretary of Agriculture, or interested members of the public which are submitted in accordance with the requirements of the Act and the instructions of the Administrator, and may change in whole or in part the actions announced in the Preliminary Notice of Determination in response to such comments; and

(iv) that the Administrator will announce his response to such comments in a Final Notice of Determination under § 162.31.

(5) Instructions to registrants, applicants for registration and other interested persons on how to submit comments (including the deadline for submission of comments).

(6) The location of the administrative records (see § 162.34) and the times during which the administrative records will be available for inspection and copying.

(7) The date on which the Agency contemplates it will announce its final determinations by issuance of a Final Notice of Determination under § 162.31. In selecting this date, the Agency shall take into consideration all relevant factors, including the number and complexity of issues to be addressed, and the extent to which expeditious conclusion of the RPAR proceeding is in the public interest.

§ 162.29 Alternative procedure for issuance of preliminary notice of determination.

(a) The Administrator may issue a Preliminary Notice of Determination with respect to a pesticide use, without having first issued a Notice of RPAR, if he determines that:

(1) One or more risk criteria in § 162.21 have been met;

(2) The information upon which to base a Preliminary Notice of Determination is unlikely to be significantly augmented by issuance of a Notice of RPAR because:

(i) The facts relevant to assessing the risks and (when applicable) the benefits of the pesticide use are generally known; and

(ii) The assessment of the risks and (when applicable) the assessment of the benefits of the pesticide use and the balancing of risks and benefits does not require resolution of significant and novel questions of policy; and

(3) It is in the public interest to abbreviate the RPAR process by issuing a Preliminary Notice of Determination without first having issued a Notice of RPAR.

(b) If the Administrator determines to issue a Preliminary Notice of Determination without first having issued a Notice of RPAR, he shall announce his determinations in a Preliminary Notice of Determination, which shall be published in the Federal Register and sent by certified mail to each registrant and applicant for registration of the pesticide use or uses subject to the Preliminary Notice of Determination.

(c) The Preliminary Notice of Determination shall include the following:

(1) For each pesticide use subject to it, the items required to be included in a Notice of RPAR under § 162.23(b)(1)–(5);

(2) For each pesticide use subject to it, the items required to be included in a Preliminary Notice of Determination under § 162.28(b); and

(3) The Administrator's findings under paragraph (a).

§ 162.30 Review of preliminary notice of determination; deadlines for comments.

(a) The Administrator shall refer any Preliminary Notice of Determination to the Secretary of Agriculture and to the Scientific Advisory Panel for review and comment and shall make available to them the Administrative Record for the Preliminary Notice of Determination, and the Working Administrative Record for the Final Notice of Determination (see § 162.34).

(b) The Administrator shall establish deadlines for the submission of comments by the Scientific Advisory Panel and the Secretary of Agriculture which are appropriate under the circumstances. These deadlines shall be later than the deadline for submission of

public comments under paragraph (c), and shall not be less than 30 days from the date of referral of the Preliminary Notice of Determination (unless a shorter deadline has been agreed upon). In establishing appropriate deadlines, the Administrator shall take into account such factors as:

(1) The need for the Sceintific Advisory Panel to schedule a public meeting under the Federal Advisory Committee Act, and to provide reasonable notice of the time of the meeting and the matters to be considered in the meeting; and

(2) The need for ending the RPAR proceedings expeditously.

(c) The Administrator shall establish a deadline for submission of public comments which is appropriate under the circumstances, taking into account such matters as:

(1) Other opportunities for public comment which have been extended;

(2) Whether § 162.24(b) or § 162.29 has been utilized; and

(3) The need for ending the RPAR proceedings expeditiously.

§ 162.31 Final notice of determination.

(a) Subject to paragraph (c), the Administrator shall prepare a Final Notice of Determination after conclusion of the comment periods on a Preliminary Notice of Determination. The Final Notice of Determination shall be published in the Federal Register and sent by certified mail to registrants and applicants for registration of pesticide uses subject to the Preliminary Notice of Determination.

(b) The Final Notice of Determination shall include the following:

(1) For each pesticide use subject to the Preliminary Notice of Determination, the determinations and discussions of reasons required by § 162.28(b)(1) and (2);

(2) Any comments submitted by the Secretary of Agriculture or the Scientific Advisory Panel in accordance with the Act and the instructions of the Administrator, and the responses of the Administrator to these comments;

(3) The reponse of the Administrator to any significant public comments submitted in accordance with the instructions of the Administrator; and

(4) Instructions to registrants, applicants for registration, and other interested persons concerning the procedures which will be used to implement any regulatory action which the Administrator has decided upon, including instructions concerning how to request hearings, if hearings are available as of right under the Act, or have been made available by the Administrator under the Act.

(c) The Administrator shall issue a revised Preliminary Notice of Determination with respect to a pesticide use subject to an RPAR, instead of a Final Notice of Determination, in the following circumstances:

(1) When the Administrator determines to withdraw a preliminary determination under § 162.28(b)(1) that an RPAR has been rebutted under § 162.25(a)(1), (a)(2), (b)(1) or (b)(2), and to substitute a determination that the RPAR has not been rebutted; or

(2) When the Administrator determines to implement a regulatory action different from the regulatory action proposed in the Preliminary Notice of Determination, and the Administrator further determines that the regulatory action in question is not within the range of regulatory options discussed in the Preliminary Notice of Determination, or otherwise placed before the Secretary of Agriculture and the Scientific Advisory Panel.

§ 162.32 Voluntary cancellation and withdrawal of application.

(a) A registrant may at any time petition the Administrator to voluntarily cancel the registration of a pesticide use. If the pesticide use is subject to an RPAR or a cancellation proceeding, or is under consideration for an RPAR or a cancellation proceeding, the Administrator may, in his discretion, either grant or deny the petition for voluntary cancellation of the pesticide use.

(b) In the event that the Administrator grants a petition for voluntary cancellation of a pesticide use, he may permit the sale, distribution or other movement in commerce, and/or the use of pesticide products affected by the cancellation action, to such an extent, under such conditions, and for such uses as he may specify if he determines that such sale, distribution or other movement in commerce, and/or use is not inconsistent with the purposes of the Act, and will not have unreasonable adverse effects on the environment.

(c) An applicant for registration may at any time petition the Administrator to withdraw an application for registration of a pesticide use. If the pesticide use is subject to an RPAR or a denial proceeding, or is under consideration for an RPAR or a denial proceeding, the Administrator may, in his discretion, either grant or deny the petition for withdrawal of the application.

§ 162.33 General standards for documents in RPAR proceedings.

(a) Each Notice of RPAR, Supplemental Notice of RPAR, Preliminary Notice of Determination and Final Notice of Determination shall contain a concise and organized discussion of the relevant and significant issues of fact, law and policy. For each such issue, the discussion shall fully disclose the facts and other matters pertaining to a decision, state how the issue has been decided, and explain the reasons for the decision. Citations to necessary supporting materials shall be provided.

(b) Rebuttals and comments submitted to the Agency in an RPAR proceeding shall be given weight to the extent that they satisfy the general standards of paragraph (a) of this section for RPAR decision documents.

§ 162.34 Administrative records.

(a) *Contents of administrative records.* (1) *Notices of RPAR and supplemental notices of RPAR.* The Administrative Record for a Notice of RPAR and a Supplemental Notice of RPAR shall consist of the following documents:

(i) The Notice of RPAR or Supplemental Notice of RPAR and the documents referred to in that notice;

(ii) Any preliminary notification letter sent to a registrant or applicant for registration under § 162.22, and all documents referred to in the letter;

(iii) Any written response to a preliminary notification letter under § 162.22;

(iv) The transcript of any hearing held under § 162.27; and

(v) Any other document designated by the Administrator.

(2) *Preliminary notices of determination.* The Administrative Record for a Preliminary Notice of Determination shall consist of the following documents:

(i) The Administrative Record for the Notice of RPAR or Supplemental Notice of RPAR, if any;

(ii) The Preliminary Notice of Determination, and the documents referred to in that notice;

(iii) Each written response to the Notice of RPAR or Supplemental Notice of RPAR submitted in accordance with the Act and the instructions of the Administrator;

(iv) The transcript of any hearing held under § 162.27; and

(v) Any other document designated by the Administrator.

(3) *Final notices of determination.* The Administrative Record for a Final Notice of Determination shall consist of the following documents:

(i) The Administrative Record for the Preliminary Notice of Determination;

(ii) The Final Notice of Determination, and the documents referred to in that notice;

(iii) Any written response to the Preliminary Notice of Determination from the Secretary of Agriculture submitted in accordance with the Act and the instructions of the Administrator;

(iv) Any written response to the Preliminary Notice of Determination from the Scientific Advisory Panel submitted in accordance with the Act and the instructions of the Administrator;

(v) The transcript of any meetings of the Scientific Advisory Panel at which the Preliminary Notice of Determination was considered;

(vi) Any other written response to the Preliminary Notice of Determination submitted in accordance with the instructions of the Administrator; and

(vii) Any other document designated by the Administrator.

(b) *Working administrative records for pending decisions.* After issuing a Notice of RPAR, a Supplemental Notice of RPAR, or a Preliminary Notice of Determination, the Administrator shall maintain a Working Administrative Record for the next RPAR decision document. The Working Administrative Record shall consist of the following documents:

(1) Each written response to the preceding RPAR decision document which was submitted in accordance with the Act and the instructions of the Administrator;

(2) The transcript of any hearing held under § 162.27 after the issuance of the preceding RPAR decision document;

(3) Any document designated by the Administrator which was prepared by Agency staff specifically in connection with the next RPAR decision document; and

(4) Any other document designated by the Administrator.

(c) *Access to administrative records and working administrative records.* (1) Subject to paragraph (c)(2), Administrative Records and Working Administrative Records shall be available for public inspection during the normal business hours of the Agency, at a place or places designated by the Administrator.

(2) Information contained in Administrative Records and Working Administrative Records which is a trade secret or otherwise subject to the provisions of § 10 of the Act shall not be disclosed to the public, except in accordance with Section 10 of the Act and the regulations of the Agency implementing that section.

(2) It is proposed to amend 40 CFR Part 164 by revising the Part title and revising Subparts A, B, and C and adding Subpart E to read as follows:

PART 164—RULES OF PRACTICE GOVERNING HEARINGS UNDER SECTION 6 OF THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

Subpart A—General

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164.5 Filing and service of submissions.
164.6 Filing and service by mail.
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164.8 Subpoenas; fees of witnesses.
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Supbart B—Formal Hearings Under Section 6(b) of FIFRA

Requests for a Hearing

164.20 Requests for a formal hearing following a Notice of Action.
164.21 Consequences of failure to identify specific pesticide uses.
164.22 Effect of requests for hearings on the status of registered pesticide uses.
164.23 Requests to participate in a Section 6(b)(2) hearing.
164.24 Requests for alternative form of public hearing.

Commencement of a Formal Evidentiary Public Hearing

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164.31 Transfer of administrative record.
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Subpart C—General Rules of Practice for Expedited Hearings

164.100 Notification.
164.101 Request for expedited hearing.
164.102 Intervention.
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164.105 Beginning of expedited hearing.
164.106 Hearing conferences.
164.107 Direct testimony.
164.108 Availability of record.
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164.111 Emergency order.
164.112 Applicability of other sections.

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Subpart E—Implementation of Final Cancellations and Suspensions; Disposition of Existing Stocks of Cancelled Pesticides

164.140 Notification of Cancellation.
164.141 Petitions concerning existing stocks of pesticides subject to final cancellation action.
164.142 Notification of Suspension.

Appendix A—Memorandum of Understanding

Authority: Section 25 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136w.

Subpart A—General

§ 164.1 Scope and applicability of this part.

Subpart B governs formal evidentiary public hearings under the Federal Insecticide, Fungicide and Rodenticide Act, as amended, arising out of refusals to register, cancellations of registrations, changes in classification, and Section 6(b)(2) hearings, which follow RPAR review under Part 162. It does not govern formal evidentiary public hearings arising out of such actions

which do not follow RPAR review under Part 162, in which cases the applicable procedures shall be specified by the Administrator in the notices initiating such actions. Subpart C governs formal evidentiary public hearings arising out of proposed suspensions of registrations under the Act. Subpart D governs proceedings to consider applications to modify previous cancellation or suspension orders. Subpart E governs proceedings to determine the disposition of existing stocks of pesticide products whose registrations have been unconditionally cancelled or suspended under the Act.

§ 164.2 Definitions.

(a) As used in this Part, the following terms shall have the following meanings:

(1) "Act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

(2) "Administrative record" means the administrative record for a Final Notice of Determination as defined in § 162.34.

(3) "Administrator" means the Administrator of the Environmental Protection Agency, or any officer or employee thereof to whom authority has been delegated to act for the Administrator.

(4) "Adversely affected" means a person with an interest in preventing the implementation of a proposed cancellation or change in classification action on the ground that the action is not necessary to remedy unreasonable adverse effects on the environment.

(5) "Agency" means the Environmental Protection Agency.

(6) "Agency trial staff" means the Agency trial staff designated under § 164.12.

(7) "Conditionally cancel" or "conditionally deny" means to cancel or deny unless specific modifications to the terms and conditions of registration of the proposed terms and conditions of registration are accomplished.

(8) "Hearing Clerk" means the Hearing Clerk, Environmental Protection Agency, Washington, D.C. 20460.

(9) "Judicial officer" means a judicial officer designated as follows:

(i) The Administrator may designate one or more judicial officers, one of whom may be Chief Judicial Officer. As work requires, a judicial officer may be designated to act for purposes of a particular case. All prior designations of judicial officers shall stay in force until further notice.

(ii) A judicial officer shall be a permanent or temporary employee or officer of the Agency who may perform other duties for the Agency. In any case in which he serves as judicial officer, such person shall not have performed investigative or prosecutorial functions for the Agency in that or a factually related case.

(10) "Notice of section 6(b)(2) hearing" means notice of intent to hold a hearing under section 6(b)(2) of the Act to determine whether or not the registration of a pesticide use should be cancelled or its classification changed.

(11) "Notice of Action" means a notice of intent to cancel the registration or to change the classification of a pesticide use or uses, or a notice of intent to deny registration of a pesticide use or uses.

(12) "Party" means a party to a formal evidentiary public hearing under Subpart B or Subpart C.

(13) "Person" means an individual, partnership, association, corporation, state or federal agency, or any organized group or persons whether incorporated or not.

(14) "Pesticide use" means a use of a pesticide (described in terms of the target pest, the application site, and other applicable identifying factors) which is included in the labeling of a pesticide product which is registered, or for which an application for registration is pending, and the terms and conditions of registration or the proposed terms and conditions of registration for the use.

(15) "Presiding Officer" has the meaning in Subpart B given in § 164.40, and the meaning in Subpart C given in § 164.104.

(16) "RPAR" means rebuttable presumption against registration. (See § 162.20 *et seq.*)

(17) "Terms and conditions of registration" means the terms and conditions governing lawful sale, distribution and use which were approved in conjunction with registration, including the approved labeling, the use classification, the composition and the packaging.

(b) Words in the singular form shall be deemed to include the plural, words in the masculine form shall be deemed to include the feminine, and vice versa, as the context may require.

(c) Terms defined in the Act and not explicitly defined herein are used with the meanings given in the Act.

§ 164.3 Burden of proof.

At all stages of proceedings under this Part 164, the ultimate burden of persuasion shall rest with the proponent(s) of registration of a pesticide use. The burden of producing evidence shall be specified in the Conference Report and Order issued under § 164.60.

§ 164.4 Computation of time.

(a) In computing the expiration of any deadline prescribed or allowed by these rules, the day of the act, event, or default from which the deadline begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be included in computing the running of the deadline, except that when the deadline expires on a Saturday, Sunday, or legal holiday, the deadline shall be extended to include the next following business day.

(b) Subject to the limitations of § 164.64, any deadline established by the Presiding Officer in the course of a formal evidentiary public hearing, and deadlines for responses to motions under § 164.7, may be extended by the Presiding Officer on motion for good cause shown, which motion may be made ex parte if made before the expiration of the deadline. Any other deadline established by or under this Part may be extended by the Administrator upon application in writing for good cause shown.

(c) The statutory deadlines established by the Act cannot be extended by the Presiding Office or the Administrator under any circumstances.

§ 164.5 Filing and service of submissions.

(a) All submissions, including pleadings, relating to a formal evidentiary public hearing shall be filed with the Hearing Clerk.

(b) A copy of each such submission other than papers commencing a proceeding shall be served by the person making the submission upon each other active party to the proceeding, and, when appropriate, on parties who have elected limited participation.

(c) Service under this section shall be accomplished by mailing or personal delivery.

(d) All submissions under this section shall be accompanied by a signed certification stating the extent to which the submission has been served on each active party.

(e) Each document filed, other than papers commencing a proceeding, shall contain the FIFRA docket number of the proceeding.

(f) In addition to copies served on all other active parties, each party shall file an original and two copies of all documents with the Hearing Clerk.

(g) Inactive parties need not be served with any documents other than briefs. Parties with limited participation need only be served with documents which relate to the area of their participation.

§ 164.6 Filing and service by mail.

(a) Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other document upon him, and the notice or other document is served upon him by mail, 3 days shall be added to the prescribed period; *provided,* that such additional time after service by mail shall not apply in the case of filing initial requests for hearings, in which cases the date of receipt of the Notice of Action shall be controlling.

(b) If filing is accomplished by mail addressed to the Hearing Clerk, filing shall be deemed timely if the papers are post-marked on the due date; *provided,* that this paragraph shall not apply to filings requesting a formal evidentiary public hearing under § 164.20, filings requesting participation in section 6(b)(2) hearings under § 164.23, filings requesting intervention in hearings under § 164.34, and filings requesting and expedited hearing under § 164.101, which filings shall be timely only if they are received by the Hearing Clerk on or before the due date.

§ 164.7 Motions.

(a) Any party may make a motion to the Presiding Officer with respect to any matter relating to the hearing. All motions shall be in writing except motions made in the course of an oral hearing before the Presiding Officer and ex parte motions for extensions of time under § 164.4.

(b) Within 10 days after service of any such motion, which may be shortened or extended by the Presiding Officer for good cause shown, any party to the hearing may file a response to the motion.

§ 164.8 Subpoenas; fees of witnesses.

(a) In proceedings under Subpart B, the attendance of witnesses or the production of documentary evidence may, by subpoena, be required at any designated place of hearing. Subpoenas may be issued by the Presiding Officer upon his own initiative or upon a showing by a party that the attendance of the witness or the documentary evidence sought for hearing is relevant and material to the issues involved in the hearing. No subpoena shall be issued unless the person to whom it will be directed is first given an opportunity to contest the propriety or scope of the subpoena before the Presiding Officer. The Presiding Officer shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of a witness or the contents of the documents produced.

(b) Subpoenas for the production of documentary evidence, unless issued by the Presiding Officer upon his own initiative, shall be issued only upon a written motion. Such motion shall specify, as exactly as possible, the documents desired.

(c) Subpoenas shall be served as provided by the Federal Rules of Civil Procedure.

(d) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness is summoned.

§ 164.9 Official transcript.

(a) Any oral testimony given at a formal evidentiary public hearing shall be reported verbatim. The Presiding Officer shall make provision for a stenographic record of the testimony and for at least three copies of the transcript.

(b) One copy of such transcript shall be placed on public display in the Office of the Hearing Clerk upon receipt, where it may be reviewed by any interested person.

(c) Any person desiring a copy of the transcript of the testimony taken at the hearing or of any part thereof shall be entitled to the same upon application to the official reporter and payment of the costs thereof.

§ 164.10 Consolidation.

The Chief Administrative Law Judge, by motion or on his own initiative, may consolidate two or more proceedings whenever it appears that this will expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 164.11 Enforcement of Rules of Practice and of proper standards of conduct.

(a) The Presiding Officer may either bar any party from further participation in the hearing, or render a decision against a party on some or all of the issues involved, for:

(1) Failure to file the material required by § 164.61 in the form required by that section; or

(2) Failure to comply with the Conference Report and Order, or with any procedural order made during the hearing.

(b) The Presiding Officer may bar any individual appearing as counsel or in a representative capacity for a party from further participation in the hearing for disrespectful, disorderly or contumacious language or conduct, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct.

(c) Interlocutory review of any decision rendered against a party on the merits under paragraph (a) of this section shall be available within 10 days of the decision. Interlocutory review of a bar on further participation issued under paragraph (b) of this section shall be available only as specified in § 164.67.

§ 164.12 Separation of functions; ex parte communications.

(a) No later than the date of issuance of a Notice of Hearing under § 164.32 or § 164.33, the Administrator shall designate:

(1) The Agency employees who will be available to serve on or assist an advisory panel under § 164.55; and

(2) The Agency employees who will be available to perform investigative or prosecuting functions for the Agency in that hearing. An Agency trial staff shall promptly be designated from among such employees.

(b) No agency employee may be named or serve in both capacities described in paragraphs (a)(1) and (a)(2) of this section.

(c) Upon issuance of a Notice of Hearing, no person designated under paragraph (a)(2) of this section and no subordinate of such a person shall participate or advise in any decision arising out of issuance of that Notice of Hearing except as witness or counsel in public proceedings. all employees of the Agency (including all panel members named under § 164.55) other than persons designated under paragraph (a)(2) of this section, and persons subordinate to persons so designated, shall be available to advise the Administrator on any of his functions relating to the hearing and final decision.

(d) Between the date of issuance of a Notice of Hearing and the date of the Administrator's final decision, communication with respect to the matters involved in the hearing shall be restricted as follows:

(1) No person designated under paragraph (a)(2) of this section, no subordinate of such a person, and no person outside the agency shall have any ex parte communication, orally or in writing, with the Presiding Officer, the Judicial Officer, the Administrator, or any person who may reasonably be expected to advise the Administrator, with respect to the merit of the proceeding. The only such communications with such persons shall be public communication, as witness or counsel, in accordance with the applicable provisions of this Part.

(2) Any written communications in violation of this section shall immediately be filed with the Hearing Clerk and served on the parties, who may then file responses within the time permitted for responses to motions under § 164.7.

(3) Any oral communication in violation of this section shall immediately be recorded in a memorandum and filed with the Hearing Clerk as a part of the hearing record. Any person, including any representative of any party to a hearing, who is involved in any such oral communication shall be made available for formal cross-examination in the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to any such oral communication shall be permitted. Any cross-examination and rebuttal testimony shall be transribed and filed as part of the hearing record.

Subpart B—Formal Hearings Under Section 6(b) of FIFRA Requests for a Hearing

§ 164.20 Requests for a formal hearing following a Notice of Action.

(a) The following persons may request a formal evidentiary public hearing following a Notice of Action issued under Part 162:

(1) In the case of a notice of intent to cancel, the registrant or other person adversely affected by the notice;

(2) In the case of a notice of intent to change classification, the registrant or other interested person with the concurrence of the registrant;

(3) In the case of a notice of intent to deny registration, the applicant or other interested person with the concurrence of the applicant.

(b) Any such request shall be submitted to the Hearing Clerk and shall be deemed timely if it is received on or before the 30th day after publication of the Notice of Action in the Federal Register (or, in the case of a registrant or applicant, the 30th day after receipt of the Notice of Action, if that occurs later).

(c) Such requests shall specifically identify:

(1) The identity and interest of the person requesting the hearing;

(2) The registration number(s) or application file symbol(s) of the pesticide product(s) as to which a hearing is requested; and

(3) Each specific pesticide use of the pesticide product(s) identified under paragraph (c)(2) of this section as to which a hearing is requested. Each such pesticide use must be described in such a manner as to sufficiently identify its characteristics, and to comply with any requirements concerning specification of pesticide uses contained in the Notice of Action.

§ 164.21 Consequences of failure to identify specific pesticide uses.

(a) Any request under § 164.20 which does not specifically identify a registration number or application file symbol and a particular pesticide use (or uses) of each identified registration number or application file symbol shall be denied.

(b) Any pesticide use subject to a Notice of Action which is not specifically identified in one or more timely requests for a hearing under § 164.20 (or as to which an application for amended registration or an amended application for registration is not timely submitted under § 164.22) shall be deemed to have been cancelled or denied or its classification changed by operation of law at the expiration of the applicable statutory 30-day period.

(c) Any cancellation or denial or change in classification of a pesticide use shall not of itself affect the status of other pesticide uses with the same registration number or application file symbol.

§ 164.22 Effect of requests for hearings on the status of registered pesticide uses.

(a) Any registered pesticide use subject to a Notice of Action as to which a timely request for a hearing is filed in accordance with § 164.20 shall remain registered with its existing classification unless the Administrator:

(1) Issues a final order cancelling the registration or changing the classification of such pesticide use pursuant to these Rules, or

(2) Grants a petition for voluntary cancellation of such pesticide use.

(b) The following rules apply to pesticide uses which have been conditionally cancelled (or conditionally denied) in a Notice of Action:

(1) A conditionally cancelled (or conditionally denied) pesticide use shall be deemed to have been cancelled (or denied) by operation of law at the expiration of the applicable statutory 30-day period unless within that time either:

(i) The registrant (or applicant) makes the necessary corrections in accordance with paragraph (b)(2) of this section; or

(ii) A request for a hearing is made in accordance with the requirements of this Part by a person specified in § 164.20(a)(1) (or § 164.20(a)(3)).

(2) The registrant (or applicant) shall be deemed to have made the necessary corrections if it submits an application for amended registration (or an amended application for registration) which if granted would accomplish the modifications to the terms and conditions of registration (or proposed terms and conditions of registration) directed by the Administrator in the Notice of Action.

(3) In the event that the conditions of paragraphs (b)(1)(i) and (b)(1)(ii) of this section are both satisfied, the application for amended registration (or amended application for registration) submitted under paragraph (b)(2) of this section shall not be acted upon until the conclusion of the hearing.

§ 164.23 Requests to participate in a section 6(b)(2) hearing.

(a) Any interested person may request to participate in a section 6(b)(2) hearing.

(b) Any such request shall be submitted to the Hearing Clerk and shall be accepted for filing if it is received on or before the 30th day after the publication of the notice of section 6(b)(2) hearing in the Federal Register.

(c) Such requests shall set forth the identity and interest of the person and, with respect to each issue specified by the Administrator in the notice of section 6(b)(2) hearing, an exposition of the person's position on the factual, legal, and policy questions alleged to be involved, together with a designation of the factual areas to be explored and the hearing time estimated to be necessary for that exploration.

§ 164.24 Requests for alternative form of public hearing.

(a) A person who has the right to request a formal evidentiary public hearing under this Subpart B may waive that opportunity and in lieu thereof request one of the following alternative forms of public hearing:

(1) A hearing before a panel of Agency employees under the same procedures used to implement section 6 of the Toxic Substances Control Act. (These procedures are detailed at 40 CFR Part 750.)

(2) A hearing not to exceed one day in length before the Administrator personally to consider certain designated issues.

(3) A hearing before a panel of non-Agency employees acceptable both to the Agency and to the persons requesting the hearing, using such procedures as the panel may designate.

(b) Any such request shall be:

(1) Submitted in writing to the Hearing Clerk at any time prior to publication of the Scheduling Order under § 164.51, and

(2)(i) In lieu of a request for a formal evidentiary public hearing under this Subpart B; or

(ii) If submitted after or with a request for a formal evidentiary public hearing under this Subpart B, in the form of a waiver of the right to such a hearing conditioned upon acceptance of the request for an alternative form of public hearing. Upon acceptance by the Adminstrator, such a waiver becomes binding and can thereafter be withdrawn only by waiving the right to any form of a hearing unless the Administrator for good cause determines otherwise.

(c) Where more than one person who has the right to request a formal evidentiary public hearing has done so under § 164.20, an alternative form of hearing may be used only if all such persons concur and waive their right to a formal evidentiary public hearing under this Subpart B. It shall not be necessary to obtain the concurrence or waiver of any other person, including persons who have intervened or moved to intervene under § 164.34.

(d) The Administrator shall determine whether an alternative form of public hearing shall be used, and if so, which alternative will be acceptable to him, after considering the requests submitted and the appropriateness of the alternative forms of public hearing for the resolution of the issues raised in the objections. A determination by the Administrator that an alternative form of public hearing is acceptable becomes binding upon him unless for good cause he determines otherwise.

(e) The Administrator shall publish in the Federal Register a Notice of Hearing announcing an alternative form of public hearing under this section, setting forth the following information:

(1) A statement of the provisions of the Notice of Action which are the subject of the alternative form of public hearing;

(2) The time, date, and place of the hearing, or a statement that such information will be published in a subsequent Federal Register notice;

(3) The names of the parties to the alternative form of public hearing;

(4) The time within which requests to intervene must be filed;

(5) A statement that final Agency action with respect to registration for any pesticide use(s) for which an alternative form of public hearing has been granted will be stayed pending the completion of the hearing;

(6) A brief description of the type of hearing granted and the procedures to be followed;—

(7) A statement of the issues to be considered at the alternative form of public hearing. The statement of the issues determines the scope of the public hearing; and

(8) A schedule for the hearing up to and including issuance of the initial decision or a statement that such information will be published in a subsequent Federal Register notice.

(f) Any initial decision issued after a hearing held under this section shall be based on a record which shall consist of:

(1) The adminstrative record;

(2) The request(s) for an alternative form of public hearing submitted under this section and all related documents;

(3) The Federal Register notice under paragraph (e) ruling on such request(s); and

(4) The transcript of the hearing and any exhibits admitted as part of the hearing record.

Commencement of a Formal Evidentiary Public Hearing

§ 164.30 Beginning of a hearing.

A formal evidentiary public hearing begins with the publication of a Notice of Hearing in the Federal Register.

§ 164.31 Transfer of adminstrative record.

Prior to the publication in the Federal Register of any Notice of Hearing under § 164.32 or § 164.33, the administrative record on which that notice was based shall be transferred to the Hearing Clerk. This record shall automatically be entered in evidence at the hearing.

§ 164.32 Notice of Hearing after a Notice of Action.

(a) If one or more hearing requests are received from persons specified in § 164.20(a), the Chief Administrative Law Judge shall issue and publish in the Federal Register a Notice of Hearing.

(b) Any issue as to whether a hearing request was timely or whether it complied with the requirements of § 164.20, shall be decided by the Presiding Officer before he conducts any other proceedings under this Part.

(c) The Notice of Hearing shall contain:

(1) The designation of the Presiding Officer to conduct the hearing or a statement that the Presiding Officer will be designated in a subsequent notice;

(2) The time within which requests to intervene must be filed; and

(3) A statement that no final order will be issued cancelling or denying registration or changing the classification of any pesticide use as to which a formal evidentiary public hearing has been convened until that hearing is concluded (or until a petition for voluntary cancellation or withdrawal of application is granted by the Administrator).

§ 164.33 Notice of Hearing after a notice of section 6(b)(2) hearing.

(a) After the time for requesting participation in a section 6(b)(2) hearing under § 164.23 has expired, the Chief Administrative Law Judge shall issue and publish in the Federal Register a Notice of Hearing.

(b) The Notice of Hearing shall contain:

(1) A reiteration of the issues which the Administrator determined would be explored in the hearing;

(2) A list of each person who responded to the notice of section 6(b)(2) hearing and a statement of his position and interest with respect to each issue under paragraph (b)(1) of this section;

(3) The designation of the Presiding Officer to conduct the hearing or a statement that the Presiding Officer will be designated in a subsequent notice;

(4) The time within which requests to intervene must be filed;

(5) The time within which requests to refer questions to the National Academy of Sciences under § 164.54 must be filed, and a statement that all such requests will be considered by the Presiding Officer rather than by a panel;

(6) A statement that the Notice of Hearing determines the scope of the proceedings and the matters as to which the development of evidence will be permitted;

(7) A statement that at the conclusion of the hearing, the Administrator shall take such action as he may consider justified by the record, including, but not limited to, conditional or unconditional cancellation of the pesticide use(s) subject to the notice of section 6(b)(2) hearing.

§ 164.34 Requests to intervene in a hearing.

(a) Any person may file a motion to intervene in a hearing within 30 days after the Notice of Hearing is published in the Federal Register.

(b) Each such motion shall set forth:

(1) The position and interest of the movant in the proceeding;

(2) A statement of the factual, legal and policy issues to be raised;

(3) Where appropriate, a statement as to why the movant believes that its interest will not be fairly and adequately represented by the existing parties; and

(4) A summary of the evidence to be introduced.

(c) The Presiding Officer shall grant such a motion timely filed, subject to later restriction of participation in the hearing under §§ 164.50 through 164.66, whenever he determines that the movant will substantially assist in the

resolution of the issues described in the Notice of Hearing.

(d) Any motion to intervene filed after 30 days after publication of the Notice of Hearing in the Federal Register shall contain, in addition to the information required by paragraph (b) of this section, a statement of good cause for failure to file earlier. The granting of such motions is discretionary with the Presiding Officer, but only upon a finding that extraordinary circumstances justify the granting of the motion, and only upon the condition that the movant shall be bound by any rules or conditions for the hearing previously specified or agreed upon by the parties to the hearing.

(e) Persons who have been granted intervention in a hearing under this section are parties with the full status of the original parties, except that a determination under § 164.24 to use an alternative form of public hearing may be made without their concurrence or waiver.

(f) Persons who are not parties may file a brief amicus curiae by leave of the Presiding Officer granted on motion. Unless all parties otherwise consent, an amicus curiae shall file its brief within the time allowed the party whose position the brief will support.

§ 164.35 Parties and appearances.

(a) The parties to a formal evidentiary public hearing are the Assistant Administrator for Pesticides and Toxic Substances, represented by Agency trial staff, any person who has properly filed a request for such a hearing under § 164.20, any person who has properly filed a request to participate in such a hearing under § 164.23, and any person who has been granted intervention under § 164.34.

(b) Parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity must file a notice of appearance with the Hearing Clerk and must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

§ 164.36 Active and inactive parties.

(a) Each person requesting a hearing under § 164.20, requesting to participate under § 164.23, or requesting to intervene under § 164.34 shall state in the request whether active, inactive or limited participation status is elected. The Presiding Officer at any time before the issuance of the Conference Report and Order under § 164.60 may afford all parties an opportunity to change status.

(b) Any person who fails to explicitly request active status at any time when a choice of status is required shall be classified as inactive.

(c) An inactive party has the right to file briefs in a proceeding and to appeal any initial decision to the Administrator and any final decision to court. Inactive parties need not be served with any of the evidence or motions in the proceeding.

(d) Parties electing limited participation shall designate the portions of the proceedings in which they intend to actively participate, and need only be served with documents relating to those portions. As to the remaining portions, they shall have the same rights as an inactive party under paragraph (c) of this section.

(e) A party is bound by its choice of inactive status or limited participation unless either:

(1) the Presiding Officer affords all parties an opportunity to change status under paragraph (a) of this section; or

(2) the Presiding Officer upon motion grants the party's application to change status.

Presiding Officer

§ 164.40 Presiding Officer.

A Presiding Officer shall preside over every formal evidentiary public hearing held under this Subpart B. The Presiding Officer shall be an Administrative Law Judge qualified under 5 U.S.C. 3105.

§ 164.41 Commencement of functions.

The functions of the Presiding Officer shall commence upon designation and shall terminate upon the filing of the initial decision under § 164.80.

§ 164.42 Authority of Presiding Officer.

The Presiding Officer shall have the authority and duty to conduct a fair and expeditious hearing and to maintain order. The Presiding Officer shall have all powers necessary to these ends, including but not limited to the power to:

(a) Take any action necessary to carry out his duties under this Part;

(b) Hold conferences to settle or simplify the issues in the hearing or to consider other matters that may facilitate the expeditious disposition of the hearing;

(c) Administer oaths and affirmations;

(d) Issue subpoenas under section 6(d) of the Act;

(e) Regulate the course of the hearing and govern the conduct of participants therein;

(f) Rule on, admit, exclude or limit evidence;

(g) Dispose of procedural requests or similar matters;

(h) Rule on motions for summary decision in accordance with § 164.66;

(i) Make rulings to enforce proper standards of conduct under § 164.11; and

(j) Take any action permitted to the Presiding Officer as authorized by this Subpart B or in conformance with law for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding.

§ 164.43 Disqualification of Presiding Officer.

(a) Any party may, by motion made to the Presiding Officer, request that the Presiding Officer disqualify himself and withdraw from the hearing. The Presiding Officer shall rule upon any such motion and shall promptly certify the motion and his ruling thereon to the Administrator for interlocutory review.

(b) A Presiding Officer shall withdraw from any hearing in which he deems himself disqualified for any reason.

§ 164.44 Unavailability of Presiding Officer.

(a) In the event that the Presiding Officer is unable to act for any reason whatsoever, the powers and duties to be performed by him in connection with any hearing shall be assigned to another Presiding Officer by the Chief Administrative Law Judge. Such substitution shall have no effect on any aspect of the hearing, except as the new Presiding Officer may order under the provisions of this Subpart B.

(b) Any motion predicated upon such substitution shall be made within 10 days thereafter.

Focusing the Issues

§ 164.50 Scheduling Order.

(a) Within 60 days after publication under § 164.32 of a Notice of Hearing after a Notice of Action, the Presiding Officer shall issue a Scheduling Order which shall specify:

(1) The time within which the parties shall submit requests for further proceedings under § 164.51; and

(2) The time for ruling on those requests under § 164.55.

(b) The Presiding Officer in his discretion may receive submissions from the parties and meet with the parties before issuing any Scheduling Order.

§ 164.51 Requests for further proceedings after a Notice of Action.

(a) Within the time specified in the Scheduling Order issued under § 164.50, each party shall submit its request for further proceedings. Each request for further proceedings shall contain:

(1) Specific objections to the Notice of Action, including expositions of the factual, legal and policy questions alleged to be at issue and their relevance to the basic decision to be

made, together with a designation of the factual areas to be explored and the hearing time estimated to be necessary for that exploration;

(2) To the extent the party wishes to introduce additional evidence, a description of the evidence conforming to the standards of § 164.52, together with an explanation of why the substantive standards of that section have been met;

(3) To the extent the party wishes to engage in formal cross-examination, a description of the subjects to be covered conforming to the standards of § 164.53, together with an explanation of why the substantive standards of that section have been met; and

(4) To the extent the party wishes certain questions to be referred to a Committee of the National Academy of Sciences for consideration, a description of the questions conforming to the requirements of § 164.54 together with an explanation of why the substantive standards of that section have been met.

(b) Parties shall have thirty days to comment on each others' request for futher proceedings, and to amend their own requests in light of requests filed by others.

§ 164.52 Standards for introducing additional evidence.

(a) Any request to introduce additional evidence at a hearing shall contain a detailed description of the evidence to be introduced and an explanation of why the standards of paragraph (b) of this section have been met. A copy of any report, article, survey, letter of comment, or other written document which is to be introduced or otherwise relied upon shall be submitted or designated from the administrative record. The request shall specifically indicate whether oral presentation of the material in question is desired.

(b) A request to present additional evidence shall be granted only to the extent that the person who wishes to present it has shown that all of the following are true:

(1) There is a genuine and substantial issue of fact for resolution.

(2) The factual issue is not one which may properly be decided on the basis of official notice of matters within the expert knowledge of the Agency.

(3) The factual issue is capable of being resolved by available and specifically identified reliable evidence. A request will not be granted on the basis of mere allegations or denials or general description of positions and contentions.

(4) Good cause existed for not presenting the material in question to the Agency for inclusion in the administrative record. "Good cause" means either that the material was not available at the stage of the RPAR process at which it should have been presented, or that the material is of such a nature that it can only be presented meaningfully in a trial-type hearing.

(5) The material in question if accepted as valid would be adequate to justify resolution of the factual issue in the way sought by the person. A request will be denied to the extent the Administrator concludes that, even assuming the truth and accuracy of all of the data and information sought to be introduced, they are insufficient to justify the factual determination urged.

(6) Resolution of the factual issue in the way sought by the person is adequate to justify granting some or all of the relief sought by that person. A request will not be granted to the extent the Administrator concludes that his action would be the same even if the factual issue were resolved in the way sought.

§ 164.53 Requests for cross-examination.

(a) Any request to cross-examine at a hearing shall state with particularly the subject(s) to be covered, and shall also contain an explanation of why the standards set forth in paragraph (b) of this section have been met. A request for cross-examination may consist of or contain a request that a sponsoring witness be provided for a portion or portion of the administrative record.

(b) A request for cross-examination shall be granted only to the extent that the person requesting cross-examination shows that each of the following is true:

(1) There is a genuine and substantial issue of fact for resolution. Cross-examination will not be granted on questions of law or policy.

(2) The factual issue is not one which may properly be decided on the basis of official notice of matters within the expert knowledge of the Agency.

(3) The requested cross-examination is likely to result in resolution or substantial clarification of the factual issue. Explanations of why this condition has been met shall state why the examination of the issue in the RPAR process has not provided adequate clarification, why it is likely that the area of uncertainty can be significantly reduced by cross-examination, and why cross-examination is the most efficient method of clarifying the factual issue when compared with other methods such as the submission of additional evidence or informal conferences.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify some or all of the relief sought by the person. Cross-examination will not be granted to the extent that the Administrator concludes that his action would be the same even if the factual issue were resolved in the way sought.

§ 164.54 Requests for referring questions to the National Academy of Sciences.

(a) Any request to refer questions of scientific fact to a Committee of the National Academy of Sciences shall state with particularity the questions to be referred, and shall also contain an explanation of why the standards set forth in paragraph (b) of this section have been met.

(b) A request for the referral of questions of scientific fact to the National Academy of Sciences shall be granted only to the extent that the person requesting it shows that each of the following is true:

(1) There is a genuine and substantial question of scientific fact to be resolved by such referral. Referrals of questions of policy or law will not be allowed.

(2) The factual question is not one which may properly be decided on the basis of official notice of matters within the expert knowledge of the Agency.

(3) The requested referral is likely to result in resolution or substantial clarification of the factual question. Explanations of why this condition has been met shall state why the examination of the question in the RPAR process (including the referral of issues to the Scientific Advisory Panel under Section 25(d) of the Act) has not provided adequate clarification, and why it is likely that the area of uncertainty can be substantially reduced by referral to a Committee of the National Academy of Sciences in light of the prior referral to the Scientific Advisory Panel.

(4) Resolution of the factual question in the way sought by the person is adequate to justify some or all of the relief sought by the person. A referral will not be granted to the extent that the Administrator concludes that his action would be the same even if the factual question were resolved in the way sought.

§ 164.55 Procedurs for consideration of requests for futher proceedings.

(a) Upon receipt of requests for further proceedings under § 164.51 the Presiding Officer shall either proceed to evaluate them himself or shall certify the matter to the Administrator. Proceedings under this section shall be completed within 120 days after the deadline for filing requests for further proceedings.

(b) If the Presiding Officer certifies the matter to the Administrator, the Administrator shall designate a panel of Agency employees from among the persons named under § 164.12(a)(1) to consider the extent to which the request meets the standards of § 164.51. Notice of the designation of the panel, and the names of the panel members, shall be filed with the Hearing Clerk and served on all parties.

(c) The panel shall consider any Notice of Action, any requests for a hearing, the Notice of Hearing, all requests for futher proceedings, all comments on those requests, and the administrative record. The panel may hold a hearing to receive the views of the persons who requested further proceedings. The panel in it discretion may also hold public hearings or issue public requests for additional information to assist its consideration of the questions involved. A verbatim transcript shall be made of all hearings held under this paragraph.

(d) Based on its consideration, the panel shall issue a draft Hearing Order specifying:

(1) The extent to which requests to introduce additional evidence, cross-examine, and refer questions to the National Academy of Sciences have been granted;

(2) The extent to which requests have been denied, together with a detailed statement explaining why the regulatory standards for granting such requests were not met; and

(3) A target date for the issuance of the initial decision by the Presiding Officer, together with a statement as to why completion of the hearing within that time is practicable.

(e) The panel's draft Hearing Order shall be filed with the Hearing Clerk and served on all parties to the hearing who shall then have thirty days from the date of service to file comments on it with the Hearing Clerk.

(f) Within thirty days after the expiration of the comment period on the panel's draft Hearing Order, the Administrator shall issue a final Hearing Order which shall be filed with the Hearing Clerk and served on all parties. The Administrator in his discretion may call for oral argument during this thirty day period on any question presented.

(g) If the Presiding Officer elects to consider the requests for further proceedings himself, he shall consider any Notice of Action, any request for a hearing, the Notice of Hearing, all requests for further proceedings, all comments on those requests, and the administrative record. he may also hold a hearing to receive the views of the persons who requested further proceedings, and a verbatim transcript of that hearing shall be made. Based on his consideration, the Presiding Officer shall issue a Hearing Order specifying the information set forth in paragraph (d) of this section.

(h) The Presiding Officer shall file the Hearing Order with the Hearing Clerk and shall serve it on all parties, who may then obtain interlocutory review by the Administrator within 10 days of service. Upon such interlocutory review, the Administrator shall have full power to reconsider any finding or determination by the Presiding Officer. He may designate a panel of Agency employees from among the persons named under § 164.12(a)(1) to assist and advise him in his review, and may in his discretion schedule oral argument on any question presented. As the result of his review, the Administrator may affirm the Presiding Officer's Hearing Order, or may issue a revised Hearing Order which shall explain in detail the basis for all revisions to the Presiding Officer's Hearing Order.

(i) The Administrator's decision either affirming or revising the Hearing Order shall be filed with the Hearing Clerk and served on all parties.

(j) The final Hearing Order determines the scope of the further proceedings and the matters as to which the development of evidence will be permitted.

(k) If the Administrator in the Hearing Order completely denies all requests for further proceedings with respect to any pesticide use subject to a Notice of Action, he shall simultaneously issue a final order implementing the action proposed in the Notice of Action with respect to that pesticide use.

Further Proceedings

§ 164.60 Hearing conference.

(a) Subject to paragraph (d), of this section, the Presiding Officer shall hold a hearing conference in each § 6(b)(2) hearing and in each case in which further proceedings have been granted under this Subpart B. The conference shall be scheduled by filing a PreConference Order with the Hearing Clerk directing the parties or their counsel to appear at a specified time and place, and specifying the purpose of the hearing conference and the matters to be resolved at it. More than one such conference may be held.

(b) The Presiding Officer may conduct a hearing conference for the following purposes:

(1) To divide the further proceedings into discrete stages (for example, a risk stage and a benefits stage), each of which shall be completed separately under this subpart;

(2) To set forth the manner of and the deadline(s) for the filing of the parties' direct cases under § 164.61;

(3) To consider or rule on motions to strike or limit portions of a party's direct case under § 164.62, *provided*, that no document contained in the administrative record may be stricken. If a request under § 164.53 for a sponsoring witness for a portion or portions of the administrative record has been granted, and no witness is provided, the presiding officer may reduce the weight to be afforded the appropriate portion or portions of the administrative record as a factual statement accordingly;

(4) To consider or rule on motions for oral direct testimony submitted as required by § 164.61. To the extent such a motion is denied, the Presiding Officer shall order the prompt filing of the testimony involved in written format;

(5) To consider or rule on motions for the issuance of subpoenas under § 164.8;

(6) To identify the most appropriate techniques for the development, if necessary, of additional evidence on issues in controversy and the manner and sequence in which they shall be used;

(7) To group participants with substantially similar interests for the purposes of eliminating duplicative or repetitive development of the evidence, for the purpose of making and arguing motions and objections, including motions for summary decision, and/or for the purpose of filing briefs or presenting oral argument;

(8) To set the time and place for beginning the presentation of evidence, and the schedule for conducting the hearing. The schedule shall include the sequence in which witnesses will be presented, and the amount of time, if any, for the oral cross-examination of the witnesses. In passing on requests for oral cross-examination, the Presiding Officer shall apply the standards set forth in § 164.53;

(9) In the case of section 6(b)(2) hearings, to set a target date for the issuance of the initial decision by the Presiding Officer;

(10) To consider and rule on requests submitted under § 164.64 for extending the time by which the initial decision is to be rendered; and

(11) To take any other steps to narrow or simplify the issues in controversy, and to consider such other matters and to take such other action as may aid in the expeditious disposition of the proceeding.

(c) All parties shall appear at any hearing conference fully prepared to discuss in detail and resolve all matters specified in the pre-conference order. All parties shall cooperate fully at all

stages of the proceeding to achieve the objective of a fair and expeditious hearing, through advance preparation for the hearing conference, including communications between the parties, and requests for information at the earliest possible time. The failure of any party to appear at the hearing conference or to raise any matters that could reasonably be anticipated and resolved at the hearing conference shall not be permitted to delay the progress of the hearing and shall constitute a waiver of the rights of the party with respect thereto, including all objections to the agreements reached, actions taken, or rulings issued by the Presiding Officer with regard thereto.

(d) Upon a finding on motion or on his own initiative that to hold a hearing conference would be unnecessary or inadvisable, the Presiding Officer may order that the hearing conference not be held. In these circumstances he may request the parties to correspond with him for the purpose of accomplishing any of the objectives set forth in this section. Such correspondence shall not be made a part of the record, but the Presiding Officer shall submit a written summary for the record if any action is taken as a result of it.

(e) No transcript of any hearing conference shall be made except to the extent that a request therefor by one of the parties is granted by the Presiding Officer or the Presiding Officer orders a transcript to be made on his own initiative. Any party whose request for a transcript is granted shall bear the cost of the taking of the transcript unless otherwise ordered by the Presiding Officer.

(f) The Presiding Officer shall prepare a written Conference Report and Order reciting the actions taken at a hearing conference and setting forth the schedule for further proceedings and the date for completing the hearing or the stage of the hearing covered by the Conference Report and Order. The Conference Report and Order shall also include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. The Conference Report and Order shall be consistent with the Hearing Order issued under § 164.55. The Conference Report and Order shall control the subsequent course of the stage of the hearing which it addresses except to the extent it may be modified by the Presiding Officer for good cause shown.

§ 164.61. Filing of direct case and other information.

(a) Within the time specified in a Conference Report and Order, each party shall file the following information with the Hearing Clerk:

(1) A list of all witnesses whose testimony will be offered at that stage of the hearing, together with a full curriculum vitae in standard format for each witness.

(2) Either the direct testimony of each such witness in written form, or a statement that the testimony concerns matters of such particular fact that oral presentation of direct testimony is justified, together with a description of that testimony and a statement that a motion to permit oral direct testimony will be made. The written direct testimony of a witness may consist in whole or in part of identification of portions of the administrative record.

(3) All other documentary data and information on which the party wishes to rely.

(b) At the same time the material described in paragraph (a) of this section is filed with the Hearing Clerk, each party shall make available to all other parties (but shall not file with the Hearing Clerk) all prior written statements by the persons who have been identified as witnesses, which shall include articles, written statements signed or adopted, and any recording or transcription of any oral statement made, if all of the following conditions are met:

(1) The statement is available without making request of the witness;

(2) The statement relates to the subject matter of the witness' testimony; and

(3) The statement was either made before the time the person agreed to become a witness or has been made publicly available by the witness.

(c) If any prior written statement required to be made available under paragraph (b) of this section has been published in the public literature, a party may comply with paragraph (b) of this section with respect to that statement by furnishing all other parties with a full citation to the public literature which identifies where the statement may be found.

§ 164.62 Ruling on direct case.

(a) The Presiding Officer, on motion, shall strike any portion of a party's direct case (other than material included in the administrative record) or limit the purpose for which it is received, to the extent he finds that the evidence presented is outside the scope of the Hearing Order (or the Notice of Hearing under § 164.33).

(b) Evidence not offered under § 164.61 may nevertheless be admitted at any later stage of the hearing upon a showing that it could not reasonably have been made available, or its relevance could not reasonably have been foreseen, at an earlier stage.

(c) The standards set forth in paragraph (a) of this section shall be applied in all rulings on motions to introduce evidence made throughout the hearing.

§ 164.63 Referral to the National Academy of Sciences.

(a) Not less than 30 days after a decision has been made to refer questions of scientific fact to a Committee of the National Academy of Sciences, the Presiding Officer shall formally refer these questions. The Committee shall report in writing to the Presiding Officer within 60 days after such referral on these questions of scientific fact and the report, its record and any other matter transmitted as provided for by the Administrator's agreement with the National Academy of Sciences shall be made public and considered as part of the hearing record.

Note.—The Memorandum of Understanding between the Agency and the National Academy of Sciences governing such referrals is reproduced as Appendix A.

(b) At any time before the hearing record is closed, a party may request by motion that questions of scientific fact not previously referred be referred, or that questions previously referred be amended or expanded. The Presiding Officer, upon such motion or on his own initiative, may refer such questions or amendments if he finds that good cause existed for the failure to request such referral within the time specified in the Scheduling Order and that the substantive standards of § 164.54 have been met.

§ 164.64 Time limits.

(a) The Presiding Officer may upon motion or his own initiative extend the target date for the issuance of the initial decision specified in the Hearing Order (or in the Conference Report and Order, in the case of Section 6(b)(2) hearings) to any extent up to sixty days total. Such motions may not be made ex parte.

(b) Extensions which, when considered together with prior extensions granted, would extend by more than sixty days the target date specified in the Hearing Order (or in the Conference Report and Order, in the case of Section 6 (b)(2) hearings) for issuance of the initial decision may only be granted by the Administrator. No request for such an extension originating with a party shall be considered by the

Administrator unless made by motion to the Presiding Officer and unless the Presiding Officer has recommended it be granted and has given supporting reasons. Requests for such an extension by the Presiding Officer on his own initiative shall also give supporting reasons. All parties to the proceeding shall have the right to file comments with the Administrator on the proposed extension. No hearing shall be delayed while a request for extension of the time for completing it is being considered.

§ 164.65 Evidence.

(a)(1) The administrative record shall automatically be admitted in evidence. All material filed or designated under § 164.61 or submitted at some later stage in accordance with § 164.62 shall automatically be admitted into evidence unless an objection as to its admissibility has been filed and sustained under § 164.62.

(2) Any written evidence excluded by the Presiding Officer as inadmissible shall remain a part of the hearing record, as an offer of proof, for purposes of judicial review.

(b) Oral testimony, whether on direct or on cross-examination, shall be admissible as evidence unless a party objects and the Presiding Officer excludes it as inadmissible. The Presiding Officer shall exclude oral evidence as inadmissible only on the following grounds:

(1) The oral evidence is irrelevant, immaterial, incompetent or repetitive;

(2) The oral evidence is outside the scope of further proceedings determined by the Hearing Order (or the Notice of Hearing under § 164.33); or

(3) Other good cause exists for its exclusion.

(c) An automatic exception to any evidentiary ruling of the Presiding Officer shall be entered on behalf of the party(s) to whom the ruling is adverse.

(d)(1) Whenever oral evidence is deemed inadmissible, the party offering such evidence may make an offer of proof, which shall be included in the transcript, and which shall consist of a brief statement describing the evidence excluded and the purpose for which it is offered.

(2) If the Administrator upon appeal determines that the Presiding Officer erred in excluding an item of oral evidence, and prejudice to a party resulted, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the administrator may evaluate the evidence and proceed to a final decision.

(e) If questions have been submitted under § 164.63 to a Committee of the National Academy of Sciences, the report of that Committee, other materials that may be required by the Administrator pursuant to the Memorandum of Understanding between the Agency and the National Academy of Sciences, and a list of witnesses and evidence relied on shall be received into evidence and made a part of the record of the hearing. Objections to any such material shall go to the evidentiary value of that material.

§ 164.66 Summary decision.

(a) Any party may, after commencement of the hearing, submit a motion with or without supporting affidavits for a summary decision in its favor with respect to any issue under consideration. Any other party may serve opposing affidavits or cross-move for summary decision. The Presiding Officer may, in his discretion, set the matter for argument and call for the submission of briefs.

(b) The Presiding Officer shall grant such motion if the objections, requests for hearing, other pleadings, affidavits, and any material filed in connection with the hearing, show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The order granting such motion shall be filed with the Hearing Clerk and served on all parties.

(c) affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon mere allegations or denials or general descriptions of position and contentions. Its response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of material fact for the hearing.

(d) If it appears from the affidavits of a party opposing the motion that it cannot, for sound reasons stated, present by affidavit facts essential to justify its opposition, the Presiding Officer may deny the motion for summary decision or may order a continuance to permit affidavits or additional evidence to be obtained or may make such order as is just.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief requested, and development of evidentiary facts is found necessary, the Presiding Officer shall make an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified shall be deemed established.

(f) Any party may obtain interlocutory review by the Administrator of an order of the Presiding Officer granting a motion for summary decision within 10 days of service.

§ 164.67 Interlocutory appeal.

(a) Except as provided in paragraph (b) of this section and in §164.11, §164.43, §164.55 and §164.66, no decision of the Presiding Officer shall be reviewed by the Administrator prior to review of the initial decision rendered under §164.80.

(b) The Presiding Officer may certify an order or ruling for interlocutory appeal to the Administrator if he finds that:

(1) The order or ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(2) Either:

(i) An immediate appeal from the order and ruling will materially advance the ultimate termination of the proceeding; or

(ii) Review after the final judgment is issued will be inadequate or ineffective.

The Presiding Officer shall issue such a certification upon a motion of a party made within 10 days of the order or ruling.

(c) If the Administrator determines that certification under paragraph (b) of this section was improvidently granted, or takes no action within thirty days of certification, the appeal shall be automatically dismissed.

(d) Any order or ruling not certified for interlocutory appeal by the Presiding Officer shall be the subject of interlocutory review by the Administrator only when he determines, upon motion of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests.

(e) Except in extraordinary circumstances, proceedings, shall not be stayed pending an interlocutory appeal. Any stay of more than 14 days must be approved by the Administrator.

(f) Ordinarily, any interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer in connection with the motion for certification, but the Administrator in his discretion may allow further briefs and oral argument.

§ 164.68 Briefs and argument.

(a) As soon as possible after the completion of the taking of evidence, the Presiding Officer shall announce a schedule for the filing of briefs. Briefs shall include a statement of position on

each issue, which shall be supported by specific and complete citations to the evidence, together with citations of points of law relied upon. Briefs may contain proposed findings of fact and conclusions of law.

(b) The Presiding Officer may permit the presentation of oral argument at his discretion and in such manner as he believes is both practicable and fair.

Record

§ 164.70 Availability of record.

The hearing record shall be available to the public, *provided*, that information which is a trade secret or otherwise subject to the provisions of section 10 of the Act shall not be disclosed to the public except in accordance with section 10 of the Act and the regulations of the Agency implementing that section.

§ 164.71 Correction of record.

After the close of the taking of evidence, the Presiding Officer shall allow witnesses, parties, and their counsel up to 30 days (or up to 45 days in unusual cases) in which to submit written proposed corrections of the transcript of any oral testimony taken at the hearings. The Presiding Officer shall thereafter allow witnesses, parties, and their counsel 5 additional days to comment upon any proposed correction to the transcript as are necessary to make it conform to the testimony.

Initial and Final Decisions

§ 164.80 Initial decision.

(a) Within the time specified in the Hearing Order (or in the Conference Report and Order, in the case of section 6(b)(2) hearings), as it may have been extended under § 164.64, the Presiding Officer shall prepare an initial decision. The initial decision shall contain:

(1) Findings of fact based on relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A full articulation of the reasons for the findings and conclusions, including a discussion of the significant factual and legal contentions made by any party; and

(4) An appropriate order supported by substantial evidence of record and based on the findings of fact and conclusions of law.

(b) The initial decision shall be filed with the Hearing Clerk and served on all parties.

(c) The initial decision shall become the decision of the Administrator by operation of law unless a party timely appeals under § 164.81 or unless the Administrator on his own initiative files a notice of review under § 164.81.

§ 164.81 Appeal from or review of initial decision.

(a) Any party may appeal an initial decision to the Administrator by filing exceptions to it with the Hearing Clerk and serving them on the other parties. Exceptions must be filed and served within twenty days of the service of the initial decision, unless that period is extended by the administrator under paragraph (d) of this section.

(b) Exceptions to the initial decision shall contain specific statements of alleged error in the findings of fact or conclusions of law with specific reference to those parts of the record on which the exceptions are based. If oral argument before the Administrator is desired, it shall be specifically requested in the exceptions.

(c) Any party may file a reply to any exceptions filed under paragraph (a) of this section. A reply shall be filed with the Hearing Clerk and served on the other parties within 10 days after the period for filing exceptions has expired, unless that period is extended by the Administrator under paragraph (d) of this section.

(d) The Administrator may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) After the filing of exceptions and replies, the Administrator shall determine whether he wishes to hear oral argument on the matter. If the Administrator decides to hear oral argument, the parties shall be informed of the date, time and place for such oral argument, the amount of time to be allowed each party, and the issues to be addressed.

(f) Within 10 days after the time for filing exceptions (including any extensions) has expired, the Administrator may file with the Hearing clerk, and serve on the parties, a notice that he will review the initial decision on his own initiative. The Administrator may invite the parties to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument shall be specified in the notice of review or in a later notice.

§ 164.82 Decision by the Administrator on appeal from or review of initial decision.

(a) On appeal from or review of the initial decision, the Administrator shall have all the powers he would have in making the initial decision. On his own motion or the motion of any party, he may remand the proceeding to the Presiding Officer with specific directions (e.g., to receive further evidence relating to a particular issue) where he concludes that such action is necessary for a proper decision in the matter.

(b) The scope of the issues on appeal shall be the same as the scope of the issues at the formal evidentiary public hearing unless the Administrator specifies otherwise.

(c) Within 90 days after filing of the initial decision, the Administrator shall issue his final decision based solely on the record. This final decision shall meet the requirements of § 164.80. The Administrator in preparing his final decision may consult with any Agency employee other than a member of the trial staff named under § 164.12 or a subordinate of a trial staff member. The Administrator may consult in this manner any member of an advisory panel named under section 164.55.

(d) The Administrator may adopt the initial decision as the final decision, in whole or in part.

(e) The final decision shall be filed with the Hearing Clerk and served on all parties.

§ 164.83 Reconsideration and stay of action.

Following publication of notice of the final decision, any party may petition the Administrator for reconsideration of part or all of such decision or for a stay of such decision under 5 U.S.C. 705.

Judicial Review

§ 164.90 Judicial review of final Agency action.

(a) The following are final Agency actions which are reviewable in a United States Court of Appeals under section 16(b) of the Act:

(1) Any final decision under § 164.82; and

(2) Any final order under § 164.55(k) implementing the action proposed in a Notice of Action following a denial of a request for further proceedings.

(b) Before requesting an order from a Court of Appeals for a stay of the effectiveness of a final order under § 164.82 or § 164.55(k), any person seeking judicial review shall first request the Agency to stay such action under 5 U.S.C. 705.

Subpart C—General Rules of Practices for Expedited Hearings

§ 164.100 Notification.

(a) Except as provided in § 164.111 (relating to emergencies), whenever the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, he shall notify the registrant of his intent to suspend the registration of the pesticide use at issue.

(b) Such notice shall include:

(1) Findings relating to the existing of an imminent hazard;

(2) Designation of an administrative records for suspension on which the findings in paragraph (b)(1) are based. This record shall be automatically entered into evidence at the expedited hearing. The notice shall also specify the location of the record, the hours it will be available for public inspection, and the name and office telephone number of the person in charge of it;

(3) Designation of an Agency trial staff, and of persons available to assist the Administrator in making a final decision, as specified in § 164.12;

(4) A time limit for completing any such expedited hearing; and

(5) A statement either (i) designating the person(s) to preside at any such expedited hearing or else (ii) stating that an Administrative Law Judge to be named by the Chief Administrative Law Judge will preside. In the latter case the Administrator may also designate Agency employees to sit with the presiding Administrative Law Judge as a panel.

(c) Any notice of intent to suspend shall either be personally served on the registratant or be sent to the registrant by registered or certified mail, return receipt requested. A copy shall also be filed with the Hearing Clerk.

§ 164.101 Request for expedited hearing.

(a) A registrant affected by a notice of intent to suspend may obtain an expedited hearing on the question of whether an immient hazard exists by filing a request in writing or by telegram with the Hearing Clerk. The request must be received by the Hearing Clerk within five days of the registrant's receipt of the notice of intent to suspend.

(b) At the time of filing a request for an expedited hearing, the registrant shall also file a document setting forth objections to the Administrator's notice of intent to suspend. This document shall conform to the requirements of § 164.20 to the maximum extent possible.

§ 164.102 Intervention.

(a) Any interested person may move to intervene at any time prior to the commencement of the presentation of evidence in an expedited hearing held under this Subpart C.

(b) Leave to intervene may be granted only if the motion to intervene indicates that the movant would introduce evidence pertinent to the issue of whether an imminent hazard exists and which would substantially assist the resolution of that issue. A motion for leave to intervene filed after the first hearing conference shall also contain a statement of good cause for failure to file earlier. Such motions may be granted only upon a finding that extraordinary circumstances justify the granting of the motion, and only upon the condition that the intervenor shall be bound by any rules or conditions for the expedited hearing previously specified or agreed upon by the parties to the expedited hearing.

(c) Any interested person who is denied permission to intervene under this section may file proposed findings and conclusions under § 164.109. Any person filing such documents under this paragraph shall be considered a party to the proceeding for all purposes of its further review.

(d) When an "emergency order" is issued under § 164.111, no person other than the Agency trial staff and the registrant shall participate in the expedited hearing except that any interested person may file proposed findings and conclusions under § 164.109. Any person filing under this paragraph shall be considered a party to the proceeding for all purposes of its further review.

§ 164.103 Time limits.

The time limit specified in the notice of intent to suspend for completing any expedited hearing under this Subpart C may be extended only by the Administrator upon the request of the Presiding Officer.

§ 164.104 Presiding Officer.

The Presiding Officer for a hearing under this subpart shall either meet the standards specified in § 164.40, or shall be a general or special Agency employee who is not part of the Agency trial staff named under § 164.12. More than one person having the qualifications specified in the preceding sentence may be named to sit as a panel in expedited suspension hearings. In such cases, one panel member shall be designated as Presiding Officer for purposes of these regulations. If an Administrative Law Judge is included on the panel, the Administrative Law Judge shall be the Presiding Officer.

§ 164.105 Beginning of expedited hearing.

The expedited hearing shall begin within 5 days after the filing with the Hearing Clerk of the last request for a hearing, by holding a hearing conference under § 164.106. Unless the Agency's trial staff and the registrant agree that it shall be held at a later time, it shall be held no later than 15 days after the issuance of the notice of intent to suspend. As soon as possible, the Presiding Officer shall publish in the Federal Register notice of such expedited hearing.

§ 164.106 Hearing conferences.

(a) The Presiding Officer may hold further hearing conferences in any case in which an expedited hearing has been granted under this Subpart C. Any conference shall be scheduled by filing a Pre-Conference Order with the Hearing Clerk directing the parties or their counsel to appear at a specified time and place, and specifying the purpose of the hearing conference and the matters to be resolved at it. More than one such hearing conference may be held.

(b) The Presiding Officer may conduct a hearing conference for the following purposes:

(1) To determine the extent to which the documents submitted by registrants or intervenors under § 164.101 and § 164.102 comply with the standards of § 164.20;

(2) To consider or rule on motions to intervene under § 164.102;

(3) To consider or rule on motions for oral direct testimony under § 164.107;

(4) To set a date by which all written direct testimony shall be filed, or a series of dates by which all written direct testimony related to specific designated stages of the expedited hearing shall be filed;

(5) To consider or rule on motions to strike or limit evidence as not within the scope of the issues raised by the notice of intent to suspend, or for other cause;

(6) To identify the most appropriate techniques for the development, if necessary, of additional evidence on issues in controversy and the manner and sequence in which they shall be used;

(7) To set the time and place for beginning the presentation of evidence at the expedited hearing, and the schedule for conducting it. The schedule shall include the sequence in which witnesses will be presented, and the amount of time, if any, for oral cross-examination of the witnesses. In passing on requests for oral cross-examination, the Presiding Officer shall consider whether the matters at issue could be more economically clarified in whole or in part by the required submission of additional direct evidence or by use of written cross-examination. The schedule shall also include a date by which the receipt and examination of evidence shall be concluded and intermediate dates where appropriate;

(8) To take any other steps to narrow or simplify the issues in controversy, and to consider such other matters and to take such other action as may aid in the expeditious disposition of the proceeding.

(c) All parties shall appear at any hearing conference fully prepared to discuss in detail and to resolve all matters specified in the Pre-Conference Order. All parties shall cooperate fully at all stages of the proceeding to achieve the objective of a fair, and expeditious hearing, through advance preparation for the hearing conference, including communications between parties and requests for information at the earliest possible time. The failure of any party to appear at a hearing conference or to raise any matters that could reasonably be anticipated and resolved at the hearing conference shall not be permitted to delay the progress of the expedited hearing and shall constitute a waiver of the rights of the party with respect thereto, including all objections to the agreements reached, actions taken, or rulings issued by the Presiding Officer with regard thereto.

(d) No transcript of any hearing conference shall be made except to the extent that a request therefor by one of the parties is granted by the Presiding Officer or the Presiding Officer orders a transcript to be made on his own initiative. Any party whose request for a transcript is requested shall bear the cost of the taking of the transcript unless otherwise ordered by the Presiding Officer.

(e) The Presiding Officer may prepare a written Conference Report and Order reciting the actions taken at the hearing conference and setting forth the schedule for the expedited hearing. This Conference Report and Order may include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. Any such Conference Report and Order shall be consistent with the statement of issues in the notice of intent to suspend issued under § 164.100. Any such Conference Report and Order shall control the course of the proceeding except to the extent it may be modified by the Presiding Officer for good cause shown.

§ 164.107 Direct testimony.

(a) All direct testimony shall be submitted in writing except to the extent a motion for oral direct testimony has been made and granted.

(b) Motions for oral direct testimony shall be granted only upon a showing that the testimony concerns matters of such particular fact that oral presentation of direct testimony is justified.

(c) No later than the time the direct testimony of a witness is filed (or no later than three days before the scheduled appearance of a witness, if a motion to permit oral diect testimony has been granted) the party presenting that witness shall make available to all other parties (but shall not file with the Hearing Clerk):

(1) A full curriculum vitae for the witness;

(2) All prior written statements by the person who has been identified as a witness, which shall include articles, written statements signed or adopted, and any recording or transcription of any oral statement made, if all of the following conditions are met:

(i) The statement is available without making request of the witness;

(ii) The statement relates to the subject matter of the witness' testimony; and

(iii) The statement was either made before the time the person agreed to become a witness or has been made publicly available by the witness.

(d) If any prior written statement required to be made available under paragraph (c)(2) of this section has been published in the public literature, a party may comply with paragraph (c)(2) of this section with respect to that statement by furnishing all other parties with a full citation to the public literature which identifies where the statement may be found.

§ 164.108 Availability of record.

The expedited hearing record shall be available to the public, *provided*, that information which is a trade secret or otherwise subject to the provisions of section 10 of the Act shall not be disclosed to the public except in accordance with section 10 of the Act and the regulations of the agency implementing that section.

§ 164.109 Recommended findings and conclusions.

(a)(1) Within 4 days of the conclusion of the presentation of evidence, the parties may propose findings and conclusions to the Presiding Officer.

(2) Within 8 days of the conclusion of the presentation of evidence, the Presiding Officer shall submit to the parties his recommended findings and conclusions and a statement of the grounds on which they are based.

(3) Within 10 days of the conclusion of the presentation of evidence, the Presiding Officer shall submit to the Administrator his recommended findings and conclusions, together with the hearing record specified in § 164.108.

(4) Within 12 days of the conclusion of the presentation of evidence, the parties shall submit to the Administrator their objections to the Presiding Officer's recommended findings and conclusions accompanied by a written brief in support thereof.

(b) All proposed and recommended findings and conclusions under paragraph (a) of this section shall contain:

(1) Findings of fact based on relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A full articulation of the reasons for the findings and conclusions, including a discussion of the significant factual and legal contentions made by any party; and

(4) An appropriate recommended order supported by substantial evidence of record and based on the findings of fact and conclusions of law.

(c) The recommended findings and conclusions shall be filed with the Hearing Clerk and served on all parties.

§ 164.110 Final decision and order of suspension.

(a) Within 7 days of receipt of the record and of the Presiding Officer's recommended findings and conclusions, the Administrator shall issue a final decision and order. In making his decision, the Administrator shall have all the powers he would have in making the initial decision. On his own motion or the motion of any party, he may remand the proceeding to the Presiding Officer with specific directions (e.g., to receive further evidence relating to a particular issue) when he concludes that such action is necessary for a proper decision in the matter.

(b) The scope of the issues before the Administrator shall be the same as the scope of the issues at the expedited hearing.

(c) The Administrator's decision and order shall conform to the requirements of § 164.109(b). The Administrator may adopt the recommended findings and conclusions as the final decision and order, in whole or in part.

(d) The final decision and order shall be filed with the Hearing Clerk and served on all parties.

(e) Prior to, or together with, the issuance of an order of suspension, the Administrator shall initiate cancellation proceedings by issuing a notice of intent to cancel the registration or change the classification of the pesticide use(s) at issue, or by issuing a notice of section 6(b)(2) hearing with respect to the pesticide use(s) at issue.

§ 164.111 Emergency order.

(a) Whenever the Administrator determines that an emergency exists that does not permit him to hold an expedited hearing before suspension, he

may issue a suspension order in advance of notification to the registrant.

(b) The Administrator shall immediately notify the registrant of the suspension order. The registrant may then request an expedited hearing in accordance with § 164.101, but the suspension order shall remain in effect during the expedited hearing.

§ 164.112 Applicability of other sections.

The provisions of Subparts A and B (except § 164.8 and the provisions relating to referral of questions of scientific fact to a committee of the National Academy of Sciences) shall apply to proceedings under this Subpart C except where their application would be clearly inappropriate. § 164.71 shall apply except that two days, not thirty days, shall be allowed for the submission of proposed corrections.

Subpart E—Implementation of Final Cancellations and Suspensions; Disposition of Existing Stocks of Cancelled Pesticides

§ 164.140 Notification of cancellation.

(a) When a cancellation action becomes final by operation of law under Section 6(b) of the Act, or at the conclusion of a hearing under this Part, the Administrator shall publish in the Federal Register and send to each registrant of an affected pesticide product a Notification of Cancellation.

(b) The Notification of Cancellation shall include the following:

(1) With respect to each affected registered pesticide use, a description of the action which has become final.

(2) Where applicable, instructions on how to bring pesticide products into compliance with the cancellation action including, for example, instructions on implementation of required changes in labeling, packaging or other terms and conditions of registration.

(3) Notification of the conditions under which existing stocks of pesticide products which are not in compliance with the final cancellation action can be distributed, sold or otherwise moved in commerce, and/or used.

(4) Notification that registrants or other interested persons may petition the Administrator under this Subpart to modify his determination concerning distribution, sale or other movement in commerce, and/or use of existing stocks of pesticide products which are not in compliance with the final cancellation action, and instructions concerning the content and filing of such petitions.

(5) Where applicable, instructions for the disposal of existing stocks of pesticide products which are not in compliance with the final cancellation action.

§ 164.141 Petitions concerning existing stocks of pesticides subject to final cancellation actions.

(a) Registrants or other interested persons may petition the Administrator to modify his determination concerning the distribution, sale or other movement in commerce, and/or the use of existing stocks of pesticide products which are not in compliance with final cancellation actions under this Part.

(b) Petitions under this section shall contain the information required by and shall be filed in accordance with the instructions contained in the Notification of Cancellation under § 164.140.

(c) The Administrator shall by order promulgate a regulation disposing of a petition appropriately under Section 6(a)(1) of the Act, after having complied with the requirements of Section 25 of the Act and 5 U.S.C. 553.

§ 164.142 Notification of suspension.

(a) When a suspension action becomes final by operation of law under Section 6(c) of the Act, or at the conclusion of a hearing under this Part, the Administrator shall publish in the Federal Register and send to each registrant of an affected pesticide product a Notification of Suspension.

(b) The Notification of Suspension shall include the following:

(1) With respect to each affected registered pesticide use, a description of the action which has become final.

(2) Where applicable, instructions on how to bring pesticide products into compliance with the suspension action including, for example, instructions on implementation of required changes in labeling, packaging or other terms and conditions of registration.

(3) Notification whether and under what conditions existing stocks of pesticide products which are not in compliance with the final suspension action can be distributed, sold or otherwise moved in commerce, and/or used.

Appendix A—Memorandum of Understanding

The Administrator of the Environmental Protection Agency, on behalf of EPA, and the President of the National Academy of Sciences, on behalf of NAS, hereby enter into the following agreement regarding studies to be conducted by the Academy under contract between EPA and NAS.

1. The NAS in preparing any report called for by a contract between EPA and NAS which incorporates this memorandum by reference shall, in accordance with its established procedures as currently specified in Chapter 6 of the NAS document entitled "Nominations and Appointments to Assemblies and Commissions, Divisions, Offices and Boards, Committees and Sub-units of the National Research Council" dated October 1975, conduct a review for potential sources of bias of the members of any of its committees engaged in preparing such report. A record of this bias review shall be kept consisting at a minimum of the curriculum vitae of each member of the committee, the form "On Potential Sources of Bias" (as set forth in Appendix 3 to the above document) filed by each member of the committee, and a verbatim transcript or recording of the committee discussions of potential sources of bias required under Chapter 6 above. On request by the Administrator of EPA for information concerning possible bias or conflict of interest of a particular committee member (or members) described above, the NAS shall make available to the Administrator the record of the bias review for that committee member (or members). Such information provided to the Administrator of EPA by the NAS shall be treated by EPA as private information to be held in confidence and shall not be disclosed outside EPA except as authorized by the Administrator of EPA for good cause shown and with the consent of the committee member (or members) concerned. The NAS shall notify the EPA of any changes in the Academy's bias review procedures.

2. No later than 15 days after the release of any final report called for by a contract between EPA and NAS which incorporates this memorandum by reference, the NAS shall make available to the public and to EPA the record of its committee deliberations concerning that report to the extent provided in the document entitled "Policy on Public Access to Information Concerning Studies Conducted Under the Auspices of the National Academy of Sciences," adopted by the National Academy of Sciences, April 20, 1975.

3. The NAS shall also undertake to ensure that one or more members of a committee engaged in the preparation of a report referred to in paragraph 2 above will for a reasonable time make themselves available upon request at any EPA regulatory proceedings or Congressional hearings to which the report may be relevant to answer questions about the report and its record. The contract between EPA and NAS shall provide for reimbursement of staff, travel, and related expenses incurred by NAS for the purpose of such appearances.

P. Handler,

President, National Academy of Sciences.

Douglas Costle,

Administrator, Environmental Protection Agency.

[FR Doc. 80-23812 Filed 8-6-80; 8:45 am]

BILLING CODE 6560-01-M

federal register

Thursday
August 7, 1980

Part III

Environmental Protection Agency

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 124

[FRL 1538-2]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rules.

SUMMARY: In response to the decision of the U.S. Court of Appeals for the D.C. Circuit in *Alabama Power Company* v. *Costle,* EPA is today amending its regulations for the prevention of significant deterioration of air quality, 40 CFR 51.24, 52.21. Today's amendments also include regulatory changes affecting new source review in nonattainment areas, including restrictions on major source growth (40 CFR 52.24) and requirements under EPA's Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S) and Section 173 of the Clean Air Act (40 CFR 51.18 (j)).

DATES: The regulatory amendments announced here come into effect on August 7, 1980. State Implementation Plan revisions meeting today's regulatory changes are to be submitted to EPA within nine months after this publication.

FOR FURTHER INFORMATION CONTACT: James B. Weigold, Standards Implementation Branch (MD-15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, 919/541-5292.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline. A section entitled Summary of PSD Program has been added to provide a concise narrative overview of this program.

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I. Summary of PSD Program

The purpose of this summary is to help those people who are unfamiliar with the PSD program gain an understanding of it. Because this summary seeks to condense the basic PSD rules, it may not precisely reflect the amendments announced in this notice. Should there be any apparent inconsistency between the summary and the remainder of the preamble and the regulations, the remaining preamble and the regulations shall govern.

A. PSD Allows Industrial Growth Within Specific Air Quality Goals

The basic goals of the prevention of significant air quality deterioration (PSD) regulations are (1) to ensure that economic growth will occur in harmony with the preservation of existing clean air resources to prevent the development of any new nonattainment problems; (2) to protect the public health and welfare from any adverse effect which might occur even at air pollution levels better than the national ambient air quality standards; and (3) to preserve, protect, and enhance the air quality in areas of special natural recreational, scenic, or historic value, such as national parks and wilderness areas.

States are required to develop SIP revisions for PSD pursuant to regulations published today. *See* 40 CFR 51.24, "Requirements for Preparation, Adoption and Submittal of Implementation Plans." If EPA approves the proposed PSD plan, the state can then implement its own program. In the absence of an approved state PSD plan, another portion of today's regulations will govern PSD review. *See* 40 CFR 52.21, "Approval and Promulgation of Implementation Plans." EPA will implement this regulation itself if the state does not submit an approvable PSD program of its own.

States can identify in their SIPs the local land use goals for each clean area through a system of area classifications. A "clean" area is one whose air quality is better than that required by the National Ambient Air Quality Standards. Each classification differs in the amount of growth it will permit before significant air quality deterioration would be deemed to occur. Significant deterioration is said to occur when the amount of new pollution would exceed the applicable maximum allowable increase ("increment"), the amount of which varies with the classification of the area. The reference point for determining air quality deterioration in an area is the baseline concentration, which is essentially the ambient concentration existing at the time of the first PSD permit application submittal affecting that area. To date, only PSD increments for sulfur dioxide and particulate matter have been established. Increments or alternatives

to increments are currently under investigation for the other criteria pollutants.

There are three types of area classifications. Class I areas have the smallest increments and thus allow only a small degree of air quality deterioration, while Class II areas can accommodate normal well-managed industrial growth. Class III designations have the largest increments and are appropriate for areas desiring a larger amount of development. In no case would the air quality of an area be allowed to deteriorate beyond the National Ambient Air Quality Standards. Except for certain wilderness areas and national parks, which are mandatory Class I areas, all clean areas of the country were initially designated as Class II. Flexibility exists under the Act to adjust most of these designations, except for those mandated by Congress.

The principal mechanism within the SIP to implement the objectives of the PSD program is the preconstruction review process. These provisions require that new major stationary sources and major modifications are carefully reviewed prior to construction to ensure compliance with the National Ambient Air Quality Standards, the applicable PSD air quality increments, and the requirements to apply the best available control technology on the project's pollutant emissions. In addition, proposed SIP relaxations which would limit further use of increment must be reviewed for their anticipated impact and not be approved if the applicable increment would be violated. The SIP must also contain PSD provisions for periodically reviewing all emissions increases, including those which occur outside the SIP revision and the new source review (NSR) process, and for restoring clean air when such increases cause violations of the applicable PSD increment. This corrective action may require additional controls on existing emissions sources which contribute to the problem.

B. Who is Subject to the Prevention of Significant Deterioration Regulations?

The requirements of today's PSD regulations apply to major stationary sources and major modifications which meet certain criteria concerning the geographic location, type of pollutants to be emitted, and timing of proposed construction. No source or modification subject to today's rules may be constructed without a permit which states that the stationary source or modification would meet all applicable PSD requirements. This section summarizes how PSD review as modified in response to *Alabama Power* will apply.

The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or major modification. Source size, for applicability purposes, is defined in terms of "potential to emit." "Potential to emit" means the capability at maximum design capacity to emit a pollutant after the application of all required air pollution control equipment and after taking into account all federally enforceable requirements restricting the type or amount of source operation. A "major stationary source" is any source type belonging to a list of 28 source categories which emits or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act, or any other source type which emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tons per year. A stationary source generally includes all pollutant-emitting activities which belong to the same industrial grouping, are located on contiguous or adjacent properties, and are under common control. Pollutant activities which belong to the same major group as defined in a standard industrial classification scheme developed by the Office of Management and Budget are considered part of the same industrial grouping. (*See* SOURCE).

A "major modification" is generally a physical change in or a change in the method of operation of a major stationary source which would result in a significant net emissions increase in the emissions of any regulated pollutant. In determining if a proposed increase would cause a significant *net* increase to occur, several detailed calculations must be performed. First, the source owner must quantify the amount of the proposed emissions increase. This amount will generally be the potential to emit of the new or modified unit. Second, the owner must document and quantify all emissions increases and decreases that have occurred or will occur contemporaneously (generally within the past five years) and have not been evaluated as part of a PSD review. The value of each contemporaneous decrease and increase is generally determined by subtracting the old level of actual emissions from the new or revised one. Third, the proposed emissions changes and the unreviewed contemporaneous changes must then be totalled. Finally, if there is a resultant *net* emissions increase that is larger than certain values specified in the regulations, the modification is major and subject to PSD review.

Certain changes are exempted from the definition of major modification. These include: (1) routine maintenance, repair, and replacement; (2) use of an alternative fuel or raw material by revision of an order under sections (2)(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation); (3) use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act; (4) use of an alternative fuel at a steam generating unit to the extent it is generated from municipal solid waste; (5) use of an alternative fuel which the source is capable of accommodating; and (6) an increase in the hours of operation, or the production rate. The last two exemptions can be used ony if the corresponding change is not prohibited by certain permit conditions established after January 6, 1975.

If a source or modification thus qualifies as major, its prospective location or existing location must also qualify as a PSD area, in order for PSD review to apply. A PSD area is one formally designated by the state as "attainment" or "unclassifiable" for *any* pollutant for which a national ambient air quality standard exists. This geographic applicability test does not take into account what new pollutant emissions caused the construction to be major. It looks simply at whether the source is major for any pollutant and will be located in a PSD area.

Once a source applicant has determined that proposed construction falls under PSD based on the above size and location tests, it must then assess whether the pollutants the project would emit are or are subject to PSD. If a new major stationary source emits pollutants for which the area it locates in is designated nonattainment, then the source is exempt from PSD review for those pollutants. These sources must, however, meet the applicable requirements of NSR for each nonattainment pollutant. Similarly, if a major modification to be constructed in a PSD area involves changes only for nonattainment pollutants then the source is not subject to PSD. These modifications must meet the appropriate nonattainment NSR under the SIP for the pollutant. Once the question of NSR jurisdiction is resolved, then the PSD review applies to all signficant emissions increases of regulated air pollutants. Specific numerical cutoffs which define what emissions increases are "significant" have been spelled out in the regulations. These pollutant-

specific cutoffs can exempt a source from PSD review for a particular pollutant, except where the proposed construction would adversely impact a Class I area.

If a proposed source or modification would be subject to PSD review based on size, location, and pollutants emitted, then its construction schedule must meet certain tests before the PSD rules promulgated today would apply. All major construction otherwise qualifying for PSD review would not need a PSD permit under these regulations if the proposed construction: (1) was subject to the old PSD rules, has submitted a complete application under these rules before today, and was or is subsequently approved to construct based on this application; or (2) was not subject to the old PSD rules, has received all federal, state, and local air permits needed before today and commences construction in a continuous fashion at the proposed site within a reasonable time.

Finally, the PSD regulations contain some specific exceptions for some forms of source construction. The requirements of today's regulations do not apply to any major stationary source or major modification that is: (1) a nonprofit health or educational institution (only if such exemption is requested by the governor); or (2) a portable source which has already received a PSD permit and proposes relocation.

C. What Must A Source or Modification Do To Obtain A PSD Permit?

1. It must apply the best available control technology.

Any major stationary source or major modification subject to PSD must conduct an analysis to ensure application of best available control technology (BACT). During each analysis, which will be done on a case-by-case basis, the reviewing authority will evaluate the energy, environmental, economic and other costs associated with each alternative technology, and the benefit of reduced emissions that the technology would bring. The reviewing authority will then specify an emissions limitation for the source that reflects the maximum degree of reduction achievable for each pollutant regulated under the Act. In no event can a technology be recommended which would not meet any applicable standard of performance under 40 CFR Parts 60 and 61.

In addition, if the reviewing authority determines that there is no economically reasonable or technologically feasible way to accurately measure the emissions, and hence to impose an enforceable emissions standard, it may require the source to use source design, alternative equipment, work practices or operational standards to reduce emissions of the pollutant to the maximum extent. For example, if an immense pile of uncovered coal emits coal dust into the atmosphere, it woud make little sense to impose an emission, standard, since measuring the amount of coal dust rising off the pile is nearly impossible. A much more direct approach to controlling emissions is, for example, requiring the owner to wet the coal pile daily. This type of standard or practice will be equivalent to an emissions limitation for purposes of the BACT requirement.

2. It must conduct an ambient air quality analysis.

Each PSD source or modification must perform an air quality analysis to demonstrate that its new pollutant emissions would not violate either the applicable NAAQS or the applicable PSD increment. This analysis ensures that the existing air quality is better than that required by national standards and that baseline air quality will not be degraded beyond the applicable PSD increment.

Each proposed major construction project subject to PSD must first assess the existing air quality for each regulated air pollutant that it emits in the affected area. This analysis requirement does not apply to pollutants for which the new emissions proposed by the applicant would cause insignificant ambient impacts. Today's PSD regulations define pollutant-specific impacts that are typically considered inconsequential and that can be exempted from analysis, unless existing air quality is poor or adverse impacts to a Class I area are in question. For pollutants for which a NAAQS exists, the applicant must provide ambient monitoring data that represent air quality levels in the year's period preceding the PSD application. Where no existing data are judged representative or adequate, then the source applicant must conduct its own monitoring program. This is often the case where the applicant will be establishing the baseline concentration for the affected area. Typically air quality dispersion modeling is used by applicants to support or extend the assessment made with gathered monitoring data. For pollutants for which there is no NAAQS, the required analysis will normally be based on dispersion modeling alone.

Source applicants who are subject to the ambient analysis requirement for sulfur dioxide or particulate matter must also perform an analysis to compute how much of the PSD increment remains available to them. In general the amount of increment that is available depends on certain changes in actual emission. First, actual emissions changes occurring after January 6, 1975 which are associated with physical changes or changes in the method of operation at a major stationary source can affect the available increment. Accordingly, cleanup adds to the available growth margin while new emissions diminish it. Second, all changes in emissions, including those from minor sources and other types of changes at major sources, affect the available increment provided they occur after the baseline date. The baseline date is essentially the time that the first PSD application affecting the area is filed.

Once the question of how much increment remains is resolved, then the applicant must demonstrate that his proposed new emissions would not exceed the remaining PSD increment. Where a proposed project would cause a new violation of the increment or contribute to an existing violation, it cannot be approved. Existing violations must be entirely corrected before PSD sources which affect the area can be approved.

3. It must analyze impacts to soils, vegetation, and visibility.

An applicant is required to analyze whether its proposed emissions increases would impair visibility, or impact on soils or vegetation. Not only must the applicant look at the direct effect of source emissions on these resources, but it also must consider the impacts from general commercial, residential, industrial and other growth associated with the proposed source or modification. The results of this analysis may be used to determine if the project would have an adverse impact on a Class I area.

4. It must not adversely impact a Class I area.

If the reviewing authority receives a PSD permit application for a source that could impact a Class I area, it will immediately notify the Federal Land Manager and the federal official charged with direct responsibility for managing these lands. These officials are responsible for protecting the air quality-related values in Class I areas and for consulting with the reviewing authority to determine whether any proposed construction will adversely affect such values. If the Federal Land Manager demonstrates that emissions from a proposed source or modification would impair air quality-related values, even though the emissions levels would not cause a violation of the allowable air quality increment, the Federal Land

Manager may recommend that the reviewing authority deny the permit.

5. Its application must undergo adequate public participation.

The regulations solicit and encourage participation by the general public, industry, and other affected persons impacted by the proposed major source or major modification. Specific public notice requirements and a public comment period are required before the PSD review agency takes final action on a PSD application. The public notice must indicate whether the reviewing authority proposed permit approval, denial, or conditional approval of a proposed major source or major modification. Consideration is given to all comments received provided they are relevant to the scope of the review. Where requested, or at its own discretion, the reviewing authority may conduct a public hearing to help clarify the issues and obtain additional information to assist in making a final permit decision.

6. It must start construction on time.

The source owner, once receiving a PSD permit, must start construction within a reasonable period of time (typically within 18 months of approval) and must stay on a continuous construction schedule. Normally, long delays will invalidate the permit.

II. Background

On August 7, 1977, the President signed the Clean Air Act Amendments of 1977 (1977 Amendments) into law. Those amendments established, in the form of Part C of Title I of the Clean Air Act (CAA), a set of requirements for the prevention of significant deterioration (PSD) of air quality in "clean air" areas. Sections 160–69, 42 U.S.C. 7470–79. The requirements for preconstruction review of new stationary sources and modifications in Part C follow the outline of the PSD regulations that EPA promulgated in 1974, but are more elaborate and in many ways more stringent. Part C also requires that each state implementation plan (SIP) contain the new PSD requirements.

In response to Part C, EPA promulgated two sets of PSD regulations on June 19, 1978. One set specified the minimum requirements that a PSD SIP revision would have to contain in order to warrant EPA approval. *See* 43 FR 26380 (codified at 40 CFR 51.24 (1979)) (hereinafter, the "1978 Part 51 regulations") The other set comprehensively amended the 1974 PSD regulations, incorporating into them the new Part C requirements. 43 FR 26388 (codified at 40 CFR 52.21 (1979)) (hereinafter, the "1978 Part 52 regulations"). EPA intended that, until it had approved a PSD SIP revision for a state, the permitting of new sources and modifications for PSD purposes would continue under the 1978 Part 52 regulations.

On June 18, 1979, the United States Court of Appeals for the District of Columbia Circuit issued a decision that upheld some of the substantive provisions of both the 1978 Part 51 and Part 52 regulations and overturned others. *Alabama Power Company v. Costle,* 13 ERC 1225. In its opinion, the court merely summarized its holdings, but promised to issue supplemental opinions after it had considered any petitions for reconsideration. In an order that accompanied the summary opinion, the court stayed the effect of its decision until it had issued the supplemental opinion. The purpose of that procedure, the court explained, was "to enable EPA to proceed as soon as possible to commence rulemaking or other proceedings necessary to promulgate those revisions in the PSD regulations required by [the court's] rulings * * *." *Id.* at 1227.

By a notice that appeared in the Federal Register for September 5, 1979, EPA began the process the court had in mind. 44 FR 51924. There EPA proposed various amendments to the PSD regulations that were to replace the provisions the court had held invalid, for instance, the definitions of "source," "modification," and "potential to emit." EPA also proposed amendments that were to add entirely new provisions to supplement the replacement provisions, for instance, the *de minimis* exemptions.

Prior to September, EPA had issued, also in response to the 1977 Amendments, various regulations and guidelines relating to the construction of new sources and modifications in and near "nonattainment" areas. In January 1979, the Agency revised its Emission Offset Interpretative Ruling ("Offset Ruling"), which now appears at 40 CFR Part 51, Appendix S (1979). Then, in April 1979, EPA issued a guideline entitled "General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas." 44 FR 20372.[1] Finally, in July 1979, EPA issued an interpretative rule concerning certain statutory restrictions on new construction in nonattainment areas. 44 FR 38471 ("construction moratorium").[2] EPA also asked for comment on certain issues concerning new construction in such areas. 44 FR 38583.

In the September Federal Register notice, EPA also proposed various changes to those nonattainment regulations and guidelines. The purpose of those changes generally was to conform those regulations and guidelines to the decisions in *Alabama Power* concerning the statutory terms "source," "modification," and "potential to emit."

On September 18, 1979, EPA announced that it would hold public hearings on the September proposal on October 15 and 16 in Washington, D.C., and on October 18 and 19 in San Francisco. *See* 44 FR 54069. At the same time, the Agency set November 18 as the deadline for submitting information rebutting or supplementing any presentation at the hearings. Subsequently, EPA held the public hearings as scheduled.

On October 4, 1979, EPA announced various corrections to technical errors in the September proposal. 44 FR 57107. At the same time, it extended the period for submitting written comments until November 5, 1979. It added that it would hold the rulemaking docket open until November 18, 1979, not only for information rebutting or supplementing any presentation at the hearings, but also for information rebutting or supplementing any written comment.

On November 9, 1979, EPA announced that it had recently released for public comment a draft of a revision of the *Ambient Monitoring Guideline for Prevention of Significant Deterioration (PSD)* (OAQPS 1.2–096), which the Agency had originally published in May 1978. 44 FR 65084. EPA also announced that it would accept any written comments on the draft until December 10, 1979.

On December 14, 1979, the Court of Appeals handed down its final opinion in *Alabama Power.* 13 ERC 1993. Subsequently, in order to avoid the uncertainty and confusion that would occur in PSD permitting if the final opinion came into effect before EPA completed the rulemaking, EPA and many of the other parties to the litigation petitioned the court to keep the final opinion from coming into effect until June 2, 1980. On March 14, 1980, the court granted the request.

On May 30, 1980, EPA and other parties to the litigation again petitioned the court, requesting a further extension of time until July 18, 1980. The court granted an extension, to July 28, on June 23, 1980.

On January 30, 1980, EPA announced that it would reopen the rulemaking docket for the receipt of written

[1] For supplements to the General Preamble, *See* 44 FR 38583 (July 2, 1979); 44 FR 50371 (August 28, 1979); 44 FR 51924, 51928–29 (September 5, 1979); 44 FR 53761 (September 17, 1979); and 44 FR 67182 (November 23, 1979).

[2] For a fuller description of those nonattainment regulations and guidelines, *See* 44 FR 51925 and 45 FR 31304–05.

comments on various aspects of the rulemaking, including the final opinion of the court, certain issues that the Agency described in the notice, the redraft of the monitoring guidelines, and various meetings between EPA and others. 45 FR 6802.

On February 5, 1980, EPA issued a stay of the 1978 Part 52 PSD regulations as to certain sources and modifications. 45 FR 7800. The stay was effective as of January 30, 1980. Its purpose was "to relieve from the permitting requirements of the 1978 PSD regulations roughly those sources and modifications that would not be subject to the permitting requirements of valid replacement regulations that would comport with the *Alabama Power* opinion." *Id.*

On May 13, 1980, EPA promulgated a stay of the Offset Ruling and the construction moratorium that is similar to the PSD stay. *See* 45 FR 31304. On the same day, EPA promulgated certain amendments to the Offset Ruling, the regulations relating to new source review at 40 CFR 51.18, and the construction moratorium. Those amendments established the geographic applicability of the various nonattainment requirements relating to the construction of new sources and modifications. 44 FR 31307. Those amendments embody EPA's responses to many of the comments on the September proposal.

Finally, on May 19, 1980, EPA promulgated regulations aimed at consolidating and unifying various permit requirements and procedures. 45 FR 33290. Those new regulations contain provisions which will govern the processing of applications for permits under the new Part 52 PSD regulations.

During the course of the rulemaking that EPA began in September, it received approximately 375 written comments. The discussion that follows summarizes the proposals, the comments on them, EPA's responses, and the final provisions.

III. Highlights

Several significant changes from the September 5, 1979 proposal have occurred. These changes include the addition of certain provisions not addressed by the September 5, 1979 proposal but which are necessary under the Act. Several regulatory provisions which are unchanged in substance by today's notice have also been reprinted to clarify the effects of any revised paragraph numbering.

A. *Transition:* The proposed transition scheme for phasing in the additional monitoring requirements has been expanded to require no new monitoring requirements for PSD applications submitted and complete within 10 months of the promulgation date. In addition, today's rules allow less than a full year of monitoring data to be included with PSD applications filed after the above times but before 18 months after the promulgation date. PSD applications filed later than 18 months from the date of promulgation will be subject to the full new monitoring requirements.

B. *Potential To Emit:* Potential to emit is the maximum design capacity of the source, except as constrained by federally enforceable permit conditions. This would include permit conditions restricting hours or type of source operation.

C. *50-Ton Exemption:* Today's regulations essentially delete the "50-Ton Exemption" for both nonattainment and PSD. The eligibility date for the section 165(b) exemption has been changed from August 7, 1977 to March 1, 1978.

D. *Fugitive Emissions:* For the purpose of PSD and nonattainment, "fugitive emissions" now means those emissions released directly into the atmosphere, which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions are not to be considered in determining whether a source would be a major source, except when such emissions come from specified source categories.

E. *Fugitive Dust:* Today's regulations promulgate the proposed deletion of the "fugitive dust exemption" from the applicable provisions of both PSD and the Offset Ruling.

F. *Stationary Source:* The definition of source for PSD purposes has been made more liberal than the previous regulations. Under today's rules, a PSD source is a grouping of all pollutant emitting activities at one location and owned or under the control of the same person or persons. This generally relates to the common notion of a plant. Smaller portions of such a plant no longer will be examined for applicability purposes. For added clarification, pollutant-emitting activities will now be considered part of the same "plant" if they belong to the same "major group" as described in the Standard Industrial Classification Manual. At this time, however, the Agency has decided not to change its previous approach to defining source for nonattainment purposes. Therefore, today's rules continue to incorporate the "dual definition" concept of source which requires consideration of overall emissions from a "plant" and from each "installation" within that plant. In a change from the proposal, this dual definition will apply to major sources in all nonattainment areas designated under section 107 of the Act, regardless of SIP approvability or degree of completion.

G. *Modification:* The definition and treatment of modifications have been changed since the September 5, 1979 proposal. The concept of accumulating minor changes made at an existing minor source until the sum was equivalent to a major stationary source has been deleted. Rather, a source must now qualify as a major stationary source prior to making a modification to become subject to review, unless the change itself is greater than 100 or 250 tons per year. Contemporaneous changes now generally refer to emissions increases and decreases occurring within the same 5-year time period unless the state opts for a different time period in its Part D SIP or PSD program. Reductions, to be creditable, must be enforceable under the SIP before the contemporaneous emission increase would begin construction. Such reductions, as well as significant increases, will be quantitatively assessed on the basis of an "actual emissions" baseline, rather than a "potential to emit" baseline, as was proposed. "Reconstruction" (*i.e.*, 50% or more capital replacement) has been deleted from PSD but has been retained for nonattainment NSR, including the prohibition on construction.

H. *"De Minimis" Exemptions:* Three types of changes from the September 5 proposal appear in today's regulations: (1) different numbers have been developed for defining significant emissions from new sources and significant net emissions increases from modifications; (2) new air quality *de minimis* numbers have been generated and can only be used to exempt PSD sources from the ambient monitoring requirements; and (3) a ten kilometer proximity cutoff has been specified to indicate when a source, regardless of pollutant emissions, must be prepared to demonstrate that no 24-hour impact greater than 1 $\mu g/m^3$ would occur in the Class I area.

I. *Geographic Applicability:* PSD will generally apply only if the otherwise subject major construction locates in a section 107 area which is designated attainment or unclassified under section 107 for any criteria pollutant (regardless of what pollutants the proposed construction would emit or what pollutant qualified it as major). An exception to this rule is that no PSD permit is required for major construction which emits only the pollutant for which the area of location is nonattainment.

J. *Pollutant Applicability:* Any net significant emissions increase of any pollutant subject to regulation under the Act (not just those pollutants for which the source is major) now qualifies as a PSD modification. Nonattainment review will continue to focus on only the major nonattainment pollutant. No PSD review will be required for a given criteria pollutant, if a source would construct in an area designated nonattainment for that pollutant.

K. *Baseline Area/Date:* Baseline area now refers to all section 107 areas which are designated attainment or unclassified for PM or SO_2 (as may be redesignated) in which the PSD source triggering the baseline date would locate or would have an annual air quality impact equal to or greater than 1 $\mu g/m^3$. Interstate impacts, however, do not trigger baseline date. This differs from the proposal, which focused on the AQCR rather than the designated area. Baseline dates are pollutant specific and can be established by the first PSD application of a source with significant emissions of the applicable pollutant. States will have the flexibility to redesignate clean or unclassified areas under section 107 and thereby remove baseline dates for certain areas. However, no redesignation may subdivide the impact area (>1 $\mu g/m^3$) of the source triggering a baseline date.

L. *Best Available Control Technology:* Today's regulations reflect the proposal with one exception. A provision has been added that requires BACT for modifications only when both a net emissions increase occurs at the changed unit(s) and a significant net emissions increase occurs at the plant; BACT applies only to the units actually modified.

M. *Monitoring:* The proposed transition scheme for phasing in the additional monitoring requirements will provide relief for sources covered under the existing regulations that are in the process of monitoring and offer allowances for setup time of monitors in gathering the required data.

N. *Notification:* The notification provisions appearing in the September 5, 1979 proposal have been deleted from today's regulations.

O. *PSD SIP Revisions:* The requirements proposed on September 5 for governing the development of PSD SIP submittals are essentially unchanged. These regulations allow limited flexibility in the development of different but equally effective state plans.

P. *Increment Consumption:* A discussion has been included in the preamble to summarize the effects that the *Alabama Power* decision has had on increment tracking. This section also discusses how certain SIP related issues are to be addressed, such as the Gulf Coast problem (SIP shows a theoretical increment violation in a clean area, unrelated to actual air quality impact) and temporary SIP relaxations. (SIP would be relaxed and only temporary emissions would occur.)

Q. *Public Participation:* The requirements of paragraph (r) of § 52.21 have been replaced with the public participation procedures associated with the consolidated permit regulations (40 CFR 124).

IV. Transition

This section focuses on those provisions of the final PSD and nonattainment regulations which govern the transition from the preexisting requirements to the new ones. It begins with a discussion of the new transition provisions of the Part 52 PSD regulations and then deals in turn with the transition provisions of the Part 51 PSD regulations, the Offset Ruling, the Part 51 nonattainment regulations, and finally the construction moratorium.

A. Part 52 PSD Regulations

The new transition provisions of the Part 52 PSD regulations fall into three categories: those that relate to the new coverage of the regulations, those that relate to the new requirements for best available control technology (BACT) and air quality assessments, and those that relate to the new procedural requirements. The discussion which follows deals with each in that order.

1. *Coverage.*

a. *Proposed transition provisions:* The preconstruction permit requirements of the 1978 Part 52 regulations applied to a certain class of projects that emit or would emit pollutants. The keystone of those regulations, section 52.21(i)(1), provided that "[n]o major stationary source of major modification shall be constructed unless the [permit] requirements of [the Part 52 regulations] have been met." It established the general rule that the permit requirements applied to any "major stationary source" or "major modification." The balance of section 52.21(i) then listed certain exceptions to that general rule. The main exceptions established various "grandfather" exemptions. The permit requirements of the regulations applied, therefore, to any pollutant-emitting project that was "major" and had no "grandfather" status.

In September 1979, EPA proposed to establish new Part 52 PSD regulations whose coverage would be substantially different from that of the 1978 regulations. First, it proposed to define "major stationary source" differently than it had defined that term in the 1978 regulations. Under the 1978 regulations, whether a "source" was "major" depended upon whether its "potential to emit" any pollutant regulated under the Act would equal or exceed certain thresholds. "Potential to emit" referred largely to the maximum rate at which a "source" would emit a pollutant *without* control equipment. Under the amendments that EPA proposed in September, "potential to emit" would be the maximum rate at which a "source" would emit a pollutant *with* control equipment. Second, EPA proposed to define "major modification" differently than it had defined that term in the 1978 regulations. There, a "major modification" was any change at a "source" that would increase the "potential to emit" of the "source" by 100 tons per year of any pollutant regulated under the Act, or 250 tons per year, depending on source type and ignoring any emission reductions. Under the amendments that EPA proposed in September, "major modification" would have become any change at a "source" that would result in a *significant net* increase in the "potential to emit" of the "source." "Significant" is defined as emissions greater than certain *de minimis* values. Finally, EPA proposed to limit the geographic applicability of the PSD permit requirements by adding an exception to section 52.21(i) that would exclude a "source" or "modification" from PSD review on the basis of its location.[3]

Amendments of the sort that EPA proposed in September would have left many projects that previously fell or would have fallen within the coverage of the 1978 Part 52 regulations outside the coverage of the resulting Part 52 regulation. For instance, many new "sources" that were "major" under the 1978 regulations would not have been "major" under the proposed amendments, because while their maximum uncontrolled emissions would exceed the applicable thresholds, their maximum controlled emissions would not.

Of those projects that were or would have been subject to the PSD permit requirements under the 1978 PSD regulations, but not under the proposed

[3] Specifically, EPA proposed that the permit requirements would apply only to any "major stationary source" or "major modification" that would be located in an area designated under section 107 of the Act as attainment or unclassifiable for a pollutant for which the "source" or "modification" would be major or would significantly impact an area in another state which is designated as attainment or unclassifiable for any such pollutant.

amendments, some have already received a PSD permit, while others have not. In September, EPA proposed to put both sets of projects outside the reach of the permit requirements as soon as possible by putting the new definitions of "potential to emit" and "modification" and the new limitation on geographic applicability into effect immediately upon their promulgation. *See* 44 FR 51927. But EPA also proposed that any permit that had already been issued would remain in effect, binding and particular project to its terms, until the permit had been rescinded under a proposed paragraph (w) or had expired under an existing paragraph (s). *See id.* at 51927, 51956. Under paragraph (w), a permittee would have been able to obtain rescission only if the permittee filed a complete application with the issuing authority within 90 days after paragraph (w) had come into effect.

Amendments of the sort that EPA proposed in September would also have brought some projects that previously fell or would have fallen outside the coverage of the 1978 regulations inside the coverage of the Part 52 regulations. For instance, many changes at a "source" that would result in a *gross* increase in "potential to emit" well below 100 or 250 tons per year might nevertheless result in a significant net increase.

In September, EPA proposed to exempt from PSD review certain of these projects that fell or would have fallen beyond the reach of the PSD permit requirements under the 1978 regulations, but not under the proposed amendments. In particular, EPA proposed to "grandfather" any such project which before the promulgation of the new amendments had received each preconstruction permit that the state implementation plan (SIP) required and which will have "commenced" construction within 18 months after promulgation. *See id.* at 51928 (first column), 51953 (proposed § 52.21(i)(7);) 44 FR 57108 (items B(1) and (C)(2)).

Finally, EPA proposed to add another new grandfather provision to § 52.21(i). That provision would have stated that the permit requirements of those regulations do not apply to any "source" or "modification" on which construction "commenced" before August 7, 1977, the date of enactment of the 1977 Amendments. *See id.* at 51928 (first column), 51953 (proposed § 52.21(i)(3)). The purpose of the proposal was merely to state in regulatory form what section 168(b) of the Act, 42 U.S.C. 7478(b), already provides.

b. *Comments and final action on the proposed transition provisions relating to coverage:* EPA received no comments on its proposal to put the new definitions of "potential to emit" and "modification" and the new limitation on geographic applicability into effect immediately upon promulgation. EPA therefore has put those provisions into effect as of the date this notice appears in the Federal Register. Some projects that were within the coverage of the 1978 Part 52 regulations, but have yet to receive a PSD permit, are now outside the coverage of the new Part 52 regulations, since the prohibition on construction without a permit in § 52.21(i)(1)(i) no longer applies to them. As a result, construction on them may begin immediately.[4] Because further delay is pointless, and might be harmful in some cases, EPA finds that it has "good cause" to put the new applicability provisions into effect immediately upon promulgation, within the meaning of section 4(d)(3) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3). *See also* APA 4(d)(1), 5 U.S.C. 553(d)(1).

EPA did receive numerous comments on its proposal to rescind certain permits, and to treat them as binding unless and until rescinded. While one commenter agreed with the proposal, most did not. They objected primarily to two aspects of the proposal: first, that it would place on the permittee the dual burden of coming forward with an application for rescission and of providing proof that the project in question does fall outside the coverage of the new Part 52 regulations and, second, that it would bar rescission if the permittee failed to file a complete application within a certain period of time. The commenters argued that EPA had no authority originally to require a permit for any project that falls outside the coverage of the new regulations and that it therefore has no authority now either to place the burden of coming forward and of proof on a permittee or to keep a rescindable permit in effect merely because of a failure to file a complete application for rescission by a certain time.

In response, EPA has promulgated a new provision, § 52.21(w), which does place the burden of coming forward and of proof on the permittee, but imposes no deadline for filing an application. Whether EPA had authority originally to require a permit for a project that falls outside the coverage of the new regulations is immaterial. EPA has authority under section 301(a)(1) of the Act, 42 U.S.C. 7601(a)(1), to fashion within reason the regulatory tools it needs to carry out its tasks. Here EPA has undertaken not only to release certain PSD permittees from the constraints of their PSD permits, but also to settle as finally, as publicly, and as quickly as possible which old permits are binding and which are not. Prospective applicants, in order to prepare applications, and permitting authorities, in order to meet their obligations under the PSD regulations, must assess increment consumption. Confusion and uncertainty over whether particular projects are subject to the emissions limitations in their PSD permits can only frustrate efforts to assess increment consumption. Now § 52.21(w) maximizes EPA's ability to perform satisfactorily the tasks it has undertaken.

First, by stating explicitly that a permit generally remains in effect until rescinded, § 52.21(w) gives each permittee with a rescindable permit a strong reason to bring it before the reviewing authority as soon as possible. Second, by putting the burdens of coming forward and of proof on the permittee, § 52.21(w) ensures that the reviewing authority will spend its time efficiently and will have adequate information with which to make a sound decision. Third, by establishing that only the reviewing authority may rescind a permit, the provision promotes the soundness and therefore the finality of the rescission, since the reviewing authority will have the expertise and objectivity necessary to check adequately whether the permittee has applied the intricate applicability rules correctly. Finally, by requiring that the reviewing authority publish each rescission, § 52.21(w) ensures that the status of each permit will be in the public record.

Certain commenters suggested two alternatives to EPA's proposed rescission provision. One alternative was to declare upon promulgation that any PSD permit for a project that falls outside the coverage of the new regulations is null and void as of that time, but that any permittee which concludes it holds such a permit must send the reviewing authority a bare notice of that conclusion. The other alternative was to require any such permittee to send the reviewing authority an application for rescission and to establish that the failure of the reviewing authority to act on the application within a certain period would operate to grant the application. EPA has decided to adopt neither alternative. Under both, a project that should not be able to escape PSD

[4] The partial stay of the 1978 regulations that EPA issued in January 1980 has probably already relieved most of those projects from the permit requirements of those regulations.

constraints would be able to escape them merely because of an oversight or a manpower deficiency. EPA, however, has no authority to allow escape from review on that basis.

Certain commenters also objected to other aspects of the proposed rescission provision. In particular, one commenter asserted that proposed § 52.21(w)(3), which would say that "[t]he permitting authority may approve" an application that does show that the permit is rescindable, should state instead that "[t]he permitting authority *shall* approve" such an application. (Emphasis added.) EPA agrees, and has placed the necessary mandatory language in the final provision. Other commenters urged that the final provision recognize the possibility that a permittee may wish to obtain rescission of only certain elements of a permit. In response, EPA has introduced language under which the reviewing authority may rescind only certain elements, if that is appropriate in the particular case.

With respect to the rescission provision, it should be noted that rescission of a permit would in no way affect any other limitations on the project that may apply by virtue of the SIP or a state permit. It should also be noted that, if a source or modification whose permit is rescinded were later found to be causing or contributing to an increment violation, additional controls might be necessary. *See* 40 CFR 51.24 (a)(3)(1979).

EPA received many comments on its proposal to "grandfather" certain projects that fall outside the coverage of the 1978 regulations, but not the new Part 52 regulations. Two commenters, while not focusing specifically on that proposal, expressed general opposition to "grandfathering" any project that would otherwise fall within the coverage of the new regulations. In its view, EPA should adhere to the transitional rules that it established in the 1978 regulations, so that in general a project would escape PSD review under the new Part 52 regulations only if certain permits were obtained for it by March 1, 1978, and construction "commenced" on it by March 19, 1979.

EPA disagrees that it should or must adhere to the transitional rules in the 1978 regulations in deciding which of the projects in question here should have to get a PSD permit. Part C of Title I of the Act contains two provisions, sections 165(a) and 168, which describe how the PSD permit requirements of Part C are to be implemented. Those sections, however, contradict each other irreconcilably. *See Citizens to Save Spencer County* v. *EPA*, 600 F.2d 844, 851–54, 860–73 (D.C. Cir., 1979). EPA has authority under section 301(a)(1) of the Act, therefore, to set transitional rules which accommodate reasonably the purposes and concerns behind the two contradictory provisions. *See id.* at 873–74.

The court in *Citizens to Save Spencer County* identified those "considerations" as follows:

> (1) enhanced protection of the environmental quality of the nation's air; (2) minimization of economic dislocation and loss as a result of such enhanced protection; (3) a heightened enforcement role for states * * *; and (4) facilitation of an efficient administrative transition from enforcement of the "old" to "new" preconstruction review requirements. (*Id.* at 889 (footnotes omitted).)

Here, the proposed grandfather provision would reasonably accommodate those considerations. Most of the projects in question are modifications that would result in a significant net increase in the maximum controlled emissions of the "source," but not in a gross increase in uncontrolled emissions equal to or above 100 or 250 tons per year. This discrete group of small modifications, even in the aggregate, have a relatively minor effect on air quality. But, because they are numerous, delaying them by imposing new PSD requirements could frustrate economic development. The proposed provision would strike a rough balance between the benefits and the cost of applying PSD to those projects by allowing any company that has already obtained each of the preconstruction permits otherwise necessary under the SIP to proceed to construction without delay. To require such a company to obtain a PSD permit could mean substantial delays. To impose such delays here would be excessive.[5]

One commenter urged EPA to promulgate a grandfather provision that would use the date of complete application instead of the date of permit issuance. The commenter was concerned that the proposed provision would treat unfairly a company that obtained the last permit necessary under the SIP just a day or two after the date this notice appeared in the Federal Register. Use of such a date, however, might exempt many more projects from review. Hence, in EPA's view, it would fail to give adequate expression to the interests behind section 165, especially the goal of protecting air quality.

[5] Even if the conflict between sections 165(a) and 168 had not conferred on EPA the discretion to exempt certain projects that would otherwise be subject to PSD review for the first time, EPA would have authority under section 301(a)(1) to exempt those projects in order to phase-in new requirements on a reasonable schedule.

Certain commenters pointed out that a company might be unable to "commence construction" within the proposed 18-month period, because it might be unable to get sufficiently in advance any preconstruction permits that federal or state law outside the SIP might require. They recommended that EPA set the deadline 18 months from issuance of the last necessary federal authorization. That recommendation parallels a proposal EPA made in July 1979 to amend the grandfather provisions of the 1978 regulations so as to extend the "commence" construction deadlines in those provisions generally to a date nine months from the issuance of the last necessary federal authorization. *See* 44 FR 42722. EPA has not yet completed that rulemaking. When it does, it will decide whether to accept the recommendation of the commenters here.

EPA has decided to promulgate the grandfather provision basically as proposed. *See* § 52.21(i)(4)(v). The final provision contains the following clause: "the owner or operator * * * obtained all final federal, state and local preconstruction approvals or permits necessary" under the SIP by a certain date. EPA intends that clause to refer only to the date on which the reviewing authority issues the permit. For emissions increases as a result of SIP relaxations, the appropriate date is the effective date of final EPA approval. Because of the construction moratorium, 40 CFR 52.24, 44 FR 38471, some SIP permits may be issued before the time that the owner or operator is allowed to begin construction. Nevertheless, in EPA's view, the owner or operator "obtains" the permit when the reviewing authority issues it, even if permission to begin construction takes effect subsequently.

EPA received no comments on its proposal to put into regulatory language the provision in section 168(b) of the Act that only the PSD regulations in effect before August 7, 1977, apply to any project on which construction "commenced" by then. Hence, EPA is promulgating that provision basically as proposed. *See* section 52.21(i)(4)(i).

2. *Substantive Provisions Relating to BACT.*

a. *Proposed transition provisions:* In September, EPA proposed certain new substantive requirements. One of the new requirements was that a project apply BACT for each pollutant regulated under the Act that the project would emit in a significant, but "minor" amount. Under the 1978 Part 52 regulations, a project has to apply BACT only for each pollutant regulated under the Act that the project would emit in a

"major" amount. EPA added that it intended to put the new BACT requirement into effect immediately upon its promulgation.

In proposing the new BACT requirement, EPA also proposed to exempt certain projects from it. In particular, the Agency proposed not to apply the requirement to any project whose application for a PSD permit was complete before the requirement came into effect. *See* 44 FR 51928, 51954 (proposed § 52.21(j)(2)).

b. *Comments and final action on proposed transition provisions relating to BACT requirements:* In general, those commenting on the proposal to grandfather any project whose application was complete before the date of publication of this notice from the new BACT requirement favored such an exemption for at least those projects. Only two commenters, the same two who opposed the grandfather provision discussed above, opposed such an exemption for any project. They argued that EPA should adhere to the transitional rules that it established in the 1978 regulations, so that the new BACT requirements would apply to any project that fell or would fall within the coverage of those regulations, even to those which have already received a PSD permit.

EPA disagrees that it should or must adhere to the 1978 transitional rules in applying the new BACT requirements. As discussed above, the court in *Citizens to Save Spencer County* held that EPA has a "responsibility to harmonize the statutory provisions [sections 165(a) and 168] so as to implement the congressional mandate that new federal preconstruction review requirements be instituted promptly but with minimum economic dislocation." 600 F.2d at 851. Requiring a company which has already received a permit, or completed application for one, to amend project designs and permit applications to include BACT for pollutants to be emitted in "minor" amounts would hardly minimize economic dislocation. To the contrary, it would delay construction substantially in many cases. The benefits of that delay in those cases would probably fail to counterbalance its cost, since the new BACT requirements would apply only to pollutants this discrete group of projects would emit in "minor" amounts. Thus, applying the new BACT requirements retroactively to projects that already have a permit or a complete application would fail to give adequate expression to the economic considerations behind section 168.

Another commenter argued that the proposal did not go far enough, in that it would require companies which on the date of promulgation were just about to file a complete application to amend project designs and applications. The commenter urged EPA to apply the new BACT requirement only to projects whose applications were not complete within one year after the date of publication of this notice in the Federal Register. That alternative, however, would fail to give adequate expression to the environmental considerations behind section 165(a). EPA therefore has rejected it, too.

Instead, EPA has decided to adopt a provision like the proposal which exempts from the new BACT requirements any project whose application was complete before this notice appears in the Federal Register. *See* § 52.21(i)(9). EPA believes that the final provision reasonably accommodates the purposes and concerns behind sections 165(a) and 168.[6]

The final provision differs from the proposed provision somewhat. First, it appears in paragraph (i), instead of paragraph (j), the provision that sets forth the general BACT requirement. EPA has sought to gather each of the exemption provisions into paragraph (i). Second, the new exemption provision exempts an eligible project from the new BACT requirement entirely, but adds that the project is subject to the BACT requirements of the 1978 regulations, if they would otherwise have applied. The purpose of that structure is in part to assure that BACT would apply to a pollutant for which the project would be "major" under the 1978 regulations, but "minor" under the new Part 52 regulations due to the new concepts of "potential to emit" and "modification."

The final Part 52 regulations contain a definition of the term "complete" in reference to an application. Under that definition an application becomes "complete" when it contains all of the information necessary for application processing.

It should be noted, finally, that the date an application was complete will generally differ from the date on which the reviewing authority makes its completeness determination, since the filing of the last necessary piece of information will typically occur before the determination is made. When EPA makes a completeness determination, it will specify the date as of which the application was "complete." That date will be the date on which the last necessary piece of information was received. One of the provisions of the Consolidated Permit Regulations, 40 CFR 124.3(f) (discussed below), refers to the "effective date" of an application. Generally, the "effective date" of an application will follow the date it is "complete."

3. *Substantive Provisions Relating to Air Quality Analyses.*

a. *Proposed transition provisions:* Another new substantive requirement that EPA proposed in September was that an applicant provide an analysis of air quality in the area the project would affect for each pollutant regulated under the Act that the project would emit in "minor," but still significant, amounts. Under the 1978 regulations, an applicant had to provide such an analysis only for those pollutants for which the project would be "major" and for which EPA had set a national ambient air quality standard (NAAQS). The remaining new requirement was that, if the project would emit particulate matter or sulfur dioxide in a significant amount, the analysis focus on the extent to which ambient concentrations of the particular pollutant had consumed the applicable PSD increments.

In proposing the new requirements for air quality analyses, EPA also proposed to exempt certain projects from them. In particular, EPA proposed not to apply the new requirements to any project whose application was complete before the requirements came into effect. *See* 44 FR 51928, 51954 (proposed § 52.21(n)(1)(i)).

The 1978 Part 52 regulations contained a requirement that any air quality analysis for a pollutant for which a NAAQS exists ("criteria pollutant") must generally include monitoring data gathered over and relating to the year preceding the submission of a complete application. In September, EPA proposed a reformulation of that requirement. That requirement, however, when coupled with the new requirement for an analysis for each criteria pollutant emitted in "minor" amounts, could cause a prospective applicant substantial delay. As a result, EPA also proposed to require any applicant who does not file a complete application before the date of promulgation to gather monitoring data for any such "minor" pollutant only over the period (up to one year) from the date of promulgation and the date the applicant would file an otherwise complete application. *See id.* at 51928, 51954 (proposed § 52.21(n)(1)(iii)).

b. *Comments and final action on transition provisions relating to air quality analysis requirements:* Two

[6] Even if the conflict between sections 165(a) and 168 had not conferred on EPA the discretion to exempt projects with a complete application, EPA would have authority under section 301(a)(1) to exempt them, since applying the new BACT requirements to such projects would be unfair.

commenters argued that EPA should adhere to the transitional rules of the 1978 regulations with respect to the new requirements for air quality analyses. In their view, the monitoring requirements should apply in general to any "major" project for which certain permits were not obtained by March 1, 1978, and on which construction had not commenced by March 19, 1979. Certain other commenters objected to any application of the new monitoring requirements to a company which, although it had not filed a complete application by the date of promulgation, had nevertheless previously undertaken a program of monitoring the EPA or a state had approved.

Some additional comments were directed to the proposed phase-in provision. Those comments contended that a prospective applicant would find it impossible to satisfy that provision, since the purchase, installation, and "debugging" of new monitoring equipment, together with the analysis of any new data, would require at least several months. Many commenters did note that the draft of the revision of the monitoring guideline would allow three months for those tasks, but asserted that even three months would generally be insufficient. See U.S. EPA, *(Draft) Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)*, (October 1979). Some recommended an allowance of 2–5 months, others 6–9 months, and still others more than 10 months.

A number of commenters observed that the proposed regulatory language failed to embody the intent that the preamble had described. First, the proposed exemption for each "major" project whose application was complete before the date of promulgation focused only on the new requirement for an analyses for each pollutant that the project would emit in a "minor" amount. Hence, it would have failed to shield each such project from the new requirement for an analysis for each non-criteria pollutant that the project would emit in a "major" amount. Second, the provision that would have phased-in any new monitoring requirements focused only on projects whose applications were complete by the date of promulgation. Consequently, it specified no phase-in rules for projects whose applications were not complete by then, the very projects that EPA intended the rules to benefit.

Finally, one commenter pointed out an anomaly in the proposed phase-in provision: it focused only on the new requirement, in proposed § 52.21(n)(1)(iii), that an applicant provide monitoring data for any criteria pollutant that the project would emit in "minor" amounts. As a result, the proposed provision would have required a company with a project that is "major" under the new regulations, but was not under the 1978 regulations, to gather the full amount of monitoring data for each of its "major" pollutants, but none of its "minor" pollutants. But, since the monitoring requirements would have been new for the "major" pollutants, as well as the "minor" pollutants, such a company should have protection with respect to the "major" pollutants, too.

The final transition provisions relating to the new requirements for air quality analyses adhere to the spirit of the proposed provisions, but differ substantially in structure and articulation. One of the four final provisions, § 52.21(i)(9), exempts certain sources and modifications from the new requirements with respect to monitoring entirely. It provides that those requirements shall *not* apply to a source of modification that was subject to the 1978 Part 52 regulations, if its application becomes complete on or before the date this notice appears in the Federal Register. Instead, the air quality analysis requirements in the 1978 regulations apply to the source or modification.

Two of the three remaining provisions exempt certain other sources and modifications from the new monitoring requirements for criteria and non-criteria pollutants. One of those provisions, § 52.21(i)(10)(i), exempts a source or modification that would have been subject to the 1978 Part 52 regulations from those new monitoring requirements, if its application becomes complete with respect to the requirements of the new Part 52 regulations, other than the new monitoring requirements, on or before a date ten months from the date of promulgation. The provision adds the clarification that the monitoring requirements of the 1978 regulations apply instead to the source or modification. The other exemption provision, § 52.21(i)(10(ii), is similar. It exempts a source or modification that would not have been subject to the 1978 Part 52 regulations, if its application becomes complete with respect to the requirements of the New Part 52 regulations, other than those for monitoring, on or before a date ten months from the date this notice appears in the Federal Register.

The remaining provision, § 52.21(m)(1)(v), phases-in the monitoring requirements of new § 52.21(m)(1)(iv) to the extent that they place monitoring burdens on an applicant that the 1978 Part 52 regulations would not have imposed. Section (m)(1)(iv) provides in general that any required air quality analysis for a criteria pollutant must include monitoring data gathered over a period of at least one year. However, the new phase-in provision establishes the general rule that for certain applications the required monitoring data shall have been gathered over a period at least equal to the period from the date six months from the date of promulgation to the date the application becomes complete, except as to the monitoring requirements of the new Part 52 regulations. The applications to which this provision applies are those which become complete, except as to those monitoring requirements, between the date ten months from promulgation and the date eighteen months from promulgation. The new phase-in provision then states three exceptions to that general rule. First, an applicant with a project that would have been subject to the 1978 Part 52 regulations must provide at least whatever monitoring data the 1978 Part 52 regulations would have required the applicant to provide. Second, if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a shorter period (not to be less than four months), the required data may be gathered over at least that shorter period. Finally, if the monitoring data would relate exclusively to ozone and would not have been required under the 1978 regulations, the Administrator may waive the otherwise applicable requirements of the phase-in provision to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

The following example illustrates how the proposed phase-in provision works. A company proposes to construct a new plant that would emit sulfur dioxide and particulate matter. Under both the new Part 52 regulations and the 1978 regulations, the plant would be "major" for sulfur dioxide and "minor" for particulate matter. The emissions of particulate matter would not be *de minimis*. But for the phase-in provision, the new Part 52 regulations would require an application for a permit for the plant to contain a year's worth of monitoring data for both sulfur dioxide and particulate matter. (This assumes that the Administrator does not determine that a complete and adequate analysis could be accomplished with data gathered over a shorter period.)

The 1978 regulations would have required the application to contain a year's worth of data for just sulfur dioxide. The company submits an application which becomes complete, except with respect to monitoring, at the end of the fifteenth month after promulgation. Under the phase-in provision, the application must contain (1) a year's worth of monitoring data for sulfur dioxide and (2) nine months' worth of data for particulate matter.

The four final provisions embody EPA's response to the comments on the proposals. First, EPA has adopted the fundamental approach of the proposal, which was to apply the new monitoring requirements prospectively only. EPA has concluded that that approach reasonably accommodates the purposes and concerns of sections 165(a) and (e)(2), on the one hand, and section 168, on the other. In brief, the approach institutes the new requirements promptly, but with minimum economic dislocation. See *Citizens To Save Spencer County* v. *EPA*, 600 F.2d at 851. Full and immediate application of the new monitoring requirements would have caused substantial delays in the submission of complete applications and hence the issuance of permits, but provided little direct environmental benefit in return. As for applicants who undertook an approved program of monitoring before the date of this notice, the phase-in provision affords them adequate protection from delay, while at the same time generally demanding as much compliance with the new monitoring requirements as possible.[7] In short, EPA disagreed with the commenters who complained that the proposals would have instituted the new requirements too late, and with those who complained that the proposals would have instituted them too soon.

Second, with respect to the new monitoring requirements for criteria and non-criteria pollutants, EPA has established a grace period of ten months in the final grandfather provisions. It has done so because it agrees with the commenters who asserted that instituting a new monitoring program and analyzing the data it generates requires more than three months in many, if not most, circumstances. EPA has selected a grace period of ten months with respect to monitoring for both criteria and non-criteria pollutants, first, because six months is an estimate of the amount of time that would generally be needed to complete those tasks and, second, because there is little usefulness to less than four months of data for most pollutants.

The promulgated provisions cure the ambiguities in the proposal observed by some commenters. Section 52.21(i)(10) exempts an eligible project from the requirements relating, not only to any non-criteria pollutant that it would emit in "minor" amounts, but also to any non-criteria pollutant that it would emit in "major" amounts. In addition, the phase-in provisions now deal explicitly with projects whose applications were *not* complete by the applicable deadline. Finally, § 52.21(i)(10) protects not only projects that were subject to the 1978 regulations, but also projects that were not subject to them.

4. *Comments on the effective date of the substantive provisions.*

In proposing the new substantive provisions relating to BACT and air quality analyses the Agency stated that it intended to put those new provisions into effect immediately upon their promulgation. One commenter contended that EPA should put the new provisions into effect 30 days after promulgation, rather than immediately on the date of promulgation, so that "potential applicants [would have] sufficient lead time in planning modifications and new sources." With respect to the new provisions relating to air quality monitoring, the 10-month grace period and phase-in provision described above should satisfy the concerns of the commenter. With respect to the new BACT provisions, however, EPA disagrees. Prospective applicants have had ample warning of the new BACT provisions. The court in *Alabama Power* held in June of 1979 that Congress intended them to be imposed and in September 1979 EPA specified when it intended to impose them. Therefore, there is good cause to make these requirements immediately effective. The Administrative Procedure Act (APA), moreover, would not require a 30-day delay in implementation, since the provisions amount to legal interpretations. *See* APA section 4(d)(2), 5 U.S.C. section 553(d)(2).

5. *New Provisions Governing Procedure.*

EPA recently promulgated regulations aimed at consolidating and unifying various permit requirements and procedures. *See* 45 FR 33290 (May 19,1979) (the "Consolidated Permit Regulations"). Those new regulations contain provisions which will govern the processing of applications for permits under the Part 52 PSD regulations. Those provisions appear as 40 CFR 124.1–124.21 and 124.41–124.42, 45 FR 33485–93. Paragraph (r) of the 1978 Part 52 regulations has governed the processing of PSD permit applications under those 1978 regulations.

The Consolidated Permit Regulations contain a provision, section 124.21, which describes the transition from the procedures of paragraph (r) to the new consolidated permit procedures. It provides that those new procedures shall "apply to PSD proceedings in progress on July 18, 1980." 45 FR 33492. It adds that the requirements of sections 124.9 and 124.18, which would require the preparation of a formal administrative record, shall apply only to "PSD permits for which draft permits [*i.e.*, preliminary determinations] were prepared after the effective date of these regulations." *Id.*

In promulgating the new Part 52 regulations, EPA has adopted a new paragraph (q). It states that the new consolidated permit procedures govern the processing of PSD permit applications to the extent that they apply. It adds that the procedures of the 1978 Part 52 regulations continue to apply to the extent that the new procedures have not yet displaced them. In time, the new procedures will displace the old ones entirely.

B. Part 51 PSD Regulations

In September, EPA did not propose an amendments to the 1978 Part 51 regulations that paralleled the proposed Part 52 transition provisions. The Part 51 amendments that EPA did propose paralleled only the Part 52 provisions that would affect coverage and substance. The few comments that were submitted focused on this gap.

One commenter asked that EPA state in the Part 51 regulations that a state which has already adopted and obtained EPA approval of its own PSD program may, in conforming that program to the new Part 51 regulations, adopt a rescission provision like new § 52.21(w) into its plan. EPA believes that it is unnecessary to make such a statement in regulatory form. A state is free, in any event, to adopt such a provision and EPA would approve it.

Another commenter asked EPA to establish in the Part 51 regulations that a state with its own PSD program, in adopting new, more stringent requirements for BACT and air quality assessments in accordance with the new Part 51 regulations, may also adopt grandfather provisions that would apply the new requirements prospectively. In response, EPA had added a new section 51.24(a)(6) to the Part 51 regulations. The new section provides that PSD SIP revision may operate prospectively,

[7] Even if the conflict between sections 165(a), 165(e)(2), and 168 had not conferred on EPA the discretion to exempt certain projects from the new air quality analysis requirements, EPA would have had authority under section 301(a)(1) to exempt those projects, because application of those requirements would have been unfair.

thereby establishing that a state may adopt grandfather provisions of that sort. It adds, however, that the revision must take effect no later than the date of its approval. EPA has also added a new section 51.24(i)(9) to the Part 51 regulations. It provides that an approval revision to a state PSD program, which program EPA has already approved, may contain transition provisions that parallel the new Part 52 transition provisions. The new section also establishes that the proposed transition provisions must operate at least as stringently as their Part 52 counterpart would in the context of the state PSD program.

Finally, a third commenter urged EPA to require a state with its own PSD program to delete these aspects of the plan that go beyond the requirements of the new Part 51 regulations within nine months after the date of promulgation of those new regulations, unless the state within that period of time submits "to EPA written acknowledgment that it is not required by federal law to include such provisions in its state plan, but has nevertheless elected to do so under state law pursuant to section 116 of the Act." The commenter feared that, absent such a requirement, inertia and lack of resources might prevent some states from deleting the provisions in question. Such a requirement, however, would interfere unnecessarily in the affairs of a state. EPA, moreover, doubts that it would have the authority in any event to repeal the more stringent aspects of a state plan simply because the state failed to say by a certain time that it wanted to retain those aspects. EPA therefore has not promulgated the requirement sought by the commenter.

After examining the Part 51 regulations in response to those comments, EPA has decided to add two new provisions. The first, section 51.24(a)(6), merely states in regulatory form what section 406(d)(2)(B) of the Clean Air Act Amendments of 1977 already states: any PSD SIP revision required by the new Part 51 regulations must be adopted and submitted within nine months of the date this notice appears in the Federal Register. The second provision, § 51.24(a)(6)(ii), establishes explicitly that any PSD SIP revision must contain provisions which describe when and as to what sources and modifications the revision is to take effect. The purpose of that requirement is merely to minimize confusion and uncertainty during the transition from any old to new PSD SIP requirements.

C. Offset Ruling

The amendments to the Offset Ruling which EPA is announcing in this notice expand its coverage, just as the amendments to the Part 52 PSD regulations expand its coverage. In EPA's view, the expansion of the coverage of the Offset Ruling should operate prospectively only. Hence, it has inserted into the Ruling a grandfather provision that parallels the relevant PSD grandfather provision. It provides that the Ruling does not apply to any source or modification that was not subject to the version of the Ruling in effect prior to the date this notice appears in the Federal Register, if all necessary SIP permits were obtained for the source or modification by that date and if construction commences within 18 months of that date.

D. Part 51 Nonattainment Regulations

Pursuant to section 406(d)(2)(B) of the Clean Air Act Amendments of 1977, states will have nine months after the date of this notice appears in the Federal Register in which to adopt and submit any new definitions and other regulatory provisions required by new 40 CFR 51.18(j). States need not adopt verbatim the definitions in section 51.18(j)(1), but they must demonstrate that any different definitions they retain or adopt have the effect of being at least as stringent as those set out in § 51.18(j)(1). If a state plan currently includes definitions or regulatory provisions which are more stringent than the nonattainment definitions and other provisions contained in these final rules, the state has the choice of retaining its current regulations or of revising them so as to conform to EPA's rules. If a state does not submit any necessary revisions to its plan within nine months after the date this notice appears in the Federal Register, the construction moratorium will go into effect 15 months after this date in all nonattainment areas in that state. The additional 6 months is consistent with the review period allotted for Part D submitted under section 110(a)(2)(I) and 129(c) of Pub. L. 95-95.

EPA received only one comment on transitional requirements for § 51.18(j). This commenter requested that EPA allow states which have already adopted NSR regulations pursuant to section 173 of the Act be permitted to adopt a rescission provision like that of § 52.21(w). EPA believes that to make such a statement in regulatory form is unnecessary. A state is free to adopt such a provision, and EPA will approve it, provided that the state's NSR program meets the requirements of section 173 and that permit rescission will not interfere with reasonable further progress or attainment of ambient air quality standards.

E. Construction Moratorium

The amendments to the construction moratorium expand its coverage in some ways, too. Hence, EPA has promulgated a grandfather provision patterned after the relevant PSD and Offset Ruling provisions. It appears as § 52.24(g).

F. Pending SIP Revisions

By the date this notice appears in the Federal Register, EPA will not have taken final action on many PSD and nonattainment SIP revisions that states have already submitted. EPA intends to review those pending revisions under the requirements that applied to them before the date of promulgation. To wait until a state had revised its revisions to bring them into line with the new PSD and nonattainment requirements would cause the state and its industry to suffer a heavy and undue burden, particularly in those cases where approval of a Part D plan is needed to lift the construction moratorium.

G. Effective Date of the Nonattainment Provisions

EPA has made all of the new nonattainment provisions announced here effective immediately upon their promulgation. EPA finds that it has "good cause" within the meaning of the relevant provisions of the Administrative Procedure Act to do so. First, the new provisions in the main provide relief from pre-existing regulatory burdens. Second, the decision in *Alabama Power* and the September 1979 proposal provided ample warning of the new changes. Finally, it is important for planning and management by EPA, the states and industry that these new provisions come into effect as soon as possible.

H. Miscellaneous

Under the amendments announced in this notice, each set of PSD and nonattainment regulations uses the phrase "this section" at some points and phrases such as "40 CFR 52.21" at other points. EPA intends "this section," when used in a particular set of regulations to refer only to the version of the regulations which has resulted from the amendments announced here. For example, the phrase "this section" in new § 52.21(i)(1)(i) refers only to the Part 52 PSD regulations as newly constituted. EPA intends phrases such as "40 CFR 52.21" to refer to any version of the particular regulations which has appeared or is to appear at the particular location in the Code of Federal Regulations. For example, "40 CFR 52.21" refers to each version of the Part 52 PSD regulations that has ever

existed, including the version that has resulted from the amendments announced here.

V. Potential to Emit

The preconstruction review requirements of section 165 of the Act apply to any "major emitting facility." 42 U.S.C. 7475. Pursuant to section 169(1), that term includes any stationary source which emits or has the "potential to emit" 100 tons per year or more of any pollutant, for sources included in one of 28 specified source categories, or 250 tons per year or more of any pollutant for any other type of source. 42 U.S.C. 7479(1).

A. Control Equipment

Obviously, many more sources would be affected if the term "potential to emit" referred to the amount of pollution that a source would emit without controls than if it took the operation of control equipment into account. In the PSD regulations promulgated on June 19, 1978, EPA took the former approach and defined "potential to emit" as "the capability at maximum capacity to emit a pollutant in the absence of air pollution control equipment." 40 CFR 51.24(b)(3), 52.21(b)(3) (1979). This approach was rejected by the *Alabama Power* decision which held that Congress intended that, in determining a facility's potential to emit, EPA "must look to the facility's 'design capacity' a concept which not only includes a facility's maximum productive capacity (a criterion employed by EPA) but also takes into account the anticipated functioning of the air pollution control equipment designed into the facility." 13 ERC 1993, 2003.

In response to the court's decision, EPA proposed, on September 5, 1979, a revised definition under which the application of control equipment would be taken into account in computing potential emissions. That approach, which was very strongly supported by public comments, is now being promulgated. 40 CFR 51.24(b)(5) and 52.21(b)(5).

The proposal noted that EPA will assume that a facility's air pollution control equipment will function in the manner reasonably anticipated. In this promulgation the Administrator is implementing the proposed approach by requiring that operation of control equipment be an enforceable requirement. In other words, a company may receive credit for the application of control equipment only to the extent that the resulting reduction in emissions is federally enforceable (see below). This provision is necessary, as a practical matter, to ensure that sources will perform the proper operation and maintenance for the control equipment. Thus, a source installing control equipment that would reduce emissions more than that required by generally applicable emissions limitations cannot receive credit for the additional increment of pollution reduction, unless it is federally enforceable. The definition of "potential to emit" is being modified appropriately.

Under the definition being promulgated, the potential to emit of existing sources with respect to the treatment of enforceable in-place control equipment shall be defined in the same fashion as discussed above for new sources. This responds to commenters who complained of this discrepancy in the September 5 proposal. Accordingly, potential to emit for all sources means the ability at maximum design capacity to emit air pollution, taking into account any *in-place* control equipment. Design capacity, and thus potential to emit, may be further limited if control equipment better than that normally required by the applicable SIP is installed and a correspondingly more stringent level of emissions control is included as an enforceable permit conditon. Finally, it should be noted that the potential to emit of a stationary source in today's rule is of primary importance in defining when a source would be major; it is not generally used in determining increment consumption or the baseline for assessing emission increases and decreases at a source (*see* Modification).

B. Continuous Operation

Under the existing definition of "potential to emit," a source can avoid PSD review if it binds itself, in a federally enforceable permit, to sufficiently limited hours of operation. 40 CFR 51.24(v)(5), 52.21(b)(5) (1979). In the September 5, 1979 proposal, EPA proposed to delete the clause which allows such adjustments and to presume continuous (24 hours per day, 365 days per year) operation. Consistent with that change, EPA also proposed to delete, from the same regulation, the words "or amount"; those words at present allow permit limitations on amount of materials combusted, processed, or stored to be considered in computing potential to emit. In making this proposal, the Administrator also requested comment on the need to adjust the assumption of continuous operation, in the case of sources which are physically incapable of such operation.

Many commenters (169 of 173) have strongly criticized this proposal, the most frequent response being that few sources operate constantly, and most cannot do so. These commenters also advised the Agency of certain benefits which would accrue from allowance of permit conditions in computing potential to emit. For example, a benefit noted is that such an approach would better relate the PSD permit applicability of new sources to the offset potential of existing sources, and to how the increment would be consumed. This approach was also claimed to be consistent with EPA's stated goal of developing PSD requirements which will fit into state programs in such a way as to minimize disruption of those programs and promote PSD SIP development by the states. Additionally, insignificant reviews would be minimized and PSD applicability would be more reflective of emissions actually produced by the source.

There was some comment in support of the proposal. A state environmental agency noted that emissions limits calculated from less than continuous operation are less easily enforceable than those which are based on continuous opertion. An environmental group supported the proposal on the grounds that it is consistent with the interpretation of "full design capacity," that it would be appropriately technology-forcing, and that it is necessary to protect the short term increment. These concerns are addressed below.

The court based its definition of "potential to emit" on the source's full-design capacity. *Id.* at 2003. The June opinion in *Alabama Power* did not directly address the acceptability of legal limitations on operation but did stress design capacity in the sense of physical and technological, as opposed to operational, limitations. However, in the final opinion, released on December 14, 1979, the court stated:

> The design capacity of a facility rarely contemplates uninterrupted operation 24 hours per day, 365 days per year. Projected downtime for repairs and maintenance *or other factors* may reduce the hours of operation that are appropriately considered in the calculation of a facility's "potential to emit." (*Id.* at 2005, n. 73.) (Emphasis added)

EPA interprets this language as not precluding permit conditions, that are federally enforceable under the applicable SIP, from circumscribing a source's potential to emit. In view of the above, the Agency believes it has discretion to adopt the most reasonable approach to this issue and has, therefore, reconsidered its proposal. Today's regulations recognize the ability of all federally enforceable limitations to constrain the potential to emit of a stationary source.

The Administrator believes that the policy concerning "enforceable permit conditions" is responsive to most of the concerns raised by commenters who were critical of EPA's proposal. New sources are now allowed to avoid NSR for PSD and nonattainment areas by limiting their type or amount of operation. Moreover, potential to emit is now defined in the same way for new and existing stationary sources. The use of certain permit conditions also addresses the concerns raised regarding physical incapability and peak load or standby units. This is, source owners or operators can now agree to source-specific permit conditions to limit their operation as appropriate. Such conditions can make infrequent operation and other physically limiting factors outside the design capacity of an emissions unit legally enforceable and can thereby limit the applicability of NSR.

The final policy concerning enforceable permit conditions has also taken in account the concerns of those favoring the proposal. One commenter noted that limited operation conditions would require greater enforcement attention. The Administrator agrees, but he believes that such conditions can be reasonably enforced. Another commenter also noted the need to minimize any air quality threats to short term increments by sources with intermittent operation but high short term rates of emission. No commenter presented a solution to this problem. EPA believes, however, that short term emissions limitations can be computed to address threats to short term increments, should any problems actually arise. It would be the responsibility of the reviewing authority to identify, in periodic evaluations, any sources causing such problems and apply appropriate limitations on their emissions. The Administrator will consider rulemaking to develop short term applicability thresholds, if necessary, after a reasonable amount of review experience has been developed.

Finally, as a result of today's policy, a potential problem exists concerning the future relaxation of a preconstruction permit that previously caused a proposed stationary source to enjoy minor rather than major status. For example, a source might evade NSR through agreement to unrealistically stringent operating limitations in its permit, and later obtain a relaxation of the condition. The Agency believes that the problem can be dealt with by 40 CFR 52.21(r)(4), entitled "Source Obligation." That paragraph provides that any owner or operator of a source, who would receive a relaxation of a permit condition that had enabled avoidance of NSR, would then become subject to review for all units subject to the original permit, as if they were new sources. In other words, if operational limitations are to be considered as an aspect of a source's design, it is reasonable that the permit accurately incorporate that design. If such operation is changed, the permit, and concomitant obligations, should be correspondingly changed.

C. Additional Guidance

Fugitive emissions under today's regulations are applicable in defining potential to emit. (*See* Fugitive Emissions.) However, like the proposal, such emissions do not count in assessing permit applicability unless a specified type of source category is involved. To accomplish this a specific exemption has been added to the final regulations by which fugitive emissions will be included in determining potential to emit only for specified source categories.

The definition of "potential to emit" is important not only to PSD preconstruction review, but also to NSR under the Offset Ruling (44 FR 3274), the statutory requirements for nonattainment areas, and the restrictions on construction in sections 110(a)(2)(I) and 173(4) of the Act. EPA is promulgating for each of those nonattainment programs the same definition of "potential to emit" that it is promulgating for the PSD program, as well as a provision like § 52.21(r)(4). EPA also intends this definition to be implemented for those programs in the same way as for PSD.

EPA has traditionally distinguished, for the purpose of NSR, between the direct emissions of a source and its "secondary emissions." (*See* Additional Issues.) In revising the Offset Ruling in January 1979 the Agency added a definition of "secondary emissions" and a provision describing for what purposes and under what circumstances those emissions are to be taken into account. *See* 44 FR 3281, 3283–84 (January 16, 1979). EPA is now adding that concept to the PSD regulations and to the nonattainment provisions relating to NSR and the restrictions on construction. For each of those sets of provisions "secondary emissions" are to be excluded in determining whether the regulations apply to a source (*i.e.*, whether a source or modification is "major"). Similarly, the control technology requirements of BACT and lowest achievable emission rate (LAER) do not apply to secondary emissions. How the Agency would treat those emissions for other purposes, including PSD air quality impact analysis, is described in Additional Issues.

VI. 50-Ton Exemption

Under the 1978 PSD regulations, stationary sources or modifications with allowable emissions of less than 50 tons per year, 1000 pounds per day, or 100 pounds per hour were in general exempted from the BACT and ambient air quality analysis PSD requirements. 40 CFR 51.24(j)(2), (k), and 52.21(j)(2), (k) (1979). In its preliminary *per curiam* decision the court thought that its ruling on "potential to emit" made a ruling on the 50-ton exemption "academic," since no 50-ton source would ever be major if "potential to emit" referred to controlled emissions. 13 ERC at 1228–29. Nevertheless, it remanded the exemption to the Agency for reconsideration and noted that the Agency had exceeded its authority in establishing the exemption. In response, EPA proposed to delete the provisions which embodied the exemption, and to delete parallel provisions in the Offset Ruling. EPA, however, proposed adding to the PSD regulations a 50-ton exemption for certain modifications. The proposed exemption tracked section 165(b) of the Act closely, but not exactly. Essentially it provided that a source qualifying for the exemption would face a limited air quality review for SO_2 and PM. Use of the exemption would be restricted to modifications, at a plant existing as of August 7, 1977, entailing emissions increases of 50 tons or less of any pollutant after application of BACT and which would impact no Class I area or interfere with the attainment of PM or SO_2 standards. All net emission changes since August 7, 1977 would be aggregated in applying the exemption.

All of the seventeen commenters who focused on the proposed provision expressed general agreement with this approach, but some commenters stated that the exemption should be broader. For example, four commenters wanted an additional 50-ton exemption after each full review. Five commenters requested a special, more lenient, review for pollutants whose emissions rates fall between 50 tons per year and the *de minimis* level in those cases where the exemption would not apply. The Administrator finds no grounds for providing additional exemptions after each review. Similarly, there is no justification or authority under section 165(b) for a special limited review for emissions increases falling between *de minimis* amounts and the 50-ton level. A few commenters suggested that other eligibility values than 50 tons be used. EPA responds that section 165 of the Act

mandates the 50-ton figure, but that much of these commenters' concerns are dealt with by the *de minimis* provisions being promulgated today. Two other commenters requested that the exemption be governed by net emissions increases. Today's regulations provide that review is applicable to net emissions increases, thus addressing the concerns of the two commenters cited above. With this exception, and the two noted below, the 50-ton exemption is being promulgated as proposed.

Some commenters pointed out that EPA's proposed 50-ton exemption clause was more limted in its application than the Clean Air Act language of section 165(b), in that the September 5 proposal contained additional consideration of Class I area impacts (*e.g.*, 44 FR 51949, 40 CFR 51.24(k)(2)(i)). EPA agrees with these commenters and has eliminated that portion of the 50-ton exemption language dealing with Class I areas. *See* 40 CFR 51.24(i)(7) and 52.21(i)(7).

The 50-ton exemption contained in the Act made those sources existing as of August 7, 1977, eligible for the exemption; the same applicability date was proposed in September 1979 for this revised exemption. The *Alabama Power* final opinion suggested that EPA had authority to conform the eligibility date for the section 165(b) exemption to the "effective date" of the preconstruction permit requirements of the 1978 regulations, i.e., March 1, 1978. In the January 30, 1980 Federal Register notice EPA sought comment on changing the eligibility date and on whether March 1, 1978 would be the appropriate choice.

Twenty-four commenters addressed the issue of the eligibility date. Nineteen of these favored a date of March 1 or 19, 1978. Four wanted the date to be that of the final promulgation of these regulations. One commenter disagreed with the date change because it considers the exemption itself to be unauthorized; however, the Act clearly provides for the exemption, as explained elsewhere in this section. One industrial group alleged that the date of promulgation would be the proper eligibility date for the specific case of fugitive emissions, in that fugitives were not regulated as of March 1, 1978. This is apparently a reference to the fact that rulemaking relative to potential to emit (*see* Potential To Emit) had not yet been performed. In fact, though, fugitive emissions were covered by the 1978 regulations and the calculation of potential to emit does not change that circumstance. The commenters preferring March 19 to March 1 referred to a statement in *Alabama Power* that March 19, 1978 is the "effective date" of the regulations. 13 ERC at 2006, n.79. The "effective date" of those regulations is, however, March 1, 1978. *See Citizens to Preserve Spencer County* v. *EPA*, 12 ERC 1961, 1978; and Preamble to 1978 Regulations, 43 FR 26380, 26390. Concerning the comments favoring the date of this promulgation as the eligibility date, the Administrator notes that section 165(b) of the Act limits eligibility for the 50-ton exemption to those sources in existence on the date of enactment of the 1977 Admendments to the Act. For the reasons noted in the *Alabama Power* decision, EPA has authority to extend eligibility to March 1, 1978. However, the Agency cannot extend this deadline to today's promulgation. For these reasons March 1, 1978 is now promulgated as the eligibility date for the 50-ton exemption.

VII. Fugitive Emissions

For PSD determinations prior to the *Alabama Power* decision, EPA considered *all* reasonably quantifiable emissions of a pollutant—including both point emissions (*e.g.*, from a stack or chimney) and fugitive emissions—on the ground that the emissions deteriorate air quality regardless of how they emanate. This practice applied to calculations of a source's emissions and potential emissions of a given pollutant both: (1) for the threshold determination under section 169(1) of whether the source was a "major emitting facility" subject to section 165, and (2) for the permitting requirements of section 165 itself.

The *Alabama Power* court upheld EPA's practice for the latter purpose, and confirmed that:

> The terms of section 165, which detail the preconstruction review and permit requirements for each new or modified "major emitting facility" apply with equal force to fugitive emissions and emissions from industrial point sources.
>
> * * * * *
>
> EPA is correct that a major emitting facility is subject to the requirements of section 165 for each pollutant it emits irrespective of the manner in which it is emitted. [13 ERC at 2016–2017.]

However, as to the first practice, the court held that section 169(1) is controlled by the rulemaking provision of section 302(j), and that fugitive emissions of a given pollutant may be included in the threshold calculation under section 169(1) only if the Administrator first determines, by rule, that they are to be included.

Accordingly, as part of the September 5, 1979 rulemaking proposal, the Administrator identified 27 categories of stationary sources for which he proposed to include fugitive emissions in threshold calculations of "major emitting facility" status for purposes of both section 165 and new source review regulations. Numerous commenters responded that the Administrator's proposal did not constitute "adequate" rulemaking, and that fugitive emissions could not be included in threshold calculations unless the rulemaking also established, on an industry-by-industry basis, methods for quantification of fugitive emissions and for analysis of their impacts on air quality, and included the identification of effective techniques for their control. EPA has considered these comments, but believes that Congress intended the rulemaking provision of section 302(j) to serve a much simpler and narrower purpose.

As the court itself noted, "[t]he legislative history of this rulemaking provision is sparse," and it is therefore particularly difficult to discern Congress' motivation for including it. 13 ERC at 2017. In general, section 302(j) sets out the criteria for determining whether a source is "major" and hence subject to the stringent requirements of certain key provisions of the Act. Congress clearly intended such determinations to always include point emissions, the type most commonly associated with major polluters. It also expressed its affirmative intent *not* to exclude "non-point" or "fugitive" emissions from those determinations:

> [T]he "major stationary source" definition is clarified to indicate the inclusion of major sources of fugitive emissions (last year's bill was unclear in this respect) * * *.[H.R. Rep. 95–294, 95th Cong. 1st Sess. 4 (1977).]

Rather than include fugitive emissions across-the-board, however, Congress left it to the Administrator to determine for which particular categories of sources fugitive emissions will be included in threshold calculations.

EPA therefore believes that the purpose of the rulemaking under section 302(j) is to afford members of affected categories of sources an opportunity to comment on the Administrator's determination to include fugitive emissions in the threshold calculation, and to allow them to present factual or policy arguments in support of claims that it would *not* be appropriate to do so. Although many such presentations will be technically oriented, EPA does not agree that section 302(j) requires the formal promulgation of measurement, modeling or control techniques or guidelines, because the fundamental decision which the Administrator is making under section 302(j) is *whether* fugitive emissions should be included in threshold calculations.

EPA finds support for this interpretation of section 302(j) in the fact that section 165 does *not* contain any rulemaking provision governing the *substantive* regulation of fugitive emissions. As explained earlier, the *Alabama Power* court confirmed that once a source is determined to be a major emitting facility under section 169(1), the substantive preconstruction review and permitting requirements of section 165 "apply with equal force to fugitive emissions and emissions from industrial point sources." In other words, even if fugitive emissions remain excluded from threshold calculations, section 165 requires that fugitive emissions be taken into account in determinations of whether NAAQS or allowable increments will be violated (section 165(a)(3)) and that fugitive emissions be subjected to BACT requirements (section 165(a)(4)). But these substantive provisions do *not* require EPA's prior promulgation of technical rules governing measurement, analysis or control such as those which the commenters suggest are necessary under section 302(j). Since the determination to include fugitive emissions in threshold applicability calculations is discretionary under sections 302(j) and 169(1), while the substantive regulation of fugitive emissions from all major emitting facilities is mandatory under section 165, EPA does not believe that the rulemaking provision of section 302(j) was intended to require the promulgation of such technical guidelines or regulations.

EPA therefore concludes that the rulemaking which it conducted was "adequate" under section 302(j) since affected sources were afforded the opportunity to comment upon the proposed inclusion of fugitive emissions in their threshold calculations. EPA's responses to more specific comments are set out below. Several commenters objected that the first 26 specific categories of sources identified in the proposal (as sources whose fugitive emissions would be taken into account in threshold calculations) were virtually identical to the 28 categories of sources identified in section 169(1) as sources with threshold tonnages of 100 tons per year (rather than 250 tons per year) for determinations of "major emitting facility" status.[8] The commenters complained that by merely copying the 28 sources without any other supporting rationale, EPA failed to conduct proper rulemaking.

Although it is true that the two lists are virtually identical, it is not true that EPA failed to conduct proper rulemaking. To the contrary, the Administrator recognized that in specifically identifying 28 categories of sources in section 169(1), "Congress' intention was to identify facilities which, due to their size, are financially able to bear the substantial regulatory costs imposed by the PSD provisions and which, as a group, are primarily responsible for emission of the deleterious pollutants that befoul our nation's air." 13 ERC at 2003. In light of that intent, the Administrator initially determined that as a matter of policy, it would be appropriate to count *all* emissions—including fugitive emissions—in threshold calculations of applicability for those 28 categories. The proposal reflected that determination as well as the Administrator's observation that, because those sources have traditionally been considered the major polluters in the country, EPA's experience in quantifying fugitive emissions from them is, in general, greater than its experience in doing so for other sources.[9]

Source Category and Reference

Primary zinc smelters
  Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions—March 1977 (EPA-450/3-77-010)
Portland cement plants
  (EPA-450/3-77-010)
Iron and steel mill plants
  Particulate Emission Factors Applicable to Iron and Steel Industry (EPA-450/4-79-028) (EPA-450/3-77-010)
Primary aluminum ore reduction plants
  (EPA-450/3-77-010)
Primary copper smelters
  (EPA-450/3-77-010)
Petroleum refineries
  Compilation of Air Pollutant Emission Factors (AP-42)
Lime plants
  (NSPS) (AP-42) (EPA-450/3-77-010)
Phosphate rock processing plants
  (EPA-450/3-77-010)
Coke oven batteries
  (EPA-450/4-79-028)
Carbon black plants
  (AP-42)
Primary lead smelters
  (AP-42) (EPA-450/3-77-010)
Sintering plants
  (See Iron and steel mill plants)
Fossil fuel-fired boilers
  (See Fossil fuel-fired steam electric plants)
Petroleum storage and transfer units
  (AP-42)
Fossil fuel-fired steam electric plants
  (EPA-450/3-77-010)

Several commenters pointed out, however, that the two lists were not identical insofar as certain restrictions or limitations for six categories of sources in the section 169(1) list were not reflected in the proposed section 302(j) list. Specifically, the section 169(1) list includes only the following (the italicized portions were omitted from the proposal): fossil-fuel fired steam electric plants *of more than two-hundred-and-fifty million British thermal units per hour heat input;* coal cleaning plants (*thermal dryers*); municipal incinerators *capable of charging more than two-hundred-and-fifty tons of refuse per day;* carbon black plants (*furnace process*); fossil-fuel boilers *of more than two-hundred-and-fifty million British thermal units per hour heat input;* and petroleum storage and transfer facilities *with a capacity exceeding three-hundred-thousand barrels.* These discrepancies are the result of an inadvertent administrative error, since EPA intended to identify in the proposed section 302(j) list the same categories of sources identified by Congress in the section 169(1) list. Accordingly, the final list promulgated today reflects the qualifying descriptions specified above for the six categories of sources. Several commenters objected to the last category on the list of sources for which the Administrator proposed to include fugitive emissions in threshold calculations—namely, "any other stationary source category which, at the time of the applicability determination, is being regulated under section 111 or 112 of the Act." Section 111 concerns the establishment of standards of performance for new stationary sources (new source performance standards or NSPS) and section 112 concerns the establishment of national emissions standards for hazardous air pollutants (NESHAP). The commenters argued that the focus of these provisions is on emissions controls rather than on ambient air quality, and that there is therefore no logical link to support the automatic inclusion of fugitive emissions from a source for PSD threshold calculation purposes simply because the source is being regulated under section 111 or section 112. EPA disagrees with some of the commenters' assumptions and characterizations of NSPS and NESHAP regulation, but concludes for other reasons that the last category should be revised to apply only to sources which are being regulated under section 111 or section 112 as of the effective date of the amended PSD and NSR regulations.

[8] The apparent discrepancy in the number of categories (i.e., 26 versus 28) is explained by the fact that the September 5, 1979 proposal listed hydrofluoric, sulfuric and nitric acid plants together in a single subheading.

[9] For example, EPA has previously published fugitive emissions data for many of the identified categories of sources:

The commenters contend that since an NSPS under section 111 merely reflects, for a category of sources, an emissions limitation which is achievable through the best system of continuous emissions reduction which "the Administrator determines has been adequately demonstrated," the establishment of an NSPS for a source is unrelated to the ambient air quality considerations which are at the heart of PSD review. What the commenters overlook, however, is that under section 111(b)(1)(B), NSPS are only promulgated for categories of stationary sources which have been included in a list under section 111(b)(1)(A); and section 111(b)(1)(A) directs the Administrator to "include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." In other words, although the NSPS itself may be based on technological considerations, the decision to develop the NSPS is clearly based on ambient air quality concerns. Moreover, under section 112, ambient air quality is clearly a compelling concern because a hazardous air pollutant to which a NESHAP will apply is one "which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness."

In short, categories of sources are regulated under section 111 or section 112 on the basis of determinations by the Administrator that their emissions seriously and adversely impact ambient air quality, and the Administrator therefore determined that it would be appropriate to include their fugitive emissions in their threshold calculations for purposes of PSD and NSR review and regulation. That basic policy determination is being finalized today.

At the same time, however, EPA believes that the comments about "automatic" inclusion of categories of sources which are not now regulated under section 111 or section 112, but which may be regulated thereunder at some point in the future, raise valid concerns. Although EPA believes that the same basic policy considerations would support the inclusion of fugitive emissions for such categories of sources, EPA recognizes that unless a source had affirmative notice during this rulemaking that it will be regulated in the future under section 111 or section 112, it will not really have been afforded a meaningful opportunity to comment on the proposed inclusion of its fugitive emissions in its threshold calculations. Accordingly, EPA has determined to limit the scope of the last category on the proposed list to sources which are being regulated under section 111 or section 112 as of the effective date of these amended PSD and NSR regulations. At the time of any future rulemaking under section 111 or section 112 proposing to regulate additional categories of sources, EPA will conduct parallel section 302(j) rulemaking concerning the proposed inclusion of fugitive emissions in threshold calculations. On the issue of the appropriateness of including fugitive emissions in threshold calculations for particular categories of sources, the basic objection expressed by most commenters was that fugitive emissions data were either unavailable or inadequate, and that it would therefore be inappropriate to include fugitive emissions in threshold calculations for a particular category.

In response, EPA notes that such concerns should and will be addressed in the context of particular applicability determinations, but that they have not changed the basic policy decision made by the Administrator under section 302(j). As explained earlier, fugitive emissions *must* be taken into account under section 165 in determining the impact on ambient air quality of a proposed new source and the BACT requirements which will apply to it, even if there are no existing fugitive emissions data, or if the available data are crude. Obviously, the nature and extent of the available data and technologies are important factors in determining how fugitive emissions should be taken into account and how they should be regulated under the review and permitting process of section 165; but those factors will not avoid or eliminate the consideration of fugitive emissions under that process. Similarly, although the issue of quantification may be relevant to particular applicability determinations, EPA does not believe that that issue alone is critical in determining whether, as a general policy matter, it is appropriate to include fugitive emissions in threshold calculations for a particular category of sources.

EPA emphasizes, however, that fugitive emissions from a source in one of the listed categories will only be included in threshold calculations "to the extent quantifiable." EPA's intent was and is to provide sources the flexibility to explore with the reviewing authority in the context of a particular applicability determination, issues of quantification which might be peculiar to an individual source. (Of course, fugitive emissions will not have to be quantified for threshold purposes if the source would qualify as a "major emitting facility" on the basis of point emissions alone, a situation which EPA believes will occur more often than not.) As indicated above, EPA has in the past published data and other information relating to the quantification of fugitive emissions for various categories of sources and, as some commenters noted, additional data and information are currently under development. EPA considers these publications concerning quantification of fugitive emissions as guidance to be used as the starting point for analysis, not as methodology or data which must be rigidly adhered to in all circumstances.

EPA encourages the development of more sophisticated or precise methods or models for quantification of fugitive emissions, and will accept any estimate of a source's fugitive emissions if the source can support the accuracy and reliability of the methodology which it has developed or employed. In situations where there are no published emissions factors or other fugitive emissions data for a particular category of sources, EPA will consider quantification estimates developed by a source which have any reasonable and rational basis, including estimates based on the transfer of technology or based on principles of material balance. Moreover, if a source satisfactorily demonstrates that all such methodologies are inappropriate in its circumstances and that there is absolutely no basis for reasonably estimating its fugitive emissions, EPA would be willing to discount fugitive emissions in the threshold calculation for that individual source.

In short, sources will have an opportunity to discuss the appropriateness and reasonableness of fugitive emissions estimates for purposes of both the threshold calculation, as well as the requirements of section 165. EPA is therefore finalizing today the proposed list of categories of sources whose fugitive emissions will be included in threshold calculations. EPA has considered comments with respect to the proposed definition of "fugitive emissions," and has determined that one change is appropriate. Instead of defining fugitive emissions as "those emission which *do not* pass through a stack, chimney, vent, or other functionally equivalent opening," EPA believes that the term should apply to "those emissions which *could not reasonably pass* through a stack, chimney, vent or other

functionally equivalent opening." This change will ensure that sources will not discharge as fugitive emissions those emissions which would ordinarily be collected and discharged through stacks or other functionally equivalent openings, and will eliminate disincentives for the construction of ductwork and stacks for the collection of emissions. Emissions which could reasonably pass through a stack, chimney, vent, or other functionally equivalent opening will be treated the same as all other point emissions for threshold calculation purposes.

In addition, in light of EPA's action today deleting the fugitive dust exemption (*see* Fugitive Dust Exemption), EPA is finalizing the proposed deletion of the existing definition of "fugitive dust" at 40 CFR 51.24(b)(6) and 52.21(b)(6) (1979).

VIII. Fugitive Dust Exemption

The 1978 PSD regulations provided that "fugitive dust" from a major stationary source or major modification be excluded from air quality impact assessment, 40 CFR 51.24(k)(5), 52.21(k)(5)(1979). Because of its decision regarding inclusion of fugitive emissions in threshold calculations, and because it questioned EPA's authority to establish the exemption in the manner in which it did, the court in *Alabama Power* vacated EPA's generalized exemption for fugitive dust and remanded it to the Agency for further consideration. 13 ERC at 1231 and 13 ERC at 2017.

In response to the court's opinion, EPA proposed deletion of the fugitive dust exemption. It also proposed to delete a parallel provision in the Offset Ruling (44 FR 3274). The majority of the public commenters directly opposed this proposal. The primary reasons were that fugitive dust allegedly has little impact on health and that techniques of evaluating its air quality impacts are unreliable.

As indicated above, the *Alabama Power* court vacated EPA's partial exemption of fugitive dust from the requirements of section 165 because the exemption was premised on the erroneous assumption that "the statute of its own momentum subjects major sources of fugitive emissions to PSD preconstruction review and permit requirements" 13 ERC at 2017. However, the court also expressed serious doubt that EPA had the statutuory authority to establish such an exemption by regulation, because (1) section 165 does not distinguish between fugitive emissions and point emissions, but applies "with equal force" to both types of emissions, 13 ERC at 2016, and (2) in the absence of explicit statutory exemption authority, EPA's "general" exemption authority is narrow in reach. 13 ERC at 2005–2010.

The court did outline, though, a mechanism which it indicated is available under the statutory scheme for acccomplishing the objective of partially exempting fugitive dust emitted by major emitting facilities from the requirements of section 165. That approach would involve defining the pollutant "particulate matter" "to exclude particulates of a size or composition determined not to present substantial health or welfare concerns," 13 ERC at 2018, n. 134, and then regulating such "excluded particulates" under section 111. Pursuant to section 109, EPA is currently reviewing the criteria document for the particulate matter NAAQS, and particle size is a factor being considered in this review. If the standard is revised, the rulemaking requirements of section 307(d) will apply.

EPA today is adopting its proposed deletion of the existing "fugitive dust exemption" and is deferring further action on any such "exemption" pending completion of the standard review process.

IX. Source

A. Proposed Definitions of "Source"

In the 1978 PSD regulations, EPA defined "source" as "any structure, building, facility, equipment, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control)." The Offset Ruling contained the same definition of "source."

In its June 1979 opinion in *Alabama Power*, the Court of Appeals rejected the definition of "source" in the PSD regulations. It concluded that Congress intended section 111(a)(3) of the Act to govern the definition of "source" for PSD purposes. That section defines "source" as "any building, structure, facility, or installation which emits or may emit any air pollutant." In defining "source," EPA used the terms "building," "structure," "facility," and "installation," but then added "equipment," "operation," and "combination thereof." The court held that EPA, in adding those terms, exceeded its authority. It stated, however, that the Agency has substantial discretion to define one or more of the four terms in section 111(a)(3) to include a wide range of pollutant-emitting activities.

In its June opinion, the court also focused on the clause "which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or persons under common control)." The court held that the approach, which that clause embodied, of grouping pollutant-emitting activities solely on the basis of proximity and control is generally acceptable, since the Agency had "evidenced an intention to refrain from unreasonable literal applications of the definition and instead to consider as a single source only common sense industrial groupings." 13 ERC at 1230.

In September 1979, EPA proposed to define "building, structure, facility and installation" for PSD purposes as "any grouping of pollutant-emitting activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control)." As the preamble to the September proposal explains in detail, EPA concluded that the proposed definition would serve the purposes of PSD adquately by requiring review of those major projects that would cause air quality deterioration. At the same time, the definition would operate to avoid review of projects that would not increase deterioration significantly. In EPA's view, the dominant purpose of PSD review is to maintain air quality within the applicable increments.

In September, EPA proposed to define the four component terms differently for nonattainment purposes. Specifically, the Agency proposed to define "building, structure and facility" as it had proposed to define them for PSD purposes, and "installation" as "an identifiable piece of process equipment." One effect of that proposal would be the application of nonattainment requirements to a new piece of equipment that would emit significant amounts of a pollutant for which the area had been designated nonattainment, regardless of any accompanying emissions offsets at the plant. The preamble to the proposal explained: "Unlike the PSD provision, the nonattainment provisions are primarily intended not merely to prevent excessive increases in emissions, but to reduce emissions. This fundamental difference in purpose requires a different approach to defining the sources that will be subject to NSR." 44 FR 51932. EPA proposed to apply this definition to "incomplete" SIPs, i.e., those which did not demonstrate attainment based exclusively on currently approved requirements. Fully

"complete" SIPs could, under EPA's proposal, use the PSD definition.

In December 1979, the court issued its final opinion on the 1978 PSD regulations, which opinion superseded the June 1979 opinion. In the December opinion, the court reaffirmed its earlier conclusions that EPA must adhere to section 111(a)(3) in defining "source" for PSD purposes and that EPA has discretion to define the component terms "reasonably to carry out" the purposes of PSD. 13 ERC at 2039. The court added that "a plant is to be viewed as a source" and that the Agency "should" provide for the aggregation of polluting-emitting activities "according to considerations such as proximity and ownership." *Id.* at 2039 and 2040. But it warned that "EPA cannot treat contiguous and commonly owned units as a single source unless they fit within the four permissible statutory terms." Finally, the court said that any new definitions "should also provide explicit notice as to whether (and on what statutory authority) EPA construes the term source, as divided into its constituent units, to include the unloading of vessels at marine terminals and 'long-line' operations such as pipelines, railroads, and transmission lines. We agreed with Industry Groups that EPA has not yet given adequate notice as to whether it considers those industrial activities to be subject to PSD." *Id.* at 2040.

In January 1980, EPA solicited comment on the September proposals in light of the December opinion of the court. 45 FR 6803. EPA specifically asked for comment on whether factors other than proximity and control, such as the functional relationship of one activity to another, should be used. The Agency also asked for specific examples of cases where a literal application of the proposed definition would be unreasonable.

B. PSD: Comments on Proposal and Responses

Most commenters agreed that for PSD purposes EPA should adopt definitions of "building," "structure," "facility," and "installation" that would aggregate pollutant-emitting activities, instead of definitions that would restrict one or more of those terms to an individual activity. One commenter, however, argued that EPA should adopt for PSD purposes the same definitions of those terms that it had proposed to adopt for nonattainment purposes. The commenter asserted that the decision of the court in *ASARCO* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978), required the Agency to impose BACT on a new unit at a plant, even if the unit would result in no net increase in emissions. The commenter also asserted that the "all-encompassing definition * * * destroys the intent of the PSD program by letting opportunities for *reducing* increment consumption disappear before control technology standards (*i.e.*, NSPS) can be in place." (Emphasis added.)

EPA has decided to adopt for PSD purposes the sort of "all-encompassing" definitions that the commenter opposed. First, in its December 1979 opinion in *Alabama Power*, the court explicitly held that *ASARCO* "does not prevent aggregation of individual units of a plant into a single source." 13 ERC at 2040. Second, the dominant purpose of PSD review is not to reduce increment consumption, but rather to maintain air quality deterioration below an applicable increment. A definitional structure that aggregates pollutant-emitting activities into one "source" would serve that purpose, since it would allow only those changes at the "source" that would not significantly worsen air quality to escape review.

Some of the commenters who agreed that each of the component terms of "source" should aggregate pollutant-emitting activities also supported the use of proximity and control as the sole criteria for aggregating them. Most of those commenters, however, objected to the use of proximity and control as the sole criteria, some on the ground that the proposed definitions would be too inclusive and others on the ground that the definitions would not be inclusive enough.

The commenters who thought the definitions would be too inclusive asserted that they would group sets of activities at one site and under common control that are functionally or operationally distinct. Typical of the examples they gave are the following activities at one site and under common control: (1) a surface coal mine and coal-burning electrical generators that the mine supplies with coal; (2) a rock quarry and the portland cement plant that the quarry supplies with raw material; (3) a primary aluminum ore reduction plant, an aluminum fabrication plant and an aluminum reclamation plant; (4) a refinery, a service station, a research laboratory, a fertilizer factory, and a pesticide factory; and (5) a uranium mill and an oil field. With the language of the June 1979 opinion in mind, the commenters contended generally that to group the nominally different activities in each of those examples would violate any common-sense notion of "plant."

The commenters who thought the proposed definitions would be too inclusive suggested a wide range of alternative definitions. For example, one group proposed that activities at one site and under common control should be combined only if: (1) they share the first three digits under the Standard Industrial Classification Code of the U.S. Department of Commerce, (2) they are dependent upon or affect the process of each other, (3) they use a common raw product or produce a common product, and (4) the proponent of the project in question does not show that the activities have entirely separate air quality impacts.

The commenters who thought the proposed definitions would not be inclusive enough urged the Agency to abandon control as a factor and adopt function in its place. Some of them described a plan by a group of independent companies to construct jointly a single coal-burning power plant to replace oil-burning power plants at various manufacturing sites belonging to those companies near to the site of the coal-burning plant. The commenters contended that EPA should treat the old plants and the new plant as being within one "source," so that the new plant might escape PSD review. They argued that the new plant would not deteriorate air quality, since presumably the decrease in emissions from the shutdown of the old plants would offset the increase from the new plant, and that to allow it to escape review would facilitate the national switch from oil to coal.

After considering the comments of those who objected to the use of proximity and control only, EPA has decided to adopt for PSD purposes a definition of "building, structure, facility, and installation" that is different from the one it proposed in September. The final definition provides that those component terms each denote "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same 'Major Group' (*i.e.*, which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively)."

In EPA's view, the December opinion of the court in *Alabama Power* sets the following boundaries on the definition for PSD purposes of the component terms of "source": (1) it must carry out

reasonably the purposes of PSD; (2) it must approximate a common sense notion of "plant"; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation."

The comments on the proposed definition of "source" have persuaded EPA that the definition would fail to approximate a common sense notion of "plant," since in a significant number of cases it would group activities that ordinarily would be considered as separate. For instance, a uranium mill and an oil field would ordinarily be regarded as separate entities, yet the proposed definition would treat them as one.

In formulating a new definition of "source," EPA accepted the suggestion of one commenter that the Agency use a standard industrial classification code for distinguishing between sets of activities on the basis of their functional interrelationships. While EPA sought to distinguish between activities on that basis, it also sought to maximize the predictability of aggregating activities and to minimize the difficulty of administering the definition. To have merely added function to the proposed definition as another abstract factor would have reduced the predictability of aggregating activities under that definition dramatically, since any assessment of functional interrelationships would be highly subjective. To have merely added function would also have made administration of the definition substantially more difficult, since any attempt to assess those interrelationships would have embroiled the Agency in numerous, fine-grained analyses. A classification code, by contrast, offers objectivity and relative simplicity.

EPA has chosen the classification code in the *Standard Industrial Classification Manual, 1972,* as amended in 1977 ("*SIC*"), because it is both widely-known and widely-used. EPA has also chosen to use just one set of categories in the manual, those that describe each "Major Group" in the classification system and that bear a two-digit classification number, although the commenter who suggested that EPA use such a code also suggested that the Agency use the categories at the three-digit level. On the one hand, the two-digit categories are narrow enough to separate sets of activities into common sense groupings. In fact, most of the nominally different sets of activities in the examples given above would fall into a different two-digit category; only the fertilizer factory and the pesticides factory would fall into the same category. On the other hand, the categories are broad enough to minimize the likelihood of artificially dividing a set of activities that does constitute a "plant" into more than one group and the likelihood of disputes over whether a set of activities falls entirely into one category or another.

Each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product. Where a single unit is used to support two otherwise distinct sets of activities, the unit is to be included within the source which relies most heavily on its support. For example, a boiler might be used to generate process steam for both a commonly controlled and located kraft pulp mill and plywood manufacturing plant. If the yearly boiler output is used primarily by the pulp mill, then the total emissions of the boiler should be attributed to the mill.

In adopting the new definition of "source," EPA rejected the requests of those commenters who thought that the proposed definition would not be inclusive enough. As noted above, they urged that EPA formulate a definition that looked only to proximity and *function.* But such a definition by looking to function would unnecessarily increase uncertainty and drain the Agency's resources. In addition, such a definition would present groupings, such as the example the commenters gave, that would severely strain the boundaries of even the most elastic of the four terms, "building," "structure," "facility," and "installation."

Many commenters urged EPA to clarify the extent to which the final definition of those terms encompasses the activities along a "long-line" operation, such as a pipeline or electrical power line. For example, some urged EPA to add to the definition the provision that the properties for such operations are neither contiguous nor adjacent. To add such a provision is unnecessary. EPA has stated in the past and now confirms that it does not intend "source" to encompass activities that would be many miles apart along a long-line operation. For instance, EPA would not treat all of the pumping stations along a multistate pipeline as one "source."

EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations. One commenter asked, however, whether EPA would treat a surface coal mine and an electrical generator separated by 20 miles and linked by a railroad as one "source," if the mine, the generator, and the railroad were all under common control. EPA confirms that it would not. First, the mine and the generator would be too far apart. Second, each would fall into a different two-digit *SIC* category.

Three commenters focused on whether and to what extent the emissions from each ship that would dock at a proposed marine terminal should be taken into account in determining whether the terminal would be "major" for PSD purposes. One commenter argued in effect that the emissions of each such ship that are quantifiable and occur while the ship is coming to, staying at or going from the terminal should be taken into account. In the view of that commenter, all of those activities would be "integral" to the operation of the terminal. Another commenter asserted that none of the emissions of any such ship should be taken into account, because ships are mobile sources. The remaining commenter contended that only the emissions that: (1) come from a ship which is under the proprietary control of the owner or operator of the terminal and (2) occur while the ship is at the dock should be included in an applicability determination. That commenter viewed the ability of the terminal owner or operator to regulate the behavior of a ship as the critical consideration.

The permit requirements of the final Part 52 PSD regulations apply to a collection of pollutant-emitting activities according to the "potential to emit" of just those activities in that collection which constitute a "stationary source." Whether and to what extent the emissions of ships that would dock at a terminal are to be taken into account in determining PSD applicability depends, therefore, on whether and to what extent the term "stationary source" in the final regulations encompasses not only the activities of the terminal itself, but also the activities of the ships while they are coming to, staying at, or going from the terminal.

The final definition of "building, structure, facility, and installation" resolves that question. EPA intends the term "stationary source" under that

definition to encompass the activities of a marine terminal and only those dockside activities that would serve the purposes of the terminal directly and would be under the control of its owner or operator. The term "dockside activities" means those activities in which the ships would engage while docked at the terminal. While "stationary source" encompasses combinations of activities, it is limited to combinations that would be "stationary," that is, fixed to the particular site. The activities of a terminal itself would be stationary, but all ship activities would not be. Only those that would directly serve the purposes of the terminal, such as loading and unloading, would be stationary since they alone would be in a sense fixed to the particular site. Hence, "stationary source" encompasses the activities of a marine terminal and only those dockside activities that would directly serve its purposes.

In addition, while "stationary source" encompasses combinations of stationary activities, it is further limited to those that would locate on "contiguous or adjacent properties." In EPA's view, only dockside activities would be located on "property" that is contiguous or adjacent to the terminal. Next, "stationary source" is also limited to those combinations of activities that would be "under the control" of one person or one group of persons who are themselves under common control. Hence, "stationary source" encompasses only the activities at a terminal and those dockside activities over which the owner or operator of the terminal would have control. Finally, the activities at a terminal and any such dockside activities fall under a single two-digit *SIC* category, namely "Water Transportation" (number 44).

Whether a particular dockside activitiy would directly serve the purposes of a terminal and would be under the control of its owner or operator depends upon the circumstances of a specific situation. Presumably, however, the activity of loading or unloading a ship would in every case directly serve the purposes of the terminal and would be under the control of its owner or operator to a substantial extent. In particular, the Agency would expect that no loading or unloading could occur without the consent of the owner or operator and consequently that the owner or operator would set, or at least have a significant say in the setting of, the schedule for loading or unloading.

In adopting this interpretation of "stationary source," EPA in large measure has rejected the arguments of the commenters on the ship emissions issue. First, to treat *all* of the activities of a ship while it is coming to, staying at, and going from a terminal would violate any common sense notion of "building," "structure," "facility," or "installation." To group just those activities occurring at the terminal that are essential to its functioning entirely comports with common sense. Second, an activity such as loading and unloading is certainly stationary, even if the ships that engage in it have mobility. Ships, moreover, are not "mobile sources" within the meaning of section 110(a)(5) of the Act, the provision restricting indirect source review. Finally, the fact that a terminal owner or operator does not own a particular ship does not mean that the owner or operator has no control over behavior of the ship at the terminal.

In deference to the position taken in *Alabama Power,* EPA has decided to treat the definition of "source" in the 1978 PSD regulations as *not* encompassing any ship or ship activity. As a result, ship emissions are not to be taken into account at all in determining whether a marine terminal is subject to review under the 1978 PSD regulations. A terminal which would not be subject to review under the 1978 regulations if ship emissions are not included in the determination of potential to emit can also be excluded from review under the new regulations provided certain conditions are met. These conditions are that the owner or operator of such a source has obtained each of the permits required under the SIP for the terminal before the date this notice appears in the Federal Register and commences construction on it within 18 months after that date.

The final definition of the component terms of "stationary source" differs from the proposed definition in one significant respect. The proposed definition used the phrase *"any grouping of* pollutant-emitting activities." The final definition uses the phrase *"all of the* pollutant-emitting activities." Taken literally, the proposed definition would have referred not only to all of the activities at a plant, but also to any subgroup of those activities. EPA, however, intended it to refer only to all of the activities. The final definition merely makes that explicit.

C. Nonattainment: Comments on Proposal and Response

Many commenters objected to EPA's proposed definition of "source" for nonattainment areas. Several commenters argued that there was no statutory basis for the distinction drawn in the proposal between "complete" and "incomplete" SIPs. Most of the commenters further claimed that the "dual definition" (*i.e.,* treating a source as both a plant and an individual piece of process equipment at the plant) both was illegal under the statute and *Alabama Power* and was wrong as a matter of policy.

The legal arguments presented by the commenters fell into two broad categories. First, they argued that the dual definition really defined "source" as a combination of surces, which had been forbidden by both *Alabama Power* and *ASARCO.* EPA therefore could, in these commenters' view, define "source" as either the entire plant or an individual piece of process equipment, but not both. These commenters opted for the former approach.

The second legal argument challenged EPA's contention that use of the plant-wide definition would be improper in nonattainment areas, because the purpose of the nonattainment new source review program is to reduce emissions, not to hold emissions constant. The commenters claimed that the Act gives primary responsibility for assuring reasonable further progress to the states, and the states therefore can choose whatever mix of strategies they want to achieve reasonable further progress. This suggested to the commenters that EPA had no authority to ban a plant-wide definition for new source review if the state could otherwise demonstrate reasonable further progress.

Several commenters also pointed to a variety of policy concerns which they felt militated against EPA's proposed dual definition. First, they argued that the definition would discourage technological innovation that could actually reduce emissions, because sources would be reluctant to modernize for fear that such requirements as LAER would be applied to them. In particular, they felt sources would be unwilling to retire old inefficient facilities and replace them with efficient cleaner ones. Second, some commenters claimed that there was no point to reviewing a facility where offsetting emissions could be obtained, since on the whole ambient air quality would not get any worse. Finally, many commenters complained that the definitional structure as a whole was far too complex, and they urged that EPA simplify the system both by eliminating the distinction between "complete" and "incomplete" SIPs and by adopting one definition for both PSD and nonattainment areas. Most commenters preferred the PSD

definition, although some urged that the dual definition be used.

In revising the Offset Ruling in January 1979, EPA adopted definitions of "source" and "modification" which had the effect of requiring any increase greater than 100 tons in the potential to emit of a plant to undergo nonattainment new source review, even if offsetting reductions at the plant were to accompany the change. The effect of the proposed definitions of "source" and "modification" which are being promulgated today would be basically the same as those in the Offset Ruling. Adoption of the proposed definitions would constitute, therefore, a continuation of an established approach to nonattainment new source review.

The comments on the dual definition have failed to persuade EPA that it should abandon the established approach at this time. As a result, the agency has decided to adopt the dual definition in each set of nonattainment regulations. For the reasons given below, EPA does not agree that the dual definition is either illegal or unsound from a policy standpoint. In addition, the agency has decided that the dual definition should be used regardless of whether the SIP is complete or incomplete. EPA agrees with the commenters that there is little support in the statute for defining "source" according to the complete or incomplete status of the SIP, and that the proposed definition was complicated.

The dual definition, by defining individual units as a "source," will bring more units in for review in areas with unhealthy air and thereby result in reducing emissions from the status quo. The legislative history of the Act indicates that new source review was intended to be an important tool in the drive towards attainment of ambient air quality standards. As the House Report stated:

> [M]aximum pollution control from new sources is necessary in order to permit room for maximum potential economic growth. This is particularly true in light of the requirement for reasonable further progress and the indications that emissions from many existing sources in nonattainment areas will be increasing (due to fuel switching, natural gas curtailments) or remaining static (due to delayed compliance orders, et cetera). Finally, the technology forcing purpose of the act is best served by requiring maximum feasible pollution control from these new sources in dirty air areas. For all these reasons, the committee adopted the requirement for proposed new or modified major stationary sources in nonattainment areas to meet the lowest achievable emission rate requirement.

H. Rep. No. 95-294, 95th Congress, 1st Sess. 215 (1977). In addition, after hearing testimony that no steel sources owned by five major steel companies were in compliance, the House inserted into section 173 a requirement that the owner of a proposed source or modification demonstrate that all other sources owned, operated, or controlled by him in the state are in compliance with the applicable SIP. *Id.* at 210-213. In this way, Congress meant to use new source review as a means of cleaning up *existing* sources as well.

To realize this goal fully, Congress intended that new source review be applied to the greatest extent possible. For example, Senator Muskie, in presenting the Clean Air Act Amendments of 1977 to the Senate, spoke of reviewing "any physical change which increases [emissions] * * *," and he went on to note:

> Thus, [under the offset ruling and Part D NSR requirements] a new source is still subject to such requirements as "lowest achievable emission rate" even if it is constructed as a replacement for an older facility resulting in a new reduction from previous emission levels. 123 Cong. Rec. at S 13702 (daily edition, August 4, 1977).

Since the dual definition would bring in more sources or modifications for review than would the plant-wide definition used for PSD purposes (including many replacement facilities which would not be reviewed under a plant-wide definition), use of the dual definition clearly is more consistent with Congressional intent.

The dual definition also is consistent with *Alabama Power* and *ASARCO*. *Alabama Power* held that EPA had broad discretion to define the constituent terms of "source" so as best to effectuate the purposes of the statute. Different definitions of "source" can therefore be used for different sections of the statute. *See* 13 ERG at 2039. As EPA discussed in detail in its proposal, the purpose of the nonattainment provisions is to "positively reduce emissions," not merely to hold emissions constant. In addition, unrestricted use of meeting emissions at an entire plant in nonattainment areas would make attainment more difficult, since many of the limited number of cost-effective opportunities to reduce emissions will in fact be used to avoid review. *See* 44 FR 51932. The dual definition therefore comports with the purposes of Part D of the Act.

Moreover, *Alabama Power* and *ASARCO* taken together suggest that there is a distinction between Clean Air Act programs designed to *enhance* air quality and those designed only to *maintain* air quality. In *ASARCO*, the Court of Appeals for the District of Columbia Circuit struck down the definition of "source" for new source performance standards (NSPS), which had employed a "bubble" concept. An important element in the court's decision was its belief that the "bubble," by allowing sources to escape NSPS, was inconsistent with the purpose of NSPS, which was to improve air quality. *See* 578 F.2d at 327-28. But in *Alabama Power*, the same court held that for PSD purposes, EPA must use a "bubble" approach, precisely because PSD is designed to maintain air quality and therefore deals with "a significantly different regulation and statutory purpose." 13 ERC at 2044.

Under this analysis, use of a plant-wide definition to avoid new source review would appear to be inappropriate in nonattainment areas, since the purpose of nonattainment SIPs is to improve existing air quality so as to attain the ambient air quality standards. EPA therefore believes that it would be more consistent with the purposes of the Act not to permit states to choose a plant-wide definition of source.

Promulgation of the dual definition follows the mandate of *Alabama Power*, which held that, while EPA could not define "source" as a combination of sources, EPA had broad discretion to define "building," "structure," "facility," and "installation" so as to best accomplish the purposes of the Act. 13 ERC at 2039. This holding contemplates that one term (such as "building") may be more inclusive than another term (such as "installation"), and so a "building" may include many "installations." In this way, a "source" can, under *Alabama Power*, be composed of smaller "sources," yet not be a combination of sources. The dual definition fits into *Alabama Power*, since under EPA's definitional scheme, a "source" is either an individual piece of process equipment or the entire plant; it is not a combination of sources. That is, when deciding whether a source must undergo new source review, the reviewing authority must determinine whether there was a significant increase in emissions at either a "major" individual piece of equipment or at the plant as a whole. Wherever such an increase occurs is a "source." Thus the plant itself is a source, not a combination of sources, although it may contain smaller sources.

EPA recognizes that use of different definitions for PSD and nonattainment areas adds to the complexity of the permitting process. But this additional complexity is outweighed by the need for a more inclusive definition of source in nonattainment areas in order to assure attainment of standards.

Although it is claimed that some sources may not be willing to modernize their facilities due to the perceived added expense of LAER and the need to demonstrate statewide compliance, EPA believes that its approach is justified by the fact that the dual definition will bring in more sources and modifications for review and will require better pollution control technology in nonattainment areas.[10]

EPA disagrees that use of a plant-wide definition would allow a plant with a new installation to achieve the same emissions reductions as LAER, but in a less expensive manner by finding offsets elsewhere in the plant. This argument assumes that LAER is markedly more costly than the requirements that would otherwise apply. EPA believes that its own past actions, and those of the states, indicate that LAER need not and is not generally being interpreted in this manner.

EPA believes, and most commenters agreed, that new facilities should install state-of-the-art control technology. Such a requirement is imposed by the Clean Air Act for major new sources in PSD areas (BACT), for major new sources in nonattainment areas (LAER), and whenever EPA has set new source performance standards (NSPS). EPA therefore intends to interpret the LAER requirement in a reasonable manner, as it believes it has in the past, and to take a close look whenever LAER would be substantially stricter than these other requirements.

EPA intends that its interpretation of "building, structure, and facility" be identical to that for "building, structure, facility, or installation" used for PSD purposes.[11]

X. Modification

This section discusses the final PSD and nonattainment definitions of "major modifications" and "net emissions increase" which EPA is promulgating in this notice. The section first describes those final provisions. It then focuses on each of their major aspects, giving in particular the relevant proposal, the comments on it and EPA's responses. An example of how the definitions work appears at the end of the section. The section also discusses a provision which appears in the PSD and nonattainment definitions of "major stationary source," but which stems from the final formulation of "major modification." That provision establishes that a physical change at a "minor" stationary source which change by itself would constitute a "major stationary source" shall be treated as a "major stationary source."

A. Final Definitions of "Major Modification" and "Net Emissions Increase"

With the final amendments announced here, the Part 51 and Part 52 PSD regulations now define "major modification" as any *"physical change"* or *"change in method of operation"* at a major stationary source which would result in a *"significant net emissions increase"* in any pollutant subject to regulation under the Act. *See* §§ 51.24(b)(2) and 52.21(b)(2).

While the new PSD regulations do not define "physical change" or "change in method of operation," they provide that those phrases do not encompass certain specific types of events. Those types are: (1) routine maintenance, repair and replacement; (2) a fuel switch due to an order under the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or due to a natural gas curtailment plan under the Federal Power Act; (3) a fuel switch due to an order or rule under section 125 of the Clean Air Act; (4) a switch at a steam generating unit to a fuel derived in whole or in part from municipal solid waste; (5) a switch to a fuel or raw material which (a) the source was capable of accommodating before January 6, 1975, so long as the switch would require no change in any preconstruction permit condition established after that date under the SIP (including any PSD permit condition) or (b) the source is approved to make under a PSD permit; (6) any increase in the hours or rate of operation of a source, so long as the increase would require no change in any preconstruction permit condition established after January 6, 1975 under the SIP; and (7) a change in the ownership of a stationary source.

The new PSD regulations define "significant" in terms of *de minimis* thresholds for each pollutant subject to regulation under the Act. Those thresholds appear in §§ 51.24(b)(21) and 52.21(b)(21). For example, the threshold for sulfur dioxide is 40 tons per year. A "net emissions increase" in sulfur dioxide below that level is not "significant." For a fuller discussion of the thresholds, see the section entitled *De Minimis* Exemptions.

Finally, the new PSD regulations contain definitions of "net emissions increase," which appear as §§ 51.24(b)(3) and 52.21(b)(3). Under those definitions, "net emissions increase" denotes the positive sum of any increase in "actual emissions" from a particular physical or operational change at a source and any other increases and decreases in "actual emissions" that are contemporaneous with the particular change and otherwise creditable.

The first step in determining whether a "net emissions increase" would occur is to determine whether the physical or operational change in question would itself result in an increase in "actual emissions." If it would not, then it could not result in a "net emissions increase." If it would, the second step is to identify and quantify any other prior increases and decreases in "actual emissions" that would be contemporaneous with the particular change and otherwise creditable. The third step, finally, is to total the increase from the particular change with the other contemporaneous increases and decreases. If the total would exceed zero, then a "net emissions increase" would result from the change.

The definitions of "net emissions increase" specify which increases and decreases in "actual emissions" are contemporaneous. Under the definition in the Part 52 PSD regulations, increases or decreases are contemporaneous with a proposed change only if they occur between two dates: first, the date five years before construction "commences" on the proposed physical or operational change in question and, second, the date the increase from that change "occurs." An increase from a physical change "occurs" when the affected emissions unit becomes operational and begins to emit a particular pollutant. Any unit that requires shakedown becomes operational only after a reasonable shakedown period (not to exceed 180 days). Under the definition in the Part 51 regulations, a state in revising its SIP may set a period other than the five-year period of the Part 52 regulations to define what is contemporaneous and what is not, so long as the period is not unreasonably long.

The definitions of "net emissions increase" in the PSD regulations also specify which contemporaneous increases and decreases in "actual emissions" are creditable. A contemporaneous increase or decrease is creditable only if the relevant reviewing authority has not relied on it in issuing a PSD permit for the source,

[10] Contrary to one commenter's argument, EPA believes that the dual definition will not cause sources to locate in clean areas. Any such source would be subject to PSD review in any event.

[11] One commenter requested EPA define "source as one emitting the criteria pollutants, and not "any pollutant regulated under the Act." EPA has decided to retain its definition, since it comports with section 302(j) of the Act. However, pursuant to section 172(b)(6), EPA will require new source review permits only for those pollutants for which an area has been designated nonattainment and for which the source is major.

and that permit is still in effect when the increase in "actual emissions" from the particular change occurs. A reviewing authority "relies" on an increase or decrease when, after taking the increase or decrease into account, it concludes that the proposed project would not cause or contribute to a violation of an increment or ambient standard. A contemporaneous increase or decrease in "actual emissions" of sulfur dioxide or particulate matter that occurs before the applicable baseline date is creditable only if, in addition, it is required to be considered in calculating how much of a particular increment remains available.

Finally, the definitions of "net emissions increase" in the new PSD regulations specify the extent to which any contemporaneous and otherwise creditable increase or decrease is creditable. Any such increase is creditable to the extent that the new level of "actual emissions" exceeds the old level of "actual emissions." Any such decrease is creditable only to the extent that (1) the old level of "actual emissions" (or the old level of "allowable emissions," if it is lower) exceeds the new level of "actual emissions," (2) the decrease is federally enforceable at the time construction begins on the proposed physical or operational change which it is intended to offset, and (3) the decrease has roughly the same health and welfare significance as the increase from the proposed change.

Under the final PSD regulations, the phrase "actual emissions" means the rate at which an emissions unit actually emits a particular pollutant. *See* §§ 51.24(b)(21) and 52.21(b)(21). In general, that rate as of a particular date equals the average rate in tons per year at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and is representative of normal source operation. The reviewing authority may presume that any "source-specific allowable emissions" for the unit is equivalent to the actual emissions of the unit. For any unit which has yet to begin normal operations on the date in question, its actual emissions equal its "potential to emit" on that date. For a fuller discussion of the concept of "actual emissions" and in particular of what constitutes "source-specific allowable emissions," see the section on Increment Consumption.

The final PSD regulations also describe in detail the concept of "allowable emissions." *See* §§ 51.24(b)(16) and 52.21(b)(16). That phrase means in essence the maximum rate at which an emissions unit under the most stringent of certain legal constraints may emit a particular pollutant. The legal constraints are (1) any applicable standards in 40 CFR Parts 60 and 61, (2) any applicable SIP limitations, including any with a future compliance date, and (3) any applicable condition in a permit issued under the SIP that is federally enforceable, also including any condition with a future compliance date.

The final amendments to the Offset Ruling, 40 CFR 51.18 and 40 CFR 52.24 which are announced here also include new definitions of "major modification," "significant," "net emissions increase," "actual emissions," and "allowable emissions." In general those definitions follow the pattern of the PSD definitions. Only the definitions of "net emissions increase" in those nonattainment provisions vary significantly. They add that a decrease in "actual emissions" which is contemporaneous with the increase in question may be credited only if and only to the extent that the relevant permitting authority has not already accepted it as a satisfactory "offset" in issuing a preconstruction permit under the SIP.

B. No Net Increase

The *Alabama Power* decision rejected EPA's regulatory approach of requiring PSD review of potential emissions increases at existing stationary sources only when such increases would equal or exceed the 100/250 ton threshold used in the review of new sources. It held instead that a change in a major stationary source is subject to review only if it would result in any significant net increase. In response, EPA proposed on September 5, 1979, an approach that would subject to new source review (NSR) under the relevant PSD or nonattainment provisions only each significant net increase that would occur in the potential to emit of a major stationary source. Under the proposal, a significant net increase was to be an overall increase in the potential to emit of the source equal to or greater than a pollutant-specific emissions cutoff (*see De Minimis* Exemptions), taking into account contemporaneous emissions increases and decreases at the same source. An exception to this general rule of netting contemporaneous increases and decreases was to be the case of construction restrictions under sections 110(a)(2)(I) and 173(4). There, accumulated increases would count toward triggering the growth prohibitions, without regard to any contemporaneous reductions occurring at the same source.

Public comment supported this proposal (except with respect to the construction restrictions) as the clear and proper interpretation of the *Alabama Power* decision. Sixty-two of sixty-three commenters endorsed the general netting approach to modification taken in the proposal, although several took issue with certain of the specific rules relating to the concept (see discussion below). Several commenters felt that requiring any significant net increase to undergo review was too strict on existing sources as compared with new sources, since new sources can emit up to 100/250 tons per year and still not be subject to review. The terms of the Act and the court decision preclude allowing such a general exemption for existing sources. Pursuant to *Alabama Power*, the Administrator is today promulgating the netting concept for determining the review applicability of changes at existing major stationary sources (consistent with each program's definition of source). This promulgation affects regulations for PSD (40 CFR 52.21 and 40 CFR 51.24), nonattainment NSR (Emissions Offset Interpretative Ruling and 40 CFR 51.18(j), Review of New Stationary Sources and Modifications), and the construction restrictions under sections 110(a)(2)(I) and 173(4), (40 CFR 52.24, Statutory Restriction on new Stationary Sources). Allowance of netting for determining the applicability of 40 CFR 52.24 is a change from the proposal and is discussed below.

C. Pollutant Applicability

EPA proposed to require preconstruction review only if the increase in potential to emit would be for a pollutant which the source emits in major amounts. Once an increase in the major pollutant triggered PSD review then review would be required for all regulated pullutants emitted in greater than *de minimis* amounts as a result of the modification. Review would also be required if the emissions change itself were equivalent to a major stationary source.

Only limited comment was received on EPA's proposal to require review where major changes in emissions of minor pollutants or greater than *de minimis* changes in emissions of a major pollutant would occur. While a few groups endorsed the September 5 proposal, one group argued that *Alabama Power* did not restrict PSD applicability to just modifications involving the pollutant(s) which the source emits in major amounts. That group pointed out that section 111(a)(4) of the Act defines "modification" as "any physical change in, or change in the method of operation of, a stationary

source which increases the amount of *any* air pollutant emitted by such source or which results in the emissions of *any air pollutant not previously emitted.*" (Emphasis added.)

The Administrator agrees that requiring review for a net emissions increase in any pollutant subject to regulation under the Act is consistent with the *Alabama Power* decision. Consequently, EPA is promulgating a final rule that requires PSD preconstruction review for net emissions increases in greater than *de minimis* amounts at a major stationary source for any pollutant subject to regulation under the Act emitted by the source, regardless of whether the source is major for that pollutant.

The Administrator is not changing the September 5 proposal with respect to pollutant applicability in nonattainment areas. *See* Geographic and Pollutant Applicability. The source must be major for the nonattainment pollutant(s) and must make a greater than *de minimis* emissions change in such a pollutant in order to trigger nonattainment review for that pollutant(s). A PSD review, however, would be triggered if a greater than *de minimis* change occurs at that major source for any regulated pollutant emitted by the source other than the nonattainment pollutant(s).

D. Netting of Actual Emissions

EPA proposed on September 5 that an activity be deemed a major modification when the "potential to emit" of the major stationary source experiences a net increase greater than a *de minimis* amount, taking into account all contemporaneous changes. EPA also proposed that a reduction would be creditable only if the physical capability of the source to emit a pollutant were actually reduced. In addition, where "allowable emissions" for a source, as defined in the 1978 PSD regulations and the Offset Ruling would be less than its "potential to emit," no credit would be given for reducing potential emissions to "allowable emissions." "Allowable emissions," as defined in those regulations, meant the emissions rate calculated using the maximum rated capacity of the source and is represented by the most stringent than any of the following: (1) any applicable standards in 40 CFR Parts 60 and 61; (2) any applicable SIP emissions limitations; and (3) any emissions rate specified as a permit condition under the SIP. The applicable SIP limitation in the case of designated nonattainment areas included the emissions rate that was assumed for the source in the attainment demonstration and in the schedule for making reasonable further progress.

Forty of forty-two commenters favored an allowable emissions baseline, for determining whether a net emissions increase would occur, instead of one using "potential to emit." The other two commenters endorsed EPA's proposal. Many also complained of the different criteria for determining "potential to emit" from new and existing sources. (Under the proposal, "allowable emissions" and physical incapability could have constrained the "potential to emit" of existing but not new stationary sources.)

There are problems with using a baseline for netting that is based on the existing source's "potential to emit." A computation of an existing source's potential emissions could give a figure considerably higher than what it is actually emitting. This would be especially true if the source operated only a small part of the time or used considerably cleaner fuels than it is allowed to burn. Such an approach would therefore create a "paper offset" that could permit actual air quality to deteriorate seriously, while the change which increased actual emissions avoided NSR. Similar problems would arise if offsets were based on allowable emissions, as recommended by most commenters.

In the June 1979 opinion in *Alabama Power*, the court held that the definition of "modification" in section 111(a)(4) governs the definition of that term for PSD purposes. Section 111(a) provides that a "modification" is "any physical change in, or change in the method of operation of, a stationary source which increases *the amount* of any air pollutant *emitted* by such source or which results in *the emissions* of any air pollutant not previously *emitted.*" (Emphasis added.) Although the *underlined* words in the definition appear to refer to what the source is actually emitting at a particular time, the court in the June opinion described the concept of "modification" in terms of changes in the "potential to emit" of a source. As a result, EPA proposed definitions which also referred to changes in "potential to emit."

In its December 1979 opinion, however, the court used an entirely different set of terms to describe "modification." Instead of using "potential to emit," it used language which, like the section 111(a)(4) definition, suggest changes in actual emissions. For example, at one point the court states: "If these plants *increase* pollution, they will generally need a permit. Exceptions to this rule will occur when the *increases* are *de minimis*, and when the *increases* are offset by contemporaneous decreases of pollutants, as we discuss below * * *" (Emphasis added.)

Following the lead of the court, EPA has also shifted the focus of its regulatory definitions from "potential to emit" to "actual emissions." For both PSD and nonattainment purposes, a "major modification" is now any significant "net emissions increase" at a major stationary source that results from certain changes. "Net emissions increase" is, in turn, roughly any net increase in "actual emissions." Not only are those definitions consistent with the court's view of section 111(a)(4), but they also avoid the "paper offset" problem described above, thereby better serving PSD and nonattainment purposes.

E. Contemporaneous Increases and Decreases

Under *Alabama Power*, a modification is any net increase in emissions that would result form "contemporaneous" changes at a major stationary source. The court decision left to EPA the task of defining what changes should be considered "contemporaneous."

A narrow interpretation of the term "contemporaneous" would restrict creditable decreases in emissions to those occurring at the same time as the emissions increases to be offset. The administrator decided against proposing such an interpretation, since it might promote the continued operation of old or obsolete equipment in order to preserve offset credit. Instead, EPA proposed a system that would grant credit for *any* post-promulgation emissions reduction and for certain pre-promulgation emissions reductions involving recent shutdowns or production curtailments. In order to be creditable, the reductions were to be enforceable before operation of the emissions unit(s) that would result in the emissions increases (except that a 180-day shakedown period could be granted for replacements). A preconstruction notice was also proposed as a mandatory means to record any reduction credit. (For a discussion of that proposed notice requirement, see the section entitled Notification.)

On January 30, 1980 (45 FR 6802), EPA solicited additional comment on its proposal for "contemporaneous." In particular, the Administrator asked whether a three-year time limit should be imposed for qualifying reductions as "contemporaneous." The proposed three-year time cap would have run from the time of the emissions reduction to the time that the source would have filed any necessary permit application

for the prospective emissions increase(s). Where a permit would have not been required, the reference time would instead be the date on which construction commenced on the change resulting in the emissions increase.

Several comments were received on the September 5 proposal. Many confused the dates for accumulation at minor stationary sources (see discussion below) with the time limits for "contemporaneous" changes at major stationary sources. The majority of commenters on the January 30 Federal Register notice were from the industrial sector and they urged EPA to treat *any* emissions decrease which occurs before a proposed increase as being "Contemporaneous" with that increase. EPA however, has rejected those urgings. To credit any decrease that occurs before a proposed increase would violate any common sense notion of what is "contemporaneous," since a period of contemporaneity must have some definite boundaries.

EPA agrees with those industry commenters, however, to the extent that they contended that the period of contemporaneity should be fairly large. In particular, EPA believes that the period should be wide enough so as to minimize any incentive for keeping old or obsolete equipment in operation beyond its usefulness. As a result, EPA has set five years, plus time for construction, as the period of contemporaneity for the purposes of the Part 52 PSD regulations, the Offset Ruling and the construction moratorium. Specifically, the definition of "net emissions increase" in each of those regulations provides that a decrease in "actual emissions" may be credited only if it occurs between the date five years before construction "commences" on a proposed physical or operational change and the date the increase in "actual emissions" from that change occurs. A five-year limit was selected for those regulations rather than a three-year value, since five years is frequently used as the time duration over which corporate expansion planning is conducted.

For the purposes of the Part 51 PSD and nonattainment regulations, EPA has established that each state may set the period of contemporaneity for its own NSR regulations. The state may not, however, set a period of unreasonable or undefined length.

F. Otherwise Creditable Increases and Decreases

Whether an increase or decrease in "actual emissions" is creditable for PSD or nonattainment purposes depends, not only on whether it is contemporaneous with the increase in question, but also on certain other factors. First, under each of the PSD and nonattainment definitions, a prior increase or decrease is creditable only if the relevant reviewing authority has not relied upon it in issuing a permit under the relevant NSR program. As stated earlier, a reviewing authority "relies" on an increase or decrease when, after taking the increase or decrease into account, it concludes that the proposed project would not cause or contribute to a violation of an increment or ambient standard. The purpose of that rule is to "wipe the slate clean." Once the reviewing authority has evaluated a significant net increase in issuing an NSR permit the net increase should not be a factor in deciding whether subsequent events should undergo scrutiny, too.

Second, under the PSD definition of "net emissions increase," an increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the baseline date is creditable only if it would be considered in calculating how much of an increment remains available. In formulating that definition, EPA sought to establish as close a correspondence as possible between what consumed increment and what must undergo NSR for PSD. Without that rule, some changes that *would* consume increment could escape review because of a prior decrease that was subsumed in the baseline concentration. In addition, without that rule, some changes that *would not* consume increment could have to undergo review because of a prior increase that was also subsumed in the baseline concentration.

G. The Extent to Which Increases and Decreases are Creditable

Each of the definitions of "net emissions increase" in the PSD and nonattainment regulations contains provisions which govern the extent to which a creditable increase or decrease in "actual emissions" may be credited.

The rules in each of those definitions relating to increases are simple. An increase is creditable to the extent that the new level of "actual emissions" at the emissions unit in question exceeds the old level. The old level of "actual emissions" is that which prevailed just prior to the physical or operational change which caused the increase. The new level is that which prevails just after the change.

The rules relating to decreases that are common to each of the definitions are more complex. First, a decrease is creditable only to the extent that "the old level of actual emissions or *the old level of allowable emissions, whichever is lower,* exceeds the new level of actual emissions." (Emphasis added.) Since "allowable emissions" encompasses any federally enforceable requirement, including any with a future compliance date, the underlined language prevents a company from taking credit for decreases that it has had to make or will have to make in the future. EPA concluded that to give credit for a decrease a company has had to make in order to bring an emissions unit into compliance was unwise, since together with the five-year "contemporaneous" period it would create an incentive to stay out of compliance. Furthermore, it would be contrary to the purposes of the Act and good sense to provide what is in essence a benefit for recalcitrance. Similarly, EPA concluded that to give credit for a decrease a company will ultimately have to make anyway in order to meet a requirement by a certain date would also be unwise, since it would encourage procrastination. Further, allowing decreases which fulfill preexisting requirements to be used to avoid review would undermine the purposes of the PSD and nonattainment programs by interfering with efforts to preserve or achieve attainment.

Second, a decrease is creditable only to the extent that it is "federally enforceable" from the moment that actual construction begins on the physical or operational change which causes the "actual emissions" increase in question. The purpose of that rule is to ensure that the decrease is real and that it remains in effect. The term "federally enforceable" is defined in the regulations as any limitation or conditions which EPA can enforce, such as any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved under 40 CFR 51.18 and 40 CFR 51.24.

Finally, a decrease is creditable only to the extent that it has the same health and welfare significance as the increases in question. By this provision, EPA seeks mainly to prevent an increase in emissions with considerable health and welfare significance from escaping review merely because of a contemporaneous decrease in less harmful emissions. The basic health and welfare protection purposes of the Act mandate this provision.

The definitions of "net emissions increase" in the nonattainment regulations contain a restriction on crediting decreases that the PSD regulations do not contain. Specifically, they provide that a permitting authority may not credit a decrease to the extent that any permitting authority has

already accepted the decrease in satisfaction of the offset requirements of the applicable nonattainment regulations and consequently has issued a preconstruction permit to any source or modification, including the source at which the decrease occurred. The purpose of that rule is to prevent any "double crediting" of decreases in "actual emissions." Double crediting would allow air quality to deteriorate without prior review.

EPA is considering whether to introduce a provision to prevent double crediting in the PSD context. A discussion of the problem appears in the section on Increment Consumption.

H. Accumulation

On September 5, 1979, EPA proposed to continue the current policy of requiring PSD and nonattainment NSR when aggregate new emissions from individually minor units at the same stationary source, which itself was minor as of a certain date, are sufficient to require the series of changes to be treated as a major stationary source. In addition, the Administrator proposed to make the current policy consistent with the *Alabama Power* decision by applying NSR when the aggregate *net* increase in potential to emit after the applicable date qualifies it as a major stationary source (the existing rules accumulate only emissions increases and do not take decreases in account). For PSD review, the date from which emissions increases were to be aggregated was August 7, 1977, the date found in the 1978 PSD regulations. The proposed December 21, 1976 date for each of the nonattainment regulations, including the construction moratorium, marks the time when sources constructing in nonattainment areas were placed on notice that accumulation could later subject them to review.

EPA also proposed that, once a series of individually minor changes or one major change at a minor stationary source had qualified for review, the control technology assessment would focus on the last changed unit triggering review while the air quality assessment would consider all aggregated emissions.

Finally, the Administrator proposed on September 5 that accumulation would also govern the review of individual *de minimis* changes at major stationary sources. Once a source had aggregated enough emissions to make it major, a subsequent emissions increase of any size at the source would have to undergo review, unless the increase together with any contemporaneous increases or decreases of any size would qualify as a *de minimis* increase.

Twenty of the twenty-three comments received did not favor retaining the accumulation concept, even with the addition of netting. Two other commenters endorsed accumulation, but with different starting dates. Two industrial commenters claimed that accumulation cannot be legally required, since section 111(a)(4) defines modification in terms of *any change* and not a *series of changes* at a stationary source. Most other commenters agreed that neither the court nor the Act takes a position on accumulation, but they requested that the Agency not adopt or maintain such a concept. These commenters claimed that both major and minor source accumulation complicates the regulations and could eventually subject the most minor of emissions changes to review. The increase in paperwork, and the administrative strain of trying to document and report *de minimis* emissions changes, were claimed to be overwhelming, costly, and counterproductive.

These concerns might have had merit if the proposed *de minimis* emission levels had not been raised in the final regulations and the accumulation of *de minimis* changes was to continue even after a preconstruction permit had been issued. It was suggested that the general NSR procedures found in all SIPs be relied upon to effect good control for the *de minimis* or minor emissions changes, instead of accumulation. Commenters stressed that, in any event, accumulation of *de minimis* increases should run over the same time period for crediting contemporaneous reductions.

The Administrator has reconsidered the need for an accumulation rule and has decided to retain accumulation to determine if a greater than *de minimis* increase would occur at a major stationary source and to delete accumulation for aggregating changes at minor stationary sources. The primary reason for proposing accumulation at minor sources was to prevent circumvention of the regulations by the systematic construction of carefully sized emissions units which only in the aggregate would trigger review. Even though all signficant changes at a source would face reveiw once the source became major, a significant loophole was thought to exist. For example, absent an accumulation rule, a company could construct a 498-ton source without having to get a PSD permit by constructing first one-half of it and then subsequently the other half. The Administrator, however, does not find adequate support in the Act for applying PSD review to the change at a minor source which would make the source major. Section 165 applies only to major emitting facilities on which "construction" commences after a specified date, where the term "construction" includes "modification." Similarly, section 172(b)(6) requires permits for the construction of new or modified major stationary sources. EPA believes that, in general, PSD and nonattainment review cannot be applied to a modification unless it would occur at a source that is already major. The one exception to this rule is where a proposed addition to an existing minor stationary source would be major in its own right. Such construction is equivalent to a new major stationary source and should therefore be subject to PSD and nonattainment review. A new subsection in each of the PSD and nonattainment regulations embodies that view.

In general, under the promulgation announced here a series of minor changes at the same minor stationary source will not be accumulated. On the other hand, a series of individually *de minimis* changes at a major stationary source would be accumulated within a contemporaneous time frame to see if a review would be required. This is reflected in the definitions of "net emissions increase" in the PSD and nonattainment regulations. Plainly, a series of individually *de minimis* increases in emissions in the aggregate deteriorate air quality significantly.

I. Restrictions on Construction

EPA proposed that the netting of emissions changes would not be permitted in areas subject to construction restrictions under section 110(a)(2)(I) or 173(4). EPA based this proposal on an interpretation that Congress intended all forms of offsets to cease after June 30, 1979, in the absence of an approved Part D plan. This policy would also have promoted the timely submittal of attainment plans and prevented the nonattainment problem from growing worse while the plan was being developed. The Administrator believed that sources might convert reductions later needed for attainment into offsets before the plan requiring those reductions could be adopted and approved.

Thirty-two of thirty-five commenters said that the proposed "increase only" approach was unacceptable. No substantial support was given by the three that favored it. Several questioned the legality of the proposed interpretation and claimed that *Alabama Power* authorized only a netting approach, despite any programmatic sense that another

approach might have. Several asserted that EPA's proposal would discourage early cleanup and actually perpetuate the existing air quality problem.

The Administrator has reconsidered the interpretation that led to the proposal of the "increase only" approach for carrying out the growth restrictions and concluded that the *Alabama Power* decision does not support it. Thus, in the final rules promulgated today, a major stationary source can construct in a growth restricted area, if sufficient contemporaneous, creditable net reductions are found (subject to the limitations on reconstruction described below).

J. Reconstruction

In the September 5, 1979 proposal, a reconstruction (roughly, improvements at an existing source which equal 50% or more of the capital cost for replacing the source) was to be treated as if it were a new source for purposes of NSR under both PSD and nonattainment rules. Under the proposal, a reconstructed major stationary source would be subject to review regardless of any contemporaneous emissions reductions that would occur at the same source. The Administrator proposed this approach in accordance with Congressional intent to subject new construction in nonattainment areas to requirements such as meeting the lowest achievable emission rate (LAER), even though a replacement of an older unit would result in a net reduction from previous emission levels (*see* 123 CONG. REC. 13702, col. 2 (daily ed. August 4, 1977) (statement of Senator Muskie)). In the agency's view nonattainment areas require very stringent NSR Procedures to overcome the inertia of the nonattainment problem. Having a reconstruction provision would promote maximum air quality improvements from an area's limited reduction capability by requiring more construction projects to meet LAER and bring other sources in the State under common control into compliance with the SIP.

The reconstruction rule was also proposed for PSD in an effort to be consistent with nonattainment NSR. Although the Administrator recognized that the air quality rationale for having reconstruction in nonattainment areas was considerably stronger than that for PSD inclusion, it was believed that less confusion would result with a parallel application of the reconstruction rule.

All ten commenters on the reconstruction topic voiced general disapproval for the proposal. Eight of the ten favored dropping the concept entirely from both sets of regulations, with the remaining two requesting that its applicability be restricted. They advised that EPA should rely instead on the reconstruction provisions of NSPS and NESHAP to ensure such construction would apply adequate control technology. Commenters complained that review criteria based solely on the replacement cost of equipment regardless of air quality improvements make little sense for NSR rules charged with safeguarding air quality. They further argued that the added regulatory complexity inherent to the inclusion of a reconstruction provision was not warranted and its addition to NSR would not be consistent with the "no net increase" exemption under *Alabama Power*.

The Administrator agrees that the reconstruction requirement makes only limited air quality sense for PSD and has reconsidered the need to retain this concept for the program. It is true that a reconstructed source not otherwise subjected to PSD review as a major modification (i.e., such source would not cause a significant net emissions increase) would not interfere with the PSD air quality objective of allowing only limited deterioration of existing air quality. On the other hand, the PSD objective of maximizing future use of the allowable increments through application of best available control technology (BACT) would not be strictly met. Nevertheless, the Administrator believes that the general PSD objective of safeguarding existing air quality from significant degradation will not be undermined by deleting the requirement for review of reconstructions.

The proposal would have implemented reconstruction for PSD only on a plant wide basis. Thus, an entire plant would have to be reconstructed in order for it to be subjected to PSD review as a reconstruction. Few instances of plantwide reconstruction are expected. The limited applicability under PSD brings further doubt as to the real need for the added complexity that a reconstruction provision would bring to determining the permit applicability of construction projects. Furthermore, the deletion of reconstruction from PSD would avoid some increment tracking problems; treating reconstruction as new PSD sources could lead to increment consumption unrelated to actual air quality changes.

The Administrator does not agree with the commenters who argued that applying "reconstruction" in nonattainment areas would bring unwarranted complexity and no air quality benefits. As explained in the proposal, EPA believes that the reconstruction provision within nonattainment NSR rules is consistent with stated Congressional intent and programmatic goals to get reasonable air quality improvements from each major construction activity. Since *Alabama Power* did not strictly bind EPA in nonattainment concerns and since the reconstruction concept was not expressly precluded, the Administrator has determined that reconstruction is warranted in nonattainment areas and is today promulgating this concept as proposed for nonattainment NSR rules.

Commenters also asked that several exemptions be considered if a reconstruction rule were promulgated. Among the exemptions suggested were: (1) current NSPS exemptions for modifications, (2) Fuel-Use Act exemptions, (3) involuntary replacement of damaged equipment, and (4) voluntary fuel switches. The Administrator is not promulgating any of these exemptions into the reconstruction provision. First, the current NSPS exemptions and involuntary replacement of damaged equipment do not avoid applicability of NSPS under 40 CFR 60.15 when a unit would have been reconstructed. Therefore, it would be inconsistent to establish such a concept under nonattainment NSR. In addition, 40 CFR 60.15, which governs how the reconstruction rule will apply in the affected NSR programs (*see e.g.*, 40 CFR Part 51 Appendix S, section II. A(12)), allows the Administrator, in paragraph (f), some case-by-case discretion in determining when a reconstruction would occur. Thus, no specific exemptions such as those suggested appear warranted at this time.

K. Exclusions

In September, EPA proposed to exclude "routine maintenance, repair and replacement" from the category "physical change" which appeared in the proposed PSD and nonattainment definitions of "major modification." At the same time EPA proposed to exclude the following events from the category "change in method of operation," unless previously limited by enforceable permit conditions: (1) a fuel switch due to an order under the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (or any superseding legislation) or due to a natural gas curtailment plan under the Federal Power Act; (2) a voluntary switch to an alternative fuel or raw material that the source prior to January 6, 1975, was capable of accommodating; (3) a fuel switch due to an order or rule under section 125 of the

Clean Air Act; (4) a switch to "refuse derived fuel generated from municipal solid waste" (RDF), and (5) a change in the ownership of a source.

EPA received few comments on the proposed exclusions. Certain commenters expressed reservations about the legal and policy basis of the RDF exclusion. Another commenter urged EPA to expand the exclusion for voluntary switches to an alternative fuel or raw material. Specifically, the commenter urged the Agency to drop the provisions which limited the exclusion to switches that would not require a change in permit conditions and to sources that were capable of accommodating the fuel or material before January 6, 1975. The commenter agreed with the position EPA took in the preamble to the 1978 Part 52 PSD regulations that Congress in enacting section 169(2)(C) intended that voluntary switches to an alternative fuel or raw material should be treated in the same way that they were being treated under section 111. *See* 43 FR 26396 (June 19, 1978). At the time Congress enacted section 169(2)(e), the regulations promulgated under section 111 excluded any such switch if the source could accommodate the fuel or material before the relevant NSPS applied to the source type. Whether a permit condition would restrict the switch was immaterial. *See* 40 CFR 60.14(e)(4) (1979). In view of this, the commenter argued that Congress intended the exclusion in the PSD and nonattainment regulations to look only at whether the source was capable of accommodating the fuel or material before those regulations first applied to it.

After considering the comments on the RDF exclusion, EPA has decided to promulgate it. The Resource Conservation and Recovery Act of 1974, 42 U.S.C. 3251 *et seq.*, firmly supports the exclusion. In that statute, Congress expressed a strong interest in the development and use of RDF. In addition, the exclusion has a sound policy basis, in view of the importance of reducing the nation's dependence on foreign oil.

In promulgating the exclusion, however, EPA has drawn it, by way of clarification, somewhat more tightly. It now excludes only a switch to RDF by a "steam generating unit." EPA intends that term to have the same meaning for the purposes of PSD and nonattainment NSR as it does for the purposes of the new NSPS for certain electric utility "steam generating units." For the NSPS definition of that term, see 40 CFR 60.41a (1979).

In response to the comment on the voluntary fuel and raw material switch provision, EPA has retained the language which limited it to sources which were capable of accommodating the fuel or material before January 6, 1975 (or December 21, 1976, for the Offset Ruling and 40 CFR 51.18; or July 1, 1979, for the construction moratorium) and the language which limited the exclusion to those not requiring a permit alteration. First, EPA disagrees that the cutoff date in the counterpart NSPS exclusion is analogous to the date the particular preconstruction permit regulations applied to a particular source. To the contrary, the NSPS counterpart is more broadly drawn; it focuses on the date the NSPS first applied to the *source type*. Second, EPA disagrees that the counterpart governs whether the NSR exclusions must ignore permit conditions. The NSPS program does not involve assessments of the impact of a source on air quality. In EPA's view, any switch to another fuel or raw material that would distort a prior assessment of a source's air quality impact should have to undergo scrutiny.

It should be noted that EPA has added a new clause to the exclusion for voluntary fuel switches. It provides that a switch which the relevant reviewing authority has already approved is not a "physical change" or "change in the method of operation" for NSR purposes. Obviously, a second evaluation of the air quality impact of the switch would be unnecessary.

The comment relating to voluntary switches has prompted EPA to add one more exclusion. It would exclude any increase in hours or rate of operation, as long as the increase would not require a change in any preconstruction permit condition established under the SIP (including PSD permits) after the relevant date of concern.

This exclusion stems largely from EPA's decision that the definitions of "major modification" should focus on changes in "actual emissions." While EPA has concluded that as a general rule Congress intended any significant net increase in such emissions to undergo PSD or nonattainment review, it is also convinced that Congress could not have intended a company to have to get a NSR permit before it could lawfully change hours or rate of operation. Plainly, such a requirement would severely and unduly hamper the ability of any company to take advantage of favorable market conditions. The emphasis of the relevant statutory provisions on "construction" strongly supports EPA's interpretation of Congress' intent. *See, e.g.*, section 165(a), 42 U.S.C. 7475. At the same time, any change in hours or rate of operation that would disturb a prior assessment of a source's environmental impact should have to undergo scrutiny.

Because of the absence of any significant comments on the other four exclusions, EPA has promulgated them as proposed.

L. Example of How the Definitions Work

The way in which the definition of modification works is best illustrated by an example. The example also demonstrates the relationship among a source's potential to emit, its actual emissions, and its allowable emissions.

In December 1980, a new source (Source A) that will emit SO_2 and PM files a PSD application to locate in an area that is attainment for SO_2 and PM. At maximum operating capacity including application of best available control technology, and assuming year-round continuous operation, the source can emit 700 tons of SO_2 per year. Seven hundred tons per year (tpy) is the source's physical potential to emit SO_2. Its physical potential to emit PM is 15 tpy. Provided that the 15 tpy of PM emissions is made federally enforceable, PM emissions will not be significant (*i.e.*, less than 25 tpy) and are, therefore, not subject to PSD review.

In the course of review, modeling reveals the SO_2 increment will be violated in the source's area of impact if it emits 700 tons SO_2 per year. The source, therefore, decides to limit its operation so as to decrease its emissions to 600 tons SO_2 per year. This reduction proves sufficient to eliminate the predicted violation. The source is issued a PSD permit that sets an SO_2 emissions limitation of 600 tpy, which reflects the revised source operation (approximately 20 hours a day, seven days a week). This emissions rate is the source's legal potential to emit. It is also the source's allowable emissions, since it is the emissions rate specified as a federally enforceable permit condition. *See e.g.*, § 52.21(b)(15)(iii).

During the first three years of operation, from March 1982 to March 1985, the demand for the source's product is less than anticipated. As a result, the source's actual emissions are 250 tpy during the first year and 300 tpy during the next two years.

In April 1985, another new source of SO_2 (Source B) proposes to locate in the area of impact of Source A. Consequently, in calculating its impact on ambient standards and its increment consumption, Source B is required to model the emissions of Source A. Under EPA's increment consumption policy (*see* Increment Consumption), Source

A's actual emissions should be modeled. Because Source A has an individually-tailored PSD permit, the definition of actual emissions allows the reviewing authority to presume that the allowable emissions in Source A's PSD permit reflects its actual emissions, unless the reviewing authority or source applicant has reason to believe that allowable emissions are not representative of actual source emissions.

In the case of Source A, allowable emissions, in fact, differ from actual emissions. Assuming that the reviewing authority is aware of this difference as a result of its periodic assessment or because Source B has presented this information in its application, Source A is modeled at its actual emissions rate representative of normal source operation during a two-year period preceding the date of concern. In this case, the date of concern would be approximately the date Source B submits its application. The reviewing authority should, therefore, look to the two-year period preceding that date unless that period of time was atypical of normal source operation. For Source A, the two-year period preceding Source B's application can be considered representative of normal source operation. Source A's actual emissions during that period, on an average annual basis, are approximately 300 tpy. The modeling of increment consumption for Source B should assume that emissions rate for Source A.

Unless Source A's permit is revised at this point to reflect its actual emissions rate of 300 tpy, Source A could attempt to use the decrease in its actual emissions in the future to offset a future emissions increase of its own. This would result in a large net increase in actual emissions for the area which could violate the applicable PSD increment. The potential problem of double counting of emissions decreases is discussed in more detail in Increment Consumption.

Assume that in June 1987, Source A decides to modify its facility. Demand for its product has increased and Source A wants to add a new emissions unit that will emit 60 tpy SO_2. In addition, Source A plans to increase the hours of operation at the units which began production in March 1982, to result in an actual emissions increase of 75 tpy at those units. If no contemporaneous decreases have occurred, both changes will result in significant net increases in actual emissions. Both changes then qualify as modifications. The addition of a new unit is a physical change. The increase in hours of operation is a change in the method of operation, assuming that the reviewing authority revised Source A's permit to reflect its actual emissions of 300 tpy at the time Source A's actual emissions were used by Source B in modeling increment consumption.

If Source A was able to decrease sufficiently its actual emissions at another unit at the source, it would be able to avoid PSD review for one or both modifications. Assume, for example, that in April 1986, Source A applied additional control equipment and decreased actual SO_2 emissions across the facility by 100 tpy. In June 1987, Source A can use those decreases to offset its proposed contemporaneous increases provided the decreases are made federally enforceable. If Source A's proposed increase in hours of operation for the units which began operation in March 1982 would result in an emissions increase of 75 tpy and the emissions from the proposed new unit are 60 tpy, Source A can use its 100 tpy decrease to avoid PSD review for both changes. Seventy-five tons of the decrease can be used to offset the increase in hours of operation and 25 tons of the decrease can offset 25 tons of the increase due to the new unit. Since the net emissions increase of 35 tons is not significant, it would not be a major modification requiring PSD review.[12]

Suppose Source A then plans to increase its emissions by 150 tpy in November 1990 and to decrease emissions by 80 tpy in February 1989. The increases and decreases since April 1986 are all contemporaneous because they occurred within the same five-year period. Now, assume Source A revises its permit to reflect only 50 tons of the 80-ton decrease in February 1989. Source A can receive credit for only 50 tons of the 80-ton decrease, since only this amount was made federally enforceable. However, Source A does receive credit for the April 1986 decrease of 100 tpy, assuming that decrease was made federally enforceable at the time of the June 1987 increase, or is made federally enforceable prior to commencement of construction on the November 1990 increase. Source A's total creditable decreases are then 150 tpy. Its increases are 135 tpy in June 1987 and 150 tpy in November 1990, for a total increase of 285 tpy. The net emissions increase is 135 tpy, which is significant for SO_2. Source A must get a PSD permit for the change leading to the 150 tpy increase in November 1990. However, it is not required to get a PSD permit for the June 1987 increases.

If, from March 1982 to March 1985, Source A had exceeded its allowable rate of 700 tpy, Source A could not receive full credit for its April 1986 decrease. For example, assume Source A's actual emissions from March 1982 to March 1986 were 800 tpy, 100 tpy over its allowed rate. None of the 100 tpy reduction in April 1986 would then be creditable. The amount of Source A's creditable decrease could also be reduced if the designation of the area where Source A is located were changed from attainment to nonattainment in March 1985 and Source A became subject to a new, more stringent SIP requirement in March 1986. If, for example, the SIP required Source A to reduce emissions from 700 to 600 tpy by December 1988, none of the 100 tpy decrease in April 1986 would again be creditable.

XI. De Minimis Exemptions

In the *Alabama Power* decision, the court indicated that emissions from certain small modifications, and emissions of certain pollutants at new sources, could be exempted from some or all PSD review requirements on the grounds that such emissions would be *de minimis*. In other words, the Administrator may determine levels below which there is no practical value in conducting an extensive PSD review. The court also indicated that the Agency could establish exemptions based on administrative necessity (e.g., the inability of reviewing authorities to provide the necessary work force to properly review a very large number of permit applications). The September 5 proposal incorporated the *de minimis* concept and requested comments on the approach taken. At that time, the Administrator noted that because of the urgency associated with the proposal, the *de minimis* numbers published were not supported by extensive analysis, and that a more thorough analysis would be undertaken prior to promulgation.

The proposal included two tables, one for defining significant emissions changes (in tons per year) and one for defining significant air quality changes (in micrograms per cubic meter). Values lower than those in the proposed tables were recommended as being *de minimis*. These tables, with respect to criteria pollutants, were generally based on the "significance" levels published in the preamble to the June 19, 1978 PSD regulations (43 FR 26398) and in the Offset Ruling (44 FR 3283). These significance levels in turn were derived from the Class I increment values listed

[12] Under the provisions of 40 CFR Part 51 Appendix S, 40 CFR 51.18(j), and 40 CFR 52.24, the emissions increases at Source A would probably be subject to review as modifications, notwithstanding the contemporaneous decreases at the source.

in Part C of Title I of the Clean Air Act. For noncriteria pollutants, a similar approach was taken: the Agency extrapolated emissions rates from documented air quality guideline numbers, where available.

In the proposal, the tables were presented as preamble guidelines to be used in the following manner. For PSD, any new source subject to review was to be analyzed for the application of BACT for each pollutant whose emissions would exceed the value in Table 1. In addition, an air quality analysis to determine the impact of these pollutants was required. For modifications, any pollutant for which the source was major and for which there was a contemporaneous net increase equal to or greater than the applicable value(s) in Table 1 would trigger PSD review of the modification; as in the case of new sources, BACT and air quality impact analyses were required for each pollutant whose net emissions increased by greater than a *de minimis* amount. Table 2 was proposed to provide an exemption from air quality impact analysis (including monitoring) for those sources and modifications which could demonstrate that their maximum expected air quality impact would be less than the values listed. Sources, including modifications, claiming to be exempt from reviews on the basis of *de minimis* emissions would be required to so notify the Administrator. The *de minimis* requirements also would apply to nonattainment sources, but would be restricted to the pollutant(s) for which the area is nonattainment.

The Agency received extensive comments on the proposed *de minimis* approach. In all there were 121 comments addressing this issue. While there was almost universal endorsement of the concept, a large number of commenters (65) criticized the proposed values as being too low. Some of these commenters stated that there was a lack of support for the numbers presented and felt that the emissions table was more restrictive than the table of air quality concentrations; others claimed that the low *de minimis* levels made the applicability of the review process inequitable for modifications in comparison to new sources. A consistent theme was that the proposed values would necessitate unproductive review in terms of environmental benefit while consuming applicant and reviewing authority resources. Although there were suggestions concerning how big the emissions numbers should be (100 tons per year was a popular choice), little specific guidance was given on how to develop alternative numbers. Suggestions generally were limited to using various percentages of the national ambient air quality standards or the amount of existing emissions. One commenter did suggest the use of an equation that accounted for variability in stack height.

Only one commenter criticized the *de minimis* levels for being too high. This commenter also believed that exemptions from review because of emissions less than the *de minimis* rate should not be automatic, but should be allowed only after a case-by-case review of source impact. In addition, the commenter stated that in areas where the increment is almost entirely consumed, sources should be subject to PSD review for any increase in emissions.

A frequently addressed aspect was the perceived need to incorporate any *de minimis* values in the regulations, as opposed to leaving them as guidelines in the preamble. Forty-eight of fifty-six commenters favored such a change. The general concern was that since the preamble is omitted from the Code of Federal Regulations, the regulations as written would appear to be ambiguous as to the term "significant." Those that favored leaving the tables as guidelines did so generally to provide more flexibility either for sources to demonstrate that they should be exempt or for states to develop alternative *de minimis* values.

There were several other meaningful comments. Sixteen commenters recommended that *de minimis* coverage be limited to criteria pollutants. Eighteen commenters contended that the need to accumulate *de minimis* changes was burdensome, environmentally unnecessary, and should be dropped; some questioned the legislative basis for this requirement. Several commenters cited the difficulty, if not impossibility, of monitoring for all regulated pollutants. These commenters were especially concerned regarding monitoring for noncriteria pollutants, indicating that the requisite technology was not available in some cases. Other commenters questioned how the term "no impact," which is used in the regulations to protect Class I areas, relates to the Table 2 *de minimis* values.

Mindful of the comments received, the Administrator has undertaken a reassessment of the *de minimis* issue. This reassessment is decribed in two documents. One is a report entitled "Impact of Proposed and Alternative *De Minimis* Levels for Criteria Pollutants," EPA-450/2-80-072, and the other is a staff paper entitled "Approach to Developing *De Minimis* Values for Noncriteria Air Pollutants." These are available for examination in the rulemaking docket. In addition, copies may be obtained by writing to the Air Information Center, U.S. EPA Library Services, MD-35, Research Triangle Park, NC 27711.

Obviously, a significant part of the reassessment involved the use of reasonable judgment. The task requires consideration of an area in which not only is data limited, but criteria for decision making is almost non-existent. The first task of the reevaluation was to identify the basic objectives to be met in selecting *de minimis* values. The primary objectives identified were: (1) provide effective Class I area protection; (2) guard against excessive "unreviewed" consumption of the Class II or III increments; and (3) assure meaningful permit reviews. "Meaningful" in this context implies that there would be a possibility of obtaining useful air quality information or obtaining greater emission reductions as a result of BACT analysis than would be expected from normal state permit or NSPS/NESHAP processing.

The proposed *de minimis* air quality values, which stemmed from the legislated Class I increments, caused concern for two reasons. First, if a modification occurs near enough to a Class I area, almost any *de minimis* emissions level could impact the area. Thus, proximity rather than emissions level appears to be more important in Class I area protection. Second, the general imposition of Class I criteria on the review process for Class II and III areas may be overly stringent. These concerns were examined as part of the *de minimis* reassessment.

As a result of this examination, the Administrator has decided that higher *de minimis* emissions rates than those used in the proposal could apply to review of sources which would not construct within a specified distance of a Class I area. However, a proposed source or modification that would construct close to a Class I area must be prepared to demonstrate for each regulated pollutant that it would emit that it would not have a significant impact on such area (defined as one microgram per cubic meter ($\mu g/m3$) or more, 24-hour average), even if the proposed emissions increases are below the applicable *de minimis* threshold. The effect of this change is to require less review for many sources through higher *de minimis* values (compared to the proposal), while adding a limited air quality analysis requirement for only a few sources. Such a change is consistent with the objectives of protecting Class I

areas while limiting PSD review to projects with significant impact.

There were three basic alternatives available for specifying *de minimis* cutoffs—one based solely on air quality impact, one based solely on emissions rate, and one based on a combination of these, such as was proposed on September 5. The Administrator has chosen to specify *de minimis* cutoffs in terms of emissions rate for applicability, BACT and air quality analysis purposes, with no provisions for case-by-case demonstration of a source's air quality impact. This is a departure from the proposal in that, as proposed, a source could avoid air quality analysis requirements for a given pollutant by demonstrating that it would produce a maximum impact less than the air quality concentrations listed for that pollutant. An air quality concentration *de minimis* level for each pollutant for which measurement methods are available is included in the regulations only for the purpose of providing a possible exemption from monitoring requirements.

This approach has been adopted for several reasons. First, the Congress specified emissions rates, not projected air quality impacts, in the Clean Air Act as the criteria for determining which sources are major and therefore subject to PSD review. Moreover, the court, in the *Alabama Power* decision, continually refers to emissions rate rather than air quality concentration in its discussion of the *de minimis* issue. Therefore, it would be inconsistent with the existing guidance to abandon the emissions rate concept.

Second, if applicability decisions depended on confirming a demonstration by the source that its impact would be less than a given air quality level, it is the Administrator's opinion that the review process would become excessively complex and greatly increase the resources needed by reviewing authorities to carry out the program. In addition, such an approval would create and atmosphere of uncertainty as to whether individual sources needed to apply for a permit or not, and could lead to uneven application of the regulations from state to state. Third, the task of establishing *de minimis* air quality levels for noncriteria pollutants, with proper consideration of threshold levels and factors of safety (if any), is very complex and could not be done in the time available.

Finally, given the inclusion of a *de minimis* exclusion for monitoring, it serves little purpose to have a separate table to permit an exclusion from the remaining air quality impact analysis requirement. (A separate table would be required because monitoring capability and concern for potential effects are unlikely to be associated with the same air quality concentrations.) Besides making the regulations more complicated, this resultant demonstration necessary to earn an exemption from air quality impact analysis would in itself *be* an air quality impact analysis.

In analyzing the basis for *de minimis* emissions rates, it was apparent that two distinct classes of pollutants were involved. The first consists of the criteria pollutants for which extensive health and welfare information has been developed and documented in the respective criteria documents. The other class consists of the noncriteria pollutants for which, as the name implies, no criteria on ambient effects exist. Rather, these pollutants are covered by either New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP), both of which are based on a national emissions standard, rather than an air quality management approach. That is, the regulations developed pursuant to both these legislative requirements generally specify emissions limitations and/or equipment performance standards as opposed to threshold air quality levels that must be achieved as for the criteria pollutants. Thus, it appeared reasonable to develop *de minimis* cutoffs from separate perspectives—to base criteria pollutant *de minimis* emissions cutoffs on air quality "design values" and to base the noncriteria pollutant *de minimis* values on the emissions rates embodied in the NSPS and NESHAP.

The first step in developing *de minimis* emissions rates for the criteria pollutants, therefore, was the establishment of air quality "design values." Such design values were then converted to emission rates in accordance with EPA modeling procedures,[13] using data on sources permitted under the PSD program. The latter provided modeling parameters associated with sources of the type expected to be most affected by the *de minimis* requirements. Ambient concentations representing percentages of the primary 24-hour air quality standard, as well as percentages of the Class II increment, were evaluated for particulate matter (PM) and sulfur dioxide (SO_2). Similarly, various percentages of the primary standard for the other criteria pollutants were examined.

The primary standard was chosen as the basis for design values because, except for PM and SO_2, none of the criteria pollutants have a secondary standard that is different than the primary standard. The 24-hour standard instead of the annual standard was used for PM and SO_2 since short term rather than the long term impact tends to be the controlling factor in determining whether air quality increments are exceeded. In addition, levels higher than five percent of the primary standard were not seriously considered because that percentage equates to approximately 35 percent of the TSP Class II increment. The Administrator does not believe that a source which, due to its own emissions, could potentially consume more than that amount of increment should be exempt from review.

Two factors had an important influence on the choice of *de minimis* emissions levels within the resulting range of annual emissions rates. The primary one was the cumulative effect on increment consumption of multiple sources in an area each making the maximum *de minimis* emissions increase (thereby going unreviewed under PSD at the time of the change). The other, and secondary one, was the projected consequence of a given *de minimis* level on administrative burden. To determine the cumulative effect on increment consumption expected from several sources, all making maximum *de minimis* increases (a rather unlikely event) in the same area, actual source distributions in the Dayton, Ohio, area were used. Dayton was chosen because it is a fairly representative industrialized community, and source data suitable for modeling was readily available. To check the impact of the various *de minimis* levels on administrative burden, data from past permitting experience were again used, in this case to prepare curves showing the number of sources expected to require review at various *de minimis* emissions levels. A description of these analyses is found in the *de minimis* report on criteria pollutants cited earlier.

As a result of the reevaluation, the Administrator has decided to use four percent of the 24-hour primary standard as a design value for both PM and SO_2. These ambient levels correspond to emissions rates of 25 tons per year for PM and 40 tons per year for SO_2 (except for lead, all emissions rates predicted from the modeling for criteria pollutants were rounded to the nearest five tons).

[13] Guidelines for Air Quality Maintenance Planning and Analysis, Volume 10 (Revised): Procedures for Evaluating Air Quality Impact of New Stationary Sources, OAQPS No. 1.2-029R, October 1977.

Four percent of the lead standard was also used, yielding an emissions rate of 0.6 tons per year. The emissions rate for carbon monoxide (CO) in all cases was greater than 100 tons per year, the limit set in the Clean Air Act to define major for many source categories. Therefore, as proposed, the *de minimis* emissions rate for CO is established at 100 tons per year.

Because the nitrogen dioxide standard is expressed only as an annual average, a factor of two percent was used to determine the design value. There were two reasons for this decision. First, for a given level of emissions, a predicted annual concentration will be smaller than a short-term value. Conversely, therefore, a lower percentage for the annual standard than for a shorter term standard is indicated if one is to maintain a reasonably consistent rationale for emissions rates. Second, the emissions rate corresponding to two percent of the standard is 40 tons per year, which is comparable to the rate established for SO_2. Both these pollutants are frequently emitted from the same source, in roughly equivalent amounts; for example, a typical power plant meeting the NSPS with low sulfur coal would emit about 1300 tons per year of nitrogen oxides and about 1500 tons per year of SO_2.

Finally, models for use in establishing a relationship between individual source hydrocarbon (VOC) emissions and ozone concentrations are not presently available. Thus, it was not possible to model an emissions rate from an air quality design value. However, in view of the link between VOC and NO_x emissions in the formation of ozone, the emissions rate for VOC was also set at 40 tons per year.

It should be recognized that several sources or modifications can be allowed in the same area even though each might consume up to four percent of the standard (about 16 percent of the Class II increment for SO_2 and about 28 percent for PM). This is because the source specific concentration occurs in only a limited area (often one point) and the temporal and spatial conditions which lead to maximum consumption by one source are seldom the same for other sources that may be making similar *de minimis* changes. To reinforce this understanding, a modeling analysis of 37 sources in the Dayton area was conducted. The maximum aggregate increment consumption projected to occur as a result of all major sources each making a *de minimis* emissions increase equal to 40 tons per year (*e.g.*, that for SO_2) was less than 1.5 $\mu g/m3$ on a 24-hour basis. While representative of only one set of conditions, this result could probably be expected in most industrialized areas.

Excessive increment consumption is unlikely, given the safeguards existing in the regulations. Although such sources would not get PSD permits, they do not go unreviewed. Most, if not all, will be permitted under ongoing state NSR programs pursuant to 40 CFR 51.18. Moreover, their contribution to increment consumption will be evaluated either by the next major source undergoing PSD review, or during the periodic assessment of source growth. Nevertheless, in atypical situations there might still be concern with the *de minimis* levels causing accelerated increment consumption. This can be controlled by a state, upon taking the program, through the establishment of smaller *de minimis* levels.

To determine a proximity cutoff that gives assurance of protection of Class I areas, a modeling analysis was performed to identify the effect of the *de minimis* emissions levels on such areas using Volume 10 screening procedures. For the purpose of this analysis, the effect of varying stack height and meteorology, as well as the influence of terrain features, was considered. Significant impact was taken to be one $\mu g/m^3$, 24-hour average. The results indicate that sources locating more than 10 kilometers from a Class I area would not have such an impact as a result of making *de minimis* changes. Therefore, the regulations promulgated here require that any new or modified major stationary source within that distance from a Class I area will be subject to review if the source would have an impact on the area equal to or greater than one $\mu g/m^3$, 24-hour average. It must be pointed out that while the preceding responds to those commenters concerned about how to judge whether a source has "no impact" on a Class I area, the analysis of impact on such an area from major sources subject to PSD review must be done on a case-by-case basis. Further, such sources may be subject to an evaluation by the appropriate Federal Land Manager as described in the regulations.

Noncriteria pollutant emissions rates were developed from the existing emission standards (NSPS and NESHAP). In general, a fraction of the applicable standard was used. In the Administrator's judgment, since the NSPS represents the best adequately demonstrated control technology on a nationwide basis, and the NESHAPs are established with an ample margin of safety to prevent unreasonable risk to the public health from hazardous pollutants, a small percentage of these standards would, for PSD purposes, prevent a significant change from escaping review.

Levels generally representing 20 percent of a NSPS emissions standard and, because of their greater impact on health, ten percent of a NESHAP emissions standard, were evaluated. The air quality impacts of the resulting NSPS emissions rates were then calculated in a manner similar to that used for the criteria pollutants. These concentrations were compared to available health and welfare data to assure that significant adverse effects were avoided. In the case of fluorides, this check resulted in a reduction of the emissions rate originally indicated. No adjustment based on resultant effect was made for the hazardous pollutants since the NESHAP emissions rate, as noted above, is itself intended to protect the public health with an ample margin of safety; therefore, ten percent of such a value is in the Administrator's judgment sufficiently stringent for use as a *de minimis* level.

A brief discussion of the rationale for each noncriteria pollutant emissions rate is given below. For more information, see the staff paper cited earlier.

Hazardous Pollutants (NESHAP):

Asbestos—Reevaluation of existing data indicates that trying to establish a quantitative link between emissions and potential effects is not possible. No level of exposure can be presumed *de minimis*. Therefore, a theoretical *de minimis* emissions rate of zero was considered. Such a value is not practical, however, since changes of any kind at sources using materials containing even traces of asbestos could trigger review regardless of the amount of asbestos emitted. Therefore, an estimate was made of the emissions from well controlled sources from which asbestos can be emitted. Although data is very limited, rough estimates of emissions from four source categories were developed. Three categories are covered by the NESHAP regulations: asbestos milling, manufacturing using asbestos in the process (e.g., textiles, asbestos tile), and asbestos asphalt manufacture. Rock crushing, a fourth category not covered by the NESHAP, was also examined. Emissions rates from these four categories, using available data, were respectively 0.2 tons per year (TPY), 0.07 TPY, 0.04 TPY, and 0.06 TPY. Because asbestos is carcinogenic, a conservative approach to establishing the *de minimis* emissions rate has been taken. The *de minimis* level is based on a source category

which has relatively small asbestos emissions, and which includes the majority of asbestos emitting sources—manufacturing operations using asbestos. Therefore, the promulgated asbestos *de minimis* rate is 0.007 TPY, based on ten percent of the emissions estimated from asbestos manufacturing sources.

Beryllium—The NESHAP emissions rate is ten grams per day or 0.004 tons per year. Ten percent of this yields a *de minimis* emission rate of 0.0004 tons per year.

Mercury—The NESHAP emissions rate is 2300 grams per day which equates to approximately one ton per year. At ten percent, the promulgated *de minimis* emissions rate is 0.1 tons per year.

Vinyl chloride—The NESHAP standard is expressed in parts per million of the effluent stream. It was therefore necessary to assume model plant characteristics in order to develop expected emissions from a well controlled plant. As in the case of asbestos, the Administrator believes that it is prudent to base these calculations on a small model plant considering the suspected carcinogenicity of this pollutant. Such plants, well controlled, emit about 10 tons per year. Based on this value, the promulgated *de minimis* emissions rate is one ton per year.

NSPS Pollutants:

Fluorides—The proposed *de minimis* emissions rate for fluorides was extremely conservative, and was strongly criticized as being too low by several commenters. Upon reevaluation, the Administrator agrees with the comments. A *de minimis* emissions rate based on the NSPS for aluminum plants is 30 tons per year—a well controlled, moderate sized, plant emits about 150 tons per year of fluorides. At a rate of 30 tons per year, the predicted maximum 24-hour ambient concentration is approximately ten micrograms per cubic meter. That concentration is about ten times the level that has been observed to produce effects on vegetation (about one microgram). In order to limit the potential for such damage, a *de minimis* emissions rate of three tons per year, corresponding to a one microgram impact, is promulgated.

An alternative would have been to base the emissions rate on the NSPS for phosphate fertilizer plants. Fertilizer plants typically emit much less than aluminum plants (i.e., about two tons per year controlled). A 20 percent *de minimis* value would then be less than 0.5 tons, which is unrealistic in view of other sources such as aluminum plants. Moreover, changes at a fertilizer plant that resulted in a fluoride emissions increase of 0.5 tons per year would probably get reviewed under state new source review and/or NSPS requirements.

Sulfuric Acid—A model plant of 1300 tons per day of production was used. The NSPS-emissions limit is 0.15 pounds of sulfuric acid per ton of product processed. Thus, the model plant would emit about 35 tons per year. This yielded a *de minimis* emissions rate of seven tons per year using the 20 percent factor.

Total Reduced Sulfur, Reduced Sulfur—These pollutant classes include hydrogen sulfide (H_2S) and are regulated primarily to avoid nuisance (odor) problems. Total reduced sulfur (TRS) emissions are based on a representative kraft pulp mill (900 tons of pulp per day) which at 20 percent yields a *de minimis* emissions rate of 10 tons per year. Similarly, using a model refinery of about 100 long tons per day, the reduced sulfur (RS) compound emissions rate is 10 tons per year.

(The emissions rates calculated on the above model plants were 8.3 tons per year for TRS and 9.4 tons per year for RS. Both values were rounded to 10 tons per year for administrative purposes.)

Hydrogen Sulfide—Regulated under the refinery NSPS only. Specified as one thirtieth of reduced sulfur emissions, in major part as a check on control efficiency. Since concern, at the NSPS emissions levels, for TRS, RS, and H_2S is the same (nuisance rather than health impact) the *de minimis* emissions rate for H_2S alone is set at ten tons per year.

Methyl Mercaptan, Dimethyl Sulfide, Dimethyl Disulfide, Carbon Disulfide, Carbonyl Sulfide—*De minimis* emissions rates were proposed for these compounds. However, none of them are individually regulated under the Act. Rather, they are described as constituents of either TRS or RS. Therefore, since *de minimis* emissions rates are promulgated for TRS and RS, individual *de minimis* for the five compounds have been dropped.

The complete list of the emissions levels promulgated today, and where applicable, the *de minimis* air quality design values from which they are derived, is given below in Table A:

Table A.—*De Minimis Values*

Pollutant	De Minimis emissions rate (TPY)	Design air quality value (average time) (μg/m³)
Carbon monoxide	100	
Nitrogen oxides	40	2 (annual).
Sulfur dioxide	40	14.6 (24-hour).
Total suspended particulates.	25	10.4 (24-hour).
Ozone (volatile organic compounds).	40	
Lead	0.6	0.06 (3 month).
Asbestos	0.007	
Beryllium	0.0004	
Mercury	0.1	
Vinyl chloride	1.0	
Fluorides	3	
Sulfuric acid mist	7	
Total reduced sulfur (including H_2S).	10	
Reduced sulfur (including H_2S).	10	
Hydrogen sulfide	10	

The air quality design values are not included in the regulations. *De minimis* emissions levels are included for use in defining the term "significant." As in the proposal, these values determine the need to review modifications and determine which pollutants require BACT and air quality impact analyses for any new source or modification requiring review.

The Administrator does not believe that the promugated *de minimis* levels will produce an extraordinary administrative burden on reviewing authorities. Based on the data available, it is estimated that approximately 700 more sources will be subject to PSD review annually, all for small modifications not heretofore reviewed.

The regulations also include a list of air quality concentrations for each pollutant as criteria for exempting sources from the monitoring requirements at the discretion of the reviewing authority. Table B summarizes the applicable air quality values by pollutant type.

Table B.—*Monitoring Exemption*

Pollutant	Air quality value (averaging time) (μg/m³)
Carbon monoxide	575 (8-hour).
Nitrogen dioxide	14 (24-hour).
Sulfur dioxide	13 (24-hour).
Total suspended particulates	10 (24-hour).
Ozone	(1)
Lead	0.1 (24-hour).
Asbestos	(2)
Beryllium	0.0005 (24-hour).
Mercury	0.25 (24-hour).
Vinyl chloride	15 (24-hour).
Fluorides	0.25 (24-hour).
Sulfuric acid mist	(2)
Total reduced sulfur (including H_2S).	10 (1-hour).
Reduced sulfur (including H_2S)	10 (1-hour).
Hydrogen sulfide	0.023 (1-hour).

[1] All cases where emissions of VOC are less than 100 tons per year.

[2] No satisfactory monitoring technique available at this time.

Several Table B values are somewhat different from the design air quality numbers shown in Table A. This is because the Table B values are based on the current capability to provide a

meaningful measurement of the pollutants. The values promulgated represent five times the lowest detectable concentration in ambient air that can be measured by the instruments available for monitoring each pollutant. The factor of five was chosen after reviewing test data for the various methods considered reasonably available. The decision was based in part on considerations of instrument sensitivity, potential for sampling error, problems with instrument variability (*e.g.*, zero drift) and the capability to read recorded data. For a more thorough discussion of this determination, see the memorandum from K. Rehme to W. Peters dated May 20, 1980, which is available in the rulemaking docket and from the address given for the other reports.

There also are several changes in the use of Table B from the Table 2 proposed on September 5. First, a source deemed subject to review may claim the *de minimis* air quality impact exemption from only the monitoring requirement for the reasons noted earlier. Next, under the proposal, a source had to demonstrate that its ambient impact would be *de minimis* to obtain an exemption from monitoring. As promulgated, the regulation allows a source to be exempted from the preapplication monitoring requirement if it shows either that existing air pollution in the source impact area or its projected impact in the affected area is *de minimis*. In most cases, little is to be gained from preconstruction monitoring in situations where either condition applies.

Finally, because there will be situations where monitoring will be necessary even if modeling predicts *de minimis* conditions, the exemption is not automatic but rather must be with the approval of the reviewing authority. For example, Table B values should not be used when (1) there is an apparent threat to an applicable PSD increment or NAAQS based on modeling alone or (2) when there is a question of adverse impact on a Class I area. Questions of adverse impact on a Class I area are to be decided on a case-by-case basis with the objectives of the affected Federal Land Manager in mind.

Some of the suggestions made in the comments have not been adopted. For the reasons stated earlier, many of the *de minimis* values have been increased. The automatic exemption on the basis of emissions rate is retained, although the exemption from monitoring has been made discretionary. The Administrator believes that a clear indication of applicability is necessary. It is not reasonable to expect a potential applicant to have continuous knowledge of the status of increment consumption and thus know when an application is required and when it is not. Nor have the *de minimis* values been promulgated as a guide only, with a screening review of all sources made mandatory as suggested by one commenter. The Administrator does not believe that there is a substantial programmatic benefit to be derived from such a stringent requirement.

Accumulation of *de minimis* values has not been dropped, because for most pollutants the promulgated *de minimis* emissions levels are now substantially higher than those proposed. The suggestion to allow sources with greater than *de minimis* emissions to make a showing that their air quality impact was *de minimis* and escape review was considered and then rejected. The higher emissions levels promulgated will offer much of the requested relief. Moreover, such an approach would not streamline the review process (*i.e.*, a detailed air quality analysis would still be necessary), and several sources with taller stacks might avoid review and the BACT requirement. Variations in actual impact because of stack height can be a factor in the BACT review. Similarly, an equation considering stack height to determine the *de minimis* emissions rate cutoff has not been promulgated. It is questionable whether such an equation could be developed for application nationwide that would be any less judgmental than the fixed *de minimis* emissions rates promulgated. Moreover, that approach would be little more than a case-by-case applicability assessment which the Administrator believes is inadvisable for reasons already described.

Other suggestions not accepted were to raise the *de minimis* emissions levels to 100/250 tons per year for the criteria pollutants, and to limit the *de minimis* concept to only the criteria pollutants. In developing an approach to defining *de minimis* for PSD purposes and consequently calculating the specific *de minimis* values under the guidance given within the Act and *Alabama Power*, emissions levels as high as 100 tons per year could not be justified for most criteria pollutants. Use of the *de minimis* concept with respect to only the criteria pollutants suggests that any increase (i.e., a zero *de minimis* value) would be significant for noncriteria pollutants and must be reviewed. As mentioned earlier, a zero *de minimis* is not practical for this program.

XII. Geographic and Pollutant Applicability

A. Background

Alabama Power held that in determining the applicability of PSD review, EPA must look to whether a source locates in an area to which Part C of the Act applies, rather than to the impact the source would have upon such an area. Accordingly, EPA proposed on September 5 to apply PSD review to a source if the source locates in an area designated attainment or unclassifiable for a pollutant which the source emits in major amounts. Each pollutant emitted by the source would be subject to PSD review, unless the pollutant was one for which an area is designated nonattainment and the source emitted that pollutant in major amounts. A modification to a source would be subject to PSD review under the September 5 proposal if it would result in a significant net increase in the emissions of any regulated pollutant for which the source is major and for which the area is designated attainment or unclassifiable. In addition, EPA proposed on September 5 to apply PSD review to a source or modification that would significantly affect an area in another state designated as attainment or unclassifiable for a pollutant for which the source or modification would be major. *See* 44 FR 5190–41, 51949 (§ 51.24(i)(2)), 5193–54 (§ 52.21(i)(8)).

On January 30, 1980, EPA stated that it intended not to apply PSD review based solely on interstate impact, because the court's final interpretation of the Act in *Alabama Power* suggested that PSD review was not appropriate in such circumstances. EPA also noted that under its September 5 proposal, a source or modification would be exempt from PSD review if it emitted in major amounts only pollutants for which an area had been designated nonattainment. EPA solicited comments on whether this exclusion should be retained, as well as on its proposal to delete PSD review based solely on interstate impacts. *See* 45 FR 6803 (January 30, 1980).

B. PSD Applicability

After further evaluation of its proposed approach, and consideration of the comments submitted in response to the September 5, 1979, and January 30, 1980, notices (see discussion below), EPA has decided to modify the September 5 proposal somewhat. Under today's action, except with respect to nonattainment pollutants, PSD review will apply to any source that emits any pollutant in major amounts, if the source would locate in an area designated

attainment or unclassifiable for *any* criteria pollutant. If the source is subject to PSD review, then PSD review will be applied to each pollutant the source emits in greater than *de minimis* amounts, unless the area is designated as nonattainment under section 107(d)(1) for the particular pollutant. It should be noted that in order for PSD review to apply to a source, the source need not be major for a pollutant for which an area is designated attainment or unclassifiable; the source need only emit *any* pollutant in major amounts (i.e., the amounts specified in section 169(1) of the Act) and be located in an area designated attainment or unclassifiable for that or any other pollutant. Therefore, sources that are major only for pollutants for which an area is designated nonattainment will not be exempt from PSD review unless the source is located in an area which is designated nonattainment for all criteria pollutants or unless all of the regulated pollutants emitted by the source in greater than *de minimis* amounts are nonattainment pollutants.

The applicability of the PSD regulations to modifications mirrors that for new sources (*see* Modification). PSD review will apply to any modification to a source which emits any pollutant subject to regulation under the Act in major amounts, if the modification would result in a significant net increase in the emissions of *any* pollutant, and if the source is located in an area designated attainment or unclassifiable for any criteria pollutant. PSD review would not apply to any nonattainment pollutant. Unlike the approach proposed on September 5, in order for PSD review to apply, the modification need not increase emissions of a pollutant for which the source is major, nor need the source be major for a pollutant for which the area is designated attainment or unclassifiable.

EPA believes that this approach is required by *Alabama Power* and sections 165(a) and 169(1) of the Act. Section 165(a) states that "[n]o major emitting facility on which construction is commenced after the date of the enactment of [Part C of the Act], may be constructed in any area to which this part applies unless" the conditions set out in section 165(a) are met. *Alabama Power* held that this provision must be interpreted literally and that, in particular, EPA should focus on the *location* of the source, not its impact. *See* 13 ERC at 2012–2016. Today's action provides the necessary literal interpretation. A "major emitting facility" is defined in section 169(1) as a source which would emit at least 100 or 250 tons per year (tpy) (depending on the type of source) of "any" pollutant. This would cover both critiera pollutants, for which national ambient air quality standards have been promulgated, and non-criteria pollutants subject to regulation under the Act. Section 165 refers to an "area to which this part [part C] applies," which the Court in *Alabama Power* interpreted to mean "clean air areas," *i.e.* areas designated pursuant to section 107 as attainment or unclassifiable for a particular air pollutant 13 ERC at 2013. *See also* sections 161, 162, and 167 of the Clean Air Act. But neither section 165 nor section 169(1) links the pollutant for which the source is major and the pollutant for which an area is designated attainment or unclassifiable. Read literally, section 165(a) applies PSD preconstruction review to all sources that are major for any pollutant subject to regulation under the Act and locate in an area designated attainment or unclassified for any pollutant.

Section 165(a) also does not link review of a particular pollutant to the attainment status for that pollutant or limit review to pollutants for which a source is major. Rather, read literally, section 165(a) applies PSD review to *all* pollutants subject to regulation under the Act emitted by the source provided that the source is major for *some* pollutant and is located in a clean air area for some pollutant. However, implicit in *Alabama Power* and the structure of the Act is a recognition that where nonattainment pollutants are emitted in major amounts (i.e., where a source emits in major amounts a pollutant for which the area in which the source would locate is designated nonattainment), Part D NSR rather than Part C PSD review should apply to these pollutants (see below). PSD review does not apply to the nonattainment pollutants emitted by the source otherwise subject to review.

C. Nonattainment Applicability

On May 13, 1980, 45 FR 31307, EPA promulgated a final rule setting out the applicability of nonattainment review of new and modified sources. In brief, EPA clarified that the construction moratorium under section 110(a)(2)(I) and NSR under the Offset Ruling and section 173 apply to all major construction proposed in such areas. This applicability is unaffected by the particular air quality levels within the designated nonattainment area which would be caused or impacted by the proposed major source or major modification. States still are required under section 110(a)(2)(D) to review new or modified sources locating outside of nonattainment areas, but causing or contributing to a violation of an ambient air quality standard; however, review need not meet all of the nonattainment requirements under section 173 and the offset policy.

The current regulations concerning pollutant applicability in nonattainment areas have not been changed. These rules are different from the PSD pollutant applicability rules. Major sources are subject to review under the Offset Ruling, section 173, and the construction moratorium only if they emit in major amounts the pollutant(s) for which the area is designated nonattainment. In addition, only those nonattainment pollutants which the source emits in major amounts are subject to review or the construction moratorium. Similarly, only if a modification increases emissions of a pollutant for which the source is major and for which the area is designated nonattainment do nonattainment requirements apply. The basic rationale for these restrictions is that section 110(a)(2)(I), which contains the construction moratorium, restricts the construction moratorium to pollutants for which the source is major and for which the area is designated nonattainment. Since there is no requirement similar to the one in section 165(a) that subjects a source to review for all regulated pollutants it emits once it is subject to review for one pollutant, preconstruction review under the Offset Ruling and section 173 is restricted in the same manner as the construction moratorium.

For example, construction of a new plant with potential emissions of 500 tpy PM and 50 tpy SO_2 in an area designated nonattainment for both PM and SO_2 would be subject to nonattainment requirements for PM only, since the source is minor for SO_2. Similarly, modification of this plant resulting in a net increase in emissions of 50 tpy in SO_2 would not be subject to nonattainment requirements. See also examples (3), (4), and (7).

D. Case Examples

The following additional examples illustrate how applicability of PSD requirements will work under today's final regulations:

(1) Construction of a new plant with potential emissions of 500 tpy PM and 50 tpy SO_2 in an area designated attainment for both PM and SO_2 would be subject to PSD review for both PM and SO_2.

(2) Construction of the same plant as in example (1), but in an area designated attainment for SO_2 and nonattainment for PM, would be subject to PSD review

for SO_2 and nonattainment requirements for PM.

(3) Construction of the same plant as in example (1), but in an area designated attainment for PM and nonattainment for SO_2, would be subject to PSD review for PM only. PSD review would not apply for SO_2, since SO_2 is a nonattainment pollutant.

(4) Construction of the same plant as in example (1), but in an area designated nonattainment for both PM and SO_2 would be subject to no PSD review and to nonattainment requirements for PM. This would be the case even if the SO_2 emissions would have an impact on a nearby Class I area for SO_2 or on an area located in another state which is designated attainment or unclassifiable for PM.

(5) Modification to the plant in example (1), where the plant is located in an area designated attainment for both PM and SO_2 resulting in a 30 tpy net increase in PM emissions, would be subject to PSD review for PM.

(6) Modification to the plant in example (1), where the plant is located in an area designated attainment for SO_2 and nonattainment for PM, resulting in increased emissions of 50 tpy in SO_2, would be subject to PSD review for SO_2. (It is a significant increase at a major source located in an attainment area.) But if the modification only were to increase the emissions of PM by 30 tpy, only nonattainment requirements would apply, since this is a modification of a major source for a nonattainment pollutant.

(7) Modification to the plant in example (1), where the plant is located in an area designated attainment for PM and nonattainment for SO_2, resulting in increased emissions of 50 tpy SO_2, would be subject to neither PSD review, nor the nonattainment NSR requirements. Nonattainment NSR would not apply since the 50 tpy increase in the nonattainment pollutant does not occur at an existing major stationary source for that pollutant. PSD does not apply since the only change is to a nonattainment pollutant. Instead, the general NSR under the SIP would typically apply to this pollutant, and the new emissions of SO_2 would be accommodated in the SIP's allowance for area and minor source growth.

(8) Construction of a new plant with potential emissions of 500 tpy hydrogen sulfide (H_2S) in an area designated attainment for PM would be subject to PSD review for H_2S. If, in addition, the plant had potential emissions of 50 tpy PM, PSD review would be applied to both H_2S and PM.

(9) Construction of a new plant with potential emissions of 500 tpy CO and 50 tpy H_2S in an area designated nonattainment for CO and attainment for SO_2 would be subject to PSD review for H_2S and to nonattainment requirements for CO. If this plant were later modified, resulting in a net increase in emissions of 30 tpy in H_2S, PSD review would apply for H_2S.

(10) Construction of a new plant with potential emissions of 500 tpy H_2S in an area designated nonattainment for all criteria pollutants would not be subject to either PSD review or nonattainment requirements. Part D applies only to criteria pollutants, and the area here is not subject to Part C, since it is not designated attainment or unclassifiable for any criteria pollutant.

E. Interstate Pollution

The September 5 proposal, in response to the *per curiam Alabama Power* decision issued on June 18, 1979, would have required PSD review for a major source locating or modifying in a designated nonattainment area only if such construction would substantially impact a clean air area in another state. In its final opinion issued on December 14, 1979, the court reversed its earlier position regarding the need for a PSD review of all interstate impacts to a neighboring state's clean air area. Under both rulings, PSD review would apply in all cases where the construction would take place in a clean area. Pursuant to the court's revised ruling in *Alabama Power*, EPA will not apply PSD review to a pollutant emitted by a source locating in an area designated nonattainment for that pollutant, even where the source would impact a PSD area in another state. Sixteen of the nineteen comments received by EPA supported this decision. Three commenters requested EPA to propose regulations to control interstate pollution pursuant to sections 110(a)(2)(E) and 161. EPA is now evaluating how best to control interstate pollution, and may propose regulations some time in the future.

F. Geographic Applicability for VOC Sources

On September 5, EPA proposed to delete the "36 hour rule," which subjected a source of volatile organic compounds (VOC) to review, if the source proposed construction within 36 hours pollutant travel time of an ozone nonattainment area. Pollutant travel time was to be calculated using wind conditions associated with concentrations exceeding the ambient standard for ozone. Most commenters agreed with the proposal to delete this requirement. One commenter who disagreed focused on the need for the rule as a means of determining which sources locating outside a designated nonattainment area should be subject to nonattainment review. Another argued that without the rule EPA will end up unnecessarily reviewing sources in remote rural areas whose impact on the ozone nonattainmnent problem is insignificant, since ozone is a regional problem.

For the reasons expressed on September 5 (44 FR 51940), EPA has decided to delete the 36 hour rule. The commenters' concerns are taken care of by the rules on geographic applicability for nonattainment areas, as set out at 45 FR 31307 (May 13, 1980). Thus, all major VOC sources locating in a designated ozone nonattainment area will be subject to review under section 173. Major VOC sources locating outside a designated nonattainment area will be subject to PSD review and will be required to monitor for ozone. If the monitoring indicates that the area of source location is nonattainment, then the provisions of the Offset Ruling or State plans adopted pursuant to section 110(a)(2)(D) of the Act shall apply until the area is redesiginated as nonattainment and a SIP revision has been approved. Of course, a source of VOC may choose to accept nonattainment review requirements immediately (i.e., LAER, offsets, statewide compliance of other sources under the same ownership) and conduct post-approval monitoring as presently permitted under the PSD regulations.

G. Response to Comments

Additional responses to comments regarding applicability of nonattainment requirements can be found at 45 FR 31307. Comments concerning interstate pollution and the geographic applicability of VOC sources, are responded to above.

With regard to PSD review, several commenters argued that EPA's approach would be overly complex and would impose great administrative burdens with few corresponding benefits to air quality. EPA does not agree. Applicability of PSD review as outlined above is required by the Act. Congress believed that such broad applicability was needed to adequately guard against significant deterioration in existing clean areas. EPA cannot restrict applicability and override Congressional intent simply because of an added administrative burden such applicability might impose. For similar reasons, EPA disagrees with the suggestion that it should restrict PSD review to only those pollutants that a source emits in major amounts.

Fourteen commenters argued that EPA should not apply PSD review to noncriteria pollutants, because the lack of NAAQS and increments for noncriteria pollutants indicates that Congress did not consider these pollutants to be able to cause significant deterioration and felt that the extent of harm by these pollutants has yet to be demonstrated. They claimed noncriteria pollutant sources are already subject to NSPS and NESHAP regulation. However, as other commenters have correctly noted, section 169(1) refers to sources with the potential to emit "any" pollutant above certain amounts. Moreover, section 165(a)(4) states that BACT must apply to "each polluant subject to regulation under this Act" emitted by a source. Neither of these provisions is limited to criteria pollutants. *See also Alabama Power*, 13 ERC at 2045.

Two commenters urged that if EPA decides to regulate sources with minor but significant emissions of criteria pollutants and sources of noncriteria pollutants, it should do so only if there already exists a SIP emission limit for the "minor" pollutants or only if section 111 or 112 (NSPS and NESHAP, respectively) has been made applicable after appropriate rulemaking to such sources of noncriteria pollutants. The difficulty with this approach is that the Act requires PSD review, regardless of whether another rule already applies to the source except in the case of nonattainment pollutants (see above). Moreover, the suggested approach could allow an unacceptably large number of sources to escape review, since many sources may not have an applicable SIP emissions limit or NSPS or NESHAP limit.

While most commenters endorsed the September 5 proposal that PSD permitting should be limited to instances where greater than *de minimis* changes in a major pollutant would occur, one commenter argued that *Alabama Power* did not restrict PSD applicability to modifications involving the pollutant(s) which the source emits in major amounts. This commenter claimed that section 111(a)(4) of the Act defines "modfication" as "*any* physical change in , or change in the method of operation of a stationary source which increases the amount of *any* air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." (Emphasis added.) As mentioned above in the Modification section, the Administrator agrees with this interpretation. Thus, today's final rule, with the exception of nonattainment pollutants, requires a PSD preconstruction review for greater than *de minimis* net increases in the potential to emit of a major stationary source for any pollutant subject to regulation under the Act.

Twenty-three commenters supported exempting nonattainment pollutants from PSD review. However, three commenters argued that PSD review should apply to nonattainment pollutants emitted in minor amounts, claiming that review in nonattainment areas should be as broad as that in PSD areas. EPA agrees with the former comments. As noted earlier, sections 165(a) and 169(1) apply to "any" pollutant regulated under the Act. The only restraint on PSD review, then, is section 173 in Part D, which governs the specific review of sources emitting nonattainment pollutant(s) in major amounts. In addition, sources emitting the nonattainment pollutants in minor amounts are subject to the general NSR contained in SIPs, and the impacts of such sources are accounted for in demonstrations of reasonable further progress and within the growth allowance provisions of the SIP. Thus, there is no need to apply PSD review to either type of nonattainment pollutant which already faces adequate review.

Twenty-three commenters also supported exempting from PSD review sources which emit only nonattainment pollutants in major amounts, but PSD pollutants in minor amounts, citing *Alabama Power* for support. Neither *Alabama Power* nor the Act support such an exemption. *Alabama Power* held that, at a minimum, PSD review does not apply to major sources which locate in an area designated nonattainment for all criteria pollutants. But the court did not take into account the fact that the same source may emit both PSD and nonattainment pollutants. Since, as noted above, section 165(a) does not link the pollutant for which the source is major and the pollutant for which an area is designated attainment or unclassifiable, EPA interprets section 165(a) as requiring PSD review for each source that is major for some pollutant and locates in an area designated attainment or unclassifiable for that or any other pollutant and that this review encompasses PSD pollutants whether or not emitted in major amounts.

Finally, some commenters perceived an inconsistency in requiring broader pollutant applicability for PSD review than for nonattainment review, yet using a broader definition of "source" for nonattainment areas than for PSD areas. However, EPA's actions are consistent with the Act. The scope of PSD review applicability and the nonattainment definition of source are separate issues and there is no basis for requiring that they be resolved in such a way as to in some manner equalize their effects.

XIII. Baseline Concentration, Baseline Area, and Baseline Date

EPA's June 1978 PSD regulations generally define baseline concentration as the ambient concentration level reflecting actual air quality as of August 7, 1977, including projected emissions of major sources commencing construction or modification before January 6, 1975, but not in operation by August 7, 1977, and excluding emissions from major sources commencing construction (including modification) after January 6, 1975. (40 CFR 51.24(b)(11), 52.21(b)(11) (1979).) Emissions from major source construction commencing after January 6, 1975, as well as most emissions increases occurring from existing sources after the baseline date are counted against the applicable PSD increments. (A more detailed discussion of the relationship between baseline concentration and increment consumption is provided in Increment Consumption.) Actual air quality includes emissions increases after the baseline date at existing sources whose emissions are counted in the baseline concentration, if the increases are due to increased hours of operation or capacity utilization authorized under the SIP and reasonably anticipated to occur on the baseline date. The baseline concentration also includes emissions increases allowed under a SIP relaxation pending final EPA approval on the baseline date, if the allowable emissions under the revision were higher than the source's actual emissions on the baseline date. The June 1978 regulations established a uniform baseline date of August 7, 1977 for all clean air areas. A definition of baseline area was unnecessary since all PSD areas were covered by the August 7, 1977 baseline date.

The *Alabama Power* decision held that a uniform baseline date was not authorized by section 169(4). It required the baseline date to be established at the time of the first application for a permit in an area subject to PSD requirements. EPA's regulations were consequently remanded for change.

The *Alabama Power* decision, however, supports EPA's definition of baseline concentration. In holding that monitoring data is required under section 165(e)(2), the court confirmed that actual air quality data should be used to determine baseline concentrations. *See* 13 ERC 2022. Since monitoring data provide information on actual air quality concentrations from

existing sources and since section 169(4) explicitly states that required monitoring data should be used in establishing baseline concentrations, the court's decision supports EPA's requirement that baseline concentrations reflect actual air quality. In addition, the court implicitly affirmed EPA's approach in ruling that EPA correctly excluded from baseline concentrations emissions increases due to voluntary fuel switches after the baseline date. Since actual air quality on the baseline date would not reflect these increases, their exclusion from baseline concentrations is consistent with EPA's actual air quality approach to baseline concentrations. Finally, the court noted Congress' rejection of a House bill that would have allowed certain source emissions to be included in baseline concentrations, even though the emissions have not occurred by the baseline date. *See* 13 ERC 2026. The court concluded that Congress considered and rejected an approach that would depart from actual air quality in calculating baseline concentrations, except in the limited circumstances set forth in section 169(4).

In its September 5, 1979 response to the court's decision, EPA proposed to delete the uniform August 7, 1977 baseline date and to define baseline date as the date of the first complete application, after August 7, 1977, for a PSD permit to construct or modify a major stationary source in an area subject to PSD requirements. As part of that definition, EPA proposed to define baseline area as all parts of an Air Quality Control Region (AQCR) designated as attainment or unclassifiable under section 107(d) of the Act. Under that definition, an application of a major stationary source to construct in any part of an AQCR designated as attainment or unclassifiable would trigger the baseline date for both SO_2 and PM in all portions of the AQCR.

EPA's proposed definition of baseline area was based in part on its consistency with the term "area" as used in section 107, which requires air quality designations for AQCRs or portions thereof. The definition was also intended to avoid implementation problems that might result from having different baseline areas and dates within the same AQCR. EPA proposed, however, to allow states some flexibility in defining baseline area. *See* discussion at 44 FR 51942.

EPA further proposed to retain its current definition of baseline concentration but asked for comment on a particular problem specific to the Gulf Coast areas (*see* 44 FR 57107, October 4, 1979 and discussion in Increment Consumption). EPA's September 5 proposal specifically asked for comment on two aspects of its proposal: (1) whether baseline area should be defined as clean portions of the AQCR in which a source applies for a permit, and (2) whether a permit application should trigger the baseline date only in the clean portions of the AQCR in which the source would locate or also in clean areas of any AQCR which would be impacted by the source.

After issuance of the court's full opinion in December, EPA proposed and asked for comment on three changes to its September 5 proposal (45 FR 6802, January 30, 1980). First, EPA stated it was considering defining baseline area as any area designated attainment or unclassifiable under section 107(d) in which a source subject to PSD requirements would locate or impact, rather than all clean portions of an AQCR in which a source would locate or impact. Second, EPA's solicited comment on whether states should be allowed to redefine the boundaries of areas designated as attainment or unclassifiable. EPA suggested, however, that states should be limited to redesignations no smaller than the source's area of impact. Third, EPA indicated it was considering adoption of a pollutant-specific baseline date and area. Under that approach, a source would trigger the baseline only for the pollutants it emitted. Thus, if the source would emit neither SO_2 nor PM, it would not trigger any baseline. EPA also requested comment on whether a source which would be major for SO_2 and minor for PM would trigger a baseline date only for SO_2 or for both pollutants.

EPA's final action and response to comments on each of the issues is discussed below. For simplification, the discussion focuses on the four basic issues of baseline concentration, baseline area, baseline date, and pollutant-specific baseline. Issues related to increment consumption are discussed in the next section.

A. Baseline Concentration

As proposed, EPA is continuing its current definition of baseline concentration as the ambient concentration levels at the time of the first permit application in an area subject to PSD requirements. Baseline concentration generally includes actual source emissions from existing sources but excludes emissions from major sources commencing construction after January 6, 1975. Actual source emissions are generally estimated from source records and any other information reflecting actual source operation over the two-year time period preceding the baseline date. The baseline concentration also includes projected emissions from major sources commencing construction (including modification) before January 6, 1975, but not in operation by August 7, 1977.

Unlike the June 1978 policy, baseline concentration will no longer routinely include those emissions increases after the baseline date from sources contributing to the baseline concentration, which are due to increased hours of operation or capacity utilization. Existing policy permitted this grandfathering, provided such increases were allowed under the SIP and reasonably anticipated to occur as of the baseline date. Today's policy which normally excludes such increases is consistent with using actual source emissions to calculate baseline concentrations. An actual emissions policy, however, does allow air quality impacts due to production rate increases to sometimes be considered as part of the baseline concentration. If a source can demonstrate that its operation after the baseline date is more representative of normal source operation than its operation preceding the baseline date, the definition of actual emissions allows the reviewing authority to use the more representative period to calculate the source's actual emissions contribution to the baseline concentration. EPA thus believes that sufficient flexibility exists within the definition of actual emissions to allow any reasonably anticipated increases or decreases genuinely reflecting normal source operation to be included in the baseline concentration.

EPA is also promulgating a change in its current policy on SIP relaxations. Under that policy, emissions allowed under SIP relaxations pending on August 7, 1977 are included in the baseline concentration if the allowed source emissions were higher than actual source emissions. EPA adopted that policy in June 1978 in recognition of the fact that some states with SIP revisions pending on August 7, 1977 had allowed sources to increase emissions prior to final EPA approval of the relaxations, while other states with pending relaxations had required sources to comply with the lower emissions limitations in the existing SIP until final approval occurred. *See* 43 FR 26401 col. 3. To avoid penalizing sources in states that did not allow increases prior to approval, EPA provided that baseline concentrations include the allowable emissions under revised SIPs, if the relaxation was pending on August 7, 1977 and the allowed emissions exceeded the source's actual emissions.

The effect was to allow sources to avoid increment consumption analyses for the emissions increase allowed in the revision. EPA considered the exemption justified because states and sources were unaware that EPA would establish a uniform baseline date of August 7, 1977, and those emissions increases after that date would consume increment.

EPA believes this exemption from increment consumption analyses is no longer necessary. States and sources have been on notice since June 1978 that emissions increases at existing sources due to SIP relaxations must be evaluated for possible increment consumption. No state or source has been uncertain as to the applicable baseline date, or been placed in an inequitable position as to other states or sources. Therefore, today's regulations do not exempt from increment consumption analyses those SIP relaxations not finally approved by EPA prior to the baseline date in the affected area.

One commenter suggested that EPA extend the transition provision within the June 1978 regulations for assessing increment consumption. 43 FR 26401 col. 2. This provided that increased emissions from plan relaxations received after the August 7, 1977 baseline date but before the June 19, 1978 promulgation would consume the applicable increment but could be reviewed as part of the periodic assessment rather than assessed individually for increment consumption prior to plan approval.

EPA does not believe that a similar exception is required under today's regulations. EPA considered the exception necessary in June 1978 due to uncertainty as to how the 1977 Amendments would affect pending SIP relaxations. Such uncertainty no longer exists, since sources have been on notice since June 1978 that SIP relaxations after that date must be individually reviewed for increment consumption. Therefore, emissions increases due to plan relaxations received after June 19, 1978 must be individually evaluated for increment consumption prior to EPA approval.

EPA is concerned, however, that the new definition of baseline concentration may work a hardship on states with SIP relaxations pending when a PSD application is filed in an area. A state may submit a SIP relaxation affecting a source, or group of sources, located in an area where the baseline date has not been set, and would not be required to provide an increment consumption analysis. If prior to final EPA approval, a source filed a PSD application in the area, the application would establish a baseline date and the state would have to withdraw the revision until it has conducted the necessary increment analysis. To prevent such burdensome delays, EPA is exempting from individual increment analyses SIP relaxations pending at the time a baseline date is established in the area affected by the revision. However, increment consumption due to emissions from these relaxations must be evaluated as part of a state's periodic assessment. Exemptions from individual analyses is analogous to the previous relief provided for sources subject to SIP relaxations submitted after August 7, 1977, but before EPA's June 1978 promulgation. The exemption is therefore consistent with prior EPA policy.

B. Baseline Area.

In response to the September 5, 1979 proposal, fifty-three commenters felt that an AQCR definition of baseline area would not produce a great deal of administrative relief and would, simultaneously, limit an area's growth options. These commenters favored defining baseline area as the area of significant source impact, based on required modeling and monitoring analysis. Such an approach was claimed to provide just as much administrative relief, more growth options, and elimination of the problem of a small PSD source triggering the baseline date for a large area. Seventeen commenters favored a baseline area definition geared to areas designated as clean or unclassified under section 107. Those favoring this alternative strongly preferred a "redesignation" procedure to accompany this option. Other commenters objecting to the AQCR approach suggested: county boundary lines (three), and the entire state (one).

In response to EPA's January 30 notice, fourteen of sixteen commenters favored a source impact area definition of baseline area. One of the remaining two commenters favored retention of the AQCR approach while the other commenter desired a county or some other legal boundary approach. All eighteen comments received favored triggering a baseline only in the area in which a source would locate, and not in those other areas which it would impact. Nineteen of twenty-nine commenters favored permitting state redesignation but to areas no smaller than a source impact area. Seven other commenters favored no limitations on the redesignation procedure. The remaining three commenters opposed allowing states to redefine baseline areas through redesignation.

EPA has determined that baseline area should be defined as the area designated as attainment or unclassifiable under section 107(d) in which a source or modification subject to PSD review would construct or on which it would have an impact equal to or greater than 1 $\mu g/m^3$ on an annual basis. EPA has concluded that "an area subject to this part," as used in section 169(4), refers to areas designated attainment or unclassifiable under section 107(d).

This view is strongly suggested by Judge Robinson's opinion on baseline concentration in the December 1979 *Alabama Power* ruling. Referring to Congress' intent to use actual air quality data to establish baseline concentrations, Judge Robinson states that "the task of monitoring existing ambient pollution levels *in attainment areas* is assigned to the first permit applicant, who will provide the information essential to calculation of the baseline." (Emphasis added) 13 ERC 1993, 2022. The footnote which follows that sentence discusses a state's obligation under section 107(d)(1) to submit area designations to EPA and the fact that section 107 lists submitted to date by the states indicate that many areas lack acceptable air quality information. *Id.* The references to attainment areas and section 107(d) designated areas indicate that the court interprets the statute as requiring that baseline concentrations be calculated for each clean area designated under section 107(d)(1).

EPA thus believes that neither the statute nor the court opinion support the proposed AQCR approach. The majority of comments also opposed defining baseline area as AQCR. Opposition was based on the view that it would do little to alleviate administrative problems, offered no flexibility in states, and would often limit an area's growth options by encompassing too large an area.

EPA has also determined that a PSD source should trigger the baseline in all intrastate clean areas that it impacts as well as the area it locates in. One objective of PSD is to track air quality changes in clean air areas. If a major source significantly affects any clean air area in the same state the purposes of PSD will be served if air quality deterioration from minor/area source growth and actual changes in baseline source emissions are tracked from the time significant SO_2 or PM emissions from a new or modified major source impact a clean area. Such a policy is also consistent with the language of section 165(e)(1) of the Act which

requires an air quality analysis of the affected area, not just the area of immediate location. The Administrator does not believe that such a policy should transcend state boundaries. Since triggering baseline dates is an important factor in managing growth, EPA has concluded that states should have jurisdiction over their own baseline dates. On the other hand, establishment of baseline dates does not affect increment consumption across state borders by major source construction commencing after January 6, 1975.

EPA has concluded that baseline areas may be redefined by the states through area redesignations. Section 107(d) specifically authorizes states to submit redesignations to the Administrator. Consequently, states may submit redefinitions of the boundaries of attainment or unclassifiable areas at any time. If EPA agrees that the available data support the change, it will redefine the areas as requested. As long as no PSD source has located in, or significantly impacted on a clean area being considered for redesignation, the area can be redesignated as a new attainment or unclassifiable area, even if the area were previously part of a larger clean area in which the baseline date had been set.

Area redesignations are subject to certain restrictions. The boundaries of any area redesignated by a state cannot intersect the area of impact of any major stationary source or major modification that established or would have established a baseline date for the area proposed for redesignation or that is otherwise required to obtain a PSD permit. In addition, area redesignations can be no smaller than the area of impact of such sources. These restrictions comport with the PSD objective of tracking air quality effects in an area once a major source or modification has affected an area. By setting the baseline date at the time a major source or modification impacts an area and preventing the date from being changed by subsequent area redesignations, the system ensures that future growth in the area will be assessed for its air quality effects from that date forward. Moreover, if states could define baseline areas as small as the immediate area in which a source is located and not include the source impact area, air quality could deteriorate or increments could be violated in a nearby area impacted by the source, but neither the state nor EPA would review the air quality impact. The source could therefore affect air quality but the reviewing authority would be unaware of the deterioration. In addition to jeopardizing air quality, "postage stamp" baseline areas would be difficult to administer.

A source will be considered to impact an area if it has an impact of 1 $\mu g/m^3$ or more of SO_2 or PM on an annual basis. This figure has been selected because it corresponds to levels of significance used in previous Agency determinations for SO_2 and PM. The annual average was selected over the short term value due to its ease of implementation. That is, the shape of source impact areas is less complex and the 1 $\mu g/m^3$ annual average provides ample area coverage of the source impact area.

The Administrator believes that defining baseline area as section 107 areas and allowing state redesignation will satisfy most of the commenters who objected to the proposed AQCR definition and favored state flexibility in designations. The redesignation process partially meets the concerns of commenters who preferred defining baseline area as source impact area. Where a baseline date is established for an area that is large relative to the impact area of the triggering source, the state has the option of redefining the area to reflect more accurately the area affected by the source.

C. Baseline Date

Consistent with the Agency's proposal, today's promulgation defines baseline date as the date after August 7, 1977 on which the first complete application for a PSD permit is filed with the appropriate reviewing authority. Section 51.24(b)(14), 52.21(b)(14). As discussed in the September 5 notice, EPA has determined that this definition is mandated by the court's interpretation of section 169(4), which requires a baseline concentration to be set on the date, after August 7, 1977, "of the first application for a permit in an area subject to this part." *See* 44 FR 51941 col. 3. Consequently, the first complete PSD permit application by a major source to construct in a baseline area, as that term is defined in § 51.24(b)(15) and 52.21(b)(15), and explained above, will trigger a baseline date.

As discussed below, under *Pollutant-Specific Baseline,* the regulation further requires that a baseline date be set for each pollutant emitted by the applicant source in greater than *de minimis* amounts, if increments or other equivalent measures under section 166 have been established for the pollutant. At present, increments are established only for SO_2 and PM, and no increments or equivalent measures for other pollutants have been established. Section 166 requires EPA to adopt regulations establishing increments or other equivalent measures for other criteria pollutants. Section 166 does not by its terms require EPA to apply section 169(4) in determining baseline dates for criteria pollutants other than SO_2 and PM. EPA is now conducting rulemaking under section 166 to develop increments or equivalent measures for the other criteria pollutants. As part of that rulemaking, EPA is considering how to establish baseline dates for those pollutants.

While comments supported EPA's proposal to establish the time of the first complete application in an area as the baseline date, eight commenters suggested that the date be set at the time of the first application after August 7, 1978, rather than August 7, 1977. This review is consistent with other comments noting that section 165(e)(2) requires permit applicants after August 7, 1978 to provide one year's monitoring or other equivalent air quality analysis to determine a baseline concentration for the area. These commenters claimed that since baseline concentration is to be established through actual ambient air quality data and no applicant can gather the necessary monitoring data before one year after the effective date of the part, the baseline date should not be triggered by applications filed before that date.

EPA understands the commenter's concerns. However, EPA believes Congress was aware that prior to August 7, 1978, applicants could not provide a full year of monitoring data, as evidenced by the fact that the monitoring requirement in section 165(e)(2) is not effective until August 7, 1978. Congress nonetheless provided that baseline concentrations be established by the first permit application, an event which could occur at any time after August 7, 1977. Congress therefore considered that baseline concentrations and increment consumption could be determined with less than a full year's monitoring data. The need to accept less data is reflected in the provision of section 169(4) that baseline concentrations be based on available air quality data and on such monitoring data as the applicant is required to submit. The provision suggests that calculations of baseline and increment use may have to be made with limited data, if available data, such as that from the state agencies, is not appropriate. EPA interprets the requirements for monitoring data after August 7, 1978, and not August 7, 1977, as intended to provide a grace period for sources, rather than evidencing intent to

postpone the establishment of baseline dates.

One commenter questioned whether baseline dates would be triggered by permit applications previously filed by sources that were major under the June 1978 PSD regulations, but no longer major under the regulations promulgated today, even if the permit applicant failed to apply for a permit rescission. EPA concurs in the commenter's suggestion that a subsequent permit applicant in any area may inform the permitting authority that the baseline date was not triggered on the date that a source which no longer qualifies as major applied for a PSD permit. As the commenter points out, this eliminates the need for an immediate rescission of all past permits affecting sources no longer subject to PSD review. It also avoids penalizing permit applicants if a source that is no longer major fails to apply for a permit rescission.

The Administration wishes to clarify another point related to a change in review status for the source which has triggered the baseline date. If the applicant that established the baseline date is later denied a PSD permit or voluntarily withdraws its PSD application, a question arises as to whether the baseline date has been triggered. In the Administrator's judgment the applicable baseline date remains in place, since no change in date is authorized under the Act. Section 169(4) establishes source application as the baseline triggering mechanism and does not qualify this by the later issuance of a permit. This policy is consistent with the establishment of a baseline concentration which is based on the available monitoring data, typically that gathered by the source applicant. The data to establish the baseline concentration would be available regardless of the eventual permit status of the baseline triggering application. Using source application also stabilizes the NSR permitting process. Later applicants can determine whether a baseline date has been set in an area by looking to whether a previous application has been filed, rather than needing to determine if the permit has been or will be issued.

Finally, the Administrator wishes to point out that it is the first PSD application submitted under either 40 CFR 52.21 or state PSD regulations developed pursuant to 40 CFR 51.24 which triggers a baseline date. When states assume responsibility for implementing the PSD program, several PSD baseline dates may well have been triggered. However, as mentioned above, states can minimize the impact of early baseline dates by redesignating the size of the baseline area which is affected by a previously established baseline date.

D. Pollutant-Specific Baseline

The Agency has concluded that a pollutant-specific baseline is consistent with section 169(4) and the statutory structure. Section 169(4) requires that a baseline concentration be established "with respect to a pollutant * * * in an area subject to (Part C)." Therefore, by the terms of the statute, a baseline concentration is established for individual pollutants. Moreover, such concentrations are established for areas subject to PSD. Section 107(d), which provides that areas designated attainment or unclassifiable are subject to PSD, requires designations to be made on a pollutant-specific basis. Section 107(d)(1)(D) and (E). To be consistent, both baseline date and baseline area (and any subsequent redesignations under section 107 of the Act) must also be pollutant-specific.

The comments that favored a pollutant-specific baseline generally did so on two grounds: the reference to "pollutant" in section 169(4) and the statutory requirement to use monitoring data to establish baseline concentration. Since monitoring and increment consumption are pollutant-specific, baseline concentrations must be as well. The Administrator agrees that the monitoring requirement supports pollutant-specific baselines. Four of the thirty-eight commenters that opposed pollutant-specific baselines did so primarily for implementation reasons. Although pollutant-specific baselines may add some complexity to the PSD program, EPA has concluded that the statutory structure contemplates pollutant-specific area designations.

The following example illustrates the concept of pollutant-specific baseline dates. If a major source of NO_x that would also emit SO_2 in significant amounts and PM in less than significant amounts submits a complete application for a permit to construct in an area designated under section 107(d)(1) as attainment for all pollutants, and no previous source has triggered any baseline dates, the source would establish the baseline date for SO_2 but not PM. If a later modification to the source results in a significant net increase in PM emissions and no other application previously triggered the PM baseline date, the proposed PSD application for the modification would then establish the PM baseline date.

XIV. Increment Consumption

There are two basic issues in the area of increment consumption: (1) which source emissions consume increment and (2) how to calculate the amount of increment consumed by those emissions. The *Alabama Power* decision addressed neither question. EPA, therefore, proposed in September to continue its current approach. Under the approach, four categories of source emissions affect increment: (1) as provided by section 169(4), emissions from major source construction (including modification) commencing after January 6, 1975. This group includes emissions from sources issued PSD permits and state new source review (NSR) permits (including those issued in accordance with section 51.18(j) and the Offset Ruling) as well as emissions from non-permitted sources; (2) emissions changes occurring after the baseline date at sources whose previous emissions on the baseline date are included in the baseline concentration; (3) emissions changes due to SIP revisions that are approved after the baseline date; and (4) minor and area source growth occurring after the baseline date. EPA's current regulations provide that the first and third category of sources affect increment on the basis of emissions allowed under the permit and emissions allowed under the SIP as revised, respectively. The second and fourth categories affect increment on the basis of actual emissions changes from the emissions included in the baseline concentration.

Since its proposal, EPA has reevaluated its current policy in light of both the December opinion of the court and the Gulf Coast problem (discussed below). EPA has concluded that increment consumption and expansion should be based primarily on actual emissions increases and decreases, which can be presumed to be allowable emissions for sources subject to source-specific emissions limitations. This change principally affects increment calculations for major source construction not subject to source-specific permits or SIP requirements and for sources whose allowable limits are demonstrated not to reflect actual emissions. PSD applications pending today before EPA or a state agency authorized to review or issue PSD permits will be reviewed for increment consumption on the basis of the revised policy.

A. Use of Actual Emissions

1. Rationale for Use of Actual Emissions.

As discussed in the *Baseline Concentration* section, the *Alabama Power* decision supported EPA's requirements that baseline concentrations reflect actual air quality in an area. Increment consumption or expansion is directly related to baseline concentration. Any emissions not included in the baseline are counted against the increment. The complementary relationship between the concepts supports using the same approach for calculating emissions contributions to each. Since the *Alabama Power* decision and the statute both provide that actual air quality be used to determine baseline concentrations, but provide no guidance on increment consumption calculations, EPA has concluded that the most reasonable approach, consistent with the statute, is to use actual source emissions, to the extent possible, to calculate increment consumption or expansion.

EPA's decision is also based on concerns raised by the Gulf Coast problem, discussed below. In that area, and possibly others, source emissions allowed under permits and SIP provisions in many cases are higher than actual source emissions. Sources could therefore increase their emissions without being subject to PSD review or the SIP revision process. However, if increment calculations were based on allowable emissions, EPA believes increment violations would be inappropriately predicted and proposed source construction would be delayed or halted. In practice, EPA expects that few, if any, sources will increase their emissions to allowable levels.

EPA believes it is unwise to restrict source growth based only on emissions a source is permitted to emit but which, in many instances, have not been and are not likely to ever be emitted. Increment calculations based on the best prediction of actual emissions links PSD permitting more closely to actual air quality deterioration than calculations based on allowable "paper" emissions. In addition, use of actual emissions for increment consumption is consistent with using an actual emissions baseline for defining a major modification and for calculating emissions offset baselines.

2. Calculation of Increment Consumption Using Actual Emissions.

To determine how much increment remains available to a proposed major source or modification, the source owner or operator must analyze several types of emissions changes as of its application date. These changes generally include: (1) emissions changes that have occurred at baseline sources and emissions from new minor and area sources since the baseline date; (2) emissions that have occurred or will occur at sources which have submitted complete PSD applications as of thirty days prior to the date that the proposed source files its application; and (3) emissions changes reflected in SIP relaxations submitted after August 7, 1977, and pending as of thirty days prior to the date the source files its application, or emissions changes reflected in SIP relaxations which have been approved since August 7, 1977, but which have not yet occurred. (*See*, discussion below on calculation of increment consumption for SIP relaxations.) The thirty-day cutoffs are specified to stabilize the review process by preventing new applications and SIP relaxation proposals from invalidating otherwise adequate increment consumption analyses without warning.

Increment calculations will generally be based on actual emissions as reflected by normal source operation for a period of two years. EPA has selected two years based on its recent experience in reviewing state NSR programs for nonattainment areas. The state submittals use periods of between one and three years to evaluate source emissions. In EPA's judgment, two years represents a reasonable period for assessing actual source operation. Since the framework for nonattainment NSR programs will generally form the basis for a state's PSD plan, EPA believes it is appropriate to use the same time period for evaluating actual source emissions in the PSD program. Two years is also being used to calculate the emissions offset baseline for modifications in nonattainment areas.

The two-year period of concern should generally be the two years preceding the date as of which increment consumption is being calculated, provided that the two-year period is representative of normal source operation. The reviewing authority has discretion to use another two-year period, if the authority determines that some other period of time is more typical of normal source operation than the two years immediately preceding the date of concern. In general, actual emissions estimates will be derived from source records. Actual emissions may also be determined by source tests or other methods approved by the reviewing authority. Best engineering judgments may be used in the absence of acceptable test data.

EPA believes that, in calculating actual emissions, emissions allowed under federally enforceable source-specific requirements should be presumed to represent actual emission levels. Source-specific requirements include permits that specify operating conditions for an individual source, such as PSD permits, state NSR permits issued in accordance with § 51.18(j) and other § 51.18 programs, including Appendix S (the Offset Ruling), and SIP emissions limitations established for individual sources. The presumption that federally enforceable source-specific requirements correctly reflect actual operating conditions should be rejected by EPA or a state, if reliable evidence is available which shows that actual emissions differ from the level established in the SIP or the permit.

EPA believes two factors support the presumption that source-specific requirements represent actual source emissions. First, since the requirements are tailored to the design and operation of the source which are agreed on by the source and the reviewing authority, EPA believes it is generally appropriate to presume the source will operate and emit at the allowed levels. Second, the presumption maintains the integrity of the PSD and NSR systems and the SIP process. When EPA or a state devotes the resources necessary to develop source-specific emissions limitations, EPA believes it is reasonable to presume those limitations closely reflect actual source operation. EPA, states, and sources should then be able to rely on those emissions limitations when modeling increment consumption. In addition, the reviewing authority must at least initially rely on the allowed levels contained in source-specific permits for new or modified units, since these units are not yet operational at a normal level of operation. EPA, a state, or source remains free to rebut the presumption by demonstrating that the source-specific requirement is not representative of actual emissions. If this occurs, however, EPA would encourage states to revise the permits or the SIP to reflect actual source emissions. Such revisions will reduce uncertainty and complexity in the increment tracking system, since it will allow reviewing authorities and sources to rely on permits and SIP emissions limitations to model increment consumption.

Review of increment usage due to SIP relaxations will also be based initially on emissions allowed under the SIP as revised (provided this allowed level is higher than the source emissions contributing to the baseline concentration). Calculations will generally be made on the difference between the source emissions included in the baseline concentration and the

emissions allowed under the revised SIP. Initial use of allowable emissions is necessary because the increment calculation generally occurs before the source has actually increased its emissions. Therefore, at the time the revision is reviewed, increment consumption must be based on the predicted source operation under the revision. In addition, since SIP revisions are commonly based on source requests, it is reasonable to assume such sources will actually emit at levels permitted by the relaxation.

Subsequent to the initial review process, increment calculations for SIP relaxations may depart from allowable emissions under the SIP, if the source has not actually increased its emissions. For example, three years after approval of a SIP relaxation, if it is found that the source has not increased its emissions to levels allowed in the SIP, estimates of increment usage should be revised to reflect actual source emissions. If this occurs, EPA would also encourage states to revise the emissions levels allowed in the SIP to represent the source's actual emissions.

Finally, the required increment consumption analysis can be amended by the applicant after the PSD review process has begun. For example, an applicant would normally revise its analysis to reflect increment made available by the withdrawal of PSD applications previously considered in the applicant's calculation of increment consumption. In no event, however, will the source be required to take account of emissions changes or changes due to pending PSD applications or SIP relaxations that could increase the amount of increment consumed by other sources.

B. Exclusions From Increment Consumption

1. *Exclusions Requested by Governors.*

Section 163(c) authorizes four exclusions from increment consumption upon the request of a governor. Exemptions are available for federally-ordered fuel switches under the Energy Supply and Environmental Coordination Act of 1974 or superseding legislation, fuel switches due to natural gas curtailment plans under the Federal Power Act, temporary emissions of particulate matter due to construction and related activities, and new sources constructing outside the United States. In the cases of the federally-ordered switches and natural gas curtailment plans, the exclusion is limited to a maximum of five years after the effective date of the order or plan.

The statute provides that these exclusions are available only if the state has an EPA-approved PSD plan. Section 163(c). In its June 1978 regulations, however, EPA permitted governors to use the exclusions during the nine-month period between promulgation of the regulations and the date plan revisions were required to be submitted. *See* § 52.21(f)(3) (1979). As discussed in the preamble to the June 1978 regulations, EPA concluded that prohibiting use of the exclusions after the nine-month period would be an adequate incentive to states to submit PSD plans. *See* 43 FR 26402 (Col. 1).

EPA has decided to extend this policy to today's regulations. In view of the many changes in the regulations resulting from the court's decision, states which have already submitted plans will have to submit revised provisions and states which have not yet submitted plans will have to develop plans based on the new regulations. As with the June 1978 requirements, EPA believes that disallowing the exclusions nine months from today will provide sufficient encouragement to states to submit plans, and will offer states more flexibility for growth in this interim period. Therefore, governors may request the exclusions until nine months from today's promulgation, even if no PSD plan has been submitted to or approved by EPA. Thereafter, the exclusions will be unavailable unless the state has submitted an approvable PSD plan to EPA.

2. *Temporary Emissions*

EPA's June 1978 regulations and the September 1979 proposal provided that temporary emissions from new sources or modifications would be exempt from impact analysis requirements §§ 51.24(k)(iii), 52.21(k)(iii) (1979); 51.24(k)(1), 52.21(k)(1) (proposed). Temporary emissions typically include, but are not limited to, emissions from a pilot plant, a portable facility, construction or exploration activities. Similarly, EPA proposed to exempt from increment analyses the impacts on the PSD increments from the temporary emissions associated with the development of an approved innovative control technology system, provided the applicable ambient standards were not jeopardized. The regulations, however, did not provide a comparable exemption for temporary emissions resulting from short-term SIP relaxations.

Only three commenters addressed the concern of temporary emissions and increment consumption. These commenters offered suggestions in light of the proposed position on innovative control systems. These commenters supported the existing policy of exempting temporary emissions from increment air quality analyses when no Class I areas or areas with known increment violations would be impacted.

Temporary SIP relaxations are comparable to temporary emissions from new and modified major stationary sources since both affect air quality for a limited period of time. Therefore, the Administrator has decided that the existing policy of exempting temporary emissions should be extended to those associated with certain SIP relaxations. A SIP relaxation will be eligible for such relief if it meets the following five conditions. These conditions are intended to ensure that the emissions increase associated with the SIP relaxation will be limited in duration and that no residual harm will occur to the environment as a result of the relaxation. (1) The SIP revision allows an emissions increase for a temporary period only. As stated in the preamble to the June 1978 regulations, temporary emissions generally would last no more than two years at one location, although emissions for a longer period of time may be considered temporary if an appropriate demonstration is made. *See* 43 FR 26394 col. 2. (2) The revision is nonrenewable. This condition is intended to prevent sources from indefinitely postponing compliance with emissions limitations necessary to prevent PSD increment violations. (3) The temporary emissions will not cause or contribute to the violation of any applicable NAAQS. (4) At the expiration of the temporary SIP relaxation, the source must be required to comply with an emissions limitation that ensures the post-exemption emissions will be equal to or less than the emissions existing before the exemption was granted. (5) The temporary emissions from the revision do not impact any Class I area and any area where an increment is known to be violated. Restricting the exemption to sources impacting Class II or III areas conforms to Congress' intent to provide maximum protection of air quality values in Class I areas and meets the commenter's concerns.

In addition to SIP relaxations for individual sources, the exemption will be available for temporary emissions due to SIP relaxations that apply to several sources, if the state provides adequate assurances that no standards will be violated.

C. Increment Expansion Due to Emissions Reductions Prior to the Baseline Date

EPA's policy under the June 1978 regulations is unclear as to whether emissions reductions prior to the

baseline date increase the amount of available increments. The policy allows decreases after January 6, 1975, and prior to the baseline date, to be used by sources to offset subsequent increases and exempt the increases from the requirement for an ambient air quality assessment. In effect, EPA treats such decrease as expanding available increments, since the decreases permit later emissions increases at the same source to avoid the otherwise required air quality assessment. The policy did not state, however, whether isolated decreases not made in conjunction with intrasource increases were considered to expand available increments. In contrast, the policy is clear that emissions reductions after the baseline date increase available increments.

As a result of the revised definition of modification which permits offset credit for emissions reductions occurring within a moving five-year period, EPA has decided to clarify its existing policy. All emissions reductions prior to the baseline date at major stationary sources will now be considered to expand available increments. Since contemporaneous emissions reductions accomplished before the baseline date can be used by a source to offset a contemporaneous post-baseline emissions increase, and thereby avoid PSD review, it is also reasonable to allow these contemporaneous pre-baseline date reductions to expand the increment. Without this change, source owners that reduce emissions by retiring or controlling old equipment before the baseline date will be penalized by having increases after the baseline date count against increments even though the pre-baseline decrease might offset the later increase and eliminate the need for PSD review. In contrast, source owners that postpone the reductions and increases until after the baseline date is set would both secure contemporaneous offsets and avoid increment consumption.

EPA believes that this inequity should be eliminated to encourage early retirement of old equipment. Section 169(4) provides that emissions from major emitting facilities that commenced construction after January 6, 1975, shall be counted against available increments. The provision implies that both emissions increases and decreases should be considered for their impact on available increments. In view of the statutory language and policy considerations, EPA has determined that decreases made prior to a baseline date can expand available increments in the same manner as decreases made after a baseline date. However, to ensure that the emissions reductions remain effective, reductions will add to available increments only if the lower emissions limitations are federally enforceable.

The changed policy is reflected in a new definition of "construction" which is any physical change or change in the method of operation of a stationary source resulting in a change in the actual emissions of the source (including fabrication, erection, installation, demolition, or modification). Any construction commencing at a major source since January 6, 1975, may result in an increase or decrease in actual source emissions. If an actual decrease involving construction at a major stationary source occurs before the baseline date, the reduction will expand the available increment if it is included in a federally enforceable permit or SIP provision. An actual increase associated with construction activities at a major stationary source will consume increment.

The Administrator would also like to clarify that changes in fugitive emissions levels (to the extent quantifiable) at major stationary sources, resulting from construction commenced since January 6, 1975, will consume or expand the available increment. This is true even if such changes occurred prior to the baseline date.

D. Gulf Coast Problem.

In the September 5 proposal, and in an October 4, 1979 correction notice, EPA solicited comments on how to calculate increment consumption by gas-fired boilers in the Gulf Coast area that had received state approval to burn oil in the event of a future natural gas shortage. *See* 44 FR 51942 (September 5, 1979), and 44 FR 57107 (October 4, 1979). The affected units include both boilers that could accommodate such a fuel-switch before January 6, 1975 and boilers that were altered to accommodate the fuel-switch after that date. All affected units were permitted to switch fuel before August 7, 1977, the earliest possible baseline date. Assuming the baseline date is set in the area where these sources are located, which EPA believes is the case for most of the sources, each group of sources may cause increment violations.

For sources that could burn alternative fuels prior to January 6, 1975, the problem is posed by the fact that if all sources made the switch to oil allowed under their permits, SO_2 increment violations would occur. Since neither a SIP revision nor a PSD Permit would be required for the sources to make the fuel switches, EPA and the state could be unaware of the violations until another source applied for a PSD permit or until a periodic assessment was made. If actual increment violations were discovered during the PSD review process for the proposed source, the source would not be permitted to build or modify until the violations were corrected. If violations were found during a periodic assessment, the state would have to suspend further growth until its plan was revised to correct the violations. Consquently, the inadequacy of the exiting permits to prevent increment violations could result in increment violations which would delay, and possibly prevent, additional growth in the area.

A similar problem is posed by sources that could not accommodate oil before January 6, 1975. Since these sources increased their potential to emit after January 6, 1975, under EPA's June 1978 policy, this change would have constituted "construction" at a major stationary source after January 6, 1975. Therefore, under section 169(4), any emissions increases caused by the "construction" would have consumed increment. As noted above, EPA's June 1978 policy required increment calculations to be based on emissions allowed under a permit or SIP and not on actual source emissions. If a PSD source applied to locate in an area and these Gulf Coast sources were modeled based on emissions increases due to fuel switches allowed by their permits, EPA believes several SO_2 increment violations would be predicted. Under existing policy, the proposed PSD source would then be required to correct the violations prior to receiving construction approval. Future growth in the area could, therefore, be delayed or prevented.

The problem posed by the second group of sources is reduced to some extent by the increment consumption policy promulgated today. Since increment usage will now be based on changes in actual source emissions, increment violations will not occur in the area unless the sources actually switch to oil from natural gas. Because natural gas is expected to remain less expensive and more available than oil, EPA believes few, if any, switches are likely. Therefore, while the increments may still be jeopardized due to inadequate permit conditions, PSD review can proceed as long as actual emissions increases at existing sources and actual emissions from sources with PSD or NSR permits are not predicted to cause increment violations.

If an actual increment violation has occurred, EPA's June 1978 policy imposes a PSD permit moratorium until

the violation is corrected. 43 FR 26401 (col. 1), June 19, 1978. This policy is continued in today's regulations. Therefore, if an increment violation is predicted to occur within the significant impact area of a proposed source (1 $\mu g/m^3$ on an annual average), a PSD permit cannot be issued to the source, unless the state or source obtains sufficient emissions reductions to restore the increment. The issue of how to deal with potential increment violations due to inadequate permit conditions is addressed in the next discussion.

Several comments were received in response to EPA's request for comments on the Gulf Coast problem. Although EPA believes its revised policy of using actual emissions to calculate increment consumption resolves the immediate Gulf Coast dilemma, and similar potential problems in other states, EPA is responding below to suggestions made by commenters.

EPA's notices questioned whether the Agency should or may include in the baseline concentration emissions increases due to fuel switches. Twelve of thirteen commenters on the issue supported including increases due to fuel switches in the baseline concentration and the majority of the commenters favored including in the baseline concentration other emissions increases approved prior to the baseline date but not occurring by that date. Commenters also proposed using allowable emissions in all cases to calculate baseline concentrations.

As discussed above and in Baseline Concentration, EPA has determined that both baseline concentrations and increment consumption should be based on actual air quality impacts. This decision is consistent with the suggestion of some commenters that EPA consider increment consumption to occur only when actual emissions increase and not when the permit or SIP allowing the increase is approved. As a result of EPA's revised policy, emissions increases due to fuel switches cannot be included in the baseline concentration unless the increase occurred prior to the baseline date and at a source which could accommodate this switch prior to January 6, 1975 without physical change or received approval under a PSD permit to make the switch.

One commenter was particularly concerned that unless allowable emissions were included in the baseline concentration, utilities with SIP relaxations approved shortly before the baseline date would be penalized if the utilities were unable to make the allowed increase by the baseline date. The commenter argued that some utilities would be unable to make the technical changes necessary to accommodate the fuel switch prior to the baseline date. Such utilities would, therefore, be required to do an increment consumption analysis, in contrast to other sources that made the switch before the baseline date. The commenter suggested that accounting for the allowed emissions increase in the baseline concentration would resolve this inequity and would be consistent with EPA's June 1978 policy of including in the baseline concentration emissions allowed under SIP relaxations pending before EPA on the baseline date.

While appreciating the commenter's concerns, EPA has concluded that no exemption from increment consumption analyses is appropriate in these cases. First, as discussed in Baseline Concentration, EPA has changed its June 1978 policy to provide that increment is consumed by emissions increases due to SIP relaxations pending EPA approval on the baseline date. Therefore, the exemption cited by the commenter no longer applies. Second, the June 1978 exemption was provided for sources whose emissions increases were delayed by the administrative process and not by physical limitations at the source. Therefore, the June 1978 exemption would not have applied to these utilities. Third, under the regulations promulgated today, if significant construction is necessary to make the allowed emissions increase, the change is a modification and would be subject to PSD review, including increment consumption analysis, in any case.

Other commenters suggested that prospective application of the definitions of major emitting facility and modification promulgated today would resolve the Gulf Coast problem. Under this approach, emissions increases that occurred after January 6, 1975, and would otherwise be considered modifications that consume increment under today's regulations, would not be evaluated under the new definitions. These commenters argued that the Gulf Coast problem is due to increment consumption from emissions increases not subject to the PSD permitting process at the time the increases were approved. The commenters stated that EPA has flexibility in deciding the effective date of the definitions.

EPA believes that section 169(4) requires emissions from all major emitting facilities (as defined in the Act and not as defined in the old PSD regulations) commencing construction after January 6, 1975 to count against increment. The statute provides no discretion to exempt these emissions from increment consumption. EPA also notes that under the PSD regulations effective from January 6, 1975 to August 7, 1977, emissions increases at such sources would have consumed increment to the extent the fuel switches occurred. (*See* 39 FR 42510).

E. Potential Increment Violations

1. Inadequate SIP and Permit Provisions. While the use of actual emissions to calculate increment consumption partially resolves the Gulf Coast problem, the potential for increment violations remains, due to inadequate SIP and permit provisions. As stated in the preceding discussion, many sources in the Gulf Coast area, and in other states as well, have permits or SIP requirements that allow actual emissions increases without subjecting the source to PSD review or the SIP revision process. For example, sources may be allowed to burn fuels with higher sulfur contents, as in the Gulf Coast area, or may have high allowable limits that would permit sources to relax existing pollution controls. If all sources in an area increased actual emissions to levels allowed under the SIP or permits, EPA believes increment violations would occur. Because no PSD review or SIP revision would be required, neither the state nor EPA would know of the violations until a PSD application was filed or a periodic assessment occurred. Growth would be halted until the violation was corrected.

At present, increment violations due to allowed but unreviewed emissions increases, and consequent construction delays, are only potential problems. EPA has therefore concluded that it is premature to promulgate remedial regulations to prevent such theoretical violations. EPA, however, encourages states to be alert to emissions increases that affect the increment. EPA urges states to closely monitor emissions increases from baseline sources and from new or modified sources not subject to PSD review which affect the available increment. States should consider requiring sources to report any emissions increases after the baseline date, including increases reflecting changed operating conditions that will continue for an extended period of time, perhaps six months. States would then learn of increases that consume increments and could take those increases into account in PSD permit reviews and periodic increment assessments. In addition, states are encouraged to revise SIPs and/or issue operating permits so that SIP requirements and permits reflect actual

source operating conditions. This will protect against large unreviewed emissions increases. While EPA is not promulgating a reporting requirement today, it will reconsider the need for a notification system if it finds that unreviewed emissions increases are causing or contributing to increment violations.

2. Double Counting of Emissions Decreases.

EPA is concerned about another potential problem: double counting of emissions decreases. The problem could arise if an existing source (Source A) reduces its actual emissions and a new source (Source B) seeking to locate in the area proposes to use the decrease when modeling increment consumption. Source B would do this by including the emissions decrease in its modeling of actual emissions from Source A. If the reviewing authority does not require Source B to ensure that the decrease at Source A is federally enforceable and does not record Source B's use of the decrease at the time Source B conducts its modeling, Source A may well use the same decrease to offset a future contemporaneous increase at Source A and thereby avoid PSD review for the increase. The use of one emissions decrease to offset two emissions increases could lead to air quality deterioration, and possible increment violations that would require correction before more PSD permits could be issued.

While EPA believes double counting of decreases should not be permitted, it is not promulgating regulations today to address the problem. EPA is uncertain how often, if ever, the problem will arise. Certainly it will be difficult for a new source to prove to the satisfaction of the reviewing authority the value of an emissions decrease accomplished at another source. Moreover, while EPA believes double counting of decreases should not occur, it is uncertain what solution is equitable for affected sources. In the absence of a formal increment banking system, or other provisions regulating increment allocation, the reviewing authority would have no basis for denying Source B use of any available increment. This could result in hardship to Source A if it deprives Source A of use of its decrease as an offset for future increases.

The issue of double counting is part of the broader question of increment management and allocation of air quality rights. EPA intends to develop banking regulations, which will include guidance to states on methods of increment allocation and regulating use of emissions decreases. To this end, EPA solicits suggestions on how to prevent double counting of decreases and on methods of increment allocation and management.

XV. Best Available Control Technology

Section 165 of the Act provides in part that any "major emitting facility" constructed in a PSD area must apply best available control technology (BACT) "for each pollutant subject to regulation under this Act emitted from, or which results from, such facility." Section 169(3) of the Act defines BACT and specifically requires that it not be applied in a manner so as to result in emissions in excess of those that are allowed by standards established pursuant to sections 111 or 112 of the Act. 42 U.S.C. 7479(3). The Agency's existing regulations required BACT only for each pollutant for which a source or modification would be "major." 40 CFR 51.24(i)(1), 52.21(i)(1)(1978).

The *Alabama Power* decision held that the Act requires that BACT be applied to all pollutants subject to regulation under the Act, not only those for which the source is major, and that EPA is without authority to circumscribe the requirement in this manner. 13 ERC 1993, 2046. The court did conclude, however, that EPA has authority to set *de minimis* thresholds for BACT applicability, in order to alleviate economic and administrative burdens. *Id.*

In response to the court's decision, EPA proposed and is now promulgating regulations regarding application of BACT. 40 CFR 51.24(k)(1), 52.21(k)(1). With respect to new major stationary sources, BACT will be required for each regulated pollutant emitted in excess of specified *de minimis* amounts. Application of BACT is also required, in the case of major modifications, for each regulated pollutant emitted for which there is a significant net emission increase (greater than *de minimis* amounts) at the source. The BACT requirement applies to only the modified units and added units at the source whose construction results in a source-wide significant net increase in the emissions of the regulated pollutant. The new BACT requirements apply only to the owner or operator of a PSD source or modification whose application for a PSD permit was not complete before today's promulgation. (*See* Transition).

The *de minimis* emissions rates promulgated by the Administrator (*see De Minimis* Exemption) will apply to both BACT and LAER requirements. The Agency specifically solicited comments on the need to specify *de minimis* levels for BACT, since the case-by-case BACT determinations would presumably take *de minimis* levels and such related issues as cost into account. Twenty-six commenters addressed this issue. Seventeen agreed in principle but generally considered the proposed levels too low and requested special consideration for pollutants emitted in less than major amounts. Eight of nine dissenters preferred case-by-case BACT determinations, with no *de minimis* values.

The Administrator is implementing the proposed *de minimis* approach for determining BACT applicability, although several values have been increased. (*See De Minimis* Exemptions.) This action should alleviate the concerns of those commenting about the need for BACT review of those pollutants emitted in small amounts. The Agency also solicited comments on the potential problem of a source obtaining lenient BACT determinations and later applying better controls to offset additional expansion plans. Twelve of thirteen commenters addressing this issue concluded that no such problem would arise. They claimed that it would be implausible to suppose that state programs and EPA regional offices would evade such responsibility, especially since loose BACT determinations would result in accelerated consumption of increment. The Administrator agrees that there appears to be adequate protection against loose BACT determinations.

Each of the three comments that addressed a need to phase in the BACT requirement favored a six month to one year grace period because of the complexity of the program. However, the Administrator believes that the case-by-case flexibility of BACT determinations is sufficient to phase in these regulations. Moreover, sources have effectively had a one year notice, in that the original *Alabama Power* decision, published June 18, 1979, informed them of the new BACT requirements. (*See* Transition.)

An additional issue, regarding the pollutant applicability of the BACT requirement, arose during the comment period. The proposal required BACT for the new or modified emissions units which were associated with the modification and not for those unchanged emissions units at the same source. Thus, if an existing boiler at a source were modified or a new boiler added in such a way as to significantly increase particulate emissions, only that boiler would be subject to BACT, not the other emissions units at the source. However, the proposal could be interpreted as requiring BACT for certain pollutants where the

Administrator did not intend to require BACT. For example, the proposal could be interpreted as requiring BACT review for any pollutant emitted from a source that was modified, regardless of whether the emissions of the pollutant increased. However, that was not the Agency's intent.

If a new unit were added or if a modification were made to a unit at a source, but there are contemporaneous decreases in emissions elsewhere at the source, BACT is required only for the pollutants for which there is a net significant plant-wide increase. For example, consider the addition of a boiler whose emissions of PM, SO_2, and NO_x each exceed *de minimis* levels. If, at the same time, an emission unit of SO_2 elsewhere at the source were shut down, such that plant-wide emissions of SO_2 either do not increase or increase by less than a *de minimis* amount, BACT is required for the new boiler only for PM and NO_x. Of course, BACT will not be required if there is no significant plant-wide increase in emissions of any pollutant. Similarly, if an existing emissions unit of a source were modified such that there is an emissions increase for one or more pollutants, but not all, BACT is required only for the pollutants for which there is both a net increase at the unit and a net significant plant-wide increase.

The above final policy governing the applicability of BACT to modifications is also consistent with existing policy under section 111, which the court said should govern modification concerns. The applicable regulation, 40 CFR 60.14(a), states that "any physical or operational change to an existing facility which results in an increase in the emissions rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility *for each pollutant to which a standard applies and for which there is an increase in the emissions rate* to the atmosphere." (Emphasis added.)

The regulation cited above makes two important statements about the applicability requirements. First, the BACT requirements apply only with regard to those pollutants for which there has been a net significant increase. This was emphasized by the Alabama Power decision: "Congress wished to apply the permit process, then only where industrial changes might increase pollution in an area, not where an existing plant changed its operations in ways that produced no pollution increase * * *. The interpretation of 'modification' as requiring a net increase is thus consistent with the purpose of the Act * * *. The EPA has properly exempted from best available control technology (BACT) and ambient air quality review those 'modifications' of a source that do not produce a net increase in any pollutant." 13 ERC at 2043.

Second, BACT is required for net significant increases of *any* pollutant regulated under the Act, regardless of the category of source involved or the emissions standards generally applicable to it. Section 165(a)(4) of the Act requires application of BACT "for each pollutant subject to regulation under this Act" emitted from a subject facility. 42 U.S.C. 7475(a)(4). This includes not only criteria pollutants but also all pollutants regulated under NSPS or NESHAP. In this manner, BACT can complement the NSPS process by extending coverage to additional source types and units and perhaps identifying candidates for future NSPS and NESHAP regulations.

XVI. Monitoring

In *Alabama Power*, the court held that section 165(e)(1) of the Act requires an ambient air quality analysis for each pollutant subject to regulation under the Act that a proposed source or modification would emit, prior to applying for a PSD permit. Since existing PSD regulations require monitoring only for criteria pollutants emitted in major amounts, EPA responded to the June 18, 1979 *per curiam* opinion by proposing to require, for criteria and noncriteria pollutants, an air quality analysis that would generally include monitoring data. In order to gather and analyze the appropriate data necessary to apply for a PSD permit, a proposed source would have to establish an appropriate monitoring network or would have to gather and analyze representative air monitoring data resulting from ongoing monitoring activities.

As proposed, preconstruction monitoring data was required as part of the air quality analysis when: (1) the estimated ambient impact of any new pollutant emissions from the stationary source or modification would be larger than the pollutant specific *de minimis* air quality concentration (Table B); or (2) the new emissions or net emissions increases for the pollutant would be major (100/250 tons per year). In addition to this rule, EPA proposed that a case-by-case analysis of the proposed stationary source or modification which would impact on a Class I area be conducted even though the anticipated impact would fall below the *de minimis* level. Later, in October 1979, EPA provided further guidance for applying these requirements in the draft revision of the *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)*, OAQPS 1.2-096, U.S. EPA, Office of Air Quality Planning and Standards and Office of Research and Development, RTP, NC 27711.

The proposal stated that certain noncriteria pollutants (sulfuric acid mist, carbon disulfide, carbonyl sulfide, methyl mercaptan, dimethyl disulfide, and dimethyl sulfide) were lacking measurement methods approved by EPA. Until such time as approved techniques would become available, the Agency proposed to use mathematical modeling to estimate the air quality resulting from the emissions of these pollutants. Considering these limitations and the general lack of experience in monitoring on a routine basis, the Administrator proposed to implement noncriteria pollutant monitoring requirements on a case-by-case basis.

In addition to the pre-application monitoring requirements already described, EPA's proposal included discretionary authority for requiring post-construction monitoring to determine the effects of the new emissions on existing air quality. For cases in which larger pollutant emission impacts are anticipated, post-construction monitoring can be a particularly useful aid in adjusting modeling results used to predict concentrations resulting from the source's operation. The approach was thought to be responsive to the *Alabama Power* decision which required EPA to use monitors to help refine modeling techniques. Accordingly, EPA proposed to generally require post-construction monitoring from large sources of particulate matter and sulfur dioxide. Other sources whose emissions are estimated to result in air quality levels approaching an allowable increment or a NAAQS could also be required to submit post-construction monitoring data. The rule promulgated today is consistent with the proposal.

The Administrator believed that the required monitoring data would be most productive in checking the accuracy of models and, in some cases, could be used to calculate increment consumption. If an applicant or other party believes that a model required by EPA had either overpredicted or underpredicted the air quality impact of a source, EPA stated that monitoring data would be evaluated to the extent possible to determine whether adjustments would be necessary. EPA anticipated that the future development of more sophisticated monitoring

techniques may permit increased use of monitoring data to track increment consumption and establish ambient baselines, as well as improve the level of confidence in modeling.

Lastly, EPA considered the approach needed to smoothly usher in the new monitoring requirements. The September 5 Federal Register indicated that EPA intended to require any additional monitoring requirements, as now necessary under *Alabama Power*, to be phased in. Later, in October 1979, the draft ambient monitoring guidelines specified that a three-month allowance would be subtracted from the time interval over which the owner must monitor to allow for procuring and setting up the necessary monitoring equipment. (*See* Transition).

There was a large response to EPA's proposal and draft monitoring guidelines—nearly 100 public comments and over 800 requests for the guidance document were received. The comments indicated general agreement with EPA's interpretation of the court's preliminary opinion. But some concern was expressed over certain specific portions of the proposal: (1) the limited technology available to monitor the noncriteria pollutants in the ambient air; (2) the large cost associated with gathering all the required air quality data for all regulated pollutants; (3) the identification process for "representative" data; and (4) the need for post-construction monitoring.

Subsequent to the publication of the September 5, 1979 proposal and the receipt of the public comment, the court issued its final decision on December 14, 1979. One important change the court made upon reconsideration of the June 18 opinion was "that section 165(e)(1) requires that *an analysis* be conducted, and that it be conducted for each pollutant regulated under the Act. But * * * that section 165(e)(1), standing alone does not require monitoring as *the* method of analysis to be employed in the fulfillment of its requirements." 13 ERC 1993, 2019. This ruling gave EPA more flexibility in defining the minimum requirements for a proper analysis of the noncriteria pollutants. "EPA might * * * choose *either* monitoring or modeling as the method of analysis * * *" *Id.* In other monitoring issues the court essentially affirmed its preliminary opinions.

Today, the Administrator is promulgating the proposed monitoring requirements with the noted exceptions. (*See* 40 CFR 51.24(m), 52.21(m)). EPA will generally require one year's worth of monitoring data as part of the air quality analysis for only the criteria pollutants. For the noncriteria and hazardous pollutants, modeling, not monitoring, will be the mechanism used to perform most detailed air quality analyses. However, there may be certain circumstances where monitoring may be the only option available to perform an adequate analysis for the noncriteria pollutants (e.g., when little or no data on emission inventories for the area of concern exist). In that case, EPA will require ambient monitoring for the noncriteria pollutants if there is an acceptable method for the monitoring of that pollutant. Presently, the Administrator has acceptable methods for measuring ambient concentrations of: (1) all the criteria pollutants; (2) mercury; (3) beryllium; (4) vinyl chloride; (5) fluorides; and (6) hydrogen sulfide. A list of acceptable methods and copies of the method description are available by writing to: U.S. EPA, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD-77), Research Triangle Park, N.C. 27711. Also, techniques to measure ambient total reduced sulfur and reduced sulfur compounds have been chosen and will be added to the list within the next several months. At this time there are no acceptable methods for measuring ambient levels of asbestos and sulfuric acid mist.

As EPA gains more experience from the PSD program with respect to noncriteria pollutant analysis and as the technology develops, the Administrator will consider an increased role for ambient monitoring within the required air quality analysis.

In addition to the exemptions given in the *de minimis* section of this Federal Register publication, EPA may not always require a source owner to establish a monitoring network when the data would not validate or improve the estimates made by the mathematical models. When the existing air pollution levels are conservatively estimated to be quite small and a monitoring network could not reliably measure the predicted background concentrations, EPA will generally not require the source owner to generate preconstruction monitoring data. Also, if the source owner has submitted preconstruction data for the source site, and the post-construction monitoring network could not measure a predicted degradation in the air quality, then EPA will generally not require the source owner to collect further monitoring data. More guidance for meeting all the monitoring requirements is given in the *Ambient Monitoring Guidelines for Prevention of Significant Deterioration* (PSD), EPA-450/4-80-012, July 1980, available from the Monitoring and Data Analysis Division, OAQPS, (MD-14), U.S. EPA, Research Triangle Park, N.C. 27711.

In the September 5, 1979 proposed regulations and the October 1979 draft of *Ambient Monitoring Guidelines for Prevention of Significant Deterioration* (PSD), EPA solicited comments on the use of representative air quality data to satisfy PSD monitoring requirements. Thirty-nine comments were received on the various aspects of the use of representative air quality data. The major responses were as follows: twenty-four commenters supported the use of existing representative air quality data, especially for remote areas. Five commenters wanted EPA to allow the use of bubbler data in lieu of continuous monitoring data, seven respondents believed that data older than two years should be allowed, and three objected to the quality assurance requirements for the representative data.

EPA has considered all of the comments and has taken the following actions:

(1) The use of existing representative air quality data will be permitted in lieu of monitoring, provided that the data meet the criteria in the above reference guideline.

(2) No bubbler data will be permitted because the data should be of the same quality as that obtained if the applicant monitored according to the requirements in the above referenced guideline. This guideline specifies monitoring must be done with continuous instruments to eliminate measurement biases associated with bubbler data. Continuous measurements are also more suitable for routine monitoring purposes in checking for compliance with short-term standards.

(3) EPA will allow the use of data, for preconstruction purposes only, collected in the three-year period preceding the permit application provided reference/equivalent quality assurance procedures were followed during the measurement period. The draft guideline has previously specified a two-year requirement.

(4) EPA reaffirms the intent that all monitoring data collected must have been collected in accordance with acceptable quality assurance procedures. The specifics of the minimum quality assurance program needed for collecting air quality data are contained in the referenced guideline.

Finally, the court held that EPA had failed to provide concrete guidance to the states for designating when less than one year of monitoring data would meet the required air quality analysis, as specifically allowed under section 165(e)(2). Such guidance is given under

PSD SIP Revisions located elsewhere in today's Federal Register publication.

XVII. Notification

The proposal contained a requirement that certain construction projects exempt from PSD permit rules file a report at least 90 days in advance of the time that the exempted construction would commence. Notification requirements similar to those in the PSD proposal were also included in the proposed nonattainment rules, under 40 CFR 51.18(j) and 52.24, and Appendix S of Part 51 (the Emission Offset Interpretative Ruling). These notice requirements would apply to source construction which would not be subject to NSR solely because (1) the increase in emissions was offset by a contemporaneous decrease so as not to cause a significant net increase at the source (*see* Modification), or (2) the application of air pollution controls not generally required by the applicable SIP or 40 CFR 60 or 61, would lower the "potential to emit" of the source below the applicable threshold for permitting. The proposal would have required the submittal of comprehensive data for both new and existing emissions units at the stationary source and all other information needed by the reviewing authority to determine if the exemption reported by the source was proper. No formal applicability determination, however, was to be made and no major delays in the construction program of any such source were intended.

The Administrator believed such reporting was necessary because of the additional complexity of such determinations and the decreased number of sources subject to PSD due to changes in applicability rules. A need was apparent to record unreviewed emission increases and reductions occurring years apart at the same plant, in order to assess their impacts on air quality as well as to simply register in advance claims for reduction credits. For these reasons the Administrator proposed to use his authority under section 114 to monitor these determinations of offsetting emissions reductions and increased control efficiency. Section 114 authorizes the Administrator to require a source owner to provide such information as he may reasonably require in order to carry out Part C of the Act or to determine if a source owner is in violation of a SIP requirement.

Fifty-nine comments were received on the notification requirements. Only two comments completely supported the Agency proposal. Thirty-eight of the commenters felt that the requirements were unnecessary and not authorized by the Clean Air Act. Many stated that the requirements were burdensome and equivalent to a preconstruction permit process. Twenty-four commenters specifically stated that section 114 does not allow such a comprehensive data gathering requirement, although reasonable data gathering is allowed.

Those who thought the requirements unnecessary cited the adequacy of existing state permitting programs to deal with these problems and the possibility of post-construction recordkeeping to accomplish the same objectives. EPA was advised to take enforcement action against the few source owners who would incorrectly exempt a source from review and then construct the source without obtaining a permit, rather than risk pervasive construction delays of properly exempted sources. Many commenters felt that the administrative burden to both the reviewing agency and the source outweighed its benefits. Seventeen commenters specifically stated that the extra cost to source owners would remove the real incentives for early cleanup and would act to perpetuate the operation of older units with high air pollutant emissions.

The Administrator maintains that reporting similar to the preconstruction notice is needed and can be required under section 114. However, the comments, particularly those concerning the potential of existing state programs to accomplish this function, have caused EPA to reconsider the need at this time for a preconstruction notification requirement. State comments and meetings with several state representatives in Atlanta (*see* Docket account of III-D-4) indicate that all states currently learn of all proposed emission units and changes before such would commence construction. Most states acquire such knowledge through their existing general NSR procedures, approved under 40 CFR 51.18, even if a net decrease would occur at the source. Other states learn of proposed emission increases through notification letters filed by the source pursuant to a formal applicability determination.

Many states do not routinely require sources to record emission decreases, especially when such would occur well in advance of related emission increases. While a preconstruction notice would be desirable to document these decreases, the requirements for contemporaneous emission reduction credit (*see* Modification) are sufficient to fulfill this need. That is, emission reductions, in order to be creditable in offsetting any contemporaneous increase at the same stationary source, must be enforceable before the associated unit(s) with the emissions increase(s) commence construction. Such reductions, to be enforceable, must generally be made part of an enforceable operating or construction permit or be processed as a formal SIP revision. Although the Administrator is still concerned that sufficient information may not be available when a source owner wishes to document previous emissions reductions, he is opting for a "wait-and-see" approach in order to alleviate the concerns of the majority of the commenters who felt the notification requirements were unjustified and burdensome.

Also, since states will soon be administering the PSD program, it is best to allow them the flexibility to integrate notification requirements into their existing permit programs. The notification requirements in each state will be different, depending upon whether the state has an emission banking system and how it operates, the type of emission inventory system, and the information available from operating and construction permits. PSD increment tracking systems will also be set up by states, which can tailor informational requirements to their own tracking systems.

While today's regulations do not contain a formal preconstruction notice requirement, owners and operators are hereby put on notice for the following: (1) Sufficient records regarding the details of contemporaneous emission increases and decreases or applicable source determinations of "potential to emit" should be maintained so as to verify that no permit was required should the Administrator so require under section 114; (2) If experience in implementing the "no net increase" provisions of PSD applicability indicates that a more comprehensive notification system is required, the Administrator will promulgate an amendment to PSD and nonattainment regulations similar to the deleted provisions of the September 5 proposal; and (3) Any source which improperly avoids review and commences construction will be considered in violation of the applicable SIP and will be retroactively reviewed under the applicable NSR regulation.

XVIII. PSD SIP Revisions

Comments have been solicited on three aspects of the development of acceptable PSD plans by states. The issues are: (1) the authority of states to submit different but equally effective PSD programs, (2) state flexibility in defining baseline areas, and (3) state flexibility in allowing monitoring exemptions.

A. *Equivalent State Programs.* Under existing regulations, the Administrator cannot approve proposed state PSD regulations unless the state requirements are identical to or individually more stringent than the corresponding 40 CFR 51.24 regulations. While the Act does contain specific requirements for several major aspects of PSD programs, it does not prohibit states from using, in other areas, approaches equivalent to those of the federal regulations in order to meet the statutory objectives. Accordingly, the Administrator proposed on September 5, 1979 that states be given some flexibility in preparing PSD plans. The Administrator requested comment on such an approach and suggested portions of the PSD requirements for which equivalent approaches might be acceptable, and others for which alternative regulations would not be approvable. Where SIPs were allowed to differ, a test of overall equivalence was to be used based on the ability of the state system to capture as many emissions as would the 40 CFR 51.24 regulations.

All forty-nine comments on this topic strongly endorsed the general approach of giving states flexibility in developing PSD programs, although several commenters expressed the desire for a more extended area for SIP flexibility. Among those areas are: (1) the entire PSD program, (2) fugitive dust applicability, (3) modeling techniques, and (4) treatment of minor modifications and exempted sources. Another commenter asserted that EPA could hold the states responsible only for plans that addressed minimal requirements, such as maximum increment consumption.

After consideration of the comments, the Administrator has decided to treat PSD SIP revisions generally in the manner proposed. This means that states will be permitted to meet the following requirements of 40 CFR 51.24 with different but equivalent regulations, or implement the federal regulations with considerable discretion:

a. Baseline area.

b. Type and amount of data needed for monitoring purposes.

c. Temporary exclusions from increment consumption.

d. Defining "contemporaneous" as a reasonable period that may be greater or shorter than 5 years.

e. Banking of emissions reductions for future offsets.

f. Source information and analysis required of the applicant.

g. Public participation after providing the opportunity for public hearing.

h. Alternatives to first-come-first-served permit processing.

State PSD programs must follow the federal regulations in other matters. This includes, but is not limited to the following:

a. Maximum allowable increments.

b. Modeling techniques.

c. Class I area protection.

d. Notice to the Administrator or the applicable Federal Land Manager for prospective permit actions.

e. New (grass roots) major stationary source applicability.

f. NSPS, NESHAP minimum requirements for BACT determinations.

g. Definitions generally as contained in 40 CFR 51.24(b). (State definitions need not be verbatim translations, but must have the same effect).

The Agency is not expanding the area of state program flexibility to those four areas, noted earlier, that were suggested by the commenters. First, the Administrator does not believe that complete program flexibility is allowable under the Act, nor does he find a basis for the comment that EPA is without authority to require that SIPs include more than skeletal program components. The second suggestion, regarding fugitive dust, is not feasible at this time for reasons detailed elsewhere (*see* Fugitive Dust Exemption). With regard to the third comment, the Act specifically directs the Administrator to specify air quality models. Section 165(e)(3), 42 U.S.C. 7475(e)(3). In addition, national consistency is important for such air quality impact analysis in order to standardize how increment would be consumed or enhanced across the country.

With regard to the degree of state flexibility in exempting additional types of new and modified sources, EPA believes that adequate exemptions have been provided in today's regulations and no further ones are authorized under the Act. The Administrator wishes to note that today's rules allow a state the opportunity to change the time period defining contemporaneous emissions increases. This change affects the definition of major modification and thereby affects the number of PSD reviews.

The opportunity for states to change the time period within which emissions changes would be considered contemporaneous is not constrained by a test of equivalency. Rather, it should be considered by states in developing PSD SIPs in conjunction with their deliberations on alternatives to first-come-first-served permitting and emission offset banking. The Administrator believes these issues are related to the state's inherent flexibility under the Act to manage increment consumption.

B. Baseline Area

This aspect of the equivalent state program issue deals with the definition of the area for which the baseline date is triggered by a PSD permit application and, specifically, with whether this definition must be the same under a PSD SIP as it is in 40 CFR 52.21. The proposal defined baseline area for both 40 CFR 51 and 52 as every part of an affected AQCR designated attainment or unclassified on the baseline date. Comments were solicited concerning the desirability of allowing states to define "area" as any *portion* of an AQCR that had been designated as attainment or unclassifiable, or, conversely, to allow states to define "area" as the entire state.

All commenters specifically addressing the issue of allowing states to have flexibility in defining baseline area were in favor of that approach. Many were more specific, suggesting that 107 designated areas or source impact areas be used.

The Administrator has decided to allow flexibility to states, not by accepting alternative definitions in SIPs, but by defining baseline area in such manner as to allow flexibility. This change in definition arises from a revised legal interpretation of what meaning "area" may be given under the Act. (*see* Baseline Concentration). Baseline area is now defined as all areas (and every part therein) within the state that are designated attainment or unclassified under section 107(d)(1) (D) or (E) of the Act in which the source establishing the baseline date would locate or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) for the pollutant (SO_2 and/or TSP) for which the baseline date is established. Flexibility is inherent in state authority to redesignate areas under section 107. Thus, large tracts of land belonging to one clean or unclassified PSD area can later be divided into several smaller PSD baseline areas with potentially different baseline dates. Other than the limitations associated with processing 107 area redesignations as SIP revisions, EPA requires that area redesignations under section 107 cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a baseline date or is subject to PSD and would be constructed in the same state as the state proposing the redesignation. A baseline date will, therefore, be triggered for the entire designated section 107 area unless nonimpacted portions are redesignated to smaller areas.

This approach allows the flexibility requested by the commenters, but precludes "postage-stamp" designations designed to trigger baseline only in the immediate vicinity of the source. It also avoids the difficult area boundary problems which would arise from defining area as the PSD source impact area. States are cautioned to carefully weigh any inclination to postpone baseline dates through area redesignations against increased difficulties associated with tracking increment consumption.

C. State Monitoring Exemption

Alabama Power remanded to EPA that portion of the monitoring requirements which allowed states to accept less than one year of preconstruction monitoring data for cases in which a shorter period would be sufficient to perform a complete and adequate analysis. The court ruled that EPA had not provided adequate guidance to the states for making this determination. 13 ERC 1993, 2020.

The proposal contained concrete guidance for use by states in determining if less than one year of monitoring data is sufficient. That guidance provided that as little as four months of monitoring data for the criteria pollutants was acceptable if the applicant demonstrated that the maximum pollutant concentrations would occur within that time.

Fourteen comments were received on various aspects of this proposal. Thirteen commenters supported the flexibility of requiring less than one year of monitoring data under specified circumstances. Two commenters addressed ozone monitoring requirements where there were more than four months with average daily maximum temperatures greater than 20°C (68°F).

The Administrator has decided to promulgate the proposed regulations except for the following:

(1) Less than one year of monitoring data will be permitted for all regulated pollutants, rather than for just the criteria pollutants. However, it must be demonstrated through historical data or dispersion models that the data for such shorter periods of time, but not less than four months, will be obtained during a time period when maximum air quality levels can be expected.

(2) Guidance for monitoring ozone during the warmest four months of the year has been deleted. Monitoring for ozone, as well as other pollutants, will still be required during the time period when maximum air quality levels can be expected. Ozone concentrations will generally be higher during the warmest four months of the year. However, ozone monitoring must also be conducted when the yearly maximum ozone concentrations are likely to occur during months other than the warmest four months of the year. This will ensure that ozone monitoring will cover the expected maximum concentrations.

XIX. Additional Issues

A. Innovative Technology

In the September 5, 1979, Federal Register the Agency proposed a new paragraph (u) which sets out specific requirements for reviewing sources that wish to utilize innovative control technologies. The new paragraph sets out criteria to be used by the Administrator in determining whether a proposed control technology is innovative, in addition to establishing specific provisions for implementing the BACT and modeling requirements.

All of the commenters recognized the need to encourage the development of technology and generally approved of EPA's approach. One large environmental group commented that while it approved of the added flexibility in specifying BACT for innovative technologies, it was concerned that Class I areas might be compromised if increment violations were allowed to occur during the period of testing. We share this concern of the environmental group and are today promulgating a regulation which ensures full protection of Class I areas.

Today's amendments provide that, for a source whose technology has been designated as "innovative" by the Administrator, the BACT requirement should insure the installation of the innovative system and the adoption of a compliance schedule for meeting a final emission limitation. This final emission limitation must at least represent the BACT level that would have been initially defined under § 52.21(j), assuming the use of proven state-of-the-art technology. The compliance schedule may extend no more than 7 years after permit issuance or 4 years after startup of the source. The regulations also provide that the Administrator may withdraw his approval if a source: (1) fails to meet the final emissions limitation by the specified date, (2) fails to protect the public health, welfare, or safety, or (3) shows an indication that the innovative control system will not be successful. The source will then be given a period of no more than 3 years to come into compliance with the BACT level determined with the use of the demonstrated system of control.

The September 5 Federal Register proposed that with the consent of the governor an "innovative technology" source could conduct the increment impact analysis using the final emission limitation specified in the permit, provided that no interference with applicable NAAQS would result during the interim period. EPA reasoned that any increased level of emissions which might occur during the interim period would be temporary and would not significantly impact the increments. However, one of the commenters pointed out that Class I areas require protection even from temporary violations. We agree with the concerns of this commenter and cite § 52.21(i)(7) in their support. That section exempts temporary sources from the modeling requirements except when they impact Class I areas or areas where the increment is known to be violated. Today's regulations allow an "innovative" source to use its final emission limitation for increment modeling purposes, but only if there is no impact on any Class I area or any area with a known increment violation. As in the proposal, the final rules requiring modeling for the purpose of evaluating the impact on NAAQS must take into account interim emission projections. Under no condition may a source be approved if it would cause a violation of the NAAQS, even a temporary violation.

B. Modified Permits

In the September 5, 1979 Federal Register, EPA proposed to add a new paragraph (t) entitled "Modified Permits." The new paragraph provided a simplified approval procedure for sources that make minor changes in design capacity or in the nature of process equipment between the time they obtain a PSD permit and the time they complete construction. It also required prior approval, through permit modifications, of increases in hours of operation.

The comments on this section were mixed. Some commenters felt that the new paragraph was redundant and superfluous, while others generally approved of it but asked for clarification. Upon further consideration, the Agency believes that there is a need to distinguish between situations in which permits would be changed for primarily administrative reasons, such as a change to reflect a revised construction schedule, and situations in which the permit change involves a significant increase in emissions. In the latter case a new permit must be issued; in the former, however, an abbreviated procedure involving modification of the permit might be preferable. There are numerous issues to be considered in implementing

such an approach. These include the means to differentiate between significant and nonsignificant changes, and the specific procedural requirements for modifying a permit. Those issues were not adequately addressed in the proposal and for that reason the Agency has decided that it does not have a sufficient basis for completing rulemaking at this time. However, further rulemaking is being considered for future proposal and comment will be requested on the issues at that time.

C. Nonprofit Institutions

EPA proposed on September 5 to exempt modifications of nonprofit institutions from PSD review requirements as is already done for new construction of this type. This would mean that, upon written request by the governor of the state, a PSD permit would not be required of a major stationary source or major modification that qualifies as a nonprofit health or educational institution. Today the Administrator promulgates this exemption as proposed since no signficant public comment was received. It should be noted that although such major new or modified sources would not require a PSD permit, the emissions from these sources would consume the applicable PSD increment(s) after January 6, 1975.

D. Portable Sources

With regard to portable sources, EPA proposed to change the 30 day notice to a 10 day notice for previously permitted PSD sources wishing to relocate. Based on experience in implementing the PSD regulations, and having received no adverse public comments on this proposal, the Administrator is adopting this proposal with one exception. Sources with PSD permits must provide a notice to the reviewing authority not less than ten days before relocation activities would commence, unless the Administrator has previously approved a different minimum time for relocation notice.

The Administrator would also like to clarify that a source is portable only if it would have temporary location and temporary emissions. Existing EPA policy defines temporary emissions as emissions from a stationary source that would be less than two years in duration, unless the Administrator determines that a longer time period would be appropriate. Thus, for a portable source to qualify for the above exemption, it must typically be located at the new location less than two years.

E. Secondary Emissions

Desiring to make the PSD review requirements similar to nonattainment requirements wherever possible, the Administrator proposed to add the definition of secondary emissions found in the offset ruling (44 FR 3274) to the PSD regulations. *See* 43 FR 26403. Secondary emissions would mean emissions from new or existings sources which occur as a result of the construction and/or operation of a major source or major modification, but do not necessarily come from the source itself. Secondary emissions would include:

(a) emissions from ships or trains coming to or from a source or modification; or

(b) emissions from offsite support sources which would otherwise increase emissions as a result of construction or operation of a major source. Although reasonably quantifiable secondary emissions would be reviewed in the air quality anaylsis, such emissions would not be included in determining "potential" emissions.

Public reaction to the September 5, 1979 proposal and the final *Alabama Power* opinion regarding EPA's treatment of secondary emissions was small. Generally the commenters favored the exclusion of secondary emissions from the PSD permit process altogether. Their objections centered on the availability and reliability of the emission factor data to "reasonably" quantify secondary emissions. Also the possibility of redundant reviews was highlighted by several commenters. The Administrator, in weighing these comments, has decided to promulgate the regulations addressing secondary emissions as proposed on September 5, 1979. *See* 40 CFR 51.24(b)(3), 52.21(b)(3), 51.24(b)(20), and 52.21(b)(20).

The Clean Air Act clearly calls for a detailed and extensive air quality impact assessment. For instance, each permit application must include impacts from the growth projected in the area that would occur as a result of the proposed source's construction. *See* section 165(a)(6). Also, once the baseline date is set, such emissions would consume the maximum allowable increments, so each permit decision must give consideration to all the possible ramifications of allowing a source or modification to construct. *See* section 165(a)(3) ("cause or *contribute*"). Secondary emissions must be considered when those emissions are specific, well defined, reasonably quantifiable, and impact the same general area.

F. Baseline for Calculating Offsets Under Section 173(1)(A)

The Offset Ruling sets out rules and guidance for determining the baseline for calculating emissions offset credit, as well as guidance on the location of offsetting emissions. *See* 40 CFR Part 51, Appendix S, Sections IV.C. and D. To aid the states in developing their NSR regulations for nonattainment areas, or in revising those regulations, EPA has decided to promulgate those rules and guidance in § 51.18(j)(3).[14] The langauge promulgated today is identical to that used in the Offset Ruling, except as explained below.

On January 16, 1979, EPA modified the Offset Ruling to conform to section 129(a)(1) of the Act by setting the baseline for determining emissions offset credit at the emissions level specified for the source in the applicable SIP. EPA is retaining this baseline level for the Offset Ruling. However, the approach for NSR programs adopted pursuant to section 173 is slightly different. Section 173(1)(A) sets the baseline as the "allowable" emissions of the source, but it further specifies that the offsets obtained by the source must be sufficient to represent reasonable further progress (RFP). Some Part D SIP revisions approved by EPA have demonstrated attainment and RFP based on the allowable emissions of sources in a nonattainment area. However, many Part D SIP revisions have based their demonstrations on the *actual* emissions of the sources in a nonattainment area, rather than the sources' allowable emissions. This means that to be consistent with RFP, sources must reduce their actual, rather than their allowable, emissions. Otherwise, sources could claim credit for offsets in situations where the offset would actually interfere with RFP.[15]

To accommodate the different approaches to RFP, EPA has provided that the baseline for determining emissions offset credit shall be the

[14] On January 16, 1979, EPA solicited comments on certain aspects of the Offset Ruling, none of which directly concerned the matters published today. EPA will respond to those comments after today's promulgation.

[15] For example, suppose a source's allowable emissions are 1,000 tpy, and its actual emissions are 500 tpy. Now suppose it wants to add a new emissions unit, thereby adding 100 tpy, and the SIP requires a 100 tpy reduction for RFP. The source might achieve both objectives by decreasing its total allowable emissions to 900 tpy, i.e., it adds the 100 tpy for the new facility, but makes other reductions in allowable emissions of 200 tpy. This is adequate if the RFP demonstration relies upon allowable emissions, since the source started at 1,000 typ and now is at 900 tpy. But if RFP is based on actual emissions, then there is a *loss* of 100 tpy, because RFP assumed 500 tpy and now the source emits 600 tpy.

allowable emissions of the source, where the SIP relies upon allowable emissions to demonstrate RFP; but the baseline must be actual emissions where the demonstration is based on reductions in actual emissions. EPA believes for the reasons discussed above that this approach is necessary to assure RFP towards attainment of ambient air quality standards.

G. Economic Impact Assessment

In the September 5 proposal, it was stated that the Agency would prepare an economic impact assessment of the proposed changes after the final court opinion was issued, which took place on December 14, 1979. The Agency further indicated that it would make the report available for public comment prior to promulgation, and that any resulting comments would be taken into account in the promulgated regulations.

Although the results of the impact assessment released today have been considered in developing the regulations, primarily for understanding *de minimis* effects, it has not been possible to complete the assessment in time to get comments prior to promulgation. In fact, because of the inherent complexity of the program, it has not been possible to do a true economic impact assessment (*i.e.*, one which considers impacts on market positions, prices, closures, etc.).

The document made available today presents as assessment of the overall impact of the proposed regulations with respect to several of the major issues or changes in the proposed regulations. The assessment does not attempt to quantify the impact of every issue nor does it attempt to assess the overall impact associated with the implementation of the PSD regulations in general. It is designed to provide a relative assessment of the impact of the September 5 proposal versus the June 1978 regulations in terms of the: sources to be affected, their associated emissions, major requirements which must be met (or which are no longer required to be met), and estimated cost savings for sources no longer subject to PSD review as a result of the proposed regulations. In short, the analysis provides an estimate of differential cost impact of the 1978 versus the proposed PSD regulations and an assessment of the major issues associated with the proposed PSD regulations.

As noted, the assessment focused on the difference between the June 1978 regulations and those proposed on September 5. However, there are significant changes in the promulgated regulations compared to those proposed, especially with regard to the *de minimis* values. Since these values have a major impact on expected cost, a projection of the impact of the final regulations was also made.

It is estimated that there will be a savings as a result of the promulgation for sources which would have been subject to the old regulations but which would not be subject to the new. This would represent an annual savings of $2.2 to 6.1 million assuming the sources which have received permits from April 1978 to November 1979 are representative of those which will receive permits in the future.

Although there is an overall savings for sources which would not longer be subject to PSD review, the new regulations require more extensive review for some sources, as well as review of sources which were not previously covered; that is, modified sources with uncontrolled emissions of less than 100 or 250 tons per year but which have controlled emissions greater than *de minimis*. Since these sources are not now subject to PSD review, they would be required to prepare a PSD permit, conduct the necessary air quality impact assessments, incur some delays in construction as a result of undergoing PSD review in addition to state NSR review, and install BACT instead of just meeting the emissions limits required by the State Implementation Plan or New Source Performance Standards as applicable. As a result of the additional cost incurred because of more extensive review and by the sources not currently subject to PSD, the overall effect of the promulgated regulations (including the savings described above) is an increase of approximately $12.4 to 24.5 million per year.

The complete analysis is contained in the document entitled *Regulatory Impact Assessment for the September 5, 1979 Proposed Prevention of Significant Deterioration Regulations*, EPA-450/2-80-073. This document is available for inspection in the rulemaking docket. Copies may be obtained by writing to the Air Information Center, U.S. EPA Library Services, (MD-35), Research Triangle Park, NC 27711.

H. Consolidated Permit Regulations

As mentioned in the section on TRANSITION, EPA recently promulgated regulations, known as the Consolidated Permit Regulations, which now generally govern the processing of applications for permits under Part 52 PSD regulations. Among the regulatory amendments announced here are three minor changes to the Consolidated Permit Regulation. First, EPA has deleted the substantive language of 40 CFR 124.3(b) and put "Reserved" in its place. Section 124.3(b) related primarily to the 50-ton exemptions of the 1978 Part 52 regulations. With the deletion of those exemptions, § 124.3(b) would have become superfluous. Second, EPA has conformed 40 CFR 124.5(g)(2) to the numbering in the new Part 52 regulations. Finally, the agency has corrected 40 CFR 124.42(b) by substituting "submitted" for "requested."

Final Action

The following regulatory amendments are nationally applicable, and this action is based upon determinations of nationwide scope and effect. Therefore, under section 307(b)(1) of the Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before October 6, 1980.

(Sections 101(b)(1), 110, 160-169, 171-178, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a)); Section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95-95, 91 Stat. 685 (August, 7, 1977)))

Dated: July 31, 1980.

Douglas M. Costle,

Administrator.

State Plans For New Source Review For PSD Purposes

1. Section 51.24 of Title 40 of the Code of Federal Regulations is amended by deleting paragraph (k) and redesignating paragraphs (l) through (s) as (k) through (r) and then by revising paragraphs (a)(2), (b), (f), (i)-(k), (m) and (r) and adding new paragraphs (a)(6) and (s) to read as follows:

§ 51.24 Prevention of significant deterioration of air quality.

(a)(1) *Plan Requirements*

* * * * *

(2) *Plan Revisions.* If a State Implementation Plan revision would result in increased air quality deterioration over any baseline concentration, the plan revision shall include a demonstration that it will not cause or contribute to a violation of the applicable increment(s). If a plan revision proposing less restrictive requirements was submitted after August 7, 1977 but on or before any applicable baseline date and was pending action by the Administrator on that date, no such demonstration is necessary with respect to the area for which a baseline date would be established before final action is taken on the plan revision. Instead, the assessment described in paragraph

(a)(4) shall review the expected impact to the applicable increment(s).

* * * * *

(6) *Amendments.* (i) Any state required to revise its implementation plan by reason of an amendment to this section, including any amendment adopted simultaneously with this paragraph, shall adopt and submit such plan revision to the Administrator for approval before May 7, 1981.

(ii) Any revision to an implementation plan that would amend the provisions for the prevention of significant air quality deterioration in the plan shall specify when and as to what sources and modifications the revision is to take effect.

(iii) Any revision to an implementation plan that an amendment to this section required shall take effect no later than the date of its approval and may operate prospectively.

(b) *Definitions.* All state plans shall use the following definitions for the purposes of this section. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions below:

(1)(i) "Major stationary source" means:

(*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(*b*) Notwithstanding the stationary source size specified in paragraph (b)(1)(i)(*a*) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act; or

(*c*) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) as a major stationary source if the change would constitute a major stationary source by itself.

(ii) A major source that is major for volatile organic compounds shall be considered major for ozone.

(2)(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(*a*) Routine maintenance, repair, and replacement;

(*b*) Use of an alternative fuel or raw material by reason of any order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*c*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*d*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*e*) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(*2*) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24;

(*f*) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(*g*) Any change in ownership at a stationary source:

(3)(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(*a*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*b*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within a reasonable period (to be specified by the state) before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(*a*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*b*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*c*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vii) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(6) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual 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 actual construction of the source to be completed within a reasonable time.

(10) "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.

(11) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(*a*) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (b)(13)(ii);

(*b*) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(*a*) Actual emission from any major stationary source on which construction commenced after January 6, 1975; and

(*b*) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14)(i) "Baseline date" means the earliest date after August 7, 1977, that:

(*a*) A major stationary source or major modification subject to 40 CFR 52.21 submits a complete application under that section; or

(*b*) A major stationary source or major modificatioin subject to regulations approved pursuant to 40 CFR 51.24 submits a complete application under such regulations.

(ii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(*a*) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i) (D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24; and

(*b*) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1) (D) or (E) of the Act in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the baseline date is established.

(ii) Area redesignations under section 107(d)(1) (D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(*a*) Establishes a baseline date; or

(*b*) Is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24, and would be constructed in the same state as the state proposing the redesignation.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits

which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(18) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(19) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(i) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)-(iv) below.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(23)(i) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy

(ii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Act that paragraph (b)(23)(i) does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(23)(i), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

(24) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

(27) "Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(28) "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

* * * * *

(f) *Exclusions from increment consumption.* (1) The plan may provide that the following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(i) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(ii) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(iii) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(iv) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4).

(2) If the plan provides that the concentrations to which paragraph (f)(1)(i) or (ii) refers shall be excluded, it shall also provide that no exclusion of such concentrations shall apply more than five years after the effective date of the

order to which paragraph (f)(1)(i) refers or the plan to which paragraph (f)(1)(ii) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under paragraph (f) of this section shall occur later than 9 months after August 7, 1980, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been submitted to the Administrator.

(4) For purposes of excluding concentrations pursuant to paragraph (f)(1)(v), the Administrator may approve a plan revision that:

(i) Specifies the time over which the temporary emissions increase of sulfur dioxide or particulate matter would occur. Such time is not to exceed two years in duration unless a longer time is approved by the Administrator;

(ii) Specifies that the time period for excluding certain contributions in accordance with paragraph (f)(4)(i) is not renewable;

(iii) Allows no emissions increase from a stationary source which would:

(*a*) Impact a Class I area or an area where an applicable increment is known to be violated; or

(*b*) Cause or contribute to the violation of a national ambient air quality standard;

(iv) Requires limitations to be in effect the end of the time period specified in accordance with paragraph (f)(4)(i) which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

* * * * *

(i) *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.*

(1) The plan shall provide that no major stationary source or major modification shall begin actual construction unless, as a minumum, requirements equivalent to those contained in paragraphs (j) through (r) of this section have been met.

(2) The plan shall provide that the requirements equivalent to those contained in paragraphs (j) through (r) of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit, except as this section would otherwise allow.

(3) The plan shall provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section apply only to any major stationary source or major modification that would be constructed in an area which is designated as attainment or unclassifiable under section 107(a)(1)(D) or (E) of the Act; and

(4) The plan may provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section do not apply to a particular major stationary source or major modification if:

(i) The major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any following categories:

(*a*) Coal cleaning plants (with thermal dryers);

(*b*) Kraft pulp mills;

(*c*) Portland cement plants;

(*d*) Primary zinc smelters;

(*e*) Iron and steel mills;

(*f*) Primary aluminum ore reduction plants;

(*g*) Primary copper smelters;

(*h*) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(*i*) Hydrofluoric, sulfuric, or nitric acid plants;

(*j*) Petroleum refineries;

(*k*) Lime plants;

(*l*) Phosphate rock processing plants;

(*m*) Coke oven batteries;

(*n*) Sulfur recovery plants;

(*o*) Carbon black plants (furnace process);

(*p*) Primary lead smelters;

(*q*) Fuel conversion plants;

(*r*) Sintering plants;

(*s*) Secondary metal production plants;

(*t*) Chemical process plants;

(*u*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*v*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*w*) Taconite ore processing plants;

(*x*) Glass fiber processing plants;

(*y*) Charcoal production plants;

(*z*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(*aa*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(iii) The source or modification is a portable stationary source which has previously received a permit under requirements equivalent to those contained in paragraphs (j) through (r) of this section, if:

(*a*) The source proposes to relocate and emissions of the source at the new location would be temporary; and

(*b*) The emissions from the source would not exceed its allowable emissions; and

(*c*) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(*d*) Reasonable notice is given to the reviewing authority prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the reviewing authority not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the reviewing authority.

(5) The plan may provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Act.

(6) The plan may provide that requirements equivalent to those contained in paragraphs (k), (m), and (o) of this section do not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(7) The plan may provide that requirements equivalent to those contained in paragraphs (k), (m), and (o) of this section as they relate to any maximum allowable increase for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the Act from the modification after the application of best available control technology would be less than 50 tons per year.

(8) The plan may provide that the reviewing authority may exempt a proposed major stationary source or major modification from the requirements of paragraph (m) with

respect to monitoring for a particular pollutant, if:

(i) The emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(*a*) Carbon monoxide—575 ug/m^3, 8-hour average;

(*b*) Nitrogen dioxide—14 ug/m^3, annual average;

(*c*) Total suspended particulates—10 ug/m^3, 24-hour average;

(*d*) Sulfur dioxide—13 ug/m^3, 24-hour average;

(*e*) Ozone [1]

(*f*) Lead—0.1 ug/m^3, 24-hour average;

(*g*) Mercury—0.25 ug/m^3, 24-hour average;

(*h*) Beryllium—0.0005 ug/m^3, 24-hour average;

(*i*) Fluorides—0.25 ug/m^3, 24-hour average;

(*j*) Vinyl chloride—15 ug/m^3, 24-hour average;

(*k*) Total reduced sulfur—10 ug/m^3, 1-hour average;

(*l*) Hydrogen sulfide—0.04 ug/m^3, 1-hour average;

(*m*) Reduced sulfur compounds—10 ug/m^3, 1-hour average; or

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in (i)(8)(i); or

(iii) The pollutants is not listed in paragraph (i)(8)(i).

(9) If EPA approves a plan revision under 40 CFR 51.24 as in effect before August 7, 1980, any subsequent revision which meets the requirements of this section may contain transition provisions which parallel the transition provisions of 40 CFR 52.21(i)(9), (i)(10) and (m)(1)(v) as in effect on that date, which provisions relate to requirements for best available control technology and air quality analyses. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in 40 CFR 52.21.

(j) *Control Technology Review.* The plan shall provide that:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emission standards and standard of performance under 40 CFR Parts 60 and 61.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under the Act for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the least reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

(k) *Source Impact Analysis.* The plan shall provide that the owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction (including secondary emissions) would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

(l) *Air Quality Models.*

* * * * *

(m) *Air Quality Analysis.* (1) Preapplication analysis.

(i) The plan shall provide that any application for a permit under regulations approved pursuant to this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(*a*) For the source, each pollutant that it would have the potential to emit in a significant amount;

(*b*) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) The plan shall provide that, with respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the reviewing authority determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) The plan shall provide that with respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(iv) The plan shall provide that, in general, the continuous air monitoring data that is required shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the reviewing authority determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(v) The plan may provide that the owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, section IV may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1).

(2) Post-construction monitoring. The plan shall provide that the owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the reviewing authority determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operation of monitoring stations. The plan shall provide that the owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to Part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.

(n) *Source Information.*

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(o) *Additional Impact Analyses.*

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(p) *Sources Impacting Federal Class I Areas—Additional Requirements.*

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(q) *Public Participation.*

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[1] No *de minimis* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform and ambient impact analysis, including the gathering of ambient air quality data.

(r) *Source Obligation.* (1) The plan shall include enforceable procedures to provide that approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

(2) The plan shall provide that at such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(s) *Innovative Control Technology.* (1) The plan may provide that an owner or operator of a proposed major stationary source or major modification may request the reviewing authority to approve a system of innovative control technology.

(2) The plan may provide that the reviewing authority may, with the consent of the governor(s) of other affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) by a date specified by the reviewing authority. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements equivalent to those in paragraphs (j) and (k) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the reviewing authority;

(iv) The source or modification would not before the date specified by the reviewing authority:

(*a*) Cause or contribute to any violation of an applicable national ambient air quality standard; or

(*b*) Impact any Class I area; or

(*c*) Impact any area where an applicable increment is known to be violated;

(v) All other applicable requirements including those for public participation have been met.

(3) The plan shall provide that the reviewing authority shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The reviewing authority decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) The plan may provide that if a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with paragraph (s)(3), the reviewing authority may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

New Source Review For PSD Purposes

2. (a) Section 52.21 of Title 40 of the Code of Federal Regulations is amended by deleting paragraph (k) and redesignating paragraphs (l) through (v) as (k) through (u) and then by revising paragraphs (b), (f), (i), (j), (k) and (g) and adding new paragraphs (r)(4), (v) and (w) as follows:

§ 52.21. Prevention of significant deterioration of air quality.

* * * * *

(b) *Definitions.* For the purposes of this section:

(1)(i) "Major stationary source" means:

(*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(*b*) Notwithstanding the stationary source size specified in paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act; or

(*c*) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) as a major stationary source, if the changes would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2)(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(*a*) Routine maintenance, repair and replacement;

(*b*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;

(*c*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*d*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*e*) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21

or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(g) Any change in ownership at a stationary source.

(3)(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(*a*) The date five years before construction on the particular change commences; and

(*b*) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(*a*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*b*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*c*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(viii) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(6) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual 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 actual construction of the source to be completed within a reasonable time.

(10) "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.

(11) "Begin actual contruction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activites other than preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts and 60 and 61. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the impostion of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such

design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(*a*) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (b)(13)(ii);

(*b*) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(*a*) Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

(*b*) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14)(i) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application under 40 CFR 52.21 is submitted by a major stationary source or major modification subject to the requirements of 40 CFR 52.21.

(ii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(*a*) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i) (D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21; and

(*b*) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1) (D) or (E) of the Act in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the baseline date is established.

(ii) Area redesignations under section 107(d)(1) (D) or (E) of the Act cannot intersect or be smaller than the area of impact of any mjaor stationary source or major modification which:

(*a*) Establishes a baseline date; or

(*b*) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii) The applicable State Implemenation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 and 40 CFR 51.24.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(19) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(i) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)–(iv) below.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23)(i) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy

(ii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Act that paragraph (b)(23)(i) does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(23)(i), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$, (24-hour average).

(24) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

(27) "Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(28) "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of selfgovernment.

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(f) *Exclusions from increment consumption.* (1) Upon written request of the governor, made after notice and opportunity for at least one public hearing to be held in accordance with procedures established in 40 CFR 51.4, the Administrator shall exclude the following concentrations in determining compliance with a maximum allowable increase:

(i) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(ii) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(iii) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(iv) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4).

(2) No exclusion of such concentrations shall apply more than five years after the effective date of the order to which paragraph (f)(1)(i) refers or the plan to which paragraph (f)(1)(ii) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under paragraph (f) of this section shall occur later than 9 months after August 7, 1980, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been submitted to the Administrator.

(4) For purposes of excluding concentrations pursuant to paragraph (f)(1)(v), the proposed plan revision shall:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide or particulate matter would occur. Such time is not to exceed two years in duration unless a longer time is approved by the Administrator;

(ii) Specify that the time period for excluding certain contributions in accordance with paragraph (f)(4)(i) is not renewable;

(iii) Allow no emissions increase from a stationary source which would:

(*a*) Impact a Class I area or an area where an applicable increment is known to be violated; or

(*b*) Cause or contribute to the violation of a national ambient air quality standard;

(iv) Require limitations to be in effect at the end of the time period specified in accordance with paragraph (f)(4)(i) which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

* * * * *

(i) *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.* (1) No stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Administrator has authority to issue any such permit.

(2) The requirements of paragraphs (j) through (r) of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit, except as this section otherwise provides.

(3) The requirements of paragraphs (j) through (r) of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act.

(4) The requirements of paragraphs (j) through (r) of this section shall not apply to a particular major stationary source or major modification, if:

(i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(i) as in effect before March 1, 1978, and the owner or operator:

(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(a) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay

of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(a) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(c) Did not discontinuue construction for a period of 18 months or more and completed construction within a reasonable time; or

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(viii) The source is a portable stationary source which has previously received a permit under this section, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the Administrator prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Administrator.

(5) The requirements of paragraphs (j) through (r) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Act.

(6) The requirements of paragraphs (k), (m) and (o) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(7) The requirements of paragraphs (k), (m) and (o) of this section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the Act from the modification after the application of best available control technology would be less than 50 tons per year.

(8) The Administrator may exempt a stationary source or modification from the requirements of paragraph (m) with respect to monitoring for a particular pollutant if:

(i) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide—575 $\mu g/m^3$, 8-hour average;

Nitrogen dioxide—14 $\mu g/m^3$, annual average;

Total suspended particulate—10 $\mu g/m^3$, 24-hour average;

Sulfur dioxide—13 $\mu g/m^3$, 24-hour average;

Ozone; [2]

Lead—0.1 $\mu g/m^3$, 24-hour average;

Mercury—0.25 $\mu g/m^3$, 24-hour average;

Beryllium—0.0005 $\mu g/m^3$, 24-hour average;

Fluorides—0.25 $\mu g/m^3$, 24-hour average;

Vinyl chloride—15 $\mu g/m^3$, 24-hour average;

Total reduced sulfur—10 $\mu g/m^3$, 1-hour average;

Hydrogen sulfide—0.04 $\mu g/m^3$, 1-hour average;

Reduced sulfur compounds—10 $\mu g/m^3$, 1-hour average; or

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(8)(i), or the pollutant is not listed in paragraph (i)(8)(i).

(9) The requirements for best available control technology in paragraph (j) of this section and the requirements for air quality analyses in paragraph (m)(1) shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(10)(i) The requirements for air quality monitoring in paragraphs (m)(1)(ii)-(iv) of this section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an

[2] No *de minimis* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section other than those in paragraphs (m)(1)(ii)-(iv) and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(ii) The requirements for air quality monitoring in paragraphs (m)(1)(ii)-(iv) of this section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii)-(iv).

(j) *Control Technology Review.* (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under the Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

(k) *Source Impact Analysis.* The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

(l) *Air Quality Models.*

* * * * *

(m) *Air Quality Analysis.* (1) Preapplication analysis.

(i) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(*a*) For the source, each pollutant that it would have the potential to omit in a significant amount;

(*b*) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Administrator determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(iv) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(v) For any application which becomes complete, except as to the requirements of paragraph (m)(1) (iii) and (iv), between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

(*a*) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(*b*) If the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii) requires shall have been gathered over at least that shorter period.

(*c*) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Administrator may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(vi) The owner or operator of a proposed stationary source or modification of violatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as requried under paragraph (m)(1).

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to Part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.

(n) *Source Information.*

* * * * *

(o) *Additional Impact Analyses.*

* * * * *

(p) *Sources Impacting Federal Class I Areas—Additional Requirements.*

* * * * *

(q) *Public Participation.* The Administrator shall follow the applicable procedures of 40 CFR Part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(r) as in effect on June 19, 1979, to the extent that

the procedures of 40 CFR Part 124 do not apply.

(r) *Source Obligation.*

* * * * *

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

* * * * *

(s) *Environmental Impact Statements.*

* * * * *

(t) *Disputed Permits or Redesignations.*

* * * * *

(u) *Delegation of Authority.*

* * * * *

(v) *Innovative Control Technology.* (1) An owner or operator of a proposed major stationary source or major modification may request the Administrator in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Administrator shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) by a date specified by the Administrator. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Administrator;

(iv) The source or modification would not before the date specified by the Administrator:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(b) Impact any Class I area; or

(c) Impact any area where an applicable increment is known to be violated; and

(v) All other applicable requirements including those for public participation have been met.

(3) The Administrator shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The Administrator decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3), the Administrator may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) *Permit rescission.* (1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (s) of this section or is rescinded.

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21 as in effect on June 19, 1978, may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator shall grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Administrator rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

2. (b) In § 52.60 (AL), § 52.96 (AK), § 52.144 (AZ), § 52.131 (AR), § 52.270 (CA), § 52.343 (CO), § 52.383 (CT), § 52.432 (DE), § 52.499 (DC), § 52.530 (FL), § 52.632 (HI), § 52.683 (ID), § 52.738 (IL), § 52.793 (IN), § 52.833 (IA), § 52.884 (KS), § 52.931 (KY), § 52.986 (LA), § 52.1116 (MD), § 52.1180 (MI), § 52.1234 (MN), § 52.1280 (MS), § 52.1339 (MO), § 52.1382 (MT), § 52.1436 (NB), § 52.1485 (NV), § 52.1529 (NH), § 52.1603 (NJ), § 52.1634 (NM), § 52.1689 (NY), § 52.1778 (NC), § 52.1884 (OH), § 52.1929 (OK), § 52.1987 (OR), § 52.2058 (PA), § 52.2083 (RI), § 52.2131 (SC), § 52.2178 (SD), § 52.2303 (TX), § 52.2346 (UT), § 52.2451 (VA), § 52.2497 (WA), § 52.2528 (WV), § 52.2581 (WI), § 52.2676 (GU), § 52.2729 (PR), § 52.2779 (VI), and § 52.2827 (AmS), paragraphs (a) and (b) are revised to read as follows:

* * * * *

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable procedures for preventing the significant deterioration of air quality.

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of 52.21(b) through (w) are hereby incorporated and made a part of the applicable state plan for the State of ———.

Emission Offset Interpretative Ruling

3. Sections I, II, III and IV of the Emission Offset Interpretative Ruling, 40 CFR Part 51 Appendix S, as revised 44 FR 3274 (January 16, 1979) and 45 FR 31307 (May 13, 1980), are amended as follows:

A. By adding a new third paragraph to Section I, to read as follows:

I. Introduction

* * * * *

The requirement of this Ruling shall not apply to any major stationary source or major modification that was not subject to the Ruling as in effect on January 16, 1979, if the owner or operator:

A. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

B. Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

C. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

B. By revising Section II, subsection A, to read as follows:

II. Initial Screening Analyses and Determination of Applicable Requirements.

A. *Definitions*—For the purposes of this Ruling:

1. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

2. "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control

of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

3. "Installation" means an identifiable piece of process equipment.

4. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

5.(i) "Major stationary source" means:

(*a*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(*b*) Any physical change that would occur at a stationary source not qualifying under paragraph 5.(i)(*a*) as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

6.(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(*a*) Routine maintenance, repair, and replacement;

(*b*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*c*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*d*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*e*) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, purusant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(*2*) The source is approved to use under any permit issued under this ruling;

(*f*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(*g*) Any change in ownership at a stationary source.

7.(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(*a*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*b*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(*a*) The date five years before construction on the particular change commences and

(*b*) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under this Ruling which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(*a*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*b*) It is federally enforceable at and after the time that actual construction on the particular change begins;

(*c*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18; and

(*d*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

8. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

9. "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 per cent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f) (1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this Ruling. In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

10. "Fixed capital cost" means the capital needed to provide all the depreciable components.

11. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Ruling, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

12. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

13.(i) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

14. "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) Applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

15. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to this Ruling, 40 CFR 52.21, or under regulations approved pursuant to 40 CFR 51.18 or 51.24.

16.(i) "Actual emissions" means the actual rate of emissions of a pollutant from an

emissions unit as determined in accordance with subparagraphs (ii)–(iv) below.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

(iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

17. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

18. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual 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 actual construction of the source to be completed within a reasonable time.

19. "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.

20. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

21. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(i) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(ii) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

22. "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this Ruling.

C. By amending Section II, subsection C by deleting footnote 2 and the second paragraph. The first paragraph is revised to read as follows:

C. *Review of specified sources for air quality impact.*

In addition, the reviewing authority must determine whether the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq.* as nonattainment for a pollutant for which the stationary source or modification is major.

D. By revising Section II, subsection F to read as follows:

F. *Fugitive emissions sources.* Section IV. A. of this Ruling shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal dryers);
(2) Kraft pulp mills;
(3) Portland cement plants;
(4) Primary zinc smelters;
(5) Iron and steel mills;
(6) Primary aluminum ore reduction plants;
(7) Primary copper smelters;
(8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(9) Hydrofluoric, sulfuric, or nitric acid plants;
(10) Petroleum refineries;
(11) Lime plants;
(12) Phosphate rock processing plants;
(13) Coke oven batteries;
(14) Sulfur recovery plants;
(15) Carbon black plants (furnace process);
(16) Primary lead smelters;
(17) Fuel conversion plants;
(18) Sintering plants;
(19) Secondary metal production plants;
(20) Chemical process plants;
(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(23) Taconite ore processing plants;
(24) Glass fiber processing plants;
(25) Charcoal production plants;
(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

E. By deleting Footnote 3 of subsection C of Section III and revising the third paragraph as follows:

C. *Review of specified sources of air quality impact.*

* * * * *

For ozone, sources of volatile organic compounds, locating outside a designated ozone nonattainment area, will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be permitted under the provisions of any state plan adopted pursuant to section 110(a)(2)(D) of the Act until the area is designated nonattainment and a State Implementation Plan revision is approved. If no state plan pursuant to section 110(a)(2)(D) has been adopted and approved, then this Ruling shall apply.

* * * * *

F. By adding a new subsection F. to IV., to read as follows:

IV. Sources That Would Locate in a Designated Nonattainment Area

F. *Source Obligation.*

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Ruling shall apply to the source or modification as though construction had not yet commenced on the source or modification.

State Plans For New Source Review For Nonattainment Purposes.

4. Section 40 CFR 51.18(j) is amended to read as follows:

§ 51.18 Review of new stationary sources modifications.

* * * * *

(j) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit

any air pollutant subject to regulation under the Act.

(ii) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual,* 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(iii) "Installation" means an identifiable piece of process equipment.

(iv) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(v)(*a*) "Major stationary source" means:

(*1*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(*2*) Any physical change that would occur at a stationary source not qualifying under paragraph (v)(*a*)(*1*) as a major stationary source, if the change would constitute a major stationary source by itself.

(*b*) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(vi)(*a*) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(*b*) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(*c*) A physical change or change in the method of operation shall not include:

(*1*) Routine maintenance, repair and replacement;

(*2*) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*3*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*4*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*5*) Use of an alternative fuel or raw material by a stationary source which:

(*i*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(*ii*) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(*6*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(*7*) Any change in ownership at a stationary source.

(vii)(*a*) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(*1*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*2*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(*b*) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(*c*) An increase or decrease in actual emissions is creditable only if:

(*1*) It occurs within a reasonable period to be specified by the reviewing authority; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(*d*) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(*e*) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emissions or the old level of allowable emissions, whichever, is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the state has not relied on it in demonstrating attainment or reasonable further progress.

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(*f*) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(viii) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(ix) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f) (1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this subsection. In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

(x) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(xi) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must

be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(*a*) Emissions from ships or trains coming to or from the new or modified stationary source; and

(*b*) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(xii) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(xiii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate
Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(xiv) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(*a*) The applicable standards set forth in 40 CFR Parts 60 or 61;

(*b*) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(*c*) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xv)(*a*) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with subparagraphs (*b*)–(*d*) below.

(*b*) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(*c*) The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(*d*) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xvi) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(*a*) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(*b*) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xvii) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to this section, 40 CFR 51.18, or 51.24.

(xviii) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xix) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(*a*) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(*b*) 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 actual construction of the source to be completed within a reasonable time.

(xx) "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.

(xxi) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(*a*) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(*b*) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further provide that:

(*a*) Where the emissions limit under the applicable State Implementation

Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(*b*) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(*c*) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source;

(*d*) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds." (42 FR 35314, July 8, 1977);

(*e*) All emission reductions claimed as offset credit shall be federally enforceable;

(*f*) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S, section IV.D.

(*g*) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the state has not relied on it in demonstrating attainment or reasonable further progress.

(4) Each plan may provide that the provisions of this subsection do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(*a*) Coal cleaning plants (with thermal dryers);

(*b*) Kraft pulp mills;

(*c*) Portland cement plants;

(*d*) Primary zinc smelters;

(*e*) Iron and steel mills;

(*f*) Primary aluminum ore reduction plants;

(*g*) Primary copper smelters;

(*h*) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(*i*) Hydrofluoric, sulfuric, or nitric acid plants;

(*j*) Petroleum refineries;

(*k*) Lime plants;

(*l*) Phosphate rock processing plants;

(*m*) Coke oven batteries;

(*n*) Sulfur recovery plants;

(*o*) Carbon black plants (furnace process);

(*p*) Primary lead smelters;

(*q*) Fuel conversion plants;

(*r*) Sintering plants;

(*s*) Secondary metal production plants;

(*t*) Chemical process plants;

(*u*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*v*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*w*) Taconite ore processing plants;

(*x*) Glass fiber processing plants;

(*y*) Charcoal production plants;

(*z*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(*aa*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state or federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirments of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Restrictions on Construction For Nonattainment Areas

5. 40 CFR 52.24 is amended by adding new paragraphs (f), (g), (h) and (i) to read as follows:

§ 52.24 Statutory restriction on new stationary sources.

* * * * *

(f) The following definitions shall apply under this section.

(1) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(2) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the following document, *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(3) "Installation" means an identifiable piece of process equipment.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5)(i) "Major stationary source" means:

(*a*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(*b*) Any physical change that would occur at a stationary source not qualifying under paragraph (5)(i)(*a*) as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile for organic compounds shall be considered major for ozone.

(6)(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(*a*) Routine maintenance, repair, and replacement;

(*b*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*c*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*d*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*e*) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before July 1, 1979, unless such change would be prohibited under any federally enforceable permit condition which was established after July 1, 1979 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(*2*) The source is approved to use under any permit issued under regulations approved pursuant to 40 CFR 51.18;

(*f*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after July 1, 1979 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(*g*) Any change in ownership at a stationary source.

(7)(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(*a*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*b*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(*a*) The date five years before construction on the particular change commences and

(*b*) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.18 which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(*a*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*b*) It is federally enforceable at and after the time that construction on the particular change begins; and

(*c*) The Administrator or reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the State has not relied on it in demonstrating attainment or reasonable further progress.

(*d*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(9) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f) (1)–(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this subsection.

(10) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(11) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(12) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(13) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate
Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(14) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) The applicable standards set forth in 40 CFR Parts 60 and 61;

(ii) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(15) "Federally enforceable" means all limitations and conditions which are

enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 and 51.24.

(16)(i) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)–(iv) below.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(17) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification) of an emissions unit which would result in a change in actual emissions.

(18) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual 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 actual construction of the source to be completed within a reasonable time.

(19) "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.

(20) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(g) This section shall not apply to a major stationary source or major modification if the source or modification was not subject to 40 CFR Part 51 Appendix S, as in effect on January 16, 1979, and the owner or operator:

(1) Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(2) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(3) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(h) This section shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants [with thermal dryers];

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plants;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(i) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then:

(1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area in which the source or modification is located, then the permit may not be so revised; or

(2) If the construction moratorium is no longer in effect in that area, then the requirements of 40 CFR 51.18(j) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Consolidated Permit Regulations

6. 40 CFR Part 124 is amended as follows:

a. 40 CFR 124.3(b) is deleted and reserved as follows:

§ 124.3 Application for a permit.

* * * * *

(b) [Reserved]

* * * * *

§ 124.5 [Amended]

b. 40 CFR 124.5(g)(2) is revised as follows:

* * * * *

(g) * * *

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(r). Applications for rescission shall be processed under § 52.21(w) and are not subject to this Part.

§ 124.42 [Amended]

c. The first sentence of 40 CFR 124.42(b) is amended by substituting "submitted" for "requested."

[FR Doc. 80-23786 Filed 8-6-80; 8:45 am]
BILLING CODE 6560-01-M

federal register

Thursday
August 7, 1980

Part IV

Federal Trade Commission

Sale of Used Motor Vehicles; Disclosure and Other Regulation

FEDERAL TRADE COMMISSION

16 CFR Part 455

Sale of Used Motor Vehicles; Disclosure and Other Regulation

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: On May 16, 1980, the Federal Trade Commission tentatively adopted the proposed Trade Regulation Rule concerning the Sale of Used Motor Vehicles. The proposed Rule would require dealers to post a window sticker ("Buyers Guide") on used cars offered for sale to consumers. The window sticker would explain to consumers that spoken promises may not be enforceable, and that consumers should ask that all promises be put in writing. The sticker would also list 14 systems of the car (for example, "frame and body", "engine", "transmission and drive shaft".) Dealers would be required to check off the condition of each of these systems as "OK", "Not OK" or "We Don't Know". Additionally, the sticker would inform consumers whether or not a warranty or service contract was offered with the car, and how the warranty, service contract, or the lack of such protection affected the consumer's right to have the dealer make repairs on the car after sale.

An earlier version of the proposal would have required dealers to inspect all used cars that they offered for sale and to report the inspection results on the sticker. The Commission has determined not to adopt a Rule mandating dealers to inspect all vehicles. The proposed Rule as tentatively adopted would not require dealers to inspect all used cars prior to sale, but would require dealers who do not inspect to notify consumers that they have not done so by checking "We Don't Know" on the window sticker. Additionally, dealers would have to disclose all known defects, whether or not they inspect the vehicles.

The proposed Rule has been revised in Section 455.1(a) to include a listing of the acts or practices in the sale of used motor vehicles which are unfair or deceptive in order that the Rule may "define with specificity" the illegal practices in a manner that complies with the decision in *Katharine Gibbs, Inc. v. F.T.C.*, 612 F.2d 658 (2nd Cir. 1979). Before the Commission promulgates the final Rule, it will determine whether compliance with §§ 455.2–455.7 of the Rule constitutes full compliance with the Rule.

The Commission has determined not to require written disclosures concerning repair cost estimates on the window sticker unless the dealer has chosen to make such estimates to the consumer, and has also determined not to require disclosure of whether a vehicle has ever been declared a total insurance loss. These provisions had been included in an earlier version of the proposed Rule.

DATES: Comments will be accepted through October 7, 1980.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. Submissions should be labeled "Sale of Used Motor Vehicles."

FOR FURTHER INFORMATION CONTACT: Michael A. Katz or Wallace W. Lovejoy, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, D.C. 20580, (202) 523–1670.

Section A. Invitation to Comment

The Commission believes that this rulemaking has provided interested persons full opportunity to make submissions and presentations on all issues relevant to the tentatively adopted proposed rule. (41 FR 1089; 10233; 20896; 26032; 39337, January 6; March 10; May 21; June 24; September 15, 1976.)

The Commission also believes that the question of whether the remedy selected is reasonably related to the violations found to exist is a matter largely within the Commission's expertise, subject to judicial review. However, the Commission has decided in its discretion, and pursuant to § 1.14(a) of its Rules of Practice, that it would benefit from additional written comments on certain remedial and drafting issues.

Comments are sought on whether the proposed Rule is likely to prevent, diminish the incidence of, or reduce the injury to consumers from the unfair or deceptive acts or practices in the sale of used motor vehicles listed in § 455.1(a) of the Rule. Comments on the format of the window sticker and comments identifying drafting errors are also sought. Comments on issues other than these remedial and drafting issues will not be considered. Written comments will be accepted through October 7, 1980. The Commission does not intend to conduct informal hearings or to permit rebuttal submissions on these issues.

Following the close of the comment period, the Commission will determine whether revisions should be made in the proposed Rule, including the window sticker. An effective date, that provides for a period of congressional review as required by Section 21 of the Federal Trade Commission Improvements Act of 1980, will be announced when the Commission promulgates a final Rule.

Section B. Questions

Interested persons are urged to submit comments on the following questions. Although the proposed Rule (including the window sticker) is drafted in specific language, the Commission retains its authority to promulgate a final Rule in ways suggested by the responses to these questions and based on the rulemaking record. Comments should indicate by number which question(s) are being addressed.

Questions: 1. Is the "Buyers Guide" likely to reduce the incidence of oral misrepresentations by dealers about the mechanical condition of or warranty coverage offered in connection with the sale of used cars? For example, will dealers be less likely than at present to make oral misrepresentations about the mechanical condition of the systems of a used car if the "We Don't Know" box is checked? Will the disclosure of warranty terms on the "Buyers Guide" make it less likely than at present that dealers will orally misrepresent the nature and extent of warranty coverage offered? For what reasons?

2. What are the incentives for dealers to mark "OK", "Not OK", or "We Don't Know"? If some dealers mark the disclosure form "OK," will that put competitive pressure on other dealers to inspect and offer "OK" vehicles as well?

3. When a vehicle's systems are marked "We Don't Know" or "Not OK" on the "Buyers Guide", will buyers be more cautious than at present about relying on oral promises by a dealer that a vehicle is in good mechanical condition? Will it be difficult or easy for dealers to explain away the fact that a vehicle's system is marked "We Don't Know", for example, by stating that they are saving buyers the cost of the inspection? Will buyers believe that a used car marked "OK" is in better condition than a used car marked "We Don't Know"? Will buyers be more or less likely than at present to demand that a dealer perform an inspection or to independently arrange for an inspection if there is a "Buyers Guide" posted on which "We Don't Know" has been marked? Will buyers be less likely than at present to rely on oral promises by a dealer to repair defects after sale if the "No Warranty—'As Is' " disclosure is marked on the "Buyers Guide"? For what reasons?

4. Does the "Buyers Guide" make clear and will buyers understand that the "OK" disclosure is not a promise by the dealer concerning future performance but a description of the condition of 14 vehicle systems at the time of sale? How often will dealers mistakenly mark a system "OK" that is, in fact, "Not OK"? When this occurs, will buyers be misled to their detriment? If a dealer marks a system "OK" and the system breaks down shortly after sale, is the dealer more likely than at present to pay the costs of repair? Will dealers be able to avoid liability by claiming that the system was "OK" when it left the lot? Will buyers be able to show that a defect existed at the time of sale because of the severity of the defect and the short time span between sale and discovery of the defect? Will it be more difficult for buyers to show that the defect existed at the time of sale when the defect first manifests itself after several months? If a dealer marks a system "OK" and then refuses to pay the cost of repair, is it more likely than at present that the dealer will be sued for breach of warranty by an injured consumer or groups of consumers (perhaps represented by legal aid or public interest law groups)? Will it be worthwhile for buyers to bring lawsuits, perhaps in small claims courts, if only $100 or $200 is at stake? Even if it is not likely that a dealer will be sued, will an "OK" disclosure put a buyer in a sufficiently better negotiating position than at present so that a dealer will pay for repairs that become necessary shortly after sale without resort to the courts? Will the "Buyers Guide" make it more difficult than at present for a consumer or groups of consumers to succeed in litigation against a dealer who sold a seriously defective car marked "We Don't Know" or "No Warranty—'As Is' "?

5. Would a "Buyers Guide" that clearly discloses the meaning of "as is" and also clearly discloses the terms of any warranty that is offered, but does not contain a mechanical condition checklist, reduce the incidence of oral misrepresentations by dealers about the condition of used vehicles? Would such a "Buyers Guide" reduce the incidence of buyer reliance on oral promises by a dealer that a vehicle is in good condition? Would such a "Buyers Guide" be more or less effective than the proposed "Buyers Guide" in reducing the incidence of oral misrepresentations by dealers and in reducing the incidence of buyer reliance on oral promises concerning mechanical condition by the dealer?

6. Does the "Buyers Guide" provide information to buyers in a useful and understandable manner? What revisions in format or wording would improve its ability to do so?

7. Are there any technical errors in the wording of the Rule or "Buyers Guide"?

Section C

It is proposed to amend 16 CFR by adding a new Part 455—Used Motor Vehicle Trade Regulation Rule to read as follows:

PART 455—USED MOTOR VEHICLE TRADE REGULATION

Sec.

455.1 General duties of a used vehicle dealer; definitions.
455.2 Consumer sales—window form.
455.3 Window form.
455.4 Contrary statements.
455.5 Foreign languages.
455.6 Records.
455.7 Inspection standards.
455.8 Declaration of Commission intent.

Authority: 38 Stat. 717, as amended (15 U.S.C. 41 et seq.)

§ 455.1 General duties of a used vehicle dealer; definitions

(a) It is an unfair or deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To fail to disclose, prior to sale, any material defect in mechanical condition of the used vehicle known to the dealer;

(3) To represent that a used vehicle, or any system thereof, is free from material defects in mechanical condition at the time of sale unless the dealer had a reasonable basis for such representation at the time it is made;

(4) To fail to make available, prior to sale, the terms of any express or implied warranty offered in connection with the sale of a used vehicle;

(5) To misrepresent the terms of any express or implied warranty offered in connection with the sale of a used vehicle;

(6) To fail to disclose, prior to sale, that a used vehicle is sold without an express or implied warranty.

(b) In order to prevent the unfair or deceptive acts or practices listed in paragraph (a) of this section, but regardless of whether any such acts or practices have been committed by an individual used vehicle dealer, it is an unfair or deceptive act or practice for any used vehicle dealer to fail to comply with §§ 455.2 through 455.7 of this rule when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

(c) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used Vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve (12) month period, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle to that vehicle's lessee or an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing in connection with the sale by a dealer of a used vehicle to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used vehicle and provided at an extra charge beyond the price of the used vehicle.

(7) "Repair insurance" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used vehicle and which is regulated in your state as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a used vehicle "Buyers Guide" as required by this rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Buyers Guide" to the

outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 10.5 inches high by 8.5 inches wide in the type styles, sizes and format indicated.

BILLING CODE 6750-01-M

BUYER$GUIDE

12 pt Helvetica Black → **Spoken promises may be no good. Ask us to put all promises in writing.**

DEALER NAME

SEE FOR COMPLAINTS

8 pt Helvetica → ADDRESS

VEHICLE MAKE

MODEL

← Hairline rules

MODEL YEAR

VEHICLE ID NUMBER

14 pt Helvetica Black → **Condition**

12 pt Helvetica Black → **OK NOT OK WE DON'T KNOW**

OK	NOT OK		WE DON'T KNOW
☐	☐	Frame & Body	☐
☐	☐	Engine	☐
☐	☐	Transmission & Drive Shaft	☐
☐	☐	Differential	☐
☐	☐	Cooling System	☐
☐	☐	Electrical System	☐
☐	☐	Fuel System	☐
☐	☐	Accessories	☐
☐	☐	Brake System	☐
☐	☐	Steering System	☐
☐	☐	Suspension System	☐
☐	☐	Tires	☐
☐	☐	Wheels	☐
☐	☐	Exhaust System	☐

12 pt Helvetica →

9 pt Helvetica Bold → **Look at the back of this form for the details of our inspection.**

12 pt Helvetica Black → **Items Marked "OK"**

9 pt Helvetica → If anything we've marked "OK" is not OK on delivery, we have to fix it or give you back some money. If the problem's bad enough, you can make us take the car back. This is true whether you buy with a warranty or "as is." You must tell us within _____

Hairline rules → _____ after delivery if something marked "OK" was not OK.

12 pt Helvetica Black → **Items Marked "Not OK" or "We Don't Know"**

9 pt Helvetica → You pay all the costs to fix things marked "We Don't Know" or "Not OK." Here is what's wrong with things marked "Not OK."

Hairline rules →

14 pt Helvetica Black → **Warranties**

12 pt Helvetica Black → **No Warranty—"As Is"**

9 pt Helvetica → This means you will pay all costs to fix things that break after you buy. But we have to pay to fix things marked "OK" that are not OK on delivery.

12 pt Helvetica Black → **Full/Limited Warranty**

9 pt Helvetica → We will pay _ % of the total repair bill for covered systems that break during the warranty. This warranty adds to our responsibilities for items marked "OK." State law "implied warranties" may give you even more rights.

THESE SYSTEMS ARE COVERED ← 6 pt Helvetica

← Hairline rules

DURATION ← 6 pt Helvetica

14 pt Helvetica Black → **Additional Information**

14 pt Helvetica → **Important:** The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer
8 pt Helvetica → purchase (except for purposes of test-driving) is a violation of federal law (16 C FR 455)

18 pt Helvetica Black

If a system is marked "OK," we have inspected it, and it doesn't have the problems listed below:

14 pt Helvetica Black

Frame & Body

9 pt Helvetica

Frame—apparent cracks, corrective welds, or rusted through
Dogtracks—bent or twisted frame
Inoperative doors

14 pt Helvetica Black

Engine

9 pt Helvetica

Known or visible oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses
Abnormal visible exhaust discharge

14 pt Helvetica Black

Transmission & Drive Shaft

9 pt Helvetica

Improper fluid level or visible leakage, excluding normal seepage
Cracked or damaged case, which is visible
Abnormal noise or vibration
Improper shifting or functioning in any gear
Manual clutch slips or chatters

14 pt Helvetica Black

Differential

Improper fluid level or visible leakage, excluding normal seepage
Cracked or damaged housing, which is visible
Abnormal noise or vibration

14 pt Helvetica Black

Cooling System

9 pt Helvetica

Improper fluid level or visible leakage
Leaky radiator
Improperly functioning water pump
Inadequate antifreeze strength for season of year

14 pt Helvetica Black

Electrical System

9 pt Helvetica

Improper fluid level or visible leakage of battery
Battery fails to start engine
Improperly functioning alternator, generator, or starter

14 pt Helvetica Black

Fuel System

9 pt Helvetica

Visible leakage

14 pt Helvetica Black

Broken Accessories

9 pt Helvetica

Gauges or warning devices
Radio
Air conditioner
Heater & defroster
Windows
Dash lights

14 pt Helvetica Black

Brake System

9 pt Helvetica

Failure warning light broken
Pedal not firm under pressure (DOT specs.)
Not enough pedal reserve (DOT specs.)
Does not stop vehicle in straight line (DOT specs.)
Hoses damaged
Drum or rotor too thin (mfgr. specs.)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

14 pt Helvetica Black

Steering System

9 pt Helvetica

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than ¼ inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

14 pt Helvetica Black

Suspension System

9 pt Helvetica

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking
Shock absorber functioning improperly

14 pt Helvetica Black

Tires

9 pt Helvetica

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

14 pt Helvetica Black

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

14 pt Helvetica Black

Exhaust System

9 pt Helvetica

Apparent leakage

Inspection procedures and "DOT specs." are printed in Vol. 16 C.F.R. (Code of Federal Regulations) Part 455.

12 pt Helvetica Bold

BILLING CODE 6750-01-C

When filling out the form, follow the directions in paragraphs (b) through (g) of this section and § 455.4.

(b) *Warranties.*—(1) *No Warranty—"As Is"/Implied Warranties Only.* If you offer the vehicle "as is," mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle "as is" or with implied warranties only but then sell it with a warranty, cross out the "No Warranty—'As Is' " or "Implied Warranties Only" disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

If your state limits or prohibits "as is" sales of vehicles, that state law overrides this part and this rule does not give you the right to sell "as is." In such states, the heading "No Warranty—'As Is' " and the paragraph immediately below it must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in states that permit "as is" sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of "No Warranty—'As Is' ".

12 pt Helvetica Black → **Implied Warranties Only**

This means that we do not make any promises to fix things that break after you buy.

9 pt Helvetica Black → **But, state law "implied warranties" may give you some rights to have us fix things marked "OK" if they are not OK on delivery.**

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, mark the box provided and briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is "Full" or "Limited." [1] Cross out the inappropriate designation.

(ii) Which of the systems are covered (for example, "engine, transmission, differential"—you cannot use shorthand, such as "drive train," for covered systems);

(iii) The duration (for example, "30 days or 1,000 miles, whichever occurs first");

(iv) The percentage of the repair cost paid by you (for example, "We will pay 100% of the total repair bill" or "We will pay 60% of the total repair bill"); and

(v) If the warranty does not cover parts and labor equally, you must disclose this. Delete the line from the form which reads "We pay —% of the total repair bill." and substitute "We will pay —% of the labor and —% of the parts." Fill in the percentage of the cost of parts and labor you will pay under the warranty.

If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the "No Warranty—'As Is' " box or the "Implied Warranties Only" box, as appropriate.

(3) *Service Contracts.* If you make a service contract available on the vehicle, you must add the following heading and paragraph below the "Full/Limited Warranty" disclosure and fill it in as applicable.

[1] A "Full" warranty is defined by the Federal Minimum Standards for Warranty set forth in § 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2304 (1975). The Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate "Full" or "Limited" for such cars, cross out both designations, leaving only "Warranty".

12 pt Helvetica Black → **Service Contract**

A services contract is available from for $ extra. This service contract adds to our responsibilities for items marked

9 pt Helvetica Black → **"OK" and to our responsibilities under any warranty. If you buy a service contract, state law "implied warranties" may give you even more rights.**

(c) *Condition—Inspections.* You may inspect, at your option, any or all of the vehicle systems listed on the front side of the "Buyers Guide" form. You may choose your own inspection procedure, but that procedure must produce the same results as the procedure set out in § 455.7.

For each system listed on the "Buyers Guide," you must mark either "OK," "Not OK," or "We Don't Know" as explained in this section.

(1) "OK": If all parts of a system pass your inspection you may mark that system "OK" on the form. If you do not inspect, you must not mark the system "OK."

(2) "Not OK": If any part of the system does not pass your inspection, and you don't repair the problem, you must mark the system "Not OK" on the form; you must not mark the system "We Don't Know." Also, you must mark a system "Not OK" if you know it would fail an inspection, even if you do not perform an inspection. Use the space provided to explain briefly the problem with each system marked "Not OK." If you give an estimate of the cost to repair the problem, you must provide it in writing on the form. If you repair all problems in a system, you may mark the system "OK."

Examples of "Not OK" explanations:

(i) Sufficient: "Brake master cylinder leaking." Insufficient: "Brakes need work."

(ii) Sufficient: "Engine burns oil." Insufficient: "Engine bad."

(3) "We Don't Know": If you have not inspected all parts of a system and do not know that any part of the system would fail an inspection, you must mark it "We Don't Know." If all parts of a system pass your inspection, but you do not wish to certify the condition of the system to the buyer, you may mark the system "We Don't Know."

You may limit how long the buyer has to notify you about a problem with an item marked "OK" by writing the limitation in the spaces provided on the window form. The limitation may be defined by time and/or mileage. If you do not limit the period to notify, you must insert the term "a reasonable time" in the spaces provided.

(d) *Name and Address.* Put the name and address of your dealership in the

space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(e) *Complaints.* Put the name and telephone number of the person who will settle any complaints after sale in the space provided. This person must have full authority to negotiate and settle complaints for you.

(f) *Make, Model, Model Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year, and Vehicle Identification Number (VIN) in the spaces provided.

(g) *Additional Information.* You may include in the space provided at the bottom of the form repair insurance information or any other information not prohibited by this rule. Lines or text may be preprinted on the form for this information.

§ 455.3 Window form.

(a) *Part of Contract.* You must incorporate the information on the window form into the contract of sale (sales agreement) for each used vehicle you sell to a consumer by using the following language in each consumer contract of sale:

"The information you see on the window form for this vehicle is part of this contract. If anything in this contract is different, the window form has the correct information."

The capitalization, punctuation and wording of this notice must appear exactly as shown above. The notice must be printed in 12 point extra-boldface type using Roman letters with 100% black ink.

(b) *Copy to Buyer.* Give the buyer of a used vehicle sold by you the original of the window form displayed under § 455.2. If the original cannot be removed from the window without damage, give the buyer a second copy, completed just like the original.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or do anything which takes away from or contradicts the disclosures in §§ 455.2 and 455.3. You may still negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Foreign languages.

(a) *General duty.* If you conduct a sale in a language other than English, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and foreign language translation(s) of that form. Where possible, follow the layout requirements of §§ 455.2 and 455.3 (type, type size, color and format) for foreign language forms.

(b) *Spanish language sales.* Use the following translation for Spanish language sales:

BILLING CODE 6750-01-M

GUIA DEL COMPRADOR

12 pt Helvetica Black → **Promesas verbales podrian resultar sin valor. Solicite hagamos todas nuestras promesas por escrito.**

Hairline rules → DISTRIBUIDOR NOMBRE

PARA QUEJAS VER A ← Hairline rules

8 pt Helvetica → DIRECCION

VEHICULO MARCA MODELO ← 8 pt Helvetica

AÑO NUMERO DE IDENTIFICACION

14 pt Helvetica Black → **Condición**

12 pt Helvetica Black →

OK	Esta OK		No Sabemos
☐	☐	Chasis y Carrocería	☐
☐	☐	Motor	☐
☐	☐	Transmisión y Eje del motor	☐
☐	☐	Diferencial	☐
☐	☐	Sistema de Enfriamiento	☐
☐	☐	Sistema Eléctrico	☐
☐	☐	Sistema de Combustible	☐
☐	☐	Accessorios	☐
☐	☐	Sistema de Frenos	☐
☐	☐	Sistema de Conducción	☐
☐	☐	Sistema de Suspensión	☐
☐	☐	Llantas	☐
☐	☐	Ruedas	☐
☐	☐	Sistema de Escape	

12 pt Helvetica →

9 pt Helvetica Bold → **Vea en el reverso de ésta forma los detalles de nuestra inspección.**

12 pt Helvetica Black → **Articulos Marcados "O.K."**

Si algún artículo marcado "O.K." resulta defectuoso a la entrega nosotros tenemos que repararlo o devolverle parte de su dinero. Si el defecto es grave, usted tiene derecho a devolvernos el vehículo. Esto aplica independientemente de si usted compró el vehículo con garantía o no. Debe notificarnos dentro de un término de _____ después de la entrega si algo marcado O.K. no lo está.

9 pt Helvetica →

12 pt Helvetica Black → **Articulos Marcados "No Esta O.K." o "No Sabemos"**

Usted paga el costo de reparación de artículos marcados "No esta O.K." o "No sabemos". A continuación se encuentra el defecto.

9 pt Helvetica →

Hairline rules →

Garantias

14 pt Helvetica Black ←

Sin Garantia ("Tal como esta") ← 12 pt Helvetica Black

Usted pagará la reparación de piezas o sistemas que se dañen despues de usted haber comprado el vehículo. Nosotros tendremos que pagar el costo de la reparación de aquellos artículos que no se encuentren "O.K." a la entrega. ← 9 pt Helvetica

Garantia Completa/Parcial ← 12 pt Helvetica Black

Nosotros pagaremos _____ % de la cuenta total de reparación por esos sistemas incluidos en la garantía si se quiebren. Esta garantía aumenta nuestra responsabilidad por artículos marcados "O.K.". Las garantías implícitas de la ley estatal podrían reconocerle hasta más derechos que esta garantía. ← 9 pt Helvetica ← 9 pt Helvetica Bold ← 9 pt Helvetica

SISTEMAS CUBIERTOS ← 6 pt Helvetica

← Hairline rules

TERMINO DE LA GARANTIA ← 6 pt Helvetica

← Hairline rules

Infórmacion Adicional

14 pt Helvetica Black ←

← Hairline rules

14 pt Helvetica → **Importante:** La información en ésta forma es parte de cualquier contrato de compraventa de este vehículo. Remoción de ésta etiqueta antes de la compra de éste vehículo (excepto para conducción de prueba) constituye una violación a la reglamentación federal (16 C.F.R. 455)

8 pt Helvetica →

18 pt Helvetica Black

Todo systema marcado "O.K." que hemos inspectado y no tiene los defectos enumerados a continuación

14 pt Helvetica Black

Chasis y Carroceria

10 pt Helvetica

Chasis-grietas, soldaduras correctivas, oxidado, chasis doblado o torcido.
Puertas dañadas.

14 pt Helvetica Black

Motor

Escape de aceite/visible, excluyendo gasto por uso normal.
Bloque o cabezal quebrado o trizado.

10 pt Helvetica

Correas dañadas o inoperantes.
Fallo o pistoneo.
Descarga excesiva de humo por sistema de escape.

14 pt Helvetica Black

Transmisión y Eje del Motor

Nivel de líquido insuficiente o escape visible, excluyendo filtración normal.

10 pt Helvetica

Cubierta aboyada o agrietada.
Vibración o ruido anormal.
Funcionamiento inadecuado o dificultad al cambiar de velocidad.
Embriague mecánico patina o vibra.

14 pt Helvetica Black

Diferencial

Nivel de líquido insuficiente o escape visible, excluyendo filtración normal.

10 pt Helvetica

Aboyadura o grieta visible en la cubierta.
Vibración o ruido anormal.

14 pt Helvetica Black

Sistema de Enfriamiento

Nivel de líquido insuficiente o escape visible.
Escape en el radiador.

10 pt Helvetica

Bomba del agua defectuosa.
Líquido anti-congelante con concentración inadecuada para la estación del año.

14 pt Helvetica Black

Sistema Electrico

Nivel de líquido o escape visible en el acumulador.

10 pt Helvetica

Acumulador incapaz de arrancar el motor.
Alternador, generador o motor arrancador defectuoso.

14 pt Helvetica Black

Sistema de Combustible

10 pt Helvetica

Escape visible de combustible.

14 pt Helvetica Black

Accesorios Dañados

Relojes o instrumentos de advertencia
Radio

10 pt Helvetica

Aire acondicionado
Calentador y descarchador
Ventanas
Luces de la consola

Sistema de Frenos

14 pt Helvetica Black

Luz de advertencia dañadas.
Pedal no firme bajo presión. (Especificaciones Depto. Transportación)
Juego insuficiente en el pedal. (Especificaciones Depto. Transportación)

10 pt Helvetica

No detiene vehículo en linea recta.
Mangas dañadas.
Tambor o rotor muy delgados. (Especificaciones del fabricante)
Espesor de bandas de frenos menor de 1/32 de pulgada.
Unidad motriz dañada o tiene escape.
Piezas dañadas.

Sistema de Dirección

14 pt Helvetica Black

Juego excesivo en la guía. (Especificaciones Depto. Transportación)
Juego en la conección en exceso de 1/4 de pulgada.

10 pt Helvetica

Guía se tranca.
Ruedas delanteras desalineadas. (Especificaciones Depto. Transportación)
Correas agrietadas o zafadas.
Nivel de líquido del recipiente al vacio inadequado.

Sistema de Suspensión

14 pt Helvetica Black

Sellos de conexión de bola defectuosos.
Piezas estructurales dobladas o dañadas
Barra de estabilización desconectada.
Resorte roto.

10 pt Helvetica

Amortiguador desconectado.
Gomas del amortiguador dañadas.
Bujes de goma dañado o no lo tiene.
Escape de líquido en el amortiguador.
Malfuncionamiento del amortiguador.

Llantas

14 pt Helvetica Black

Profundidad del caucho menor de 2/32 de pulgada.

10 pt Helvetica

Tamaño de llantas diferentes.
Daño visible

Ruedas

14 pt Helvetica Black

Trizaduras visibles, daños o reparaciones.
Pernos de montaje sueltos o que faltan.

Sistema de Escape

14 pt Helvetica Black

Escapes visibles.

10 pt Helvetica

12 pt Helvetica Bold

Los procedimientos de inspección y las especificaciones del departamento de transportación estan publicadas en el volumen 16 C.F.R. (Código de Reglamentos Federales) Parte 455.

BILLING CODE 6750-01-C

§ 455.6 Records.

When you sell a used vehicle, keep a fully filled-in, legible copy of each document that you used or received under §§ 455.2, 455.3, and 455.5. Keep these copies for three years from the date of sale.

§ 455.7 Inspection standards.

To inspect any or all of the vehicle systems for § 455.2(c), use the following inspection procedure or any other procedure that would produce the same results. For non-safety systems (paragraphs (a)–(i) of this section), the inspection procedure includes a test drive, an examination under the chassis, an examination under the hood, and a walk-around inspection. For safety systems (paragraphs (j)–(n) of this section), additional inspection procedures accompany each system. When deciding whether an item is "OK" or "Not OK," treat all vehicles the same; do not use lower standards for older or cheaper vehicles.

(a) *Frame and body.* (1) Frame—apparent cracks, corrective welds or rusted through;

(2) Dogtracks—bent or twisted frame;

(3) Inoperative doors.

(b) *Engine.* (1) Known or visible oil leakage, excluding normal seepage;

(2) Cracked block or head;

(3) Belts missing or inoperable;

(4) Knocks or misses;

(5) Abnormal visible exhaust discharge.

(c) *Transmission and drive shaft.* (1) Improper fluid level or visible leakage, excluding normal seepage;

(2) Cracked or damaged case, which is visible;

(3) Abnormal noise or vibration;

(4) Improper shifting or functioning in any gear;

(5) Manual clutch slips or chatters.

(d) *Differential.* (1) Improper fluid level or visible leakage, excluding normal seepage;

(2) Cracked or damaged housing, which is visible;

(3) Abnormal noise or vibration.

(e) *Cooling system.* (1) Improper fluid level or visible leakage;

(2) Leaky radiator;

(3) Improperly functioning water pump;

(4) Inadequate antifreeze strength for season of year.

(f) *Electrical system.* (1) Improper fluid level or visible leakage of battery;

(2) Battery fails to start engine;

(3) Improperly functioning alternator, generator, or starter.

(g) *Fuel system.* (1) Visible leakage.

(h) *Broken accessories.* (1) Guages or warning devices;

(2) Radio;

(3) Air conditioner;

(4) Heater and defroster;

(5) Windows;

(6) Dash lights.

(i) *Exhaust system.* (1) Apparent leakage.

(j) *Brake system.—General procedure.* Use 25 lbs. of force to test power-assisted or full-power brakes (50 lbs. for non-power brakes) unless a different force is given below.

(1) *Failure warning light (if original equipment).* Procedure: Apply the parking brake and turn the ignition to "start" or test by other means set by the manufacturer to make sure the light works.

(2) *Brake system integrity.* Procedure: With the engine running on vehicles equipped with power brake systems, and the ignition turned to "on" in other vehicles, apply a force of 125 pounds to the brake pedal and hold for 10 seconds. Make sure that there is no decrease in pedal height and that the failure lamp does not light.

(3) *Brake pedal reserve.* Procedure: Depress the brake pedal fully (with the engine running in vehicles equipped with power assisted brakes). The pedal travel must not be more than 80 percent of the distance from the pedal's free position to the floorboard or pedal stop. This test is not needed for full power (central hydraulic) brake systems or for vehicles with brake systems designed to work with more than 80 percent of pedal travel.

(4) *Service brake performance.* Procedure: With the tire pressure at the manufacturer's specification, test by either procedure (a) or (b):

(i) Roller-type or drive-on platform procedure: Using either a drive-on platform or a roller-type brake analyzer which can measure equalization, make sure that the forces applied by the front brakes are within 20 percent of each other and that the forces applied by the rear brakes are within 20 percent of each other. Follow the directions of the maker of the test equipment.

(ii) Road test procedure: Drive on a road that is level (not more than one percent grade), dry, smooth, hard-surfaced and free from loose material, oil or grease. Make sure that the vehicle stops from 20 miles per hour within 25 feet staying in a 12 foot-wide lane.

(5) *Brake hoses and assemblies.* Procedure: Look at all the brake hoses to make sure that the hoses do not touch the vehicle's body or chassis and that the hoses are not cracked, chafed or flattened. Do not count a protective device like a "rub ring" as part of the hose or tubing. Examine the front brake hoses through all wheel positions from full left to right.

(6) *Disc and drum condition.* Procedure: Remove at least one front and one rear wheel and look (measure as needed) to see if the drum diameter and rotor thickness are within the manufacturer's specifications. (Vehicles built after January 1, 1971 and some earlier models have drums embossed with the maximum safe drum diameter dimension and the rotors embossed with the minimum safe rotor thickness dimension.)

(7) *Friction materials.* Procedure: With at least one front and one rear wheel removed, look to see if the brake linings or pads have cracks or breaks that extend to rivet holes, except minor cracks that do not impair attachment. See if the drum brake linings are securely attached to the brake shoes and the disc brake pads are securely attached to the shoe plate. Measure to see if there is at least one thirty-second of an inch of lining left. (With riveted linings, measure the thickness of the lining over the rivet heads. With bonded linings or pads, measure the lining thickness over the shoe surface at the thinnest point on the lining or pad.)

(8) *Brake structural and mechanical parts.* Procedure: With at least one front and one rear wheel removed, look to see if backing plates and caliper assemblies are deformed or cracked; whether system parts are broken, misaligned, missing, binding or severely worn; and if automatic adjusters and other parts are assembled and installed correctly.

(9) *Power brake unit.*

Procedure: With the engine running, look and listen to made sure vacuum hoses are not collapsed, scraped, broken, improperly mounted or leaking audibly. Stop the engine and apply the service brakes several times to destroy vacuum in the system. Depress the brake pedal with 25 pounds of force and start the engine while maintaining that force. The power assist is defective if the brake pedal does not fall slightly when the engine starts. (This test is not needed for vehicles with full power brake systems. The service brake performance test is enough for those vehicles.)

(k) Steering system.—(1) *System play.*

Procedure: With the engine on and the wheels in the straight ahead position, turn the steering wheel in one direction until there is a slight movement of a front wheel. Turn the steering wheel the other way until the same wheel again moves slightly. If you had to turn the steering wheel more than the distance shown in Table I, there is excessive lash or free play in the steering system.

Table I.—*Steering System Free Play Values*

[In inches]

Steering wheel diameter	Lash
16 or less	2
18	2¼
20	2½
22	2¾

(2) *Linkage play.*

Procedure: Elevate the front end of the vehicle to load the ball joints. Insure that the wheel bearings are correctly adjusted. Grasp the front and rear of a tire and attempt to turn the tire and wheel assembly left and right. If the free movement at the front or rear tread of the tire exceeds one-quarter inch there is excessive steering linkage play.

(3) *Free turning.*

Procedure: Turning the steering wheel through the limit of travel in both directions. Feel for binding or jamming in the steering gear mechanisms. (The wheel should turn freely.)

(4) *Alignment.*

Procedure: Toe-in or toe-out must not be greater than 1.5 times the values listed in the vehicle manufacturer's service specification for alignment settings as measured by a bar-type scuff gauge or other toe-in measuring device. Values to convert toe-in readings in inches to scuff gauge readings in feet/mile side-slip for different wheel sizes are provided in Table II. Tire diameters used in computing scuff gauge readings are based on the average maximum tire dimensions of grown tires in service for typical wheel and tire assemblies.

Table II.—*Toe-in settings from vehicle MFR's Service Specifications*

Wheel size (included)	Nominal tire diameter (inches)	Readings in feet per mile sideslip								
		1/16"	1/8"	3/16"	1/4"	5/16"	3/8"	7/16"	1/2"	9/16"
13	25.2	13.1	26.2	39.3	52.4	65.5	78.6	91.7	104.8	117.9
14	26.4	12.5	25.0	37.5	50.0	62.5	75.0	87.5	100.0	112.5
15	28.5	11.5	23.0	34.5	46.0	57.5	69.0	80.5	92.0	103.5
16	35.6	9.3	18.6	27.9	37.2	46.5	55.8	65.1	74.4	83.7

(5) *Power steering system.* Procedure: Examine the fluid reservoir to see that it has enough fluid. Check to see that the pump belts are not cracked or slipping.

(l) *Suspension system.*—(1) *Suspension.* Procedure: Examine the front and rear suspension parts to make sure that the ball joint seals are not cut or cracked; the structural parts are not bent or damaged; the stabilizer bars are connected; the springs are not broken or extended by spacers; the shock absorber mountings, shackles and U-bolts are securely attached; rubber bushings are not cracked, extruded out from or missing from suspension joints; and the radius rods are not missing or damaged.

(2) *Shock absorber.* Procedure: Look at the shock absorbers to make sure their seals are not leaking (oil on the housing leaking from within). Make sure the vehicle does not rock freely more than two cycles by pushing down on one end of the vehicle, releasing and counting the cycles. Repeat at the other end of the vehicle. Test on a level surface.

(m) *Tires.*—(1) *Tread depth.* Procedure: make sure that the tread on each tire is at least two thirty-seconds of an inch deep. On passenger cars look for exposed tread depth indicators (check two adjacent major grooves at three points about equally spaced around the tire). On other vehicles, you may have to measure tread depth with a tread gauge.

(2) *Type.* Procedure: Look to make sure that the tires on each axle are matched in tire size designation, construction and profile, and are not a major deviation in size from the manufacturer's recommendation. (Given on a glove box sign in 1968 or later passenger cars.)

(3) *General condition.* Procedure: Look to make sure that the tires are free from clunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent materials.

(4) *Damage.* Procedure: Look at the tires and use a blunt instrument (to probe cuts or abrasions) to make sure that the tire cords or belting materials are not exposed.

(n) *Wheels.*—(1) *Integrity.* Procedure: Look at the wheels (tire rim, wheel disc, and spider) to make sure that there are no visible cracks, elongated bolt holes, or signs of repair welding.

(2) *Deformation.* Procedure: Use a runout gauge and stand to make sure that the lateral and radial runout of each rim bead area is not more than one-eighth of an inch of total indicated runrout. (Measure each wheel through a full rotation.)

(3) *Mounting.* Procedure: Make sure all wheel nuts and bolts are in place and tight.

§ 455.8 Declaration of Commission Intent.

(a) This rule is intended to prevent the unfair or deceptive acts or practices set forth in 455.1(a). By requiring the disclosures of this part, it is not the Commission's intent to preempt state or local laws, rules or regulations which relate to vehicle condition or warranties and which provide greater protection to the consumer than this part provides. It is also not the Commission's intent to preempt by this part other state or local laws, rules or regulations which govern aspects of used vehicle sales other than those regulated by this part.

(b) If, upon application of an appropriate state or local governmental agency, the Commission determines that any requirement of such state or local government (1) affords protection to consumers greater than the requirements of this rule and (2) does not unduly burden interstate commerce, then that requirement shall be applicable to the extent specified in the Commission's determination so long as the state or local government administers and enforces effectively any such greater requirement.

(c) Applications for exemption should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

(d) These Rules, requirements and declaration of intent and their application are each separate and severable.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-23903 Filed 8-6-80; 8:45 am]

BILLING CODE 6750-01-M

federal register

Thursday
August 7, 1980

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Urban Homesteading Program; Implementation of Section 106 of the Housing and Community Development Amendments of 1979

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

[Docket No. R-80-854]

Urban Homesteading Program; Implementation of Section 106 of the Housing and Community Development Amendments of 1979

AGENCY: Department of Housing and Urban Development/Office of the Assistant Secretary for Community Planning and Development.

ACTION: Interim rule.

SUMMARY: This interim rule would implement Section 106 of the Housing and Community Development Amendments of 1979 (Pub. L. 96-153) and the related Section 102(a) of the Housing and Community Development Amendments of 1978, (Pub. L. 95-557). Section 106 authorized HUD to use funds authorized by Section 810 of the Housing and Community Development Act of 1974 to reimburse the Administrator of Veterans' Affairs and the Secretary of Agriculture for properties conveyed to a unit of general local government, State or agency for use in a HUD-approved local urban homesteading program.

Section 102(a) amends Section 810(f) of the Housing and Community Development Act of 1974 to allow for the provision of lists of properties by the Administrator of Veterans' Affairs.

DATES: Effective date: September 15, 1980.

Comment due date: October 6, 1980.

ADDRESS: Comments should be addressed to: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410. Please refer to the docket number shown in the heading of this interim rule.

FOR FURTHER INFORMATION CONTACT: Lenore R. Siegelman, Urban Homesteading Division, Office of Urban Rehabilitation and Community Reinvestment, Room 7176, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, Telephone: (202) 755-6935.

SUPPLEMENTARY INFORMATION: This interim rule is needed because earlier Urban Homesteading Program legislation limited the reimbursement for federally-owned properties conveyed for use in such local homesteading programs to those held by HUD. Current legislation authorizes that reimbursement. HUD anticipates that appropriations currently available for reimbursement to the Federal Housing Administration Funds will have been authorized to reimburse the Department of Agriculture and the Veterans Administration as proposed in the pending 1981 Appropriation Bill presently under Congressional consideration.

A Finding of No Significant Impact respecting the National Environmental Policy Act of 1969 (24 CFR Part 590) has been made in accordance with HUD procedures. A copy of this Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address. This interim rule was not listed in the Department's semi-annual agenda of significant regulations published in the Federal Register on February 5, 1980. Accordingly, Part 590 is amended to read as follows:

PART 590—URBAN HOMESTEADING

Sec.
590.1 Scope of regulation.
590.3 Purpose of program.
590.5 Definitions.
590.7 Program requirements.
590.9 Listing of HUD-owned and VA-owned properties.
590.11 Applications.
590.13 HUD Review and Approval of Application.
590.15 Urban Homesteading Agreement.
590.17 Transfer of HUD-Owned Properties.
590.18 Reimbursement to the Department of Agriculture and to the Veterans Administration.
590.19 Implementing Funds.
590.21 Reduction of Funds.
590.23 Program Close Out. [Reserved]
590.25 Retention of Records.
590.27 Audit.
590.29 Applicable Federal Laws and Regulations.
590.31 HUD Review of Local Urban Homesteading Agency's Performance.
590.33 Corrective and Remedial Action.
590.35 Evaluation by HUD.

Authority: Sec. 810 of the Housing and Community Development Act of 1974, Pub. L. 93-383, as amended, 88 Stat. 633 (12 U.S.C. 1706e)

§ 590.1 Scope of regulation.

(a) The policies and procedures in this regulation are applicable to the approval of urban homesteading programs authorized by Section 810 of the Housing and Community Development Act of 1974, as amended.

(b) This part includes the functions and responsibilities of HUD and units of general local government and States or a designated public agency of a State or unit of general local government with regard to program requirements; application requirements; submission of applications; review and approval of applications; transfer of HUD-owned properties; property disposition assistance; HUD program evaluation; performance review; reimbursement by HUD to the Department of Agriculture and to the Veterans Administration for properties used in the urban homesteading program and other applicable Federal laws and regulations.

§ 590.3 Purpose of program.

The purpose of the urban homesteading program is to utilize existing housing stock to provide homeownership, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program will provide for the transfer without payment to States or units of general local government or their designated public agencies Federally-owned, unoccupied one- to four-family residences requested by such unit, State or agency for use in an approved urban homesteading program. Reservations under the Section 312 Rehabilitation Loan Program are available to finance rehabilitation of single family or multifamily homestead properties, as well as other properties, within the urban homesteading neighborhoods.

§ 590.5 Definitions.

(a) "Act" means Title VIII, Section 810 of the Housing and Community Development Act of 1974, as amended.

(b) "Agriculture" means the U.S. Department of Agriculture.

(c) "Agriculture- or VA-owned property" means property to which the Secretary of Agriculture or the Administrator of Veterans Affairs holds title.

(d) "Applicant" means any State or unit of general local government that applies to carry out an urban homesteading program under these regulations.

(e) "Homesteader" means an individual or family who participates in a local urban homesteading program by accepting a property pursuant to the requirements of § 590.7. For locally owned property, it may also mean cooperatives and condominium associations.

(f) "HUD-owned property" means property to which the Secretary of HUD holds title.

(g) "Locally-owned property" means any real property which is improved with a one- to four-family residence or a multifamily residence not obtained from

the Department of Housing and Urban Development or from the Department of Agriculture or the Veterans Administration and to which the local urban homesteading agency holds title.

(h) "Local Urban Homesteading Agency" means a State, a unit of general local government, or a public agency designated by a unit of general local government or a State, which must have the authority to accept the transfer, without payment, of Federally-owned property.

(i) "Local Urban Homesteading Program" means the operating procedures, and requirements developed by a local urban homesteading agency in accordance with the provisions of § 590.7.

(j) "Neighborhood Strategy Area (NSA)" means an area selected by a recipient of Community Development Block Grant (CDBG) entitlement funds and designated in its Community Development and Housing Plan for a program of concentrated community development activities which is defined by the Community Development Block Grant Regulations, Title 24, Chapter V, Part 570, Subpart D, Section 570.301(c).

(k) Private non-profit entity, neighborhood-based nonprofit organization, Small Business Investment Company and local development corporation mean:

(1) A private nonprofit entity which is any organization, corporation, or association, duly organized to promote and undertake community development activities on a not-for-profit basis;

(2) A neighborhood-based nonprofit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood as defined pursuant to this Part. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted under this Part are to be carried out;

(3) A Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; and

(4) A local development corporation which is an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981); an entity eligible for assistance under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695), or other similar entity incorporated pursuant to Federal, State, or local law.

(l) "Secretary" means the Secretary of Housing and Urban Development or any person to whom the Secretary has delegated authority for the urban homesteading program.

(m) "Federally-owned property" means any real property:

(1) Which is improved with a one- to four-family residence;

(2) To which the Secretary, the Secretary of Agriculture or the Administrator of Veterans Affairs holds Title;

(3) Which is not occupied.

(n) "Section 312 Rehabilitation Loan Funds" means loan funds authorized by Section 312 of the Housing Act of 1964, as amended to finance the rehabilitation of urban homesteaded property, as well as other property within the designated urban homesteading neighborhood.

(o) "Section 810 Funds" means the funds authorized under Title VIII, Section 810 of the Housing and Community Development Act of 1974, as amended to reimburse the Department of Housing and Urban Development's housing loan and mortgage insurance funds for the fair market value of HUD-owned properties transferred to local urban homesteading agencies, and to reimburse the Department of Agriculture and the Veterans Administration for their properties transferred to the urban homesteading agency in accordance with 590.18.

(p) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(q) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Virgin Islands, and American Samoa, or in a general purpose political subdivision thereof: The District of Columbia; the Trust Territories of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

(r) "Unoccupied residential property" means either a Federally-owned property or a locally-owned property that is vacant.

(s) "Urban homesteading neighborhood" means a geographic area(s) approved by HUD for conducting a local urban homesteading program that meets the requirements of § 590.7.

(t) "VA" means the Veterans Administration.

§ 590.7 Program requirements.

An applicant shall meet the following requirements to qualify for assistance under this Part:

(a) *Designation of Urban Homesteading Neighborhood.* It shall designate neighborhood(s) for carrying out urban homesteading. An urban homesteading neighborhood shall have available HUD-owned properties; HUD-owned plus locally-owned properties; or pursuant to Section 312(a)(1)(D) of the Housing Act of 1964, as amended, and Title I of the Housing Community Development Act of 1974, as amended, locally-owned properties within designated areas where eligible community development block grant activities are being carried out. An urban homesteading neighborhood shall be in the following areas:

(1) The same as or contained within Neighborhood Strategy Areas designated pursuant to the Community Development Block Grant regulations published March 1, 1978, in the Code of Federal Regulations, Title 24, Chapter V, Part 570, Subpart D—Entitlement Grants, § 570.301(c); or

(2) Another area designated by the applicant, if:

(i) The applicant is not a recipient of community development block grant entitlement funds authorized by Title I of the Housing and Community Development Act of 1974;

(ii) The required public improvements and services will be provided from sources other than community development block grants; or

(iii) The neighborhood selected for urban homesteading requires some improvements but not the concentrated treatment required for a Neighborhood Strategy Area.

(b) *Development of Local Urban Homesteading Program.* It shall develop a program to convey unoccupied residential properties to qualified individuals or families. The program shall provide for the following:

(1) *Homesteader Selection.* It shall provide equitable procedures for homesteader selection giving special consideration to the homesteader's:

(i) Need for housing; and

(ii) Capacity to make or cause to be made necessary repairs and improvements.

(2) *Conditional conveyance.* It shall provide for the conditional conveyance of unoccupied, unrepaired residential property to homesteaders. Property received from the Federally-owned inventory shall be conditionally conveyed without substantial consideration.

(3) *Homesteader Agreement.* It shall provide for execution of a Homesteader

Agreement between the local urban homesteading agency and the homesteader which shall require the homesteader:

(i) To make or cause to be made any repairs required to meet minimum local health and safety housing standards prior to occupying the property;

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local standards for decent, safe, and sanitary housing within 18 months after occupying the property and to comply with any energy conservation measures designated by the local urban homesteading agency as part of the repairs;

(iii) To occupy the property as principal residence for not less than three consecutive years from the initial date of occupancy;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the local urban homesteading agency; and

(4) *Revocation Upon Breach of Agreement.* It shall provide for the revocation of the conditional conveyance upon any material breach of the agreement by the homesteader.

(5) *Fee Simple Title.* It shall provide for the conveyance of the property from the local urban homesteading agency to the homesteader in fee simple title upon full compliance with the terms of the agreement between the local urban homesteading agency and the homesteader.

(6) *Coordinated Approach Toward Neighborhood Improvements.* It shall provide a plan for needed public improvements and services, and community facilities in the Urban Homesteading Neighborhoods.

(i) If the Urban Homesteading Neighborhood is a Neighborhood Strategy Area, then the coordinated approach toward neighborhood improvement for the area described in the applicant's Community Development Block Grant entitlement application, pursuant to 24 CFR 570.304(b)(1)(i) (Community Development and Housing Plan) will satisfy this requirement. Such an applicant will cite the appropriate cross reference in its applications.

(ii) For designated urban homesteading neighborhoods that are outside or mostly outside of Community Development Block Grant Neighborhood Strategy Areas of entitlement recipients, the coordinated approach toward neighborhood improvement plan shall include:

(A) A brief description of the area's need for revitalization, community facilities, public services and improvements and housing problems;

(B) A description of the plan that will be implemented to meet the identified needs for upgrading and improving the area; and

(C) A description of the actions to mitigate any adverse effects on low-and moderate-income persons that may result from implementing an urban homesteading program in the designated neighborhood.

§ 590.9 Listing of HUD-owned and VA-owned properties.

In order to facilitate planning for the urban homesteading program, the Secretary of HUD and the Administrator of Veterans Affairs shall, upon request of a local urban homesteading agency, provide a listing of all unoccupied one- to four-family units to which HUD or VA holds title, and which are located within the jurisdiction of the urban homesteading agency, except that properties with executed repair or sale contracts may be excluded from such lists.

§ 590.11 Applications.

(a) *Submission Requirements.* Applications shall be submitted to the HUD Area Office which has jurisdiction over the applicant and shall consist of the following:

(1) Standard Form 424, prescribed by OMB Circular No. A-102;

(2) A description of the coordinated approach toward neighborhood improvement as required by § 590.7(b)(6). An applicant that is applying for Community Development Block Grant (CDBG) entitlement funds may cite the appropriate cross reference in its community development plan pursuant to 24 CFR 570.304(b)(1)(i) (Community Development and Housing Plan) to meet this requirement.

(3) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown. The map shall include:

(i) An estimate of the number and the location of any locally-owned properties to be coveyed to homesteaders during the program's first year;

(ii) An estimate of the number and the location of any HUD-owned properties requested for use in the proposed urban homesteading program during the program's first year, and may include data on Agriculture- and VA-owned properties;

(4) A description of the rehabilitation financing plan to be used in the urban homesteading neighborhood(s) which shall include:

(i) An estimate and brief description of terms and conditions of the Federal, State and/or local public funds and any private funding sources that are to be made available for interim and permanent financing of rehabilitation;

(ii) The total number of residential properties for rehabilitation (both homestead properties and other properties);

(iii) An outline of the applicant's proposed schedule(s) and time periods for committing rehabilitation loan funds in its urban homesteading program.

(5) An implementation plan which includes:

(i) The description of the public entity that will carry out the program, including any agreements with private non-profit organizations, neighborhood-based nonprofit organizations, small business investment companies and/or local development corporations, as defined in Section 590.5(h) to provide program related services (e.g. "counseling" services to homesteaders, marketing activities, neighborhood improvements, financial assistance, rehabilitation).

(ii) A timetable and methods to accomplish the program which includes:

(A) Transferring properties from HUD, and may include the transfer of Agriculture- and VA-owned properties to the local urban homesteading agency;

(B) Advertising residential properties for homesteading purposes;

(C) Conveying unoccupied, unrepaired residential property to homesteaders; and

(D) A summary of the plan for implementing neighborhood improvements in accordance with 590.7(b)(6)(i)-(ii).

(b) *Certifications.* The applicant shall submit certifications in such form as HUD may prescribe, providing assurances that:

(1) Its governing body has duly adopted or passed as an official act, resolution, motion, or similar action authorizing the filing of the application including all understandings and assurances contained in the application;

(2) It possesses the legal authority to:

(i) Accept the transfer without payment of Federally-owned property;

(ii) Convey residential property received from HUD, Agriculture or VA to homesteaders without any substantial consideration, and

(iii) Assist in or undertake the financing of the rehabilitation for residential property conveyed to homesteaders.

(3) It has:

(i) A form for conditional conveyance as required by § 590.7(b)(2);

(ii) Equitable procedures for selecting homesteaders as required by § 590.7(b)(1); and

(iii) An urban homesteader agreement required by § 590.7(b)(3).

(4) It will convey the residential property received from HUD, Agriculture or VA in fee simple title without consideration to the homesteader upon full compliance with the terms of the agreement required in § 590.7(b)(3).

(5) It has, prior to submission of its application:

(i) Provided citizens an adequate opportunity to express preferences about the proposed location of urban homesteading neighborhoods; and

(iii) Provided citizens with adequate information regarding the amount of rehabilitation loan funds, and the number of any Federally-owned properties and/or locally-owned properties to be homesteaded and the coordinated approach toward neighborhood improvement required by § 590.7(b)(6).

(6) It will submit any environmental information that may be requested by HUD in meeting the Department's environmental responsibilities under the National Environmental Policy Act of 1969.

(7) It will: (i) Not discriminate upon the basis of race, creed, color, handicap, sex, or national origin in the sale, lease, or rental or in the use or occupancy of the property conveyed in accordance with this Part;

(ii) Comply with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968; and

(iii) Comply with Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against the handicapped in any program or activity receiving Federal financial assistance.

(8) It will comply with the lead based paint procedures set forth in 24 CFR Part 35 agreeing to:

(i) Assure the elimination of the lead based paint hazards for which HUD will not expend funds in residential structures transferred under this Part; and

(ii) Make notification to potential homesteaders of the hazards of lead-based paint poisoning in residential units constructed prior to 1950.

(9) It will submit any information that may be requested by HUD meeting the Department's Responsibilities under the National Historic Preservation Act of 1966 (Pub. L. 89-665) and the Preservation of Historic and Archaeological Data Act of 1974 (Pub. L. 93-291), including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(10) It will, upon conveyance of title from HUD, Agriculture or VA assume liability for injury and damage to persons or property by reason of a defect in the dwelling, its equipment, its appurtenances, or any other reason.

(11) It will give HUD, Agriculture, VA and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the urban homesteading program.

(12) It will maintain in writing and on file a description of its approved local urban homesteading program for the purposes of public information and review.

(c) OMB Circular A-95, Part II.

(1) The applicant shall submit the completed application to all appropriate State and areawide clearinghouses prior to, or concurrently with, the submission of the application to HUD.

(2) The clearinghouses shall have thirty (30) days to review the completed application and transmit to the applicant and to the appropriate HUD Area Office any comments or recommendations.

(3) Clearinghouses will be of assistance to the applicant and to HUD if their reviews address the impact of the proposal in revitalizing the designated urban homesteading neighborhood, the relationships of the proposal to community and areawide planning and any other considerations not reflected in the application which would bear on the viability of the proposal as well as the "subject matter of comments and recommendations" in Part I. Attachment A of OMB Circular No. A-95, Item 5, with emphasis on consistency among State, areawide, and local plans and compliance with environmental and civil rights laws.

(4) If the A-95 review comments contain any findings of inconsistency with State, areawide, or local plans or noncompliance with environmental or civil rights laws, the applicant must state how it proposes to resolve the finding or state its justification for proposing to proceed with the project despite the findings developed through the A-95 review process.

(5) HUD will not approve an application until all comments have been received and considered from the clearinghouses or until the end of the thirty-day review period, whichever occurs first.

(6) HUD shall notify the clearinghouses of actions taken on all applications reviewed within seven working days by use of Standard Form 424. When HUD makes approval following clearinghouse recommendations against approval or approval only with specific and major substantive changes, the clearinghouse will be provided an explanation for such approval with the HUD submittal of SF 424.

(d) *Application Submission.* Applications shall be submitted, at anytime, to the HUD Area Office which has jurisdiction over the applicant.

§ 590.13 HUD review and approval of application.

The appropriate HUD Area Office will review the application and will approve the proposed local urban homesteading program, unless the HUD Area Office determines that it does not comply with the requirements of this Part and other applicable laws and regulations. Approval of the application does not, however, obligate HUD or Agriculture or VA to transfer a specific number of properties or particular properties identified in the application. If the application is disapproved, the applicant shall be informed in writing of the specific reasons for the disapproval.

§ 590.15 Urban homesteading agreement.

(a) Upon approval of the proposed local urban homesteading program, the appropriate HUD Area Office will sign an Urban Homesteading Agreement with the local urban homesteading agency. The regulations of this part become a part of the agreement.

(b) The agreement is renewable on an annual basis: *Provided,* That:

(1) The local urban homesteading agency has carried out its program substantially as proposed and approved; and

(2) The local urban homesteading agency has a continuing capacity to carry out the approved program in a timely manner including the selection of homesteaders, the conveyance of residential property to homesteaders, the implementation of its interim and permanent financing plan(s), the completion and quality of the housing rehabilitation and the implementation of its coordinated approach toward neighborhood improvements.

§ 590.17 Transfer of HUD-owned property.

(a) *Property Disposition Assistance.* HUD's property disposition activity shall support the Urban Homesteading Program as follows:

(1) Upon the signing of the Urban Homesteading Agreement as required in § 590.15 but prior to the initial selection of any HUD-owned property, a local urban homesteading agency may request HUD to suspend its routine property disposition activity for up to 45 days in the designated urban

homesteading neighborhood(s). Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all HUD-owned properties except those for which there are repair or sales contracts.

(2) The HUD Area Offices shall develop and implement a property disposition plan for HUD-owned properties in the designated urban homesteading neighborhood which is consistent with the local urban homesteading program. This plan shall include the following procedure:

(i) As soon as feasible, but in any event not later than ten days, after receipt of notice of property transfer and application for insurance benefits to HUD for an HUD-owned unoccupied, one- to four-family residence in an approved urban homesteading neighborhood, the HUD Area Office shall notify the local urban homesteading agency of the potential availability of the property for homesteading. The notification shall be in writing and shall include the street address and zip code and shall inform the local urban homesteading agency that it has thirty days from the date of the notice to inform the Area Office if it wishes to use the property for homesteading.

(ii) The Area Office shall not approve a property disposition program for that property until the local urban homesteading agency has informed that Area Office, in writing, whether or not it intends to use the property in the urban homesteading program or until 30 days have expired from the date of HUD's notice to such agency, whichever comes first. The Area Office manager may extend the thirty (30) day deadline, if the Area Office Manager makes a determination that notification by the local urban homesteading agency within thirty (30) days is impractical. The title for any property requested in accordance with this procedure shall be transferred to a local urban homesteading agency if such property meets the conditions for transferring HUD-owned properties listed in § 590.17(b).

(b) *Conditions for Transferring HUD-Owned Properties.* Except as provided in § 590.17(c) below, HUD shall transfer the title of HUD-owned properties to a local urban homesteading agency, without receiving payment from such agency, if the following conditions are met:

(1) The local urban homesteading program has been approved by HUD;

(2) The properties requested by the local urban homesteading agency are in a designated urban homesteading neighborhood(s);

(3) The HUD Area Office has reserved the necessary Section 810 funds to reimburse HUD's housing loan and mortgage insurance accounts for the residential property to be transferred;

(4) The requested property is HUD-owned unoccupied, unrepaired and a repair or sale contract has not been signed;

(5) The requested property is determined to be suitable for the approved local urban homesteading program by the Area Office. In making this determination the Area Office will take into account the following factors:

(i) The value of the property. The value of the property shall not exceed $15,000 for a one unit single family residence or an additional $5,000 for each unit of two- to four-family residences. To compute this value, HUD shall estimate and deduct from the appraised as is fair market value of the property the cost of continued care and handling for the average length of time for that area that such property might remain in HUD's inventory if it were not transferred to a local urban homesteading agency;

(ii) The estimated cost of housing repairs required. The cost of required repairs shall not exceed the applicable statutory limit of the Section 312 rehabilitation loan program;

(iii) The Area Office Manager may authorize on a property by property or program by program basis the transfer of HUD-owned property:

(A) Whose value exceeds the limitations, cited in paragraph (b)(5)(i) of this section, if the benefit to the community, expected from the expedited occupancy of the property and the reduction of difficulties and delays (such as vandalism to property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal Government;

(B) For which the value of housing repairs exceeds the limitation, cited in paragraph (b)(5)(ii) of this section, when the value of such repairs in excess of the applicable loan limit of the Section 312 loan program will be provided by the homesteader or through other local resources other than Section 312 rehabilitation loan funds.

(c) *Exceptions.* (1) If a local urban homesteading agency fails to accept title within thirty (30) days of the agency's selection of a HUD-owned property made available in accordance with § 590.17(b)(1)-(5), the Area Office may approve an alternative disposition plan for the property. The Area Office Manager may extend, for a reasonable period of time, this thirty (30) day deadline if the Area Office Manager makes a determination that acceptance of title by the local urban homesteading agency within thirty (30) days of property selection is impractical.

(2) A property otherwise eligible for transfer to a local urban homesteading agency may be used to meet higher priority needs if the Area Office Manager makes a determination in writing that such property is essential to meet an existing legal obligation such as the following:

(i) Settlement of Sales Warranty claims;

(ii) Settlement of section 518 claims for critical structural defects in one- to four-family dwellings with certain mortgages insured by HUD;

(iii) Emergency housing needs: (disaster housing and urgent public housing needs);

(iv) Reconveyance for noncompliance with regulation 24 CFR Sec. 203.363;

(v) Reconveyance pursuant to Civil Frauds Act settlement; and

(vi) Reconveyance where the mortgage was never insured.

(3) A property otherwise eligible for transfer to a local urban homesteading agency for use in its HUD approved homesteading program, may instead be made available to private non-profit organization, a local development corporation or a neighborhood nonprofit organization as defined in Section 590.5(h) if the Area Office Management determines in writing that such transfer will serve the community's best interest and is consistent with the goals of the local urban homesteading program. Such transfer does require concurrence of the local urban homesteading agency or the local government.

§ 590.18 Reimbursement to the Department of Agriculture and to the Veterans Administration.

(a) The Secretary of HUD is authorized to reimburse the Secretary of Agriculture and the Administrator of Veterans Affairs in an agreed amount, out of Section 810 funds, for property which

(1) Is improved with a one- to four-family residence;

(2) Is not occupied;

(3) Is located in an urban homesteading area, in a locality which has an approved urban homesteading program;

(4) Has been approved for urban homesteading use by the locality and by the HUD Area Office;

(5) Has a value not in excess of $15,000 for a one-unit single-family residence or an additional $5,000 for each unit of two- to four-family residences;

(6) Is conveyed to a local urban homesteading agency for use in an approved local urban homesteading program.

(b) The reimbursement shall not exceed an amount certified by Agriculture or VA to be a fair value based on the lesser of the market value and the amount of the claim plus the expenses connected with Federal ownership.

§ 590.19 Implementing funds.

HUD will reserve or otherwise provide available Section 810 funds and Section 312 rehabilitation loan funds necessary to assist in implementing an approved local urban homesteading program. The Section 810 funds may not be used to reimburse local homesteading agencies for administrative costs nor may they be used to acquire property other than through reimbursement for property owned by the Secretary of HUD, the Secretary of Agriculture, and the Administrator of Veterans Affairs.

§ 590.21 Reduction of funds.

The Secretary reserves the right to reduce any Section 810 allocation or Section 312 rehabilitation loan funds earmarked, reserved or targeted for a local urban homesteading agency should such agency not meet the schedules for use of such funds required in §§ 590.11(a)(4)(iii) and 590.11(a)(5)(ii)(A) and (C), and does not comply with the statutory and regulatory requirements of this part or fails to carry out its program as approved.

§ 590.23 Program close out [Reserved]

§ 590.25 Retension of records.

Financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the urban homesteading program shall be retained by the local urban homesteading agency for a period of three years from the date of the program closeout.

§ 590.27 Audit.

The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of local urban homesteading agencies pertaining to funding assistance related to this part and HUD-owned property transferred under this part for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

§ 590.29 Applicable Federal laws and regulations.

(a) *Nondiscrimination.* Every phase of an approved local urban homesteading program is to be implemented in accordance with the requirements of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. Approved local urban homesteading programs shall also comply with Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against the handicapped.

(b) *National Environmental Policy Act.* In implementing and administrating the Urban Homesteading Program, HUD shall comply with the National Environmental Policy Act of 1969 and all rules, regulations, and requirements issued pursuant thereto.

(c) *National Historic Preservation Act.* In implementing and administering the Urban Homesteading Program, HUD shall comply with the National Historic Preservation Act (Pub. L. 89-665), the Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291), including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(d) *Lead-Based Paint Poisoning Prevention Act.* Local urban homesteading agencies shall comply with the Department's Lead-Based Paint Regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint; elimination of immediate lead-based paint hazards in any residential structure transferred under this part; and notification of the hazards of lead-based paint poisoning to potential homesteaders in residential units constructed prior to 1950 and assisted under this part.

(e) *Acquisition and Relocation.* If a local urban homesteading agency acquires real property for an urban homesteading program approved under the regulations in this part, it shall comply with HUD relocation and acquisition regulations at 24 CFR Part 42.

§ 590.31 HUD review of local urban homesteading agency's performance.

(a) HUD will review each local urban homesteading agency's performance at least annually to determine whether:

(1) The program complied with the requirements of Title VIII, Section 810, of the 1974 Act, as amended, the implementing regulations, and other applicable laws and regulations;

(2) The local urban homesteading agency has carried out its program substantially as proposed and approved; and

(3) The local urban homesteading agency has a continuing capacity to carry out the approved program in a timely manner.

(b) In reviewing a local urban homesteading agency's performance, HUD will consider all available evidence which may include, but need not be limited to the following:

(1) Records maintained by the local urban homesteading agency;

(2) Results of HUD's monitoring of local urban homesteading agency's performance;

(3) Audit reports whether conducted by the local urban homesteading agency or by HUD auditors; and

(4) Records of comments and complaints by citizens and organizations, or litigation.

§ 590.33 Corrective and remedial action.

When HUD determines on the basis of its review that there is a deficiency in the local urban homesteading agency's performance, the HUD Area office shall take one or more of the following corrective or remedial actions that are appropriate for the circumstances:

(a) Issue a letter of warning that advises the local urban homesteading agency of the deficiency and puts it on notice that more serious corrective and remedial actions will be taken if the deficiency is not corrected or is repeated;

(b) Advise the local urban homesteading agency to suspend, discontinue or not incur costs for the defective aspect(s) of the local program;

(c) Condition the renewal of the Urban Homesteading Agreement if there is substantial evidence of a lack of progress, noncompliance, or a lack of a continuing capacity. In such cases, the reasons for the conditional renewal and the actions necessary to remove the condition shall be specified; or

(d) Cancel the Urban Homesteading Agreement and explain the reasons for such action.

§ 590.35 Evaluation by HUD.

Local urban homesteading agencies shall supply data or make available such records as are necessary for the completion of HUD's annual evaluation of the Urban Homesteading Program.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted

waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C. on July 31, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 80-23953 Filed 8-6-80; 8:45 am]

BILLING CODE 4210-01-M

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Thursday, August 7, 1980

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HHS/FDA		DOT/SLSDC	HHS/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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

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

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Office of the Secretary—

45887 7-8-80 / Amendment of certification of essential agricultural uses and requirements; Natural Gas Policy Act

FEDERAL COMMUNICATIONS COMMISSION

46406 7-10-80 / FM broadcast stations in Bonita Springs, Goulds, and Homestead, Fla.; change to table of assignments

45593 7-7-80 / FM broadcast stations in Centralia, Mo.; changes in table of assignments

INTERIOR DEPARTMENT

Indian Affairs Bureau—

45909 7-8-80 / Rights-of-way over Indian lands

List of Public Laws

Last Listing August 6, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

S. 2995 / Pub. L. 96-321 To allow the transfer of certain funds to fund the heat crisis program. (Aug. 4, 1980; 94 Stat. 1001) Price $1.

H.R. 6666 / Pub. L. 96-322 To revise the laws relating to the Coast Guard Reserve. (Aug. 4, 1980; 94 Stat. 1002) Price $1.25.

H.R. 5580 / Pub. L. 96-323 North Atlantic Treaty Organization Mutual Support Act of 1979. (Aug. 4, 1980; 94 Stat. 1016) Price $1.