8-11-80
Vol. 45 No. 156
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federal register

Monday
August 11, 1980

Highlights

53075 **Leif Erikson Day** Presidential proclamation

53195 **Grant Programs—Community Action Agencies** CSA is considering funding 15 grants to Community Action Agencies and invites eligible applicants to submit proposals which focus on energy planning activities recently begun or about to start in their communities; effective 8-11-80

53187 **Grant Programs—Environmental Protection** EPA invites public participation in revising regulations implementing municipal wastewater treatment works construction grants program; comments by 10-10-80

53382 **Grant Programs—Environmental Protection** EPA sets forth policy and procedures for implementing municipal wastewater treatment works construction grants limitations; effective 8-11-80 (Part VII of this issue)

53412 **Museum Services** ED/MSI issues final regulations implementing Government in the Sunshine Act and establishes rules for the award of grants to museums; effective 8-11-80 (2 documents) (Part XI of this issue)

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Area Code 202-523-5240

Highlights

53422, 53434 **Energy Conservation** DOE proposes changes to correct clerical errors and issues rules with respect to Residential Conservation Service Program affecting warranties, utility costs and financing of residential measures; (comments by 9-10-80 and effective 8-11-80 (2 documents) (Part XII of this issue)

53099 **Energy** DOE/FERC amends interim regulations implementing production—related costs for sales of natural gas and seeks further comment on its policy; effective 7-25-80; comments by 9-22-80

53077 **Loan Programs—Agriculture** USDA/CCC announces availability of price support loans to eligible producers of 1980-crop cotton; effective 8-11-80

53091 **Natural Gas** DOE/FERC publishes final rule governing pricing of pipeline production; effective 9-3-80

53116 **Natural Gas** DOE/FERC publishes regulations regarding bona fide offer to purchase natural gas; effective 9-1-80

53393, 53397 **Bonds** Treasury/FS issues rules amending regulations governing Retirement Bonds to provide for an interest rate of 6.5 percent per annum; effective 8-1-79 (2 documents) (Parts VIII and IX of this issue)

53358-53365 **Charter Flights** CAB removes all limitations on cargo charters and eliminates Schedule T-41 in reporting off-route charter operations; effective 9-6 and 10-2-80 (Part V of this issue) (5 documents)

53316 **Aviation Safety** DOT/FAA proposes revision of flight and duty time limitations and rest requirements for flight crew members; comments by 12-9-80 (Part II of this issue)

53220 **Privacy Act Documents** HHS/PHS

53311 President's Commission on White House Fellowships

53312 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Proclamation 4777 of August 7, 1980

Leif Erikson Day, 1980

By the President of the United States of America

A Proclamation

The name of Leif Erikson symbolizes the triumph of the human spirit. A thousand years ago, he and his crew of Norsemen conquered the North Atlantic in an open boat and set a permanent standard of fearlessness, fortitude and endurance. His example will always be an example to men and women of daring and imagination.

In commemorating his life, we also salute the achievements of the Scandinavian people, whose voyages at the dawn of the Middle Ages pushed back the frontiers of human geographical knowledge in many parts of the world, and whose accomplishments have enriched Western man from that era to our own.

As a mark of respect to the courage of Leif Erikson and his Norse followers, the Congress of the United States, by joint resolution approved September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), authorized the President to proclaim October 9 in each year as Leif Erikson Day.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate Thursday, October 9, 1980 as Leif Erikson Day and I direct the appropriate Government officials to display the flag of the United States on all Government buildings that day.

I also invite the people of the United States to honor the memory of Leif Erikson on that day by holding appropriate exercises and ceremonies in suitable places throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of August, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 80-24213
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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

CCC Cotton Loan Program Regulations Governing 1980 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This supplement contains the base loan rates by warehouse location for upland cotton, loan rates by location for extra long staple cotton, premiums and discounts for upland cotton, and micronaire differences applicable for all 1980-crop cotton. Price support loans will be available to eligible producers on 1980-crop cotton under such rates.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Eloise V. Mauck, Program Specialist, Price Support and Loan Division, ASCS, Room 3748 South Building, P.O. Box 2415, Washington, D.C. 20013 (202) 447-7923. This regulation contains necessary operating provisions needed to implement the national average loan rates for upland cotton announced October 31, 1979, and extra long staple cotton announced March 18, 1980, for which Final Impact Statements have been prepared and are available on request from Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, ASCS, Room 3629 South Building, P.O. Box 2415, Washington, D.C. 20013 (202) 447-7873.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under the USDA procedures established to implement Executive Order 12044 and has been classified "not significant."

In compliance with Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1427.100-.105 for need, currency, clarity, and effectiveness, will be made within the next five years.

On August 14, 1979, a notice was published in the Federal Register (44 FR 47544) regarding certain determinations CCC was to make with respect to the loan program for the 1980 crops of upland and extra long staple cotton. Included in these determinations were quality and location differentials for upland and extra long staple cotton. Interested persons were given until October 15, 1979, to respond. Six comments were received concerning quality differentials, three from general farm organizations, two from producer groups, and one from a shipper organization. All six of the respondents recommended that at least equal weight be given to market differences in computing upland loan premiums and discounts. One respondent also recommended that more weight be given market price differences in the computation of upland micronaire differences. After considering all responses, it is determined that the loan rates, premiums, discounts, and micronaire differences proposed by CCC are fair and equitable and will be applicable to the 1980 crop of cotton. The upland micronaire schedule issued on May 15, 1980, was revised on June 13. This action was taken to assist with the unusual problem which the Southwest farmers experienced in 1979 resulting in low micronaire cotton. The abnormally large amount of low micronaire cotton produced in 1979 weighed heavily on the market, resulting in wider than normal market discounts. Thus, the weighting used initially in determining 1980 crop micronaire discounts resulted in too large an increase in the loan discounts. Accordingly, the micronaire differences for 1980-crop upland cotton have been revised. Minor revisions were made in the 1980 location differentials because of changes in transportation costs. The 1980 location differentials maintain a reasonable relationship between production areas and assure fair loan values for cotton as to location.

In accordance with the provisions of section 103(f) of the Agricultural Act of 1949, as amended by section 602 of the Food and Agriculture Act of 1977, and section 102 of the Act of May 15, 1978, it has been determined that 85 percent of the average spot market price for the average of the 5 years (excluding the highest and lowest years) ending July 31, 1979, was 47.58 cents per pound, an amount less than the statutory minimum of 48.00 cents per pound. Therefore, the Northern Europe calculation is not necessary. The base loan rate for 1980-crop upland cotton was announced at 48.00 cents per pound on October 31, 1979, the statutory minimum. The cotton loan program regulations, issued by CCC, containing loan operating provisions, are supplemented as shown below for the 1980 crops of cotton.

Section 1427.101 contains the schedule of base loan rates by warehouse location for upland cotton based on the 48.00-cent rate. Sections 1427.102 and 1427.103 contain the schedule of premiums and discounts for grade and staple length announced May 15, 1980, and the revised micronaire differences announced June 13, 1980, for upland cotton, basis Strict Low Middling 1 1/16 inches, micronaire 3.5 through 4.9, net weight, at average location. Sections 1427.104 and 1427.105 contain the base loan rates by location and micronaire differences for eligible qualities of extra long staple cotton which were also announced on May 15, 1980, and are based on the national average loan rate of 93.50 cents per pound, net weight, announced on March 18, 1980.

The title and number of the federal assistance program that this Final Rule applies to is: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of the Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

Accordingly, the regulations at 7 CFR 1427.100 through 1427.105 and the title of the subpart are revised to read as follows, effective as to the 1980 crops of upland and extra long staple cotton. The material previously appearing in these sections remains in full force and effect as to the crop years to which it was applicable.

PART 1427—COTTON

Subpart—1980 Crop Supplement to Cotton Loan Program Regulations

Sec.
1427.100 Purpose.
1427.101 Schedule of base loan rate for eligible 1980 crop upland cotton by warehouse location.
1427.102 Schedule of premiums and discounts for grade and staple length of eligible 1980 crop upland cotton.
1427.103 Revised schedule of micronaire differences for 1980 crop upland cotton.
1427.104 Schedule of loan rates for eligible qualities of 1980-crop extra long staple cotton by location.
1427.105 Schedule of micronaire differences for 1980-crop extra long staple cotton.

Authority: Secs. 4, 5, 62 Stat. 1070 (15 U.S.C. 714b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); Sec. 602, 91 Stat. 934, as amended (7 U.S.C. 1444); and sec. 102, 92 Stat. 240 (7 U.S.C. 1444).

§ 1427.100 Purpose.

This subpart is for the purpose of announcing that loans will be available on upland and extra long staple cotton of the 1980 crop under the terms and conditions stated in the cotton loan program regulations issued by CCC and contained in this Part 1427. This subpart also contains schedules to be used in determining loan rates on 1980-crop cotton.

§ 1427.101 Schedule of base loan rates for eligible 1980 crop upland cotton by warehouse location.

[In cents per pound, net weight; basis SLM white 1 1/16 "4134"]

City	County	Loan rate
ALABAMA		
Albertville	Marshall	49.25
Aliceville	Pickens	46.95
Atmore	Escambia	49.95
Attalla	Etowah	49.60
Belle Mina	Limestone	49.25
Birmingham	Jefferson	49.25
Centre	Cherokee	49.60
Collinsville	De Kalb	49.25
Cullman	Cullman	49.25
Decatur	Morgan	49.25
Eclectic	Elmore	49.25
Elkmont	Limestone	49.25
Eutaw	Greene	48.95
Fayette	Fayette	49.25
Frisco City	Monroe	48.95
Geraldine	De Kalb	49.25
Greenbrier	Limestone	49.25
Greensboro	Hale	48.95
Hamilton	Marion	48.95
Hartselle	Morgan	49.25
Huntsville	Madison	49.25
Hurtsboro	Russell	49.60
McCullough	Escambia	48.95
Madison	Madison	49.25
Moundville	Hale	48.95
Northport	Tuscaloosa	48.95
Opelika	Lee	49.60
Panola	Sumter	48.95
Red Bay	Franklin	48.95
Selma	Dallas	49.25
Sulligent	Lamar	48.95
SweetWater	Marengu	48.95
Talladega	Talladega	49.60
Tallassee	Elmore	49.25
Tuscumbia	Colbert	48.95
Union Springs	Bullock	49.25
Wetumpka	Elmore	49.25
ARIZONA		
Eloy	Pinal	46.50
Phoenix	Maricopa	46.50
Picacho	Pinal	46.50
Yuma	Yuma	46.50
ARKANSAS		
Blytheville	Mississippi	48.80
Bradley	Lafayette	48.60
Brinkley	Monroe	48.80
Clarendon	Monroe	48.80
CottonPlant	Woodruff	48.80
Dell	Mississippi	48.80
Dumas	Desha	48.80
England	Lonoke	48.80
Eudora	Chicot	48.80
Evadale	Mississippi	48.80
Forrest City	St. Francis	48.80
Helena	Phillips	48.80
Hughes	St. Francis	48.80
Jonesboro	Craighead	48.80
Leachville	Mississippi	48.80
McCrory	Woodruff	48.80
McGehee	Desha	48.80
Marianna	Lee	48.80
Marked Tree	Poinsett	48.80
Marvell	Phillips	48.80
Newport	Jackson	48.80
North Little Rock	Pulaski	48.80
Osceola	Mississippi	48.80
Pine Bluff	Jefferson	48.80
Portland	Ashley	48.80
Trumann	Poinsett	48.80
Walnut Ridge	Lawrence	48.80
West Memphis	Crittenden	48.80
CALIFORNIA		
Bakersfield	Kern	46.50
Calico	Kern	46.50
El Centro	Imperial	46.50
Fresno	Fresno	46.50
Hanford	Kings	46.50
Imperial	Imperial	46.50
Kerman	Fresno	46.50
Pinedale	Fresno	46.50
Tulare	Tulare	46.50
FLORIDA		
Jay	Santa Rosa	49.25
GEORGIA		
Allentown	Wilkinson	49.90
Arabi	Crisp	49.60
Arlington	Calhoun	49.25
Atlanta	Fulton	49.90
Augusta	Richmond	50.20
Bartow	Jefferson	49.90
Blakely	Early	49.25
Byrumville	Dooly	49.60
Cadwell	Laurens	49.90
Cochran	Bleckley	49.90
Columbus	Muscogee	49.90
Comer	Madison	50.20
Cordele	Crisp	49.60
Dawson	Terrell	49.60
Desoto	Sumter	49.60
Dexter	Laurens	49.90
Doerun	Colquitt	49.25
Dublin	Laurens	49.90
Eastman	Dodge	49.90
Edison	Calhoun	49.25
Elko	Houston	49.90
Fitzgerald	Ben Hill	49.60
Funston	Colquitt	49.25
Hawkinsville	Pulaski	49.90
Jeffersonville	Twiggs	49.90
McDonough	Henry	49.90
Madison	Morgan	49.90
Marshallville	Macon	49.90
Metter	Candler	49.90
Midville	Burke	49.90
Monroe	Walton	49.90
Montezuma	Macon	49.90
Moultrie	Colquitt	49.25
Norman Park	Colquitt	49.25
Omega	Tift	49.60
Pinehurst	Dooly	49.60
Pitts	Wilcox	49.60
Rebecca	Turner	49.60
Reynolds	Taylor	49.90
Rochelle	Wilcox	49.60
Rome	Floyd	49.90
Rutledge	Morgan	49.90
Sendia	Coweta	49.90
Shellman	Randolph	49.25
Social Circle	Walton	49.90
Sycamore	Turner	49.60
Trion	Chattooga	49.90
Unadilla	Dooly	49.60
Vienna	Dooly	49.60
Wadley	Jefferson	49.90
Watkinsville	Oconee	50.20
Waynesboro	Burke	49.90
Winder	Barrow	50.20
Wrightsville	Johnson	49.90
Yatesville	Vpson	49.90
LOUISIANA		
Bemice	Union	48.60
Cheneyville	Rapides	48.60
Columbia	Caldwell	48.80
Delhi	Richland	48.80
Ferriday	Concordia	48.80
Lake Providence	East Carroll	48.80
Mansfield	De Soto	48.60
Mer Rouge	Morehouse	48.80
Monroe	Ouachita	48.80
Natchitoches	Natchitoches	48.60
Neweliton	Tensas	48.80
New Orleans	Orleans	48.80
Oak Grove	West Carroll	48.80
Plain Dealing	Bossier	48.60
Rayville	Richland	48.80
St. Joseph	Tensas	48.80
Tallulah	Madison	48.80
Winnsboro	Franklin	48.80
MISSISSIPPI		
Aberdeen	Monroe	48.85
Batesville	Panola	48.85
Belzoni	Humphreys	48.80
Canton	Madison	48.85
Carthage	Leake	48.85
Clarksdale	Coahoma	48.80
Cleveland	Bolivar	48.80
Como	Panola	48.85
Corinth	Alcorn	48.85
Drew	Sunflower	48.80
Flora	Madison	48.80
Greenville	Washington	48.80
Greenwood	Leflore	48.80
Grenada	Grenada	48.85
Gulfport	Harrison	48.80
Hollandale	Washington	48.80
Holly Springs	Marshall	48.85
Houston	Chickasaw	48.85
Indianola	Sunflower	48.80
Inverness	Sunflower	48.80
Itta Bena	Leflore	48.80
Kosciusko	Attala	48.85
Leland	Washington	48.80
Marks	Quitman	48.80
New Albany	Union	48.85
Paynes	Tallahatchie	48.80
Pontotoc	Pontotoc	48.85
Quitman	Clarke	48.80
Ripley	Tippah	48.85
Rolling Fork	Sharkey	48.80
Rosedale	Bolivar	48.80
Ruleville	Sunflower	48.80
Shaw	Bolivar	48.80
Shelby	Bolivar	48.80
Sledge	Quitman	48.80
Tunica	Tunica	48.80
Tutwiler	Tallahatchie	48.80
Vicksburg	Warren	48.80
Yazoo City	Yazoo	48.80
MISSOURI		
Arbyrd	Dunklin	48.80
Caruthersville	Pemiscot	48.80
Gideon	New Madrid	48.80
Hayti	Pemiscot	48.80
Kennett	Dunklin	48.80
Lilbourn	New Madrid	48.80
Malden	Dunklin	48.80
Portageville	New Madrid	48.80
Sikeston	Scott	48.80

[In cents per pound, net weight; basis SLM white 1 1/16 "4134"]

City	County	Loan rate
New Mexico		
Artesia	Eddy	48.05
Deming	Luna	47.70
Las Cruces	Dona Ana	48.05
Lovington	Lea	48.25
Roswell	Chaves	48.05
North Carolina		
Charlotte	Mecklenburg	50.35
Cherryville	Gaston	50.35
Conway	Northampton	50.20
Dunn	Harnett	50.20
Edenton	Chowan	50.20
Enfield	Halifax	50.20
Fayetteville	Cumberland	50.20
Jackson	Northampton	50.20
Laurenburg	Scotland	50.20
Lincolnton	Lincoln	50.35
Lumberton	Robeson	50.20
Morven	Anson	50.35
Nashville	Nash	50.20
Parkton	Robeson	50.20
Pembroke	Robeson	50.20
Raeford	Hoke	50.20
Red Springs	Robeson	50.20
Roanoke Rapids	Halifax	50.20
Salisbury	Rowan	50.35
Scotland Neck	Halifax	50.20
Shelby	Cleveland	50.35
Smithfield	Johnston	50.20
Tarboro	Edgecombe	50.20
Wagram	Scotland	50.20
Weldon	Halifax	50.20
Wilson	Wilson	50.20
Oklahoma		
Altus	Jackson	48.40
Chickasha	Grady	48.40
Frederick	Tillman	48.40
Mt. View	Kiowa	48.40
South Carolina		
Abbeville	Abbeville	50.35
Allendale	Allendale	50.20
Anderson	Anderson	50.35
Bamberg	Bamberg	50.20
Bennettsville	Marlboro	50.20
Bishopville	Lee	50.20
Calhoun Falls	Abbeville	50.35
Cameron	Calhoun	50.20
Chester	Chester	50.35
Chesterfield	Chesterfield	50.35
Clio	Marlboro	50.20
Columbia	Richland	50.35
Dalzell	Sumter	50.20
Darlington	Darlington	50.20
Dillon	Dillon	50.20
Edgefield	Edgefield	50.35
Elloree	Orangeburg	50.20
Gaffney	Cherokee	50.35
Greenville	Greenville	50.35
Hartsville	Darlington	50.20
Lake City	Florence	50.20
Lamar	Darlington	50.20
Manning	Clarendon	50.20
Manon	Manon	50.20
Newberry	Newberry	50.35
Norway	Orangeburg	50.20
Orangeburg	Orangeburg	50.20
Pinewood	Sumter	50.20
Spartanburg	Spartanburg	50.35
St. Matthews	Calhoun	50.20
Summerton	Clarendon	50.20
Sumter	Sumter	50.20
Timmonsville	Florence	50.20
Williston	Barnwell	50.20
Tennessee		
Brownsville	Haywood	48.85
Covington	Tipton	48.85
Dyersburg	Dyer	48.85
Jackson	Madison	48.85
Memphis	Shelby	48.85
Milan	Gibson	48.85
Ripley	Lauderdale	48.85
Texas		
Abernathy	Hale	48.25
Ballinger	Runnels	48.40
Big Spring	Howard	48.25
Bovina	Parmer	48.25
Brownfield	Terry	48.25
Brownsville	Cameron	48.25
Bryan	Brazos	48.40
Cameron	Milam	48.40
Childress	Childress	48.40
Colorado City	Mitchell	48.40
Cooper	Delta	48.60
Corpus Christi	Nueces	48.40
Corsicana	Navarro	48.40
Crockett	Houston	48.40
Dimmitt	Castro	48.25
Enloe	Delta	48.60
Ennis	Ellis	48.40
Fabens	El Paso	48.05
Floydada	Floyd	48.25
Gainesville	Cooke	48.60
Galveston	Galveston	48.60
Greenville	Hunt	48.60
Hamlin	Jones	48.40
Harlingen	Cameron	48.25
Haskell	Haskell	48.40
Hearne	Robertson	48.40
Hillsboro	Hill	48.40
Houston	Harris	48.60
Hubbard	Hill	48.40
Kenedy	Karnes	48.40
Lamesa	Dawson	48.25
Levelland	Hockley	48.25
Littlefield	Lamb	48.25
Lockhart	Caldwell	48.40
Lockney	Floyd	48.25
Lubbock	Lubbock	48.25
McKinney	Collin	48.60
Memphis	Hall	48.40
Morton	Cochran	48.25
Muleshoe	Bailey	48.25
Navasota	Grimes	48.40
Needville	Fort Bend	48.60
O'Donnell	Lynn	48.25
Paducah	Cottle	48.40
Pecos	Reeves	48.25
Plainview	Hale	48.25
Quanah	Hardeman	48.40
Quitaque	Briscoe	48.25
Ralls	Crosby	48.25
Raymondville	Willacy	48.25
Roaring Springs	Motley	48.40
Rochester	Haskell	48.40
Rule	Haskell	48.40
San Angelo	Tom Green	48.40
Seagraves	Gaines	48.25
Seymour	Baylor	48.40
Slaton	Lubbock	48.25
Snyder	Scurry	48.40
Stamford	Jones	48.40
Stanton	Martin	48.25
Sudan	Lamb	48.25
Sweetwater	Nolan	48.40
Tahoka	Lynn	48.25
Taylor	Williamson	48.40
Temple	Bell	48.40
Texarkana	Bowie	48.60
Tulia	Swisher	48.25
Turkey	Hall	48.25
Vernon	Wilbarger	48.40
Waco	McLennan	48.40
Waxahache	Ellis	48.40

§ 1427.102 Schedule of premiums and discounts for grade and staple length of eligible 1980 crop upland cotton.

Basis Strict Low Middling 1 1/16 Inches, Net Weight

Grade	Code	Staple length (inches): 13/16 through 28/32 (26-29)	15/16 (30)	31/32 (31)	1 (32)	1 1/32 (33)	1 1/16 (34)	1 3/32 (35)	1 1/8 (36)	1 5/32 and longer (37 and longer)
		Points per pound								
White:										
SM and better	(11 and 21)	−600	−505	−400	−260	+20	+195	+225	+260	+365
MID plus	(30)	−615	−520	−420	−280	0	+170	+205	+245	+345
MID	(31)	−625	−535	−430	−290	−15	+150	+185	+230	+325
SLM plus	(40)	−670	−570	−480	−360	−105	+65	+95	+130	+230
SLM	(41)	−695	−600	−510	−405	−165	B	+35	+75	+165
LM plus	(50)	−780	−695	−610	−510	−325	−190	−165	−125	−55
LM	(51)	−830	−745	−655	−565	−405	−280	−255	−220	−190
SGO plus	(60)	−1,045	−975	−905	−850	−735	−670	−660	−635	−635
SGO	(61)	−1,090	−1,030	−955	−900	−805	−750	−745	−720	−720
GO plus	(70)	−1,280	−1,225	−1,170	−1,125	−1,045	1,000	−990	−970	−970
GO	(71)	−1,325	−1,270	−1,215	−1,170	−1,100	−1,065	−1,055	−1,035	−1,035
Light spotted:										
SM and better	(12 and 22)	−650	−560	−465	−350	−75	+75	+110	+145	+240
MID	(32)	−690	−605	−505	−400	−165	−10	+20	+65	+160
SLM	(42)	−785	−720	−630	−535	−330	−275	−255	−210	−180
LM	(52)	−990	−915	−855	−800	−750	−700	−690	−670	−670
Spotted:										
SM and better	(13 and 23)	−840	−780	−725	−655	−435	−410	−405	−375	−375
MID	(33)	−920	−865	−810	−735	−635	−565	−560	−540	−540
SLM	(43)	−1,035	−990	−940	−895	−850	−820	−815	−800	−800
LM	(53)	−1,190	−1,140	−1,100	−1,060	−1,030	−1,020	−1,015	−1,000	−1,000

§ 1427.102 Schedule of premiums and discounts for grade and staple length of eligible 1980 crop upland cotton.

Basis Strict Low Middling 1 1/16 Inches, Net Weight—Continued

Grade	Code	Staple length (inches)								
		13/16 through 29/32 (26–29)	15/16 (30)	31/32 (31)	1 (32)	1 1/32 (33)	1 1/16 (34)	1 3/32 (35)	1 1/8 (36)	1 5/32 and longer (37 and longer)
		Points per pound								
Tinged:[1]										
SM	(24)	−1,085	−1,040	−1,005	−975	−950	−935	−935	−935	−935
MID	(34)	−1,135	−1,085	−1,050	−1,020	−995	−985	−985	−985	−985
SLM	(44)	−1,210	−1,175	−1,150	−1,135	−1,110	−1,105	−1,100	−1,075	−1,075
LM	(54)	−1,335	−1,295	−1,270	−1,250	−1,225	−1,215	−1,210	−1,190	−1,190
Light gray:										
SM and better	(16 and 26)	−790	−695	−605	−475	−200	−20	+25	+75	+170
MID	(36)	−940	−840	−760	−650	−470	−295	−270	−215	−190
SLM	(46)	−1,205	−1,105	−1,035	−970	−850	−770	−740	−695	−695
Gray:										
SM and better	(17 and 27)	−945	−845	−775	−670	−510	−365	−340	−290	−260
MID	(37)	−1,215	−1,115	−1,045	−970	−900	−825	−800	−770	−770
SLM	(47)	−1,495	−1,400	−1,325	−1,275	−1,225	−1,160	−1,140	−1,110	−1,110

[1] Cotton classed as "Yellow Stained" (Middling and better grades) will be eligible for loan, if otherwise eligible, at a discount 200 points greater than the discount applicable to the comparable quality in the color group "Tinged".

Grade symbol: SM—Strict Middling; MID—Middling; SLM—Strict Low Middling; LM—Low Middling; SGO—Strict Good Ordinary; GO—Good Ordinary.

§ 1427.103 Revised schedule of micronaire differences for 1980 crop upland cotton.

Micronaire reading	Points per pound
5.3 and above	−145
5.0 through 5.2	−70
3.5 through 4.9	0
3.3 through 3.4	−95
3.0 through 3.2	−285
2.7 through 2.9	−490
2.6 and below	−720

§ 1427.104 Schedule of loan rates for eligible qualities of 1980 crop extra long staple cotton by location.

[In cents per pound, net weight—Micronaire 3.5 and above][1]

Grade	Staple length (inches)			
	1 3/8 Cotton stored in approved warehouses in		1 7/16 and longer Cotton stored in approved warehouses in	
	Arizona and California	New Mexico, Texas, and other States	Arizona and California	New Mexico, Texas, and other States
1	97.75	98.65	98.25	99.15
2	97.30	98.20	97.75	98.65
3	96.80	97.70	97.30	98.20
4	95.70	96.60	96.10	97.00
5	91.60	92.50	91.85	92.75
6	78.85	79.75	79.10	80.00
7	64.95	65.85	65.15	66.05
8	57.35	58.25	57.60	58.50
9	55.25	56.15	55.50	56.40

[1] A micronaire premium of 75 points (0.75 cent) per pound is included in the loan rate for each eligible quality; thus, the national average loan rate reflected in the above schedule is 94.25 cents per pound. Cotton with micronaire readings below the micronaire range "3.5 and above" will be subject to the discounts in the schedule of micronaire differences for ELS cotton which follows:

§ 1427.105 Schedule of micronaire differences for 1980 crop extra long staple cotton.

Micronaire reading	Points per pound
3.5 and above	0
3.3 through 3.4	−160
3.0 through 3.2	−305
2.7 through 2.9	−570

Signed at Washington, D.C. on August 1, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-24098 Filed 8-8-80; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 80-8]

Loans Originating at Other Than Banking Offices

AGENCY: Office of the Comptroller of the Currency.

ACTION: Reinstatement of Interpretive Ruling.

SUMMARY: The U.S. Court of Appeals for the District of Columbia issued an opinion on June 11, 1980 which reversed a district court judgment that had resulted in rescission of the Office of the Comptroller of the Currency's Interpretive Ruling 7.7380, relating to loans which are originated at other than banking offices. The Office of the Comptroller of the Currency ("Office") is revoking the rescission of Interpretive Ruling 7.7380, effective immediately.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: David Ansell, Attorney, Legal Advisory Services, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219. Telephone: (202) 447-1880.

SUPPLEMENTARY INFORMATION: On March 29, 1979, the Office was ordered by the District Court for the District of Columbia to rescind Interpretive Ruling 7.7380, and on May 15, 1979, the Office did so. 44 Fed. Reg. 29038 (May 18, 1979). Because the District Court's Order has now been vacated by the Court of Appeals, and in accordance with existing procedures, the Office has determined that the rescission of the Interpretive Ruling should be revoked and that public procedures and delayed effectiveness are neither required nor appropriate.

Applications for incorporation of national bank subsidiaries for the purpose of engaging in activities which come within the terms of the Interpretive Ruling will be accepted for filing and processed by the Office pursuant to policies and procedures in effect prior to the rescission.

PRINCIPAL DRAFTER: Shela Turpin, Regulations Analysis Division.

Reinstatement of Interpretive Ruling

Accordingly, § 7.7380 of 12 CFR Part 7 is reinstated, to read as follows:

§ 7.7380 Loans originating at other than banking offices.

(a) A national bank may utilize the services of and compensate persons not employed by the bank for originating loans.

(b) Origination of loans by employees or agents of a national bank or of a subsidiary corporation at locations other than the main office or a branch office of the bank does not violate 12 U.S.C. 36 and 81: *Provided,* That the loans are approved and made at the main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank.

Dated: July 30, 1980.

Lewis G. Odom, Jr.,

Acting Comptroller of the Currency.

[FR Doc. 80-24184 Filed 8-8-80; 8:45 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

[Revision 2, Amendment 12]

13 CFR Part 101

Delegation of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final Rule.

SUMMARY: SBA is delegating increased guaranty loan authority to the Milwaukee, Wisconsin and Springfield, Illinois, Branch Offices. This is intended to speed up the loan approval process.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Paperwork Management Branch, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416. Telephone 202-653-6399.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 is not required and this amendment to Part 101 is adopted without resort to those procedures.

Accordingly, pursuant to authority in Section 5(b) (6) of the Small Business Act, 15 U.S.C. 634, Part 101 Chapter I, Title 13 of the Code of Federal Regulations is amended as follows:

The table in Part I, section A, 1, b of § 101.3-2 is amended as follows:

1. Item 7 is redesignated as item 8 and revised.
2. Item 8 is redesignated as item 9 and revised.
3. Item 9 is redesignated as item 12 and revised.
4. Item 10 is revised.
5. Items 7 and 11 are added.

As redesignated, revised and added, items 7 through 12 read as follows:

§ 101.3-2 Delegations of authority to conduct program activities in field offices.

* * * * *

Part I—Financing Program

Section A—Loan Approval Authority

1. *Business and Handicapped Assistance Loans (Small Business Act) (SB Act).*

* * * * *

b. *Guaranty Loans. 7(a) business loans and 7(l) energy loans only.*

* * * * *

	Approve	Decline
(7) Branch Manager, Milwaukee, WI and Springfield, IL	$500,000	$500,000
(8) Branch Manager, Buffalo and Elmira, NY	350,000	500,000
(9) Branch Manager, Except Fairbanks, AK, Buffalo, Elmira, NY, Milwaukee, WI and Springfield, IL B/O	250,000	500,000
(10) Branch Manager, Fairbanks, AK B/O only	150,000	150,000
(11) Assistant Branch Manager for F&I, Milwaukee, WI and Springfield, IL B/O	350,000	500,000
(12) Assistant Branch Manager for F&I, Biloxi, MS B/O	250,000	500,000

* * * * *

Dated: July 28, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-23850 Filed 8-8-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Airworthiness Docket No. 80-ASW-3; Amdt. 39-3868]

Airworthiness Directives; Mooney Aircraft Corp. Model M20J Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that was applicable to Mooney Model M20J airplanes equipped with a Rochester Model 3060-18 oil pressure transducer. The new AD requires modification of the oil pressure sensing system to provide for sufficient clearance between the oil pressure transducer and the engine mount. This modification will eliminate the potential for contact between the oil pressure transducer fitting and the engine mount and resultant oil leaks.

DATES: Effective August 18, 1980. Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Martin J. Saunders, Propulsion Section (ASW-214), Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Adminstration, Post Office Box 1689, Fort Worth, Texas 76101; telephone (817) 624-4911, extension 525.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment 39-3725 (45 FR 20780), AD 80-07-12, which currently requires a one-time clearance inspection between the oil pressure transducer with its 45-degree fittings and the engine mount. Subsequent to the issuance of that AD, Mooney Aircraft Corporation developed an alternate mounting arrangement which eliminates one of the 45-degree elbow fittings and mounts the oil pressure transducer directly to the engine mount thereby providing ample clearance with all surrounding engine components. Since it is possible for the oil pressure transducer misalignment situation to occur unless the installation is modified, the FAA is superseding Amendment 39-3725 (AD 80-07-12) to require modification of the oil pressure sensing system.

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations (41 CFR 39.13) is amended by adding a new airworthiness directive to read as follows:

Mooney: Applies to Model M20J airplanes Serial Numbers 24-0084, 24-0378 through 24-0906, 24-0908 through 24-0925, 24-0927 through 24-0942, and 24-0946 (Airworthiness Directive Docket No. 80-ASW-3).

Compliance: Required as indicated unless already accomplished. To prevent total loss of engine oil, accomplish the following:

(a) Before further flight, unless already accomplished, remove the top cowl and inspect the positioning of the Rochester Model 3060-18 oil pressure transducer and the condition of the two 45-degree elbows as follows:

(1) Clean the oil pressure transducer fitting and the two 45-degree fittings with an oil soluble solvent.

(2) Inspect the Rochester Model 3060-18 oil pressure transducer for any evidence of contact with the engine mount. If damage is present, remove and replace it before verifying the clearance outlined in paragraph (a)(3).

(3) Verify a minimum of 0.40 inch clearance between the Rochester Model 3060-18 oil pressure transducer body and the upper right hand engine mount ring and between the Rochester Model 3060-18 oil pressure transducer and the two 45-degree elbow fittings and the engine mount tube. If any clearance is less than 0.40 inch, rotate the oil pressure transducer and its fittings to obtain this minimum clearance.

Note.—Measure the 0.40 inch in an arc perpendicular to the crankshaft centerline. When this clearance exists the oil pressure transducer is almost contacting the vacuum pump body.

(4) Start and operate the engine until it is warm enough to respond smoothly to throttle changes (monitor oil temperature and cylinder head temperature gauges to maintain temperatures within limits), then stop the engine.

(5) Inspect the oil pressure transducer and its fittings for any signs of oil leakage.

(6) If any signs of oil leakage are detected, comply with paragraph (b) of this AD before further flight.

(b) Within the next 25 hours' time in service after the effective date of this AD, unless already accomplished, modify the mounting provisions of the oil pressure transducer as follows:

(1) Remove the top cowl.

(2) Disconnect the wire from the oil pressure transducer, P/N 3060-18, and remove the transducer from the 45-degree fitting; retain for reinstallation.

(3) Remove the 45-degree fitting which was attached to the transducer. Leave the 45-degree fitting installed in the engine case port.

(4) Connect an AN 816-3 adapter to this 45-degree fitting.

(5) Connect the flex hose, P/N S94B90145, to this adapter and the other end, ⅛ inch pipe thread, to the transducer; use Tite Seal on all pipe threads. Position hose and fittings to obtain a clearance of .20 inch between hose socket and vacuum pump housing.

(6) Route the transducer and hose under the upper right hand engine mount tubes and secure the upper outboard tube with an AN742D25 and an MS21919DG8 clamp and an AN3-5A bolt, two AN960-10 washers and an AN363-1032 nut; the smaller clamp, MS21919DG8, clamps around the engine mount tube and the larger clamp, AN742D25, clamps around the transducer body as shown in Figure 1.

(7) Connect the ground wire, Wire No. 21DH04C20, under the bolt head holding the clamps together and to the landing light ground located on the firewall.

(8) Secure the hose to the engine mount with TY-RAP, MS3367-1, ensuring clearance between adjacent components.

(9) Reconnect the oil pressure gauge wire to the transducer connection post.

(10) Run the engine and check for oil leaks at the fittings connecting the flex hose and the engine and the flex hose and the oil pressure transducer. If leaks are noted, correct this situation before proceeding. Check the operation of the oil pressure gauge.

Note.—Secure bottom cowling or remove prior to engine run.

(11) Replace cowling and secure all connections.

Note.—Mooney Service Bulletin No. M20-221, "Oil Pressure Transducer Installation Modification," pertains to this same subject.

(c) Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to fly airplanes to a base where this AD can be accomplished.

(d) Any alternate equivalent method of compliance with this airworthiness directive must be approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

This amendment supersedes Amendment 39-3725 (45 FR 20780) AD 80-07-12.

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)); 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 28, 1979).

Issued in Forth Worth, Texas on July 28, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

BILLING CODE 4910-13-M

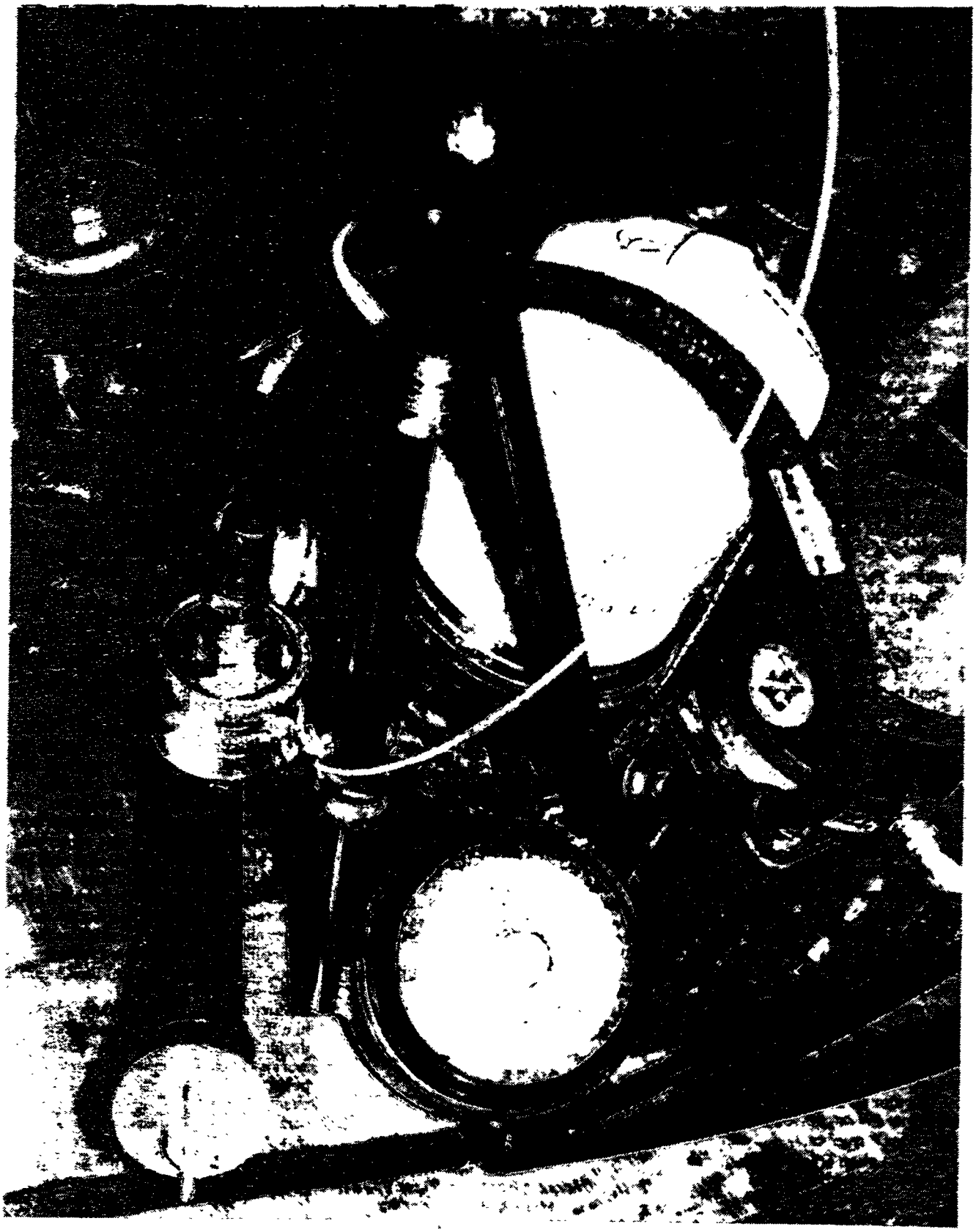

FIGURE 1

[FR Doc. 80-24065 Filed 8-8-80; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 80-SO-43; Amdt. No. 39-3872]

Airworthiness Directives; Piper PA-31, PA-31-325 and PA-31-350 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the inspection and, if necessary, replacement of the elevator balance weights, and the reidentification of both elevators on certain Piper PA-31, PA-31-325 and PA-31-350 series airplanes. The AD is prompted by a report of an incorrect elevator balance weight installation which could result in elevator flutter.

DATES: Effective August 11, 1980. Compliance required within the next 50 hours time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Piper Aircraft Corporation, Lock Haven Division, Lock Haven, Pennsylvania 17745, telephone (707) 748-6771.

A copy of the service bulletin is also contained in The Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Norman Berry Drive, East Point, Georgia 30320

FOR FURTHER INFORMATION CONTACT: Tom Rice, ASO-212, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There has been a report of an incorrect balance weight installation on a Piper PA-31-325 airplane, which could result in elevator flutter. Since this condition is likely to exist on other airplanes of the same type design, an Airworthiness Directive is being issued which requires the inspection of the elevator balance weights, the reidentification of both elevators, and if necessary, replacement of the elevator balance weights on certain Piper PA-31, PA-31-325 and PA-31-350 series airplanes.

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

Adoption of the Amendment

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

Piper Aircraft Corporation: Applies to the following Piper models of airplanes certificated in all categories: PA-31 and PA-31-325, S/N 31-7401201 through 31-8012076, 31-8012078, and 31-8012079; and PA-31-350, S/N 31-7405401 through 31-8052169 and 31-8052172.

Compliance is required within the next 50 hours time in service after the effective date of this AD unless already accomplished. To ensure flutter integrity of the elevator system, accomplish the following:

(a) Inspect the elevator balance weights for correct dimensions, and, if necessary, install correct elevator balance weights in accordance with Piper Aircraft Corporation Service Bulletin No. 690, dated July 7, 1980, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

(b) Revise the part numbers on both elevators in accordance with Piper Aircraft Corporation Service Bulletin No. 690, dated July 7, 1980, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

(c) Make appropriate maintenance record entry.

This amendment becomes effective August 11, 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)); 14 CFR 11.89)

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). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in East Point, Georgia, on July 29, 1980.

Louis J. Cardinali,
Director, Southern Region.

[FR Doc. 80-24064 Filed 8-8-80; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-SO-41; Amdt. No. 39-3874]

Airworthiness Directives; Piper PA-31, PA-31-325 and PA-31-350 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires a one-time check to insure that placards located on the instrument panel and cockpit floor area are correct and readable on certain Piper Model PA-31, PA-31-325 and PA-31-350 series airplanes. The AD is prompted by a discovery during an FAA inspection that certain installed instrument panel placards were in error which could result in the pilot using incorrect airspeeds during normal and emergency procedures. Also, some floor area placards and emergency landing gear extension equipment were covered with floor runners making them inaccessible to the pilot.

DATE: Effective August 13, 1980. Compliance within the next 50 hours time in service unless already accomplished.

ADDRESSES: The applicable service bulletins may be obtained from Piper Aircraft Corporation, 820 E. Bald Eagle Street, Lock Haven, Pennsylvania 17745.

A copy of the service bulletin is also contained in the Rules Docket, Room 275, 3400 Norman Berry Drive, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: R. J. Sample, Flight Test Section, ASO-216, Flight Standards Division, FAA, Southern Region, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone (404) 763-7446.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain instrument panel placards may have been installed with incorrect information and that emergency landing gear extension placards and operating equipment may be covered by floor runners on certain Piper Model PA-31, PA-31-325 and PA-31-350 series airplanes. These conditions could result in the pilot using incorrect airspeeds during normal or emergency procedures and make the emergency landing gear extension procedures and equipment inaccessible to the pilot.

Since this condition is likely to exist in other airplanes of the same type design produced at the Piper Lakeland facility, an Airworthiness Directive is being issued which requires a one-time check of cockpit placards to insure correct instrument panel placards are installed and that cockpit floor area placards and equipment are not made inaccessible by floor runners on certain Piper PA-31, PA-31-325 and PA-31-350 series airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and

public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

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

Piper Aircraft Corporation: Applies to Model PA-31 and PA-31-325 airplanes, Serial Numbers 31-7401201 through 31-8012072; and PA-31-350 airplanes, Serial Numbers 31-7405401 through 31-8052162 certificated in all categories.

Compliance is required as indicated unless already accomplished.

To prevent the possible use of incorrect airspeed information during normal and emergency operations and to insure accessibility to emergency landing gear extension placards and operating equipment, accomplish the following within the next 50 hours time in service after the effective date of this AD:

(a) Check for the following placards on these airplanes to insure they are correct and accessible:

(1) Piper PA-31 Serial Numbers 31-7401201 through 31-8012072.

On top right side of instrument panel:

THIS AIRCRAFT MUST BE OPERATED AS A NORMAL CATEGORY AIRPLANE IN COMPLIANCE WITH THE OPERATING LIMITATIONS STATED IN THE FORM OF PLACARDS, MARKINGS AND MANUALS. NO ACROBATIC MANEUVERS (INCLUDING SPINS) APPROVED.

For Serial Numbers 31-7401201 through 31-7612110: FOR TYPES OF OPERATION SEE AIRPLANE FLIGHT MANUAL.

For Serial Numbers 31-7712001 through 31-8012072: FOR TYPES OF OPERATION SEE PILOT'S OPERATING HANDBOOK.

On top left side of instrument panel:

For Serial Numbers 31-7401201 through 31-7612110:

MINIMUM CONTROL SPEED.....85 MPH
MAXIMUM SPEED LANDING GEAR OPERATION.....150 MPH
DESIGN MANEUVERING SPEED.....183 MPH

SEE AIRPLANE FLIGHT MANUAL FOR ADDITIONAL SPEEDS.

For Serial Numbers 31-7712001 through 31-7712103:

MINIMUM CONTROL SPEED.....76 KIAS
MAXIMUM SPEED LANDING GEAR OPERATION.....129 KIAS
DESIGN MANEUVERING SPEED.....159 KIAS

SEE PILOT'S OPERATING HANDBOOK FOR ADDITIONAL SPEEDS.

For Serial Numbers 31-7812001 through 31-8012072:

MINIMUM CONTROL SPEED.....76 KIAS
MAXIMUM SP. LG—RET. 129 KIAS.....EXTEND 156 KIAS
DESIGN MANEUVERING SPEED.....159 KIAS

SEE PILOT'S OPERATING HANDBOOK FOR ADDITIONAL SPEEDS.

On floor between pilot and copilot seats, check the following two placards for accessibility:

EMERGENCY GEAR EXTENSION

REMOVE COVER—EXTENSION INSTRUCTIONS ON REVERSE SIDE

On underside of emergency gear extension door:

EMERGENCY GEAR EXTENSION

1. PLACE GEAR SELECTOR HANDLE IN DOWN POSITION.
2. PULL EMERGENCY PUMP HANDLE OUT AS FAR AS POSSIBLE.
3. PUMP HANDLE UP AND DOWN UNTIL ALL 3 GREEN LIGHTS COME ON. CONTINUE PUMPING UNTIL PRESSURE BUILDS UP AND SELECTOR HANDLE RETURNS TO NEUTRAL.

(2) Piper PA-31-325, Serial Numbers 31-7512001 through 31-8012072.

On top right side of instrument panel:

THIS AIRCRAFT MUST BE OPERATED AS A NORMAL CATEGORY AIRPLANE IN COMPLIANCE WITH THE OPERATING LIMITATIONS STATED IN THE FORM OF PLACARDS, MARKINGS AND MANUALS. NO ACROBATIC MANEUVERS (INCLUDING SPINS) APPROVED.

For Serial Numbers 31-7512001 through 31-7612110: FOR TYPES OF OPERATION SEE AIRPLANE FLIGHT MANUAL.

For Serial Numbers 31-7712001 and Up: FOR TYPES OF OPERATION SEE PILOT'S OPERATING HANDBOOK.

On left side, center of pilot's panel:

For Serial Numbers 31-7512001 through 31-7612110:

MINIMUM CONTROL SPEED.....85 MPH
MAXIMUM SPEED LANDING GEAR OPERATION.....150 MPH
DESIGN MANEUVERING SPEED.....183 MPH

SEE AIRPLANE FLIGHT MANUAL FOR ADDITIONAL SPEEDS.

For Serial Numbers 31-7712001 through 31-7712103:

MINIMUM CONTROL SPEED.....71 KIAS
MAXIMUM SPEED LANDING GEAR OPERATION.....127 KIAS
DESIGN MANEUVERING SPEED.....155 KIAS

SEE PILOT'S OPERATING HANDBOOK FOR ADDITIONAL SPEEDS.

For Serial Numbers 31-7812001 through 31-8012072:

MINIMUM CONTROL SPEED.....71 KIAS
MAXIMUM SP. LG—RET. 127 KIAS.....EXTEND 152 KIAS
DESIGN MANEUVERING SPEED.....155 KIAS

SEE PILOT'S OPERATING HANDBOOK FOR ADDITIONAL SPEEDS.

On floor between pilot and copilot seats, check the following two placards for accessibility:

EMERGENCY GEAR EXTENSION

REMOVE COVER—EXTENSION INSTRUCTIONS ON REVERSE SIDE

On underside of emergency gear extension door:

EMERGENCY GEAR EXTENSION

1. PLACE GEAR SELECTOR HANDLE IN DOWN POSITION.
2. PULL EMERGENCY PUMP HANDLE OUT AS FAR AS POSSIBLE.
3. PUMP HANDLE UP AND DOWN UNTIL ALL 3 GREEN LIGHTS COME ON. CONTINUE PUMPING UNTIL PRESSURE BUILDS UP AND SELECTOR HANDLE RETURNS TO NEUTRAL.

On pedestal adjacent engine controls (when air conditioning is installed):

AIR CONDITIONING OFF FOR SINGLE ENGINE OPERATION

Above airspeed indicator:

For Serial Numbers 31-7512001 through 31-7612110: ABOVE 12,000 FEET REDUCE V_{NE} SPEED 3 MPH PER 1,000 FEET.

For Serial Numbers 31-7712001 through 31-8012072: ABOVE 12,000 FEET REDUCE V_{NE} SPEED 2.6 KTS PER 1,000 FEET.

Adjacent to airspeed indicator:

For Serial Numbers 31-7512001 through 31-7612110: ABOVE 21,000 FEET REDUCE V_{NO} SPEED 3 MPH PER 1,000 FEET.

For Serial Numbers 31-7712001 through 31-8012072: ABOVE 21,000 FEET REDUCE V_{NO} SPEED 2.6 KTS PER 1,000 FEET.

(3) Piper PA-31-350, Serial Numbers 31-7405401 through 31-8052162.

On top right side of instrument panel:

THIS AIRCRAFT MUST BE OPERATED AS A NORMAL CATEGORY AIRPLANE IN COMPLIANCE WITH THE OPERATING LIMITATIONS STATED IN THE FORM OF PLACARDS, MARKINGS AND MANUALS. NO ACROBATIC MANEUVERS (INCLUDING SPINS) APPROVED.

For Serial Numbers 31-7405401 through 31-7652176: FOR TYPES OF OPERATION SEE AIRPLANE FLIGHT MANUAL.

For Serial Numbers 31-7752001 and Up: FOR TYPES OF OPERATION SEE PILOT'S OPERATING HANDBOOK.

On top left side of instrument panel:

For Serial Numbers 31-7405401 through 31-7652176:

MINIMUM CONTROL SPEED..... 90 MPH
MAXIMUM SPEED LANDING GEAR OPERATION.....150 MPH
DESIGN MANEUVERING SPEED.....186 MPH

SEE AIRPLANE FLIGHT MANUAL FOR ADDITIONAL SPEEDS.

For Serial Numbers 31-7752001 through 31-7752201:

MINIMUM CONTROL SPEED..... 76 KIAS
MAXIMUM SPEED LANDING GEAR OPERATION.....128 KIAS
DESIGN MANEUVERING SPEED.....160 KIAS

SEE PILOT'S OPERATING HANDBOOK FOR ADDITIONAL SPEEDS.

For Serial Numbers 31-7852001 through 31-8052162:

MINIMUM CONTROL SPEED..... 76 KIAS
MAXIMUM SP. LG—RET. 128 KIAS EXTEND.....153 KIAS
DESIGN MANEUVERING SPEED.....160 KIAS

SEE PILOT'S OPERATING HANDBOOK FOR ADDITIONAL SPEEDS.

On floor between pilot and copilot seats, check the following two placards for accessibility:

EMERGENCY GEAR EXTENSION

REMOVE COVER—EXTENSION INSTRUCTIONS ON REVERSE SIDE

On underside of emergency gear extension door:

EMERGENCY GEAR EXTENSION

1. PLACE GEAR SELECTOR HANDLE IN DOWN POSITION.
2. PULL EMERGENCY PUMP HANDLE OUT AS FAR AS POSSIBLE.
3. PUMP HANDLE UP AND DOWN UNTIL ALL 3 GREEN LIGHTS COME ON. CONTINUE PUMPING UNTIL PRESSURE BUILDS UP AND SELECTOR HANDLE RETURNS TO NEUTRAL.

On pedestal adjacent engine controls (when air conditioning is installed):

AIR CONDITIONING OFF FOR SINGLE ENGINE OPERATION

(b) If aircraft is equipped with floor runners to protect carpeting, an opening must be cut in the runner to match opening in carpet in order to provide access to Emergency Gear Extension Cover.

(c) Replace incorrect or missing placards with correct placards.

Note.—Placards may be obtained from Piper Aircraft Corporation, Lakeland Division, 3000 Medula Road, Lakeland, Florida 33803, telephone (813) 646-2911.

(d) When (a) through (c) above are accomplished, make an appropriate maintenance record entry. These actions may be accomplished by a pilot as provided in FAR 43.3(h).

An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

Note.—Piper Service Bulletin 688 pertains to this subject.

This amendment becomes effective August 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)); 14 CFR 11.89)

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

Issued in East Point, Georgia, on July 30, 1980

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-24060 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-NW-5-AD; Amdt. 39-3823]

Airworthiness Directives; Boeing Model 727-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This document corrects a final rule published at 45 FR 43696, June 30, 1980 concerning an airworthiness directive on Boeing Model 727-200 Series airplanes.

This amendment corrects a reference to an airplane line number, adds a provision crediting previous accomplishment of the required one-time inspection within a specified time, and further extends the effective date.

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

SUPPLEMENTARY INFORMATION: In the amendment published herein on June 30, 1980 (45 FR 43696), an error was made in the informational note which appears in the lead-in paragraph. The note identified airplanes which are not affected by the amendment as beginning with line number 1364 when it should have read line number 1512. Further, no provision was made in the final rule crediting accomplishment of the one-time inspection made prior to the effective date of the AD. Many operators made an inspection upon publication of the NPRM, and it was not FAA's intent to have this inspection repeated. Finally, the effective date of the amendment, as corrected, is corrected further and extended to September 10, 1980, to afford affected parties ample notice of these changes.

Since these changes are either clarifying or relieving in nature, notice and public procedure thereon are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 80-19557, appearing at page 43697 in the issue of Monday, June 30, 1980, as corrected in the issue of Thursday, July 17, 1980, page 47838, is amended as follows:

1. The effective date is changed to September 10, 1980.
2. The words "line number 1364" appearing in the note in the lead-in paragraph of the amendment are changed to read "line number 1512".
3. The words "Unless already accomplished on or after March 3, 1980" are added to the beginning of paragraph A of the amendment.

(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 provisions 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 August 1, 1980.

E. O. Conner,

Acting Director, Northwest Region.

[FR Doc. 80-24178 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-EA-49]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area; Durhamville, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates a Durhamville, N.Y., Transition Area over Kamp Airport, Durhamville, N.Y. This designation will provide protection to aircraft executing the new VOR RWY 28 instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 GMT September 4, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas Ambrose, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: On page 3921 of the Federal Register for January 21, 1980, the F.A.A. published an NPRM proposing to designate the Durhamville, N.Y., Transition Area. The rule amends Subparts F & G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area over Kamp Airport. The airport will be overlaid by a 700-foot area and controlled in an area generally northeast out to 13 miles, to the east out to 32 miles and around to the south, and southwest out to 24 miles of the airport. There had been several objections to the proposed rule from the users of Kamp Airport which suggest that the rule will overly complicate the use of Kamp Airport, particularly by student pilots. However, the proposed transition area is required to protect the instrument approaches to the airport. Interested parties were given an opportunity to submit comments. No other objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subparts F & G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 GMT September 4, 1980, as published.

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

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 17, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

§ 71.181 [Amended]

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulatons by designating a 700-foot floor transition area at Durhamville, N.Y. as follows:

Durhamville, N.Y.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center 43°08'07"N., 75°38'54"W. of Kamp Airport within 2.5 miles each side of 059° bearing of Kamp Airport, extending from the 6.5-mile radius area to 7 miles northeast of the airport; within 5 miles each side of the 107° bearing of Kamp Airport extending from the 6.5-mile radius area to 26 miles east of the airport; within an 18.5-mile radius of the center of the Airport extending from the 6.5-mile radius area extending clockwise from a 122° bearing from the center of the airport to a 235° bearing from the center of the airport.

[FR Doc. 80-24057 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-WE-7]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

Designation of Control Zone; Mesa, Ariz.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a new control zone for Falcon Field Airport, Mesa, Arizona. This action will provide controlled airspace for aircraft conducting instrument operations at the Falcon Field Airport.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. Telephone (213) 536-6182.

SUPPLEMENTARY INFORMATION:

History

On June 23, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a new control zone for Falcon Field Airport, Mesa, Arizona. This action will provide controlled airspace for aircraft conducting instrument operations at Falcon Field Airport. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No objections were received. This action is the same as that proposed in the notice. Section 71.171 was republished in the **Federal Register** on January 2, 1980, (45 FR 356).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT October 30, 1980, as follows:

1. Amend § 71.171 of Part 71, Federal Aviation Regulations to read:

Falcon Field, Mesa, Ariz.

Within a three mile radius of Falcon Field Airport (latitude 33°27'35" N., longitude 111°43'39" W.) excluding the portion within the Chandler, Arizona (Williams Air Force Base) control zone and control zone extension. This control zone is effective from 0600 to 2100 hours, local time, daily or during the specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory.

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

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

Issued in Los Angeles, California, on July 29, 1980.

H. C. McClure,

Acting Director, Western Region.

[FR Doc. 80-24058 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71

[Airspace Docket No. 80-EA-7]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area; Beaver Falls, Pa.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will alter the Beaver Falls, Pa., Transition Area over Beaver County Airport, Beaver Falls, Pa. This alteration will provide protection to aircraft executing the proposed new Instrument Landing System (ILS) Runway 10 instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach

EFFECTIVE DATE: 0901 GMT September 4, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas Ambrose, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: On page 26079 of the **Federal Register** for April 17, 1980, the FAA published an NPRM proposing the subject rule. The rule will amend Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Beaver Falls, Pa., Transition Area. The airport is presently overlaid by a 700-foot transition area which will be expanded in all directions by approximately 2 miles. Interested parties were given an opportunity to submit comments. No objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT September 4, 1980, as published.

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

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 28, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

1. Amend § 71.181 of the Federal Aviation Regulations so as to amend the description of the Beaver Falls, Pennsylvania 700-foot floor transition area as follows:

Delete the text in its entirety and substitute the following: "That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center 40°46'21" N., 80°23'37" W. of Beaver County Airport, Beaver Falls, Pa., and within 2 miles of each side of the Elwood City, Pa. VORTAC 248° radial extending easterly from the 6.5-mile radius area to the VORTAC, excluding that portion which overlies the East Liverpool, Ohio transition area."

[FR Doc. 80-24061 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 77-SO-51]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates additional airspace in the Atlanta, Georgia, Transition Area. This action provides controlled airspace required to protect instrument flight operations at the McCollum Airport.

EFFECTIVE DATE: 0901 GMT, September 4, 1980.

ADDRESS: Federal Aviation Administration Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on Thursday, November 10, 1977 (42 FR 58539), which proposed to designate additional controlled airspace to protect aircraft performing IFR operations at McCollum Airport, Marietta, Georgia.

The Departments of the Air Force and the Navy have sustained objections since 1977 to the instrumentation of McCollum Airport. The contention is that IFR operations at McCollum will cause delays to military aircraft operations at Dobbins Air Force Base.

Air traffic control radar coverage is adequate for transponder equipped aircraft executing the proposed VOR/DME RWY 11 standard instrument approach procedure at McCollum. Air traffic control service can be safely provided at McCollum Airport with minimal impact upon operations at Dobbins AFB. The McCollum Airport operating status is hereby changed from VFR to IFR.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, September 4, 1980, by adding the following:

Atlanta, Ga.

. . . within a 10.5-mile radius of McCollum Airport, Marietta, Georgia (Lat. 34°00'47"N., Long. 84°35'55"W.), excluding the portion within the Carterville, Georgia, transition area . . .

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44FR 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 East Point, Georgia, on July 30, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-24063 Filed 8-8-80; 8:45 a.m.]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-WE-8]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters a portion of the Placerville, California 700-foot transition area. This action redescribes the controlled airspace required to protect instrument flight operations at the Placerville Airport.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone: (213) 536-6182.

SUPPLEMENTARY INFORMATION:

History

On July 3, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area for Placerville, California (45 FR 45306). Redesignation of this transition area will provide controlled airspace for protection of instrument operations at the Placerville Airport. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 was republished in the **Federal Register** on January 2, 1980, (45 FR 445).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the transition area at Placerville, California. This transition area provides protection for instrument operations authorized for the Placerville Airport. This amendment increases air traffic safety and improves flow control procedures.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, October 30, 1980, as follows:

71.181 Placerville, Calif.

Delete all following . . . "within four miles each side of the . . ." and substitute therein; . . . "Hangtown, California VOR (latitude 38°43'31"N., longitude 120°44'52"W.) 242° radial extending from four mile radius area to eleven miles southwest of the VOR."

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

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

Issued in Los Angeles, California, on July 29, 1980.

H. C. McClure,

Acting Director, Western Region.

[FR Doc. 80-24066 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-EA-67]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area: Binghamton, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will alter the Binghamton, N.Y., Transition Area over Broome County Airport, Binghamton, N.Y. This alteration will provide protection to aircraft executing an amended VOR/DME Runway 28 instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 GMT September 4, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas N. Ambrose, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: On page 26080 of the **Federal Register** for April 17, 1980, the FAA published an NPRM proposing the subject rule. The airport is presently overlaid by a 700-foot area to which will be added a portion of controlled airspace approximately five miles long and nine miles wide to the northeast side of the transition area. Interested parties were given an opportunity to submit comments. No objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT September 4, 1980, as published.

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

Note.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 22, 1980.

Murray E. Smith,

Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Binghamton, N.Y., 700-foot floor transition area as follows:

In the text delete, "within 2 miles each side of the airport ILS localizer SE course extending from the 7-mile radius area to the Nimmons RBN;" and substitute therefor, "within 2 miles each side of the airport ILS localizer SE course extending from the 7-mile radius area to the Nimmons RBN; within 4.5 miles each side of the Binghamton VORTAC 068°-248° radial extending NE from the 7-mile radius area to 21.5 miles northeast of the VORTAC;"

[FR Doc. 80-24022 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-EA-28]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone: Hampton Roads, Va.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: final rule.

SUMMARY: This rule will alter the Hampton Roads, Va., Control Zone by changing the description so as to delete the two control zone extensions. This change results from a re-evaluation of the controlled airspace needed for the Langley Air Force Base terminal area.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas Ambrose, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: This amendment relaxes the rule by reducing the amount of controlled airspace. Thus, the amendment does not impose any additional burden on any person. In view of the foregoing, notice and public procedure hereon are unnecessary, and the rule may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective upon publication in the **Federal Register**, as follows:

Amend Section 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Langley AFB, Hampton Roads, Virginia, Control Zone by deleting the description and substituting therefor, "Within a 5-mile radius of Langley AFB, Hampton Roads, VA., (37°05'05"N., 76°21'25"W.)."

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

Note.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this

action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 22, 1980.

Murray E. Smith,

Director, Eastern Region.

[FR Doc. 80-24023 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-EA-41]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Control Zone: State College, Pa.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will designate a State College, Pa. Control Zone over University Park Airport, State College, Pa. This designation will provide protection to aircraft executing instrument approaches which have been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 GMT September 4, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas Ambrose, Airspace and Procedures Branch, AEA-530, Air Traffic Dvision, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York, 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: On page 3329 of the **FEDERAL REGISTER** for January 17, 1980, the F.A.A. published an NPRM to designate a State College, Pa. Control Zone. The rule will amend Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a State College, Pa. Control Zone. The zone will control a portion of airspace approximately five miles in radius around the airport and an additional 5.5 miles within a 2 mile wide extension to the northeast. Interested parties were given time in which to submit comments. No objections had been received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT September 4, 1980, as published.

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

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 21, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

State College, Pa.

Within a 5-mile radius of University Park Airport (40°50'57" N., 77°50'54" W.), within 1 mile each side of University Park Airport Runway 24 centerline, extending from the 5-mile radius zone to 5.5-miles northeast of the Runway 24 approach end. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport-Facility Directory.

[FR Doc. 80-24021 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-EA-31]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone: Elmira, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will alter the Elmira, N.Y., Control Zone by deleting the control zone extension based on Runway 1. The change is required by the closing of Runway 1 at Chemung County Airport. This change is editorial and results from a local change to the name of the airport.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas Ambrose, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: The amendment relaxes the rule by reducing the amount of controlled airspace. Thus, the amendment does not impose any additional burden on any person. In view of the foregoing, notice and public procedure hereon are unnecessary, and the rule may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective upon publication in the **Federal Register**, as follows:

Amend Section 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Elmira, New York Control Zone by deleting: "within 2 miles each side of the centerline of Runway 1 extended northerly from the 5-mile radius zone for 3 miles;"

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

The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 22, 1980.

Murray E. Smith,

Director, Eastern Region.

[FR Doc. 80-24016 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 378

Amendment to Export Administration Regulations To Conform to Commodity Control List

Correction

In FR Doc. 80-18860 appearing on page 43139 in the issue of Wednesday, June 25, 1980, make the following correction:

On page 43143, first column, insert the following footnote for § 378.3(b):

BILLING CODE 1505-01-M

[3] Such activities may also require a specific authorization from the Secretary of Energy pursuant to § 57.b(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR Part 810.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, and 270

[Docket No. RM80-6; Order No. 98]

Pricing of Pipeline Production Under the Natural Gas Act

Issued: August 4, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Under section 2(21)(B) of the Natural Gas Policy Act of 1978 (NGPA) and § 270.203 of the Commission's regulations, sales of natural gas by pipelines or distributors are not first sales, and thus not subject to NGPA prices, unless the gas is comprised exclusively of production volumes of natural gas from identifiable wells, properties or reservoirs that are owned by the pipeline of distributor. Therefore, sales of volumes of interstate pipeline production that are commingled with purchased gas prior to sale remain subject to the Commission's pricing authority under the Natural Gas Act (NGA).

The Commission is adopting regulations under the NGA governing the pricing of interstate pipeline production sold in mixed volume sales. These regulations continue the Commission's policy of parity of treatment by permitting pipeline production that is now priced by reference to independent producer area or nationwide rates to be priced by reference to the maximum lawful price that would have been applicable under Title I of the NGPA if the gas had been sold in a first sale. Natural gas that is now priced on a cost-of-service basis will continue to be subject to the cost-of-service pricing treatment.

EFFECTIVE DATE: The final rule is effective September 3, 1980.

FOR FURTHER INFORMATION CONTACT:
Suan Tomasky, Office of the General Counsel, 825 North Capitol Street, NE., Room 8111, Washington, D.C. 20426. (202) 357-8461.
or
Ray Beirne, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Room 5100C, (202) 357-9371.

I. Introduction.

A. *Statutory Framework*

Interstate pipelines, in addition to transporting gas owned by others, acquire gas and sell it to their customers, either by purchasing it or by producing it themselves. Under the Natural Gas Policy Act of 1978 (NGPA), if gas is sold to an interstate pipeline in a first sale,[1] the producer (or other seller) may sell it to the pipeline at the NGPA ceiling price.[2] When the interstate pipeline sells gas acquired in a first sale, the NGPA's "guaranteed passthrough" provision precludes the Commission from denying passthrough of the acquisition cost of the gas (if below the applicable NGPA ceiling) unless the amount paid was excessive due to fraud, abuse or similar grounds.[3] On the other hand, if the pipeline does not acquire the gas in a first sale, neither the NGPA ceiling prices nor the "guaranteed passthrough" provision applies.

Section 2(21) of the NGPA and Order No. 58[4] define the circumstances under which a pipeline's acquisition of natural gas would be treated as a first sale. As a general matter, if the gas is acquired from another pipeline or from a distributor it is not a first sale.[5] If the gas is acquired from a person (other than a pipeline or distributor), whether affiliated or unaffiliated with the interstate pipeline, the gas is acquired in a first sale and both the NGPA ceiling prices and the "guaranteed passthrough" provision apply.[6] Thus, as more fully described below, if a pipeline's producing affiliate sells to the pipeline, that sale is a first sale; on the other hand, if gas acquired by a pipeline is produced from wells owned directly by the pipeline, there is neither a first sale to the pipeline under Order No. 58 nor a guaranteed passthrough. In the case of an interstate pipeline acquiring gas other than in a first sale, both the acquisition and sale are governed by the Natural Gas Act (NGA).

This rulemaking, commenced contemporaneously with the issuance of Order No. 58, addresses the Commission's policy under the NGA respecting gas acquired (other than in a first sale) by an interstate pipeline from its own production.

B. *Pipeline and Affiliate Production*

In addition to determining the circumstances under which a pipeline's acquisition of natural gas is a first sale, Section 2(21) of the NGPA also determines which sales by pipelines or distributors are first sales under the NGPA. Subparagraph (B) of Section 2(21) provides that first sales "shall not include the sale of any volume of natural gas by an interstate pipeline, intrastate pipeline, or local distribution company, or an affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or affiliate thereof." The Commission in Order No. 58 interpreted the word "attributable" to mean "comprised exclusively of production volumes of natural gas from identifiable wells, properties, or reservoirs which are owned by such pipeline or distributor."[7]

However, only a limited amount of pipeline or distributor owned production is committed from an identifiable source or is otherwise sold in a sale comprised exclusively of pipeline or distributor owned production. More typically, a pipeline will commingle its own production volumes with purchased gas and make mixed volume sales from its general system supply. Because such mixed volume sales generally would not be first sales,[8] they are not subject to the

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[1] First sale is defined in section 2(21) of the NGPA as follows:

(21) First Sale.—

(A) General Rule.—The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) Certain Sales Not Included.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

[2] The NGPA ceiling prices are deemed just and reasonable for purposes of the NGA (Section 601(b) of the NGPA). However, a buyer may insist on his contractual rights to purchase at a lower price (Section 101(b)(9) of the NGPA), and contractual authorization may be required in the case of first sales that remain subject to the NGA. *See* Order No. 23 (Docket No. RM79-22, issued March 13, 1979), 44 FR 16895 (March 20, 1979); Order No. 23-A (issued June 12, 1979), 44 FR 34472 (June 15, 1979); Order No. 23-B (issued June 21, 1979), 44 FR 38834 (July 3, 1979).

[3] NGPA Section 601(c). In addition, the affiliated entities limitations may limit the extent of passthrough. *See* NGPA section 601(b)(1)(E).

[4] Order No. 58 (Docket No. RM80-7, issued November 14, 1979), 43 FR 66577 (Nov. 20, 1979), § 270.203.

[5] NGPA Section 2(21)(B). Sales by pipelines or distributors of volumes comprised in whole or in part of their own production are first sales under certain circumstances. *See* § 270.203(a) and (b); *see also, infra* note 7-9 and accompanying text.

[6] Sales by unaffiliated sellers (other than pipelines, distributors or their affiliates) are not barred from first sale treatment under section 2(21)(B). Sales by affiliates (other than pipelines or distributors) are first sales unless the Commission determines otherwise. *See* § 270.203(c).

[7] See § 270.203(a).

[8] A mixed volume sale by an intrastate pipeline that is not regulated by a state agency empowered by State statute to establish, modify or set aside the rate for such a sale is denominated by the

Footnotes continued on next page

NGPA and Title I maximum lawful prices. Therefore, most sales of pipeline production remain subject to rate regualtion under otherwise applicable Federal and state law: intrastate pipelines and local distribution companies are subject to existing state and local regulatory authority,[9] and interstate pipelines continue to be subject to price regulation under the NGA.

In conjunction with Order No. 58, the Commission issued Notice of Proposed Rulemaking in exercise of its continuing authority under the NGA to establish rates for mixed volume sales of natural gas by interstate pipelines.[10] In order to achieve parity of pricing treatment among independent producers subject to Title I maximum prices and pipeline producers subject to NGA pricing authority, the proposed rule permitted a pipeline, in determining its NGA cost-of-service for mixed volume sales, to value its own production by reference to the Title I maximum lawful prices that would have been applicable to the gas had it been sold in a first sale. After review of public comments,[11] the Commission is adopting as final regulations the proposed amendments to the Commission's regulations under the NGA, to provide for parity of price treatment among independent and pipeline producers.[12]

II. Background: Pricing Parity for Pipeline Producers Prior to the NGPA

The pricing of pipeline production under the NGA is a question of policy that was originally addressed in the context of the Federal Power Commission's (FPC's) efforts to establish just and reasonable rates for producer sales of natural gas to the interstate market. Initially, the FPC determined producer rates by use of the cost-of-service methodology traditionally employed in determining rates for interstate pipelines. Subsequently, the FPC rejected that ratemaking method for sales by independent producers and off-system sales by pipeline producers and instead adopted a series of average cost-based rates which were applicable to such sales of gas produced in specified geographic areas. However, the area rates were not made applicable to pipeline production sold in mixed volume sales, so that the value of production transmitted from a pipeline's own producing operation continued to be included as a cost component in the pipeline's overall cost-of-service and was computed generally on the same test year basis as other elements of the cost-of-service. Test year projections were made for lease acquisition, exploration, development, and production.[13]

Subsequently, in Opinion No. 568,[14] the FPC rejected the cost-of-service ratemaking methodology for determining rates for pipeline production, finding that the economic and administrative considerations which had urged the abandonment of cost-of-service ratemaking for independent producers were equally as compelling in the case of pipeline producers. In the face of dwindling gas supplies, the FPC indicated that its primary concern was to spur the development of new production. The FPC reasoned that the stimulus to additional production implicit in the area rates for producers should be directed toward increasing production by pipeline producers as well.[15] In its view, parity was essential to the creation of a "regulatory climate conducive to an aggressive pipeline exploration program."[16] Further, the FPC concluded that the use of the average ratemaking methodology could stimulate gas production by pipelines while protecting consumers from bearing the full cost of unsuccessful or inefficient ventures.[17]

Therefore, in Opinion No. 568, the FPC initiated a policy of parity of pricing treatment, under which gas produced by a pipeline or its affiliates from leases acquired after October 7, 1969, and taken into the pipeline's own system would be valued by reference to the just and reasonable area rates established for sales by independent producers in the same area. Those area rates would then be passed through the pipeline's purchased gas adjustment (PGA) clause.[18] Pipeline producers would be permitted to recover their production costs on a cost-of-service basis only upon showing that special circumstances existed which warranted such treatment.[19]

The FPC continued this policy of parity in the nationwide rate proceedings, extending the nationwide rates to various vintages of pipeline production.[20] In Opinion No. 699-H, the FPC reaffirmed its decision that pipeline production flowing from pre-October 8, 1969, leases should continue to be priced on a cost-of-service basis, but concluded that pipeline production from wells

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Footnotes continued from last page

Commission as a first sale unless the Commission, on application, has determined not to treat such a sale as a first sale. § 270.203(b). Such a sale is a first sale by exercise of the Commission's authority under section 2(21)(A)(v). *See infra* note 9 and accompanying text.

[9] Section 2(21)(A) of the NGPA, which expressly denominates certain sales as first sales, also empowers the Commission to extend the first sale definition to embrace any other sale in order to avoid circumvention of the NGPA maximum lawful prices. In Order No. 58, the Commission asserted this authority to include as first sales, sales by intrastate pipelines and local distributors that are not subject to state or NGA regulatory authority. *Mimeo* at 8-9; *see* § 270.203(b). Also pursuant to section 2(21)(A)(v) the Commission will treat as first sales, sales by non-producing affiliates of pipelines or distributors, such as brokers or gatherers, which are not subject to Commission jurisdiction and are largely unregulated by the states. *Mimeo* at 12-13; § 270.203(c). This limited exercise of the Commission's circumvention authority under Section 2(21)(A)(v) reflects our view that the NGPA Pricing policies can be effectuated without disrupting any existing regulation of intrastate pipeline and distributor rates for mixed volume sales.

[10] Notice of Proposed Rulemaking (issued November 14, 1979); 44 FR 66612 (Nov. 20, 1979).

[11] Comments were timely filed by American Gas Association (AGA), Natural Gas Pipeline Company of America (Natural), Consolidated Gas Supply Corporation (Consolidated), Northwest Pipeline Corporation (Northwest), El Paso Natural Gas Company (El Paso), Northern Natural Gas Company (Northern), United Gas Pipe Line Company (United), Colorado Interstate Gas Company (CIG), Kentucky-West Virginia Gas Company (Kentucky-West Virginia), and the Kansas State Corporation Commission (Kansas). Comments were received after the close of the comment period from the Public Service Commission of the State of New York (New York), Southern Natural Gas Company (Southern), Sonat Exploration Company (Sonat) and Columbia Gas Transmission Company (Columbia). These comments are considered as if timely filed. However, we have not considered late comments received June 23, 1980, after the Commission meeting in which this final rule was considered, from Arizona Power Cooperative and the City of Wilcox, Arizona.

[12] The Commission is presently reviewing applications for rehearing of Order No. 58 and is further considering the policy underlying that Order. The issuance of this rule, which is predicated on the interpretation of section 2(21)(B) reflected in Order No. 58, does not dispose of those petitions for rehearing. Because the policies set out in both these dockets are firmly interlaced, we prefer to consider the legal and policy issues raised on rehearing of Order No. 58 in connection with consideration of any arguments raised in petitions for rehearing of these final regulations. *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

[13] *City of Chicago v. FPC*, 458 F.2d 731, 734-37 (D.C. Cir. 1971) *cert. denied*, 405 U.S. 1074 (1972). *See generally Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

[14] *Pipeline Production Area Rate Proceeding (Phase I)*, 42 F.P.C. 738, *modified* 42 F.P.C. 1089 (1969), *aff'd*, *City of Chicago* v. *FPC*, 458 F.2d 731 (D.C. Cir. 1971), *cert. denied*, 405 U.S.1074 (1972).

[15] *Pipeline Production Area Rate Proceeding*, *supra* note 14, at 747.

[16] *Id.* at 745.

[17] *See City of Chicago v. FPC*, *supra* note 13, 458 F.2d at 738.

[18] 18 C.F.R. 2.66 (1979).

[19] 18 C.F.R. 2.66(a)(4). The FPC expressly stated that a pipeline's inability to recover its expenditures and earn the allowed return on production would not constitute special circumstances. *Pipeline Production Area Rate Proceeding*, Opinion No. 568-A, *supra* note 14, 42 F.P.C. at 1091; *See Kansas-Nebraska Natural Gas Company*, 53 F.P.C. 1691, 1698-1699 (1975).

[20] *See* Opinion No. 770-A, *mimeo* at 147 (issued November 5, 1976) 56 F.P.C. 2698 (1976); Opinion No. 749-C, *mimeo* at 29 (issued July 19, 1976), *to be published at* 56 F.P.C. 303 (1976); Opinion No. 699-H, *mimeo* at 47 (issued December 4, 1974), *to be published at* 52 F.P.C. 1604, 1634-35 (1974).

drilled on or after January 1, 1973, should be valued at nationwide rates regardless of the date the lease was acquired.[21] Therefore, on the date of enactment of the NGPA, area or nationwide rates were applicable to all but two categories of pipeline produced gas: most production from pre-1973 wells on pre-October 8, 1969 leases, and production from other leases which had been granted cost-of-services treatment upon a showing of special circumstances or pursuant to a settlement in lieu of a finding of special circumstances.

III. Discussion: Parity of Pricing for Pipeline Production in the Context of the NGPA

The enactment of Title I of the NGPA ended the prevailing system of domestic wellhead price regulation under which the Commission set rates for producer sales of natural gas to the interstate market, and the states regulated producer sales to intrastate markets. In its stead, Congress established a unified pricing scheme imposing maximum lawful prices for first sales by producers of domestically produced natural gas. The elimination of the dual market and the statutorily embraced commitment to price incentives are the cornerstones of the Congressional plan to encourage maximum production of natural gas.

However, the NGPA left substantially intact the Commission's authority under the NGA to regulate the rates and services of pipelines delivering gas in interstate commerce. The Congress left to the Commission the task of harmonizing its statutory mandate to implement the NGPA pricing scheme with its continuing authority under the NGA to determine the price treatment of natural gas produced by interstate pipelines and sold in mixed volume sales. Therefore, our goal in establishing a pricing scheme for pipeline production is to properly employ our regulatory tools under the NGA to coordinate the purposes of that Act with the policies established by the NGPA.

As we stated in the Notice of Proposed Rulemaking, the objectives which prompted the FPC to extend pricing parity to pipeline producers, to provide for equitable treatment among producers and to encourage additional exploration for and production of natural gas, remain desirable in the face of a transcendent public need for additional domestically produced energy supplies. In reliance on the FPC's policy, pipelines have competed for leases with independent producers and have undertaken substantial drilling programs which have produced increased gas supplies. As commenters point out, the aims of equity and regulatory stability are well served by a continuation of this parity policy.[22]

However, the role of parity pricing has been enlarged by the passage of NPGA and, in the context of our efforts to coordinate the NGA with the regulatory scheme of the NGPA, the arguments for parity treatment emerge as even more compelling. Prior to the NGPA, the FPC and the Commission recognized the need to offer price incentives to producers to encourage exploration and development of additional natural gas supplies.[23] Thus, the area and nationwide rates were designed to provide for recovery of the average costs of finding, developing and producing natural gas plus an incentive to compensate for the risks associated with lease acquisition, exploration and development. The Congressional decision to reorder the economic regulation of natural gas prices to provide a uniform system of statutorily prescribed price incentives was based on a similar belief that such incentives are necessary to secure continued development and additional production of natural gas.

Having embarked under the NGA upon a course which would provide price incentives for both pipeline and independent producer production to encourage production of additional gas supplies, and having been reaffirmed in this course by evidence of a similar purpose in Congress' enactment of a pricing scheme in the NGPA designed to encourage additional production, we believe that our mandate of coordinating the NGPA and the NGA would best be accomplished through a policy of pricing parity among independent and pipeline producers. First, as many commenters point out, pipeline producers undertaking new exploration efforts must compete with independent producers for the acquisition of leases. The prices independent producers may be willing to pay for leases will be influenced by the expected revenues for gas from the project, which will be priced at applicable Title I prices. If pipeline producers were held to pre-NGPA prices, or were subject to a newly established cost-based nationwide rate, they would in many instances be unable to compete with independent producers in acquiring new leases. The resulting disincentive to pipeline production would deny the pipeline customers a more certain stream of additional supplies.

Further, the institution of a nationwide rate proceeding in order to account for changes in costs or market conditions since 1975 might not cure the distortions created by disparate pricing treatment. If the cost-related incentive prices established in a nationwide ratemaking were less than the NGPA prices, pipelines would still be at a competitive disadvantage in acquiring new leases. To the extent that the resulting nationwide rates varied in any respect from the NGPA rates, we would have established inconsistent schemes of wellhead price regulation, reincarnating the regulatory anomaly which Congress sought to eliminate in its enactment of Title I. Such an undertaking would effectively ignore the Congressional evaluation of price incentives, and would be, in our view, an insular and administratively wasteful endeavor. For these reasons we believe that the existing policy of parity of treatment for pipeline producers should be continued in the context of the NGPA.

The foregoing analysis demonstrating our reasons for extending pricing parity to pipeline producers previously subject to area or nationwide rates does not apply in the case of pipelines receiving cost-of-service treatment for production. In the case of gas yet to be produced from pre-1973 wells on pre-October 8, 1969 leases, we find little to persuade us that costs of production will not be recouped by the pipeline on a cost-of-service basis. As one commenter articulates the pertinent consideration:

> The pipeline's customers have paid [through the pipeline's rates] for the development and production costs, including components for return, income taxes, and depreciation. As a result, the equity and incentive reasons for granting parity do not apply to such gas.[24]

As several commenters argue, the same consideration persuades us that parity should not be extended to pipeline producers subject to cost-of-services treatment under the special circumstances provisions of § 2.66(a)(4).[25] Pipelines receiving such treatment have enjoyed the advantage of passing on to their customers the risks of the pipeline's production ventures. Pipelines have passed on the costs of acquiring leases and the costs of exploration and development, including dry hole costs and other costs associated with unsuccessful and marginally successful ventures, in

[21] Opinion No. 699-H, *mimeo* at 47-50.

[22] *See* comments of El Paso and Northern.

[23] *See Mobile Oil Corp. v. FPC*, 417 U.S. 283, 316-317 (1973); *Permian Basin Area Rate Cases*, 390 U.S. 747, 796-798 (1973).

[24] Comments of El Paso. *See* discussion *infra*.

[25] *See* comments of El Paso, Northern and New York.

exchange for assuring their customers the opportunity to enjoy the additional volumes resulting from successful ventures at a price determined on a cost-of-service basis. The Commission therefore will not extend pricing parity to pipeline production which prior to the enactment of the NGPA was valued on a cost-of-service basis rather than by reference to area or nationwide rates.

For the foregoing reasons, we are promulgating a final substantive rule [26] which continues the policy of parity of pricing treatment for pipeline production now subject to area or nationwide rates.

IV. Summary of Comments and Analysis of the Final Rule.

A. *Parity of Price Treatment*

In response to the Notice of Proposed Rulemaking, the American Gas Association (AGA), Natural Gas Pipeline Company of America (Natural), Consolidated Gas Supply Corporation (Consolidated), Northwest Pipeline Corporation (Northwest), Public Service Commission of the State of New York (New York), El Paso Natural Gas Company (El Paso), Southern Natural Gas Company (Southern), Northern Natural Gas Company (Northern), and United Gas Pipeline Company (United) have submitted comments expressing support for the parity policy. They commend the proposed rule as a logical extension of past Commission policy favoring parity of pricing treatment between pipelines and other producers in order to promote equity and fundamental fairness, and to encourage natural gas production. These commenters emphasize that absent parity of treatment, pipeline producers will be unable to compete for leases and develop new gas supplies for their customers.

Two comments raise various legal and policy objections to the concept of pricing parity. Kentucky-West Virginia Gas Company (Kentucky-West Virginia) argues that the establishment of pricing parity under the NGA is outside the scope of the Commission's authority, because it rests upon an improper interpretation of the NGPA's definition of first sale. It contends that any sale that includes volumes of pipeline production including a mixed volume sale, is statutorily entitled to NGPA first sale treatment for any portion of the sale that is attributable to the pipeline's own production. Therefore, Kentucky-West Virginia argues, all pipeline production should be priced under the NGPA regardless of its prior treatment under the NGA.

Questions concerning the Commission's interpretation of the NGPA's first sale definition as it applies to pipeline production pertain directly to Order No. 58, and not to this rulemaking.[27] Therefore, we will deal with these comments when we consider applications for rehearing of Order No. 58.

The Kansas Corporation Commission (Kansas) objects to the policy underlying this rulemaking on wholly different grounds. In its view, the Commission has correctly interpreted section 2(21)(B) of the NGPA to exclude a pipeline's mixed volume sales from first sale treatment. However, it contends that the fact that such sales have been statutorily excluded from first sale treatment is evidence of Congressional intent to prevent pipeline producers from collecting NGPA rates.

Kansas further argues that the Commission lacks authority to provide for the collection of NGPA rates under the NGA. It contends that a just and reasonable rate within the meaning of the NGA must be cost-based. In Kansas' view, the NGPA rates were established primarily to escape the bounds of the NGA's restrictive standards, necessarily implying that the NGPA rates are not just and reasonable. Finally, Kansas also contends that even if the Title I prices were just and reasonable, the Commission should not permit such rates to be collected for flowing gas and gas produced from properties acquired before enactment of the NGPA. Kansas argues that the allowance of an incentive price for such gas will not result in increased exploration and development activities, and therefore, urges the Commission to offer NGPA incentive prices only for gas produced from leases acquired by a pipeline on or after November 9, 1978, where qualification for sections 102, 103, 107 or 108 has been obtained.

We cannot agree that our action is impermissible under the NGPA or the NGA. Our interpretation of the NGPA's first sale definition does not reflect the view that Congress intended to insure that pipeline production would be valued at a rate lower than that applicable to sales by independent producers. Rather, our interpretation of section 2(21)(B) is premised on the view that Congress chose to maintain NGA price regulation of mixed volume sales to facilitate the coordination of our ongoing authority over pipeline services with our duties to implement the wellhead pricing scheme of Title I.[28] We find no evidence either in the legislative history or implicit in the language of section 2(21)(B) that Congress intended us to take no cognizance of the NGPA prices in exercising our pricing authority under the NGA.

The Commission is aware, of course, that rates granted under the NGA generally must be just and reasonable. We do not believe, however, that our decision to permit pipelines to collect incentive rates commensurate with the NGPA prices works an unjust and unreasonable result.[29]

While it is true that the Commission's historical reliance on cost-based ratemaking methodology has nurtured the growth of an intricate regulatory scheme which has been, to a large extent, analytically dependent upon cost concepts, we have also consistently recognized that the rigors of a wholly cost-based methodology cannot accommodate the need for price incentives to induce the exploration for and development of additional gas supplies. In reviewing our policies in this regard the courts have indicated that although the Commission must consider cost factors in order to protect consumers from excessive rates, it may also include price incentive factors in the rate in order to assure consumers an adequate supply of gas.[30]

Although the Commision has employed several methodologies for pricing pipeline production, it has expressed a preference for valuing pipeline production by reference to producer rates, because that method achieves parity of treatment and results in the least potential for distortion of the incentives and disincentives which

[26] The Notice of Proposed Rulemaking set out proposed § 2.66a as a statement of policy, but indicated that the Commission might choose to issue these provisions as substantive regulations. Proposed § 2.66a has been modified to reflect our decision that this policy should take effect as a substantive rule, which is promulgated at 18 CFR § 154.42.

[27] Kentucky-West Virginia has articulated the same arguments in its application for rehearing of Order No. 58.

[28] *See* Order No. 58, *mimeo* at 5-7.

[29] The Commission has broad authority in selecting methods for determining individual components of a pipeline's cost of service, so long as the resulting pipeline rate is just and reasonable under sections 4 and 5 of the NGA. In *Hope Natural Gas Co. v. FPC*, 320 U.S. 591 (1943), the Supreme Court stated that a challenge to a Commission ratemaking decision involves the question "whether that order, 'viewed in its entirety' meets the requirement of the Act * * *. It is the result reached not the method employed which is controlling." *Id.* at 602. We believe, however, that the Commission exercises its discretion in a manner most consistent with the provisions of sections 4 and 5 of the NGA when it values the pipeline production component of the pipeline's cost-of-service as well as the entire rate at levels which are just and reasonable within the meaning of the NGA.

[30] *See, e.g., American Public Gas Ass'n v. FERC*, 567 F. 2d 1016, 1059 (1977), *cert. denied* 435 U.S. 907 (1978); *City of Chicago v. FPC, supra note* 13, 458 F. 2d at 750-51 (D.C. Cir. 1971); *See also* note 23 *supra*, and accompanying text.

govern investment decisions concerning natural gas production. Comments received in this docket and in the course of our consideration of Order No. 58 persuade us that failure to continue parity of treatment would introduce distortions into natural gas production investment decisions in derogation of the substantial public need for stable, domestically produced energy supplies.

Continuing this policy of pricing parity requires that we now price pipeline production by reference to NGPA prices. In doing so without instituting another nationwide ratemaking proceeding we have relied on Congress' conclusion that the NGPA prices reflect the composite of cost-based and non-cost-based factors necessary to encourage production of additional gas supplies. Based on this premise, we believe that the valuation of pipeline production by reference to NGPA rates represents the most reasonable reconciliation of consumer and producer interests, and therefore achieves a just and reasonable result.[31]

B. *Applicability of § 154.42* [32]

The final rule in § 154.42 implements the Commission's decisions in this regard and, although it is being promulgated as a substantive rule rather than a statement of policy, is essentially the same as the rule set forth in the Notice of Proposed Rulemaking. It applies NGPA pricing to all non-first sale natural gas produced by an interstate pipeline or its affiliate on or after November 15, 1979 (the day after issuance of the Notice of Proposed Rulemaking) unless such production is from a lease acquired before November 15, 1979, that has ever been granted cost-of-service treatment. However, under new § 154.42(a)(2), a pipeline would be able to obtain NGPA pricing for gas produced as early as December 1, 1978, provided it had either made a filing under section 4 of the NGA to collect the rate and the Commission's suspension of the rate was conditioned on the provisions of the final rules promulgated in this order, or it had filed for cost-of-service treatment under § 2.66(a)(4) and such treatment was denied by the Commission after December 1, 1978.[33]

In commenting on the proposed rule, Columbia and Northern maintain that the Commission should allow pipelines to collect NGPA prices for all production after December 1, 1978, unless the Commission has provided otherwise by order. Northern argues that the Commission should not rely on the "procedural happenstance of whether the pipeline, either by suspension of a portion of its PGA adjustment filing or otherwise, has had its entitlement to rates conditioned on the provisions of the rule issued in this docket."

We do not agree that the effect of this provision is to condition a pipeline's rights upon "procedural happenstance." Pipelines who filed to collect Title I prices upon enactment of the NGPA were subject to the Commission's PGA regulations. At that time, § 154.38 authorized the passthrough of area or nationwide rates for pipeline production "that qualifies for and is being afforded area or nationwide rate treatment or is otherwise being afforded area or nationwide rate treatment as though the gas were being produced by an independent producer." [34] This limitation on a pipeline's ability to reflect its own production in a PGA filing was imposed in recognition of the fact that pipeline production priced on a cost-of-service basis was already being reflected in the pipeline's section 4 rates on a test period basis. In accordance with this provision, the Commission rejected any rate filing to collect NGPA prices for pipeline production subject to cost-of-service treatment as inconsistent with the provisions of the Commission's PGA regulations. The Commission suspended other filings where the pipeline had valued its own production, which was eligible for inclusion in its PGA, at NGPA rates and conditioned these filings on the outcome of this rulemaking. In this respect, the provisions of new § 154.42(a)(2) are consistent with the policy reflected in § 154.38 and affirmed in this rulemaking to exclude from parity pricing all pipeline production now subject to cost-of-service treatment.

With regard to pipeline production for which NGPA rate treatment is available, this provision is also consistent with the provisions of section 4 of the NGA and § 154.38 which require a pipeline to file for rate increases before passing through the costs of purchased gas and its own production. Compliance with the filed rate requirement assures the Commission the opportunity to review the rates to determine whether they are eligible to be passed through to the pipeline's customers. The requirement to which Columbia and Northern object implements the Commission's intent, consistent with prior practice, to permit pipeline producers eligible for NGPA rates under the provisions of this rule to receive those rates from the effective date of the NGPA, if they have properly filed to collect them. For these reasons the requirement will be retained.

C. *Termination of Special Circumstances*

Because new § 154.42 by its terms applies to all gas produced from leases acquired on or after November 15, 1979, that section would terminate prospectively relief based on special circumstances, since § 154.42 does not contain a special circumstances provision similar to that in § 2.66(a)(4).[35] One commenter urges the Commission to use its authority under section 502(c) of the NGPA to permit a pipeline to seek cost-of-service pricing treatment for its own production based upon a showing that collection of the applicable NGPA ceiling price works a special hardship upon the pipeline producer. Presumably such a provision would serve the same function as § 2.66(a)(4).

First, the Commission emphasizes that, while section 502(c) empowers the Commission to make adjustments of its rules under the NGPA, the rules governing interstate pipeline production are promulgated under the NGA, and thus technically are not subject to adjustment under section 502(c). Furthermore, the Commission has determined that the NGPA prices provide a system of incentives which adequately compensates a pipeline producer for the risks associated with exploration and development. We therefore decline to extend cost-of-service treatment to pipeline producers not currently on cost-of-service. However, in the Notice of Proposed Rulemaking, the Commission indicated that special relief would be available to pipeline producers to the same extent that it is available to independent producers to encourage investment in new production projects and production enhancement work, and to cover operating and maintenance expenses

[31] Similarly, we believe that it is necessary under the NGA to require customers of interstate pipelines to bear the burden of certain non-cost incentives in order to assure that their needs for additional gas supplies are satisfied. The Commission has in the past granted higher prices for flowing gas, reasoning that a pipeline's customers should be required to share with future customers the higher costs of developing the natural gas supplies to replace the supplies they consume. Opinion No. 749, 54 F.P.C. 3090 (1975) *aff'd, Tenneco Oil Co.* v. *FERC*, 571 F.2d 834 (1976), *cert. dismissed*, 439 U.S. 801 (1978).

[32] The rule in this docket was originally proposed as a statement of policy and thus was drafted to amend Part 2 of the Commission's regulations, "General Policy and Interpretation" by creating a new § 2.66a. Because we have decided to issue a substantive rule in this docket, we will amend Part 154, "Regulations Under the Natural Gas Act" to create a new § 154.42, "Pricing of Certain Gas Produced on or after December 1, 1978, by Pipelines and Pipeline Affiliates."

[33] The provision for gas denied cost-of-service treatment is an addition to the rule as originally proposed. *See infra* note 44, and accompanying text.

[34] 18 CFR 154.38, n. 1 (1979).

[35] The termination of the special circumstances provision has no retroactive effect. Pipeline production from leases which have ever been subject of cost-of-service treatment will continue to be subject to such treatment. *See* discussion *infra*.

that cannot be recouped under the applicable NGPA rates.

The Commission is presently considering regulations governing applications for special relief applicable to independent producers and pipeline producers whose sales qualify as first sales under § 270.203[36] and has specifically solicited comments discussing whether the proposed provisions for special relief should be made available to pipeline producers for gas not sold in first sales. That issue will be resolved within the context of the special relief rulemaking.

D. *Requirements to Collect NGPA Rates*

Section 2.66a(b)(1)(i)[37] of the proposed rule set out the general policy permitting pipelines to value their production that is subject to § 2.66a by reference to Title I prices prescribed under Subparts B, C, D, G, H or J, and under Subpart K of the Commission's regulations, if certain conditions are met.

In the Notice of Proposed Rulemaking we did not raise directly the question whether pipeline producers should be permitted to collect deregulated prices if the sale is not a first sale. However, in the interim rulemaking deregulating the price of natural gas subject to section 107(c)(1)–(4), the Commission requested comments on whether production by interstate pipelines should be valued by reference to the price of natural gas deregulated under the NGPA. All of the comments addressing this issue urge the Commission to extend such rates to eligible pipeline producers.

We recognize that in deregulating high-cost gas, Congress determined that the production of such gas should be encouraged at whatever price the market will bear. We believe that the same incentive price should be available to interstate pipelines and have therefore modified the proposed rule to permit interstate pipelines to value their production of such high cost gas by reference to our rules in Part 272 concerning deregulation.

The Commission is concerned, however, that reference to a market price imposes no meaningful limitation on the pipeline's valuation of its own production, which is not determined by contract negotiation.[38] Section 601(b)(1)(E) of the NGPA addresses the problem created by the absence of a true bargaining relationship when a first sale contract price is established by an interstate pipeline and its producing affiliate regarding regulated as well as deregulated gas. That section provides that the price paid in the first sale by a pipeline to its affiliated producer will not be deemed just and reasonable (and therefore will not be subject to PGA passthrough) unless the price does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

In order to accomplish a similar purpose for pipeline producers, § 2.66a(b)(1)(ii)(A)[39] of the proposed rule conditioned the availability of price parity treatment on compliance with the affiliated entities rule in section 601(b)(1)(E). Such a requirement would impose a market based limitation on the valuation of all pipeline production, including deregulated gas, comparable to contract price limitations borne by independent producers.

The Commission remains persuaded that pipeline producers who receive parity of pricing treatment should be subject to a market based limitation on the valuation of their own production. However, the proposed regulation's reference to the affiliated entities rule of section 601(b)(1)(E) may be inadequate because the language of section 601(b)(1)(E) is, on its face, applicable only to first sales between interstate pipelines and their affiliates. For this reason, we have modified the language of the proposed rule to make it clear that pipeline production may not be valued at a rate in excess of the amount paid in comparable sales between persons not affiliated with the interstate pipeline or with each other. The modification has been incorporated into the general rule regarding NGPA pricing treatment in new § 154.42(b)(1). Under that provision qualifying production as defined in paragraph (b)(2) is priced at the lower of the applicable NGPA referenced rate or the amount paid in comparable sales between persons not affiliated with the pipeline or with each other.

Section 2.66a(b)(1)(ii) of the proposed rule contained two other conditions with which a pipeline was required to comply before receiving NGPA rates for its production. The pipeline was required to comply with all of the requirements in Subchapter H, including those relating to filing requirements for jurisdictional agency determinations, provisions for interim and retroactive collection, and Part 276 reporting requirements. The requirement that a pipeline or affiliate comply with the requirements of Subchapter H, except the requirement of § 270.101(d)(1), has been retained in § 154.42(b)(3) of the final rule. We are aware, however, that pipelines may have been uncertain as to their filing obligations with regard to production not sold in a first sale, and may have failed to make timely filings as required under Subchapter H. We have therefore provided in new § 154.42(b)(3)(i) that a pipeline may be granted a waiver of any time of filing requirement upon showing that a timely filing was not made because the pipeline had no notice that it was subject to such requirement.[40]

In addition, the proposed rule conditioned a pipeline's authority to collect the applicable NGPA rates upon compliance with the rate change filing requirements applicable to independent producers under § 154.94 of the Commission's regulations. Section 154.94 establishes blanket affidavit filing requirements which permit a qualifying producer who filed a blanket affidavit prior to December 30, 1978, to collect NGPA prices retroactively to December 1, 1978, the effective date of the NGPA. Under § 154.94 producers who file on or after December 30 may only collect NGPA prices prospectively. Southern and Sonat request that the Commission modify this restriction, pointing out that pipeline producers had no notice that such requirements could be applicable to them and therefore complied only with the PGA rate change requirements in § 154.38.

After reviewing the requirements of § 154.94, we have concluded that they impose unwarranted burdens on pipeline producers. We now believe that it is adequate for pipeline producers to report the value of their own production through their PGA filings, which in the past have provided the Commission with adequate information regarding the validity of such charges. Therefore, the Commission has provided in § 154.42(b)(3) that a pipeline need not comply with § 270.101(d)(1) of Subchapter H which require compliance with the filing requirements set out in §§ 154.92 and 154.94.

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[36] Notice of Proposed Rulemaking, Procedures Governing Applications for Special Relief under sections 104, 106 and 109 of the NGPA, Docket No. RM79-67 (issued June 9, 1980).

[37] *See* § 154.42(b)(1) of the final rule.

[38] Kansas claims that proposed § 2.66a created "super parity" because it allows pipelines NGPA prices while NGPA prices available to producers are limited by contract. Kansas states that this will be used to the advantage of producers in Order No. 23-B protest proceedings. Acknowledging, as Kansas does, that all producers contracts after December 1, 1978, will have rate clauses referencing congressionally set rates, so in that regard there is no "super parity" as to pre-December 1, 1978 contracts, the "affiliated entities limitation" in proposed § 2.66a(b)(1)(ii)(A) and in new § 154.42(b)(1) prevents pipelines from costing their own production on the basis of NGPA rates where that pipeline or other pipelines are paying less than NGPA rates to other producers.

[39] *See* § 154.42(b)(1) of the final rule.

[40] This provision for waiver of filing requirements does not extend to waiver of applicable PGA filing requirements under 18 C.F.R. § 154.38.

E. *Exception for Natural Gas Subject to Cost-of-Service Treatment*

As noted above, the proposed rule excluded from eligibility for NGPA referenced rates any pipeline production which has ever been subject to cost-of-service treatment. Under proposed § 2.66a(b)(1)(i),[41] production from pre-1973 wells on pre-October 8, 1969 leases remained subject to cost-of-service rate treatment. Also, under § 2.66a(b)(1)(iii) and (b)(2), the Commission proposed to continue cost-of-service treatment for any gas granted such treatment under the special circumstances provisions of § 2.66(a)(4).

El Paso, New York, and Northern strongly support the exclusion of cost-of-service gas from parity treatment, arguing that in these cases the pipeline's stockholders have not borne the risk of exploration and production (as in the case of production valued at area or nationwide rates), and thus the pipelines do not need the price incentives for such gas.

Although CIG and Columbia also agree with the Commission's proposal to extend NGPA prices to pipeline production which is not subject to first sale treatment, they argue that the Commission should provide complete parity for pipeline production by allowing all pipeline production to be valued by reference to NGPA prices. They maintain that such a rule furthers the purposes of the NGPA to provide capital and other inducements to explore for and develop additional gas, and "to promote conservation of a finite and strategic substance by causing the consumers to pay a price more representative of its replacement cost."

CIG also argues that whether pipeline production gets cost-of-service treatment or the section 104 rate, those prices should be escalated monthly by the statutorily prescribed inflation factor, because Congress intended the rate for all production under the NGPA to escalate for inflation. Finally, CIG argues that pipelines need the same incentives provided under section 108 for stripper wells as other producers will receive. CIG maintains that cost-of-service treatment does not provide sufficient incentives since old wells have already been depreciated and thus, the rate of return allowed under cost-of-service treatment would produce a rate lower than the section 108 maximum lawful price.

As discussed above, the Commission believes that there are compelling reasons for not allowing cost-of-service production to receive NGPA pricing treatment. The purchasers of cost-of-service gas have provided the pipeline with significant cost guarantees and other benefits not available to independent producers. The Commission agrees with El Paso, Northern, and New York that retaining cost-of-service treatment for production granted cost-of-service treatment under special circumstances provides all parties concerned with what they bargained for. We also note that cost-of-service treatment, in permitting the recovery of test period costs, provides for recovery of increased costs due to inflation. Therefore, the NGPA inflation adjustment is not necessary to assure these pipelines the full recovery of their costs. For these reasons, the Commission declines to modify new § 154.42 to extend NGPA rates to all pipeline production.

Several comments request that the Commission clarify the effect on certain particular cases of the language of the exclusion in what is now § 154.42(b)(2)(ii) concerning leases acquired before November 15, 1979 which have ever been granted cost-of-service treatment upon a showing of special circumstances. New York argues that by limiting the scope of the exclusion to gas produced from leases *granted* cost-of-service treatment, the Commission has failed to make clear the treatment to be accorded pipeline production valued on a cost-of-service basis as a result of a settlement, or pending final disposition of a special circumstances application. New York urges the Commission to require, in both types of cases, that such production continue to be valued on a cost-of-service basis, arguing that pipelines that have enjoyed the benefits of cost-of-service treatment should not now be permitted to collect the higher NGPA rates.

New York correctly notes that in many cases pipeline production has been subject to cost-of-service treatment pursuant to a settlement agreement adopted in lieu of a Commission finding of special circumstances. It was our intent in § 2.66a(b)(1)(iii) of the proposed rule that such treatment continue in effect. We have therefore provided more clearly for that result in new § 154.42(b)(2)(ii) by expressly excepting from NGPA treatment natural gas from leases which have ever been granted cost-of-service treatment pursuant to a settlement approved in lieu of a finding of special circumstances.

The Commission addressed the issue of pending proceedings in the Notice of Proposed Rulemaking, indicating that we would not use this rulemaking to dispose of the matters pending before the Commission in Docket No. RP75-106.[42] In that docket, Columbia Gas Transmission Company sought to show that special circumstances existed which warranted cost-of-service treatment for certain of Columbia's Appalachian production. Since the issuance of the Notice of Proposed Rulemaking, the Commission in Opinion No. 74 has determined that special circumstances do not exist and has therefore denied Columbia's request for cost-of-service treatment.[43] Therefore, because Columbia has not been granted cost-of-service Treatment under the special circumstances provisions of § 2.66(a)(4), Columbia may value its production that is otherwise eligible under this rule by reference to NGPA maximum lawful prices.[44]

Northern has requested that the Commission modify the cost-of-service exemption with regard to production of gas from leases now subject to modified cost-of-service rate treatment. Under Northern's modified cost-of-service rate treatment, the pipeline values a portion of its production on a cost-of-service basis and the remaining portion by reference to area rates. Northern notes that in its case, the percentages are computed as an undivided rate and are not allocated among the pipeline's producing leases. Thus, it is concerned that all production from any lease subject to 75 percent cost-of-service treatment would be subject to cost-of-service treatment rather than NGPA referenced rates. They urge the Commission to amend § 2.66a(b)(1)(iii) of the proposed rule[45] to exclude from parity of price treatment "production from leases acquired before November 15, 1979, to the extent such *production* has ever been granted cost-of-service treatment pursuant to § 2.66(a)(4)

[41] *See* § 154.42(b)(2)(i)(A)-(D) of the final rule.

[42] Notice of Proposed Rulemaking, *supra* note 19, at 11 n. 7. Also in the Notice, the Commission noted that Michigan-Wisconsin Pipeline Company received cost-of-service treatment under § 2.66(a)(4) for the period November 1, 1973 through October 31, 1977, but that the Commission in approving settlements covering rates for subsequent periods "has expressly disavowed any policy decision regarding the pricing approach incorporated in the settlements." *Id.*

[43] On June 27, 1980, the Commission voted to deny rehearing of Opinion No. 74.

[44] Section 154.42(a)(2)(ii) makes clear that pricing parity is applicable to all of Columbia's production since December 1, 1978, that has been denied cost-of-service treatment in Docket No. RP75-106. Columbia is nevertheless subject to other requirements of this rule and the Commission's regulations under the NGA. These include, but are not limited to, the filed rate doctrine of section 4 of the NGA and §§ 154.38 and 154.63 of the Commission's regulations, and the requirement under § 154.42(b)(3)(i) that a pipeline comply with the provisions of subchapter H, absent a waiver.

[45] *See* § 154.42(b)(2)(ii) of the final rule.

(relating the special circumstances.)" (emphasis added.)

It was the Commission's intent in establishing this rule to leave intact existing pricing schemes which were designed to encourage the drilling programs of individual pipelines. Because we agree that pipelines subject to modified cost-of-service treatment should continue to value the designated percentage of their production by reference to prices applicable to sales by independent producers (NGPA rates), we have expressly provided for that result in new § 154.42(b)(2)(ii).

El Paso urges the Commission to adopt a similar amendment to § 2.66a(b)(1)(iii) of the proposed rule for somewhat different reasons. In El Paso's view, the Commission erred in applying the exclusion to natural gas from leases acquired before November 15, 1979, if any production from such leases was ever accorded cost-of-service treatment. El Paso contends that new production from such leases should receive parity treatment, and therefore urges the Commission to limit the language of new § 154.42(b)(2)(ii) to exclude only that "production" which has ever been granted cost-of-service treatment under special circumstances.

El Paso appears to have misconstrued the Commission's purpose in excluding cost-of-service gas from NGPA rate treatment. It was our design to enforce the perimeters which the pipelines themselves drew around their drilling programs. In determining the applicable cost-of-service allowance, the Commission included the pipeline's costs of lease acquisition, exploration and development. The risks associated with these expenditures have already been passed on to the pipeline's customers. We therefore will continue to treat on a cost-of-service basis any gas produced from developed or undeveloped leases, if such leases were acquired before November 15, 1979, and were ever subject to cost-of-service treatment.

F. Abandonment of Leases Now Subject to Cost-of-Service Treatment

In the Notice of Proposed Rulemaking, the Commission expressed its concern that pipelines may seek to circumvent the exclusion of cost-of-service gas from NGPA price treatment by spinning-off to affiliates their properties which are now valued on a cost-of-service basis. Under § 270.203(c), the affiliate's sale back to the pipeline of gas from those properties would be a first sale. We emphasized that any such transfer would require the Commission's authorization of abandonment. Also, because the gas is committed or dedicated to interstate commerce within the meaning of section 2(18) of the NGPA, we took the position that the affiliate would be required to file a certificate application in order to make the sale of the transferred gas to the interstate pipeline. We cautioned pipelines that the Commission would closely scrutinize abandonment and certificate applications to assure that the transaction is not merely an attempt by the pipeline to avoid continued cost-of-service pricing treatment.

Kentucky-West Virginia objects to our statements in the Notice of Proposed Rulemaking that we would carefully scrutinize any attempt by a pipeline to transfer its leases to an affiliate in order to circumvent our decision to deny parity of pricing treatment to pipelines now subject to cost-of-service treatment. It maintains that any attempt by the Commission to deny a certificate to an affiliate of a pipeline in order to prevent the affiliate from selling production from leases transferred from the pipeline and then sold back to the pipeline at NGPA prices would be contrary to section 601(c) of the NGPA. Section 601(c) provides that the Commission cannot deny or condition the grant of any certificate under section 7 of the NGA based upon the amount paid in any sale if such amount is deemed "just and reasonable" under section 601(b) deems NGPA prices to be just and reasonable if paid in a first sale, subject to certain conditions.

The Commission does not believe that its authority under the NGA to scrutinize such a transaction has been significantly limited by the NGPA. Assuming that the interpretation of 601(c) proffered by Kentucky-West Virginia is correct, the pipeline is nevertheless required to obtain the Commission's authorization before it may transfer its production properties.[46] The Commission reiterates that we will closely scrutinize any attempt to spin-off developed and undeveloped leases and will exercise our full authority to prevent spin-offs undertaken in order to circumvent the policies established in this rule.

EFFECTIVE DATE: This final rule is effective September 3, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12,009, 42 FR 46267)

In consideration of the foregoing, the Commission amends Part 2 of Subchapter A, Part 154 of Subchapter E, and Part 270 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, effective September 3, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

[46] *See*, Opinion No. 626, *Panhandle Eastern Pipe Line Co.*, 48 F.P.C. 518 (1972).

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.66 [Amended]

1. Part 2 is amended in the table of contents and in the text of the regulations by inserting in the title of § 2.66 the word "certain" between "of" and "new" and is further revised by adding at the end of the text of § 2.66 the following new paragraph:

* * * * *

(e) *Inapplicability to certain gas produced on or after December 1, 1978.* This section does not apply to natural gas produced on or after December 1, 1978:

(1) If such gas sold in a first sale, as determined under § 270.203 of this chapter; or

(2) If § 154.42 is applicable to such gas.

PART 154—RATE SCHEDULES AND TARIFFS

2. Part 154 is amended in the table of contents and in the text of the regulations by adding after § 154.41 the following new § 154.42:

§ 154.42 Pricing of certain gas produced on or after December 1, 1978, by pipelines and pipeline affiliates.

(a) *Applicability.* This section applies to natural gas that is produced by an interstate pipeline or an affiliate thereof and that is delivered to such pipeline, other than in a first sale, if:

(1) Such gas is produced on or after November 15, 1979; or

(2) Such gas is produced on or after December 1, 1978, and before November 15, 1979, and

(i) Is specifically made subject by Commission order to the outcome of the proceeding in which this section has been promulgated; or

(ii) Such pipeline's or affiliate's filing for cost-of-service treatment for such gas was denied by the Commission under § 2.66(a)(4) of this chapter after December 1, 1978, for failure to show special circumstances justifying such treatment.

(b) *NGPA rate treatment.* (1) *General rule.* Natural gas to which this section applies and for which NGPA rate treatment is available under paragraph (b)(2) of this section shall be priced for ratemaking purposes in any pipeline rate proceeding at the lower of:

(i) The rate that would have been applicable under Part 271 or under Part 272 of Subchapter H had the gas been delivered to the pipeline in a first sale; or

(ii) The amount paid in comparable sales (which may also be first sales) between persons not affiliated with such interstate pipeline or with each other.

(2) *Gas for which NGPA rate treatment is available.* (i) For purposes of this section, NGPA rate treatment is available (except as provided in paragraph (b)(2)(ii) of this section) for natural gas if the production is from a lease owned by a pipeline or affiliate thereof and if:

(A) The lease was acquired after October 7, 1969; or

(B) The natural gas is produced from a well commenced on or after January 1, 1973; or

(C) The natural gas is produced through a well commenced prior to January 1, 1973, as a result of a completion operation commenced on or after such date into a different, formerly nonproductive reservoir; or

(D) The Commission, prior to December 1, 1978, had granted area or nationwide rate treatment for such gas in lieu of otherwise applicable cost-of-service treatment; except that NGPA rate treatment shall be available only for natural gas produced during the period for which area or nationwide rate treatment was provided in applicable Commission orders and shall also be subject to the conditions specified in such orders.

(ii) *Exclusion from NGPA rate treatment.* NGA rate treatment is not available for natural gas produced from leases acquired before November 15, 1979, which have ever been granted cost-of-service treatment pursuant to § 2.66(a)(4) of this chapter or pursuant to a settlement approved by the Commission in lieu of a finding of special circumstances under that section; except that, in the case of natural gas from leases which have been granted area or nationwide rates for some specified percentage, NGPA rate treatment is available for that specified percentage.

(3) *Subchapter H requirements.* A pipeline or affiliate that produced natural gas for which NGPA rate treatment is available under paragraph (b)(2) of this section shall be subject to all the requirements of Subchapter H that would have been applicable had the natural gas been delivered pursuant to a first sale other than the requirement of § 270.101(d)(1) regarding applicable filing requirements under § 154.92 and § 154.94. Such pipeline or affiliate may apply for a waiver of any time-of-filing requirement in Subchapter H based on a showing that a timely filing was not made because such pipeline or affiliate had no notice that it was subject to such requirement under this subparagraph.

(c) *Cost-of-service treatment.* In any pipeline rate proceeding, natural gas to which this section applies and for which NGPA rate treatment is not available shall be priced for ratemaking purposes on a cost-of-service basis.

(d) *Definitions.* For purposes of this section:

(1) *NGPA definitions.* The terms "interstate pipeline," "affiliate," and "first sale" have the same meaning as they have for purposes of Subchapter H.

(2) *Lease.* The term "lease" includes any fee interest in producing property or any working interest in production.

(3) *Pipeline rate proceeding.* The term "pipeline rate proceeding" includes a proceeding under § 154.38(d)(4).

§ 154.38 [Amended]

3. Part 154 is further amended by deleting the first sentence in footnote 1 to § 154.38(d)(4) and substituting the following sentence in lieu thereof:

[1]For the purpose of this paragraph, purchased gas costs represent the cost of wellhead purchases, field line purchases, plant outlet purchases, transmission line purchases, and pipeline or affiliate production that qualifies for and is being afforded an area of nationwide rate under § 2.66 of this chapter, a maximum lawful price under § 270.203 of this chapter, or a rate specified under § 154.42(b)(1).

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

§ 270.203 [Amended]

4. Part 270 is amended in § 270.203 by adding a new paragraph (f) to read as follows:

* * * * *

(f) *Cross reference.* For treatment of interstate pipeline and affiliate production delivered to a pipeline other than in a first sale, see § 2.66 and § 154.42 of this chapter.

[FR Doc. 80-24130 Filed 8-8-80; 8:45 am]
BILLING CODE 6450-85-M

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18 CFR Parts 2, 270, and 271

[Docket No. RM80-47]

Order No. 94: Order Amending Interim Regulations Under the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act

Issued July 25, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Amending Interim Regulations, Establishing Policy and Seeking Further Comment.

SUMMARY: By this Order, the Commission, after prior notice and comment, amends those sections of Subpart K, Part 271, of its regulations implementing the production-related costs portion of section 110 of the Natural Gas Policy Act (NGPA); issues a policy statement respecting certain production-related costs incurred by interstate pipeline purchasers under the Natural Gas Act; and seeks further comment on its rules and comment on its policy. The important changes to the interim regulations of Subpart K include, *inter alia*, (1) permitting sellers of committed or dedicated gas under the NGPA to apply for production-related costs in excess of Natural Gas Act allowances; (2) permitting certain sellers of natural gas to collect Natural Gas Act allowances without application; and (3) providing for a new category of production-related costs ("other costs"). In addition, the interim regulations of Subpart K are amended to suspend, during the pendency of new, yet to be announced rulemakings, applications for production-related costs to gather or compress natural gas. Accompanying these changes are changes to Subpart A of Part 270 of the Commission's regulations to define the terms "production-related", "production" and "non-allocable" costs. The policy accompanying these rules provides that certain activities which are production-related will be deemed prudent if undertaken by an interstate pipeline.

DATES: Amendments to Parts 2, 270, and 271 to be effective July 25, 1980; comments on Order No. 94 to be received by September 22, 1980.

ADDRESS: Send comments to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: John Conway, Office of the General Counsel, Room 8100-K, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8150.

United States of America

Federal Energy Regulatory Commission

[18 C.F.R. Parts 2, 270 and 271]

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

Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978

and Establishing Policy Under the Natural Gas Act, Docket No. RM80-47.

Order No. 94

Rule

Issued July 25, 1980

Amending Interim Regulations Under the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act.

By this rule, the Federal Energy Regulatory Commission (the Commission) amends certain portions of Subpart K, Part 271 of its regulations implementing section 110 of the Natural Gas Policy Act of 1978 (the NGPA). The parts of Subpart K treated under this Rule are those interim regulations addressing allowances for production-related costs for sales of natural gas produced in the lower-48 states.[1] The rule defines the types of production-related costs which may be applied for, permits automatic add-on of certain costs without application and expands the scope of persons who may apply for production-related costs to include sellers of committed or dedicated gas. The amendments also provide that costs of compression and gathering cannot be applied for until the conclusion of generic rulemaking proceedings to establish appropriate allowances for these activities.[2]

This Rule also establishes a policy in Part 2 of the Commission's regulations that addresses interstate pipeline purchasers subject to the Natural Gas Act jurisdiction of the Commission. The policy provides that certain types of production-related costs incurred by an interstate pipeline purchaser will be deemed prudently incurred in proceedings brought under the Natural Gas Act.

These actions, in conjunction with the proceedings to determine appropriate allowances to gather and compress gas, will, we believe, establish a coherent mechanism for implementing section 110 of the NGPA.[3]

A. Background

The NGPA was signed into law on November 9, 1978.[4] Among the most important of its provisions are those of Title I dealing with "first sales" of natural gas made in interstate or intrastate commerce on or after December 1, 1978.[5] Under these provisions, the price at which natural gas may be sold in a first sale cannot exceed an applicable maximum lawful (ceiling) price established by Congress or the Commission.

Section 110 of the NGPA, entitled "Treatment of State Severance Taxes and Certain Production-Related Costs", provides in part that:

> . . . a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas . . . if such first sale price exceeds the maximum lawful price to the extent necessary to recover . . . any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similar costs, borne by the seller and allowed for, by rule or order, by the Commission.

Under these terms, the Commission is given authority to permit sellers of natural gas to charge prices in excess of established ceiling prices in order to allow them to recoup certain "production-related" costs borne by them.

The words of section 110 ("allowed . . . by the Commission"), and its legislative history, show that the Commission's authority to grant an allowance for production-related costs is discretionary.

The joint statement of managers which accompanied the NGPA to the floor of Congress makes clear the authority under section 110 is discretionary and that this discretion extends to all ceiling prices.[6] In addition, the floor debates which attended passage of the NGPA spoke of the authority as being discretionary.[7]

Yet this discretion is not without some limits. On the one hand, the legislative history shows that the refusal to grant an appropriate allowance under section 110 may be an abuse of discretion and that, in determining an allowance consistent with the purposes of the NGPA, "prevailing industry practice" may be the guide.[8] On the other, by referencing the activities for which an

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[1] In order No. 45 we established final regulations respecting allowances for production-related costs borne by sellers of natural gas produced at Prudhoe Bay, Alaska for transport though the Alaska Natural Gas Transportation System. *See* Order No. 45, "Treatment of Certain Production-Related Costs for Natural Gas to be Sold and Transported through the Alaska Natural Gas Transportation System: Regulations and Statement of Policy", Docket No. RM79-19 (issued Aug. 24, 1979), 44 *Fed. Reg.* 51554 (Sept. 4, 1979), *as clarified*, Order 45-A, "Order Clarifying Certain Provisions of Order No. 45", Docket No. RM79-19 (issued Sept. 21, 1979), 44 *Fed. Reg.* 56926 (Oct. 3, 1979), *as corrected*, Erratum Notice, Docket No. RM79-19 (issued Oct. 10, 1979), 44 *Fed. Reg.* 61949 (Oct. 29, 1979), *stayed until further notice*, "Order Granting Rehearing for the Purpose of Further Consideration and Further Staying of Order No. 45 and Order No. 31-A", Docket Nos. RM79-19 and RM78-12 (issued Dec. 20, 1979), 44 *Fed. Reg.* 76482 (Dec. 23, 1979). Nothing we do today in the present Order substantively affects or amends Order No. 45.

[2] Today's amendments to the interim regulations do not inaugurate these proceedings. However, any add-ons permitted as a result of the new proceedings will be permitted retroactively to the date today's amendments take effect. *See* text accompanying note 76 *infra*.

[3] In addition to this Rule and Policy, and the two generic rulemaking proceedings for compression and gathering costs just alluded to, there will also be a proposed amendment to bar sellers from selling gas so that a purchaser incurs costs to produce the gas in addition to the first sale price. And there will be a proposed amendment to pipeline filing requirements to implement the policy statement. These proposals are described more fully below.

[4] Pub. L. No. 95-621, 92 Stat. 3353 (1978), 15 U.S.C. §§ 3301 *et seq.* (Supp. II, 1978).

[5] Under Section 2(21)(A) of the NGPA a "first sale" is defined as: any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii) and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

Certain sales, such as those of volumes of natural gas from pipelines or local distribution companies, are not included in the definition of "first sale" unless they are sales of volumes of natural gas attributable to the production of these sellers; *see* section 2(21)(B) of the NGPA.

[6] All ceiling prices under this Act are exclusive of State severance taxes borne by the seller and any adjustment which may be allowed by the Commission for specified production related costs. . . .

The conference agreement provides authority for the Commission, by rule or order, to make adjustments in ceiling prices for production-related costs which include the costs of compressing, gathering, processing, treating, liquefying, or transporting natural gas. The authority is available for making adjustments to all ceiling prices.

The conferees recognize that, in certain cases, the just and reasonable rates under the Natural Gas Act include an allowance for production-related costs. The conference agreement is not intended to alter or change that practice.

Sen. Rep. No. 95-1126, 95th Cong., 2d Sess. at 90 (1978).

[7] *See generally* 124 Cong. Rec. at H13118 (daily ed. Oct. 11, 1978) (statement of Congressman Dingell); 124 Cong. Rec. at S16257 (daily ed. Sept. 27, 1978) (colloquies of Senators Gravel and Jackson and Senators Stevens and Jackson).

[8] With respect to section 110, it has been correctly observed that the authority to permit adjustments is discretionary. However, by authorizing discretionary adjustments the conferees did not intend to authorize a refusal to grant an appropriate allowance where such refusal would be an abuse of discretion. Thus, if the function performed is not usually performed by the producer without provision being made for compensation over and above the amounts paid for the gas, prevailing industry practice may guide FERC to approve ceiling price adjustments which the Commission determines appropriate and consistent with the purposes of the legislation. For example, if the producer undertakes to compress the gas to pipeline pressure, and if an allowance is customarily made by the pipeline for such compression, the conferees anticipated that FERC would consider approval of an appropriate allowance under section 110. However, administrative flexibility was deemed important. Therefore, it was also intended that FERC could selectively focus on the areas which appear appropriate for approval of adjustments under section 110 in such a manner that the implementation of the section would not become administratively burdensome.

124 Cong. Rec. at H13118 (daily ed. Oct. 11, 1978) (statement of Congressman Dingell).

allowance can be granted, the words of section 110 make it clear that there are certain costs which cannot be allowed.

In implementing section 110 we must then steer a middle course; to permit an allowance for activities falling outside the scope of section 110 would be as much as abuse of our discretion as would a refusal to grant an appropriate allowance for activities within its scope. To implement section 110, we must therefore determine first, the costs for which we may grant an allowance (the allowable costs); and then which, if any, of those costs should be allowed as an appropriate exercise of our discretion.

1. *Production and production-related costs.* To say that we have the discretion to allow "production-related" costs does not take us very far in determining what costs are within our discretion to allow under section 110.[9] And the list of activities provided under section 110, while giving some insight to the limits of that section, does not suffice in and of itself to define those limits.

The production and sale of natural gas involves a myriad of costs. In the simplest situation there are costs for seismic and other geophysical surveys, geological activities, lease acquisition, drilling and equipping the well and production of natural gas and liquids. In addition, costs can be incurred for processing, treating, dehydrating, storing and transporting any natural gas that is produced. In more complex situations, as for example when natural gas is produced as oil-well gas, or when it is otherwise produced as a stream bearing liquid hydrocarbons, or liquefiable hydrocarbons or both, costs will be incurred for separation and extraction facilities for the liquids and liquefiables and their transportation and storage. Costs may also be incurred for building and operating facilities to enhance the recovery of oil or natural gas liquids from a reservoir. Included under this heading are facilities to reinject gas into an oil reservoir or recycle the gas in a gas-condensate reservoir stream or facilities to use natural gas to lift liquids in the well to the surface (such as, "gas-lift" operations or other artificial liquid lifting operations).

In one sense all of these costs are "production-related" although not all are related to bringing forth natural gas. Moreover, a particular activity can be involved in more than one aspect of this process. The best example is compression which can, among other things, be used to recycle or reinject natural gas into a gas condensate or oil reservoir to enhance recovery or production of liquid hydrocarbons, to drive gas to and through a separator or plant to strip out liquids, transport liquids through a dual-phase transportation system (one carrying both natural gas vapor and liquids), or to raise the pressure of a natural gas stream to permit its entry into a transportation system).

All of this suggests that costs which attend the production of natural gas can be broken down into three categories: costs necessary to bring the gas out of the ground and to the wellhead (the costs of finding and acquiring the gas, of drilling and providing facilities and the costs of maintaining production); costs which go to the production and handling (including separation, storage and transportation) of nongas commodities like oil and natural gas liquids; and costs which, apart from those allocable to nongas production and handling, are incurred to ready the gas for pipeline transportation. Our problem is to determine whether, under section 110, any of these costs are, or should be, allowable add-ons for pricing purposes.

2. *Allowable costs.* We believe that there are two types of costs outside the scope of section 110 and therefore not allowable under its provisions. These are costs incurred in the production and sale of nonnatural gas commodities (as, for example, costs allocable to oil and natural gas liquid production), and costs which are incurred for production of natural gas to the wellhead. To grant an allowance under section 110 for either of these two types of activities would be a circumvention of the NGPA pricing provisions. With respect to costs for the production and sale of nonnatural gas commodities, these should be borne by the consumers of oil and liquids; and with respect to costs incurred for the wellhead production of natural gas, the costs should properly be borne by producers under NGPA ceiling prices.

a. *Allocation of costs between natural gas and liquids.* It should be evident that only costs allocable to the sale of natural gas should be allowed under section 110. That section goes only to first sales of "natural gas". To permit allowances under its provisions for costs which are not allocable to natural gas means that those who purchase under the NGPA, and the ultimate gas consumer, would pay for a benefit not received. Congress could not have intended that we use our discretion in such a manner.

This common-sense approach is supported by other sections of the NGPA and its legislative history. Although the Act itself does not provide a detailed definition of the term "natural gas",[10] the joint statement of managers, in observing that the definition given in the Act "is identical to the definition of natural gas provided in the Natural Gas Act" evinces an intent to limit that term.[11] In implementing the Natural Gas Act, we find that oil and liquids are not included in the definition of "natural gas". This was true in pipeline rate cases where the issue was one of jurisdiction;[12] and it was true after the inauguration of producer rate regulation.[13] Given this history, and given the view that, whatever else our jurisdiction under the NGPA may go to, it does not go to setting prices for oil or natural gas liquid production, we find that the problem of cost allocation remains a stubborn fact of life under section 110 of the NGPA.

The problem of allocating costs between gas production and oil production and between gas production and other liquid production was faced by this Commission's predecessor, the Federal Power Commission (the FPC) in fixing individual producer rates under the Natural Gas Act.[14] Cost allocation

[9] The Congress used the term "production-related" in the title of section 110 and in the joint statement of managers and floor debates to describe the activities for which an allowance could be given under section 110. *See* H.R. Rep No. 95-1752, 95th Cong., 2d Sess. at 90-91 (1978), quoted above at note 6 *supra*; *see also* 124 Cong. Rec. at H13118 (daily ed. Oct. 11, 1978) (*statement of Congressman Dingell*) (quoted above at note 8 *supra*), and at S16257 (daily ed. Sept. 27, 1978) (colloquys of Senators Jackson and Stevens and Senators Jackson and Gravel). In the accepted common usage, the suffix "-related" means no more than to have a relation to. *See* Websters Third New International Dictionary 1916 (unabridged ed. 1961).

[10] Section 2(1) of the NGPA states only that, "[t]he term "natural gas" means either natural gas unmixed or any mixture of natural and artificial gas."

[11] H.R. Rep. No. 95-1752, 95th Cong., 2d Sess. at 69 (1978). The joint statement goes on to state that the NGPA is not intended to include facilities for producing synthetic gas or for producing methane gas generated by the decomposition of organic waste. *Id.* Hence our view that these costs are also excluded from section 110.

[12] *See, e.g.*, City of Detroit v. FPC, 230 F.2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956) (in proceeding to determine rate increase for interstate pipeline, pipeline's gasoline plant facilities deemed jurisdictional); *see also* Mobil Oil Corp. v. FPC, 483 F.2d 1238 (D.C. Cir. 1973) (Commission lacks authority under Natural Gas Act to establish mandatory rates for pipeline transportation of liquid hydrocarbons).

[13] The regulation of producer sales of natural gas in interstate commerce for resale dates from June 7, 1954 and the Supreme Court's decision in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954) (*Phillips I*).

[14] *See, e.g.*, Davidor & Davidor, 15 FPC 1236 (1956); Union Oil Co. of California *et al.* 16 FPC 100 (1956); *but see* Pan American Corp. *et al.*, 19 FPC 463 (1958) (rate increase not based on production cost evidence). This approach, of requiring production costs to fix just and reasonable rates, was upheld by the courts. Forrest Oil Corp. v. FPC, 263 F. 2d 622 (5th Cir. 1959); Bel Oil Corp. v. FPC, 255 F. 2d 543 (5th Cir. 1958). The premier case in which this was done for an individual producer was that of Phillips

Footnotes continued on next page

took up a considerable portion of the record in area-wide ratemaking proceedings,[15] and in the nationwide ratemaking opinions.[16]

While the concept of cost allocation is simple, this prior history of rate regulation under the Natural Gas Act shows that its practice is exceedingly complex and requires considerable judgment.[17] Yet, given the fact that section 110 goes only to production-related costs of sales of natural gas, we must still insure that natural gas consumers incur only those costs attributable to the natural gas service. Whether a given cost is allocable to natural gas will be determined under the procedures and practices already developed under the Natural Gas Act. We make no changes in these practices by this Rule. The rules implementing section 110 apply then only to those costs which are properly allocable to natural gas production-related activities.

b. *Costs incurred after gas production.* Of the costs allocable to natural gas production and production-related activities, only costs incurred after the natural gas flows from the wellhead should be considered under section 110. We arrive at this conclusion by looking at the list of activities for which a cost allowance can be granted under that section—"any costs of compressing, gathering, processing, treating, liquifying, or transporting such natural gas, or other similar costs." This is a classification by enumeration, and our problem is to define the limits of the class. In doing so, we note that all of the specified activities excepting compression are activities which occur only after the natural gas is produced from the ground and leaves the wellhead; and compression frequently occurs after this point. No mention is made of costs incurred in exploring for and finding natural gas reserves or for equipping wells to produce natural gas. Nor, with the single exception of compression, is there any reference to costs or activities to enhance productivity or to operate or maintain production facilities. (As noted above, compression can be used to enhance gas and oil recovery and to recover and transport liquids.[18]) Finally, we have a general reference ("other similar costs") supplementing the enumeration. All of this leads us to the conclusion that what is meant by a "production-related" cost under section 110 is a cost incurred only after the natural gas leaves the wellhead (*i.e.*, is produced) and that "compression" must be read in the context of such costs.[19]

This result can be tested against other provisions of the NGPA. First, the add-ons of section 110 apply to a ceiling price. Second, under the dictates of Title I, the ceiling prices apply to all "first sales" which are, in turn, defined in terms of to whom the gas is sold.[20] Thus, the Congress provided that first sale ceiling prices may aply downstream form the wellhead, and that they would apply "at the wellhead."[21] The ceiling prices then represent ceilings for gas production. Third, if Congress had intended that the section 110 discretion be used to permit a higher ceiling price for production activities, then particular provisions of the NGPA which permit this Commission to set higher ceiling prices for certain types of gas would be mere surplusage.[22] Finally, in considering the NGPA, and its predecessor bills (specifically the proposed National Energy Act) the Congress was concerned with providing prices for the production of natural gas.[23] All of this leads to the conclusion that to permit a first seller to pass through, under section 110, as an addition to a ceiling price, costs borne by him in producing the gas to the wellhead would be a circumvention of the ceiling prices set by the Congress.

B. Summary of Changes

In implementing section 110 of the NGPA we must exercise our discretion in a manner consistent with the purposes of the Act. This means that allowances cannot be given for costs not allocable to the natural gas nor for costs incurred to produce the gas. It also means that, to the extent costs are allowed, they should be allowed in a manner consistent with the pricing mechanisms established by the Congress; each pricing provision of Title I of the NGPA must be given full effect.

Footnotes continued from last page
Petroleum Co., 24 FPC 537, 533–565 (1960), *affirmed*, Wisconsin v. FPC, 373 U.S. 294 (1963) *(Phillips II)*.

[15] Opinion No. 468, "Area Rate Processing," Docket Nos. AR61–1 *et al.* (issued Aug. 5, 1965), at 83–89, 34 FPC 159 at 214–216, *affirmed*, Permian Basin Area Rate Cases, 390 U.S. 747 (1978); Opinion No. 546, "Area Rate Proceeding (Southern Louisiana I)", Docket Nos. AR61–2 *et al.* at 73 (issued Sept. 25, 1968), 40 FPC 530, *affirmed*, Austral Oil Co. v. FPC, 428 F.2d 407 (5th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970); Opinion No. 586, "Area Rate Proceeding (Hugoton-Anadarko Area)", Docket Nos. AR64–1 *et al.* at 8 (issued Sept. 18, 1970), 44 FPC 761 at 772; Order No. 411, "Area Rates for the Appalachian and Illinois Basin Areas," Docket Nos. R–371 *et al.* at 3–4 (issued Oct. 2, 1970), 44 FPC 1112 at 1115–1116; Opinion No. 595, "Opinion and Order Determining Just and Reasonable Rates for Natural Gas Produced in the Texas Gulf Coast Area", Docket Nos. AR64–2 *et al.* at 4–5 (issued May 6, 1971); Order No. 435, "Opinion and Order Establishing Initial Rates in the Rocky Mountain Area," Docket Nos. R–389 *et al.* at 18–19 (issued July 15, 1971); Opinion No. 598, "Area Rate Proceeding (Southern Louisiana II)", Docket Nos. AR61–2 *et al.* at 12–13, 50 (issued July 16, 1971) 46 FPC 86 (1971); Opinion No. 607, "Opinion and Order Determining Just and Reasonable Rates for Natural Gas Produced in the Other Southwest Area", Docket Nos. AR67–1 *et al.* (issued Oct. 29, 1971); Opinion No. 658 "Opinion and Order Establishing Just and Reasonable Rates and Initial Rates in the Rocky Mountain Area", Docket No. R–425 (issued Apr. 11, 1973); Opinion No. 662, "Opinion and Order Determining Just and Reasonable Rates for Natural Gas Producers in the Permian Basin Area (Permian II)", Docket No. AR70–1 (Phase 1) (issued Aug. 7, 1973).

[16] *See e.g.*, Opinion 699–H at 31; Opinion 749 at 5–16, 54 FPC 3090 (1975) (establishing a national flowing gas rate for wells commenced, and contracts entered into, prior to January 1, 1975); Opinion 770–A at 58–60, 42 *Fed. Reg.* 2954 (issued Jan. 14, 1973) (establishing a national flowing gas rate for wells commenced on or after January 1, 1973 and certain other sales). Obviously, with the possible exception of some early producer rate cases, rates were set on the basis of more than mere cost allocation. For example, "noncost" elements were introduced to arrive at a just and reasonable rate. *See generally* Opinion No. 595, note 15 *supra* at 5; Opinion No. 749, at 5–6. However, cost allocation was certainly one of the major factors. Opinion No. 749 at 6.

[17] For a brief summary of the problems involved, see Opinion No. 595, note 15 *supra* at 10–11 (cost allocations requiring "substantial amount of judgment").

[18] *See* text following note 9 *supra*.

[19] We apply the twin tools of statutory construction, *ejusdem generis* and *expressio unias est exclusio alterius* to arrive at this result. *See generally* 2A Sutherland: Statutory Construction §§ 47.18 to 47.23 (4th Ed. 1973). The fact that the title to section 110 used the term "production related" to describe the activities for which an allowance can be granted under section 110 cannot, in and of itself, mean that production costs are to be included. *See, e.g.*, United States v. Minker, 350 U.S. 179 (1956) (title of statute not controlling).

[20] *See* note 5 *supra*.

[21] In support of the view that the first sale price can apply at the wellhead, we have the title of the pricing provisions of the NGPA, "Wellhead Pricing: Wellhead Price Controls"; *see also* 124 Cong. Rec. at H13115 (daily ed. Oct. 14, 1978) (statement of Congressman Dingell regarding ceiling prices generally applicable to "field sales"; 124 Cong. Rec. at S 16257 (daily ed. Sept. 27, 1978) (Colloquy of Senator Jackson, Senate floor Manager of the NGPA and Senator Gravel to the point that Commission's discretion under section 110 does not preclude purchase at the wellhead at a maximum lawful price). *Cf.* H.R. Rept. No. 95–496 (Part 4), 95th Cong., 1st Sess. at 103 (July 19, 1977) (report accompanying House-passed version of the President's National Energy Act) (first sale prices restricted to wellhead sales).

[22] *See* sections 104 (b)(2) (increasing ceiling rates for natural gas priced as committed or dedicated gas); 106(c) (increasing ceilings for gas priced under rollover contracts); 107(b) (higher incentive prices for "high-cost" natural gas); 109(b)(2) (increasing ceiling prices for certain other categories of natural gas); *see also* Notice of Proposed Rulemaking, "Procedures Governing Applications for Special Relief Under Sections 104, 106 and 109 of the Natural Gas Policy Act of 1978," Docket No. RM79–67 (issued Aug. 14, 1979), 44 *Fed. Reg.* 49468 (Aug. 23, 1979).

[23] *See, e.g.*, 124 Cong. Rec. at S15020 (daily ed. Sept. 13, 1978) (statements of Senators McIntyre and Jackson on introducing the NGPA); 124 Cong. Rec. at H13129 (daily ed. Oct. 14, 1978) (statement of Congressman Stockman); *see also* H.R. Rept. No. 95–496 (Part 4), 95th Cong., 1st Sess. at 5–14 (July 19, 1977) (major purpose of National Energy Act to provide price incentives to encourage production of hard-to-produce natural gas).

Finally, we must further the policies inherent in the pricing provisions of the NGPA without permitting a shift of costs to purchasers as would constitute a circumvention of those policies.

In implementing section 110 defining terms is essential. Using the distinctions described earlier in our discussion of costs,[24] all costs incurred to explore for and develop gas reserves, to drill and equip wells, to enhance natural gas liquid production (as for example recycling gas) and to operate and maintain production of natural gas through the wellhead and similar costs will be termed "production" costs; [25] costs which cannot be allocated to the natural gas sale (as, for example, costs associated with the separation, extraction, storage or transportion of the natural gas liquids or hydrocarbons that are liquefied for separation from the gas stream which are owned by the seller) will be termed "non-allocable" costs; all other costs will be termed "production-related" costs.[26]

In the interim regulations implementing section 110,[27] we described two types of allowable costs: "Natural Gas Act allowances" and "production-related costs".[28] The Natural Gas Act allowances applied to sales of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate was in effect on that date (*i.e.*, committed or dedicated gas).[29] They were defined as the area gathering and offshore-to-onshore delivery allowances provided for under the nationwide rate opinions.[30]

"Production-related" costs were defined as costs for compression; off-lease gathering, liquefication, and transportation; and processing and treating costs necessary to exceed certain specified quality standards ("other" production-related costs).[31] The interim rules barred the sellers of committed or dedicated gas from applying for the "production-related" costs; [32] and sellers of natural gas under existing (as of the date of passage of the NGPA) intrastate contracts, intrastate rollover contracts and successors to existing intrastate contracts were barred from both "Natural Gas Act allowances" and "production-related" costs.[33]

The decision to exclude sellers of committed or dedicated gas from the application provisions for "production-related" costs was based on the fact that the issue of cost shifting under rates set under the Natural Gas Act remained, at that time, pending before the Commission.[34] To have permitted sellers of this gas production-related costs in excess of the "Natural Gas Act allowances" would have been to decide the issue; for such sales, although controlled by the pricing provisions of the NGPA, were still subject to the Natural Gas Act.[35]

The decision to exclude sales of natural gas subject to an existing intrastate contract, intrastate rollover contract or successer to an existing intrastate contract from the application procedure for production-related costs was based on the view that Congress intended to preserve pre-NGPA contractual relationships.

As we expressed it then, "the existing contract provisions reflect the allocation of costs of production as they were contemplated by the parties at the time the contract was negotiated," to permit an increase for production-related costs, "would have the effect of increasing the total costs borne by the purchaser for acquiring the very same commodity as he was acquiring for a lower price before [the] date of enactment." [36] Our view was that to permit an increase would be contrary to the Congressional intent to establish maximum lawful prices under sections 105 and 106(b) of the NGPA by reference to the terms and conditions of the contract.[37]

Taken together, the purpose of the exclusions for committed or dedicated gas and intrastate contract gas was to preserve that aspect of NGPA Title I pricing which was based upon pre-NGPA prices. In addition, it was to prevent a shift to the buyers of what we now term "production" costs (which should be borne by the seller within prescribed ceiling prices) and non-allocable costs.

The same considerations respecting the shifting of costs which should, in the first instance, be borne by sellers, was the basis of defining standards for "production-related" costs under the interim regulations:

> Standards for determining when the Commission will entertain applications for a determination that the maximum lawful price has not been exceeded as a result of the addition of certain production-related costs are require in order to assure that natural gas for which the maximum lawful prices set by the NGPA are paid is that commodity which is of relatively uniform value to the purchased. When a price is charged and collected for a specific commodity, such a product is normally deemed to have certain basic qualities which define the item being purchases. The Commission does not believe that Congress, when setting the maximum lawful prices for natural gas, did not anticipate that the seller would bear normal costs of production in making this commodity useful to the purchaser. The maximum lawful prices were designed to permit the seller to recoup such costs. Section 110 recognizes that some sellers may incur abnormally high costs of production and permits recovery of those costs in circumstances where the Commission finds such recovery to be warranted.[38]

In implementing those standards in the interim regulations, we did not define "compression", nor did we characterize costs for "gathering, liquefaction or transportation" beyond the extent of requiring that they be for activities conducted "off the lease from which the natural gas was produced."[39] The interim regulations did, however, define the costs allowable for processing or treating the natural gas and did so by referencing minimum quality standards that generally prevail in the industry.[40]

In preparing the amendments issued under this Rule, we have had the benefit of the comments and oral presentations submitted specifically in response to

[24] *See* text following note 9 *supra*.

[25] This categorization was developed under the Commission's rate setting procedures for individual producers, area-wide rates and nationwide rates. *See e.g.*, Opinion 699 at 77–94.

[26] This term, "production-related," is neither elegant nor accurate. However, since the term "production-related" has entered the lexicon of the NGPA as a description of section 110 costs we see no point in creating yet another new word.

[27] "Natural Gas Policy Act of 1978: Interim Regulations, Docket No. RM79-3 at 247–253 (issued Dec. 1, 1978), 43 *Fed. Reg.* 56448, 56574–56577 (Dec. 1, 1978). These provisions are codified at 18 C.F.R. §§ 271.1100 *et seq.* (1979).

[28] *Id.* at 247, 43 *Fed. Reg.* at 56574 (§ 271.1100).

[29] *Id.* at 250, 43 *Fed. Reg.* 56575 (§ 271.1104(a)).

[30] *Id.*

[31] *Id.* at 251, 43 *Fed. Reg.* at 56576; §§ 271.1105(c) and (d).

[32] *Id.* at 250–251, 43 *Fed. Reg.* at 56575–76; § 271.1105(b)(1).

[33] *Id.* § 271.1105(b)(2). Sellers of gas under these conditions are those who sell gas subject to sections 105 and 106(b) of the NGPA.

[34] *Id.* at 76–77, 43 *Fed. Reg.* at 56488–56489 (Preamble to the regulations). Resolution of the issue was pending before the Commission in rehearing of the *Phillips* case, Docket Nos. CI77–412 *et al.*

[35] Section 601(a) of the NGPA defines those first sales for which the provision of the Natural Gas Act and the jurisdiction of the Commission under that Act shall not apply solely by reason of the first sale. Among those first sales are those of natural gas which was not committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA. In addition, certain sales of committed or dedicated gas are also among first sales to which the Natural Gas Act will not apply. Among those are sales made under sections 107(c) (1), (2), (3) or (4); section 102(c) and section 103(c) of the NGPA.

[36] Interim Regulations, note 27 *supra*, at 77–78, 43 *Fed. Reg.* at 56489 (Preamble to the regulations).

[37] *Id.* at 78, 43 *Fed. Reg.* at 56489 (Preamble to the regulations).

[38] *Id.* at 82–83, 43 *Fed. Reg.* 56491–92 (Preamble to the regulations).

[39] *Id.* at 251, 43 *Fed. Reg.* at 56576 (§ 271.1105(c)).

[40] *Id.* at 251–252, 43 *Fed. Reg.* at 56576 (§ 271.1105(d)).

Subpart K of the interim regulations.[41] In addition, and as one would expect given the pervasive nature of the issues raised in implementing section 110, we have had comments and oral presentations on related areas including the reseller rule of § 270.202 and cost shifting under the Natural Gas Act.[42] Finally, we have had comments on, and petitions to rehear, regulations implementing the pricing provisions of sections 105 and 106(b) of the NGPA.[43] All of this leads us to conclude that important revisions to the regulations are necessary.

The major points of the amendments issued herein can be briefly summarized. Among other things, the new interim regulations under Subpart K of Part 271 erase the distinction between "Natural Gas Act allowances" and "production-related costs". Both are now considered as "production-related" costs and that term, as described above,[44] is defined to exclude production and non-allocable costs from the application provisions for allowances. The regulations permit sellers of committed or dedicated gas to apply for, and receive, production-related costs in addition to the Natural Gas Act allowances. The changes made by this Order do not address the interim regulations that bar sellers of gas under intrastate contracts from applying for (and receiving) allowances for production-related costs absent special hardship, inequity or an unfair distribution of burdens.[45]

The costs for which an application can be made are changed in four important respects. First, the rules are amended to bar applications for costs to compress and gather natural gas. The bar will be temporary, to extend only to the conclusion of proceedings to determine the appropriate allowance for these two activities. At such time as the Commission sets those allowances, applications, retroactive to the time the bar was instituted, will be accepted. Second, the "off-lease" requirement for transportation is removed. Third, the Natural Gas Act (NGA) allowances for gathering and transportation may be added to a first sale price by any seller (other than sellers of intrastate gas or gas produced at the Prudhoe Bay Unit of Alaska for transport through the ANGTS) without prior application if the seller performs the particular types of activities described in the applicable area or national rate opinion. Finally, the NGA allowances are particularly described.

In implementing these changes we define "production", "nonallocable" and "production-related" costs. The definitions track our discussion of these three types of costs given above and are placed in the general regulations section of Part 270.

Finally, a policy statement is issued. The statement applies to pipelines within the Commission's Natural Gas Act jurisdiction that purchase natural gas in a first sale. If such a pipeline incurs production-related costs because of activities performed by it after the first sale, such activities will be deemed prudent in any proceeding brought under the Natural Gas Act to determine the lawfulness of the rates and charges of the pipeline if the costs could have been applied for by the seller under the regulations of Subpart K implementing section 110 or if the costs involve certain types of compression. The policy addresses the problems of shifting costs to purchasers. The policy is reflected in the Commission's decision in the *Phillips* case (Docket Nos. CI77-412 *et al.*) issued today.

C. Section-by-Section Analysis of the Amendments

1. *Allowances for Production-Related Costs (Part 271).*

Before we begin our discussion of the regulations and comments, an important caveat is in order. The amendments made today to the interim regulations issued under Part 271 extend only to Subpart K of Part 271 and only to the extent that subpart regulates add-ons for allowances of production-related costs for natural gas produced in the lower-48 states. We do not, under this Rule, address the regulations for (and issues raised by) allowances for State severance taxes. Those particular regulations (§§ 271.1102 and 271.1103 and part of § 271.1101) will be discussed under a separate but related docket.[46] Nor do we address the regulations which make special provision for add-ons in the unique case of a first sale of natural gas produced at the Prudhoe Bay Unit of Alaska, for transport through the Alaska Natural Gas Transportation System.[47] That particular situation and the issues which surround it, are discussed elsewhere.[48] And we do not specifically address the regulations that prohibit sellers of intrastate gas (those who sell under sections 105 and 106(b) of the NGPA) from applying for production-related costs.

a. *Applicability.* As originally issued, § 271.1100 of the interim regulations provided that the regulations of Subpart K would apply to permit add-ons to first sale prices for State severance taxes, Natural Gas Act allowances, and production-related costs.[49] As discussed more fully below, the regulations are amended to remove the distinction between "production-related costs" and "Natural Gas Act allowances"; therefore, § 271.1100 is amended by deleting the reference to the latter "allowance". In addition, the title to Subpart K is also amended in order to make it more accurately reflect the scope of the subpart.

b. *Definitions.* As originally defined under § 271.1101(b), the term "production-related costs" meant those costs (including "other similar costs") enumerated under section 110 and incurred by the seller.[50] This paragraph has been amended and placed under the general definitions of § 270.102(b). A discussion of the amendments to this definition is given below under our consideration of Part 270.[51] For purposes of the present discussion, we need only point out that the term "production-related" is defined to exclude "production" and "non-allocable" costs. "Production" costs and "non-allocable" costs are, in turn, defined under two new paragraphs, §§ 270.102(b)(15) and 270.102(b)(16).[52] Given our view that

[41] Some 36 separate comments were received from 32 individuals, groups and state or Federal agencies. Those submitting comments represented all parts of the industry including sellers, purchasers, resellers, and consumers. Late filed comments, of which there were a few, were treated as being timely filed.

[42] With respect to this latter point, *see* Opinion No. 90 Phillips Petroleum Company: Opinion and Order Granting Rehearing in Part and Denying Rehearing in Part, Docket Nos. CI77-412 *et al.* (issued July 25, 1980).

[43] Order No. 68, "Final Regulations Under Sections 105 and 106(b) of the Natural Gas Policy Act of 1978", Docket No. RM80-14 (issued Jan. 18, 1980) 45 *Fed. Reg.* 5678 (Jan. 24, 1980), *rehearing granted*, "Order Granting Rehearing for the Purpose of Further Consideration", Docket No. RM80-14 (issued Mar. 17, 1980), 45 *Fed. Reg.*——(Mar. —, 1980).

[44] *See* text accompanying note 26 *supra*.

[45] Also, the special provisions limiting allowances for sales of natural gas produced at Prudhoe Bay, Alaska for transport through the Alaska Natural Gas Transportation System would remain. *See* note 1 *supra*.

[46] *See* Notice of Proposed Rulemaking, "Proposed Regulations Under Sections [sic] 110 of the Natural Gas Policy Act of 1978", Docket No. RM80-21 (issued Jan. 18, 1980) 45 *Fed. Reg.* 5785 (Jan. 24, 1980).

[47] As originally issued, the interim regulations excluded first sales of this gas from the operation of all of Subpart K save those regulations dealing with State severance taxes. Section 271.1100(b), Interim Regulations, note 27 *supra*, at 247, 43 *Fed. Reg.* at 56574. This exclusion was subsequently deleted and special regulations were implemented for first sales of Prudhoe Bay gas under section 110; *see* Order 45, note 1 *supra*.

[48] *See* note 1 *supra*. However, as explained below, certain conforming changes to the particular section that addresses this type of sale are necessary. *See* note 72 *infra*.

[49] Section 271.1100(a), Interim Regulations, note 27 *supra*, at 247, 43 *Fed. Reg.* at 56574.

[50] Section 271.1101(b), Interim Regulations, note 27 *supra*, at 248, 43 *Fed. Reg.* at 56574.

[51] *See* text accompanying note 82 *infra*.

[52] *Id.*

section 110 cannot be used to permit an add-on for costs to produce the gas to the wellhead or for costs allocable to non-gas commodities,[53] the definitional exclusions are necessary. However, the exclusion of production costs from the provisions of Subpart K does not mean that such costs would never be considered; it only means that they will not be considered under our section 110 discretion.[54]

c. *Natural Gas Act allowances.* Section 271.1104 of the interim regulations did two things. First, it prescribed a general rule that the area-wide gathering and offshore-to-onshore delivery allowances found just and reasonable under the nationwide rate opinions would be permitted as add-ons for sales of natural gas committed or dedicated to interstate commerce on November 8, 1978 for which a just and reasonable rate was in effect on that date.[55] Second, and in conjunction with the exception provisions of § 271.1105 (now § 271.1104) of the interim regulations,[56] it provided that these would be the only add-ons permitted to sales of committed or dedicated gas.

The regulations implemented by this Rule delete § 271.1104 of the interim regulations issued in December 1978. The effect of this deletion, coupled with other amendments, is to permit sellers of committed or dedicated gas to apply under section 110 of the NGPA for more than Natural Gas Act allowances and to specifically permit sellers of other types of natural gas the addition of Natural Gas Act allowances to their first sale prices if they incur the types of costs described under those allowances.[57] These two changes are products of the Commission's final decision in the case of *Phillips Petroleum Co.,* Docket Nos. CI77-412 *et al.* and comments received to the interim regulations.

As we explained above,[58] the purpose of limiting sales of committed or dedicated gas to "Natural Gas Act allowances" was to prevent the premature decision of the issues then before us on application for rehearing of our decision under *Phillips.* To have allowed first sale prices of committed or dedicated gas to be increased for "production-related costs" (as that term was used under the interim regulations of December 1978) would have been to decide that the base rates set under the nation-wide opinions did not include such cost. In that the Natural Gas Act allowances were, prior to the NGPA, allowed as add-ons to sales of committed or dedicated gas, permitting the same allowances under section 110 of the NGPA would only perpetuate an established practice without broadening its application.

Since publication of the interim regulations, the rationale for so limiting these sales—the then pending decision on *Phillips*—no longer exists.[59] Given that contracts entered into prior to November 9, 1978 for sales of committed or dedicated gas may, consistent with a concept of prudently incurred costs, shift certain costs to the purchaser, restricting first sellers of the gas who sell under such contracts to add-ons only for "Natural Gas Act allowances" makes little sense. If a cost can be legitimately borne by a purchaser, then, barring other considerations,[60] it should be legitimately allowed to the seller.

Two comments to § 271.1104 of the interim regulations recommended that, because the gathering and delivery allowances of that section had been determined to be just and reasonable under the Natural Gas Act, the same allowances should be permitted for sales of natural gas not priced as committed or dedicated gas under the NGPA. We agree. As discussed more fully in the next section, the allowances are expressly permitted to those who sell natural gas under other sections of the NGPA.

Comments, noting that the Natural Gas Act allowances were based on old data, expressed the view that the allowances could not be considered adequate for current needs. This was particularly argued for situations involving resellers who, because of being limited to the allowances, would be placed at a disadvantage when competing with pipelines for the gas sales. Under the amendments of this rule, a seller who was restricted to the Natural Gas Act allowances may now apply for costs in excess of the Natural Gas Act allowances to the exent those costs are incurred by the seller. Moreover, to the extent the reseller incurs compression and gathering costs, the rules that pertain to a producer-seller would apply. That is, compression and gathering costs may be applied for after the costs of those activities are established by the nationwide proceedings, and in the interim, these costs can be applied for under the adjustment provisions of section 502(c) of the NGPA.

d. *Production-related costs.* Section 271.1105 of the interim regulations of December 1978 set out the rules under which one could apply for production-related costs.[61] That section set forth the sales excepted from the application procedure, the costs for which an application could be made, filing requirements for applications and a provision that more information could be requested of the seller beyond that supplied in the filing. The amended rule renumbers § 271.1105 as § 271.1104 and limits the scope of that section to rules describing who may apply for production-related costs, the types of costs which can be applied for and what costs can be automatically added to sale prices without prior application (Natural Gas Act allowances). (Filing requirements are set forth in a new § 271.1105.) In issuing these amendments important changes were made to the exclusion provisions and to the description of the costs for which applications could be made. In addition, the Natural Gas Act allowances are specifically described (rather than being merely referenced by citation to existing regulations as was done in the interim regulations) and permitted as automatic add-ons provided that the activities for which those allowances are made are being performed.

(i) *The general rule.* The general rule, that an applicable ceiling price will not be considered to be exceeded because of the addition to that price for production-related costs only under what is now § 271.1104 remains substantially unchanged. The words "first sale price" are substituted for the words "such price" to make it clear that the add-ons described in § 271.1104 may be considered for all legal first sale prices and not just ceiling prices. This is necessary because the first sale price to

[53] *See,* text accompanying notes 10-23 *supra.*

[54] *See, e.g.* Notice of Proposed Rulemaking, "Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978", Docket No. RM79-67 (issued Aug. 14, 1979), 44 *Fed. Reg.* 49468 (Aug. 23, 1979) (proposed rulemaking to establish mechanism for higher ceiling prices for certain categories of natural gas on basis of prudent investments).

[55] Section 271.1104, Interim Regulations, note 27 *supra,* at 250, 43 *Fed. Reg.* at 56575. The allowances were those specified in § 2.56a(d), § 2.56a(e), § 2.56b(e), § 2.56b(f) of the Commission's regulations.

[56] Section 271.1105(b)(1), Interim Regulations, note 27 *supra* at 250-251, 43 *Fed. Reg.* at 56576.

[57] The other amendments are to what was § 271.1105 of the interim regulations and include deleting the exception respecting sales of committed or dedicated gas, enumerating the areawide gathering and onshore delivery allowances, and providing for the automatic add-on of these allowances for qualified sales. These changes are discussed in detail under section C(1)(d) of this Preamble.

[58] *See* text accompanying notes 34-35 *supra.*

[59] *See* note 42 *supra.*

[60] As explained below, there will be occasion when purchasers may bear certain costs that the seller could not bear. This particularly involves costs of compression, gathering, and certain treatment and processing costs. With respect to compression and gathering, the prohibition will be short lived and subject to retroactive procedures.

[61] Section 271.1105, Interim Regulations, note 27 *supra* at 250-253, 43 *Fed. Reg.* at 56575-56576.

which an add-on is made may be less than the applicable ceiling price; and yet, with the add-on, that first sale price may exceed the applicable ceiling price.

In addition, the rule has been rephrased for clarity and the term "borne by the seller" in a first sale has been added. This last was in response to a comment which suggested that, absent some qualifying language, there was a potential for ambiguity respecting whether the cost would be one actually incurred by a seller. The production-related costs must be actually incurred.

Comments were received on the general rules of this section that raised questions as to the flow-through of production-related costs incurred by purchasers, the use of an inflation adjustment to escalate add-ons permitted under the section, and the relative merits of case-by-case determinations of allowed costs as opposed to generic standards. These comments can be properly considered here under the discussion of § 271.1104(a).

Three comments suggested that the regulations should explicitly provide that if a purchaser bears production-related costs then, on his sale of the gas, he can pass those costs through dollar-for-dollar.

Passthrough depends on who the purchaser is and the nature of the costs incurred by that purchaser. For example, a purchaser may be one who, while buying gas in a first sale, sells that gas in a subsequent first sale (a reseller); or the purchaser may be one who, though buying in a first sale, sells the gas outside of the first sale provisions of the NGPA. If the production-related costs are incurred by the buyer as a result of an add-on permitted the seller, the buyer can, if regulated by this Commission under the Natural Gas Act, pass the add-on through, dollar-for-dollar, to its customer.[62] For the reseller, this passthrough is expressly permitted under § 270.202 of the Commission's regulations implementing the NGPA. To the extent sales are regulated under the Natural Gas Act (as, for example, a sale by an interstate pipeline) the NGA specifically requires the passthrough of any price paid not in excess of the ceiling price; and we read this requirement to include a ceiling price augmented by a production related cost add-on.[63] To the extent such sales are not so regulated (*e.g.* sales made by intrastate pipelines) then the question of flow-through is one which must be resolved in other forums.[64]

A related situation occurs if a purchaser incurs production-related costs other than as a part of the first sale price. That is, after the purchase in a first sale, the buyer could perform production-related activities (or have them performed by others) and thereby incur costs. If the purchaser is a reseller and wishes to recoup the incurred production-related costs, he must make application under Subpart K.[65] If the purchaser is not a reseller and is subject to this Commission's Natural Gas Act jurisdiction then the question of passing on the costs is one of prudence. As explained more fully below in Section D of this Preamble, this would be an issue in a pipeline rate proceeding. If the purchaser is not subject to this Commission's jurisdiction, then, as before, the question of the propriety of passing these costs on is left to others.

One comment expressed the view that the regulations should expressly state that no inflation adjustment should be permitted to a maximum lawful price adjusted under section 110. To the extent this suggestion would mean that once an add-on had been approved and was being collected under a contract then the entire maximum lawful price would not be subject to inflation adjustment, we disagree. The add-ons of section 110 are distinct from the NGPA ceiling prices of sections 102 through 109, and such inflation adjustments as may attend those ceiling prices. Whether the add-on itself would be adjusted for inflation is a different question. The answer would depend in large degree upon the methodology used to derive the add-on.

While some comments appeared to favor the case-by-case approach, two, criticizing it as being ad hoc, cumbersome and confusing, recommended that a rulemaking should be used to establish general guidelines for add-ons. One of these comments went on to suggest a two-step approach: establishing guidelines setting reasonable levels of production-related costs allowable to all first sellers without application proceedings; and an application procedure only for costs in excess of the established guidelines expended and sought by the seller. The suggested generic approach has merit in terms of administrative expedience and business certainty, and we have decided to adopt it for costs of compressing and gathering the gas. To this end we will inaugurate procedures to determine the appropriate allowances of compressing and gathering and to define the types of compression for which an add-on under Subpart K should be permitted.

(ii) *The exceptions.* As originally issued, the interim regulations excepted two classes of first sales from the application provisions for production-related costs: sales of committed or dedicated gas; and gas sold under existing intrastate contracts, intrastate rollover contracts, and successors to existing intrastate contracts.[66] (An exception was also provided for first sales of natural gas produced at the Prudhoe Bay Unit of Alaska for transport through the Alaska Natural Gas Transportation System.[67]) The amendments remove the sale of committed or dedicated gas from the exceptions. This means that those who sell committed or dedicated gas may apply for and receive the full spectrum of production-related costs described under what is now § 271.1104. The arguments which persuaded us to make this change stem in large part from our decision in the *Phillips* case (Docket No. CI77-412).

Several comments spoke specifically to the exclusion of the committed or dedicated gas. One, for example, argued that a decision in *Phillips* would not speak to either "new" (*i.e.* post-NGPA) gas sales contracts or to fact situations outside the ambit of the case. We disagree. Among the issues in *Phillips* was the extent that production-related costs were included in the nation-wide rates and the ability of purchasers and sellers to contract, as between themselves, responsibility for quality standards and concomitant price adjustments to those base rates.[68] Because the rates at issue in the *Phillips* case were the base rates for pricing

[62] The passthrough is subject to the affiliated entities limitation; *see* section 601(b)(1)(e) of the NGPA; and to Commission scrutiny under section 601(c) of the NGPA respecting fraud abuse or other similar grounds.

[63] *See* section 601 of the NGPA respecting coordination of the NGPA and the Natural Gas Act, especially at section 601(b)(1)(A) which provides that, for purposes of sections 4 and 5 of the Natural Gas Act, "any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful prices established under title I of this Act . . . ." and at section 601(c) which speaks to guaranteed passthrough. In that section 110 provides that a first sale price "shall not be considered to exceed the maximum lawful price applicable" to that sale because of add-ons permitted under that section, then the provisions of section 601 just cited must apply for production-related costs as well as ceiling prices.

[64] In that those who sell gas under the provisions of sections 105 and 106(b) of the NGPA, which govern sales under certain intrastate contracts, intrastate rollover contracts and successors to existing intrastate contracts, are excluded from applying for add-ons under section 110 (*see* text accompanying notes 70-72 *infra*), the situation described in the text is limited to cases where an adjustment is granted to permit an allowance.

[65] *See* § 271.202 of the Commission's regulations. The application would be either to add-on an allowed production-related cost or for an adjustment from any regulatory proscription against adding-on production-related costs.

[66] Section 271.1105(b), Interim Regulations, note 27 *supra*, at 250-251, 43 *Fed. Reg.* at 56570.

[67] In Order No. 45 (note 1 *supra*) the exception was modified to permit collection of certain production-related costs.

[68] Opinion No. 90, note 42 *supra* at 3-4.

natural gas under sections 104 and 106(a) of the NGPA, the *Phillips* decision as to the scope of the rates established under the Natural Gas Act determines the scope of section 104 and section 106(a) ceiling rates.

One comment regarding the exclusion of committed or dedicated gas, presaging a different outcome to the *Phillips* case, argued that, because the ceiling rates for this type of gas included production-related costs, no change should be made to the interim regulations. Another took somewhat the opposite view and suggested that the exclusion should be modified at least to the extent of permitting applications for add-ons for costs already contracted for as of the date of the enactment of the NGPA. Under our decision in *Phillips*, it is through the contract that responsibility for bearing production-related costs is set. To the extent the seller bears those costs, it should be (and now is) permitted to make application under section 110.[69]

The amendments made by this rule do not address the exclusion provisions for sales of intrastate gas. Several comments to the interim regulations of December 1978 argued that the exclusion, together with regulations under Subparts E and F that generally prohibit contract modifications that shift production-related costs to purchasers of intrastate gas,[70] was discriminatory and would provide disincentives for sellers to incur costs to upgrade services.[71] According to these comments, the consequences of the rules would be either degradation in services or early abandonment of wells. To prevent these results, the comments suggested that we permit sellers to apply for section 110 add-ons to recoup production-related costs borne by them or permit contract amendments so that production-related costs could be borne by purchasers.

Fed. Reg. ——; *see* also 18 C.F.R. §§ 271.505(b) and 271.604(b).

In addition to the comments to the interim regulations of December 1978, some of the petitions to rehear Order No. 68 (establishing final regulations for Subparts E and F) raised issues concerning section 110. Because of this, and because of the relationship between the exercise of Commission discretion under section 110 for intrastate sales and the pricing of those sales, the proper place to consider the prohibition against intrastate sales add-ons is in a Commission Order granting or denying rehearing of Order No. 68.

The exclusion for intrastate sales has been amended in two, non-substantive respects. First, the section has been conformed to other changes in Subpart K that permit the automatic add-on of Natural Gas Act allowances. The conforming change prohibits intrastate sellers from adding on these allowances.[72] This continues the effect of the December 1978 interim regulations which operated to bar intrastate sellers from the Natural Gas Act allowances. Second, the description of the sales has been amended to make it clear that the proscription pertains only to sales made under sections 105 and 106(b) of the NPGA. If a seller of such gas receives an alternative price determination and sells the gas under that alternative, the exclusion no longer applies. While this was implicit in the interim regulations, it is made explicit here.

Finally, several comments charged that the exclusion of any type of first sale, those for committed or dedicated gas or those for intrastate gas sales, from the section 110 provisions was arbitrary and, in light of existing contracts or allowances, prejudicial. These comments claimed that exclusions violated the intent of section 110 because that section was to apply to all ceiling prices and did not expressly exclude any type of first sale from its provisions. These arguments misapprehend the scope and purpose of section 110. That section 110 can apply to all ceiling prices, a precept to which we readily agree,[73] does not mean that production-related costs allowed under its provisions *must* apply to all ceiling prices.

(iii) *The production-related costs.* The provisions of the interim regulations which defined the production-related costs for which an application could be made divided those costs into three groups: costs incurred for compression; costs incurred for gathering, liquefaction and transportation to the extent those activities took place "off the lease from which the natural gas was produced"; and "other production-related costs" incurred to raise gas to quality levels above specified standards.[74]

The amendments under what is now § 271.1104 work a considerable change upon the interim regulations of December 1978.

Under the amended regulations, compression and gathering costs may not be applied for until the Commission completes generic proceedings to determine appropriate allowances for these two activities.

Compression is perhaps the single most complex cost category which we must consider for a production-related add-on. First, of the activities specifically listed under section 110, compression, more than any other, can be undertaken as a production or non-allocable activity.[75] Second, no standard or prevailing industry practice now exists for determining the costs of compression. This means that a seller seeking to add-on compression costs must make a showing as to the costs incurred and the type of compression undertaken. If this must be done case-by-case for each seller there is a potential for long delay and inconclusive results. Rather than this approach (which was the approach of the interim regulations issued in December of 1978), we believe that an appropriate allowance for compression can be determined which would apply for specific kinds of compression. To this end we will inaugurate a generic proceeding to determine the appropriate allowance for compression and the types of compression which should be considered under section 110. During the pendency of the proceeding, in our exercise of discretion, we will accept no applications for compression costs.

The sellers will not be prejudiced by the amendments to the regulations which removes compression from the costs which may be applied for. First, a retroactive collection procedure will be provided under which the allowance for compression costs determined under the generic rulemaking will be applied to costs incurred with respect to gas delivered on or after the effective date of this Rule if collection of such costs is contractually authorized.[76] Second, during the time the proceeding is underway, sellers have recourse under the provisions of section 502(c) of the

[69] Excepted from this general rule are cost to compress and gather the gas and costs to process, treat or condition the gas to minimum quality standards absent a showing of hardship, inequity or unfair distribution of burdens.

[70] *See* Order No. 68, "Final Regulations Under Sections 105 and 106(b) of the Natural Gas Policy Act of 1978," Docket No. RM80-14 (issued Jan. 18, 1980), 45 *Fed. Reg.* 5678 (Jan. 24, 1980), *rehearing granted*, "Order Granting Rehearing for the Purpose of Further Consideration," Docket No. RM80-14 (issued Mar. 17, 1980) 45 *Fed. Reg.* —— (Mar. —, 1980).

[71] The regulations barring contract amendments for sellers of intrastate gas contain an exception for the situation of a new purchaser to agree to pay for increased production-related costs to take delivery of the gas. *See* Order No. 68 at 12-13, 45

[72] This same conforming change was made to the provisions of Subpart K that speak to add-ons under section 110 of the NGPA for natural gas produced in the Prudhoe Bay Unit of Alaska for transport through the ANGTS.

[73] *See* note 6 *supra* and accompanying text.

[74] Sections 271.1105 (c) and (d), Interim Regulations, note 27 *supra* at 251-252, 43 *Fed. Reg.* at 56576.

[75] *See* text accompanying notes 10-18 *supra*.

[76] If an application was filed under the original Interim regulations, any allowance for compression (or gathering) costs will be retroactive to the date the application was filed.

NGPA for consideration of compression costs. The alternative, to continue to accept applications for all costs of compression, is not viable. First, the process to consider the applications may well take as long as the generic proceeding. Second, any determination made would, in our view, have to be reconsidered in light of the results of the generic proceeding.

What we have just said for compression applies equally to costs to gather the gas. For this reason we will also begin a generic proceeding to establish an appropriate gathering allowance. As with compression, we will not accept applications for the case-by-case determination of gathering costs save only those that are made pursuant to section 502(c) of the NGPA, and a retroactive collection procedure will be provided.

Costs incurred for transporting the natural gas can still be applied for. Section 271.1104(c)(2) permits application for transportation costs and the "off lease" requirement for these costs has been dropped. Originally intended to restrict the add-ons to extraordinary costs, the "off lease" criteria was, as comments pointed out, inexact and did not lead to equal treatment between applicants. The requirement that costs for this activity will be considered only to the extent it is in excess of the Natural Gas Act allowances is not so much a limitation as a recognition that these latter costs may be added-on without prior application. No limit is placed upon the costs of transportation (other than gathering) which can be applied for.

Under § 271.1104(c)(3), application can be made for costs of liquefaction; that is, costs that are incurred to liquefy the gas stream. As with transportation costs, there is no requirement that the costs of liquefaction must be incurred "off lease"; nor is there any limit to the amount of the cost which can be applied for.

Section 271.1104(c)(4) permits applications for costs of processing, treating or conditioning gas to raise it above certain quality levels. Beyond detailing the production-related activities involved, no change has been made to the provisions of the interim regulations of December 1978 which provided that, for sales made to persons other than end-users, application may be made for costs incurred to bring natural gas to quality standards greater than those listed in the regulations. The provision respecting sales of natural gas made to any person for use by that person has also been retained but with a drafting change to more clearly reflect the Commission's intent. As worded under the interim regulations, applications for an add-on could be made for costs to meet or exceed the listed quality standards. The intent was that the provision would permit an application for any cost to process, condition, or treat the gas, and not just costs to meet or exceed the established quality standards. The regulation has been reworded to reflect that intent.

Several comments were received on the use of minimum quality standards and the requirement that those standards must be exceeded before an add-on will be permitted for costs incurred in processing or treating the gas. Some, voicing the opinion that section 110 was intended to allow the recovery of all costs to treat and process gas, argued that no threshold limit should apply. To the extent sellers must operate below the limit, these comments argued, then the costs of processing and treatment borne by them without an add-on work to reduce the ceiling price revenues attributable to finding and producing the gas and, as a result, the standards work an unlawful reduction in ceiling prices. To substantiate this view, these comments observed that no such standards were set out in the NGPA and that ceiling prices must apply only for finding and producing the gas.

These arguments bring into sharp focus what we believe are major misconceptions of section 110 and Title I of the NGPA. To say that the Congress intended that section 110 be used to reimburse sellers for all production-related costs and that therefore the Commission must permit such costs ignores the plain words of the statute and its legislative history. The grant of production-related add-ons lies within the discretion of the Commission. The allowance for production-related costs is not mandatory.

Our adoption of minimum standards is based on what we perceive to be prevailing industry practices as to who bears the costs of processing and treating natural gas for pipeline transportation and for what the costs are incurred. They are drawn from our review of contracts now on file with the Commission. As such they can be taken as minimum standards. More to the point, while comments were received that argued against using minimum quality standards or against the quality standard approach to implementing section 110, no comment questioned the specific standards themselves. This supports our view that these are appropriate standards. However, because we will accept comments on all aspects of these amendments, we request further comment on the level of the standards.

One comment raised the question of permitting applications for the extraordinary costs incurred by a seller to meet the minimal quality standards set out in the regulations. First, because the standards were selected on the basis of what we believe to be prevailing industry practices, the costs to meet the standards should not normally be considered as extraordinary. Second, to the extent that such a situation actually arises, recourse may be had to the adjustment provisions of § 271.1106.

One comment argued that to permit the supplier of an end-user to apply for all costs of processing and treating the gas, while barring other sellers from such liberal treatment, was arbitrary and without legal foundation. We disagree. First, we do not have the factual basis on which to find that there is a prevailing practice with respect to sales made to end users. Therefore, it makes good sense to proceed in this area case-by-case without general precepts. Second, our discretion under section 110 is, we believe, broad enough to permit us to differentiate between types of sales if there is good reason to do so. Here, the lack of the factual basis or experience provides this reason. However, we specifically seek further comment as to whether it would be appropriate to apply the minimum standards to sales made to end users.

A new provision (§ 271.1104(c)(5)) provides that application may be made for production-related costs other than costs for compression, gathering, transportation, liquefaction, processing, treating or conditioning the gas. This provision speaks to the "other similar costs" of section 110. The amendment was suggested by a comment that requested that the Commission make it clear whether storage costs would be a permissible add-on under section 110(a)(2). This amendment permits a mechanism by which such questions can be dealt with.

Finally, we have amended the regulations under § 271.1104(d) to provide that Natural Gas Act allowances may be added to a first sale price by any seller (other than one selling under sections 105 or 106(b) of the NGPA or one selling gas produced at the Prudhoe Bay Unit of in Alaska for transport through the ANGTS) who conducts the gathering or other described activity that attends those allowances. This addition may be made without prior application to, or approval by, the Commission. In making this change, we have enumerated the allowances as they appear under §§ 2.56a and 2.56b of our regulations—

area by area—making only such amendments to the language as would comport with clarity and the concept of a first sale. We have also inserted a "savings" provision respecting other allowances which may have been permitted by Commission order prior to passage of the NGPA. This provision recognizes that such allowances can continue to be collected as part of the prescribed ceiling rates without prior application.

Section 2.56b(b) of the Commission's regulations provides that the adjustments for allowances for gathering and offshore-to-onshore delivery under §§ 2.56b (e) and (f) do not apply to "minimum rate gas." We make no such provision in the amendments to Subpart K. First, as with the other production-related costs provided for under Subpart K, the Natural Gas Act allowances can only be collected if such collection is authorized by contract or if there has been a specific finding under the *Mobile-Sierra* doctrine that the contract rates are so low as to be not in the public interest.[77] Second, we make no such finding under this Rule with respect to minimum rates and Natural Gas Act allowances. Therefore, a special exception for minimum rate gas is unnecessary.

In providing for the continued receipt of Natural Gas Act allowances we do not adopt the suggestions made by some of the comments that the allowances be deleted because they are outdated and inadequate for proper compensation. First, although we may recognize the toll taken by time, specific evidence to warrant this conclusion has not been presented. Second, these comments were received to interim regulations which provided that the allowances would be the *only* allowances permitted some sellers. This is no longer the case. To the extent a seller incurs costs to transport the gas, and these costs exceed the Natural Gas Act allowances, the seller may apply under § 271.1104 of the amended regulations for the additional costs.

Nor do we adopt the suggestion of some comments that the Natural Gas Act allowances should be on a MMBtu basis rather than on an Mcf basis. While the mere fact that something has always been done a certain way is little reason to continue the practice, in this instance the practice makes sense. Under the Natural Gas Act allowances provisions, the prevailing practice has been to measure on an Mcf rather than a MMBtu basis. Those who receive the allowances and those who pay them have already developed the necessary measuring and accounting system. Additionally, the allowances were developed and stated on an Mcf basis and are not viewed as lending themselves to the degree of adjustment precision suggested by stating the allowances on the basis of the exact heat content of a particular gas stream. Furthermore, the level of the allowances as now stated would likely have been less if they originally had been stated on a MMBtu basis rather than on a Mcf basis. This follows because the heating value of most of the gas was, and is, greater than 1 MMBtu per Mcf. Therefore, we do not adopt the suggestions made respecting a change in the unit of measurement for the NGA allowances. However, subject to comments and the generic gathering allowance proceeding, it may well develop that gathering allowances should more properly be stated on a MMBtu basis (or some other heat energy basis) rather than on an Mcf basis. Although the Commission will not permit a change *per se* in the level of the NGA allowances at this time, this action does not prohibit a producer-pipeline transaction in which the billed and paid for gathering charges are referenced to MMBtu rather than Mcf measurements as long as the dollar amount of the charge to be borne by the gas customers is not increased as a result of utilizing the MMBtu unit of measurement.

(iv) *The application procedure.* Sections 271.1105 (e) and (f) of the interim regulations provided a minimum of procedural detail for applications for production-related costs.[78] Those seeking Commission approval for an add-on filed a statement under oath that contained relevant information on which the Commission could make its decision. The information was geared to determining the activity for which the add-on was sought, the amount sought, and the reason why the amount (or some part of it) should be allowed. To the extent more information was required, the interim regulations provided that the Commission could request the additional information and hold or cause to be held such other proceedings as considered necessary. These two elements of the interim regulations—the submission of basic information and the flexibility of Commission response—are preserved without change under a new § 271.1105.

Some comments questioned the case-by-case approval process set out in the December 1978 interim regulations. Among the criticisms voiced by these comments was that the process would take too long to execute. We are keeping the case-by-case approach for those types of costs that we consider amenable to such treatment. Gas conditioning and processing, for example, is gas-specific and reservoir-specific. Gas conditioning and processing, therefore, do not lend themselves to generic methods. For the situations which lend themselves to generic treatment (for example, compression and gathering) we will implement a generic approach as explained above.

Two comments were received which specifically addressed the provisions of § 271.1105(e)(4) (now § 271.1105(a)(4)) which require that, "if the applicant purchased the natural gas which is the subject of an application under this paragraph, documentation of the price paid by the applicant for such gas [must be provided]." The comments queried whether purchaser *and* seller can or must make application for a section 110 add-on or only the seller.

The provisions of § 271.1105(a)(4) which speak to a "purchaser" making an application under section 110 refer to resellers who, while they purchase natural gas in a first sale, also make first sales of the gas they purchase. As sellers, they are within the scope of section 110. These are the only "purchasers" contemplated as falling within the scope of this subsection. As we pointed out in the interim regulations of December 1978, the provisions of section 110 apply only to *sellers* of natural gas who must sell under the ceiling price requirements of Title I of the NGPA.[79] Thus, questions on the shifting of costs between "seller" and "purchaser", and the potential for a double recovery of these costs under section 110, do not occur. The very information solicited by the subsection in question (at least with regards to sellers) is to prevent double recovery.

Several comments were received which requested that, with respect to the application procedure itself, the form of application as well as the general criteria which would be used to pass on an application be clearly set out in the regulations. We do not adopt this suggestion under the present rule. As a practical matter, however, the proceedings to determine costs for gathering and compressing the gas which would be added to a first sale price under section 110 of the NGPA will result in such action.

With respect to criteria, several comments requested that the

[77] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 345 (1956); *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956).

[78] Interim Regulations, note 27 *supra* at 252-253, 43 *Fed. Reg.* at 56576-56577.

[79] *Id.* at 73, 43 *Fed. Reg.* at 56457.

Commission explicitly provide for not only out-of-pocket costs but return on investment as well, or a reasonable profit for the production-related activities. We read these comments and others which speak to uniform allowances, simple procedures, and less emphasis on case-by-case applications, as suggesting that a formula by which the amount of permitted add-on is determined be developed. Such a formula would ensure uniform treatment of applications and would go a long way toward speeding up the administrative process which attends case-by-case determinations. The problem, of course, is to determine the proper variables for such a formula and their interrelationships. This will be done for gathering and compression.

Finally, one comment recommended that, in determining the amounts involved, meter readings to measure activities for production-related costs be permitted to be "split" between months. The rationale offered for this method of measuring was that, because meter readings are usually taken in mid-month, then, for ease of measuring, we should allow the last week of the one month's readings to be considered on the next month's billing cycle for purposes of production-related costs and ceiling price inflation adjustment(s). We fail to see the reason for this splitting of costs.

For ceiling prices, the alternative offered by the comment is clearly inappropriate; for these prices change monthly. To permit any part of a month's volume to be considered with a subsequent month's volume would have the effect of permitting a higher price for the prior month's volume than would be permitted by law. Given this state of affairs, it seems appropriate to have production-related costs measured, just as the ceiling prices they are added-on to, by the month.

(v) *The adjustment provisions.* Section 271.1106 of the interim regulations of December 1978 provided that, under section 502(c) of the NGPA, any person may apply for an adjustment on the grounds that the regulations governing applications for production-related costs (§ 271.1105 of the regulations) resulted in special hardship, inequity or an unfair distribution of burdens to such person.[80] The amended regulations make it clear (by referencing the Commission's adjustment procedures) that a person may apply for an adjustment on the grounds that a regulation under the NGPA results in special hardship, inequity or an unfair distribution of burdens to such person. This would include those regulations under Subpart K that restrict who may apply for production-related costs as well as those that restrict what types of costs can be applied for.

Several comments, attacking the restrictions of the interim regulations against sellers of committed or dedicated gas receiving more than the Natural Gas Act allowances and restrictions against sellers of intrastate gas from receiving any add-on, spoke to what they perceived as the "inadequacies" of section 502(c) (NGPA) proceedings. Most argued that section 502(c), rather than setting a procedure by which one could receive an adjustment was, in and of itself, a substantive standard by which our exercise of discretion under section 110 could be measured. Others suggested that in view of the fact that proceedings under section 502(c) and its stricter standard may not be adequate to provide a suitable compensation to those who bear production-related costs, this fact should be taken into account when production-related costs are considered.

While the "equity" or harm standard is expressly provided for under section 502(c), and while a broader standard is arguably applicable to section 110 considerations, it does not follow that the strictures of the former require a more liberal implementation of the latter. The logic of the comments which advocate this position appear to rest upon the two-fold premise that section 110 requires adequate compensation for all production-related costs and that "adequate" must include (or may include) more than what is allowable under section 502(c). We do not believe that this comparison of section 110 and section 502(c) is correct.

This might be better explained by example. The regulations under section 110 preclude sellers from applying for costs to be added-on to the ceiling price for treating gas to meet minimum quality standards. A seller who would fall under this proscription applies under section 502(c) for an "adjustment" that, with respect to a particular sale, the prohibition of the substantive rule should not apply. In doing this the seller shows that, as applied to his situation, the limit is unfair or inequitable. The relief sought is to remove the limit. If this is done, that is an end to the matter addressed under section 502(c). The actual consideration of the amount of production-related costs to his situation can then proceed under our section 110 provisions. The "test" of section 502(c) is not used to determine whether the activity for which an add-on is sought is production-related or the amount of an add-on.

One comment questioned whether, because section 502(c) provides a more stringent standard for consideration of applications for production-related costs than does section 110, then the highest ceiling price provision of section 101(b)(5) of the NGPA should require that the more liberal standards of section 110 always be applied.[81] To accept this argument is to reduce section 502(c) of the NGPA to a nullity for consideration of production-related costs.

2. *Definitions (Part 270):* We have amended § 270.102 by adding definitions of "production costs" (§ 270.102(b)(15)), "non-allocable costs" (§ 270.102(b)(16)) and "production-related costs" (§ 270.102(b)(17)). Production costs and non-allocable costs are defined by describing the types of activities involved. Thus, "production costs" include costs incurred for exploration, development, production and abandonment activities. They also include costs incurred for enhanced recovery techniques (including compression which attends stripper-well production) and liquid-lift or pumping operations. Non-allocable costs are those incurred as necessary to recover, separate, extract, process, treat, dehydrate, store or transport oil or natural gas liquids.

The basis for these two definitions has already been presented.[82] They are based upon our view of how the industry operates and the limits of the NGPA. Because the definitions given here comport with practices well known to the industry and developed under area and nation-wide ratemaking proceedings, we do not expect much difficulty in their implementation. In providing this treatment we do nothing new, nor do we depart from established practices or definitions.

The specific inclusion of compression costs incurred in the production of "stripper well" natural gas priced under the provisions of section 108 of the NGPA [83] was suggested by a comment. Describing this cost as a production cost works to exclude the cost from the

[80] *Id.* at 253, 43 *Fed. Reg.* at 56577.

[81] Section 101(b)(5) of the NGPA requires that: If any natural gas qualifies under more than one provision of this title [Title I] providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

[82] *See* text accompanying notes 10-23 *supra.*

[83] Subpart H of Part 271 of the Commission's regulations defines a "stripper well" and prescribes necessary regulations for qualifying for section 108 (NGPA) ceiling prices. Subpart H is therefore used as the reference in the definition of production costs.

ambit of production-related costs. We believe that this exclusion is necessary because of special provisions of the Commission's regulations that provide that one who sells "stripper well" gas will not be excluded from the higher ceiling prices of section 108 solely because enhanced recovery techniques are used to permit higher production rates than those permitted for qualification under section 108.[84] Compression is such an enhanced recovery technique.[85] While a seller is not penalized for using compression to increase production, the cost of the compression is compensated for under the section 108 price and is clearly a production rather than a production-related cost.

The definition of "production-related costs" which now appears in § 270.102(b) is identical to that which was contained in Subpart K of the regulations issued in December 1978 with one important exception. The term is defined by excepting production and non-allocable costs. The effect of this is to bar any applications under section 110 for production or non-allocable costs.

D. Analysis of the Policy Statement

1. Need for a Policy Statement

When natural gas is sold in a first sale, production-related, production and non-allocable costs may be borne by the seller because of activities performed by the seller or they may be borne by the purchaser because of activities not performed by the seller. So far in this discussion we have dealt with the case of production-related costs borne by the seller (provided for under Subpart K) and the case of production or non-allocable costs being borne by the purchaser (barred under Subparts A and K). We now turn to the situation of a purchaser buying gas in a first sale and assuming responsibility for the production-related activities which are not performed by the seller.

That this situation can occur at all is because of the definition of a "first sale." Under the NGPA, one can make a first sale of gas at a point anywhere in the delivery and processing system from the wellhead on. This is true because the definition of "first sale" is, generally, in terms of to whom the gas is sold rather than where the sale takes place.[86] Therefore, one can sell natural gas at the wellhead and escape responsibility for such production-related activities as gathering, extraction, processing, treating or compressing the gas for delivery.

Section 601 of the NGPA speaks to the coordination of that Act to the Natural Gas Act. With respect to "natural gas companies" (as that term is used in the Natural Gas Act) section 601(b)(1) of the NGPA states that amounts paid in any first sale shall, for purposes of sections 4 and 5 of the Natural Gas Act, be deemed to be just and reasonable if the amount paid does not exceed the applicable ceiling price.[87] Section 601(c)(1) of the NGPA states that a certificate under section 7 of the Natural Gas Act cannot be denied or conditioned because of an amount paid in a first sale if that amount is "just and reasonable" as that term is used under section 601(b)(1). Finally, section 601(c)(2) provides that the Commission may not (absent fraud, abuse or similar grounds), under section 4 or section 5 of the Natural Gas Act, deny any interstate pipeline recovery of an amount paid to purchase gas if that amount is deemed "just and reasonable" under section 601(b)(1).[88] What we have here is a set of rules which go to the price paid by an interstate pipeline for gas in a first sale. What we do not have under the NGPA are provisions respecting costs incurred by that pipeline *after* the first sale.

If a pipeline purchases gas in a first sale and then incurs costs for performing activities which could be labelled as "production-related" (as we now define that term under Subpart A of Part 270 of our regulations), then the question of whether it may recoup the costs of those activities in its sale of the gas is a question to be settled under the Natural Gas Act and not the NGPA. For example, an interstate pipeline company purchases gas in a first sale and then gathers the gas, conditions it and compresses it to a pressure to enter its mainline transporting system and then sells the gas. This second sale is not a first sale.[89] Therefore, the rate which the company can charge is determined under the provisions of the Natural Gas Act. With respect to the price paid by the pipeline for the gas (a first sale price), section 601 of the NGPA requires that this price be deemed just and reasonable. However, we are still left with determining the reasonableness of the costs incurred by the pipeline after the first sale.

In determining the reasonableness of costs incurred by a pipeline the issue is one of prudence: whether the activity which engendered the cost was of the sort which is prudent for the pipeline to incur and pass on to its customers and, if so, whether the level of the sums expended on the activity were reasonable. We must consider this issue in any proceeding brought under the Natural Gas Act to determine the lawfulness of rates and charges of an interstate pipeline company. In doing so we should consider the fact that, had production-related costs been allowed a first-seller under section 110 of the NGPA, those costs would have been automatically deemed prudent when paid by a pipeline as part of a first sale price.

2. Analysis of the policy statement.

In purchasing natural gas in a first sale, an interstate pipeline will incur costs subsequent to that purchase and before its sale of the gas. Frequently, the pipeline will be required to justify these costs as to whether they were prudently incurred and whether the level of the costs were proper. Among the costs for which a pipeline may have to show prudence are those which, had they been borne by the first seller of the gas, would have been "production-related" as that term is defined in the Commission's NGPA regulations. These latter costs may be either costs which, had the seller borne them, the seller could have made application for under Subpart K of Part 271; or they could be costs for which no application could be made by the seller absent a showing of special hardship, inequity, or unfair distribution of burdens.

The policy statement of new § 2.102 recognizes the fact that interstate pipelines will incur costs that, if borne by the producer or reseller of the gas, would be considered as production-related. The policy speaks to two types of these costs: costs which, had they been borne by a first seller, application for their recovery could be made under

[84] *See* §§ 271.805(e) and 271.806 of Subpart H of the Commission's regulations; *see also* Order No. 44, "Final Rule Amending Subpart H of Part 271 on Stripper Well Natural Gas and Amendments to § 274.206 of the Interim Regulations," Docket No. RM79-73 at 21-24 (issued Aug. 22, 1979), 44 *Fed. Reg.* 49656, 49660 (Aug. 24, 1979).

[85] *See* Order No. 44, note 84 *supra*, at 4-5, 44 *Fed. Reg.* at 49657.

[86] *See* note 5 *supra* (this generalization is limited by the pipeline or distribution-production rules of section 2(21)(B)). This is in contradistinction to such pre-NGPA rate setting methods which, by use of quality standards, dictated where a sale should occur (*i.e.*, who should bear what costs after production). *See* notes 14 and 15 *supra*.

[87] That section also provides that, if there is no applicable ceiling price solely because of deregulation, the price paid in a first sale will still be deemed to be just and reasonable.

[88] That section also provides that recovery will not be denied if the purshase price is also consistent with certain provisions of Title II of the NGPA.

[89] The sale is not a first sale because it is a sale made by a pipeline of natural gas not attributable to its own production. *See* section 2(21)(B) of the NGPA.

Subpart K (or they could be automatically added on as NGA allowances) and certain compression costs. The policy statement expresses the Commission's view that, as a general proposition, these types of costs should be deemed prudent and, consequently, not subject to challenge (except with respect to the level of the expenditures).

The costs that a seller can now apply for under the amended interim rule include costs to transport or liquefy the gas; costs to process, treat or condition the gas above certain minimum quality levels; and other costs (excluding gathering and compression). These types of costs, as well as the NGA allowances that can automatically be added to a first sale price, are the types of costs which could be incurred by either the seller or purchaser. In that we have identified these types of costs as proper for a section 110 add-on (and therefore, through operation of section 601 of the NGPA, proper costs for utility rate payers to bear), we believe that, as a general matter, these types of costs should be considered as prudent costs if incurred by the purchasing pipeline.

The decision to include compression costs in the policy statement, even though such costs cannot now be applied for by sellers, rests on similar grounds. As we have already discussed, the bar to applications by a seller for compression is temporary. At the time the Commission completes its proceedings to determine the appropriate allowance for compression, applications by sellers will be entertained. Moreover, the applications can be made retroactive to the date the regulations were amended to bar the applications.[90] Thus, our decision to suspend the application process for costs to compress gas is not a decision that all such costs should not be allowed. However, in the interim, we must recognize that pipelines incur compression costs and it is important that pipelines have some guidance now as to what costs may be deemed prudent.

In determining what types of compression costs will be deemed prudent, we begin with the concept developed above in our consideration of what types of costs are allowable under section 110, the concept that "production costs" should not be permitted as an add-on. Certain types of compression, as for example compression to cycle natural gas in gas condensate reservoirs or to pressurize oil reservoirs, gas used in gas-lift operations for lifting liquids from wells, or compression which attends such production enhancement pricing as that for stripper wells or special relief,[91] should properly be considered as production costs. Because of this, we do not believe that such compression costs should be incurred by a pipeline purchaser, much less borne by the consumer as a cost above the maximum lawful price. Therefore, such costs are not considered as prudent compression costs for pipeline companies to bear.

Yet the distinction between a production cost and a production-related cost can not be the sole criteria for considering the prudence of compression costs incurred by a pipeline. The physics of natural gas production are such that gas is produced only when there is a pressure difference between two points and, in that compression makes possible greater pressure difference, compression, as a general matter, results in a higher flow rate of production. Thus, to look only to the production/nonproduction cost distinction could result in no compression costs being deemed prudent. To adopt such a test would be to ignore past Commission practice and the practicalities of natural gas operations. Instead, we must recognize other important attributes of compression.

The first thing we should recognize is that compression necessary to move volumes of gas from the wellhead will also increase the rate of flow of the gas through the pipeline system and thereby make additional gas available in the market place; and it will do so at a lower per-unit cost than other methods used to increase gas supply. Additionally, it will defer abandonment of gas reserves which are uneconomical to produce without the aid of compression. Such uses of compression should be encouraged, for they promote conservation of energy resources. Moreover, as a general proposition, centralized compression facilities will be more cost efficient than compression facilities installed to service individual wells or production platforms. Cost efficiencies of this nature should also be encouraged. Finally compression is a necessary element in moving the gas stream and in treating, processing or conditioning the gas stream. Therefore, compression benefits not only customers who purchase the gas vapor stream but also customers who purchase any liquids or liquefiable hydrocarbons that form a part of that stream. Gas customers should be required to bear only those costs of compression properly allocable to the benefits they receive.

The definition of "prudent compression cost" that accompanies the policy statement reflects these four facets of compression and the "production cost" exception. The definition is divided into three general parts, all of which may operate to have a compression cost be considered prudent.

The first part of the definition is that the cost cannot be a "production cost" as that term is defined under § 270.102(b)(15). This removes from the scope of compression costs deemed prudent any costs that attend compression necessary for production operations. This includes compression for gaslift, cycling gas in a gas-condensate reservoir, pressurizing an oil reservoir, or compression considered as a production enhancement technique.

The second part considers as prudent only those compression costs properly allocable to the pipeline's gas customers. Thus, compression for the benefit of producing or separating liquids and liquifiable hydrocarbons or for transporting these components in a gas stream are excluded. This applies for the case of a pipeline that purchases only the gas vapors and returns to the seller liquids stripped from the stream; and it applies in the case of a pipeline that, while taking title to liquids or liquifiable hydrocarbons, does not include these in the gas stream sold to its gas consumers.

The third part of the definition describes those conditions in which compression operates to conserve energy resources in a cost effective manner or enures to the benefit of the transportation system or both. The first subclause of this part describes the situation where a compressor or compression facility serves two or more onshore producing wells or more than one offshore production platform and is necessary to pressurize the gas for pipeline entry. The intent here is to consider prudent that compression undertaken by a pipeline that is cost effective. The subclause recognizes that, as a general proposition, one compressor serving more than one well is more cost effective than a series of smaller compressors serving individual wells and that a centralized compression facility, as a general proposition, is more cost effective than a series of individual compressors. Accordingly, the subclause expresses a

[90] Of course, no application for a cost already incurred by the pipeline would be permitted.

[91] *See, e.g.*, Order No. 44, "Final Rule Amending Subpart H of Part 271 on Stripper Well Natural Gas and Amendments to § 274.206 of the Interim Regulations", note 84 *supra; see also* "Notice of Proposed Rulemaking, Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978", note 22 *supra*.

strong preference by the Commission for centralized compression facilities. The provision that the cost must be the "least cost of compression practicable" is to address the situation where a single facility may be more beneficial than a series of facilities placed upstream from that single facility even though each of those facilities service a number of wells. In such a situation it would be the single facility that would be deemed prudent rather than the separate upstream facilities.

There may be situations in which compression for a single well will result in the conservation of energy resources. However, as a general matter, we do not believe that such compression should be deemed prudent. Comments on this general view and how to otherwise treat single-well compression are specifically solicited.

The fourth subclause, that compression which operates on a transportation system to decrease upstream line pressure and thereby increase the throughput of the system, will be deemed prudent, recognizes the important role played by compression in moving the gas stream. Such compression can mean that less field compression will be necessary. It can also mean that the entire system can operate at more efficient levels and provide a greater volume of gas at a lower per-unit-cost. We have intentionally not defined "transportation system" in this context. We intend for the term to be applied broadly to any situation in which the pipeline incurs costs to move the gas stream.

Both the first and fourth subclauses except any compression necessary to treat, process or condition the gas or compression necessary becasue of such activities. The special role played by compression in these activities is exclusively treated in the second and third subclauses. In doing so, we recognize that not all costs of treating, processing or conditioning the gas may be applied for by a seller under our rules implementing section 110 of the NGPA. Because that costs necessary to attain minimum pipeline quality standards should be borne by the seller, these activities if undertaken by the pipeline will not be among those deemed prudent under the policy statement. Compression needed during, or resulting from, operations necessary to meet minimum quality standards is viewed as an adjunct of those operations and, accordingly, should not be deemed prudent under the policy statement. Therefore, to the extent a pipeline incurs compression costs because it treats, processes or conditions the gas it purchases, no presumption of prudence will attend such cost.[92] However, should it be necessary to have the gas exceed the minimum quality standards of § 271.1104(c)(4), the compression properly allocable to these processes will be deemed prudent.

An example should help to explain this distinction. Assume that a pipeline purchases natural gas at a field pressure of 200 pounds per square inch (psi) and must treat the gas for pipeline entry. Also assume that after treatment, the gas is at 100 psi pressure and must be compressed to 800 psi to enter the pipeline. If the treatment is only to meet the minimum quality standards, then the compression cost that would be deemed prudent would be only that cost allocable to the increase from 200 to 800 psi. The 100 psi pressure loss due to treatment would not be presumed prudent. However, if the sole purpose of the treatment was to exceed the minimum quality levels, and such treatment was necessary (and produced benefits only for the gas customers), then the full cost of compressing the gas from 100 psi to 800 psi would be deemed prudent.[93]

The policy statement goes only to certain types of costs; it does not go to the level of expenditures made by a pipeline in doing the activities that engender these types of costs. Moreover, the policy does not go to those types of production-related costs (except compression) which the seller could not apply for under Subpart K absent a showing of hardship, inequity or an unfair distribution of burdens. Those types of costs include costs necessary to raise the quality of the gas stream to a level up to the minimum quality levels of § 271.104(c)(4). They also include gathering costs. For these types of costs, we believe that some showing should be made before they may be considered prudent.

The Commission stated in Opinion No. 86 (*Minnesota Power and Light*) that it has the option of requiring that a utility demonstrate the prudence of particular expenditures in an order setting the increase for hearing or by later order, and generally, that the party seeking to call the prudence of an expenditure into question must do so by adducing evidence or citing to material of which the Commission may take offical notice.[94] Moreover:

> As a matter of practice, utilities seeking a rate increases are not required to demonstrate in their cases-in-chief that all expenditures were prudent unless the Commission's filing requirements, policy or precedent otherwise require. However, where some other participant in the proceeding creates a serious doubt as to the pr[u]d[e]nce of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.[95]

The Commission will apply the *Minnesota Power and Light* precedent in determining the prudence of "production-related" costs which are incurred by an interstate pipeline but which are not addressed in the policy statement. That is, for such costs, a pipeline may be required to provide information which, at a minimum, explains the nature of the costs and whether it is reasonable for the customers of the pipeline to bear the particular cost.[96]

When a pipeline files its case-in-chief in a rate proceeding the information it files may be considered by the Commission and participants in determining whether the costs described in that filing are of the kind described in the policy statement. If they are, those costs should not be subject to challenge (except with respect to the level of the claimed cost).

Finally, section 2.102(c) sets out the definitions necessary to relate the policy statement to the NGPA and the regulations of Subpart K. The term "production-related costs" is given the same meaning for purposes of the policy statement as it has under Subpart A of Part 270. The terms "first sale" and "interstate pipeline" are given the same meanings as those terms have under the NGPA. The reference in the policy statement to "prudent compression costs" is, as already described, defined in terms of the types of compression that will be considered prudent.[97]

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[92] As explained below, such costs would not be deemed imprudent; rather, the pipeline would be permitted to enter evidence that such costs were or are prudently incurred.

[93] Of course this is a simple example and complicating factors such as allocating the cost of the compression among the beneficiaries of the compression may be present.

[94] *See* Opinion No. 86, Minnesota Power and Light Co., Docket No. ER76-827, at 18, nn. 44 and 45 (issued June 24, 1980).

[95] Id. at 17-18 (footnotes omitted).

[96] In a later Notice of Proposed Rulemaking we will propose amendments to the filing requirements of § 154.93 which specify what information will be required under the policy. In the interim, pipelines should be on notice that the Commission will exercise its authority to require the filing of additional evidence as warranted.

[97] *See* the attached Appendix for a discussion of various examples of compression in the context of the definition of "prudent compression cost". The Appendix—"Examples of Various Compression Activities" is filed with the Office of the Federal Register as part of the original document. Copies may be secured by writing to the Federal Energy Regulatory Commission, Office of Public Information, Washington, D.C. 20426.

E. Effective Dates and Further Proceedings.

The interim regulations of Subpart K of Part 271 and Subpart A of Part 270; are amended as set forth below and are being made effective immediately in order to properly implement the NGPA. Good cause to do so exists because most of the changes made to the interim regulations either remove restrictions or clarify the existing regulations. With respect to amendments that suspend the application procedure of § 271.1104 for gathering and compression allowances, these amendments are being made effective immediately because such applications would not be acted upon during the pendency of generic proceedings to determine the appropriate level for these allowances. To permit further application would serve no purpose or administrative practicality. In that these allowances will, for potential applicants, be considered retroactively to the date of this suspension, and in that application may still be made under the provisions of section 502(c) of the NGPA for these allowances, potential applicants should not be adversely affected by the suspension.

Because it is a policy statement, and necessary for the proper implementation of the NGPA and the NGA, the amendment to Part 2 of the Commission's regulations is made effective immediately.

Because the amendments to Parts 270 and 271 made by this Rule are interim, comments will be considered before they are made final. Interested persons may submit comments on the amendments made under this Rule and the policy statement by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 22, 1980. Each person submitting a comment should include his name and address, identify Docket No. RM80-47, and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the amendments may be addressed. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours.

The Commission intends to hold a public hearing on the amendments made to Subpart A of Part 270 and Subpart K of Part 271, as required by section 502 of the NGPA. The date and location of such hearing will be announced in the future. The amendments shall not become final until the Commission has had an opportunity to receive oral presentation of relevant data, views and arguments.

(Natural Gas Act, as amended, 15 U.S.C. § 717, *et seq.*; Department of Energy Organization Act, 47 U.S.C. §§ 7101-7352; E.O. 12009, 42 F.R. 46267; Natural Gas Policy Act of 1978; 15 U.S.C. §§ 3301-3432)

In consideration of the foregoing, Parts 2, 270 and 271 of Title 18, Code of Federal Regulations, are amended as set forth below; to become effective on the date the Rule is issued. (July 25, 1980)

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. Part 2 is amended by creating a new section to follow § 2.101 to read as follows:

§ 2.102 Policy respecting production-related costs borne by interstate pipelines (Lower-48 States).

(a) *Policy.* If an interstate pipeline purchases natural gas in a first sale, then, in any proceeding brought under the Natural Gas Act to determine the lawfulness of the rates and charges of such pipeline, any activity that results in the pipeline incurring a production-related cost with respect to such gas (whether or not the activity for which the cost is incurred is conducted by the pipeline) shall be deemed prudent if:

(1) The activity is one the cost of which could have been applied for under Subpart K of Part 271 had it been undertaken by the seller; or

(2) The cost incurred is a prudent compression cost.

(b) *Definitions.* For purposes of this section:

(1) The terms "first sale" and "interstate pipeline" have the same meanings as such terms have under the NGPA.

(2) The term "prudent compression cost" means any compression that:

(i) is not a production cost;

(ii) is properly allocable to the gas stream purchased by the pipeline for the benefit of its gas consumers; and

(iii) is in one of the following categories:

(A) a compressor or compression facility serving two or more onshore producing wells, leases or fields or more than one offshore producing platform and necessary to pressurize the gas for pipeline entry absent any treatment, processing, or conditioning but only to the extent the cost so incurred is the least cost of compression practicable;

(B) compression necessary to treat, process, or condition the gas but only to the extent such treatment, processing, or conditioning is necessary to exceed the minimum quality standards set forth under § 271.1104(c)(4);

(C) compression necessary because of pressure loss attributable to treating, processing, or conditioning the gas stream but only to the extent that such treatment, processing, or conditioning was necessary to exceed the minimum quality standards set forth under § 271.1104(c)(4); or

(D) a compressor or compression facility that is not necessary for or because of any treatment, processing, or conditioning but operates on a transporting system to decrease upstream line pressure.

(3) The terms "production cost" and "production-related cost" have the same meanings as such terms have under §§ 270.102(b) (15) and (17) of Part 270.

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

2. Section 270.102 of Part 270 is amended in paragraph (b) by adding new paragraphs (15), (16) and (17) to read as follows:

* * * * *

(b) *Subchapter H definitions.* For purposes of this subchapter:

* * * * *

(15) "Production costs" means all costs incurred for exploration, development, production and abandonment operations, enhanced recovery techniques (including costs of compression incurred in the production of stripper well natural gas to which the pricing provisions of Subpart H of Part 271 apply), gas-lift pumping or other liquid lifting equipment located on or in the vicinity of the wellhead or the point of commingling gas on the offshore platform from which the gas is produced, and costs that attend compression necessary for lifting liquids, cycling gas in a gas-condensate reservoir or pressurizing an oil reservoir.

(16) "Non-allocable costs" means all costs incurred for the construction or operation of facilities to recover, separate, extract, process, treat, dehydrate, store, or transport crude oil or natural gas liquids or both.

(17) "production-related costs" means costs (excluding production costs and

non-allocable costs) of compressing, gathering, processing, treating, liquefaction, conditioning, or transporting natural gas, or other similar costs.

PART 271—CEILING PRICES

3. The title to Subpart K, Part 271 and § § 271.1100, 271.1101, 271.1104, 271.1105, and 271.1106 are amended to read as follows:

Subpart K—Allowances for State Severance Taxes and Certain Production-Related Costs

§ 271.1100 Applicability.

(a) *General.* This subpart prescribes regulations under which a price for a first sale of natural gas shall not be considered to exceed the applicable maximum lawful prices set forth in this Part if such first sale price exceeds the maximum lawful price determined under Subparts B through I of this Part to the extent necessary to recover:

(1) State severance taxes under § 271.1102; and

(2) Production-related costs allowed by rule or order of the Commission under § 271.1104.

§ 271.1101 Definitions.

(a) Except as provided in paragraph (b), the term "State severance tax" as used in this subpart means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas:

(1) By any State;

(2) By any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians; or

(3) By any political subdivision of a State if the authority to impose such tax, fee, or other levey is granted to such political subdivision under State law.

(b) The term "State severance tax" does not include any amount of tax which results from a provision of State law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

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§ 271.1104 Production-related costs.

(a) *General rule.* To the extent provided in this section, the maximum lawful price applicable to a first sale of natural gas shall not be considered to be exceeded as a result of the addition to a first sale price of an amount necessary to recover production-related costs borne by the seller in a first sale and approved by the Commission.

(b) *Exclusion of certain natural gas.* (1) *Certain intrastate contract and intrastate rollover gas.* Applications under this section will not be considered, and the Natural Gas Act allowances described under paragraph (d) of this section will not be allowed, for natural gas the only maximum lawful price applicable to which is determined under Subpart E or F of this part (relating to sales made under an existing intrastate contract, an intrastate rollover contract or a successor to an existing intrastate contract).

(2) *Certain Alaskan gas.* Applications under this section for natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 will be considered only for production-related costs described in paragraph (c)(4)(ii) of this section.

(c) *Costs for which applications may be submitted.* Except as provided in paragraph (b) of this section, applications will be considered by the Commission for an amount necessary to recover the following costs:

(1) [Reserved]

(2) Transportation (other than gathering) costs may be applied for.

(3) Liquefaction costs to convert an entire natural gas stream to a liquid form for the purpose of allowing cryogenic transport of the natural gas stream may be applied for; however, costs incurred to extract from the gas stream hydrocarbon constituents such as ethane, propane, butane, and natural gasolines may not be applied for.

(4)(i) Except as provided under clauses (ii) and (iii) of this subparagraph, costs of processing, treating or conditioning may be applied for to the extent they exceed the amount attributable to meeting the following standards:

(A) Total sulphur (grains per 100 cf.)—20.

(B) Hydrogen sulphide (grains per 100 cf.)—1.

(C) Water (pounds per MMcf)—7.

(D) Carbon dioxide (percent by volume)—3.

(E) Oxygen, nitrogen, dust, dirt, gum, or other impurities.

in amounts in excess of which the buyer would be required to incur costs to meet pipeline requirements.

(ii) With respect to first sales of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976, the Commission will entertain applications for costs necessary to lower the carbon dioxide content from a level of 3 percent by volume to a level of less than 3 percent by volume.

(iii) Subject to paragraph (b) of this section, the Commission will entertain applications for costs of processing, treating or conditioning natural gas with respect to first sales of natural gas to any person for use by such person.

(5) *Other costs.* Production-related costs, other than costs for compression, gathering, transportation, liquefaction, processing, treating or conditioning may be applied for.

(d) *Certain costs not requiring application.* Except as provided in paragraph (b), an application under this section need not be made for a first sale price to exceed the applicable maximum lawful price by an amount necessary to recover costs incurred for the following activities:

(1) *Appalachian-Illinois Basin Areas.* A gathering allowance of 1.0 cent per Mcf for all sales of natural gas made from wells located in the Appalachian-Illinois Basin Areas.

(2) *Hugoton-Anadarko Area.* A gathering allowance in the amounts prescribed below if delivery of the natural gas is made after substantial off-lease gathering by the producer, whether at a plant tailgate or at a central point in the field:

(i) For natural gas produced in the Panhandle and Hugoton Fields the allowance shall be 2.5 cents per Mcf; and

(ii) For gas produced from fields or reservoirs other than the Panhandle or Hugoton Fields (the "Other Fields") the allowance shall be 1.0 cent per Mcf;

(3) *Other Southwest Area.* A gathering allowance in the amounts listed below if the gas is delivered to the buyer at a central point in the field, the tailgate of a processing plant, a point on the buyer's pipeline, or an off-shore platform on the buyer's pipeline:

(i) For gas produced in the Other Oklahoma Area, Texas Railroad District No. 9, and Northern Arkansas the allowance shall be 1.5 cents Mcf;

(ii) For gas produced in Texas Railroad District Nos. 5 and 6, Northern Louisiana, and Southern Arkansas the allowance shall be 1.0 cent per Mcf; and

(iii) For gas produced in Mississippi and Alabama the allowance shall be 1.25 cents per Mcf.

(4) *Permian Basin Area.* For gas produced in the Permian Basin Area, a gathering allowance of 1.5 cents per Mcf if delivery is made after substantial off-lease gathering by the producer, whether

at a plant tailgate or a central point in the field.

(5) *Rocky Mountain Area.* For gas produced in the Rocky Mountain Area, a gathering allowance of 1.0 cent per Mcf if delivery is made to the buyer at a central point in the field, the tailgate of a processing plant, or a point on the buyer's pipeline.

(6) *Southern Louisiana Area.* For gas produced in the Southern Louisiana Area, a gathering allowance of 0.5 cent per Mcf if the gas is delivered to the buyer at a central point in the field, the tailgate of a processing plant, a point on the buyer's pipeline, or an offshore platform on the buyer's pipeline.

(7) *Texas Gulf Coast Area.* For gas produced in the Texas Gulf Coast Area, a gathering allowance of 0.4 cent per Mcf if the gas is delivered to the buyer at a central point in the field, the tailgate of a processing plant, a point on the buyer's pipeline, or an offshore platform on the buyer's pipeline.

(8) *Delivery of offshore gas by the producer to an onshore area.* If natural gas produced offshore is delivered onshore, at the sole cost to the producer, the allowance shall be 1.0 cent per Mcf for such offshore gas.

(9) *Other allowances.* In the event that a seller was authorized prior to November 9, 1978 to collect an allowance in excess of an allowance determined under clauses (1) through (8) of this paragraph, the seller may collect the allowance so authorized.

§ 271.1105 Procedures for determination and collection.

(a) *Applications.* Applications made to the Commission under § 271.1104 shall be under oath and shall include the following information:

(1) Identification of the maximum lawful price applicable to the first sale of the natural gas under Part 271;

(2) Documents supporting the identification of the applicable maximum lawful price, including copies of any determinations by a jurisdictional agency or the Commission or copies of applications made for such determinations;

(3) A summary of the contract provisions which contain the obligations of the parties with respect to production-related costs;

(4) If the applicant has purchased the natural gas which is the subject of an application under this paragraph, documentation of the price paid by the applicant for such gas;

(5) The specific costs sought to be recovered by the applicant and a description of the method used to compute such costs; and

(6) The circumstances which make it necessary for the applicant to collect any amount in excess of the maximum lawful price provided for under Part 271.

(b) *Additional information.* The Commission may, upon receipt of an application made under this section, require the submission of additional information and hold, or cause to be held, such other proceedings as it deems necessary or appropriate.

§ 271.1106 Adjustments.

For procedures to obtain an adjustment on the grounds of special hardship, inequity, or unfair distribution of burdens, see § 1.41 of this chapter.

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18 CFR Part 277

[Docket No. RM80-8; Order No. 95]

Bona Fide Offers; Right of First Refusal

Issued July 28, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This order implements sections 315(b) and (c) of the Natural Gas Policy Act of 1978 (NGPA). Section 315(b) establishes that the purchaser of natural gas which is removed from Natural Gas Act jurisdiction under section 601(a)(1)(B) of the NGPA has the right to a bona fide offer to purchase such natural gas and the right of first refusal which permits the purchaser to buy such natural gas under the terms of an offer made by a third party purchaser. The order establishes procedures by which the requirements of bona fide offer and the right of first refusal shall be satisfied. Under the authority granted in section 315(c), the Commission has prescribed recordkeeping requirements pertaining to sales occurring under section 315(b).

EFFECTIVE DATE: September 1, 1980.

FOR FURTHER INFORMATION CONTACT: Leslie J. Lawner, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., N.E, Washington, D.C. 20426, (202) 357-8027.

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, and George R. Hall.

I. Background

On November 14, 1979, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking in Docket No. RM80-8, (44 FR 66208, November 19, 1979). The proposed rule would implement section 315(b) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. § 3375(b), concerning bona fide offers and the right of first refusal. Section 315(b) imposes a duty on the seller of certain categories of natural gas to make a bona fide offer for the continued sale of such gas upon the expiration of the contract for sale covering such gas. If the bona fide offer is rejected, and the seller attempts to sell the gas to a person other than the original purchaser, section 315(b)(3) grants a right of first refusal to the original purchaser of such natural gas, which right permits the original purchaser to match the terms of a third party offer to purchase the natural gas.

In summary, the notice proposed to impose requirements involving bona fide offers and the right of first refusal on certain sales of gas which gas (1) was committed or dedicated to interstate commerce on November 8, 1978, and (2) has been determined to be high-cost gas described in section 107(c)(1) through (4) of the NGPA, new natural gas under section 102(c), or gas produced from a new onshore production well under section 103. The proposed provisions involving bona fide offers required that a bona fide offer to sell the gas to the original purchaser be made, in those cases where the original contract had not yet expired, 20 days prior to expiration of the contract. The original purchaser was given 20 days to accept the offer in writing. If the offer was rejected, the seller could sell the gas to other purchasers only if the original purchaser rejected his right of first refusal, that is, refused to purchase the gas under terms substantially accepted in principle by a third party in an arms-length transaction. The third party could not be an affiliate of the seller. If the purchaser accepted such an offer, he had the right to change the delivery point and physical conditions of delivery specified in the offer to those found in the subject contract.

A seller of gas subject to these provisions was free to sell the gas to third person only if (1) the bona fide offer was rejected, (2) the offer submitted pursuant to the right of first refusal was rejected, and (3) the gas was, or is, sold under the terms of the offer subject to the right of first refusal, which the original purchaser rejected. Other provisions required that the gas must continue to be sold to the original purchaser, where the contract expired, until the bona fide offer requirements were met. Relief was extended to original purchasers as the Commission determined to be appropriate, for sales

which took place prior to the promulgation of this rule. The proposal also required the retention of certain records.

Interested persons were invited to submit written comments on the proposed rule on or before December 19, 1979. A public hearing concerning the proposed rule was scheduled to be held on December 14, 1979. The hearing was cancelled due to lack of interest in participation by the public. All written comments received in this docket are in the Commission's public files and are available for public inspection in the Commission's Division of Public Information.

II. Summary of Comments

Written comments concerning the proposed rule were submitted by interested persons and were reviewed by the Commission. The comments which were received raised numerous issues which will be discussed in turn.

A. Bona Fide Offers

1. *Form of Bona Fide Offers.*—Section 277.203(b) of the proposed rule defined the term "bona fide offer" as:

A written offer by the seller to the original purchaser which would be legal for such purchaser to accept under the Natural Gas Act and which is sufficiently firm that if accepted by the original purchaser would result in a binding contract enforceable by the seller and the purchaser.

Numerous persons commented that the requirement that such offer must be legal for the purchaser to accept under the Natural Gas Act (NGA) (15 U.S.C. §§ 717–717w) was not clear. One commenter indicated that what was probably intended by this requirement, as it appeared in the Conference Report of the NGPA, was compliance with the legal requirements pursuant to the regulation of interstate pipelines under the transportation sections of the NGA.

Under the Natural Gas Act, the Commission has ruled that various types of contractual clauses are impermissible. For example, certain types of indefinite rate escalation provisions were prohibited by the Commissions in Order No. 174–B, 13 F.P.C. 1576, Order No. 232, 25 F.P.C. 379, and Order No. 242, 27 F.P.C. 339. Permissible contractual clauses concerning pricing provisions are set forth in § 154.93 of the Commission's regulations. "Most favored nation" clauses have similarly been abrogated by the Commission (See, § 154.93 of the Commission's regulations and Order No. 174–B, 13 F.P.C. 1576). The Commission contemplated legal strictures of this nature when defining the term "bona fide offer" and views such strictures as intended by the Conferees when they stated that the offer should include terms which are legal to accept under the Natural Gas Act (Joint Explanatory Statement of the Committee on Conference Natural Gas Policy Act of 1978, P.L. 95–621, H. Report No. 95–1126, August 16, 1978, at page 111).

Other comments were made concerning the form of the bona fide offer and the degree of specificity of the offer required by the proposed rule. Several commenters noted that it is the common practice to have the purchaser submit the proposed contract to the producer. Both the proposed rule and § 277.205 of the final rule would require that the producer submit the offer to the purchaser. Because the rule does not reflect business practice, the commenters suggested that the producer need not be required to submit an actual and detailed contract to the purchaser. Rather, it was suggested the producer could simply be required to make an offer or specify terms which will enable the parties to reach an agreement in principle without compelling the producer to draft a legally sufficient and binding contract.

The Commission is not convinced that the proposed regulations should be changed in this regard. The regulations do not require that the seller submit an "actual and detailed contract" to the seller. They merely require that the offer be "sufficiently firm that, if accepted by the original purchaser, [it will] result in a binding contract enforceable by the seller and the purchaser." (*See*, § 277.203(c)). Thus, all that needs be submitted to comply with the bona fide offer requirement is an offer which, if accepted, is legally sufficient to bind the parties. Detailed contractual provisions can be added at a later stage in the negotiation if desired by the parties.

2. *Definitions.*—In § 277.203(j) of the proposed rule, the term "original purchaser" was defined to include any successor in interest to such original purchaser. One commenter suggested that a definition of "seller" should also be included in the rule, and that it should be defined to include successors to sellers who are subject to the section 315(b) obligations. The Commission believes that such a definition would carry out the purposes of section 315(b) by ensuring that no purchaser of natural gas eligible for the protection afforded by section 315(b) is denied its rights because of a change in the identity of the seller of such natural gas. Accordingly, the term "seller" will be defined in the regulation to include successors to sellers for the purposes of this rule.

3. *Scope of Bona Fide Offer.*—A general rule is established in § 277.205(a) governing bona fide offers. The proposal provided that deliveries of gas under a subject contract may not be discontinued until a bona fide offer has been rejected by the original purchaser. Two commenters felt that this section should be clarified to state that sales may not be discontinued before the contract expires. The general rule has been amended to clarify the fact that it is the Commission's intent that sales not be discontinued prematurely.

With respect to the scope of the bona fide offer rule, one commenter stated that the offer is statutorily required under section 315(b) of the NGPA only where the contract expired before December 1, 1978. Pursuant to this interpretation, natural gas which was sold under a contract which had not expired as of November 8, 1978, would be subject only to the right of first refusal. To support this interpretation, the commenter cites the use of the word "or" in section 315(b)(3) (which provides when the right of first refusal arises), as indicating that *either* the contract has expired, presumably after November 9, 1978, *or* the bona fide offer has been rejected. The pertinent language in section 315(b)(3) reads:

The Commission shall require that following—(A) the expiration or termination of any contract . . ., *or* (B) any rejection of any bona fide offer . . ., such person who would have been entitled to receive such natural gas shall be granted a right of first refusal . . . . (emphasis added).

This position is untenable for several reasons. First, nothing in section 315(b)(3)(A) indicates that the reference to "expiration or termination of any contract" was limited to those contracts which expire after November 9, 1978. Second, in section 315(b)(2), which provides for the bona fide offer, no distinction is made between natural gas sold under a subject contract which expired prior to the enactment of the NGPA, and natural gas sold under a subject contract which expired after the enactment of the NGPA. The language of section 315(b)(2) provides that if natural gas which was committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA, has been removed from Natural Gas Act jurisdiction, and was produced on or after December 1, 1978, a bona fide offer must be made to the original purchaser to continue to sell the gas after termination of the contract. The

language of section 315(b)(2) regarding its applicability is clear on its face.

Other factors also point against this commenter's reading of the statute. The Commission interprets the use of the word "or," emphasized by the commenter, to indicate that the right of first refusal vests in all cases at the earlier of the expiration of the contract or the rejection of the bona fide offer. The two clauses, when read together, ensure that the original purchaser is not denied the protection of section 315 where the contract expires before the requirements of the bona fide offer provision have been met.

The Commission's view is supported by the Conference Report, *supra*, which states that:

Following the expiration of any contract covering such natural gas, *and* any rejection of a bona fide offer by the purchaser who would have been entitled to receive the gas under the Natrual Gas Act, such purchaser is granted a right of first refusal . . . (p. 111) [emphasis added]

Here, the use of "and" clearly implies that Congress intended to have a bona fide offer for all gas described in this section, at some point in time after the contract expires, regardless of when the contract expired. The Commission's interpretation of section 315(b)(2) and (3), as requiring a bona fide offer for all gas to which this subsection applies, operates to give effect to both the language of the statute as written, and the intent of Congress as gleaned from the Conference Report.

4. *Timing of Bona Fide Offer.*—Section 277.205(b) of the proposed rule provided:

(1) *Determination more than 45 days before contract expiration.* With respect to the natural gas subject to this subpart and for which the final determination that the natural gas qualifies as high-cost natural gas, new natural gas or gas from a new, onshore production well was made 45 days or more before the expiration date of the subject contract (other than a contract implied in law) the bona fide offer shall be made no later than 20 days prior to the expiration date of the subject contract.

(2) *Determination less than 45 days before contract expiration.* In all other cases, the offer shall be made no later than 20 days after a final determination is made that the natural gas qualifies as high-cost natural gas, new natural gas or natural gas produced from any new, onshore production well.

Several persons commented that the bona fide offer should not be permitted to be made more than 18 months prior to the expiration of the contract. The commenters raising this point felt that without such a provision, the purchaser might find itself in the position of having to consider a bona fide offer years before the contract expires. Furthermore, years may elapse between the time the bona fide offer is made and the expiration of the right of first refusal. Such occurrences would circumvent meaningful compliance with the bona fide offer rule. Accordingly, the Commission has modified the proposal to provide that bona fide offers may not be made more than 18 months prior to expiration of the contract.

The commenters made several arguments that the 20-day time frame was unduly restrictive. One reason given was that negotiations between the parties often exceed 20 days, which, they suggested, is all the rule allows. The Commission believes that the 20 days provided for both the making and acceptance of the offer (§ 277.205(b)) is sufficient. While negotiations may or may not take longer than 20 days, that fact is immaterial here. Nothing in this rule limits the amount of time parties may carry on negotiations other than those required by the provisions regarding bona fide offers. The parties are free to enter into a contract for the sale of such gas where the contract was not the result of the procedures required regarding bona fide offers. In addition, the parties are also free to agree to modifications of the time requirements established in this rule. (*See*, § 277.209.)

The comments seem to imply that the time restrictions on making and accepting the bona fide offer work a hardship on small producers who may be unaware of the bona fide offer provisions, as well as a hardship on large producers who will find it difficult to monitor their contracts on a daily basis. One commenter noted that small producers may not be aware of these provisions, and that it would be preferable simply to require that the offer be made before the sale of gas under the subject contract is discontinued, or after a specified period of time following a request by the purchaser for a bona fide offer. The Commission does not accept these suggestions. Requiring that the bone fide offer provisions be complied with not later than 20 days before expiration of the contract is not significantly more burdensome to the small producer than simply requiring compliance before deliveries are terminated. Moreover, the 20 day notice provides protection to the purchaser which the Commission believes was intended in section 315(b)(2) since deliveries may not stop until the purchaser has had a reasonable opportunity to reject the bona fide offer.

Large producers were concerned that no provisions are made for the cases where the producer fails to comply with the time requirements of this section. Another commenter noted that in actual practice, contracts expire with no replacement contracts yet made. It was argued that it is not possible for purchasers with many contracts to monitor them on a daily basis. Such monitoring is not required by the rule. Sellers are free to make the bona fide offer at any time up to 18 months before the expiration of the contract. The flexibility afforded by the 18 month rule should result in no significant recordkeeping or monitoring burden on sellers. For instance, a seller could make an annual survey of interstate contracts, identify those expiring in the next 12 months for which well determinations have been made or applied for, and make bona fide offers to purchasers who are or may be entitled thereto.

The proposals to liberalize the time limits are not adopted.

5. *Acceptance or Rejection of the Bona Fide Offer.*—Section 277.205(c) stipulates the manner of making the bona fide offer and the acceptance thereof. This section provides that any counteroffer to the bona fide offer will constitute a rejection of the bona fide offer. One commenter suggested that for a counteroffer to act as rejection of the offer, it should be required to be in writing to avoid confusing counteroffers with requests for clarification of the bona fide offer itself. It was the intent of the Commission to treat only written counteroffers submitted in the manner of the required acceptance to be treated as the rejection of the offer. The text of the regulation has been so conformed. Requiring written counteroffers is consistent with the Commission's position that nothing in this rule is intended to prevent the parties from negotiating for the continued sale of subject gas outside of the realm of the bona fide offer and right of first refusal rules.

Another commenter suggested that the Commission can establish that rejection of an offer will be implied after a certain time has elapsed. Section 277.205(c) of this rule, as well as the proposed rule, provides that if a bona fide offer is not accepted or rejected in the prescribed manner provided for therein, it will be deemed rejected.

B. Right of First Refusal

1. *General.*—Proposed § 277.206(a) contained the general rule governing the right of first refusal. The general rule provides:

The seller shall present any offer substantially accepted in principle by a third person in an armslength transaction to the original purchaser for exercise of its right of first refusal. The offer shall be presented in accordance with the provisions of this section.

This provision engendered numerous comments. First, one commenter suggested that the contract which is submitted to the original purchaser should not be party-specific, that is, the name of the third-party purchaser should be omitted. The proposed rule did not require that the name of the third-party purchaser be disclosed.

One commenter suggested that the rule should specify that only sections 102, 103, and 107 gas is subject to the rule, and that the seller is still required to sell to the original purchaser all other gas previously committed or dedicated to it. The comment accurately reflects the provisions of section 601 of the NGPA and these regulations, however, we feel the applicability and definitions provisions in the rule (in § 277.202 and § 272.203(a)) adequately describe the scope of this rule. It was also suggested that the rule state that once the original purchaser refuses to accept the first offer substantially accepted in prinicple by a third-party, the provisions of section 315 will cease to apply to the subject natural gas. This suggestion is not accepted. The rule provides, in § 277.204, that the provisions cease to apply only if a sale is subsequently made under the terms rejected by the original purchaser. The rule is necessary in order to avoid the presentation to the original purchaser of offers which, while "substantially accepted in principle by a third party," were never intended to apply to an actual sale of the subject natural gas.

One commenter stated that it is not necessary to have fixed every detail of the "offer substantially accepted" by a third party. The offer should be flexible enough to enable negotiations to take place between the seller and original purchaser. The Commission believes that the offer must be sufficiently firm that when accepted by either the third-party purchaser, or the original purchaser, a binding contract would result. However, as noted above, the seller and original purchaser may agree to modify or supplement the terms found in this offer; indeed, the seller may be required to modify certain terms, such as delivery point and delivery pressure, where necessary to enable the original purchaser to accept delivery of the subject gas (see § 277.206(d)).

The final comment concerned the provision which prevents transactions between affiliates from being able to satisfy the right of first refusal obligations. The point made by the commenters here is that adequate safeguards exist to ensure that these transactions are fair, and section 601 of the NGPA allows the Commission to oversee such transactions. The commenters argued that because these safeguards exist, the affiliate transactions need not be prohibited, but can be permitted and reviewed by the Commission using a third-party standard. Inasmuch as the language of section 315 explicity requires that transactions be at arms-length, the Commission finds that affiliate transactions were not intended to be included in the scheme of the right of first refusal. The suggestions made by the commenters will not be adopted. However, the final rule has been amended at § 277.209(a), to permit the original purchaser to waive the exclusion respecting affiliate transactions.

2. *Time Frame Proposed.*—The time frame for making and accepting the offer pursuant to the right of first refusal was set out in § 277.207(b) and (c). With respect to this provision, one commenter indicated that it felt insufficient time was provided for the transmittal of the offer to the original purchaser. Proposed § 277.206(b) provided that the seller must present the offer at the later of (1) the time when the offer substantially accepted in principle by the third-party purchaser, or (2) the time when the bona fide offer is rejected. The Commission has amended this provision to permit the seller to present the offer within 10 days of its acceptance, or rejection of the bona fide offer, whichever is later.

One commenter stated that the use of certified mail for sending the offer to the original purchaser should not be required. Use of certified mail enables the parties to know with more certainty when the time periods for offer and response expire. Accordingly, disputes over the timeliness of actions are less likely to result. Telegrams with confirming copy sent by certified mail will be acceptable as they also tend to restrict disputes over timeliness.

3. *Delivery Point and Physical Conditions of Delivery.*—Section 277.206(d) of the proposed rule provided:

Delivery point under an accepted offer. Notwithstanding any contrary provision of an offer substantially accepted in principle, the original purchaser that accepts the offer shall (at its option) have the right to receive the natural gas at the delivery point and under the physical conditions of delivery specified in the subject contract.

Three commenters took issue with the provisions of this section, based on the argument that the Commission is not authorized to prescribe the terms of delivery, and that the right to alter delivery point is outside of the realm of the right of first refusal. The parties stated that delivery point and other conditions of delivery have substantial economic impact and can thus affect the price agreed upon in the agreement between the seller and a third party purchaser. To enable the original purchaser to avoid these terms, they argued, subverts the negotiation process. Commenters insisted that the original purchaser should be required to accept *all* the terms of the offer substantially accepted by the third party.

The Commission fully recognizes that terms concerning delivery point and pressure affect the sale price for natural gas established in a contract. However, the Commission believes that in order to give the original purchaser a meaningful right of first refusal under section 315(b)(3), the original purchaser must be given the opportunity to purchase the gas on terms which will physically allow delivery. To simply grant the original purchaser the first chance to accept an offer, under which it would be physically impossible for him to accept delivery, affords the original purchaser no substantial protection at all. For example, the terms of the offer substantially accepted may provide for delivery of the gas at some location to which the original purchaser has no access. Unless the purchaser could obtain delivery at some acceptable location, his right of first refusal would serve no purpose.

If the original purchaser does accept an offer to sell natural gas made pursuant to section 315(b)(3), and makes changes in delivery conditions which place the seller in an economically disadvantageous position, the seller may petition the Commission for an allowance to compensate the seller for additional expenses incurred as a result of the original purchaser exercising the right to take delivery under the conditions in the subject contract.

C. Interim Protective Sales

Under the time provisions established in this rule, there is a potential gap between the subject contract's expiration and the original purchaser's acting on the bona fide offer. To provide for an orderly operation of section 315(b) as well as an orderly transition to non-price deregulation of natural gas subject to this rule, the Commission

proposed provisions for interim protective sales. These provisions read:

§ 277.207 *Interim protective sales.*

(a) *General rule.* Except as provided in § 277.208, after the expiration date of a subject contract, any natural gas subject to the provisions of this subpart shall continue to be sold to the original purchaser until the requirements of § 277.205 (concerning bona fide offers) have been met.

(b) *Conditions of sale.* Natural gas sold to the original purchaser under paragraph (a) of this section shall be sold under the terms and conditions prevailing in the subject contract on the last day the contract was in effect, except that the seller may charge no more than the price paid by the original purchaser on the day before the final determination was made.

One commenter argued that interim sales are outside the scope of the Commission's jurisdiction, and so this provision should be deleted. This commenter further asserted that the price limit in paragraph (b) is unlawful, as the Commission cannot impose as a ceiling price the lower of two applicable maximum lawful prices, by operation of section 101(b)(5) of the NGPA. The Commission disagrees. It is within the scope of the Commission's rulemaking authority in implementing section 315(b) of the NGPA to impose on the seller an obligation to continue sales to the original purchaser (on terms prevailing under the expired contract), where the seller fails to comply with his duty to make a bona fide offer.

Another commenter suggested that instead of retaining the *price* in effect on a certain date, the *pricing terms* should be retained, in order to permit escalation. We agree. Section 277.207(b) is modified to provide that the seller will continue to sell the subject gas to the original purchaser in accordance with the pricing terms which were in effect on the last day the contract was effective, rather than limiting the price to the price paid by the original purchaser on the day before the final determination was made.

D. Intervening Third-Party Sales

The proposal contained provisions in § 277.208, regarding sales made to third parties prior to the issuance of the proposal. The proposal would have permitted the original purchaser to apply to the Commission for relief. One commenter recommended that the Commission clarify what terms would be available to the original purchaser seeking relief in the case in which the subject contract has expired and the seller has entered into a contract for the first sale of the subject gas after the gas received a final determination and before this rule was issued. Section 277.208(b) in the proposed rule provided that the original purchaser could apply for relief as the Commission would deem appropriate, and such application be made not later than January 15, 1980. The Commission does not believe it could fairly decide issues which will be raised in applications for relief except upon review and examination on a case-by-case basis. This provision is retained in the final rule. The date for such applications will be moved forward, and the new deadline for applications for relief will be September 1, 1980.

5. *Waivers.*—The proposed rule, at § 277.209, allowed the original purchaser to voluntarily waive its right to a bona fide offer or the right to first refusal and provided the manner in which to effect such a waiver. Several persons recommended deletion of this section. One argument made which favored deletion was that waiver is not warranted by section 315, and is contrary to the public interest. The obligations found in section 315 are statutory in nature and a seller cannot be relieved of these obligations. Another commenter stated that the Commission is nowhere empowered to authorize anticipatory waiver. A waiver by one purchaser could unfairly result in a waiver for all successor purchasers. A right cannot be waived, it is argued, until it may be exercised.

The Commission does not agree that waiver is either unwarranted or unauthorized. The Commission believes that the parties have the right to bargain for the waiver of section 315(b) rights irrespective of whether or not the rule contains the provisions concerning waiver. Moreover, if a purchaser is satisfied that his rights under section 315(b) are adequately protected through his own negotiations with the seller, the Commission perceives no reason to insist the seller should be required to execute the intricate procedures required under section 315(b). However, in response to the concerns raised, a new provision has been added in the final rule which requires that any waiver must be made no more than one year prior to the expiration of the subject contract.

A question was raised whether the waiver is intended to be a blanket waiver of all section 315(b) rights, or a contract-by-contract waiver. This commenter considered a blanket waiver to be unacceptable, because to make a knowing and voluntary waiver, the original purchaser must consider proposed terms and conditions for a specific contract for the purchase of a certain type of natural gas, in certain quantities, and at a given price. This commenter further asserted that any written waiver should be preceded by notice to the ultimate customers and the state regulatory agency. The customers and state agencies should have an opportunity to review and oppose such waivers.

Once again, it is the Commission's position that the scope of the waiver, whether blanket or contract-specific, is a matter to be agreed upon by the seller and original purchaser in arms-length transactions. A purchaser's agreement to a waiver of its rights to a bona fide offer or right of first refusal should not be subject to any different scrutiny than the failure to exercise those rights would be.

III. Summary of the Rule

The rule implementing the bona fide offer and right of first refusal provisions of section 315(b) of the NGPA are found in Subpart B of Part 277 of the Commission's regulations. Sections 277.201 through 277.204 are general in nature, setting forth the applicability, purpose and scope of the rule promulgated under section 315(b). The rule applies to natural gas which has been removed from Natural Gas Act jurisdiction by virtue of its being the subject of a final determination that it qualifies as deregulated high-cost gas under section 107(c)(1) through (4), new natural gas under section 102(c), or natural gas produced from any new, onshore production well under section 103(c) of the NGPA. The general rule requires that before a seller of the natural gas described above (hereinafter "subject gas") enters into a sale of the subject gas to a purchaser other than the purchaser who received the gas under the Natural Gas Act (the original purchaser), the seller must first make a bona fide offer of sale of the subject gas to the original purchaser. If the original purchaser rejects this bona fide offer, the seller may seek a third-party purchaser, but before any sale of the subject gas can be made to a third party, the seller must give the original purchaser the opportunity to purchase the subject gas at the terms and conditions substantially accepted in principle by the third-party purchaser. This describes the right of first refusal vested in the original purchaser by section 315(b)(3).

Section 277.205 establishes procedures and the time frame pursuant to which the bona fide offer required by section 315(b)(2) is to be made and accepted or rejected. In the case where the subject

gas has received an appropriate final determination (that it qualifies under section 107(c)(1) through (4), section 102(c), or section 103(c)) 45 days or more before the subject contract expires, the seller must make the bona fide offer no later than 20 days before the contract expires. When the appropriate final determination is made less than 45 days before contract expiration, the bona fide offer is required to be made no later than 20 days after the subject gas is removed from the jurisdiction of the Natural Gas Act, that is, the date of the final determination. A bona fide offer cannot be made more than 18 months prior to the expiration of the contract covering subject gas, if it is to satisfy the requirements set out in the NGPA and the implementing regulations. The bona fide offer must be transmitted to the original purchaser in writing, and sent by U.S. mail, certified, return receipt requested. The original purchaser must respond to the offer within 20 days; any acceptance must be in writing and is deemed operative when signed and placed in the U.S. mail, certified, return receipt requested. Counteroffers and failure to respond are deemed to be rejections.

If the original purchaser rejects the bona fide offer, and the seller seeks to sell the gas after expiration of the subject contract, the right of first refusal comes into play. The procedures and time requirements for the implementation of the right of first refusal provisions are set forth in § 277.206. The seller is required to submit to the original purchaser the offer substantially accepted in principle by a third party in an arms-length transaction not later than 10 days from the later of the time when the offer was substantially accepted in principle, or the time when the bona fide offer was rejected. The offer must be sent by U.S. mail, certified, return receipt requested, and, if accepted, must be accepted by the original purchaser within 20 days of its receipt. Counteroffers or acceptances after 20 days have passed are deemed to be rejections. An acceptance is operative if it is in writing, when placed in the U.S. mail, certified, return receipt requested.

A significant provision is incorporated in the rule where it concerns the right of first refusal and is found in § 277.206(d). This provision enables the original purchaser, in the exercise of its right of first refusal, to accept the offer substantially accepted in principle and to modify the delivery point and physical conditions of delivery stated in this offer to match those in the subject contract between the seller and the original purchaser. The seller in this case may request that the price be increased to offset any additional cost incurred by the seller related to the original purchaser's decision to modify terms of delivery. The price may be increased by action of the Commission, but will not be raised above the applicable maximum lawful price.

First sales of natural gas subject to the section 315(b) requirements cease to be subject to these requirements when the original purchaser has both rejected the bona fide offer and the offer substantially accepted in principle by a third-party purchaser and the subject gas has been sold to a third-party purchaser pursuant to the terms of that offer rejected by the original purchaser.

Section 277.207(a) provides for interim protective sales to be carried out in the period after the subject contract has expired and until the seller has satisfied its obligation to make to a bona fide offer. Section 277.207 provides that such sales will be under the terms and conditions prevailing in the subject contract on the last day the contract was in effect. The rule also makes provisions, at § 277.208, for natural gas which has been removed from the Natural Gas Act jurisdiction before September 1, 1980. Original purchasers of this gas may apply for relief with the Commission not later than September 1, 1980. In general, requirements of bona fide offer and right of first refusal found in §§ 277.204 through 277.206 will not apply to this gas.

Original purchasers may waive the rights granted to them under section 315(b), pursuant to § 277.209 of the rule. In order to be effective, the waiver must be made no more than one year prior to the expiration of the subject contract, it must be in writing and signed by the original purchaser. The original purchaser is also specifically permitted to waive the prohibition which prevents affiliate transactions from being qualifying transactions for the purposes of obtaining an offer substantially accepted in principle by a third party, subject to the original purchaser's right of first refusal.

Section 277.210 requires that sellers subject to this subpart retain copies of all bona fide offers made under § 277.205, and offers made to original purchasers in compliance with such purchasers' right of first refusal under § 277.206. Sellers and purchasers are also required to retain all other documents related to this subpart which are created in the ordinary course of business.

IV. Effective Date

This rule shall become effective as a final rule on September 1, 1980.

(Department of Energy Organization Act, 42 U.S.C. §§ 7101-7352; E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432; Natural Gas Act, as amended 15 U.S.C. §§ 717-717w)

In consideration of the foregoing, Subpart B of Part 277, Chapter I, Title 18, Code of Federal Regulations is added, as set forth below, effective as a final rule on September 1, 1980. By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 277 is amended by adding a Table of Contents to read as follows:

PART 277—OTHER PROVISIONS

Subpart A—Contract Duration

Sec.
277.101 Duration of new contracts for first sale of certain OCS gas.

Subpart B—Bona Fide Offers; Right of First Refusal

Sec.
277.201 Purpose.
277.202 Applicability.
277.203 Definitions.
277.204 General rule.
277.205 Bona fide offers.
277.206 Right of first refusal.
277.207 Interim protective sales.
277.208 Gas removed from Natural Gas Act jurisdiction before September 1, 1980.
277.209 Waiver of rights under this subpart.
277.210 Recordkeeping requirements.

Authority: Natural Gas Policy Act of 1978; 15 U.S.C. §§ 3301—3432.

2. Part 277 is further amended in the text of the regulations by adding the title "SUBPART A—CONTRACT DURATION" immediately preceding § 277.101.

3. Part 277 is further amended by adding a new Subpart B to read as follows:

Subpart B—Bona Fide Offers; Right of First Refusal

§ 277.201 Purpose.

This subpart implements section 315(b) of the NGPA. Under section 601(a)(1)(B) of the NGPA, any service obligation which a first seller may have under the Natural Gas Act continues until the gas is removed from Natural Gas Act jurisdiction. This subpart specifies the circumstances under which a seller, prior to making a first sale of gas removed from Natural Gas Act jurisdiction to a third party purchaser, must make a bona fide offer to sell such gas to such original purchaser and give such original purchaser a right of first

refusal of offers to sell such gas which have been substantially accepted in principle by a third party purchaser in an arms-length transaction.

§ 277.202

Applicability.

This subpart applies to natural gas removed from Natural Gas Act jurisdiction.

§ 277.203

Definitions.

For purposes of this subpart:

(a) Natural gas is "removed from Natural Gas Act jurisdiction" if it is natural gas which:

(1) Was committed or dedicated to interstate commerce on November 8, 1978 (other than natural gas committed or dedicated to interstate commerce solely by reason of its being natural gas from the OCS under section 2(18)(A)(i) of the NGPA);

(2) Has been finally determined to be:

(i) Deregulated high-cost gas (as defined in § 272.103),

(ii) New natural gas (as defined in § 271.203(a)), or

(iii) Natural gas produced from any new, onshore production well (as defined in § 271.303); and

(3) Would be subject to the provisions of the Natural Gas Act and the jurisdiction of the Commission thereunder but for the provisions of section 601(a)(1)(B) of the NGPA.

(b) "Arms-length transaction" means a transaction between parties with adverse economic interests. Arms-length transactions exclude transactions between affiliates or family members.

(c) "Bona fide offer" means a written offer by the seller to the original purchaser which would be legal for such purchaser to accept under the Natural Gas Act and which is sufficiently firm that if accepted by the original purchaser would result in a binding contract enforceable by the seller and the purchaser.

(d) "Final determination" means an eligibility determination which has become final within the meaning of § 273.102(b) of this chapter.

(e) "Offer substantially accepted in principle" means a written acceptance by a purchaser (other than the original purchaser) of a written offer to sell the natural gas. The written offer and acceptance must be sufficiently firm such that if the original purchaser rejects the written offer, the written offer and acceptance by the third party purchaser would result in a contract which is binding on the seller.

(f) "Subject contract" means a contract (including an implied contract):

(1) For the sale of natural gas which is removed from Natural Gas Act jurisdiction; and

(2) Which was in effect on or after November 9, 1978.

(g) "Implied contract" means a contract implied by reason of the seller's service obligation under the Natural Gas Act (excluding any interim service obligation arising from this subpart or section 315 of the NGPA).

(h) "Expiration date of a subject contract" means:

(1) In the case of natural gas subject to an implied contract, the date the natural gas is removed from Natural Gas Act jurisdiction

(2) In all other cases, the expiration or termination date of the subject contract.

(i) "Original purchaser" means a person who would be entitled to receive natural gas under the Natural Gas Act but for the provisions of section 601(a)(1)(B) of the NGPA. (The original purchaser may be any successor in interest to the person which had the right to receive the natural gas on November 8, 1978).

(j) "Third party purchaser" means a person, other than the original purchaser, that purchases the natural gas subject to this subpart from the seller.

(k) "Seller" means that person who would be required to sell natural gas under the Natural Gas Act, but for the provisions of section 601(a)(1)(B) of the NGPA. (The Seller may be any successor in interest to the person who had the obligation to sell the natural gas on November 8, 1978).

§ 277.204 General rule.

(a) Except as provided in §§ 277.208 and 277.209, no seller may make a first sale of natural gas which is removed from Natural Gas Act jurisdiction to any third party purchaser until the original purchaser has both rejected a bona fide offer in accordance with § 277.205 and has rejected an offer substantially accepted in principle by a third party purchaser in an arms-length transaction, in accordance with § 277.206.

(b) The requirements of this subpart cease to apply to the first sale of natural gas when;

(1) The original purchaser has rejected a bona fide offer with respect to the natural gas in accordance with § 277.205;

(2) The original purchaser has rejected an offer substantially accepted in principle with respect to the natural gas in accordance with § 277.206; and

(3) The seller has sold the natural gas to a third party purchaser in an arms-length transaction under the terms of the offer substantially accepted in principle (which was rejected by the original purchaser).

§ 277.205 Bona fide offers.

(a) *General rule.* Except as provided in §§ 277.208 and 277.209, deliveries of natural gas removed from Natural Gas Act jurisdiction to an original purchaser under a subject contract may not be discontinued until the later of:

(1) The expiration date of the subject contract, or

(2) Rejection of a bona fide offer as provided for under paragraph (c) of this section.

(b) *Time for making the bona fide offer.*

(1) *Determination 45 days or more before contract expiration.* With respect to the gas removed from Natural Gas Act jurisdiction 45 days or more before the expiration date of the subject contract (other than an implied contract) the bona fide offer shall be made no later than 20 days prior to the expiration date of the subject contract.

(2) *Determination less than 45 days before contract expiration.* In all other cases, the offer shall be made no later than 20 days after the gas is removed from Natural Gas Act jurisdiction.

(3) *18 month rule.* A bona fide offer made more than 18 months prior to the expiration of the subject contract will not be deemed to satisfy the requirements of this subpart or section 315(b)(2) of the NGPA.

(c) *Offer; acceptance; rejection.*

(1) The written bona fide offer shall be made by sending it to the original purchaser by U.S. mail, certified, and return receipt requested.

(2) The original purchaser shall have 20 days from receipt to accept the bona fide offer. The bona fide offer, if accepted, shall be accepted in writing. It shall be deemed accepted when signed and placed in the U.S. mail, certified, return receipt requested.

(3) The bona fide offer may be rejected by a written refusal to accept it. Any written counteroffer to the bona fide offer made by the original purchaser shall constitute a rejection of the bona fide offer. If the bona fide offer is not accepted or rejected within 20 days, it shall be deemed rejected.

§ 277.206 Right of the first refusal.

(a) *General rule.* The seller shall present any offer substantially accepted in principle by a third party purchaser in an arms-length transaction to the original purchaser for exercise of its right of first refusal. The offer shall be presented in accordance with the provisions of this section.

(b) *Time for making the offer.* Except as provided in § 277.208, the seller shall

present the offer described in paragraph (a) of this section to the original purchaser for the exercise of its right of first refusal not later than 10 days after the later of:

(1) The time when the offer is substantially accepted in principle; or

(2) The time when the bona fide offer is rejected.

(c) *Offer; acceptance; rejection.*

(1) The offer described in paragraph (b) of this section shall be made by sending it to the original purchaser by U.S. mail, certified, return receipt requested.

(2) The original purchaser shall have 20 days from receipt to accept the offer. The offer, if accepted, shall be accepted in writing. It shall be deemed accepted when it is signed and placed in the U.S. mail, certified, return receipt requested.

(3) The offer may be rejected by a written refusal to accept it. Any written counteroffer to the offer made by the original purchaser, except as provided in paragraph (d) of this section, shall constitute a rejection. If the offer is not accepted or rejected within 20 days, it shall be deemed rejected.

(d) *Delivery point under an accepted offer.* Notwithstanding any contrary provision of an offer substantially accepted in principle, the original purchaser that accepts the offer shall (at its option) have the right to receive the natural gas at the delivery point and under the physical conditions of delivery specified in the subject contract. On application of the seller, the Commission may permit the price under the offer substantially accepted in principal to be increased (but not above the applicable maximum lawful price) in order to compensate the seller for any cost incurred by the seller by reason of the original purchaser's exercise of its rights under this paragraph.

§ 277.207 Interim protective sales.

When deliveries of gas are required to be continued after the expiration of the subject contract under § 277.205(a), such gas shall be sold under the terms and conditions prevailing in the subject contract on the last day the contract was in effect. Nothing in this subpart prohibits a seller from interrupting deliveries of gas in accordance with the provisions of a contract or any certificate of public convenience and necessity which would have been applicable but for the removal of the gas from NGA jurisdiction.

§ 277.208 Gas removed from Natural Gas Act jurisdiction before September 1, 1980.

(a) *Applicability.* This section applies to natural gas if such gas was removed from Natural Gas Act jurisdiction prior to September 1, 1980, and if the subject contract expired before such date.

(b) *Relief.* The original purchaser of gas to which this section applies may apply not later than October 1, 1980, to the Commission for such relief as the Commission may by order determine appropriate. Unless such order otherwise provides, § 277.204 through § 277.207 shall not apply to any gas to which this section applies.

§ 277.209 Waiver of rights under this subpart.

(a) *General rule.* The original purchaser may voluntarily waive any requirement imposed on the seller under this Subpart (including the purchaser's right to a bona fide offer under § 277.205, its rights of first refusal under § 277.206, and the limitation in § 277.203(b) that arms-length transactions under § 277.206 do not include transactions between affiliates). No such waiver may be made more than one year prior to the expiration of the subject contract.

(b) *Method of waiver.* Waiver under paragraph (a) of this section must be in writing and signed by the original purchaser.

§ 277.210 Recordkeeping requirements.

All sellers of natural gas which is subject to this subpart must retain copies of all bona fide offers made under § 277.205 and offers to the original purchasers to satisfy the original purchaser's right of first refusal under § 277.206. The sellers and purchasers of natural gas which is subject to this subpart must also retain all other documents created in the ordinary course of business which relate to this subpart.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[T.D. 7713; LR 2-77]

Generation-Skipping Transfer Tax Regulations; Effective Date Provisions for Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing the effective date provisions of the new tax on generation-skipping transfers that was added by the Tax Reform Act of 1976. The regulations reflect changes made to the effective date provisions by the Revenue Act of 1978, and affect all persons creating, or increasing the amount of, a generation-skipping transfer after June 11, 1976.

DATES: The regulations are effective for certain generation-skipping transfers (as defined in section 2611 (e)) made after June 11, 1976.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20024. Attention CC:LR:T 202-566-3287, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1978, the Federal Register published proposed regulations implementing the new generation-skipping transfer tax (26 CFR Part 26) under Chapter 13 of the Internal Revenue Code of 1954 (43 FR 59849). A public hearing was held on April 10, 1979. After consideration of all written and oral comments regarding the proposed regulations, final regulations are adopted by this Treasury decision.

Provisions of this Regulation

Under Chapter 13, a tax is imposed on every generation-skipping transfer occurring after June 11, 1976. However, section 2006(c) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1879) provides that certain trusts in existence on that date (or created under wills in existence on that date) are excluded by effective date and transition rules from the application of the generation-skipping transfer tax provisions. The Code further provides that a trust, which is otherwise excluded from the new tax, may become subject to the tax if additions to corpus are made after June 11, 1976.

The regulations provide guidelines for determining which trusts in existence on June 11, 1976, are excluded from Chapter 13 under the effective date rule; which trusts in existence on June 11, 1976, are excluded from Chapter 13 by the transition rule; and what effect additions or amendments to trusts occurring after June 11, 1976, will have.

Additional Considerations

These regulations are needed in order to provide guidance to the public as well as to government employees responsible for the implementation of Chapter 13 of the Code. Considering both the direct and indirect effects of these regulations, it is believed that they satisfactorily implement section 2006(c) of the Tax

Reform Act of 1976, as amended by section 702(n)(1) of the Revenue Act of 1978. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Internal Revenue Service and the Treasury Department, other government agencies, and the public.

Public Comments

Fifty-four comments were received in response to the proposed regulations. The comments focused principally on three areas of the proposal; the definition of the term "revocable", the characterization of accumulated income as an addition to the corpus of a trust, and the characterization of a codicil as an amendment to a will at the time of execution even though ambulatory until death. The Treasury Department agrees that in these areas, as well as others, modification of the proposed regulations is appropriate.

The regulation has been revised to follow the structure of the statute more closely. It now provides an effective date rule applicable to irrevocable trusts and a transition rule applicable to wills and revocable trusts where the testator/creator dies before January 1, 1982. Under the regulation a trust will be treated as a revocable trust only if the trust would have been included in a decedent's estate under section 2038 (without regard to powers relinquished during the prior 3-year period) if the decedent had died on June 11, 1976. Furthermore, the regulation provides that accumulated income will not be an addition to the corpus of a trust. Finally, a post June 11, 1976, codicil will not be considered a disqualifying amendment to a will if it does not ultimately result in a change to the will which creates or increases the amount of a generation-skipping transfer.

Five comments were received on the transition rule treatment of mental incompetence. The Department agrees that the proposal provided results not contemplated by the statute. Accordingly, it has been revised to provide that the transition rule will apply to individuals who were mentally incompetent on June 11, 1976, for a minimum of two years after competency has been regained.

The Department believes Congress intended transitional relief be denied where individuals, after consideration of the generation-skipping aspects of their existing estate plans, alter those plans in a manner that creates or increases the amount of a generation-skipping transfer. Several commentors stated, however, that the proposed transition rule treatment of amendments to wills and revocable trusts left a number of questions unanswered and did not grant sufficient relief. In response to these comments, the proposal has been clarified in several respects. First, the regulation makes it clear that amendments to any instrument falling within the transition rule (including trust equivalents) will result in loss of "grandfathering" for all generation-skipping transfers under that instrument. Second, the word "technical" has been deleted from subsection (e)(1)(ii) because it was confusing and redundant. Third, several examples have been added. Fourth, the "independent effect" concept (under which each amendment would be tested against the facts as they exist on the date of death) has been replaced by a "cumulative effect" rule. The regulation now provides that in testing whether an amendment results in the creation or increase in the amount of a generation-skipping transfer, the instruments that exist on the date of death (or any prior taxable distribution or termination) will be compared to the instruments that existed on June 11, 1976.

Several commentors felt that a republication of a will that was in existence on June 11, 1976, should be treated as a will in existence on that date, arguing that the "revival" concept recognized in the proposal is a technicality. After reconsideration, the Department believes it would be unwise to modify the proposed rule. The apparent intent of Congress was to provide transitional relief for those wills that would be effective were the testator to die on June 11, 1976. The rule as proposed requires that any instrument "in place" on that date, be probated, and, therefore, open to challenge. Treating a republication as the original instrument, would place the Internal Revenue Service in the impractical position of "proving" that the instrument being republished not only was a valid will but that it was the instrument that would have controlled the devolution of the testator's property had the testator died on June 11, 1976.

The proposed regulation provided that post June 11, 1976, additions to both irrevocable and revocable trusts would subject a proportionate amount of transfers from the trust to Chapter 13. Upon reconsideration the Treasury Department believes that the statute distinguishes between additions to trusts subject to the effective date rule and those subject to the transition rule. Thus, under the final regulation, an addition to the corpus of an irrevocable trust will result in a proportionate part of future distributions being subject to tax, while an addition to a revocable trust will result in future distributions being fully subject to tax. However, to alleviate potentially harsh results, the regulation provides that if all post June 11, 1976, additions to a revocable trust are set aside as a separate fund prior to January 1, 1982, only the separate fund will be subject to Chapter 13.

Other comments suggested that either tracing or segregation of assets should be allowed as an alternative to the proposed rule that generation-skipping transfers occurring subsequent to an addition to corpus of an irrevocable trust are proportionately "tainted"; *i.e.*, subject to tax under Chapter 13, to the same extent that the value of the corpus represented added assets immediately after the additions. The Treasury Department continues to believe that a single approach provides the more equitable result in terms of both trust and tax administration.

A number of commentors stated that "additions" to the corpus of a trust should only occur where property is conveyed to the trust from an outside source. They argued that the "constructive addition" concept adopted in the proposal was not intended by Congress. After reconsideration, the Department feels the legislative history does not support the position of the commentors. The structure of the statute (including both an effective date rule and a transition rule) and the language in the Conference Committee Report (expressly providing that "grandfather" protection will not in all cases be applicable to an irrevocable trust subject to a "limited" power of appointment) clearly indicate a congressional intent to provide relief from the provisions of Chapter 13 only in those cases where the generation-skipping transfer could not be avoided. Thus, subject to the application of the transition rule, it is appropriate to subject property to the generation-skipping tax where an individual is, for gift and estate tax purposes, treated as owning the property. This result is accomplished by the "constructive addition" concept.

As a number of commentors noted, the generation-skipping tax is essentially complementary to the estate and gift taxes and burdensome legal and administrative questions may arise if traditional transfer tax concepts are not followed. The Department recognizes the validity of these concerns and has revised the regulation to provide that a constructive addition will be deemed to occur in those cases where the exercise, release or lapse of a power of appointment is subject to either the

Federal estate or gift tax, with the further provision that if a nongeneral power is exercised in a manner that may result in an extension of the term of the trust more than 21 years beyond a life or lives in being at the original creation of the trust, there will be a constructive addition to the corpus of the trust. However, principally for purposes of administrative convenience, where a constructive addition occurs by reason of the exercise, release or lapse of a power which is in any part taxable under Chapter 11 or Chapter 12 the amount of the addition will be equal to the entire portion of the trust subject to the power. Rules to determine the grantor of such construction additions will be set forth in definitional regulations to be published shortly in proposed form.

Six commentors felt that the "pour-over" exception to the addition to corpus rule should be expanded beyond a "grandfathered" will or revocable trust. The regulation now provides that any "pour-over" involving two "grandfathered" instruments will not result in loss of relief under either the effective date or the transition rule.

The regulation also contains an example stating that the transition rule is inapplicable where the holder of a general power of appointment dies before January 1, 1982 but had no will in existence on June 11, 1976. The Department believes this rule is necessary to relieve the Internal Revenue Service from having to inquire whether a will was destroyed after June 11, 1976, to avoid adverse generation-skipping tax consequences.

Finally, several grammatical changes suggested by commentors were adopted.

Drafting Information

The principal author of these regulations is Fred E. Grundeman 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 the Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Regulations

Accordingly, a new part 26, Generation-Skipping Transfer Tax Regulations, is added to Title 26 of the Code of Federal Regulations, and the first regulations adopted thereunder are as follows:

§ 26.2601-1 Effective Date.

(a) *In general.* Except as provided in paragraphs (b)(1) and (b)(2) of this section, the provisions of Chapter 13 of the Code apply to any generation-skipping transfer, as defined in section 2611(a), made after June 11, 1976. For purposes of this section, any reference to a trust includes a "trust equivalent" within the meaning of section 2611(d).

(b) *Exceptions*—(1) *General rule.* The provisions of Chapter 13 of the Code will not apply to any generation-skipping transfer—

(i) under a trust which was irrevocable on June 11, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after that date (the effective date rule); or

(ii) under any other trust created before June 12, 1976, or established under a will executed before June 12, 1976, which becomes irrevocable by reason of the death of a decedent before January 1, 1982, provided that the document in existence on June 11, 1976, was not amended at any time after June 11, 1976, in any respect which results in the creation of, or an increase in the amount of, a generation-skipping transfer (the transition rule).

(2) *Mental disability.* If an individual on June 11, 1976, was under a mental disability to change the disposition of his or her property, the date in the transition rule of this section (and in every reference to the transition rule) by which a document must become irrevocable shall be the later of January 1, 1982, or the date which is two years after the date on which the individual first regains his or her competence to dispose of his or her property. For purposes of this provision, the term "mental disability" means mental incompetence, in fact, to execute the instrument governing the disposition of his property, whether or not there was an adjudication of incompetence.

(3) *Examples.* The provisions of paragraphs (b)(1) and (b)(2) may be illustrated by the following examples:

Example (1). A, a resident of State *X,* had executed an irrevocable generation-skipping trust, but had not funded the trust as of June 11, 1976. On that date the trust was named irrevocable beneficiary of certain paid up life insurance policies on the life of *A.* Under the law of State *X* a trust is not considered a separate entity until it is funded. However, under the law of State *X* the combination of documents in existence on June 11, 1976, is considered as irrevocably disposing of the insurance proceeds, and is, therefore, an irrevocable trust equivalent for purposes of Chapter 13. Assuming that the trust is not funded (and that no further arrangements are made to add corpus to the trust or enhance the benefit payable under the policies) future generation-skipping transfers pursuant to the trust will not be subject to Chapter 13 by reason of the effective date rule.

Example (2). Assume the same facts as in example (1) except that under the law of State *X* the documents did not irrevocably determine the disposition of the insurance proceeds. Under these circumstances the combination of documents in existence on June 11, 1976, is a revocable trust equivalent. Assume further that after executing the documents but before June 12, 1976, *A* became mentally disabled and was incompetent to dispose of his property by will until his death on August 15, 1985, at which time the trust was funded with the insurance proceeds. Since the revocable trust equivalent was in existence on June 11, 1976, and the decedent was at that time mentally disabled, no generation-skipping transfers pursuant to the trust will be subject to tax under Chapter 13.

Example (3). Assume the same facts as in example (2) except that the decedent became mentally disabled after June 11, 1976. In this case, since *A* became mentally disabled after June 11, 1976, and survived beyond December 31, 1981, the transition rule is not applicable and all generation-skipping transfers pursuant to the trust will be subject to the provisions of Chapter 13.

(c) *Irrevocable trusts*—(1) *In General.* For purposes of this section, any trust in existence on June 11, 1976, will be considered an irrevocable trust except to the extent that on that date it was subject to a power that would have caused the value of the trust to be included in a decedent's gross estate for Federal estate tax purposes by reason of section 2038 (without regard to those powers relinquished during the prior 3-year period) if the decedent had died on that date. Thus, a trust will be considered subject to a power on June 11, 1976, even through the exercise of the power was subject to the precedent giving of notice, or even though the exercise could take effect only on the expiration of a stated period, whether or not on or before June 11, 1976, notice had been given or the power had been exercised. Moreover, a trust will not be considered subject to a power if the power is, by its terms, exercisable only on the occurrence of an event or contingency not subject to the possessor's control (other than the death of the possessor) and if the event or contingency had not in fact taken place on June 11, 1976.

(2) *Examples.* The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). On June 11, 1976, *Y,* the settlor of a trust that was otherwise irrevocable on June 11, 1976, had a testamentary power to add new beneficiaries to the trust. The testamentary power held by *Y* would have caused the trust to be included in *Y's* gross estate under section 2038 if *Y* had died on June 11, 1976. Therefore the trust is not an irrevocable trust for purposes of this section.

Example (2). On June 11, 1976, *A,* the wife of the settlor of a trust in existence on that date, had the right to withdraw 15% of the corpus in each calendar year. The trust had a

value of $100,000 on June 11, 1976, and was otherwise irrevocable on that date. Because the power was not held by the settlor of the trust it is not a power described in section 2038 of the Code and the trust is considered irrevocable on June 11, 1976.

Example (3). In 1972, *A* created a trust retaining the right to expand the class of remaindermen to include any of *A's* afterborn grandchildren. On June 11, 1976, there were no grandchildren who were not named remaindermen of the trust. Since *A's* power on June 11, 1976, was dependent on afterborn grandchildren being in existence, a contingency that had not occurred, the trust is not considered subject to the power on June 11, 1976, and is an irrevocable trust for purposes of this section.

(d) *Amendments to wills or revocable trusts.*—(1) *In general.* For purposes of this section, an amendment to a will or revocable trust in existence on June 11, 1976, will not be considered to result in the creation of, or an increase in the amount of, a generation-skipping transfer, where the amendment is—

(i) Basically administrative or clarifying in nature and only incidentally increases the amount transferred, or

(ii) Designed to ensure that an existing bequest or transfer qualifies for the applicable marital, charitable or minor child (orphans) deduction for estate, gift, or generation-skipping tax purposes and only incidentally increases the amount transferred. For purposes of determining whether a particular amendment to a will (or revocable trust) creates, or increases the amount of, a generation-skipping transfer, the effect of the instrument(s) in existence on June 11, 1976, will be measured against the effect of the instrument(s) in existence on the date of death of the decedent or on the date of any prior generation-skipping transfer. If the effect of an amendment cannot be immediately determined, it will be deemed to create, or increase the amount of, a generation-skipping transfer until a determination can be made.

(2) *Wills and trusts in existence on June 11, 1976.* For purposes of this section, a will or revocable trust will be considered in existence on June 11, 1976, if (i) the will or revocable trust was in existence on June 11, 1976, (ii) the will or revocable trust was revoked in its entirety by a new will or revocable trust and (iii) prior to the death of the testator or creator the new will or revocable trust is revoked in such a manner that, under local law, the document(s) in existence on June 11, 1976, (or a conformed copy thereof) again controls the passing of property at death.

(3) *Examples.* The provisions of paragraph (d) (1) and (2) of this section may be illustrated by the following examples:

Example (1). An amendment changes the trustees of a revocable trust in existence on June 11, 1976. Although the amendment may have the effect of lowering administrative costs and thus increasing the corpus of the trust, it will be considered administrative in nature. Therefore, assuming that the generations to which the new trustees belong do not result in the creation of, or an increase in the amount of, a generation-skipping transfer, the amendment will not prevent transfers pursuant to the trust from qualifying under the transition rule.

Example (2). On September 1, 1976. *A* executes a codicil to a will in existence on June 11, 1976, removing one of the co-executors named in the will. Although the codicil may have the effect of lowering administrative costs and thus increasing the corpus of a residuary trust, it will be considered administrative in nature and will not prevent generation-skipping transfers under the will from qualifying under the transition rule.

Example (3). A will, in existence on June 11, 1976, containing a formula marital deduction provision coming within the transition rule of section 2002(d)(1) of the Tax Reform Act of 1976, is amended to allow the estate to continue to obtain the maximum allowable estate tax marital deduction. Such an amendment does not prevent transfers under the will from qualifying under the transition rule even if the amendment incidentially produces an estate tax savings that increases the amount passing to a residuary generation-skipping trust.

Example (4). On September 1, 1976, *A* executes a codicil to his will that was in existence on June 11, 1976, revoking a bequest of $10,000 to *B* and causing that amount to be added to a residuary trust containing generation-skipping provisions. Such an amendment will be deemed to increase a generation-skipping transfer and will prevent transfers under the will from qualifying under the transition rule. If, however, *B* dies before *A* and the bequest would have lapsed under local law, the codicil will not be considered an amendment that increases a generation-skipping transfer.

Example (5). On June 11, 1976, a will provided that an amount equal to the maximum allowable marital deduction would pass to the testator's spouse. After June 11, 1976, the will is amended by codicil to provide that the amount passing to the surviving spouse will not exceed one-half of the adjusted gross estate, even though a larger deduction may be allowable by reason of certain generation-skipping transfers or the application of section 2056(c)(1)(A)(i). As the amendment merely removes a potential ambiguity created by changes in the law subsequent to execution of the will (and does not change the original distribution of the estate), it will be considered clarifying in nature and will not prevent transfers under the will from qualifying under the transition rule.

Example (6). On June 11, 1976, *D's* will provided that an amount equal to the maximum allowable marital deduction would pass to *D's* spouse with the residue of the estate passing to a testamentary generation-skipping trust. After June 11, 1976, the will is amended to provide that the marital share passing to *D's* spouse shall be the lesser of the maximum allowable marital deduction or that amount which will result in no estate tax liability for *D's* estate. The amendment is not considered clarifying in nature and may, therefore, prevent any generation-skipping transfers under the will from qualifying under the transition rule.

Example (7). On June 11, 1976, *C's* will provided for the creation of two generation-skipping trusts. On September 1, 1976, *C* executed a codicil to the will specifically inceasing the amount to be used to fund one of the trusts. Since the codicil is an amendment to a will in existence on June 11, 1976 which, if effective, will increase the amount of a generation-skipping transfer, all transfers made pursuant to the will or either of the trusts created thereunder are precluded from qualifying under the transition rule.

Example (8). Assume that *C* in example (7) executed a second codicil deleting the increase to the fund. Because the provision increasing a generation-skipping transfer did not become effective it will not be considered an amendment to a will in existence on June 11, 1976.

Example (9). On June 11, 1976, *C's* revocable trust provided for certain generation-skipping transfers. Prior to his death on August 7, 1980, *C* amended his trust to provide that an amount, previously payable to *C's* child, be paid instead to charity upon *C's* death. *C's* trust provided that any estate tax attributable to the trust should be paid by the trust. The effect of the charitable amendment was to decrease the estate tax attributable to the trust thereby increasing the corpus for subsequent generation-skipping transfers. Because the amendment does more than perfect an existing deductible transfer, the amendment is considered as increasing the amount of a generation-skipping transfer, and all transfers made pursuant to the trust are precluded from qualifying under the transition rule.

Example (10). Prior to June 11, 1976, *S* created a revocable trust providing that upon the death of *S* the income was to be paid to *S's* nephews *A*, *B* and *C* in equal shares for life, with one-third of the corpus to be distributed per stirpes of each nephew's surviving issue upon the death of the nephew. *A* becomes disabled and *S* modifies the trust in 1978 to increase *A's* share of the income. Since the amendment cannot result in the creation of, or increase in the amount of, a generation-skipping transfer, transfers pursuant to the trust will not be subject to taxation under Chapter 13.

Example (11). Assume the same facts as in example (10) except that the amendment adds a fourth nephew, *D*, as an income beneficiary. Since the amendment does not create or increase the amount of, a generation-skipping transfer, transfers pursuant to the trust will not be subject to Chapter 13.

Example (12). Assume the same facts as in example (11) except that *D's* issue are to take a one-fourth share of the corpus per stirpes upon *D's* death. Because the distribution to

be made upon D's death may involve a younger generation than would be involved if one-third shares were distributed under the original trust, the amendment will be considered an amendment that creates or increases a generation-skipping transfer until a determination can be made. Accordingly, any generation-skipping distribution of the trust corpus will be considered a taxable generation-skipping transfer until it is apparent that a younger generation has not been added to the trust. At that time a claim for refund may be filed with respect to any generation-skipping transfer tax that was paid within the period set out in section 6511.

Example (13). On June 15, 1976, *C* executed a new will revoking entirely a will in existence on June 11, 1976. The second will is considered a new will which was not in existence on June 11, 1976, and will not qualify under the transition rule even though each generation-skipping transfer under the new will is no greater than the transfer that would have occurred under the will in existence on June 11, 1976. If prior to *C's* death, *C* revokes the new will in such a manner that the document in existence on June 11, 1976, becomes subject to probate, the intervening instrument will not disqualify the original instrument for purposes of the transition rule. If *C* revokes the new will by a later will republishing the original will in its entirety the republication would not qualify transfers under the will under the transition rule unless local law would require the proof of the original document as *C's* will.

(e) *Additions to corpus*—(1) *Irrevocable trusts.* An addition made after June 11, 1976, to the corpus of a trust that was irrevocable on June 11, 1976, will subject a proportionate amount of the transfers from such a trust to the provisions of Chapter 13 of the Code. In such a case, the portion subject to Chapter 13 is a fraction of the trust's total value. The numerator of this fraction is the amount of the addition (valued as of the date the addition was made) and the denominator is the total value of the trust immediately after the addition. Where there is more than one addition to corpus after June 11, 1976, the portion of the trust attributable to all such additions will be a similar fraction. The numerator of this fraction is the sum of:

(i) The total value of the trust immediately before the latest addition, which, because of the prior additions, is subject to Chapter 13, and

(ii) The amount of the latest addition. The denominator of the fraction is the total value of the trust immediately after the latest addition.

(2) *Revocable trusts.* Except as provided in paragraph (e)(4) of this section, an addition made after June 11, 1976, but before the death of the settlor, to the corpus of a trust described in the transition rule will subject all subsequent generation-skipping transfers involving the trust to the provisions of Chapter 13 of the Code unless the corpus of the trust as it existed on June 11, 1976, is severed from the additions thereto. The corpus will be considered severed if, before January 1, 1982, the assets transferred to the trust after June 11, 1976 (together with all income and capital gains derived therefrom and after all losses, expenses, and distributions chargeable thereto) are permanently set aside as a separate fund so that the trust will be treated as two separate trusts under local law. Under these circumstances, all distributions from the separate fund will be subject to the provisions of Chapter 13. Additions made to the corpus of a trust described in the transition rule after it becomes irrevocable by reason of the death of the settlor will be treated as additions to an irrevocable trust.

(3) *Constructive addition.* Where any portion of the corpus of an irrevocable trust remains in the trust after the post June 11, 1976, release, exercise or lapse of a power of appointment over that portion of the corpus and the release, exercise or lapse is treated to any extent as a taxable transfer under either Chapter 11 (estate tax) or Chapter 12 (gift tax) of the Code, the value of the entire portion of the corpus involved in the release, exercise or lapse of the power (and not merely the taxable portion) will be treated as an addition to the trust for purposes of this chapter. Further, where any portion of the corpus of a trust is subject to a power of appointment, that portion will be considered an addition to the corpus of the trust, if, and to the extent that, after June 11, 1976, the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. If a power is exercised by creating another power it will be deemed to be exercised to whatever extent the second power may be exercised. In the case of a decedent dying before January 1, 1982, the provisions of this paragraph (e)(3) will not be applicable to the exercise of a power pursuant to an instrument described in the transition rule.

(4) *Exceptions.* Any addition to a trust made pursuant to a trust meeting the requirements of the effective date rule or, in the case of a decedent dying before January 1, 1982, pursuant to an instrument described in the transition rule, will not be treated as an addition to corpus for purposes of this section. Where a decedent fails to exercise a general power of appointment in a will described in the transition rule, the corpus passing in default of the exercise will be considered as passing pursuant to the will. In addition, in the case of a decedent dying before January 1, 1982, any property transferred inter vivos to a trust will not be treated as an addition to corpus if the same property or money would have been added to the trust pursuant to a will or trust described in the transition rule, or passed in the same way, but for the inter vivos transfer. However, in any case where it cannot be determined at the time of an addition to corpus if the transition rule will apply, the property transferred will be deemed to be an addition to corpus until such time as a determination can be made.

(5) *Appreciation and income.* Except to the extent that the provisions of paragraph (e)(1) of this section allocate subsequent appreciation and accumulated income between original corpus and additions thereto, appreciation in the value of the corpus of a trust and undistributed income added thereto will not be considered an addition to the corpus of a trust.

(6) *Relation to other sections.* No provision of this section is to be construed as in any way modifying the rules to be applied in determining the identity of the grantor of a generation-skipping trust. For example, an addition to corpus occurring by reason of an exercise of a power of appointment will not cause the individual exercising the power to be considered a grantor of the trust unless the exercise is treated as a taxable transfer under Chapter 11 or Chapter 12 of the Code.

(7) *Examples.* The provisions of paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section may be illustrated by the following examples:

Example (1). A, the settlor of a generation-skipping trust that was irrevocable on June 11, 1976, added $100,000 to the trust corpus on July 30, 1976. Immediately before the addition, the corpus of the trust had a value of $900,000. Transfers pursuant to the trust after the addition on July 30, 1976, will be subject to the generation-skipping transfer provisions to the extent of 10 percent (that is, $100,000/($900,000+$100,000)).

Example (2). Assume the same facts as in example (1) except that on August 30, 1977, when the value of the trust corpus was $2,000,000, a constructive addition of one half the corpus is made. Since 10% of the corpus is subject to Chapter 13 by reason of the first addition, then 10% of the constructive addition is attributable to corpus already subject to Chapter 13. Therefore, the new portion of the trust subject to Chapter 13 is 55%. The numerator of the fraction set out in paragraph (e)(1) of this section is $200,000 (10% of $2,000,000) plus $900,000 (90% of ½ of

$2,000,000) or $1,100,000. The denominator is $2,000,000.

Example (3). Assume the same facts as in example (1) except that the trust was revocable rather than irrevocable on June 11, 1976, and the $100,000 addition would not have passed to the trust but for the inter vivos transfer. Transfers pursuant to the trust after the addition to corpus on June 30, 1976, will be fully subject to the generation-skipping transfer provisions unless, before January 1, 1982, the additional assets (together with all increments and after all distributions) are permanently set aside in such a manner that under local law the fund traceable to the "grandfathered" corpus will be treated as a separate trust.

Example (4). Assume the same facts as in example (1) except that *A* was also the settlor of a revocable trust in existence on June 11, 1976, and that *A* died on September 30, 1979, without amending, or adding corpus to, the revocable trust. Upon the death of A, the trustee of the revocable trust was directed to terminate the trust, distributing the assets to the trustee of the irrevocable trust. At the time of the "pour-over" on September 30, 1979, the corpus of each trust equaled $1,500,000. To determine the percentage of each generation-skipping transfer after September 30, 1979, that is subject to tax under Chapter 13, $150,000 (10% of $1,500,000, the value of the corpus of the irrevocable trust immediately before the "pour-over") is the numerator of the fraction described in paragraph (e)(1) of this section. No other amount is treated as an addition on that date under the transition rule. Therefore, assuming no other corpus is added to the trust, 5% (that is $150,000/($1,500,000+$1,500,000)) of any generation-skipping transfer pursuant to the trust after September 30, 1979, will be subject to Chapter 13.

Example (5). Assume the same facts as in example (4) except that the $1,500,000 added to the irrevocable trust did not come within the transition rule. In that case, to determine the percentage of subsequent distributions subject to tax, $1,650,000 (10% of the corpus plus the $1,500,000 addition) is the numerator of the fraction described in paragraph (e)(1) of this section. Thereafter, assuming no other corpus is added to the trust, 55% (that is $1,650,000/($1,500,000+$1,500,000)) of future generation-skipping transfers will be subject to Chapter 13.

Example (6). On June 11, 1976, *B*, the surviving child of the settlor of a trust that was irrevocable on that date, possessed a general power of appointment over the corpus. Under the terms of the trust (created in 1970) *B's* power lapsed upon attaining age 21, an event that occurred on September 23, 1979. Under section 2514, ninety-five percent (100%−5%) of the value of the corpus was treated as a gift by *B* for Federal gift tax purposes. However, because the entire trust was subject to the power of appointment, 100% (that portion of the trust subject to the power) of all generation-skipping transfers pursuant to the trust occurring after September 23, 1979, will be subject to Chapter 13.

Example (7). *H* is the grantor of an irrevocable generation-skipping trust which was in existence on June 11, 1976. *H's* will, which was executed before June 11, 1976, and not amended thereafter, provides that upon his death the entire estate will pour-over into his trust. In 1980, *H* transfers $10,000 to the trust. If *H* dies after 1981, the transfer will be treated as an addition to corpus for purposes of any distribution made after the transfer to the trust in 1980. If *H* dies before 1982, the entire trust (as well as any distribution made by the trust prior to his death) will be excluded under paragraphs (b)(1)(i) and (e)(2) of this section from the generation-skipping transfer tax provisions, because the $10,000 would have been added to the trust under a will which would have qualified under paragraph (b)(1)(iii) of this section. In either case, for any generation-skipping transfers made after the transfer to the trust in 1980 but before *H's* death the $10,000 will be treated as an addition to corpus and a proportionate amount of such transfer will be subject to the generation-skipping transfer tax provisions. If *H* dies before January 1, 1982, the person liable for any previously paid generation-skipping transfer tax may file a claim for refund of such tax within the time limit set out in section 6511.

Example (8). *A* is the settlor of a generation-skipping trust which was in existence on June 11, 1976. Under the terms of the trust, *A*, on June 11, 1976, possessed the power to withdraw one-half of the corpus for *A's* personal use. The trust was irrevocable in all other respects. If *A* dies before January 1, 1982, the entire trust will be excluded from the generation-skipping transfer tax provisions. If *A* dies after December 31, 1981, one-half of all generation-skipping transfers pursuant to the trust will be subject to Chapter 13.

Example (9). Assume the same facts as in example (8) except that on July 30, 1980 while *A* is alive, a generation-skipping distribution is made from the trust. Because, on that date, it cannot be determined whether the transition rule will be applicable, the revocable portion of the trust must be treated as a constructive addition to the irrevocable portion of the trust occurring on June 11, 1976. If *A* dies before January 1, 1982, the person liable for any previously paid generation-skipping transfer tax may file a claim for refund of such tax within the time limit set out in section 6511.

Example (10). *H* and *W* are the settlors of separate revocable generation-skipping trusts which were in existence on June 11, 1976, and not amended after that date. *W* dies in 1980 and under the provisions of her trust the corpus pours over into *H's* trust. If *H* dies before January 1, 1982, the entire trust is excluded under paragraph (b)(1) of this section from the operation of Chapter 13. If *H* dies after 1981, the entire trust is subject to the generation-skipping transfer tax provisions because *H's* trust did not qualify under the transition rule. The fact that *W* died before 1982 is irrelevant, because the corpus of her trust was added to a trust that never qualified under the transition rule.

Example (11). Assume the same facts as in example (10) except that upon the death of *W* in 1980 her trust continues as an irrevocable trust and that the corpus of *H's* trust is to be paid over upon his death to *W's* trust should he survive her. Again, if *H* dies before 1982, the entire trust falls within the provisions of paragraph (b)(1) of this section. However, if *H* dies after 1981, the "pour-over" is considered an addition to the corpus of a trust which falls within the transition rule, and a proportionate part of subsequent distributions and terminations will be subject to tax under Chapter 13.

Example (12). *A*, the spouse of the settlor of an irrevocable trust that was created in 1973, had, on June 11, 1976, a general power of appointment over the trust assets. The trust provides that should *A* fail to exercise the power the trustee is to continue the trust as a generation-skipping trust. On June 11, 1976, *A* had a will in existence under which *A* failed to exercise the power to appointment. If *A* dies before January 1, 1982, without having exercised the power in a manner which results in the creation of, or increase in the amount of, a generation-skipping transfer (or amended the will in a manner that results in the creation of, or increase in the amount of, a generation-skipping transfer) transfer pursuant to the trust will not be subject to Chapter 13 because the trust qualifies under the effective date rule, the will qualifies under the transition rule, and there is no constructive addition by reason of paragraph (e)(4) of this section.

Example (13). Assume the same facts as in example (12) except that on June 11, 1976, *A* did not have a will. Upon *A's* death, or upon the prior exercise or release of the power, the value of the entire trust will be treated as a constructive addition to the corpus and all subsequent distributions or terminations pursuant to the trust will be subject to Chapter 13. It is immaterial whether *A's* death occurs before January 1, 1982, since the transition rule is only applicable where a will was in existence on June 11, 1976.

This Treasury decision is issued under the authority contained in sections 2621 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1887, 68A Stat. 917, 26 U.S.C. 2621, 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: July 31, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Geological Survey

30 CFR Part 211

Regulation of Coal Mining on Federal Lands in New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) and Geological Survey (GS), Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule completes the amendment to 30 CFR 211.75(c)(3) to permit those States with terminated cooperative agreements to request the Secretary of the Interior to reinstate the terminated agreements. This final rule also modifies and reinstates a Federal/State cooperative agreement between the Department of the Interior and the State of New Mexico (30 CFR 211.77(c)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), hereinafter referred to as the "Surface Mining Act."

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado, 80201, (303) 837-5421.

SUPPLEMENTARY INFORMATION: This final rule amends 30 CFR 211.75(c)(3) to permit States having terminated cooperative agreements to request the Secretary to reinstate those agreements. In addition, the rule modifies and reinstates the cooperative agreement published at 30 CFR 211.77(c) between the State of New Mexico and the Secretary, in accordance with the requirements of Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). That Section of the Act provides that States with cooperative agreements pre-dating August 3, 1977 may elect to continue regulation of Federal lands within the State providing that the pre-existing cooperative agreement is modified to fully comply with the initial regulatory program set forth in Section 502 of the Surface Mining Act.

The bases and purposes of the amendment to 30 CFR 211.75(c)(3) appear in the preamble to the proposed rule published on April 21, 1980 (44 FR 26924-32). The full text of the proposed cooperative agreement and supplementary information on the terms of the agreement and New Mexico's request to reinstate also appear in the April 21, 1980 notice. The content of that notice is hereby incorporated by reference and will not be repeated here except as necessary to discuss comments.

The cooperative agreement establishes conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands, including but not limited to (1) the adoption of State statutes and amended regulations containing new environmental protection standards and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law enforceable by the State and the United States; (2) the requirement that the State Regulatory authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to Section 521 of the Surface Mining Act; (3) the creation of procedures for the cooperative review and approval of integrated mining and reclamation plans for surface coal mining and reclamation operations on Federal lands or on commingled State and/or private lands and Federal lands; (4) the termination of such agreement; and (5) the creation of requirements for joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations which include Federal lands.

The Office of Surface Mining received comments from one individual on the proposed cooperative agreement with the State of New Mexico. These comments were apparently based on this individual's review of the New Mexico proposed permanent regulatory program which was submitted to the Office of Surface Mining on February 28, 1980. OSM published a Notice of Receipt of New Mexico's State program submission on March 5, 1980 (45 FR 14230-31). His comments consist of a copy of a letter written to the State of New Mexico's Energy and Minerals Department on April 30, 1980, commenting on the State's proposed program submitted to the Department pursuant to Section 503 of the Act. The comments, therefore, are addressed to various provisions of New Mexico's laws and regulations intended to be applicable to the permanent program. Since this rulemaking is concerned with regulation of surface coal mining on Federal lands under the initial regulatory program (Sections 502 and 523(c) of the Surface Mining Act), the comments are not relevant to this rulemaking. Consequently, no changes in the agreement were made in response to these comments. There will be a separate rulemaking to receive comments on a permanent program cooperative agreement between the State of New Mexico and the Department if New Mexico elects to enter into such an agreement. See Sections 523(c) of the Act (first sentence) and 30 CFR Part 745.

In the April 21, 1980 notice of proposed rulemaking, OSM identified a revegetation regulation of the State of New Mexico which was in compliance with the corresponding provision of the permanent program (30 CFR 816.114 and 817.114) but technically not in compliance with the initial program regulation (30 CFR 715.20). See discussion of rulemaking regulation at 45 FR 26925, April 21, 1980. The Secretary proposed to require the State to develop specific criteria for elimination of the mulching requirement under the State's regulation, and requested public comment on whether the criteria should be made a condition of the cooperative agreement. (*Id.*) No comments were received on this issue.

OSM and the State of New Mexico have had preliminary discussions with respect to the development of specific criteria for omitting mulching. Development of these criteria by the State of New Mexico will constitute an "assurance given by the State upon which this Cooperative Agreement is based" pursuant to Article IX (B)(2) of the Cooperative Agreement.

As noted above, no changes in the Cooperative Agreement previously signed by the Governor, the Secretary of the Interior, and the Secretary, Energy and Minerals Department on April 15, 1980 were made as a result of public comment. In addition, no other changes based on the Department's internal review are necessary. Accordingly, there is no need for the parties to execute another version of the Cooperative Agreement.

EFFECTIVE DATES:

a. *Effective date of the amendment to the Regulations* (30 CFR 211.75(c)(3)). The Department has determined that good cause exists to make the amendment to 30 CFR 211.75(c)(3) effective upon the date of publication in the Federal Register (August 11, 1980). The reasons for an immediate effective date are as follows. The amendment to 30 CFR 211.75(c)(3) enables the Governor of the State of New Mexico and the Secretary of the Interior to reinstate and modify a cooperative agreement which had terminated. Reinstatement of the cooperative agreement and making the cooperative agreement also effective immediately are necessary to aid in preventing duality of administration and enforcement, to permit a more uniform application of reclamation requirements on Federal lands, to reduce the administrative costs of implementing the program, and to reduce possible operator confusion by having a single set of standards for all lands within the State.

b. *Effective date of the Cooperative Agreement.* The Department has determined that good cause exists to make the cooperative agreement effective immediately for the reasons given in paragraph (a) above.

Accordingly, although originally signed by the parties on April 15, 1980, this final cooperative agreement becomes effective on the date of publication in the Federal Register (August 11, 1980). See Article II of the cooperative agreement.

Other Information:

1. *Significance.* The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. This "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of New Mexico and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social, economic, or recordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., N.W., Washington, D.C. 20240.

2. Pursuant to Section 702(d) of the Surface Mining Act, adoption of this rule is part of the Secretary's implementation of the Federal Lands Program and is therefore exempt from the requirement to prepare a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)].

Dated: August 4, 1980.

Cecil D. Andrus,

Secretary.

1. Title 30 CFR 211.10(e)(3) is revised as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) *States with § 211.75(c) agreements.*

* * * * *

(3) *New Mexico.* A Federal coal lessee in the State of New Mexico who must submit a mining plan or permit application under both State and Federal law shall submit to the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, and the statement required by paragraph B2 of Article IV of the modified cooperative agreement and the requirements of 30 CFR 211.10(c).

* * * * *

2. Title 30 CFR 211.75(c)(3) is revised as follows:

§ 211.75 Applicability of State law.

* * * * *

(c) * * *

(3) The governor of any State that wishes to modify a cooperative agreement existing on August 3, 1977, shall notify the Secretary in writing of the State's intent to modify the cooperative agreement. The notice of intent to modify the cooperative agreement must have been received by the Secretary prior to December 31, 1977, and the modification to the existing cooperative agreement agreed to by November 20, 1978 (90 days from the publication of the August 22, 1978, amended 30 CFR Part 211 regulations). Failure to give notice or to timely complete the modification shall result in termination of any cooperative agreement executed prior to August 3, 1977. On and after December 31, 1979, the governor of any State whose pre-Act existing cooperative agreement is terminated as a result of inability of the parties to complete a modified cooperative agreement may request reinstatement of the terminated cooperative agreement. Such request shall be in writing, must be received by April 3, 1980, and the modification agreed to by May 3, 1980.

3. Title 30 CFR 211.77(c) is revised as follows:

§ 211.77 States with cooperative agreements.

* * * * *

(c) *New Mexico.* The administration and enforcement of reclamation requirements of Federal coal leases in New Mexico, subject to this part, shall be done according to the modified cooperative agreement between the State of New Mexico and the Department of the Interior, published on August 11, 1980. The State of New Mexico and the Department enter into a modified cooperative agreement to designate the State of New Mexico as the principal party to administer surface coal mine reclamation operations on Federal land in New Mexico to read as follows:

Cooperative Agreement

Cooperative Agreement between the United States Department of the Interior, and the State of New Mexico under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (hereinafter referred to as the "Act"), 30 U.S.C. 1273(c), between the State of New Mexico (hereinafter referred to as the State), acting by and through Bruce King, Governor (hereinafter referred to as the Governor), and the United States Department of the Interior acting by and through the Secretary of the Interior (hereinafter referred to as the Secretary).

Article I. Purpose

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of New Mexico with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of New Mexico. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for State review and approval of mining and reclamation plans for operations on Federal lands, subject to the Secretary's authority to approve mine and reclamation plans on Federal lands and State regulation of surface coal mining and reclamation operations on Federal lands within the State.

Article II. Effective Date

This Cooperative Agreement is effective upon signing by the Secretary and the Governor, approval by the New Mexico Energy and Minerals Department, and upon publication as rulemaking in the Federal Register (August 11, 1980).

Article III. Requirements for Cooperative Agreement

The Governor and the Secretary affirm that they will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Energy and Minerals Department of the State of New Mexico (hereinafter referred to as the "State Regulatory Authority") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor on Federal lands throughout the State.

B. *Authority of State Agency.* The State Regulatory Authority designated in paragraph A of this Article has, and shall continue to have, authority under State law to carry out this Cooperative Agreement.

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of the New Mexico Surface Mining Act and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. *Effectiveness of State Procedures.* The procedures of the State for enforcing the requirements contained in Appendix A are and shall continue to be as effective as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The Governor affirms that the State will inspect all surface coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted, and will continue to devote, adequate funds to the administration and enforcement of the requirements contained in Appendix A of this Cooperative Agreement. If the State Regulatory Authority complies with the terms of this Agreement and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 502(e)(4) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

H. *Reports and Records.* The State Regulatory Authority shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Regulatory Authority and the Secretary shall exchange, upon request, information developed under the Cooperative Agreement.

I. *Personnel.* The State Regulatory Authority shall have the necessary personnel to fully implement this Cooperative Agreement in accordance with the provisions of the Act.

J. *Equipment and Laboratories.* The State Regulatory Authority shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses, can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement, or have access to such facilities and personnel.

Article IV. Mining and Reclamation Plans

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for surface coal mining operations to receive approval from the State Regulatory Authority and the Secretary of a mining plan and permit prior to conducting operations.

B. *Contents of Mining Plans and Permits.* The Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and state permit application to the State and the Secretary which plan and permit application shall be in the form required by the State Regulatory Authority and include any supplemental data or information required by the Secretary. Such plan and application shall include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:

a. Section 69-25A-10 and 14 N.M.S.A., 1978 (1979 Replacement Pamphlet).

b. The Energy and Minerals Department Rule 79-1, Section 2.

c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.;* 91 Stat. 445) and the regulations promulgated pursuant thereto, to the extent not otherwise required by 1(a) and (b) above.

d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*

e. The requirements of 30 CFR 211.10.

f. Applicable terms and conditions of the lease unless such conditions would be contrary to the requirements of the Act.

g. Applicable requirements of other Federal laws.

2. A statement certifying that identical copies of the mining and reclamation plan and permit application have been given to both the State Regulatory Authority and the Secretary.

C. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the Protocol for Cooperative Review of Mining and Reclamation Plans, attached hereto and incorporated as a part of this Cooperative Agreement. The parties may review and mutually revise said Protocol, as deemed necessary, in accordance with the terms of Article XI of this Agreement. Any revisions to the Protocol shall become effective upon notice published in the Federal Register.

D. When acting upon mining and reclamation plans and permits, or modifications or revisions thereto, the State Regulatory Authority and the Secretary agree that neither of them will approve any plan and permit, or modification or revision thereto, which fails to comply with the requirements of the laws and regulations listed in paragraph B.1 of this Article. The State Regulatory Authority shall promptly notify the Secretary and the applicant of its action on the application. If the application is disapproved, a notice shall be sent to the applicant along with a statement of findings and conclusions in support of the action. The State Regulatory Authority shall in any approved plan, permit, or amendment, reserve the right to amend or rescind its action to conform with action taken or with terms or conditions imposed by the Secretary, and agreed to by the State Regulatory Authority, as a basis of his approval. The Secretary shall not delete any requirements included in the State Regulatory Authority's approval without the consent of the State. Prior to the Secretary disapproving the mining and reclamation plan, permit or request for amendment, in whole or in part, the Secretary shall consult with the State Regulatory Authority for the purpose of reaching agreement on revisions to the plan, permit, or amendment, to the extent allowable under State and Federal law.

When acting on a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

Article V. Inspections

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by New Mexico State law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining and reclamation plan, the permit area of the applicable State permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operations on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, and all environmental and reclamation requirements of approved mining and reclamation plans or permits, but not to determine compliance with development or diligent production requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority will, subsequent to conducting any inspection, prepare a report adequately describing (1) the general conditions of the lands under lease, permit or license, (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable performance and reclamation requirements. A copy of this inspection report shall be furnished to the Secretary in accordance with regulations adopted pursuant to the Surface Mining Control and Reclamation Act. A copy of this report shall be furnished to the operator and shall be made available for public inspection during normal business hours at the office of the State Regulatory Authority and the Office of Surface Mining.

C. For the purpose of evaluating the manner in which this Cooperative Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary may conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall promptly provide the State Regulatory Authority with a copy of the Federal inspection report. Inspections by the Secretary may be made in association with regular inspections by the State.

D. The Secretary may also conduct inspections to determine whether the operator is complying with requirements that are unrelated to environmental protection and reclamation.

E. Personnel of the State and representatives of the Secretary shall be available to serve as witnesses in enforcement actions taken by either party.

Article VI. Enforcement

A. If the State Regulatory Authority finds any conditions or practices, or violations of the Act, the requirements of Appendix A hereof, or of an approved mining and reclamation plan or permit, which would authorize the issuance of an order of

cessation under Section 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by Section 69-25A-25A N.M.S.A. 1978 to issue a cessation order halting mining and reclamation operations or the portion thereof relevent to the condition, practices or violation.

B. 1. When, during any inspection, any representative of the State Regulatory Authority determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining and reclamation plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall issue a notice and abatement schedule to the operator pursuant to section 69-25A-25B N.M.S.A. 1978 which shall be consistent with the requirements of section 521(a)(3) of the Act.

2. When a notice of violation has been issued under B(1) of this Article and a representative of the State Regulatory Authority determines that the operator has failed to abate the violation within the time fixed or subsequently extended consistent with section 521(a)(3) of the Act, the representative shall immediately exercise the discretion authorized by section 69-25A-25A N.M.S.A. 1978 to order a cessation of mining and reclamation operations or the portion thereof relevant to the violation, until the violation has been abated.

C. The State shall promptly notify the Secretary of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

D. This Agreement does not limit the secretary's authority to seek cancellation of a Federal coal lease under Federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate any requirement under Federal law or Appendix A incorporated into Federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to mine in accordance with 30 CFR 211.72 or assess civil penalties in accordance with 30 CFR 211.78.

E. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement.

Article VII. Bonds

A. *Amount and Responsiblity.* The State Regulatory Authority and the Secretary shall require all operators on Federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both State and Federal law and shall be conditional upon compliance with all applicable requirements of Federal law and Appendix A hereof.

B. *Notification.* Prior to releasing the operator from his obligations under the bond required by State law for Federal lands, the State Regulatory Authority shall consult with and obtain the advice and consent of the Secretary.

C. *Release of Bond.* The State Regulatory Authority shall hold the operator responsible and liable for successful reclamation as required by State law.

D. *Forfeiture.* Either the State Regulatory Authority or the Secretary may forfeit the bond under State or Federal law.

Article VIII. Opportunity to Comply With Cooperative Agreement

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Agency that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify the period of time within which the defects in administration shall be remedied and statisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. The period of time specified shall not be less than 30 days. Upon failure of the State Agency to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

Article IX. Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice from the Governor, to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary pursuant to paragraphs D, E, and F of this Article whenever the Secretary finds, after giving due notice to the Governor and the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement, or

2. That the State Regulatory Authority has failed to comply with any assurance given by the State upon which this Cooperative Agreement is based, or any condition or requirement which is specified in Article III.

3. Following promulgation of a Federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that New Mexico lacks the necessary personnel, legal authority, or funding to fully implement the Federal lands program in accordance with the provisions of the Act.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal laws and regulations or New Mexico laws and regulations;

2. When a permanent State program is disapproved and the State has failed to remedy the deficiencies within the time allowed by Section 503(c) of the Act, or where a Federal program for the State is promulgated and implemented pursuant to Sec. 504 of the Act.

3. Within 120 days of the approval of a permanent State program pursuant to Section 503 of the Act.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.

2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.

3. The Secretary shall also publish a notice in the Federal Register containing items 1 and 2 of this paragraph, and specifying a minimum of 30 days for comment by interested persons.

E. *Opportunity for Hearing.* Whenever the Secretary proposes to terminate this Cooperative Agreement pursuant to paragraph B hereof, in addition to the notice required by paragraph D, he shall:

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the Federal Register, and the place shall be in the State.

2. Within thirty (30) days of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements and other documents relative to the proposed termination.

3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. Notice of Withdrawal of Approval of Cooperative Agreement.—1. After a hearing

has been held with respect to a proposed termination of this Agreement under paragraph B of this Article, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulatory Authority of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of this Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

2. After the close of the comment period required by paragraph D. 3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C. of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating the reasons therefor.

G. Nothing in this Article shall be construed as a waiver of any right the State Regulatory Authority may have to seek judicial review of any decision by the Secretary to terminate this Cooperative Agreement.

Article X. Reinstatement of Cooperative Agreement

If this Cooperative Agreement has been terminated, for cause, pursuant to paragraph B of Article IX, it may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement, and has remedied all defects in administration for which this Cooperative Agreement was terminated.

Article XI. Amendments of Cooperative Agreement

This Cooperative Agreement may be amended by mutual agreement of the Governor and the Secretary. An amendment proposed by one shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

Article XII. Changes in State or Federal Standards

The Secretary of the Interior and/or the State Regulatory Authority may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months to make such changes. For changes which may require legislative authorization, the State has until the close of its next legislative session at which such legislation can be considered in which to make changes. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX, paragraph C., may be invoked, provided, however, that the State shall be given reasonable and necessary time to make the required changes as set forth in this paragraph.

Article XIII. Conflict of Interest

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR 705.

Article XIV. Exchange of Information

A. *Organizational and Functional Statement.* The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, addresses, telephone numbers, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

B. *Laws, Rules and Regulations.* The State Regulatory Authority and the Secretary shall provide each other with copies of their respective laws, rules and regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations and standards when the revision becomes effective.

Article XV. Reservation of Rights

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(3) of the Mineral Leasing Act, as amended, or his duty to approve mine plans or his responsibilities with respect to the designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

Article XVI. Definition

Terms and phrases used in this Agreement which are defined in 30 CFR Part 700 or Part 710 shall be given the meanings set forth in said definitions.

Dated: February 13, 1980.

Bruce King,
Governor of New Mexico.

Dated: February 13, 1980.

Larry Kehoe,
Secretary, Energy and Minerals Department.

Dated: April 15, 1980.

Cecil D. Andrus,
Secretary of the Interior.

Protocol for Cooperative Review of Mining and Reclamation Plans for Surface Coal Mining and Reclamation Operations on Federal Lands

I. Purpose

This Protocol is intended by the New Mexico Energy and Minerals Department (hereinafter the "State Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective Interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on Federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the Governor and the Secretary dated August 11, 1980 and are incorporated therein and made a part thereof.

II. Procedures

1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.

2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding completeness or deficiencies of plans and

applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.

3. The Office of Surface Mining will coordinate all activities including coal conservation and postmining land use, relative to the review of mining plans and permit applications for all concerned Interior agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of the Interior.

4. Review and evaluation of each mining plan and permit application, or modifications or revisions thereto, and the data or documentation submitted in support thereof, will be conducted jointly by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate. When detailed review is deemed to be necessary, Interior agencies may conduct a detailed review of all aspects of the plan and application, or modifications or revisions thereof, but as the program develops, Interior's review will be concentrated on major functions such as hydrology and revegetation, or where special attention is deemed to be necessary.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver Regional Office, Office of Surface Mining. It will be the goal of the State Regulatory Authority to send such letter within 60 days of receipt of the plan and application. The Office of Surface Mining will, whenever possible, coordinate review of the draft letter on behalf of Interior agencies. It will be the goal of the Office of Surface Mining to communicate to the State Regulatory Authority within 30 days any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, and the State Regulatory Authority to resolve the specified objections. If the Regional Director and the State Regulatory Authority cannot resolve such objections, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss a resolution of such objections. Following the resolution of such objections or in the absence of any such objections, the draft letter will be revised to incorporate the language proposed by the Office of Surface Mining and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining.

6. The Secretary may at his discretion incorporate into the draft letter any matters related to mining plan review and approval which are not within the jurisdiction of the State Regulatory Authority and which the Secretary is required to address under any Federal statute or regulation other than the Act. The State Regulatory Authority agrees to incorporate such matters into the draft at the Secretary's request. Failure to incorporate such matters into the draft letter shall not deprive the Secretary of the right to contact an operator directly regarding such matters. Whenever written communications regarding such matters are made directly between an Interior agency and an operator, the State Regulatory Authority shall be supplied with a copy.

7. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to review and propose additions or modifications to all substantive written correspondence regarding an operator's mining and reclamation plan from the State Regulatory Authority in accordance with paragraph 5 hereof.

8. Copies of all written communications, data, documents, or other information pertinent to a mining permit or permit application will be forwarded to the Office of Surface Mining by the State Regulatory Authority or sent directly to the Office of Surface Mining by the operator when requested to do so by the State Regulatory Authority.

9. The Secretary and the State Regulatory Authority agree to inform each other of any communications received from the operator regarding any matter subject to this Protocol.

10. Either the Secretary or the State Regulatory Authority may request and schedule meetings or site inspections with the operator. No meeting with the operator or site inspection will be scheduled by either the Secretary or the State Regulatory Authority without adequate advance notice to each other.

11. Upon receipt of a mining and reclamation plan and permit application, or major modification or revision thereto, the State Regulatory Authority and the Office of Surface Mining will, when appropriate, cooperate so that one Environmental Assessment and Environmental Review will be produced. When an Environmental Impact Statement is necessary, the State Regulatory Authority and the Office of Surface Mining will designate, when appropriate, one Environmental Impact Statement team to produce an EIS which will comply with the National Environmental Policy Act.

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations.

Following notification of the Regional Director of the proposed action, the Regional Director will inform the State Regulatory Authority of concurrence or disagreement with the proposed action. If the Regional Director and the State Regulatory Authority cannot agree upon the proposed action, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. The parties shall make reasonable efforts to resolve the differences and to reach a mutually agreeable decision on the proposed action.

III. Interpretation.

1. This Protocol shall be construed so as to give effect to the intent of the parties as set out in the Cooperative Agreement of which this is a part. Any words or phrases used in this protocol shall be defined in accordance with Article XVI of said Agreement.

2. If any question of legal interpretation is raised by either party with respect to any matter subject to this Protocol, both the State Regulatory Authority and the Secretary shall defer to the opinion of the State Attorney General where interpretations of State law or regulations are involved, and to opinions of the Solicitor of the Department of the Interior where interpretations of Federal law or regulations are involved. This provision shall not be interpreted to prevent either party from challenging in court any opinion or interpretation of the State Attorney General with regard to State law or regulation or Solicitor with regard to Federal law or regulations.

IV. Revisions to Protocol.

As a part of the Cooperative Agreement referenced in Part I hereof, this Protocol may be revised at any time during the duration of said Cooperative Agreement with the consent of the appropriate officer of the State Regulatory Authority and the Regional Director. Such revision shall become effective upon publication in the Federal Register.

Dated: April 15, 1980.

Bruce King,

Governor of New Mexico.

Larry H. Kehoe,

Secretary, Energy and Minerals Department.

Cecil D. Andrus,

Secretary of the Interior.

Appendix A

This Appendix A identifies the laws of the State of New Mexico and the regulations of the State Regulatory Authority which are incorporated into the Federal-State Cooperative Agreement between the State of New Mexico and the Secretary of the Interior pursuant to Article III.C. of said Cooperative Agreement. This Appendix is approved as part of the Cooperative Agreement. The requirements contained in the laws and regulations identified in this Appendix shall be applicable to surface coal mining and reclamation operations on Federal lands in accordance with the terms of the Cooperative Agreement. Included in this Appendix are:

1. Laws of the State of New Mexico:

(a) The provisions of the New Mexico Surface Mining Act, Sections 69-25A-1, *et seq.* being laws of New Mexico 1979 Chapter 291 which are specifically identified in (i)-(xxxiii) hereof:

(i) 69-25A-1 NMSA.
(ii) 69-25A-2 NMSA 1978.
(iii) 69-25A-3 NMSA 1978, provided, however, that the term "prime farmland" shall have the same meaning as that in 30 USC 1291(20) for purposes of this Cooperative Agreement.
(iv) 69-25A-4 NMSA 1978.
(v) 69-25A-5.
(vi) 69-25A-6.
(vii) 69-25A-7.
(viii) 69-25A-8.
(ix) 69-25A-9.
(x) 60-25A-10, provided, however, that the term "prime farmland" shall have the same meaning as that in 30 USC 1291(20) for purposes of this Cooperative Agreement.
(xi) 69-25A-11, provided that no waiver or reduction of the requirements of § 69-25A-11(a) shall be permitted without the express concurrence of the Secretary.
(xii) 69-25A-12.
(xiii) 69-25A-13, provided, however, that any bond or any cash or securities posted in lieu of bond under this section applicable to the performance of duties on or affecting Federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of State law, and provided further that the bond may also be forfeited by the Secretary under Federal law pursuant to Article VII of this Cooperative Agreement.
(xiv) 69-25A-14.
(xv) 69-25A-15.
(xvi) 69-25A-16.
(xvii) 69-25A-17.
(xviii) 69-25A-18.
(xix) 69-25A-19, provided, however, that the term "prime farmland" shall have the same meaning as that in 30 USC 1291(20) for purposes of this Cooperative Agreement.
(xx) 69-25A-20.
(xxi) 69-25A-21.
(xxii) 69-25A-22, provided, however, that the imposition of a civil or criminal penalty by the State pursuant to this section shall not be construed as barring the Secretary from assessing a civil penalty pursuant to 30 CFR 211.78 or from requesting criminal prosecutions under applicable Federal law.
(xxiii) 69-25A-23, provided, however, that any bond applicable to the performance of duties on Federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.
(xxiv) 69-25A-24, provided, however, that this section shall be limited to actions taken by the State under State law in accordance with this Cooperative Agreement, and nothing in this section or this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary.
(xxv) 69-25A-25.
(xxvi) 69-25A-27.
(xxvii) 69-25A-28.
(xxviii) 69-25A-29, provided, however, that actions of the Secretary are not reviewable by the Director of the Mining and Minerals Division or the Coal Surface Mining Commission pursuant thereto.
(xxix) 69-25A-30, provided, however, that this section shall be limited to actions taken by the State under state law in accordance with this Cooperative Agreement, and nothing in this section or this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary.
(xxx) 69-25A-31.
(xxxi) 69-25A-32.
(xxxii) 69-25A-33, provided, however, that nothing in this section or this Cooperative Agreement shall be construed to delegate the Secretary's responsibility for approving experimental practices.
(xxxiii) 69-25A-35.

2. Regulations of the New Mexico Energy and Minerals Department adopted by the Coal Surface Mining Commission as Rule 79-1.

[FR Doc. 80-24158 Filed 8-8-80; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 78-041b]

Puget Sound Vessel Traffic Service

AGENCY: Coast Guard, DOT.

ACTION: Deferral of effective date and correction to final Rule.

SUMMARY: On July 21, 1980, the Coast Guard published a final rule at 44 FR 48822 which amended the vessel traffic service (VTS) regulations in Puget Sound. In that document, August 20, 1980, was established as the effective date of the rule. Section 161.183 of the rule amended the configuration of the "separation zones" of the VTS. This action will necessitate the relocation of six buoys and the removal of one buoy. Because the equipment required to move these buoys will not be available until September 29, 1980, the effective date of the entire final rule has been changed to October 1, 1980.

EFFECTIVE DATE: This rule is effective on October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W. Ziegfeld, Office of Marine Environment and Systems (G-WWM/11), Room 1104, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-1934. Normal office hours are 7 a.m. to 5 p.m., Monday through Thursday.

DRAFTING INFORMATION: The principal persons involved in drafting this document are Mr. Daniel W. Ziegfeld, Project Manager, Office of Marine Environment and Systems, and LCDR Jack Orchard, Project Counsel, Office of the Chief Counsel.

Supplementary Information

The amendment to section 161.183 which was contained in the final rule published on July 21, 1980, at 44 FR 48822, altered the configuration of the Puget Sound VTS traffic separation zones. In order to carry out this action, six buoys must be moved to new locations and one buoy must be completely removed. The buoys are held in place by nylon mooring lines which must be handled with special equipment. This equipment will not be available until September 29, 1980. Therefore the effective date of the final rule is changed to October 1, 1980.

In addition, a printing error exists in subparagraph (c)(8)(ii) of § 161.183: the entry of 47°48'31" N., 122°26'23" W. is corrected to read 47°46'31" N., 122°26' 23" W.

Finally, the separation zones of § 161.183 and the precautionary areas of § 161.187, are described in reference to consecutively lettered buoys. The buoy desigated "SF" was removed in the final rule and the remaining buoys should have been redesignated in alphabetical order. The Coast Guard intends to continue its practice of consecutively designating buoys so as to avoid a possible source of confusion to the mariner.

In consideration of the foregoing, the effective date of the final rule issued as CGD 78-041b on July 21, 1980, is changed from August 20, 1980 to October 1, 1980. In addition the following corrections amend Part 161 to Title 33, CFR:

1. By revising § 161.183 (c)(8)(ii) and the introductory text of (c)(9) and (c)(10) to read as follows:

§ 161.183 Separation zones.

* * * * *

(c) * * *
(8) Between precautionary area "SE" and "SG".
(i) * * *
(ii) 47°46'31" N., 122°26'23" W.
(9) Between precautionary area "SC" and "SG".
(i) * * *
(ii) * * *
(10) Between precautionary area "SG" and "T".
(i) * * *
(ii) * * *

* * * * *

2. By revising § 161.187 (i) and (j) to read as follows:

§ 161.187 Precautionary areas.

* * * * *

(i) Precautionary area "SF". A circular area of 1,250 yards radius centered at latitude 47°45'55" N., longitude 122°26' 11" W.;

(j) Precautionary area "SG". A circular area of 1,250 yards radius centered at latitude 47°39'42" N., longitude 122°27'48" W.;

* * * * *

(Sec. 2, Pub. L. 95-474, 92 Stat. 1471, (33 U.S.C. 1221 et seq.); 49 CFR 1.46(n)(4))

Dated: August 6, 1980.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 80-24182 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1559-7]

Approval and Promulgation of Implementation Plans, Alabama: Revision of Emergency Episode Plan and Oxidant Alert Level

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today is approving the changes in the Alabama State Implementation Plan (SIP) which (1) updates the emergency episode procedures, and (2) raises the level of the Alert Stage in the emergency episode procedures to 0.15 ppm for ozone, which will be consistent with the revised National Ambient Air Quality Standard of 0.12 ppm.

DATES: This action is effective September 10, 1980.

ADDRESSES: Copies of the submittal may be examined during normal business hours at the following EPA offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

In addition, the Alabama revisions may be examined at the offices of the Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Preston, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On August 23, 1979, EPA asked the State of Alabama to update its emergency episode procedures to reflect changes in monitoring methods, persons to be contacted, likely episode locations, and accidental spill guidelines. On January 11, 1980, the State submitted the final version of the plan revision complying with EPA's request. In addition, the State raised the alert level of ozone from 0.10 ppm to 0.15 ppm, a fifty percent increase, to be consistent with a corresponding increase in the National Ambient Air Quality Standard promulgated by EPA on February 8, 1979 (44 FR 8202). EPA published in the Federal Register on March 25, 1980, a proposal to approve the revision and solicited public comment on it. No comments were received.

Final Action

Based on the above information, EPA is approving the changes to the Alabama plan as being consistent with requirements of the Clean Air Act and Federal regulations promulgated thereunder.

(Section 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: August 5, 1980.

Douglas M. Costle,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

In § 52.50, paragraph (c) is amended by adding subparagraph (25) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(25) Revised emergency episode control plan, updating procedures and raising the alert level for ozone from 0.10 ppm to 0.15 ppm, submitted by the Alabama Air Pollution Control Commission on January 11, 1980.

[FR Doc. 80-24155 Filed 8-8-80; 8:45 a.m.]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1558-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: Six Administrative Chapters

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve six administrative chapters of the California State Implementation Plan (SIP) submitted by the Governor's designee. These chapters address the legal authorities of the State and the local Air Pollution Control Districts, present an overall statewide perspective on air quality, and outline specific State programs dealing with emission source compliance procedures, surveillance of emission sources, resources to implement the SIP, and intergovernmental relations. The intended effect of this action is to update the SIP.

EFFECTIVE DATE: September 10, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION: On May 21, 1979 (44 FR 29497) and July 3, 1979 (44 FR 38912), EPA published Notices of Proposed Rulemaking for six Administrative Chapters submitted on December 29, 1978 and March 16 and 29, 1979 by the California Air Resources Board for inclusion in the California SIP. The Chapters are entitled as follows:

Chapter 2—Statewide Perspective

Chapter 3—Legal Authority

Chapter 20—Compliance

Chapter 23—Source Surveillance

Chapter 24—Resources

Chapter 25—Intergovernmental Relations

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions. All six chapters were evaluated in accordance with 40 CFR Part 51 and found to be consistent with EPA requirements. The Notices of Proposed Rulemaking proposed to approve these six chapters and provided 30-day public comment periods. No comments were received. Therefore, this notice takes final action to approve the revisions contained in the December 29, 1978, and March 16 and 29, 1979 submittals, and incorporate them into the California SIP.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)))

Dated: August 5, 1980.

Douglas M. Costle,

Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(46), (48), and (49) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(46) The following Administrative Chapters of the California SIP, submitted on December 29, 1978, by the Governor's designee.

(i) Chapter 2—Statewide Perspective.

(ii) Chapter 20—Compliance.

(iii) Chapter 23—Source Surveillance.

(iv) Chapter 24—Resources.

(v) Chapter 25—Intergovernmental Relations.

* * * * *

(48) Chapter 3—Legal Authority of the California SIP, submitted on March 16, 1979, by the Governor's designee.

(49) Addendum to Chapter 23 of the California SIP submitted on March 29, 1979, by the Governor's designee.

* * * * *

[FR Doc. 80-24153 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1554-6]

State and Federal Administration Orders Revising the Michigan State Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: U.S. Environmental Protection Agency (USEPA) approves the Michigan Air Pollution Control Commission's (Commission's) request for a revision to the Michigan State Implementation Plan (SIP). The revision is a Final Order issued by the Commission. The Final Order was the result of the Stipulation and Consent Order entered into by the Dundee Cement Company and the Air Quality Division of the Michigan Department of Natural Resources. The order provides for a final compliance date of December 31, 1983 for reducing the particulate matter emissions to 0.20 pounds per 1,000 pounds of exhaust gases at the Dundee Cement Company located near Dundee in Monroe County, Michigan.

Any Order which has been issued to a major source and extends the SIP compliance date for meeting the particulate emission limitations must be approved by USEPA before it becomes effective as a SIP revision under the Clean Air Act (CAA). 42 U.S.C. Section 7410.

EFFECTIVE DATE: This final rulemaking becomes effective on August 11, 1980.

ADDRESSES: Copies of the SIP revision and USEPA's evaluation of the revision are available for inspection at the following addresses:

United States Environmental Protection Agency, Air Programs Branch Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: The Dundee Cement plant is located in a particulate attainment area, as designated by USEPA in the October 5, 1978 Federal Register (45 FR 45993). The nearest primary particulate nonattainment areas are approximately 35 km northeast and south of the plant, and the closest secondary particulate nonattainment area is approximately 6 km east.

The Dundee Cement Company operates two 1,600 ton per day (each) wet process rotary cement kilns and related cement manufacturing process equipment. From the time the plant was built in 1959, the particulate emissions from the rotary kilns have been controlled by an electrostatic precipitator. The original precipitator unit operated at approximately 97.5 percent efficiency. Particulate emissions were about seven times greater than the Commission's limit. Despite various changes and upgrading efforts, the precipitators have not attained consistent satisfactory performance.

On October 26, 1979 the State of Michigan formally submitted a State Implementation Plan revision for particulate matter and visible emissions for the Dundee Cement Company in Monroe County, Michigan. The Order extends the compliance date until December 31, 1983 for the Dundee Cement Company to meet the particulate and visible emission limitations in the Michigan SIP.

The Commission's rules, R336.41 and 336.44 (Rules 336.1301 and R 336.1331 as of January 18, 1980), set forth the visible emission and particulate matter emission limitations for cement kilns in the State of Michigan. Presently, particulate matter emissions from the Dundee Cement Company's cement kiln stack are in excess of the allowable limit of 0.2 lb. total suspended particulates (TSP) per/1000 lbs. of exhaust gases set by the Commission.

The SIP revision provides for final compliance with the allowable limit of 0.2 lb. of particulate per 1,000 pounds of exhaust gases by December 31, 1983 and establishes an interim emission limitation of 0.65 lb. TSP/1000 lb. of exhaust gases.

An air quality analysis was performed to assess the contribution of particulate emissions from the Dundee Cement plant to measured exceedences of the 24-hour particulate standard. The analysis was based on maximum plant operating conditions for both the interim and final particulate emission limitation conditions. From the results of the air quality analyses, it was concluded that the operation of the Dundee Cement Plant under either the interim (0.65 lb. TSP/1000 lb. exhaust gas) or the final (0.2 lb. TSP/1000 exhaust gas) emission limitations will not threaten or prevent the attainment and maintenance of the TSP National Ambient Air Quality Standards (NAAQS) in the plant vicinity, nor contribute significantly to existing violations at nearby primary and secondary particulate nonattainment areas.

USEPA reviewed the Order and the technical support material, and proposed approval of the Order and compliance schedule as a SIP revision on May 7, 1980 (45 FR 30090). In that notice, USEPA proposed approval of the extension of the compliance date to December 31, 1983. In addition, USEPA proposed to approve the schedule for compliance. Interested parties were given until June 6, 1980 to submit written comments. No comments were received. Therefore, USEPA takes final action today to approve this revision to the Michigan SIP.

Final approval of the Order as a SIP revision is effective upon publication (date of publication). The Administrator finds good cause for making this revision effective immediately as the Order is already effective in the State of Michigan and federal approval imposes no additional requirement on the affected source.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of (date of

publication). Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." The Administrator has reviewed this regulation and determined that it is a specialized regulation.

After review of all relevant materials, the Administrator has determined that the revision meets the requirements of section 110(a)(3) of the Clean Air Act and USEPA regulations in 40 CFR Part 51.6. The revision is legally enforceable, will not interfere with attainment or maintenance of the NAAQS and has been subjected to reasonable notice and public hearing. Accordingly, the revision is approved.

This Final Rulemaking is issued under the authority of section 110 of the Clean Air Act as amended.

Dated: August 5, 1980.

Douglas Costle,

Administrator.

Part 52 of Chapter 1, Title 40 Code of Federal Regulations is amended as follows:

Subpart X—Michigan

1. Section 52.1170(c) is amended by adding paragraph 29 as follows:

§ 52.1170 Identification of Plan

* * * * *

(c) * * *

* * * * *

(29) Compliance schedules were submitted by the State of Michigan, Department of Natural Resources to USEPA on October 26, 1979, for the Dundee Cement Company, Monroe County (Michigan Final Order, APC No. 08-1979, adopted October 17, 1979).

2. Section 52.1175(e) is amended by deleting the existing entry for Dundee Cement Co. under Monroe County, Michigan and inserting the following in lieu:

§ 52.1175 Compliance Schedules

* * * * *

(e) * * *

* * * * *

Michigan				
Source	Location	Regulations involved	Date schedule adopted	Final compliance date
*	*	*	*	*
Monroe County				
Dundee Cement Company	Dundee	336.41, 44 (336.1301, 336.1331)	Oct. 17, 1979	Dec. 31, 1983.

[FR Doc. 80-24154 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1567-6]

40 CFR Part 52

Revision to the New York State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan. This action has the effect of approving the State's issuance of a "special limitation" to allow the Consolidated Edison Company of New York, Inc. to use fuel oil with a maximum sulfur content of 1.5 percent, by weight, in units 2 and 3 of its Arthur Kill generating facility on Staten Island, New York and in unit 3 of its Ravenswood generating facility in Queens, New York. These units are currently limited by State regulation to the use of fuel oil with a maximum sulfur content of 0.30 percent, by weight. The use of the higher sulfur content fuel oil would be permitted for a maximum period of one year from when such use begins.

DATE: This action becomes effective on August 11, 1980.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1979 New York State submitted to the Environmental Protection Agency (EPA) a proposed revision to its State Implementation Plan (SIP). The State's revision request was submitted in accordance with all EPA requirements under 40 CFR Part 51, including a public hearing which was held by the State on October 17, 1979. The request was for EPA approval of a "special limitation," issued by the State under the provisions of Part 225.2 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. The effect of this "special limitation" is to allow the Consolidated Edison Company of New York, Inc. (Con Edison) to use fuel oil with a maximum sulfur content of 1.5 percent, by weight, in units 2 and 3 of its Arthur Kill generating facility on Staten Island, New York and in unit 3 of its Ravenswood generating station in Queens, New York. These units are currently limited by State regulation to the use of 0.30 percent, by weight, sulfur content fuel oil The use of the higher sulfur content fuel oil would be permitted for a mazimum period of one year from when it begins.

A notice of proposed rulemaking on the State's SIP revision request was published in the Federal Register on January 17, 1980 (45 FR 3331). The reader is referred to this January 17 notice where a detailed description of the revision request is provided. The comment period established by this notice ended on February 19, 1980 and was subsequently extended to March 5, 1980 by another Federal Register notice (45 FR 12266, February 25, 1980). In these notices EPA advised the public that comments would be accepted as to whether the proposed revision to the New York State Implementation Plan should be approved or disapproved. During the comment period EPA received 217 comments. Based on the significant public comment received regarding the implications of the State's proposed action upon regional growth potential and based on the acquisition of new air quality data which indicated a violation in lower Manhattan of the national annual ambient air quality standard for sulfur oxides, on April 17, 1980 (45 FR 26101) EPA reopened its comment period. As a result of this extension, which ended on May 19, 1980, EPA received an additional 143 comments on the proposed SIP revision.

Based on its review of all available information, including the numerous public comments received, EPA has found the State's SIP revision request to be approvable. Action to promulgate

this determination is being taken today. However, it should be noted that today's approval is only for the one-year period requested by the State. Any request by the State to extend the term of its "special limitation" would have to be resubmitted to EPA for approval through the SIP revision process. Because, as will be discussed in more detail later in this notice, EPA's current action is based in part on the limited duriation of the State's request and on the current air quality and emission picture, an identical future request by the State may not be able to be approved. Similarly, any application for coal burning must be subject to the SIP revision process and possibly to the prevention of Significant Deterioration permitting process and would be evaluated independent of EPA's current action.

II. Discussion of Comments Received

As indicated, EPA received over 350 comments on its January 17, 1980 notice of proposed rulemaking. These are discussed in this section of today's notice according to the general subject of the issue raised. They are also treated in greater detail in a document entitled, "Technical Support Document: Response to Comments on Con Edison Proposed Test Burn of 1.5% Sulfur Content Oil at the Arthur Kill and Ravenswood Power Plants," July 1980, prepared by EPA, Region II. EPA has considered all comments it received in making its final determination on the approvability of the State's SIP revision request.

1. Human Health Impacts

Potential adverse effects on human health was cited as a reason for EPA disapproval of the State's request in 132 separate letters received and in a petition containing 2,293 signatures. Several commentors indicated that health effects resulting from the synergistic interaction of sulfur dioxide with other pollutants and those resulting from the emission of fine particulates had not been determined.

For purposes of evaluating SIP revisions under the Clean Air Act EPA must rely on national ambient air quality standards in assuring adequate protection of human health. Under the provisions of the Clean Air Act these standards have been promulgated for seen pollutants. The level of such primary standards must be "requisite to protect the public health" and include an "adequate margin of safety" (Section 109(b)(1) of the Clean Air Act).

While the synergestic effect between sulfur oxides and particulate matter was assessed in establishing the present sulfur oxide ambient standard, this was not the case with the other pollutants. Though under evaluation, there currently in no national ambient air quality standard for fine particulates. Thus, under these circumstances and in this case, EPA could only judge whether or not the use of high sulfur content fuel oil by Con Edison would cause or contribute to a violation of any currently promulgated ambient standard. If no such violation is predicted to occur, there is currently no basis under the Clean Air Act to find any adverse effects on human health.

2. Violation of Air Quality Standards

At the time of EPA's January 17, 1980 notice of proposed rulemaking, the available sulfur dioxide concentration measurements from the Mabel Dean Bacon High School Annex monitor, located on the lower east side of Manhattan, indicated that this area was marginally attaining national ambient air quality standards. Continued attainment of standards was predicted even when accounting for the impact of the proposed use of high sulfur content fuel oil by Con Edison. However, later data from this monitor indicated an annual average sulfur dioxide concentration of 81 $\mu g/m^3$ for the 12-month period ending December 31, 1979. This concentration exceeds the national primary ambient air quality standard, which is 80 $\mu g/m^3$. This potential for violation was discussed by the Natural Resources Defense Council, Inc. in comments submitted to EPA.

EPA, in reopening its comment period on April 17, 1980, solicited public comment on the issue of the observed violation of the annual national ambient air quality standard for sulfur oxides at the Mabel Dean Bacon monitor. Comments were particularly solicited with regard to the following specific issues:

- The degree to which this violation should be considered in EPA's decision to approve or disapprove Con Edison's "special limitation" in light of air quality trends at this site,
- The degree to which short term variances to State sulfur-in-fuel-oil limitations issued during the 1978–1979 heating season may have affected observed sulfur oxide concentrations at this site, and the extent to which the effect of such variances should be considered, and • The need for offsetting measures (such as additional conversions to natural gas burning) so as to accommodate the impact of the proposed "special limitation" at this site.

EPA received six comments in response to these issues. Several commentors, including the New York State Coal Conversion Expediting Group and the Consolidated Edison Company, all indicated that, for reasons discussed below, the violation of the national ambient air quality standard should not be considered by EPA in deciding to approve or disapprove the "special limitation." Specifically, the commentors noted that the violation of the standard was directly attributable to the State issuance of emergency variances to permit the temporary use of high sulfur content fuel oil during the 1978–1979 heating season. These variances were due to disruptions in the availability of low sulfur content fuel oil. Commentors estimate that these variances resulted in the burning of 700,000 barrels of high sulfur content fuel oil, primarily from low-level emitting stacks.

The commentors further noted that the January to December 1979 data cited by EPA in its January 17, 1980 Federal Register notice had not been accepted as valid by the State and included only four daily observations for the month of April. Recent unedited data for the 12-month period ending April 30, 1980 show an annual average sulfur dioxide concentration of 73 $\mu g/m^3$ at the Mabel Dean Bacon site. This value indicates that, even with the additional expected impact of 2 $\mu g/m^3$ resulting from the one-year "special limitation," attainment of the annual average national ambient air quality standard for sulfur oxides of 80 $\mu g/m^3$ will not be jeopardized. As a result of this fact, all three commentors do not believe that offsets are necessary to accommodate the impact of the proposed "special limitation" at this site.

In comments submitted by the New York State Coal Conversion Expediting Group it was indicated that, if actual ambient air quality standards are violated, mitigating measures can be employed, including the halting of the test burn. The New York State Department of Environmental Conservation stated that a program of on-site gas conversions and conversion to Con Edison supplied steam should be considered as providing an offset for any increase in emissions from Con Edison. Con Edison indicated that, as a precautionary measure, the Company will commit to implementation of a gas conversion program in the Mabel Dean Bacon High School Annex areas to assure compliance with air quality standards, even during the period of the "special limitation."

EPA also received several comments indicating that the observed violation of the national ambient air quality standard should be considered by EPA regardless of whether or not the elevated concentrations resulted from

short term variances which allowed the use of high sulfur content fuel oil.

EPA has reviewed the air quality data at the Mabel Dean Bacon monitor and has determined that the elevated concentrations of sulfur dioxide can in part be attributed to the short term fuel oil sulfur content variances issued by the State during the 1978–1979 heating season. Further, the data cited by EPA was unedited, which may have overstated the actual ambient concentrations due to the limited amount of data from the month of April. As noted earlier, in comments submitted by the New York State Department of Environmental Conservation, the latest unedited air quality data from the Mabel Dean Bacon monitor indicates clear attainment of the standard. Nevertheless, EPA believes reductions of sulfur oxide emissions will insure the long term attainment of standards at the Mabel Dean Bacon monitor. Therefore, EPA is requiring the Consolidated Edison Company to undertake specific gas conversion actions. This requirement is discussed in this section under the heading of "Natural Gas Conversions," and is promulgated at § 52.1675 of 40 CFR appearing at the end of today's notice.

3. Regional Growth Impacts

In its January 17, 1980 notice of proposed rulemaking, EPA briefly discussed in the context of the Clean Air Act's Prevention of Significant Deterioration (PSD) provisions, the issue of the potential impact of the State's SIP revision request upon future new source development and regional economic growth. Specifically, commentors on this issue objected to the use of a large portion of the available PSD increment to accommodate Con Edison's "special limitation." They did not believe that the available PSD increment should be allocated on a "first come-first served" basis without carefully considering the implications of growth needs in the States of New Jersey and Connecticut. They pointed out that there is a likelihood that many power plants in the New York City metropolitan area may be required by the U.S. Department of Energy to convert to coal, and recommended that the cumulative impact of all such conversions should be analyzed before proceeding with approval of any individual application. They believe that such conversions should be based on a comprehensive areawide strategy. Commentors also made reference to the provisions of Sections 126 and 110(a)(2)(E) of the Clean Air Act, under which EPA assumes a role in resolving interstate air quality impact issues. EPA, in reopening its comment period on April 17, 1980, requested further comments on whether this situation warrants EPA involvement consistent with the above referenced sections of the Clean Air Act.

The States of Connecticut and New Jersey have responded to this issue by filing petitions pursuant to Section 126 of the Clean Air Act. These petitions request the Administrator of EPA to initiate proceedings to determine whether the use of 1.5 percent sulfur content fuel oil by Con Edison would prevent the attainment or maintenance of any national primary or secondary ambient air quality standard or interfere with programs designed to prevent significant deterioration of air quality and protect visibility in New Jersey and Connecticut. Both States have indicated that the "special limitation" would use up a large portion of the available sulfur dioxide 24-hour PSD increment in areas of these states and thereby would limit future economic growth. The petitions also identify other issues, such as the adverse air quality impact of increased particulate matter emissions, inaccurate PSD baseline determinations and inappropriate modeling procedures, as additional reasons why EPA should deny the "special limitation." These issues are discussed elsewhere in today's notice.

EPA also received numerous letters from units of government and elected officials, most notably from New Jersey, and from environmental groups voicing strong opposition to the effect PSD increment consumption would have on local economic growth.

Comments received from the New York State Department of Environmental Conservation and the New York State Coal Conversion Expediting Group discussed the concept of apportioning available PSD increments in the region so as to accommodate regional growth and development as fairly as possible. However, these groups believe that the "special limiation," which authorizes a test burn for a maximum period of one year, would not have any lasting impact on regional growth and development. Further, the commentors noted that, if under Section 126 EPA undertakes a comprehensive review of the regional impact of increased air pollution emissions resulting from the burning of high sulfur fuels, including coal, it should do so in a manner which analyzes the long term and permanent use of these fuels, rather than singling out the temporary Con Edison "special limitation." They also stated that any EPA proceedings under Section 126 should not delay its decision on the "special limitation."

Con Edison commented that the amount of PSD increment consumption cited by EPA is based on the highest 24-hour sulfur dioxide concentration which could be projected using five years of meteorological data rather than on the second-highest measurement in any one year. In the latter case, the maximum consumption of the 24-hour PSD increment would be 43 percent rather than 78 percent as cited by EPA in its January 17, 1980 notice of proposed rulemaking. The Company has also submitted a technical document which, it claims, indicates that increased sulfur dioxide emissions will not interfere with industrial development in the neighboring States of New Jersey and Connecticut. Con Edison contends that the PSD increment is not consumed due the temporary nature of the "special limitation," but, if it were, EPA has no choice but to approve the "special limitation" on a "first come-first served" basis.

EPA has reviewed these various comments and concludes that there are substantial reasons for concern with respect to interstate air quality impacts, assuming long term high sulfur content fuel use by Con Edison and other utilities in the metropolitan area. It is EPA's intention to convene in the future a hearing under Section 126 of the Clean Air Act for the purpose of deciding whether and under what circumstances the long term use of high sulfur content fuels by utilities in the metropolitan region has an acceptable interstate air quality impact. Notice of this hearing will be announced in the Federal Register.

With regard to the issue before it, EPA has determined that the proposed use of high sulfur content oil by the two Con Edison generating stations for a one-year period will not cause any primary or secondary ambient air quality standard to be exceeded. In addition, this use of high sulfur content fuel oil does not violate any PSD increment and, since its use has only been approved for one year, will not preclude regional growth. Any extension of EPA approval of this action or any proposal to use coal will have to be initiated by a new SIP revision request from New York State. EPA would be required to evaluate this new request on the basis of the amounts of PSD increment which remain available at the time of the request, considering the emissions growth which had occurred on a "first come-first served" basis in the intervening period. Presumably, any source which wishes to locate within the impact area of this

action could fulfill all PSD requirements and receive a PSD permit during this intervening period of time. In this event, the amount of PSD increment used by the source would not be available to accommodate a permanent relaxation of the fuel sulfur requirements for oil and coal contained in the New York SIP.

4. Particulate Matter Impacts.

The Natural Resources Defense Council, Inc. (NRDC), the New York City Clean Air Campaign, Inc. and others pointed out that the use of high sulfur content fuel oil will increase particulate matter emissions and impact on an area currently designated (under the provisions of Section 107(d) of the Clean Air Act) as not attaining the national secondary ambient air quality standard for this pollutant. Since, as noted by NRDC, there is no *de minimis* level of impact in an area not attaining standards, the commentors recommend that the State's SIP revision request be disapproved on the basis of an assumed exacerbation of an existing violation.

In its comments the New Jersey Department of Environmental Protection questioned the emission factors used by Con Edison to estimate particulate emissions. Alternate factors were suggested which if used would result in slightly greater emissions. Another commentor claimed that EPA did not evaluate the impact of increased particulate emissions upon PSD increment consumption.

As noted in the May 21, 1980 Federal Register (45 FR 33981), New York State is currently revising its SIP for the New York City metropolitan area to provide for attainment of the secondary national ambient air quality standard for particulate matter. The particulate matter emission limitations in the currently approved SIP are being met by Con Edison and must continue to be met with the use of high sulfur content fuel oil. EPA intends to assure that these limitations continue to be met by requiring under Section 114 of the Clean Air Act in-stack sampling of the affected sources. Until such time as it is found necessary to make existing emission limitations applicable to Con Edison more stringent, the acceptable level of particulate matter emissions from Con Edison must be that defined in the existing approved SIP.

EPA has reviewed the particulate matter emission factors used by Con Edison in its air quality impact analysis and finds them acceptable. EPA also has projected the amount of particulate matter PSD increment consumed as a result of the use of high sulfur content fuel oil and found it to be a maximum of approximately 0.2 $\mu g/m^3$ on an annual basis and 2.1 μ/m^3 on a 24 hour basis. Even if the emission factors suggested by New Jersey were used, these impacts would not change significantly. Nevertheless, regarding both these issues, it must be emphasized that Con Edison will not be permitted to volate any particulate matter emission limitation while using high sulfur content fuel oil.

Finally, it should be noted that particulate matter emissions from the combustion of natural gas are approximately 25 percent of those emitted from fuel oil combustion. This fact combined with the relatively low stacks of sources converting to natural gas should offset in the areas where conversions are taking place any increased particulate matter air quality impact from Con Edison.

5. Natural Gas Conversions

In its January 17, 1980 Federal Register notice EPA proposed to promulgate a schedule for the conversion to natural gas use of fourteen oil burning facilities in northern Manhattan. The reduced emissions resulting from these conversions are intended to offset the air quality impact of the use of high sulfur content fuel oil by Con Edison. Five commentors responded to EPA's proposed conversion schedule.

The New York State Department of Environmental Conservation indicated that EPA's proposed schedule and its proposed provision for suspending EPA approval of the State's "special limitation" if the schedule is not met are unnecessarily rigid requirements which may be counterproductive. The State recommends that EPA withdraw these requirements proposed for inclusion at 40 CFR 52.1675 and accept Condition 9 of the State's order implementing the "special limitation." Condition 9 requires that Con Edison provide to the State approved applications for natural gas conversions and an acceptable schedule for such conversions.

In comments submitted by Con Edison, the Company agrees that the gas conversion program is an integral part of the one year test burn and that the establishment of a conversion schedule is reasonable and necessary. However, it believes that, because of the large number of independent contractors retained by the source owners to do the conversion work, the possibility for some minor delays in completing the work is always present. For this reason, Con Edison believes that the gas conversion schedule should be established by EPA as a target rather than as a condition for continued EPA approval of the "special limitation." Under Con Edison's recommended approach, if a gas conversion were not completed on schedule, the Company would immediately notify EPA and, based on the air quality impact of the delay, EPA could determine whether or not it should allow the test to continue.

Comments received from the Natural Resources Defense Council, Inc. (NRDC) noted that the proposed conversion schedule establishes a conversion date of October 1, 1980 for ten of the fourteen sources. NRDC asserts that, if EPA approves the "special limitation," Con Edison could begin burning higher sulfur content fuel oil before all the gas conversions take place and, since the air quality analysis shows that offsets are necessary to maintain the national ambient air quality standards for sulfur oxides, the timetable is unacceptable.

Finally, a civic association questioned why natual gas conversions were not required on Staten Island and a private citizen did not believe the proposed conversion schedule was legally binding.

EPA disagrees with the New York State Department of Environmental Conservation's contention that the proposed natural gas conversion schedule represents an unnecessarily rigid requirement. Because they are central to the State's air quality impact demonstration, in order to approve the State's SIP revision request, EPA must be assured that the proposed conversions are sufficient both in scope and timing to provide for continue attainment of the national ambient air quality standards for sulfur oxides. Furthermore, the requirement for these conversions must be capable of being enforced by EPA as a part of the SIP. Because it is not specific, Condition 9 of the State's order is not adequate to provide these assurances. Therefore, EPA is promulgating, with certain modifications to be discussed at the end of this discussion, the gas conversion schedule and provisions proposed in its January 17, 1980 Federal Register notice.

For the reasons just discussed, EPA must also reject Con Edison's recommendation to establish the gas conversion program schedule as a "target" as opposed to a legally enforceable regulation. EPA believes the gas conversion schedule, established in consultation with the Company, depicts a reasonable and realistic set of conversion dates for the fourteen sources. Nevertheless, as noted, modifications to the proposed revision are discussed at the end of this subsection.

With regard to NRDC's comment, the fact that higher sulfur content fuel oil could be used by Con Edison prior to completion of all of the gas conversions

was factored into the air quality impact demonstration used to support the State's SIP revision request. In other words, in demonstrating continued attainment of ambient standards, with Con Edison burning higher sulfur content fuel oil, this and subsequent analyses assumed that emissions from the converted sources would not decrease (and consequently offset Con Edison's impact) until the actual conversions took place. In this way a judgment could be made by EPA on the adequacy of the conversion schedule.

Because EPA is promulgating a conversion requirement as a part of the SIP, it is legally binding on Con Edison.

In response to the absence of requirements for conversions to natural gas by sources on Staten Island, EPA emphasizes that the basis for requiring sulfur dioxide emission "offsets" is to provide for continued attainment of the air quality standards. A review of the impact of the "special limitation," taking into account the latest sulfur dioxide ambient monitoring data from Staten Island, indicates no potential for a violation. Therefore, EPA has no reason at this time to require Con Edison to obtain emission "offsets" on Staten Island.

Based on the reasons cited above, EPA is today promulgating in a modified form its proposed conversion schedule and associated provisions. Further, EPA is also promulgating today new requirements for conversion to natural gas of sources located in the vicinity of the Mabel Dean Bacon High School Annex monitor, discussed in this section under the heading of "Violation of Air Quality Standards." These promulgations are provided in the regulatory section of this notice at § 52.1675 and are discussed, in part, as follows.

On July 3, 1980 the New York State Department of Environmental Conservation submitted to EPA additional information regarding Con Edison's plan to satisfy Condition 9 of the State's order. The State's submittal included copies of documents supplied by Con Edison indicating that the conversion or shut down of the four sources identified for conversion prior to October 1, 1980 has occurred. Moreover, Con Edison has notified the State that they believe that nine of the remaining ten sources will be converted by October 1, 1980. However, conversion of the Harlem Hospital source, originally proposed for October 1, 1980, has been delayed until April 1, 1981. To assess the impact of this delay, Con Edison has submitted to the State an air quality impact analysis.

The State and EPA have reviewed this analysis and have determined that it will produce no adverse air quality impact and will still provide for continued attainment of national ambient air quality standards. This results from the fact that the original air quality impact analysis assumed that high sulfur content fuel oil use at the two Con Edison facilities would begin on March 1, 1980. In contrast, the later analysis projects the use of high sulfur content fuel oil at the Con Edison facilities beginning on July 16, 1980. (The actual date will be the date of publication of this Federal Register notice or later.) Therefore, because the gas conversion schedule with the exception of Harlem Hospital has not effectively changed, offsets from thirteen of the fourteen converting sources will be in effect for a greater period of time than originally assumed. This has the effect of providing a greater air quality benefit than would have been provided had the original schedule been met even when the six month delay in converting Harlem Hospital is considered. This new schedule is promulgated at the end of this notice.

As noted earlier, an additional issue concerns natural gas conversions in the vicinity of the Mabel Dean Bacon monitor. As indicated under the discussion of "Violations of Air Quality Standards," in a comment to EPA, Con Edison has agreed to implement a gas conversion program in this area as a precautionary measure. In a July 8, 1980 letter to the New York State Department of Environmental Conservation, Con Edison further agreed to displace the annual use of approximately 7.1 million gallons of residual oil through a gas conversion program at eight sources within a two-mile radius of the Mabel Dean Bacon High School Annex monitor. Con Edison anticipates that several sources (displacing 2.3 million gallons of residual oil annually) will be burning gas by the beginning of the upcoming heating season. The Company claims that if any of the eight sources cannot, for any reason, commence using gas by July 1, 1981, it will substitute other gas conversions in the vicinity of this monitoring station to achieve the goal of eliminating 7.1 million gallons of oil burning in that area by July 1, 1981. Requirements to implement this commitment by Con Edison are promulgated by EPA at the end of today's notice.

6. Sulfates and Acid Rain

EPA received numerous comments, mostly from environmental groups, voicing strong concern over the effect of increasing sulfur dioxixe and particulate matter emission on ambient sulfate concentrations and acid precipitation.

EPA recognizes that approval of the State's "special limitation" may aggravate these problems and is deeply concerned about this fact. However, at the present time, EPA has not adopted standards or regulations specifically governing sulfactes and acid precipitation. Conseuently, EPA has no legal basis with regard to these issues, on which to judge the SIP revision. The major avenue for dealing with acid precipitation, through prohibiting increased sulfur emissions, rest at present with the State and the City of New York.

7. Air Quality Data

EPA received several commets questioning the analysis of the air quality data utilized by the New York State Department of Environmental Conservation in issuing its approval of the "Special limitation." The New York City Clean Air Campaign, Inc. expressed concern that only one to two years worth of air quality data were analyzed by the State and that this time frame would not include date collected during periods when the previously mentioned sulfur-in-fuel-oil variances were in effect. They also pointed out that data from certain monitoring stations were omitted from the analysis. Other commentors argued that additional air pollution monitors are needed to adequately assess the impact of emissions from the Con Edison plants, particularly since the current New York City run network does not meet EPA siting criteria.

EPA has conducted an independent review and analysis of several years of sulfur dioxide data measured at all impacted sites in New York City. EPA's review has included air pollution data collected during the period when variances were in effect. On this basis, EPA concludes that the data base is adequate for determining that sulfur oxide national ambient air quality standards are being attained throughout New York City. It should also be noted that, under Condition 1 of the New York State Department of Environmental Conservation's "special limitation" order, Con Edison is required to establish two additional sulfur dioxide monitoring stations.

EPA has evaluated the New York City air monitoring network and believes that, although some sulfur dioxide monitors do not meet EPA siting criteria, they do provide representative air quality data. This fact is sufficient to justify a waiver of EPA's siting criteria, a process which is provided for in EPA's

monitoring regulations (40 CFR Part 58) and which had already been initiated.

8. Air Quality Modeling and Impact Analysis

Several commentors questioned the adequacy of the air quality impact analysis submitted by Con Edison. Specifically, the Connecticut Department of Environmental Protection questioned whether EPA considered the following:

- Evaluating the air pollution impact of Con Edison on the State of Connecticut, considering all established ambient air quality standards for sulfur dioxide and particulate matter including Connecticut's secondary 24-hour sulfur dioxide standard,
- Evaluating the aggregate air quality impact on Connecticut of all sulfur dioxide sources which overlap the impact of Con Edison, and
- Assessing the competency of the air quality data utilized in establishing the air quality baseline, for purposes of PSD increment analysis within the Connecticut portion of New Jersey-New York-Connecticut Air Quality Control Region in light of the decision in *Alabama Power Company, et. al.* v. *Costle et. al.* (USCA D.C. No. 78-106, decided December 14, 1979).

EPA also received detailed comments on the modeling issue from the Environmental Defense Fund (EDF). EDF commented that, during low wind speeds and stable atmospheric conditions, and in the morning hours when a plume from a stack may become "entrapped" near the ground, the EPA models understimate actual concentrations. It also questioned whether appropriate "background" concentrations were used in the modeling procedures and whether EPA considered impacts from sources subject to PSD increment consumption in determining the remaining available PSD increments. One commentor criticized EPA's air quality impact analysis claiming that it represents a large scale regional assessment as opposed to an analysis of impact on a local scale.

The evaluations and assessment suggested by the State of Connecticut have been considered by EPA. Even accounting for the air quality impact from the Con Edison plants and new major sources of sulfur dioxide, including those located in Connecticut, EPA has determined that no PSD increment will be violated within the impact area. In this determination EPA has utilized data generated by the Connecticut Department of Environmental Protection. Though this PSD determination did not make use of the recent "Alabama Power Company" decision in defining "baseline," if it had, the conclusion reached by EPA would not change.

In reply to the EDF comments, the air quality modeling utilized by EPA represents the current scientific "state-of-the art" and does not underestimate emissions under the two scenarios described by the commentor. For example, due to the tall stacks at the Con Edison plants, the ground level contribution to air quality concentrations from Con Edison during light winds and stable atmospheric conditions are, as predicted by the air quality models, very low. EPA has also determined that the "background" concentrations used by Con Edison are appropriate. EPA's assessment of avialable PSD increments has included the impact form all other sources subject to PSD increment consumption.

The comment that the air quality impact analysis was performed on a regional scale as opposed to.a local scale is not valid. In addition to modeling on a regional scale, EPA required modeling for those geographic areas adjacent to the power plants in order to predict maximum concentrations during unusual meteorological conditions.

9. Use of Intermittent Controls

The Natural Resources Defense Council, Inc. (NRDC) noted in its comments that the "special limitation" is conditioned by the State on Con Edison maintaining a reserve supply of low sulfur content fuel oil and developing fuel switching procedures for use in the event that national ambient air quality standards are jeopardized. The NRDC contends that this fuel switch capability conditions is an intermittent control technique whichis prohibited by the Clean Air Act.

Because fuel switching is not necessary to demonstrate attainment of ambient standards, it is not a part of EPA' approval of the State's "special limitaition" and was not considered by EPA. Therefore, EPA is not approving a SIP which depends on an intermittent control technique for maintaining ambient air quality standards.

10. Executive Order 12044, Improving Government Regulations

EPA received comments form the State of Connecticut Department of Environmental Protection, the City of New York Community Board No. 1, and a research scientist at New York Univeristy all objecting to EPA's determination in its January 17, 1980 Federal Register notice of proposed rulemaking that the "special limitation" is not "significant" as defined under Executive Order 12044 and, therefore, is not subject to the procedureal requirements of the Order.

EPA uses the label "significant" (as recommended in the Executive Order) for those regulations that are subject to the formal EPA procedures outlined in May 29, 1979 Federal Register notice (44 FR 30988). In its definition of "significant" actions EPA has excluded regulations developed by state and local governments, such as approval or disapproval of State Implementation Plan revisions under Seciton 110 of the Clean Air Act. Therefore, EPA reaffirms its earlier determination that the "special limitation" is not subject to the procedural requirements of Executive Order 12044.

11. Comments in Support of Approval

EPA received a large number of comments, primarily from private businesses, requesting the EPA approve the "special limitation." The commentors noted that approval of the "special limitation" would hopefuly lead to coal burning and a subsequent reduction of oil consumption and dependency on foreign oil. It was also indicated that the use of a high sulfur content oil would reduce the current cost of electricity.

EPA supports the need to reduce our country's dependence on foreign oil and the need to reduce energy costs. These goals are not inconsistent with the air quality goals contained in the Clean Air Act. However, the Clean Air Act does not authorize EPA to apply such considerations in evaluating SIP revision requests.

12. Coal Burning and Alternate Energy Sources

Although EPA's proposed action only addresses the use of a high sulfur content fuel oil for a one-year period, fifteen commentors addressed the environmental and health impacts of coal burning (e.g., the noise pollution associated with coal transport, delivery and storage, and the health effects of inhalable particulate emissions). Several related comments dealt with the application of pollution control technology, including scrubbers, to the Con Edison plants.

It must be emphasized again, that any request to burn coal would be a separate and distinct revision to the New York SIP and, as such, would require a new public hearing, a demonstration that public health and welfare would be protected and a separate EPA review and approval. In addition, New York State law requires that an environmental impact

assessment be prepared prior to any coal burning which would have to deal with all environmental aspects of the action including, but not limited to, air, water, noise, and solid waste impacts. The public would also have the opportunity to review and comment upon this assessment.

Another series of comments were concerned with alternative energy sources, such as solar energy, wind energy, hydro-electric power, cogeneration, and conservation. In a similar vein, other commentors purport that there is an abundance of clean-burning natural gas and urged its use.

These comments raise valid and important issues, but do not directly address today's action. Although alternate energy sources and environmental impacts are connected, EPA's only legal basis for determining the approvability of the Con Edison "special limitation" revolves around the air quality impact of burning higher sulfur content fuel oil on national ambient air quality standards and PSD increments.

III. Final Determination

Provided that the required sources convert from fuel oil to natural gas combustion, EPA's analysis indicates no violation of any national ambient air quality standard or PSD increment as a result of its approval of New York's SIP revision request. Therefore, EPA finds that this revision to New York SIP is consistent with the requirements of Section 110(a) of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly, EPA approves this revision contingent upon the timely conversion from oil to natural gas at those sources identified in the State submitted air quality analysis.

As noted earlier, under Executive Order 12044, EPA is required to judge whether a regulation is "significant," and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: August 6, 1980.

(Sections 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601))

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart HH—New York

1. Section 52.1670, paragraph (c) is amended by adding a new paragraph (c)(53) as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(53) Revision submitted on November 29, 1980 by the New York State Department of Environmental Conservation which grants a "special limitation" under 6 NYCRR Part 225. This "special limitation" relaxes, until one year from [the date of publication], the sulfur-in-fuel-oil limitation to 1.5 percent, by weight, for the Consolidated Edison Company of New York, Inc. Arthur Kill generating facility, units 2 and 3, Staten Island, New York and Ravenswood generating facility, unit 3, Queens, New York.

2. Section 52.1675 is amended by adding a new paragraph (g) as follows:

§ 52.1675 Control strategy and regulations: Sulfur oxides.

* * * * *

(g) The following applies to the Environmental Protection Agency's approval as a SIP revision of the "special limitation" promulgated by the Commissioner of the New York State Department of Environmental Conservation on November 20, 1979 permitting the purchase and use by the Consolidated Edison Company of New York, Inc. of fuel oil with a maximum sulfur content of 1.5 percent, by weight, at units 2 and 3 of its Arthur Kill generating facility on Staten Island, New York and unit 3 of its Ravenswood generating station in Queens, New York:

(1) On or before the "Date of Conversion" indicated below, each "Facility" indicated below shall combust only natural gas for the duration of the special limitation.

1. City College of New York, Amsterdam Ave. Between W. 135th St. and W. 138th St., Manhattan—
   North Campus Academic Center:
   Converted North Campus Main Boiler (Compton Hall): Two boilers shut-down; One boiler converted;
   South Campus—Boiler Plant: Converted;
   North Campus Science and Physical Education Building: October 1, 1980.
2. Harlem Hospital, 135th St. and Lenox Ave., Manhattan: April 1, 1981;
3. Columbia University, 116th St. and Broadway, Manhattan: Converted;
4. New York City Housing Auth., Senator Robert F. Wagner Houses, 23–96 First Ave.: October 1, 1980;
5. New York City Housing Auth., Frederick Douglass Houses, 880 Columbus Ave., Manhattan: October 1, 1980;
6. New York City Housing Auth., Manhattanville Houses, 549 W. 126th St., Manhattan: October 1, 1980;
7. New York City Housing Auth., St. Nicholas Houses, 215 W. 127th St.: October 1, 1980;
8. New York City Housing Auth., General Grant Houses, 1320 Amsterdam Ave., Manhattan: October 1, 1980;
9. New York City Housing Auth., Harlem River Houses, 211–0–1 W. 151st Street, Manhattan: October 1, 1980;
10. New York City Housing Auth., Martin Luther King Towers, 90 Lenox Ave., Manhattan: October 1, 1980;
11. New York City Housing Auth., Drew Hamilton Houses, 210 W. 142nd Street, Manhattan: October 1, 1980.

(2) If any of the facilities identified in paragraph (1) fail to meet the requirements of that paragraph, the Consolidated Edison Company shall not burn fuel oil with a sulfur content in excess of 0.30 percent, by weight. For this purpose, Consolidated Edison shall maintain a reserve supply of fuel oil with a maximum sulfur content of 0.30 percent, by weight, and shall have a mechanism to switch promptly to the use of such fuel oil.

(3) EPA's approval of this revision to the New York SIP will extend for a period of twelve months from [the date of the publication] or such longer period limited to twelve months from the date on which fuel oil with a sulfur content exceeding 0.30 percent, by weight, is first burned at any of the affected Consolidated Edison facilities. However, once the use of high sulfur fuel oil has commenced, failure to meet any of the conversion dates specified in paragraph (g)(1) of this section shall not extend the period of EPA approval.

(4) On or before July 1, 1981 the Consolidated Edison Company of New York, Inc. shall displace the use of approximately 7.1 million gallons of residual oil, as projected on an annual basis, through a gas conversion program to be implemented within a two-mile radius of the Mabel Dean Bacon High School Annex monitor. Beginning on the first day of the month in which fuel oil with a sulfur content exceeding 0.30 percent, by weight, is first burned at any of the affected Consolidated Edison facilities and continuing for twelve months thereafter, the Consolidated Edison Company of New York, Inc. shall submit a report to the EPA, on a monthly basis, which includes, but is not limited to, the following information regarding this program:

(i) The total gallonage of fuel oil capacity converted (projected to an annual amount) as of that date,

(ii) The potential gallonage from sources at which conversion work has begun, and

(iii) The projected gallonage from sources expected to be converted by July 1, 1981.

[FR Doc. 80-24227 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1562-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve changes to the Kern County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 10, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air & Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION: On February 14, 1980 (45 FR 9953) EPA published a notice of proposed rulemaking for revisions to the Kern County APCD's rules and regulations submitted on May 23 and October 15, 1979 by the California Air Resources Board for inclusion in the SIP.

The changes contained in the above mentioned submittals that are being acted upon by this notice include the following:

(a) Several administrative changes concerning procedures before the hearing board; and

(b) Minor wording and renumbering changes.

A list of the affected rules was published as part of the February 14, 1980 Notice of Proposed Rulemaking. As described in that notice, all the rules were evaluated, found to be in conformance with the requirements of 40 CFR Part 51, and proposed to be approved, with the exception of Rule 407.3 for which no action was proposed. The Notice of Proposed Rulemaking provided for a 60 day public comment period. No comments were received.

Thus, it is the purpose of this notice to approve the revisions contained in the May 23 and October 15, 1979 submittals and to incorporate them into the California SIP, with the exception of the Rule 407.3 as discussed below.

No action is being taken on the proposed deletion of Rule 407.3, *Scavenger Plants*, because the Rule is not currently part of the applicable SIP. The Rule was previously submitted on July 19, 1974 and was disapproved on August 22, 1977 (42 FR 42219). Thus no further action is required.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

EPA has determined that this action is "specialized" and therefore not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. § 7410 and § 7601(a)))

Dated: August 5, 1980.

Douglas M. Costle,

Administrator.

Subpart F of Part 51 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding sub-paragraphs (51)(i) and (52)(i) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(51) Revised regulations for the following APCD's submitted May 23, 1979, by the Governor's designee.

(i) Kern County APCD.

(A) Amended Rules 305 and 503.

* * * * *

(52) Revised regulations for the following APCD's submitted October 15, 1979, by the Governor's designee.

(i) Kern County APCD.

(A) Amended Rule 302

* * * * *

[FR Doc. 80-24181 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1565-5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision: Inspection/Maintenance Program

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve revisions to the motor vehicle emission control inspection and maintenance (I/M) program submitted by the Governor's designee on March 21, 1979 as a revision to the Arizona State Implementation Plan (SIP). The intended effect of this action is to update the rules and regulations and to correct certain deficiencies in the SIP. In addition, this approval satisfies certain requirements under Part D of the Clean Air Act concerning I/M in Maricopa and Pima Counties.

EFFECTIVE DATE: September 10, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

"Inspection/Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emissions control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be included as well. Operation of noncomplying vehicles is prohibited. This is more effectively accomplished by requiring proof of compliance to purchase license plates or to register a vehicle. A windshield sticker system, much like that of many safety inspection programs, can be used if it can be demonstrated that equal effectiveness will be achieved.

Section 172 of the Clean Air Act requires that SIPs for States which include nonattainment areas must meet certain criteria. For areas which demonstate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by 1982, despite the implementation of all reasonably available control measures, an extension to 1987 will be granted. In such cases Section 172(b)(11)(B) requires that "the plan provisions shall establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program. * * *"

EPA issued guidance on February 24, 1978, on the general criteria for SIP approval including I/M, and on July 17, 1978, regarding the specific criteria for I/M approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking (44 FR 20372). Though the July 17, 1978 guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

(1) *Legal Authority.* States or local governments must have adopted the necessary statutes, regulations, ordinances, etc., to implement and enforce the I/M program. (Section 172(b)(10))

(2) *Commitment.* The appropriate governmental unit(s) must be committed to implement and enforce the I/M program. (Section 172(b)(10))

(3) *Resources.* The necessary finances and resources to carry out the I/M program must be identified and committed. (Section 172(b)(7))

(4) *Schedule.* A specific schedule to establish the I/M program must be included in the SIP. (Section 172(b)(11)(B)). Interim milestones are specified in the July 17, 1978 memorandum in accordance with the general requirement of 40 CFR 51.15(c).

(5) *Program Effectiveness.* As set forth in the July 17, 1978 guidance memorandum, the I/M program must achieve a 25% reduction in passenger car exhaust emissions of hydrocarbons and a 25% reduction for carbon monoxide. This reduction is measured by comparing the levels of emissions projected to December 31, 1987, with and without the I/M program. This policy is based on Section 172(b)(2) which states that "the plan provisions * * * shall * * * provide for the implementation of all reasonably available control measures * * *."

Specific detailed requirements of these five provisions are discussed below.

To be acceptable, I/M legal authority must be adequate to implement and effectively enforce the program and must not be conditioned upon further legislative approval or any other substantial contingency. However, the legislature can delegate certain decision making to an appropriate regulatory body. For example, a state department of environmental protection or department of transportation may be charged with implementing the program, selecting the type of test procedure as well as the type of program to be used, and adopting all necessary rules and regulations. I/M legal authority must be included with any plan revisions which require I/M (i.e., a plan which establishes an attainment date beyond December 31, 1982) unless an approved extension to certify legal authority is granted by EPA. The granting of such an extension, however, is an exceptional remedy to be utilized only when a state legislature has had no opportunity to consider enabling legislation.

Written evidence is also required to establish that the appropriate governmental bodies are "committed to implement and enforce the appropriate elements of the plan" (Section 172(b)(10)). Under section 172(b)(7), supporting commitments for the necessary financial and manpower resources are also required.

A specific schedule to establish an I/M program is required (Section 172(b)(11)(B)). The July 17, 1978, guidance memorandum established as EPA policy the key milestones for the implementation of the various I/M programs. These milestones were the general SIP requirement for compliance modified at 40 CFR 51.15(c). This section requires that increments of progress be incorporated for compliance schedules of over one year in length.

To be acceptable an I/M program must achieve the requisite 25% reductions in both hydrocarbon (HC) and carbon monoxide (CO) exhaust emissions from passenger cars by the end of calendar year 1987. The Act mandates "Implementation of all reasonably available control as expeditiously as practicable" (Section 172(b)(2)). At the time of passage of the Clean Air Act Amendments of 1977, several I/M programs were already operating, including mandatory programs in New Jersey and Arizona operating at about a 20% stringency. (The stringency of a program is defined as the initial proportion of vehicles which would have failed the program's standards if the affected fleet had not undergone I/M before. Because some motorists tune their vehicles before I/M tests, the actual proportion of vehicles failing is usually a smaller number than the stringency of the program.) Depending on program type (private garage or centralized inspection) a mandatory I/M program may be implemented as late as December 31, 1982 and the attainment date may be as late as December 31, 1987. Based on the implementation date of December 31, 1982 and a 20% stringency factor, EPA predicts the reduction of both CO and HC exhaust emissions by 25% can be achieved by December 31, 1987. Earlier implementation of I/M will produce greater emission reductions. Thus, because of the Act's requirement for the implementation of all reasonably available control measures and because New Jersey and Arizona have effectively demonstrated practical operation of I/M programs with 20% stringency factors, it is EPA policy to use a 25% emission reduction as the criterion to determine compliance of the I/M portion of the nonattainment area plan with Section 172(b)(2).

Arizona's I/M Program

On August 4, 1978 (43 FR 34470) EPA approved the State of Arizona's I/M program and regulations. On July 5, 1979 EPA published a Notice of Proposed Rulemaking in the FEDERAL REGISTER (44 FR 39234) proposing to approve revisions to the regulations submitted to EPA on March 21, 1979. In addition, Notices of Proposed Rulemaking were published on June 11, and July 6, 1979 (44 FR 33433 and 39480) for the Maricopa and Pima counties nonattainment area plans. Please refer to those notices for futher information.

Arizona's I/M program covers all vehicles registered or reregistered in Maricopa and Pima Counties for highway use, and provides for inspections each year. Inspections are carried out by a contractor working for the State. An idle mode inspection test is used. Vehicles failing inspection must be repaired and reinspected. The operation of noncomplying vehicles is prevented by requiring proof of compliance to register a vehicle.

Vehicles older than 13 years are excluded. Also, a vehicle exceeding the standards after its second inspection could be granted a waiver, if the cost of repairs exceed 75 dollars or 10 percent of the vehicle's value for post 1967 models and 25 dollars for pre-1968 models.

As decribed below, Arizona's I/M program satisfies the key requirements for approval previously described.

(1) *Legal Authority.* The basis for the State's legal authority (R9-3-1001, Policy and Legal Authority) is contained in the Arizona Revised Statutes 36-1707, 36-1717, and 36-1772. Under these State statutes the Director of Department of Health Services has the authority to adopt rules and regulations controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines in a manner which ensures the health, safety, and general welfare of the citizens of Arizona.

(2) *Commitment.* The State has identified its commitments to the implementation and enforcement of the Arizona I/M program submitted as part of the Maricopa and Pima Counties nonattainment area plans (NAPs).

(3) *Resources.* The State has identified its commitments for resources submitted as part of the Maricopa and Pima Counties NAPs.

(4) *Schedule.* EPA's requirement for a specific schedule to establish an I/M program is not applicable to Arizona since the program is currently being implemented and enforced.

(5) *Program Effectiveness.* Based on information in the revision and the SIP, the program will achieve a 27% reduction in HC and a 25% reduction in CO by December 31, 1987, thus

complying with EPA's requirement for minimum emission reductions.

The I/M program requires a motor vehicle owner to obtain a certificate of compliance issued by an official emissions inspection station once a year prior to registration. In order to assure public awareness of the I/M program, an insert is sent with individual registration notices listing the hours and locations of inspection stations.

Certificates of waiver, exemption, and a Director's certificate can also be accepted as evidence that a vehicle is in compliance with the requirements of the program. Inspections are made at State owned, operated, or contracted emissions inspection facilities. The State regulations also provide for permit procedures for fleet stations, licensing of inspectors, inspection of government vehicles, reinspection of vehicles, and inspection of State and fleet stations.

The exhaust emissions inspection consists of sampling the exhaust emissions in the idle mode and in loaded modes, and measuring the concentrations of hydrocarbons (oxidant/ozone precursor) and carbon monoxide. Data from the loaded mode test is for diagnostic purposes only and is not the basis for passing or failing the test. Idle emissions are the basis for passing or failing. Each vehicle that is inspected by a State station must be accompanied by a document such as registration, certificate of title, or bill of sale which identifies the vehicle by make, model year, identification number, and license plate. The fee for an emissions inspection is $5.00.

Mechanics training is included as a part of the I/M program. Monthly training clinics are scheduled in Phoenix and Tucson for both mechanics and the general public to improve tune-ups and to show the cause for and the correction of emissions failures.

The State makes periodic inspections of emissions analyzers. Analyzers not meeting the specified accuracy requirements are retired for use until they are repaired.

The program also provides for certain exceptions including electric powered vehicles, light duty motor vehicles more than 13 years old, and vehicles with engine displacement less than 90 cubic centimeters. Any vehicle not complying with the requirements of Arizona's I/M program may not be registered and is prohibited from operating on public roads.

As discussed above, and in the July 5, 1979 notice, Arizona's I/M program meets all of EPA's criteria. No comments were received during the public comment period. Therefore, EPA approves the I/M program with respect to Part D of the Act and incorporates it into the SIP.

The State of Arizona has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)).)

Dated: August 5, 1980.

Douglas M. Costle,

Administrator.

Subpart D of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.120 is amended by adding paragraphs (c)(27)–(31) as follows:

§ 52.120 Identification of plan.

* * * * *

(C) * * *

(27)–(30) [Reserved]

(31) Revisions to the Arizona Air Pollution Control Regulations submitted on March 21, 1979: R9–3–1002 (22,34); R9–3–1003 [A(A8–11),B,C]; R9–3–1005 [A, (A3)]; R9–3–1006 [A,(A1,2),B, (B2,3,4,5),D,E,(E1(c),2(c)),F,G,(G1,2), Table II]; R9–3–1008 [B,(B1,2,6,7)]; R9–3–1010 [A,(A3),C,D,F]; R9–3–1011 [A,B,(B1,2,3)]; R9–3–1012(b); R9–3–1014; R9–3–1017 [B,(B4), C, E]; R9–3–1019 [A,B,D, D(1)(a)(i), D(1)(a)(ii)(6), D(1)(a)(iii), D(1)(c), D(1)(f)(11), H, (H1,2), I(I8,9,10,11,12,13), J, (J10), L, M, N, (N1,2)]; R9–3–1020(C,E); R9–3–1022(B); R9–3–1023(A,B); R9–3–1027(F).

* * * * *

[FR Doc. 80-24162 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1555-5]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today is approving a revision to Colorado's State Implementation Plan to meet the data reporting requirements of Section 127 of the Clean Air Act.

EFFECTIVE DATE: August 11,1980.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Progams Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–3711.

SUPPLEMENTARY INFORMATION: On June 4, 1980, EPA proposed for comment in the Federal Register this revision to the Colorado State Implementation Plan. No comments were received. Therefore, based on the rationale explained in the proposed rulemaking, EPA is approving this SIP revision.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this rule is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of (date of publication in the Federal Register). Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of todays notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore, subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended.

Dated: August 5, 1980.

Douglas M. Costle,

Administrator.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart G—Colorado

1. Section 52.320(c)(19) is added as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(19) On April 21, 1980, the Governor submitted a plan revision to meet the data reporting requirements of Section 127 of the Clean Air Act.

[FR Doc. 80-24150 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1565-3]

Designation of Areas for Air Quality Planning Purposes: Attainment Status Designations; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice revises the attainment status designations of all or portions of 12 counties in California for ozone (O_3), total suspended particulates (TSP), and/or carbon monoxide (CO).

These revisions are the result of (a) a request from the State Air Resources Board (ARB) to redesignate the areas, (b) the revision of the oxidant (Ox) standard of 0.08 parts per million (ppm) to an O_3 standard of 0.12 ppm, (c) the availability of more recent monitoring data, and (d) application of the EPA's Fugitive Dust Policy. The 12 counties or portions thereof are redesignated from nonattainment to either attainment or unclassifiable as specified below.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105, Attn: Morris I. Goldberg, (415) 556-8065.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (CAA) Amendments of 1977, Public Law No. 95-95, added to the CAA section 107(d), which directed each state to submit to the Administrator a list of the National Ambient Air Quality Standards (NAAQS) attainment status of all areas within the state. The Administrator was required under section 107(d)(2) to promulgate the state lists, with any necessary modifications.

For each NAAQS, areas are classified as either (1) not attaining the standard (nonattainment areas), (2) meeting the standard (attainment areas), or (3) lacking sufficient data to be classified (unclassifiable areas). The EPA published these lists on March 3, 1978 (43 FR 8962).

On February 8, 1979 (44 FR 8202), the EPA revised the Ox standard of 0.08 ppm to an O_3 standard of 0.12 ppm. In addition, the EPA established a statistical method of determining whether the standard has been exceeded. The national standards for O_3 are published as a revision to 40 CFR 50.9 and the statistical method as the new Appendix H, 40 CFR Part 50.

On March 19, 1979 (44 FR 16388), the EPA redesignated Yolo County from nonattainment (primary and secondary) to nonattainment (secondary) for TSP, as recommended by the State of California, because air quality data indicated violations of secondary, but not primary, TSP standards.

The Redesignations

The ARB, in a letter dated September 24, 1979, submitted to the EPA a list of proposed redesignations "necessitated by (1) the change in the .08 ppm oxidant standard to .12 ppm ozone, (2) availability of more recent monitoring data, and (3) agreements between our agencies relative to the applicability of the TSP standard in some rural areas."

The redesignations proposed by the ARB are as follows:

(1) From nonattainment for Ox to attainment for O_3: Mariposa, San Luis Obispo, and Tehama Counties.

(2) From nonattainment for Ox to unclassifiable for O_3: Colusa and Glenn Counties and the Sacramento Valley Air Basin (SVAB) portion of Shasta County.

(3) From nonattainment (primary and secondary) to unclassifiable for TSP: Butte and Sutter Counties.

(4) From nonattainment (secondary) to unclassifiable for TSP: Tehama, Yolo, and Yuba Counties and the SVAB portions of Shasta and Solano Counties.

(5) From nonattainment to attainment for CO: Fresno County, outside of the Fresno-Clovis Metropolitan Area.

(6) From nonattainment to attainment for sulfur dioxide (SO_2): San Joaquin Valley Air Basin portion of Kern County, outside of the Oildale area.

Under section 107(d)(5) of the CAA, as amended, a state may revise its designations of attainment status and submit them to the EPA for promulgation.

On April 10, 1980 (45 FR 24510) the EPA published a Notice of Proposed Rulemaking, proposing to approve these redesignations, except for the Kern County SO_2 redesignation, which will be addressed in a separate Federal Register notice. The redesignations were proposed to be approved because, as a result of the revised oxidant/ozone standard, more recent monitoring data, and the application of the EPA's Fugitive Dust Policy, the redesignated areas are now considered by the EPA to be either attainment or unclassifiable for certain pollutants.

The April 10 notice invited public comments on the proposal. No comments were received. Therefore, the EPA is now approving the proposed redesignations.

As a result of these redesignations, the requirements of Title I, Part D (Plan Requirements for Nonattainment Areas) of the CAA, as amended, no longer apply in the 12 counties or portions thereof for the pollutants for which those counties are being redesignated attainment or unclassifiable.

Correction of Errors

On September 12, 1979 (44 FR 53081), the EPA published a Final Rulemaking Notice concerning attainment status designations for Arizona, California, and Hawaii.

That notice inadvertantly indicated that the attainment status of two areas in the Southeast Desert Air Basin of California had been changed. Specifically, the non-AQMA portions of Riverside and San Bernardino Counties were shown as not meeting the secondary standards for TSP, when they should have been shown as unclassifiable for TSP, as in their original designation of March 3, 1978 (43 FR 8971). These and other errors are corrected in this notice.

The EPA finds that good cause exists for making this action effective immediately. The EPA has a responsibility to take final action on these provisions as soon as possible in order to lift the construction moratorium.

The EPA has determined that this action is "specialized" and therefore not subject to the procedural requirements of Executive Order 12044.

(Sec. 107(d) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d) and 7601(a)))

Dated: August 1, 1980.

Douglas Costle,

Administrator.

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.305 [Amended]

1. In § *81.305 California*, the attainment status designation tables are amended as follows:

A. The California—TSP table is amended as follows:

(1) In the Sacramento Valley Air Basin, the designations of Solano, Yolo, Butte, Shasta, Sutter, Tehama, and Yuba Counties are revised.

(2) In the Southeast Desert Air Basin, the designations of the non-AQMA portions of Riverside and San Bernardino Counties are corrected.

B. The California—Ox table is amended as follows:

(1) The name of the table is revised from "Ox" to "Ozone".

(2) In the South Central Coast Air Basin, the designation of San Luis Obispo County is revised.

(3) In the Sacramento Valley Air Basin, the status of each county is specified, and the designations of Colusa, Glenn, Shasta, and Tehama Counties are revised.

(4) In the Mountain Counties Air Basin, the designation of Mariposa County is revised.

(5) Various typographical errors are corrected.

C. The California—CO table is amended as follows:

(1) In the San Joaquin Valley Air Basin, Fresno County is divided into two areas, and the designation of Fresno County, outside of the Fresno-Clovis Metropolitan Area, is revised.

(2) Various typographical errors are corrected.

The amended portions of the tables for § *81.305 California* read as set forth below:

California—*TSP*

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*	*	*	
Sacramento Valley Air Basin (SVAB):				
Sacramento County		X		
Solano County (SVAB Portion)			X	
Yolo County			X	
Butte County			X	
Colusa County			X	
Glenn County			X	
Shasta County (SVAB Portion)			X	
Sutter County			X	
Tehama County			X	
Yuba County			X	
Great Basin Valleys Air Basin			X	
Northeast Plateau Air Basin			X	
Southeast Desert Air Basin:				
Kern County (S.E. Desert Air Basin Portion)			X	
Imperial County			X	
Los Angeles County (S.E. Desert Air Basin Portion)	X			
Riverside County (S.E. Desert AQMA Portion)	X			
San Bernardino County (S.E. Desert AQMA Portion)	X			
Riverside County (non-AQMA Portion)			X	
San Bernardino County (non-AQMA Portion)			X	
* * * *	*	*	*	

California—Ozone

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * *	*	*
North Coast Air Basin		X
San Francisco Bay Area Air Basin	X	
Lake County Air Basin		X
North Central Coast Air Basin	X	
South Central Coast Air Basin:		
Ventura County	X	
San Luis Obispo County		X
Santa Barbara County AQMA	X	
Santa Barbara County non-AQMA	X	
Channel Islands		X
San Diego Air Basin:		
San Diego Intrastate AQCR Portion	X	
Southeast Desert Intrastate AQCR Portion	X	
South Coast Air Basin	X	
San Joaquin Valley Air Basin	X	
Sacramento Valley Air Basin (SVAB):		
Sacramento Valley Area AQMA (SVAB Portion)	X	
Butte County	X	
Colusa County		X
Glenn County		X
Shasta County (SVAB Portion)		X
Sutter County	X	
Tehama County		X
Yuba County	X	
Great Basin Valleys Air Basin		X
Northeast Plateau Air Basin		X

California—Ozone—Continued

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * *	*	*
Mountain Counties Air Basin (MCAB):		
Amador County		X
Calaveras County		X
El Dorado County (MCAB Portion)	X	
Mariposa County		X
Nevada County		X
Placer County (AQMA Portion)	X	
Placer County (MCAB non-AQMA Portion)	X	
Plumas County		X
Sierra County		X
Tuolumne County		X
Southeast Desert Air Basin (SEDAB):		
Imperial County	X	
Kern County (SEDAB Portion)		X
Los Angeles County (SEDAB Portion)	X	
Riverside County (S.E. Desert AQMA Portion)	X	
Riverside County (SEDAB non-AQMA Portion)		X
San Bernardino County (S.E. Desert AQMA Portion)	X	
San Bernardino County (SEDAB non-AQMA Portion)		X
Lake Tahoe Air Basin	X	
* * * * *		

California—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
San Joaquin Valley Air Basin (SJVAB):		
Fresno County (within Fresno-Clovis Metropolitan Area*)	X	
Fresno County (outside Fresno-Clovis Metropolitan Area*)		X
Kern County (SJVAB Portion)	X	
Kings County		X
Madera County		X
Merced County		X
San Joaquin County	X	
Stanislaus County	X	
Tulare County		X
Sacramento Valley Air Basin (SVAB):		
Butte County	X	
Colusa County		X
Glenn County		X
Sacramento County	X	
Shasta County (SVAB Portion)		X
Solano County (SVAB Portion)		X
Sutter County		X
Tehama County		X
Yolo County		X
Yuba County		X
* * * * *		
Southeast Desert Air Basin (SEDAB):		
Imperial County		X
Kern County (SEDAB Portion)		X
Los Angeles County (SEDAB Portion)		X
Riverside County (S.E. Desert AQMA Portion)		X
Riverside County (SEDAB non-AQMA Portion)		X
San Bernardino County (S.E. Desert AQMA Portion)		X
San Bernardino County (SEDAB non-AQMA Portion)		X
Lake Tahoe Air Basin	X	

*As shown on page 4 of the *1974 General Plan Report for the FCMA*, City of Fresno Department of Planning and Inspection.

* * * * *

[FR Doc. 80-24181 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Amendment F-42]

Federal Property Management Regulations; Security of Federal ADP and Telecommunication Systems

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation adds a new subpart to FPMR 101-35 and revises Subpart 101-36.7 to set forth Government-wide security management provisions for the protection of ADP and telecommunication systems and facilities. The intended effect is to ensure that adequate security is

considered and present in all ADP and telecommunication systems.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Robert R. Johnson, Policy and Evaluation Division (202-566-0834).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) issued Circular No. A-71, Transmittal Memorandum No. 1, on July 27, 1978. This OMB issuance requires that: (1) GSA issue regulations for the physical security of computer rooms consistent with standards and guidelines issued by the Department of Commerce; (2) ensure that agency procurement requests for automated data processing equipment, software, and related services include security requirements; and (3) ensure that all procurements made by GSA meet the security requirements established by the user agency. To meet GSA's responsibility for Government-wide management as well as comply with OMB direction, Subpart 1-4.11 of this title is being amended also.

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

PART 101-35—ADP AND TELECOMMUNICATIONS MANAGEMENT POLICY

1. The table of contents for Part 101-35 is amended by adding 14 entries and revising 1 entry as follows:

Subpart 101-35.3—Security of Federal ADP and Telecommunication Systems

Sec.
101-35.300 Scope of subpart.
101-35.301 Policy.
101-35.302 Definitions.
101-35.303 Agency security responsibilities.
101-35.304 Security program elements.
101-35.304-1 Identification of sensitive systems and facilities.
101-35.304-2 Risk analysis.
101-35.304-3 Administrative, physical, and technical controls.
101-35.304-4 Privacy considerations.
101-35.305 Security program
101-35.306 Security specifications.
101-35.307 Certification of conformance to security specifications.
101-35.308 Security audit or evaluation.

Subparts 101-35.4—101-35.16 [Reserved]

2. Subpart 101-35.3 is added to read as follows:

Subpart 101-35.3—Security of Federal ADP and Telecommunication Systems

§ 101-35.300 Scope of subpart.

This subpart provides Government-wide security management guidance for the protection of ADP and telecommunication systems and facilities. Other subparts of the FPMR cover specific aspects of security. (See Subparts 101-35.17 for Privacy Act application and 101-36.7 for environment and physical security considerations.)

§ 101-35.301 Policy.

Federal agencies shall ensure that an adequate level of security is provided for all ADP and telecommunication systems and services, including those provided by contractors. An adequate security program shall be established to ensure automated information system integrity; i.e., a security program that (a) ensures that under all conditions sensitive data is safeguarded from disclosure and protected from unauthorized modification and destruction, (b) provides for operational reliability of the ADP and telecommunication systems, and (c) provides asset integrity for prevention of loss from natural hazards, fire, etc.

§ 101-35.302 Definitions.

(a) "Sensitive application systems" means those ADP and telecommunication systems that require a degree of protection. The protection is required because these systems process sensitive data; or the risk of loss or harm that could result from data disclosure, modification, or destruction is substantial; or the improper operation of the software or equipment related to the application system would have a serious effect on the ability of the agency to function. Examples of sensitive application systems are: (1) Automated systems with little or no human intervention; e.g., check issuing systems; (2) systems that process privileged information; e.g., proprietary data and economic forecasting; (3) systems that process personal information subject to the Privacy Act of 1974; and (4) systems where the loss or harm would be such that the organization could not effectively perform its mission and would have a substantial adverse effect on the Nation.

(b) "Sensitive data" means data that require a degree of protection due to the risk and magnitude of loss or harm which could result from inadvertent or deliberate disclosure, alteration, or destruction of the data.

(c) "Security specifications" means a detailed description of the safeguards required to protect a sensitive computer application or telecommunication system.

(d) "ADP system security" means the degree of protection of ADP equipment and data that is established through the application of technological safeguards, physical security measures, and administrative procedures applied to a sensitive application system, its component facilities and equipment, its software, its data to ensure protection of a computer system, and its telecommunications.

(e) "Physical security" means the sum of construction features and the use of locks, guards, badges, and similar measures to control access to a facility (location) as well as the measures required to protect personnel and property, including the structures housing the computer, their contents, and related equipment, from but not limited to damage by accident, fire, loss of utilities, environmental hazards, and unauthorized access.

(f) "Agency controls" means those administrative and personnel measures used in conjunction with ADP administrative, technical, and physical security measures to achieve adequate comprehensive security.

§ 101-35.303 Agency security responsibilities.

Each agency head shall establish an agency security program that clearly delineates the responsibility for security agencywide. The agency head shall establish policies and procedures and assign responsibility for development, implementation, and operation of the agency's ADP and telecommunication security program. This responsibility applies to work performed internally or by contract.

(a) *Personnel.* The agency security program shall include policies and procedures for the screening and clearance of all persons involved in the design, operation, or maintenance of ADP or telecommunication systems. The level of screening required will vary from minimial checks to full background investigations commensurate with the sensitivity of the data handled and the risk and magnitude of loss or harm that could be caused by the individual. Policies shall be consistent with the policies issued by the Office of Personnel Management. (See Federal Personnel Manual, FPM 732-4.01.)

(b) *Facility security officer.* Each ADP/telecommunication system location shall have a designated security person responsible for the implementation, operation, and testing of the agency security program for that installation, including the adequacy of

the security training of personnel involved.

(c) *Security evaluations.* The agency security program shall include procedures for conducting periodic (at least once every 3 years) audits or evaluations of the adequacy of the security safeguards of each sensitive application. Audits or evaluations shall be conducted on applications which process personal, proprietary, or other sensitive data, or which have a high potential for financial loss, such as automated decisionmaking application. They shall be conducted by persons independent of the facility users and facility management.

§ 101-35.304 Security program elements.

The agency computer security program shall contain all of the elements necessary to ensure an adequate level of security for all agency data whether processed by the agency, by other Government agencies, or commercially. The program shall be consistent with all Federal policies, procedures, and standards issued by OMB, GSA, the Department of Commerce, and the Office of Personnel Management. Where national security systems are involved, the policies issued by the National Security Agency shall apply.

§ 101-35.304-1 Identification of sensitive systems and facilities.

A review of ADP and telecommunication facilities and systems is necessary to identify sensitive applications. The risks (threats and hazards) shall be identified for each facility to determine the level of security required.

§ 101-35.304-2 Risk analysis.

(a) A risk analysis shall be performed for each ADP and telecommunications facility to provide a measure of the relative vulnerabilities. The analysis shall be performed before the approval of design specifications for new computer installations or whenever there is a significant change to the physical facility or to the hardware or software. The analysis shall be reviewed and updated when changes concerning the degree of protection occur or at least every 3 years. This risk analysis should provide an understanding of the probable loss and establish how the loss will affect the system; for example, what is the probability of loss of a tape or micro film library and what is the economic or other consequence of that loss? Expected losses should be estimated in dollars or other meaningful indicators such as delayed processing or loss of data. A copy of each risk analysis shall be maintained for evaluation and audit purposes. These should be protected to the maximum within the limits of the law. These risk analyses form the basis for preparation of the security specifications and for determining the type and scope of security measures required at each location.

(b) The analyses should include but not necessarily be limited to the following factors:

(1) Physical destruction or loss of data and program files;

(2) Impact loss, destruction, or alteration of data on systems or programs;

(3) Theft or disclosure of information;

(4) Misuse of ADP systems (fraud, vandalism, etc.);

(5) Delay or prevention of ADP operation; and

(6) Reliability of ADPE and utilities.

(c) An annual loss expectancy for each facility shall be developed from a matrix of threats and frequency of losses as a result of the analysis. The NBS publication FIPS PUB 65, Guideline for Automatic Data Processing Risk Analysis, provides guidance on risk analysis.

§ 101-35.304-3 Administrative, physical, and technical controls.

Administrative, physical, and technical controls shall be developed to ensure attainment of security objectives. These controls encompass a continuous program of systems and application security. They should be compatible with other practices; e.g., cost accounting and management oversight. Included are:

(a) Organizational controls; e.g., those that have the potential to reduce damage or loss to the agency through concentration or distribution of functions;

(b) Media and logistic controls; e.g., those used in ADP operations to protect data during physical handling; and

(c) Accountability controls; e.g., those that identify specific individuals at any time an action is taken that may have an effect on the data, application, or physical installation.

§ 101-35.304-4 Privacy considerations.

Subpart 101-35.17, Privacy and Data Security for ADP and Telecommunication Systems, contains ADP system security considerations to assist in the implementation of the Privacy Act of 1974 (5 U.S.C. 552a). See Department of Commerce publication FIPS PUB 41 for further guidance.

§ 101-35.305 Security program.

The security program requires continuing day-to-day attention. The following program objectives need to be considered:

(a) *Reduction of sensitive facilities.* All locations need to be designed to safeguard the equipment and data against varying degrees of projected threats and hazards. Although all facilities must provide protection under varying circumstances, it may be prudent to move a senstive data application to a system that provides adequate protection rather than spend enormous sums to upgrade security.

(b) *Improvement of security at existing facilities.* Security may be improved at existing facilities by either upgrading the physical security at the facility and/or by strengthening the administrative security practices. Strengthening administrative security, by applying sound management practices, can often be effective in minimizing losses and limiting alteration costs. Actions such as closing and locking doors, maintaining logs, verifying signatures, inspecting fire equipment, replacing air filters, and verifying emergency procedures are important continuing considerations. Security must be a daily concern that is given priority attention.

(c) *Contingency plans.* Plans should be developed to provide continuity of data processing support should normal operations be interrupted. Alternate facilities are essential for systems that process sensitive data applications. The alternate facility should have sufficient capacity to run its own sensitive data applications plus the sensitive application(s) from the downed system. The backup capability may reside in one or more systems or facilities but should be located so that operating personnel, programs, data, paper, forms, etc., can be made available on short notice. Agreements for use of the backup (alternate) facility should be made in advance so that sensitive data applications are operated with minimum interruption. Plans should be reviewed and tested at periodic intervals.

§ 101-35.306 Security specifications.

(a) The agency security program shall include a managemenmt control process to develop security specifications for new sensitive applications or modifications of sensitive applications. The development of a security specification consists of the identification of the sensitive application, a list of potential threats and hazards, and a description of the measures needed to protect the application.

(b) The security program should include procedures that ensure that security specifications are developed to

meet the requirements of those responsible for the security of the various application systems.

(c) The security program must include procedures requiring the certification of each system after completion of the system acceptance tests and before operational use of that system. This action certifies that the system meets the documented and approved system security specifications, that the results of the system tests demonstrate adequacy of application security provisions, and that all applicable Federal policies, regulations, and standards are met.

(d) The security program shall establish requirements and responsibilities for the design, system test, certification of system test, and certification of security specifications.

§ 101-35.307 Certification of conformance to security specifications.

(a) New or modified sensitive application systems shall be certified in accordance with agency procedures to ensure conformance with the security specifications before operation. Contractor- or other-agency-operated systems or services shall also be certified.

(b) The security of existing sensitive systems shall be modified as appropriate to the level of security as specified in the agency security program for new or revised systems.

Note.—The agency security program shall establish policies, criteria, and timetables for periodic recertification of all sensitive application systems, including those operated at contractor locations. The recertification timetable shall be based on the sensitivity of the information processed and risk involved, but shall be conducted at least every 3 years.

§ 101-35.308 Security audit or evaluation.

(a) Agencies shall establish a program for conducting periodic audits or evaluations for evaluating and recertifying the adequacy of the security safeguards of each operational sensitive application.

(b) Audits shall be conducted by personnel other than those responsible for the operation and development of the sensitive application systems.

(c) The audit or evaluation function shall include an examination of the data sensitivity; a verification and validation of the adequacy of physical, administrative, financial, and technical controls; and the adequacy of security administration. Time intervals for audits or evaluations will be determined by the agency, based on the sensitivity of the operation but at least every 3 years. All ADP and telecommunication facilities shall be included in this audit and evaluation.

Subparts 101-35.4—101-35.16 [Reserved]

3. Subparts 101-35.4 through 101-35.16 are reserved.

PART 101-36—ADP MANAGEMENT

4. The table of contents for Part 101-36 is amended by revising, adding, or deleting the following entries:

Subpart 101-36.7—Environmental and Physical Security

Sec.
101-36.700 Scope of subpart.
101-36.701 Definitions.
101-36.702 ADP facility environment.
101-36.702-1 Temperature and humidity.
101-36.702-2 Lighting and electrical service.
101-36.702-3 Cleanliness.
101-36.702-4 Personnel.
101-36.702-5 Precautionary measures.
101-36.703 Fire safety.
101-36.703-1 Fire prevention—master control switches.
101-36.703-2 Portable firefighting equipment.
101-36.703-3 Smoke detection.
101-36.704 Contingency planning.
101-36.704-1 [Deleted]
101-36.704-2 [Deleted]
101-36.704-3 [Deleted]
101-36.704-4 [Deleted]
101-36.704-5 [Deleted]
101-36.704-6 [Deleted]
101-36.704-7 [Deleted]
101-36.704-8 [Deleted]
101-36.704-9 [Deleted]
101-36.705 Security of ADP facilities.
101-36.705-1 [Deleted]
101-36.705-2 [Deleted]
101-36.705-3 [Deleted]
101-36.705-4 [Deleted]
101-36.705-5 [Deleted]
101-36.706 Physical security for ADP facilities.

Subpart 101-36.7—Environmental and Physical Security

5. Subpart 101-36.7 is reception and revised.

§ 101-36.700 Scope of subpart.

This subpart provides guidelines applicable to Federal agencies concerning environmental and physical security of ADP facilities. Security management provisions are in Subpart 101-35.3.

§ 101-36.701 Definitions.

Terms as used in the subpart are defined as follows:

(a) "ADP facility" means an area, usually enclosed, containing a computer, other operational ADPE, and related supporting ADP resources that are essential to the operation of an ADP system. This definition generally excludes areas containing only ADP peripheral devices that cannot use, alter, access, or affect sensitive data. The area needing a degree of protection includes areas where there are terminals capable of displaying sensitive data or that can alter, change, or affect data.

(b) "ADP facility environment" means the aggregate of conditions that influence the performance of the ADP facility, personnel, and equipment.

(c) "ADP facility security" means those technological safeguards, physical security measures, and administrative procedures applied to an ADP facility and its equipment, software, data, and operational and user personnel, in order to ensure the protection of organizational assets, proprietary data, market information, individual privacy, etc.

(d) "Physical security" means the sum of construction features and the use of locks, safeguards, badges, and similar measures to control access to an ADP facility (location) as well as the measures required to protect personnel and property, including the structures housing the computer, their contents, and related equipment, from but not limited to damage by accident, fire, loss of utilities, environmental hazards, and unauthorized access.

§ 101-36.702 ADP facility environment.

An ADP facility environment conducive to both the protection of the Government's investment in ADP resources and the effective performance of the ADP function is essential. Care should be exercised in the selection of the ADP facility location to ensure the protection of supporting utilities and the minimization of natural disaster probabilities.

§ 101-36.702-1 Temperature and humidity.

(a) Wherever possible, manufacturers' specifications for data processing equipment and Federal energy conservation considerations shall be used to determine the optimum temperature and humidity ranges for the computer room. The ADPE should be operated within those limits. To prevent excessive temperature and humidity fluctuation, all doors to the computer room shall be kept closed as appropriate.

(b) An adequate warning system should be installed and maintained to warn of near-limit conditions so that prompt action can be taken to prevent equipment damage. Recording instruments (24-hour or 7-day) should also be located and installed to provide a true record of temperature and humidity. The recorders should be located where they will monitor the air leaving the ADPE area. The recorders should be checked frequently for accuracy. Only the building manager,

the ADP facility manager, or another official controlling or operating the building should be permitted to regulate the computer room environmental controls.

§ 101-36.702-2 Lighting and electrical service.

Adequate lighting of the computer room should be provided and maintained, taking into account Federal energy conservation considerations. An uninterruptible power source may be needed to support the system. Voltage regulators or other electronic means may be necessary to prevent serious fluctuations in current. Emergency lighting shall be provided as necessary to ensure safe exit. Periodic checks should be made of the emergency lighting and the auxiliary power to ensure performance operability. The minimum acceptable level of illumination is 40 foot-candles as measured 40 inches above the floor at any point in the room.

§ 101-36.702-3 Cleanliness.

(a) A routine cleaning schedule should be established and followed. Personnel assigned to clean the computer room should be permitted to do so only after receiving proper training in the cleaning of these areas. An authorized representative of the ADP facility shall be present during the cleaning operations.

(b) Noncombustible wastebaskets with self-closing or tight-fitting covers should be provided in the computer room. Burn bags required for security purposes should be enclosed in metal bulk-refuse containers with self-closing tops if the room is sufficiently secure; otherwise, the burn bags should be kept in safes.

(c) Contributors to dust or lint conditions such as outer coats and coat racks should not be permitted in the computer room. Venetian blinds, throw rugs, etc., that accumulate dust and static electricity should not be used in computer rooms.

(d) Air-conditioning filters should be checked and cleaned or replaced frequently.

(e) Floors should be kept polished and, if necessary, buffed to a hard finish. Waxes which powder or flake and steel wool buffing pads should not be used. Care should be exercised when damp-mopping or waxing to avoid seepage of liquids through the joints of raised floors.

(f) Carpeted areas should be vacuumed frequently to prevent accumulation of dust. Antistatic carpeting or spray should be used to prevent the buildup and discharge of static electricity.

§ 101-36.702-4 Personnel.

(a) Only those authorized persons as defined by the agency security program are permitted in the ADP facility. Notice of this restriction should be posted at each entrance. Authorized Personnel shall be positively identified through the use of local access control procedures. Personnel should be well trained in these facility, environment, and security regulations and procedures.

(b) Smoking, eating, and drinking shall not be permitted in the computer room. Signs stating these restrictions should be posted at each entrance.

(c) Appliances and equipment not essential to the functioning of the system are prohibited in the ADP facility. Examples of these items are electric razors, coffee pots, hot water pots, and hotplates.

§ 101-36.702-5 Precautionary measures.

False ceilings that conceal steam and water pipes shall be checked regularly for discoloration or other indication of a leak in the pipes. Any irregularities should be reported immediately to the building manager or other official controlling or operating the building so that prompt remedial action may be taken. Work scheduled for the ceiling area, whether from above or below; shall be a coordinated effort to provide maximum safety for personnel and equipment and to minimize interruption of operations. All other situations that are suspect as being potentially damaging to life or property shall be reported to the appropriate authority and liaison maintained until corrective action has been taken. Plastic sheets should be readily available to cover at least the CPU and those peripheral units susceptible to water damage. Equipment that has been exposed to water should not be activated until completely dry.

§ 101-36.703 Firesafety.

Guidelines concerning firesafety practices are provided in § 101-20.109 and in the National Fire Prevention and Control Administration's Handbook RP-1, Standard Practice for the Fire Protection of Essential Electronic Equipment Operations. Employees should receive periodic training regarding emergency actions. Training should include power shutdown and startup procedures, use of emergency power, the fire detection system, use of fire extinguishers, building evacuation, use of alarms, etc.

§ 101-36.703-1 Fire prevention—master control switches.

Master control switches that shut off all power to the computers and peripheral equipment should be so installed as to override all other electrical controls used during normal computer operations. Facilities with air-conditioning systems not designed for smoke removal may include their air-conditioning system on the same master switches. These switches should be located near each normally used entrance to the computer room and should be conspicuously labeled and adequately protected to prevent accidental shutoff. Master control switches for systems that process sensitive applications should be equipped to require a sequential shutdown routine.

§ 101-36.703-2 Portable firefighting equipment.

Agencies shall ensure that a sufficient number of fire extinguishers are available in the ADP facility. Each fire extinguisher shall be prominently displayed in an unblocked, easily accessible area, so that no person in the area will have to travel more than 50 feet to obtain a fire extinguisher. Only carbon dioxide fire extinguishers shall be used on electrical fires; no other Class C (electrical nonconducting) extinguishing agents should be used. Fire extinguishers using water should be used on fires involving ordinary combustible materials, such as wood, paper, cloth, and plastics. Extinguishers containing water shall not be used on fires involving electrical equipment because this use can result in injury or death. All fire extinguishers shall be regularly inspected and properly maintained to ensure that they are in good working order. The number of types of fire extinguishers available in the ADP facility will be in accordance with section 704 of the National Fire Prevention and Control Administration's Handbook RP-1.

§ 101-36.703-3 Smoke detection.

Automatic smoke detection equipment capable of early warning detection shall be installed in all areas as required in RP-1 and NFPA No. 72 E, Automatic Fire Detectors.

§ 101-36.704 Contingency planning.

Contingency plans should be developed to deal with events that could prevent normal ADP operations and interfere with the accomplishment of an agency's mission. The contingency plan should, at a minimum, address the following elements:

(a) The appropriate response to a fire, flood, civil disorder, natural disaster, or bomb threat, to protect lives, limit damage, and minimize the impact on ADP operations.

(b) The development of backup procedures to ensure that essential ADP operational tasks can be conducted after disruption to the primary ADP facility. Arrangements should be made for a backup facility, including the needed files, programs, paper stocks and preprinted forms, etc., to operate the essential systems in the event of a total failure.

(c) Recovery procedures to permit rapid restoration of an ADP facility following physical destruction, major damage, or loss of data. To the extent possible, contingency plans should be tested on a recurring basis and modified as changes in the ADP facility workload dictate. Critical applications should be operated on the backup system to ensure that it can properly process this workload. Additional information on contingency planning is contained in FIPS PUB 31, Guidelines for Automatic Data Processing Physical Security and Risk Management.

§ 101-36.705 Security of ADP facilities.

Agencies are required to organize and maintain an ADP system security program to ensure the protection, confidentiality, and integrity of the Government's investment in the ADP system, including associated ADPE, data, computer media, and software. (See Subpart 101-35.3 of this title for security management provisions.) Agencies' internal directives and procedures for the physical security of computer facilities should consider the standards and guidelines that appear in the following Department of Commerce publications:

(a) FIPS PUB 31, Guidelines for Automatic Data Processing Physical Security and Risk Management;

(b) FIPS PUB 39, Glossary for Computers Systems Security;

(c) FIPS PUB 41, Computer Security Guidelines for Implementing the Privacy Act of 1974;

(d) FIPS PUB 46, Data Encryption Standard;

(e) FIPS PUB 48, Guidelines on Evaluation of Techniques for Automated Personnel Identification; and

(f) FIPS PUB 65, Guideline for Automatic Data Processing Risk Analyses.

Note.—NBS Publications List 91 outlines a number of NBS computer security publications.

§ 101-36.706 Physical security for ADP facilities.

Agencies shall provide physical security for their ADP facilities at levels consistent with the agency security program. Emergency requirements and operating procedures shall be considered when planning physical protective measures. The Office of Federal Protective Service Management (mailing address: General Services Administration (PSO), Washington, DC 20405) can furnish assistance regarding the availability and use of security hardware and alarm systems.

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

Dated: July 31, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-24067 Filed 8-8-80; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2474]

Grazing Administration and Trespass; Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations on grazing administration and trespass to provide that suspensions of preference for grazing livestock on public lands administered by the Bureau of Land Management may be phased in over a period not to exceed 3 years. This rulemaking is needed to bring the revised paragraph into agreement with changes made to the grazing administration and trespass regulations by an earlier final rulemaking.

EFFECTIVE DATE: August 11, 1980.

ADDRESS: Any suggestions or inquiries should be addressed to: Director, Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: R. Keith Miller, (202) 343-5841.

SUPPLEMENTAL INFORMATION: The principal author of this final rulemaking is David Little of the Division of Rangeland Management, Bureau of Land Management, assisted by the Office of Legislation and Regulatory Management.

The paragraph amended by this final rulemaking was included in the proposed rulemaking which was published in the Federal Register of July 30, 1979 (44 FR 44702). A final rulemaking incorporating most of the provisions of the July 30, 1979, proposed rulemaking was published in the Federal Register of July 11, 1980 (45 FR 47104). Section 4110.3-2(c), Decrease in Forage, was not included in the final rulemaking of July 11, 1980, because the policy relating to the phasing in of reductions in grazing use was still under review. As effective August 11, 1980, the revised regulations in § 4110.3-2(b) provide only for suspension of grazing preference (the cancellation language having been deleted), but § 4110.3-2(c) in the existing regulations still provides for cancellation and suspension of grazing preferences.

Therefore, to provide for consistency, § 4110.3-2(c) is being revised to provide for suspensions, but not for cancellations. This change is consistent with the comments which were received on the amendments in the proposed rulemaking published July 30, 1979.

The language of the paragraph, revised in this final rulemaking, is the same as that published in the proposed rulemaking of July 30, 1979, except the word "reduction" has been eliminated in one place because it is redundant, and in two places has been replaced by the word "suspension".

The policy on the manner and timing in which adjustments are made in livestock grazing use of the public lands is still under review. Therefore, a further change in the wording of § 4110.3-2(c) may be necessary. Any further changes will first be published as proposed rulemaking with an opportunity for public review and comment.

This revision is being made effective August 11, 1980, to assure consistency with the amendments published on July 11, 1980, which become effective on August 11, 1980.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1701 et seq.), Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal

Regulations is amended as set forth below.

Daniel P. Beard,

Acting Assistant Secretary of the Interior.

August 6, 1980.

1. Section 4110.3-2 is amended by revising paragraph (c) to read as follows:

§ 4110.3-2 Decrease in forage.

* * * * *

(c) Suspensions under paragraphs (a) or (b) of this section shall be equitably apportioned by the authorized officer or as agreed to among permittees or lessees and the authorized officer. If consistent with resource management needs, the authorized officer may provide that the suspensions under paragraph (b) of this section be scheduled over a period not to exceed 3 years with the full suspension coming in the last year.

[FR Doc. 80-24103 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 5741

[AR-04855]

Arizona; Transfer of Jurisdiction: Withdrawal of Lands for the Painted Rock Dam Project

Correction

In FR Doc. 80-23016 appearing on page 50753 in the issue of Thursday, July 31, 1980 make the following correction:

In the first column of page 50754, in the land description, under Sec. 32, third line, "N¼SE¼ . . ." should have read "N½SE¼ . . .".

BILLING CODE 1505-01-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1050

Uniform Federal Standards

Property Management Standards

AGENCY: Community Services Administration.

ACTION: Correction to final rule.

SUMMARY: The Community Services Administration is publishing a correction to the final rule on the Uniform Federal Standards, Part 1050, Subpart O—Property Management Standards published in the Federal Register on Thursday, February 7, 1980 (Vol. 45 page 8299). Subpart O sets forth the standards governing management of property acquired with funds awarded by the CSA or cost of which was charged to a project supported by CSA grant or other agreement. This action clarifies and redesignates paragraphs in the original document.

FOR FURTHER INFORMATION CONTACT: Mr. E. W. Covington, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506. Telephone (202) 632-6520, Teletypewriter (202) 254-6218.

EFFECTIVE DATE: August 11, 1980.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)

Michael T. Blouin,

Assistant Director for Community Action.

Part 1050 Subpart O—Property Management Standards is amended to read as follows:

1. On page 8300, column 3, paragraph (a) and (b) of § 1050.130-7 are revised to read as follows:

§ 1050.130-7 Standard—exempt property.

(a) When statutory authority exists, (e.g. Pub. L. 95-224, 41 U.S.C. 506b) title to nonexpendable personal property acquired with project funds, shall be vested in the grantee upon acquisition unless it is determined that to do so is not in compliance with the objectives of the Community Services Administration.

(b) When title is vested in the grantee, the grantee shall have no other obligation or accountability to the Federal Government for its use or disposition. The provisions of § 1050.130-8(a)(1) apply.

§ 1050.130-8 [Amended]

2. On page 8301, column 1, § 1050.130-8(a)(1)(iii) is revised to read as follows:

(a) * * *

(i) * * *

(iii) When CSA exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in § 1050.130-6.

* * * * *

3. On page 8301, § 1050.130-8(c)(3) is redesignated as paragraph (d) and the remainder of paragraph (c) is revised to read as follows:

§ 1050.130-8 Standard—other expendable property.

* * * * *

(c) *Disposition of other nonexpendable property.* When a grantee no longer needs the property as provided in § 1060.130-8(b), the property may be used for other activities in accordance with the following conditions:

(1) *Nonexpendable property with a unit acquisition cost of less than $1,000.00.* The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) *Nonexpendable personal property with a unit acquisition cost of $1,000.00 or more.* (i) The grantee may retain the property for other uses provided that compensation is made to the Community Services Administration. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the appropriate CSA Property Administrator.

(ii) The Community Services Administration shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported to the General Services Administration by CSA to determine whether a requirement for the property exists in other Federal agencies. The Community Services Administration shall issue instructions to the grantee no later than 120 days after the grantee's request. The following procedures shall govern disposition under this paragraph (c)(2)(ii) and the preceding paragraph (c)(2)(i):

(A) If instructed, or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Community Services Administration in an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. The grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater for the grantee's selling and handling expenses.

(B) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the Federal agency which receives the property an amount which is computed by applying the percentage of the grantee's participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(C) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Community Services Administration for such costs incurred in its disposition.

(d) *Property management standards for nonexpendable property.* The grantee's property management standards for nonexpendable personal

property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the grantee or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage of CSA participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates CSA for its share.

(2) Property owned by CSA must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the appropriate CSA Property Administrator.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

§ 1050.130-11 [Amended]

4. On page 8302, column 3, the introductory text of paragraph (b) of § 1050.130-11 should be revised to read as follows:

* * * * *

(b) *Surplus Government Property.* 40 U.S.C. 484 also provides for donation of surplus property within the State.

* * * * *

[FR Doc. 80-24025 Filed 8-8-80; 8:45 am]
BILLING CODE 6315-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-22; RM-3286]

Radio Broadcast Services, FM Broadcast Station in Mount Vernon, Ohio; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: In response to a petition for rule making filed by Bellevue Community Broadcasting, the FCC has assigned FM Channel 252A to Mt. Vernon, Ohio, as its second FM assignment.

EFFECTIVE DATE: September 15, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 30, 1980.

Released: August 4, 1980.

By the Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making,* adopted January 22, 1980, 45 Fed. Reg. 6968, in response to a petition filed by Bellevue Community Broadcasting ("petitioner"), proposing the assignment of FM Channel 252A to Mt. Vernon, Ohio, as its second FM assignment. Comments were filed by petitioner, Triplett Broadcasting Co., Inc., and Mt. Vernon Broadcasting Company.

2. Mt. Vernon (pop. 13,373),[1] the seat of Knox County (pop. 41,795), is located in the center of the State of Ohio. It is approximately 65 kilometers (40 miles) northeast of Columbus. Mt. Vernon is presently served by the co-owned Stations WMVO(AM) and WMVO-FM (Channel 229).

3. Petitioner states that the public interest will be served by a diversity of media ownership within the Mt. Vernon area. According to petitioner, the proposed Class A FM station operating with maximum power and antenna height would serve, in addition to Mt. Vernon, several nearby communities without local aural service. Although intermixture will occur as the result of an already assigned Class B channel, the Commission finds this permissible because the petitioner is interested in applying for the Class A channel, despite the competitive disadvantage.

4. Mt. Vernon Broadcasting Company ("Mt. Vernon"), licensee of Station WMVO and WMVO-FM, Mt. Vernon, Ohio, opposes the request, challenging the preclusion study. Mt. Vernon states that two communities of over 1,000 population (Bellville and Lexington, Ohio) will be precluded in the co-channel if Channel 252A is assigned to Mt. Vernon. Petitioner responds that no interest has been shown by these communities and that those communities receive adequate service from nearby stations. Further, a staff study indicates that these communities are already precluded by existing stations.

5. Triplett Broadcasting Co., Inc., proposes an additional site restriction to permit a transmitter move by its station, WTOO-FM, Bellefontaine, Ohio. This is acceptable to the petitioner and appears in line with spacing requirements.

6. We have carefully considered the proposal herein and believe that it would be in the public interest to assign Channel 252A to Mt. Vernon, Ohio. The proposed assignment would provide a divesity of views and programming being presented to listeners of the community as well as serving several nearby communities without local aural service.

7. Accordingly, pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, IT IS ORDERED, That effective September 15, 1980, the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, is amended for the city listed below, to read as follows:

City: Mt. Vernon, Ohio
Channel No.: 229, 252A.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

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

Federal Communications Commission.
Henry L. Baumann,
Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-24159 Filed 8-8-80; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-8; Notice 3]

Motor Vehicle Safety Standard No. 108

Correction

In FR Doc. 80-22444, appearing at page 49941 in the issue for Monday, July 28, 1980, make the following corrections:

(1) On page 49941, in the third column, in the second complete paragraph, in the fifth line, "§ 5.1.1.28" should read "§ 4.1.1.28".

(2) On page 49941, in the third column, following the table "Group Totals, CP", in amendatory paragraph number "2.", in the first line, "§ 5.1.1.28" should read "§ 4.1.1.28".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Fourth Rev. S.O. 1474]

Various Railroads Authorized To Use Tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Fourth Revised Service Order No. 1474.

SUMMARY: Fourth Revised Service Order No. 1474, is revised by granting additional authority to the Burlington Northern Inc., item 15, permitting an interim operation over lines in the states of North and South Dakota, and Montana.

From Linton, North Dakota (milepost 74.41) to Eureka, South Dakota (milepost 25.67), a distance of approximately 48.74 miles.

From Sappington, Montana (milepost 1464) to Three Forks, Montana (milepost 1450), a distance of approximately 14 miles.

EFFECTIVE DATE: 12:01 a.m., August 7, 1980, and continuing in effect until 11:59 p.m., September 30, 1980, unless modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

SUPPLEMENTARY INFORMATION:

Decided: August 5, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96-254, the Commission is authorizing various railroads to provide interim service over Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee), (MILW) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over MILW's lines pending the implementation of long-range solutions, this order permits carriers, previously providing service under various individual service orders to operate under authority of a single order which appendix describes their operations, and to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Fourth Revised Service Order No. 1474, is revised by granting additional authority to the Burlington Northern Inc., item 15, permitting an interim operation over lines in the states of North and South Dakota, and Montana.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations, also identified in the attachment, using MILW tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1474 Fourth Revised Service Order No. 1474.

(a) *Various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), as listed in Appendix A to this order, in order to provide interim service over the MILW.

(b) The Trustee shall permit the affected carriers to enter upon the property of the MILW to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96-254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced on the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the MILW Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of these operations over the MILW lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the MILW estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the MILW is deemed to be due to carrier's disability, the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via MILW, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with

pertinent authority conferred upon it by the Interstate Commerce Act.

(l) *Employees*—In providing service under this order interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Service Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., August 7, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien. Joel E. Burns not participating.

Agatha L. Mergenovich,

Secretary.

Appendix A—MILW Lines Authorized To Be Operated by Interim Operators

1. Chicago and North Western Transportation Company (CNW):
   A. At DeKalb, Illinois.
   B. At Appleton, Wisconsin.
   C. At Lake Preston, Mitchell, and Sioux Falls, South Dakota, and from Wolsey to but not including Aberdeen, South Dakota.
   D. At Miloma and Montgomery, Minnesota.
   E. Between Jefferson and Marathon, Jefferson and Waukee, and Manning and Huxley, Iowa.
   F. Between Merriam Park and Norwood, Minnesota.
2. Illinois Central Gulf Railroad Company (ICG):
   A. Between Cedar Rapids and Louisa, Iowa, including Marion, Iowa.
   B. In Sioux City, Iowa, from Pearl Street west approximately 1.5 miles to Tri-View Industrial area, and from Court Street to Virginia Street.
3. Seattle and North Coast Railroad Company (SNC):
   A. Between Port Angeles and Port Townsend, Washington, including Pier 27 and associated track in Seattle, Washington.
4. Cedar Rapids and Iowa City Railway Company (CIC):
   A. Between Middle Amana and Cedar Rapids, Iowa.
   B. Over the Chicago, Rock Island and Pacific Railroad Company trackage—4th Street Corridor—in Cedar Rapids, Iowa, originally operated by MILW under trackage rights.
   C. Over certain terminal and industry tracks in Cedar Rapids, Iowa, between milepost 86 and milepost 87 in order to serve the 6th Street Power Station.
5. Escanaba and Lake Superior Railroad Company (ELS):
   A. Between Iron Mountain, Michigan, and Green Bay, Wisconsin.
6. Consolidated Rail Corporation (CR):
   A. At Momence, Illinois.
7. Des Moines Union Railway Company (DMU):
   A. Between Des Moines (milepost 0) and Clive (milepost 8.5), Iowa; and between Clive (milepost 0) and Grimes, Iowa, (milepost 7), a total of 15.5 miles.
8. The La Salle and Bureau County Railroad Company (LSBC):
   A. From Mendota, Illinois, (milepost 69.5) to Ladd, Illinois, (milepost 82.1), a total of 12.6 miles.
9. Chicago, Madison and Northern Railway Company (CMN):
   A. Between Sparta, Wisconsin, (milepost 2.5) and Viroqua, Wisconsin, (milepost 34.7), a distance of approximately 32.2 miles.
   B. Between Janesville, Wisconsin, (milepost 10.0) and Mineral Point, Wisconsin, (milepost 90.7), a distance of approximately 80.7 miles.
10. Wisconsin Central Railroad Company (WCRC):
   A. Between Waukesha, Wisconsin, (milepost 20.5) and Milton Junction, Wisconsin, (milepost 61.5), a distance of approximately 41.0 miles.
11. Pend Oreille Valley Railroad, Inc., (POV):
   A. Between Newport, Washington, (milepost 43.6) and Metaline Falls, Washington, (milepost 104.7), a distance of approximately 61.1 miles.
12. St. Maries River Railroad Company (SMRR):
   A. Between St. Maries and Bovill, Idaho, the Bovill Branch, a distance of approximately 52 miles; and between St. Maries and Plummer, Idaho, a distance of approximately 19 miles.
13. Chippewa River Railroad Company (CRRC):
   A. Between Eau Claire, Wisconsin, and Durand, Wisconsin, a distance of approximately 33 miles.
14. Wisconsin and Southern Railroad Company (WSR):
   A. The following lines in the state of Wisconsin:
   (1) North Milwaukee (milepost 93.72) to Oshkosh (milepost 187.64).
   (2) Horicon (milepost 140.27) to Cambia (milepost 165.7).
   (3) Granville (milepost 100.5) to Menomonee Falls (milepost 104).
   (4) Iron Ridge (milepost 133) to Mayville (milepost 140).
   (5) Beaver Dam Junction (milepost 148.5) to Beaver Dam (milepost 150.5).
   (6) Fox Lake Junction (milepost 154.5) to Fox Lake (milepost 156.7).
   (7) Brandon (milepost 161.15) to Markesan (milepost 172.7).
15. Burlington Northern Inc. (BN)
   A. In Sioux City, Iowa, between milepost 509.77 and milepost 512.62, a distance of approximately 2.85 miles.
   * B. From Linton, North Dakota (milepost 74.41) to Eureka, South Dakota (milepost 25.67), a distance of approximately 48.74 miles.
   * C. From Sappington, Montana (milepost 1464) to Three Forks, Montana (milepost 1450), a distance of approximately 14 miles.

[FR Doc. 80-24051 Filed 8-8-80; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD13-80-07]

Safety Zone—Columbia River Mile 63 to 75, Longview, Wash.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations makes changes to the Safety Zone established in the Columbia River, Mile 67–70 on May 22, 1980 (45 FR 37187, June 2, 1980) and amended on June 19, 1980 (45 FR 46382, July 10, 1980).

EFFECTIVE DATE: This amendment is effective at 2500 PDT on July 29, 1980 and remains in effect until cancelled by the Captain of the Port, Portland, Oregon.

ADDRESSES: Comments should be mailed to: USCG Marine Safety Office, 6767 N. Basin Avenue, Portland, OR 97217.

FOR FURTHER INFORMATION CONTACT: LCDR Harry Dudley, Chief, Port Operations Department, Telephone Number (503) 221-6328, FTS 423-6328, Marine Safety Office, 6767 N. Basin Avenue, Portland, OR 97217.

SUPPLEMENTARY INFORMATION: This amendment to the Coast Guard's Safety Zone Regulations makes the following changes to the Safety Zone established in the Columbia River, Mile 67–70 on May 22, 1980 (CCGD13-80-04) and amended on June 19, 1980 (CCGD13-80-05):

a. Expands the Safety Zone to include Columbia River miles 63 through 75.

b. Provides that deep draft vessels proceeding with the current have the right of way.

c. Allows for transit through the dredged channel from one hour before

* Added

sunrise to one hour after sunset (except in reduced visibility).

d. Prohibits entering the zone when visibility anywhere in the zone is less than one statute mile.

e. Eliminates the requirement that deep draft vessels provide 24 hour advance notice to transit the zone.

f. Adds the requirement that all vessels using the dredged channel take a state or federally licensed pilot (except dredges, dredge support craft and crossing vessels).

These changes are a result of: (a) an increase in the portion of the river in which extensive dredging operations are being conducted to remove deposits left after the eruption of Mount Saint Helens; (b) the fact that tide and river flow conditions now make a reversal of the current flow in the area of the Safety Zone possible; (c) the increase in dredged depths make the use of special "windows" at high water unnecessary; (d) the season when fog is likely approaching; (e) the generally improved conditions in the area make the need for strict control of vessel movements unnecessary; and (f) the increased length of the portion of the channel which has a reduced width makes it imperitive that all vessels using the dredged channel including public vessels, be piloted by a person familiar with the area and the existing conditions.

This amendment is issued without publication of a notice of proposed rule making, and this amendment is effective less than 30 days from the date of publication because public procedures on this amendment are impractical due to the nature of the situation and there is not sufficient time to allow for public comment. Although this amendment is published as a final rule, public comment is nevertheless desirable to ensure that the requirements concerning this amendment are workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to the address stated above. Commentors should include their names and addresses, identify the docket number for this amendment (CCGD13-80-07), and give their reasons for the comments. Based upon comments received, this regulation may be revised.

DRAFTING INFORMATION: The principal person involved in the drafting of this document is LCDR Harry H. Dudley, Chief, Port Operations Department, Marine Safety Office, Portland, Oregon.

In consideration of the above, Part 165 of Title 33, Code of Federal Regulations, is amended by changing section 165.1303 to read as follows: Section 165.1303 Columbia River, Mile 63 through Mile 75, Longview, Washington.

(a) The following area is a safety zone—the Columbia River Mile 63 through Mile 75, including the original channel and the waters on either side of the channel to shoreline. This zone is effective 24 hours per day beginning at 2400 PDT on July 29, 1980 and will continue in effect until cancelled.

(b) The following Special Regulations apply to DEEP DRAFT VESSELS (i.e., those vessels which must remain in the navigable channel because of their draft) entering the safety zone.

(1) TRANSIT within the above safety zone is limited to the period from one hour before sunrise to one hour after sunset.

(2) Upbound and downbound vessels will not be allowed to transit through the zone at the same time.

(3) Vessels approaching the zone shall communicate directly with the dredging vessels on scene via channel 13 as far in advance as possible in order that arrangements may be made for a safe passage.

(4) When an upcurrent (traveling in the opposite direction from the current) vessel is approaching the safety zone it shall determine both visually and by radio what downcurrent (traveling in the same direction as the current) vessels are approaching the safety zone. The upcurrent vessel shall not enter the safety zone unless it can complete the transit and clear the zone without hindering the passage of the downcurrent vessel, the downcurrent vessel being entitled to the right-of-way. During slack water the downbound vessel is deemed to be the downcurrent vessel.

(5) Vessels approaching the zone shall determine both visually and by radio communications with other vessels in the area the visibility conditions throughout the safety zone and shall not enter the zone if the visability anywhere in the zone is less than one statute mile.

(6) All vessels transiting the dredged channel in the safety zone, except those vessels owned or contracted by the U.S. Army Corps of Engineers and involved in the dredging operations in the safety zone, shall take on a state or federally licensed pilot authorized to operate on the portion of the Columbia River within the zone.

(c) The following special regulations apply to SHALLOW DRAFT VESSELS (i.e., those vessels which because of their draft need not remain in the dredged channel in order to make a safe transit through this zone) entering the zone—

(1) Transit through the safety zone is not limited to particular hours, however, transit shall be made utilizing that area of the Columbia River which is to the *South* (i.e. Oregon side) of the original 40 foot channel except as provided in paragraphs (2), (3), and (4).

(2) Shallow draft vessels which desire to use the dredged portion of the original channel shall comply with all regulations that apply to deep draft vessels including the requirement to take on a state or federally licensed pilot except as provided in paragraph (4).

(3) Vessels entering or departing the zone from the Cowlitz River or Carrolls Channel shall remain to the north (i.e. Washington side) of the original 40 foot channel and shall not proceed east of the western tip of Cottonwood Island while north of the dredged channel except as provided in paragraph (4).

(4) If it is necessary for a vessel to cross the dredged channel, that vessel shall insure that no deep draft vessels or dredges will be hampered by its passage and shall then proceed across the dredged channel as quickly as safely possible. Vessels crossing the dredged channel are not required to take on a pilot.

(5) Vessels required to have bridge to bridge radio telephone approaching the zone shall communicate directly with the dredging vessels on scene via channel 13 as far in advance as possible in order that arrangements may be made for a safe passage through the safety zone.

(d) The following Special Regulations apply to ALL VESSELS entering the safety zone regardless of their draft—

(1) No vessel may anchor within the safety zone without the permission of the Captain of the Port, Portland, Oregon unless, in the opinion of the Master or Pilot, further transit is considered unsafe. In that event the Captain of the Port, Portland, Oregon shall be notified immediately.

(2) Recreational vessels may not use the zone except to transit. This provision does not apply to the waters to the south (Oregon side) of Lord Island, Slaughters Dike, Dibble Dike, and Sandy Island.

(92 Stat. 1475 (33 U.S.C. 1225); 49 CFR 1.46(n)(4))

Dated: July 29, 1980.

G. K. Greiner, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, USCG Marine Safety Office, 6767 N. Basin Avenue, Portland, OR 97217.

[FR Doc. 80-24373 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 45, No. 156
Monday, August 11, 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 Ch. 1

[Docket No. 20289; Petition Notice No. PR 80-8A]

Petition for Rulemaking of Air Transport Association of America; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for submission of public comments on Petition Notice 80-8 relating to flight attendant seats until October 15, 1980. This action is in response to a petition indicating that the Boeing Company, who is affected by the proposed regulations, needs additional time in which to prepare and submit its comments.

DATES: Comments on Petition Notice 80-8 must be received on or before October 15, 1980.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 20289; 800 Independence Avenue, SW., Washington, D.C. 20591; or be delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 20289. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman C. Miller, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION: In Petition Notice 80-8, published in the federal Register on May 19, 1980, the FAA published the Air Transport Association of America (ATA) petition to amend § 121.311(j) of the Federal Aviation Regulations (FAR) to allow an extension, not to exceed March 6, 1982, of the compliance time for § 121.311(f) concerning flight attendant seats, provided the Part 121 certificate holder submits an acceptable schedule of compliance. The original comment period closed on July 14, 1980.

On July 3, 1980, the FAA issued General Notice N8000.200, Subject: Guidance to Assist Compliance with FAR Amendments 25-51 and 121-155 effective March 6, 1980, regarding flight attendant seats. On July 15, 1980, that general notice was revised by General Notice N8000.201.

On July 14, 1980, the Boeing Company petitioned for an extension of the time for comments on Petition Notice 80-8. The petition states, in pertinent part, that the general notices did not allow enough time to permit development of definitive cost and schedule impact assessment by the July 14, 1980, closing date for comments on the ATA petition. To provide adequate time for the development of necessary data, the petitioner requested that the comment period be extended to October 15, 1980.

The FAA has reviewed this request and has determined that a limited extension of the comment period would afford the public an additional opportunity to furnish comments that should be considered in the development of the disposition of the ATA petition. In view of this, and consistent with the FAA's desire to ensure full public participation in its regulatory actions, it is concluded that it is in the public interest to extend the comment period to October 15, 1980.

Accordingly, the comment period for Petition Notice 80-8 is extended to October 15, 1980.

(Secs. 305, 306, 307, 313(a), 601, and 1110, Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1347, 1348, 1354(a), 1421 and 1522); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.45 and 1165))

Issued in Washington, D.C., on August 5, 1980.

John H. Cassady III,
Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Federal Aviation Administration,
Office of the Chief Counsel,
Attention: Rules Docket (AGC-204),
Room 916, Docket No. 20289,
800 Independence Avenue SW,
Washington, D.C.

Subject: Petition for Rule Making of Air Transport Association of America, Request for Additional Information.

Reference: FAA General Notice N8000.200, dated July 3, 1980—Subject: Guidance to Assist Compliance with FAR Amendments 25-51 and 121-155 Effective March 6, 1980, Regarding Flight Attendant Seats.

Gentlemen: The referenced General Notice was issued too recently to permit definitive cost and schedule impact assessment by the July 14, 1980 deadline for comments on the subject petition.

Our preliminary evaluation of the referenced Notice leads us to the following conclusions:

1. The wording of the referenced Notice is ambiguous and subject to varying interpretations. Significant areas of ambiguity include definition of "passenger aisles and aisle extensions . . . through galley/stowage areas", the extent of the requirement for "multiple latch devices" in "all other galley/stowage areas or serving carts", the precise definition of seat dimensional criteria, and the wide range of possible decisions with regard to the "direct view" criteria.

2. The impact of the attendant seat rules as defined by the referenced Notice is significantly more severe than we had assumed to date. Literal interpretation of the referenced guidance material will impose a severe economic and financial penalty on our present programs. Hardware redesign will encompass not only seats and galleys, but aircraft structure as well.

3. The retrofit hardware requirements, by the previous interpretation of the rules, consisted essentially of the backrests, headrests and shoulder harnesses required to configure forward facing seats to the aft facing seat criteria of TSO-C39A. Accordingly, we advised our customers and the FAA that the first of such kits would be available in 60 to 80 weeks.

4. The compliance status of this hardware is now in question. Therefore, we are suspending, effective immediately, all design, fabrication and procurement activities relative to the new attendant seat rules pending clarification and resolution by the FAA of the specific requirements for compliance. The hardware availability dates can be exepcted to slide accordingly.

Pursuant to the above, we request an extension of the comment period to October 15, 1980. This will allow time for preparation

of detailed cost and schedule impact data, provided that we have clarification of the rules by August 15, 1980.

Very truly yours,
the Boeing Co.
H. J. Badger,
Manager, Airworthiness and Safety, Boeing Commercial Airplane Company.

[FR Doc. 80-24062 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Ch. I

Proposed Alteration of Terminal Control Area, Kansas City, Mo.; Informal Airspace Meeting No. 1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: The purpose of this meeting is to discuss a proposed alteration of the Kansas City, Missouri, Terminal Control Area (TCA), Docket 18605/80-WA-6. The proposal, if adopted, would reduce the size of the TCA by eliminating a substantial portion of it between 10 miles and 20 miles. Comments on the potential economic and environmental effects are also invited. Attendance is open to the interested public, but is limited to the space available.

With the approval of the chairman, members of the public may present statements at the meeting. Written statements in addition to, or in lieu of, oral presentations will be accepted. These should be submitted to the chairman or as directed at the meeting.

DATE: 7:00 p.m., Tuesday, October 14, 1980.

ADDRESS: Penn Valley Community College Auditorium, 3201 Southwest Trafficway, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 E. 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

Issued in Kansas City, Missouri, on July 22, 1980.

William H. Pollard,
Chief, Air Traffic Division, FAA, Central Region.

[FR Doc. 24129 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-36]

Airworthiness Directive; DeHavilland DHC-4 and 4A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an airworthiness directive applicable to DHC-4 and 4A type airplanes equipped with Pratt & Whitney Aircraft (PWA) Twin Wasp D-5 and R-2000-7M2 engines using left-hand rotation magneto drives. The proposal requires the replacement of the drives with right-hand drives. This proposal results from reports of power losses due to failures of the left-hand drives.

DATE: Comments must be received on or before October 9, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Engineering and Manufacturing Branch, AEA-210, Eastern Region, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. The docket may be examined at the following location: FAA, Office of Regional Counsel, AEA-7, Federal Building, J.F.K. International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: J. Kiselica, Propulsion Section, AEA-214, Flight Standards Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. (212) 995-2894.

SUPPLEMENTARY INFORMATION: Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. All communications received on or before October 9, 1980, will be considered before action is taken on the proposed amendment. The proposals 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. A report summarizing each FAA public contact concerned with the substances of the proposed AD will be filed in the docket. Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Engineering and Manufacturing Branch, AEA-210, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, New York 11430, or by calling (212) 995-2842.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 39.13 of Part 13 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

Applies to all DeHavilland DHC-4 and DHC-4A aircraft equipped with Pratt & Whitney Aircraft Twin Wasp D-5 and R-2000-7M2 engines incorporating left-hand magneto drive arrangement.

Compliance required within the next 1400 hours in service after the effective date of this AD unless already accomplished.

To preclude failure of the left hand magneto drive mechanism, incorporate the right-hand magneto drive and associated parts as described in Pratt & Whitney Aircraft Service Bulletin No. 1756 dated September 13, 1963, or approved equivalent instructions and parts.

The Twin Wasp D-5 and R-2000-7M2 engines so modified must be redesignated as noted in Section C of the Pratt & Whitney Aircraft Service Bulletin No. 1756, or an approved equivalent instruction.

All equipment instructions and parts must be approved by the Chief, Engineering & Manufacturing Branch, FAA Eastern Region.

(Pratt & Whitney Aircraft Service Bulletin No. 1756 pertains to this subject.)

(Sec. 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 Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Jamaica, New York, on July 29, 1980.

Lonnie D. Parrish,
Acting Director, Eastern Region.

[FR Doc. 80-24059 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 45

[Docket No. 20424; Notice No. 80-11]

Size of Registration Marks

Correction

IN FR Doc. 80-22843, appearing at page 50810 in the issue for Thursday, July 31, 1980, make the following corrections on page 50813:

(1) In § 45.22(b), in the fifth line, "21.19(g)" should read "21.191(g)";

(2) In § 45.29(b)(1)(iii), in the fourth line, "2.191(d)" should read "21.191(d)";

(3) In § 45.29(b)(2), in the second line, the word "lest" should read "least".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 80-CE-19]

Transition Area—Joplin, Mo.; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the transition area at Joplin, Missouri, by amending the NDB approach to the Joplin, Missouri Municipal Airport, utilizing the Lunns NDB (Non-Directional Radio Beacon) as a navigational aid.

DATES: Comments must be received on or before September 18, 1980.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before September 18, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received 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 NPRM by submitting a request to the Federal Aviation Administration Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR Section 71.181) by altering the transition area at Joplin, Missouri. To enhance airport usage, the Federal Aviation Administration proposes to amend the NDB approach to the Joplin, Missouri Municipal Airport, utilizing the Lunns NDB as a navigational aid. The amendment of the instrument approach procedure based on this navigational aid entails alteration of the transition area at Joplin, Missouri, at and above 700 feet above ground level (AGL) to accommodate aircraft executing this amended instrument approach procedure. The intended effect of this action is to ensure segregation of aircraft the approach procedures at Joplin under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by altering the following transition area:

Joplin, Mo.

That airspace extending upward from 700' above the surface within an 8-mile radius of Joplin Municipal Airport (Latitude 37°09'05" N; Longitude 94°29'55" W), within 3 miles each side of the Joplin NDB (LUNNS LOM, Latitude 37°12'11" N, Longitude 94°33'30" W) 306° bearing, extending from the 8-mile radius area to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (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.

Issued in Kansas City, Missouri, on July 31, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-24086 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-EA-41]

Proposed Designation of Transition Area; Broadway, N.J.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a Broadway, N.J., Transition Area over the Broadway VORTAC, Broadway, N.J. This proposal will lower the controlled airspace over the VORTAC to 700 feet NSL. This designation will permit the use of a lower minimum enroute altitude (MEA) on airway Victor 232, east of the VORTAC.

DATES: Comments must be received on or before August 14, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace & Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, New York 11430. The docket may be examined at the following location: FAA, Office of Regional Counsel, AEA-7, Federal Building, J.F.K. International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Morris Rosen, Airspace & Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International

Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

Comments Invited

Interested parties 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, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. All communications received on or before August 14, 1980, will be considered before action is taken on the proposed amendment. The proposals 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 Chief, Airspace & Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, New York 11430, or by calling (212) 995-3391.

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 G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a Broadway, N.J., Transition Area. The VORTAC is at present overlaid by a 1200-foot area which will be lowered to 700 feet.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. Amend Section 71.181 of Part 71, Federal Aviation Regulations by designating a 700-floor transition area at Broadway, New Jersey as follows:

"Broadway, N.J.

"That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Broadway, New Jersey VORTAC".

(Sec. 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348(a)]] and of Section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)]; and 14 CFR 11.65)

NOTE.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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 operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 22, 1980.

Murray E. Smith,

Director, Eastern Region.

[FR Doc. 80-24024 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Ch. II

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Agency for International Development.

ACTION: Publication of semiannual agenda of regulations under review.

SUMMARY: This notice contains the 1980 second half semiannual schedule of existing AID regulations to be reviewed by the Agency. The list is published pursuant to Section 2(a) of Executive Order 12044.

FOR FURTHER INFORMATION CONTACT: Joseph R. Ellis, Room 113, SA-8, Office of Management Planning, Agency for International Development, Washington, D.C. Telephone (202) 235-2386.

SEMIANNUAL AGENDA OF REGULATIONS:

This agenda of regulations under review by AID is published semiannually pursuant to Section 2(a) of Executive Order 12044. The following regulations are under review:

1. The Regulations governing the registration of agencies for voluntary foreign aid (22 CFR Part 203) are being revised, specifically the definition of Private Voluntary Organizations (PVOs) and the conditions for their registration. A notice will be published in the Federal Register for public comment. Inquiry regarding the regulations on PVO registration may be directed to: Robert S. McClusky, Chief, Public Liaison Division, Bureau for Private and Development Cooperation, Agency for International Development, Washington, D.C. 20523, Telephone (202) 235-1844.

2. Regulations governing nondiscrimination in Federally-assisted programs of A.I.D. (22 CFR Part 209) are being revised. It was so announced in the February semiannual agenda. The review period is being extended into the second half of 1980. Inquiries regarding these Regulations may be directed to: Kenneth E. Fries, Office of the General Counsel, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-8218.

3. Regulations governing the collection of civil claims by the Agency for International Development (22 CFR Part 213) are being reviewed. Inquiry regarding these Regulations may be directed to: Bruce K. Birnberg, Chief, Accounting Systems, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-0162.

4. Regulations covering the implementation of the Privacy Act of 1974 (22 CFR Part 215) are being reviewed. Inquiry regarding these Regulations may be directed to: Arnold H. Dadian, Public Inquiry Staff, Office of Public Affairs, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-1850.

In accordance with the procedural steps outlined in Section 2(c) of Executive Order 12044, A.I.D. will give the public full opportunity to comment on the review and any proposed revisions to the Regulations listed above.

Dated: July 31, 1980.

D. G. MacDonald,

Assistant Administrator, Bureau for Program and Management Services.

[FR Doc. 80-24112 Filed 8-8-80; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 171, 172, 173, 177, and 182

Indian Mineral Development Regulations

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: Following is a new revision of proposed rules published on April 5, 1977, in 42 FR 18083, governing mineral development on Indian lands. With the exception of rules governing coal operations, 25 CFR Part 177 Subpart B, 42 FR 63395 (December 16, 1977), and revisions of rules governing oil and gas

leasing of Osage reservation lands, 25 CFR Part 183, 43 FR 8135 (February 28, 1978), the proposed rules were never promulgated as final rulemaking. There is, nevertheless, a continuing need for updated rules to govern increasing Indian mineral development. Because of the three-year interval since the last published comprehensive proposal, those proposed rules, with some substantive revisions, are being republished for further public comment.

DATE: Comments must be received on or before October 10, 1980.

ADDRESS: Send comments to Director, Office of Trust Responsibilities, Attn: Code 241, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Tim Vollmann or David E. Jones, Office of the Solicitor (202) 343-9331; or Tom Riggs, Bureau of Indian Affairs, (202) 343-3722.

SUPPLEMENTARY INFORMATION: The general outline of this proposal follows that of the proposed rules published in 1977. Numerous public comments were received and many changes have been made in response to those comments.

Like the 1977 proposal, these proposed rules would combine rules for the review and approval of mineral development contracts on both tribal and allotted lands in Part 171. Part 172 would be revoked. Oil and gas development is again proposed to be set out in a separate Part 182. As was provided in the 1977 proposal, Part 173 would be revoked. This is in acknowledgement of the fact that the Crow Tribe is now effectively subject to the same statutory authorities affecting Indian mineral development which apply to most other tribes, as a result of the Act of May 17, 1968 (82 Stat. 123).

Proposed Part 177 provides for mining and exploration plans, performance bonds, conservation, and other operational aspects of mining on Indian lands, including provisions for compliance with the National Environmental Policy Act. Subpart B will continue to deal with performance standards for coal operations subject to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1201 *et seq.*, until they are superseded by permanent program regualtions promulgated by the Office of Surface Mining. The permanent rules will be designed to implement those provisions of SMCRA which began to apply to Indian lands as of February 3, 1980, as required by SMCRA Section 710(d), 30 U.S.C. § 1300(d). Coal is excluded from Part 171 on entering into contracts as well. The permanent program regulations will cover coal contracting.

The principal authors of this proposal are Richard N. Wilson, formerly of the Bureau of Indian Affairs and now Special Assistant to the Assistant Secretary—Energy and Minerals; Tim Vollmann and David E. Jones, Office of the Solicitor; and David Baldwin, Osage Agency, Bureau of Indian Affairs, and now Chief of the Division of Energy and Minerals, BIA Office of Trust Responsibilities, in Lakewood, Colorado.

It has been determined that these proposed rules are not "significant" within the meaning of 43 CFR Part 14 because they are designed primarily to clarify existing policies and procedures governing the development of Indian-owned minerals, to eliminate out-dated regulatory requirements, and to insure compliance with current law. While some new recordkeeping and reporting requirements would be imposed by these proposed rules on mineral developers and lessees, these requirements are viewed as essentially equivalent to the level of recordkeeping which would be expected in most any mineral development venture. It has also been determined that no regulatory analysis is required in connection with this proposal.

Pursuant to the authority of section 4 of the Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d); the Act of March 3, 1909 (Stat. 783, 25 U.S.C. 396); the Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415); and the Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380), it is proposed that:

Parts 172 and 173 [Revoked]

1. Parts 172 and 173 of 25 CFR be revoked;

2. Part 171 of 25 CFR be revised as follows:

PART 171—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN MINERAL LANDS

Sec.

171.1 Purpose and scope.
171.2 Definitions.
171.3 Authority to contract.
171.4 Procedures for awarding contracts and types of contracts authorized.
171.5 Duration of contracts.
171.6 Approval of contracts.
171.7 Economic considerations.
171.8 Performance bonds.
171.9 Approval of amendments to contracts.
171.10 Responsibilities.
171.11 Recordkeeping and inspection.
171.12 Assignments; overriding royalties.
171.13 Unitization.
171.14 Enforcement of orders.
171.15 Penalties.
171.16 Appeals.

Authority. Sec. 4, Act of May 11, 1938 (52 Stat. 848, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415); Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477).

§ 171.1 Purpose and scope.

(a) The regulations in this part govern contracts for the prospecting for and mining of Indian-owned minerals, other than oil, gas and coal. These regulations are intended to ensure that Indians desiring to have their mineral reserves developed receive, at least, fair market value for their ownership rights; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is thoroughly considered and possibly minimized; and to allow Indian mineral owners to enter into contracts which reserve to them the responsibility for overseeing the development of their mineral reserves.

(b) The regulations of the United States Geological Survey published in 30 CFR Part 231, are applicable to contracts governed by this part, except for coal, where not inconsistent with the regulations in this part.

(c) The regulations in this part do not apply to leasing and mining governed by the regulations in 25 CFR Parts 174, 175, and 176.

(d) The regulations in this part shall become effective and in full force 30 days after the date of their publication in the Federal Register, and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, that no regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract. All former regulations governing the leasing of tribal and allotted lands for mining purposes are superseded by the regulations in this part.

§ 171.2 Definitions.

As used in the regulations in this part:

(a) "Bureau" means the Bureau of Indian Affairs.

(b) "Commissioner" means the Commissioner of Indian Affairs, or his/her authorized representative.

(c) "Contract" means any written contract or legally-binding agreement, and is not limited in its meaning to leases, permits, or licenses.

(d) "Gas" means any fluid, either combustible or noncombustible, which is produced from a natural state from the earth and which maintains a

gaseous or rarefied state at ordinary temperature and pressure conditions.

(e) "Indian mineral owner" means:

(1) An Indian tribe, band, nation, community, group, colony, or pueblo with an organization recognized by the Secretary, or an agency or subdivision thereof; or

(2) an individual Indian; who owns trust or restricted minerals or mineral rights, or is entitled to the proceeds or benefits or the mining or development of minerals, title to which is held by the United States,

(f) "Indian-owned minerals" means:

(1) Minerals, title to which is held by the United States in trust for the benefit of an Indian mineral owner; or

(2) Minerals in which an interest is held by an Indian mineral owner subject to federal restrictions against alienation or encumbrance.

(g) "Individual Indian mineral owner" means an Indian mineral owner as defined in paragraph (e)(2) of this section.

(h) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil, gas and coal, and also includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, and silt.

(i) "Mining" means the science, technique and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals. However, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay, or silt is the subject mineral, an enterprise is mining only if the sale and removal of such mineral exceeds 250 cubic yards.

(j) "Mining Supervisor" means the Area Mining Supervisor, United States Geological Survey, having responsibility for the area in which the property covered by a contract under this part is located.

(k) "Oil" means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a contract to mine for Indian-owned minerals.

(m) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a contract to prospect or explore for Indian-owned minerals.

(n) "Secretary" means the Secretary of the Interior or his/her authorized representative.

(o) "Superintendent" means the Bureau Agency Superintendent or his/her authorized representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office, where it shall mean the Bureau Area Director or his/her authorized representative.

(p) "Tribal mineral owner" means an Indian mineral owner as defined in paragraph (e) (1) of this section.

§ 171.3 Authority to contract.

(a) Contracts authorizing prospecting for or mining of Indian-owned minerals may be entered into by a trial mineral owner through its governing body, by an individual Indian mineral owner, or by a group of Indian mineral owners acting jointly through an association or entity in which they all participate. All such contracts, as well as amendments thereto, shall be subject to the approval authority described in § 171.6 of this part, and shall not be valid until such approval has been secured. Indian mineral owners are encouraged to consult with the Superintendent and the Mining Supervisor during the negotiation of a mineral contract.

(b) An Indian mineral owner may at any time seek technical or other advice or assistance regarding development of Indian-owned minerals from the Superintendent, Mining Supervisor, or the representatives of other appropriate federal agencies such as the Bureau of Mines, who shall provide such advice or assistance upon request, where available resources permit.

(c) The Superintendent may himself/herself execute contracts authorizing prospecting for or mining of Indian-owned minerals on behalf of an individual Indian mineral owner only under the following circumstances:

(1) Where the individual Indian mineral owner of record is deceased and the heirs to or devisees of any interest in the minerals have not been determined;

(2) Where there are multiple individual Indian mineral owners in an undivided tract which is sought for mining or prospecting, and

(i) One or more owners desires to enter into a contract pursuant to this part but the remainder of the owners cannot be located, or

(ii) None of the owners can be located;

(3) Where there are multiple individual Indian mineral owners in an undivided tract sought for mining or prospecting, and

(i) The tract is not in use by any of the owners, and

(ii) A majority of the ownership interests in that tract has expressed in writing a desire for development of the minerals, and

(iii) The owners, after due deliberation, are unable to reach unanimous agreement on a contract within three months after a potential operator or prospector has filed with the Superintendent an offer to contract, and the Superintendent has taken all reasonable steps to notify the owners of that offer; or

(4) Where the individual Indian mineral owner of a majority ownership interest in an Indian mineral tract is incapacitated by reason of minority, or has been determined to be mentally incompetent; *Provided,* that in all such circumstances the procedures in § 171.4(c) of this part must be followed.

(d) The Superintendent may not otherwise award any contracts affecting rights in Indian-owned minerals unless he/she has been requested in writing to do so by the Indian mineral owner.

§ 171.4 Procedures for awarding contracts and types of contracts authorized.

(a) An Indian mineral owner may utilize the following procedures, among others, in entering into a mining or prospecting contract. A contract may be entered into through competitive bidding, negotiation, or a combination of both, and may relate to prospecting, mining, or both, subject to the restrictions of § 171.7(c) of this part.

(b) The Indian mineral owner may also request the Superintendent to undertaken the preparation, advertisement, negotiation, and/or award of such a contract on his/her behalf. If so requested, the Superintendent shall undertake such a responsibility in accordance with the procedure hereinafter described in this section. If application is made to the Superintendent by a potential prospector or operator for a contract to prospect or mine Indian-owned minerals, the Superintendent shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternative open to him/her, and that he/she may decline to permit any prospecting for or mining of his/her minerals.

(c) When the Superintendent exercises his/her authority to enter into contracts of behalf of individual Indian mineral owners pursuant to § 171.3(c) of this part, or when he/she has been requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding

the contract, he/she shall offer contracts to the highest responsible qualified bidder at a public sale subject to the following procedures, unless he/she determines in accordance with § 171.7(a)(4) of this part that the highest return can be obtained on the minerals by other methods of contracting (such as negotiation):

(1) Contracts shall be advertised for a bonus consideration under sealed bids or oral auction, or a combination of both, and a notice of such advertisements shall be published at least 60 days in advance of such sale or such longer time as is necessary to achieve optimum competition;

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists, and after consultation with the Mining Supervisor, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Superintendent reserves the right to reject any or all bids, and that acceptance of the contract bid by or on behalf of the Indian mineral owner is required;

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount of not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful;

(4) If no bid is received which meets the criteria of § 171.6 of this part or if the successful bidder fails to complete the contract, or if the Indian mineral owner refuses the highest bid, the Superintendent may readvertise the contract, or if deemed advisable, he/she may attempt to award the contract by private negotiations, provided that he/she shall not award a contract by private negotiations without the written concurrence of the Indian mineral owner unless he/she is exercising his/her authority under § 171.3(c) of this part;

(5) A successful bidder must, within 30 days after notification of the bid award, remit to the Superintendent the balance of the bonus, the first year's rental, a $25 filing fee, his/her share of the advertising costs, and file with the Superintendent all required bonds. The successful bidder shall also file the contract in completed form at that time. However, for good and explicit reasons the Superintendent may grant an extension of time of up to 30 days for filing of the contract. Failure on the part of the bidder to comply with the foregoing will result either in forfeiture of the required initial payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner, or, at the Indian mineral owner's option, readvertisement of the forfeited lease with the defaulting bidder required to pay any difference between his/her bid and the high bid received at the subsequent sale, plus the cost of the advertising for such subsequent sale. The readvertisement option must be reflected in the original advertisement to be effective.

(d) When the Indian mineral owner has requested the Superintendent to offer a contract to the highest responsible qualified bidder in accordance with subsection (c) of this section, the Superintendent shall advise the Indian mineral owner of the results of the bidding, and shall not award the contract to the successful bidder until the consent of the Indian mineral owner has been obtained.

(e) When a contract has been entered into by methods other than the competitive bid procedure (whether by the Superintendent or by the Indian mineral owner), or when a contract contains provisions not appearing in an approved Bureau contract form, the contract shall be submitted to the local Field or Regional Solicitor's Office for review for legal sufficiency, prior to approval pursuant to § 171.6 of this part.

§ 171.5 Duration of contracts.

(a) No mining contract with an Indian mineral owner shall exceed a term of ten years and as long thereafter as minerals are produced in paying quantities. All provisions in contracts governing their duration shall be measured from the date of approval pursuant to § 171.6 of this part, unless otherwise provided in the contract.

(b) Where a mining contract specifies a term of years and "as long thereafter as minerals are produced in paying quantities" or equivalent phrase, the term "paying quantities" shall mean: That quantity of recovered minerals which produces during the fiscal year of the contract a profit to the operator over and above the total cost of: Extraction (exclusive of exploration), processing (including beneficiation), and handling to the point of sale; all salaries and employee expenses incident to such extraction, processing, and handling; and business licenses, repairs of equipment, and transportation.

(c) In order to continue production in paying quantities the operator must not suspend mining operations at any time for a period of 30 days or more without the prior express written approval of the Superintendent unless production is impossible as a result of an act of God or some other cause clearly beyond the operator's control.

(d) At the expiration of the primary term of the mining contract and at the end of each fiscal year thereafter until expiration of the contract, the operator shall present sufficiently detailed written evidence to the Indian mineral owner and to the Superintendent to demonstrate that minerals are being produced in paying quantities.

§ 171.6 Approval of contracts.

(a) A prospecting contract or a mining contract shall be approved by the Superintendent if he/she determines in writing that the following conditions are met:

(1) The contract provides a fair and reasonable remuneration to the Indian mineral owner;

(2) The contract does not have adverse cultural or environmental consequences to the Indian lands and community affected sufficient to outweigh its benefits to the Indian mineral owner; and

(3) The contract complies with the requirements of this part, Part 177 of this title, all other applicable regulations, the provisions of applicable federal law, and applicable tribal law where not inconsistent with federal law.

Such determinations must also be made prior to the award of any contract pursuant to § 171.4(c) of this part.

(b) The determination required by subsection (a) of this section shall be based on the written findings required by § 171.7(a) of this part and § 177.4 of Part 177 of this title.

(c) "Fair and reasonable remuneration" within the meaning of paragraph (a)(1) of this section means a return on the Indian-owned minerals:

(1) not less than that received by non-Indian mineral owners in comparable contemporary contractual arrangements for the development of similar minerals,

(2) not less than that received by the Federal Government in comparable contemporary contractual arrangements for the development of similar federally-owned minerals, and

(3) not less than the minimum rental and royalty payments which would be applicable to those minerals were they federally-owned.

A determination of what constitutes a comparable contemporary contractual arrangement is within the sound discretion of the Commissioner.

§ 171.7 Economic considerations.

(a) To aid in the Superintendent's consideration of the criteria in § 171.6 of this part, he/she shall prepare a written economic assessment of the contract with the assistance of the Mining Supervisor. Such assessment shall

include the following findings to the extent of their applicability to mining or prospecting:

(1) Assurances in mining contracts that minerals will be mined with appropriate diligence;

(2) The availability of water in the amount needed for purposes of operations under the contract;

(3) The adequacy of production royalties or other form of return on the minerals considering the history and the economics of the mineral industry;

(4) If a method of contracting is used other than the competitive bid procedure of § 171.4(c) of this part, whether that method clearly provides the Indian mineral owner with a greater share of the return on the development of his/her minerals than he/she might otherwise obtain through competitive bidding;

(5) The adequacy of payment and enforcement provisions in the contract;

(6) Provisions for the training and preferential employment of the local Indian labor force;

(7) The size and shape of the area to be mined (the mineral tract shall be contained in a reasonable compact body and the acreage leased must not exceed that necessary to promote the orderly development of mineral resources); and

(8) the reputation of the prospector or operator for responsible and diligent development of mineral resources. Contracts shall not be entered into primarily for purposes of speculation.

Information required to be incuded in such an assessment may be incorporated therein by reference to attached documentation. Such an assessment shall be regarded as an intra-agency memorandum, but shall be made available to the Indian mineral owner in all cases.

(b) In all cases where the mineral estate has been severed from the surface estate, the Superintendent shall seek the counsel of the Solicitor's Office and shall then advise the Indian mineral owner in writing of any potentially adverse legal and economic consequences of such severance. At his/her discretion, the Superintendent may postpone approval of a contract until problems of severed ownership have been resolved. Prior to approval, the Superintendent shall insure that attempts have been made to provide all users and owners of the surface estate with the best practicable notice of the impending operation.

(c) No prospecting contract which also confers mining rights or includes an exclusive option on such rights shall be approved. A prospecting permit containing a right of first refusal shall be subject to special scrutiny prior to exercise of the approval power. If it appears that the Indian mineral owner will be able to obtain a measurably more favorable return on his/her minerals by means of a contract or contracts not containing provisions for such a right, then a prospecting contract granting such a right shall not be approved.

(d) In aid of his/her consideration of whether approval should be given to a contract, the Superintendent may request that any party thereto submit additional information regarding his/her financial structure or experience in mining or any other relevant matter. Failure to supply such information may be regarded as a ground for declining to grant approval.

§ 171.8 Performance bonds.

The prospector or operator shall furnish a bond to secure performance on each contract in accordance with § 177.6 of Part 177 of this title.

§ 171.9 Approval of amendments to contracts.

(a) Amendments to or modification of contracts approved pursuant to § 171.6 of this part shall be approved by the Superintendent if the entire contract after amendment or modification meets the conditions of that section. The Superintendent shall review assessments compiled pursuant to subsection (a) of § 171.7 of this part and § 177.4 of Part 177 of this title in light of the amendment or modification, and shall revise such assessments, when appropriate.

(b) An amendment to or modification of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Superintendent if the entire contract meets the conditions of § 171.6 of this part. When appropriate, the Superintendent shall prepare a written economic assessment of the amendment or modification pursuant to subsection (a) of § 171.7 of this part, and an environmental assessment pursuant to § 177.4 of Part 177 of this title. Whenever an amendment or modification of a contract increases the acreage covered by the contract, a written economic assessment of the amendment or modification shall be required.

(c) The exercise of preference rights or options to contract for the mining of Indian-owned minerals, which options or rights were conferred but not exercised prior to the effective date of these regulations, shall be approved by the Superintendent pursuant to § 171.6 of this part if the contract meets the conditions of that section.

(d) Amendments and modifications to contracts for the prospecting or the mining of Indian-owned minerals shall not be approved by the Superintendent without the consent of the Indian mineral owner, except in the circumstances prescribed by § 171.3(c) of this part.

§ 171.10 Responsibilities.

(a) The Mining Supervisor shall be responsible for advising the Superindentent, the tribal mineral owner, and, upon request, individual Indian mineral owners regarding development and conservation of Indian mineral resources. He/she is also responsible for all geologic, engineering, and economic value determinations incident to contracts for the development of Indian-owned minerals, including ascertaining and recording the amount and value of production, and determining and recording rental, royalties, or other economic returns due and paid.

(b) The Mining Supervisor shall investigate all claims of the Indian mineral owner regarding the failure of a prospector or an operator to comply with the provisions of this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, or the orders of the Mining Supervisor.

(c) In addition to the other responsibilities under this part and Part 177 of this title, the Superintendent is responsible for promptly transmitting to a tribal mineral owner, and upon request, to an individual Indian mineral owner, all information found and determinations made by the Mining Supervisor regarding the subject minerals or contracts for the development thereof.

(d) In addition to their other responsibilities under this part and Part 177 of this title, the Superintendent and Mining Supervisor shall be responsible for consulting with a tribal mineral owner, and upon request, with an individual Indian mineral owner, before acting on the approval of a contract or any amendment or modification thereto, a complete or partial mining plan or any amendment or modification thereto, a variance from applicable reclamation or performance standards, the release of any portion of any bond, or before taking any other action which substantially affects the rights of such Indian mineral owner.

(e) When an approved contract provides for authority on the part of the Indian mineral owner for overseeing the development of mineral reserves or other natural resources, the Superintendent and the Mining

Supervisor shall take all steps necessary to insure that the Indian mineral owner is involved in such development in accordance witht the terms of the contract.

§ 171.11 Recordkeeping and inspection.

(a) The operator shall maintain records of all mining operations done under contract, including information on the type, grade, or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept available for examination and reproduction by the Superintendent and the Mining Supervisor. Requests for inspection of such records by Indian mineral owners shall be approved by the Superintendent at his/her discretion.

(b) All records maintained under subsection (a), all records regarding the financial structure of the operator, and any other records which are pertinent or related to operations done under contract shall at all times be available for audit purposes upon the request of the Superintendent. When an independent audit is requested by the Superintendent, he/she may require that the cost thereof be borne by the operator.

(c) This section shall not be construed to restrict an Indian mineral owner's right under contract to examine or reproduce any records relating to development under the contract.

(d) The Indian mineral owner, the Supintendent, and the Mining Supervisor shall at any reasonable time have the right to enter upon all parts of the premises of the operations under the contract for the purpose of inspection.

§ 171.12 Assignments; overriding royalties.

(a) No assignment or sublease of any interest in a contract under this part shall be effective without the approval of the Indian mineral owner and the Superintendent pursuant to and subject to the criteria of § 171.6 of this part. Such approval shall not relieve the assignor of his/her obligations under the original contract. However, the Superintendent, with the consent of the Indian mineral owner, may release the assignor of his/her obligations under the contract, or may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee. A merger by operation of law or a corporate name change shall not be considered an assignment requiring approval.

(b) Agreements creating overriding royalties or payjments out of production are hereby authorized and the approval of the Superintendent shall not be required with respect thereto, but such an agreement shall not be construed as modifying any of the obligations of the prospector or operator under his/her contract and the regulations in this part and Part 177 of this title, including the requirement of Department approval prior to abandonment.

§ 171.13 Unitization.

(a) If the Indian mineral contract provides for unitization, the development and production requirements of the contract may be modified upon application of the operator to the Superintendent, so that production from a part of the lands within a logical mining unit satisfies the development and production requirements of all Indian mineral contracts within the unit. The Mining Supervisor must first determine that the reserves sought to be included constitute a logical mining unit. Upon designation of the logical mining unit, the Superintendent may modify the requirements governing diligent development, continued operation, and production in paying quantities as to any of the Indian mineral contracts within the unit. The rental and royalty payments obligations of all Indian mineral contracts within a unit may also be combined, and advance royalties paid on any Indian mineral contract in that unit may be credited against those combined royalties.

(b) If the Indian contract has no provision for unitization, then the Superintendent may approve an application by the operator or lessee as under paragraph (a).

(c) If the Indian mineral contracts provides for unitization but only with the consent or agreement of the Indian owners, then the consent or the agreement of the Indian owners must first be obtained by the operator before the application in paragraph (a) may be made. If there are multiple Indian mineral owners for any one contract covering lands sought to be included within a logical mining unit, the consent of agreement of a majority of owners in each contract shall be sufficient to pool those interests in the unit. The minority interests will not be included in the unit. However, if, with the respect to multiple individual Indian-owned lands within a proposed unit, any of the circumstances provided for the Superintendent executing contracts in § 171.3(c) are present, then the Superintendent may commit those interests to the unit. The minority interests not included in a unit will be entitled to a proportion of the royalty during the term of the lease covering those lands when mining occurs thereon.

§ 171.14 Enforcement of orders.

(a) If the Superintendent determines—

(1) That a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, his/her orders, or the orders of the Mining Supervisor, and

(2) That such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, he/she shall serve a notice of noncompliance upon the prospector or operator by delivery in person or mailed to him/her at his/her last known address. Copies of said notice shall be sent to the Indian mineral owner and the Mining Supervisor. Failure of the prosecutor or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Superintendent, unless he/she has initiated a timely appeal pursuant to § 171.15 of this part, shall be grounds for suspension of operations by the Superintendent, or grounds for the initiation of action for cancellation of the contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, laws, terms of the mining plan or contract, or the orders of the Superintendent of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Superintendent when such noncompliance has been corrected.

(c) If, in the judgment of the Superintendent, a prospector or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, his/her orders, or the orders of the Mining Supervisor, and

(2) Which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources,

the Superintendent shall order the immediate cessation of such activities, without prior notice of noncompliance. The Superintendent shall, however, as soon after issuance of the cessation order as possible, serve on the prospector or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted. Both the cessation order and the statement of the reasons for the order shall be delivered to the Indian mineral owner.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon him/her pursuant to subsection (a), or if a prospector or operator fails to take action in accordance with the cessation order statement served upon him/her pursuant to subsection (c), the Superintendent may issue a notice of cancellation of the contract, specifying the basis for cancellation. The prospector or operator may, within 30 days of issuance of the notice, request a hearing at which he/she, the Indian mineral owner, the Superintendent, and the Mining Supervisor shall be entitled to present evidence. After such hearing, or after 30 days if no hearing has been requested, the Superintendent may order cancellation of the contract.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner or other means for the resolution of disputes as set forth in the contract or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Mining Supervisor under 30 CFR § 231.73. However, another, when feasible, before taking any enforcement actions. Nor is any provision in this part intended to supersede the Secretary's enforcement authority under Subpart B of Part 177 of this title, relating to Indian coal development.

§ 171.15 Penalties.

Violation of any of the terms or conditions of any contract or of the regulations under this part shall subject the prospector or operator to a fine of not more than $1,000 per day for each day of such violation or noncompliance with the orders of either the Superintendent or the Mining Supervisor: *Provided,* that prior to the determination that a fine will be imposed as provided for in this section, the prospector or operator shall receive a 30-day notice with respect to the terms of the contract or of the regulations violated and, if he/she so requests, may receive a hearing before the Superintendent. Payment of penalties not received within 10 days after notice of final decision is given shall be subject to late charges at the rate of not less thn 1½ percent per month for each month or fraction thereof until paid.

3. Part 177 of 25 CFR is proposed to be revised as follows:

PART 177—OPERATION, RECLAMATION, AND CONSERVATION OF INDIAN MINERAL LANDS

Subpart A—General Provisions

Sec.
177.1 Purpose.
177.2 Scope.
177.3 Definitions.
177.4 Environmental assessment; cultural resources compliance.
177.5 Approval of exploration and mining plans.
177.6 Performance bonds.
177.7 Responsibilities.
177.8 Reports; cessation of operations.
177.9 Enforcement; appeals.
177.10 Waiver.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 853; 42 U.S.C. 4332).

Subpart A—General Provisions

§ 177.1 Purpose.

(a) It is the policy of this Department to encourage the development of Indian-owned minerals when the Indian mineral owner desires such development, however, the Federal Government's trust responsibilities to Indian tribes and their members require that adequate measures be taken to avoid, minimize, or remedy damage to the environment—land, water, and air—as a result of such development, and to avoid, minimize, or remedy hazards to the public health and safety. The regulations in this part prescribe procedures to that end.

§ 177.2 Scope.

(a) The regulations in this subpart are applicable to contracts governing operations for the discovery, development, mining, and onsite processing of Indian-owned minerals except for oil, gas and coal.

(b) The regulations of the United States Geological Survey published in 30 CFR Part 231, are applicable to contracts governed by this subpart where not inconsistent with the regulations in this subpart.

(c) Contracts approved prior to the effective date of the regulations in this subpart shall not be subject to the requirements of this subpart, unless a contract provides otherwise, except that:

(i) Such contracts shall continue to be subject to all regulations in effect on the date of approval of those contracts;

(ii) The requirements of § 177.5 shall apply to exploration and mining plans which had not been approved before the effective date of these regulations.

§ 177.3 Definitions.

The definitions in § 171.2 of Part 171 of this title are applicable to the regulations in this subpart. In addition, as used in the regulations in this subpart:

(a) "Affected area" or "area to be affected" means any lands or structures affected or to be affected by exploration, development, mining operations, or the construction of any facilities necessary or related to such operations.

(b) "Casual use" means activites which do not cause significant surface disturbance or damage to lands, resources, or improvements, such as activities which do not include heavy equipment, explosives, or heavy vehicular movement off established roads or trails which cause such disturbance.

(c) "Operation" or "operations" means all of the activites related to mineral exploration or development on or within close proximity to the land identified in a prospecting or mining contract as being subject to the terms of the contract.

(d) "Pollution" means man-made or man-induced adverse alteration of the chemical, physical, biological, or radiological integrity of land, water, or air, which does or has the potential of reducing the beneficial uses of these resources.

(e) "Reclamation" means the processes of land, air, vegetation, and water treatment that restrict and control harmful effects on the environment resulting from mining operations and restore the affected area to a stable condition capable of supporting the uses established prior to commencement of such operations, or an equal or better use which has been identified in an approved exploration or mining plan under this part.

(f) "Refuse" means solid or liquid waste material produced by an operation and any other waste having no further use on the affected area.

(g) "Revegetation" means planting and other measures taken to support stable vegetative growth suitable to the approved post disturbance land use for the surface of the affected area.

§ 177.4 Environmental assessment; cultural resources compliance.

(a) To aid in the Superintendent's consideration of the environmental consequences of a contract, pursuant to § 171.6(a)(2) of Part 171 of this title or other provision governing approval of contracts for the mining of or prospecting for minerals other than oil and gas, and to determine whether preparation of an environmental impact statement is required by section 102(2)(C) of the National Environmental Policy Act of 1969, the Superintendent shall prepare a written environmental assessment of the contract.

(b) Such assessment shall examine the prospective effects of the proposed operation upon the environment and the local Indian culture, and shall specifically consider:

(1) The prevention and control of flooding, erosion, and earth slides;

(2) The effect of the operation on the quality and flow of water and watercourses in the affected area;

(3) The effect on air quality;

(4) The need for reclamation of the affected area by revegetation, replacement of soil, or other means;

(5) Land uses both before and after operations;

(6) The protection of fish and wildlife and their habitat;

(7) Measures designed to guarantee health and safety;

(8) The effect on resources of historical, scenic, archeological, and ethnological value;

(9) The impact on the local Indian population, with particular reference to:

(i) The possible dislocation of people from their homes or occupations;

(ii) The influx of non-Indians into the Indian community, and its effect on the local cost of living, tribal government, housing, educational services, police protection, transportation and communication facilities, health care, and intercultural relationships;

(iii) Noise and esthetics; and

(iv) Threats to vegetation, wildlife, and natural or other monuments which play an important role in local Indian culture or religion; and

(10) Any other potentially adverse effects on the environment.

Such an assessment shall be prepared in accordance with regulations promulgated by the Council on Environmental Quality, 40 CFR 1508.9, and the Environmental Quality Handbook, 30 BIAM Supplement 1. When it is recognized prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made specifically available to the Indian mineral owner and to the governing body of the local Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(c) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. § 470 *et. seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et. seq.*, the Superintendent shall, prior to approval of a contract, perform surveys of the cultural resources so as to evaluate and make a determination of the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. § 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Superintendent shall seek the comment of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Superintendent shall ensure that the properties will either be avoided, the effects mitigated or the data preserved.

§ 177.5 Approval of exploration and mining plans.

(a) Before conducting any operation other than casual use, the prospector or operator shall submit to the Superintendent for his/her approval an exploration or mining plan. Upon receipt of such a plan, the Superintendent shall immediately transmit the plan to the Mining Supervisor. Prior to any such approval the Superintendent shall consult with, and obtain the concurrence of the Mining Supervisor. With respect to plans for the exploration or mining of tribally-owned minerals, the concurrence of the tribal mineral owner must also be obtained prior to approval. Such plans shall be consistent with and responsive to the requirements of the underlying contract, and shall demonstrate that reclamation of the affected area is an integral part of the planned operations and that it will progress in accordance with all applicable performance standards. The details of the reclamation aspects of the plan shall be based upon the advice of technically trained personnel experienced in the type of reclamation to be undertaken. The Superintendent shall at all times be available to consult with individual Indian mineral owners before acting to approve any plan concerning their minerals.

(b) Prior to approval of a plan pursuant to this section, the Superintendent shall prepare an environmental assessment in accordance with § 177.4 of this part, and also comply with § 177.4(c) concerning cultural resources.

(c) When a contract involves both prospecting and mining operations in an affected area, or when a prospecting permit conveys a right of first refusal with regard to contracting for mining operations, prospecting operations may commence after approval of an exploration plan but prior to submission and approval of mining plan.

(d) The plan required by subsection (a) of this section shall include:

(1) Accurate and up-to-date maps of the area to be affected by the operation, drawn to a scale acceptable to the Mining Supervisor, and showing roads, dwellings, utilities, fences, and the topographic, cultural and drainage features of the area;

(2) A detailed description of the prospecting, mining, processing, and transporting methods to be used in any given portion of the affected area, including, but not necessarily limited to, descriptions of equipment, locations of vehicular trails, roads, railroads, drilling, trenching, and blasting requirements, size and location of support facilities, and a designation of those portions of the affected area which will be specifically disturbed or damaged by these methods and a description of the anticipated disturbance or damage to each such portion;

(3) Identification of all known items of significant archeological, historical, ethnological, or cultural value in the affected area, and a description of the specific measures to be taken to identify and protect any such items during the course of the operation;

(4) A list of the anticipated number of persons to be employed in each occupation at an operation at any given time, and plans for the training and utilization of the local Indian labor force, both skilled and unskilled;

(5) A description of the condition and uses of the area to be affected at the time the plan is prepared, and a statement of the capability of the area to support its existing use or any equal or better use, giving consideration to

topography, vegetative cover, soil, foundation and water characteristics;

(6) A projection of the quantity of water to be used during an operation, the source of such water, a description of any pollutants which are expected to enter any receiving waters, and a detailed plan for the control and treatment of all water and watercourses (both surface and subsurface) connected with or to be affected by the operation;

(7) A planting and revegetation program calculated to restore the native vegetation to the affected area, where possible, or in the alternative to provide a nonnative vegetative cover consistent with approved post-operation land uses; such a program shall provide for soil stabilization and preservation prior to revegetation and shall show proposed methods of preparation and fertilization of the soil and proposed methods of planting;

(8) A description of all measures to be taken to prevent, control, and correct possible damage caused by fire, soil erosion, air pollution, damage to fish and wildlife (key wildlife habitats in the affected area shall be identified), and hazards to public health and safety both during and upon cessation of the operation;

(9) A list of the names and addresses of supervisory personnel employed by the prospector or operator and responsible for the planned activities under the contract; this list shall be kept up-to-date during the life of the operation;

(10) With regard to coal mining operations, any other information which is deemed necessary for compliance with applicable provisions of the Surface Mining Control and Reclamation Act and Indian lands regulations promulgated pursuant thereto;

(11) A detailed description of the methods to be used to grade, backfill, and contour, if necessary, the affected area, and to isolate and dispose of acid and toxic materials and other spoils; and

(12) An integrated timetable for the planned commencement and completion of prospecting, mining, and reclamation operations.

(e) After the plan is approved, it shall be attached to the contract, and shall be made a part thereof. The prospector or operator, and all subcontractors shall conform all their operations to the terms of the plan.

(f) Upon a request of the Indian mineral owner or the prospector or operator, or on his/her own initiative, the Superintendent may at any time direct that a plan be reasonably revised or supplemented to adjust to changed conditions or to corrrect oversights. If the prospector or operator seeks to change an approved plan, he/she shall submit the proposed revision and the justification therefore in writing to the Superintendent and to the Mining Supervisor. Before acting to approve any revised plan, the Superintendent shall obtain the concurrence of the Mining Supervisor. The Superintendent shall at all times during the consideration of a revised plan be available to consult with the Indian mineral owner.

(g) If development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot be determined except during the progress of the operations, the Superintendent may, with the concurrence of the Mining Supervisor, approve a partial plan and permit commencement of the operation under such partial plan. A partial plan shall include all information required by subsection (c) of this section and other applicable regulations to the extent that such information is available. Before approval of a partial plan may be secured, the prospector or operator must demonstrate to the Superintendent that the data or information necessary to complete the plan could not reasonably be obtained, and provide the Superintendent with adequate assurances that such data or information will be collected with due diligence during the progress of the operation, and that when sufficient data or information has been obtained, a complete plan will be promptly submitted for approval. If it appears to the Superintendent that a prospector or operator has failed to abide by such assurances, he/she shall inform the Mining Supervisor and the Indian mineral owner. The Superintendent may then order operations suspended in accordance with enforcement procedures provided by § 171.13 or the terms of the contract.

§ 177.6 Performance bonds.

(a) Upon approval of an exploration or mining plan, and before conducting any operation other than casual use, the prospector or operator shall be required to furnish a bond, payable to the Secretary, with surety satisfactory to the Superintendent and the Mining Supervisor, conditioned on the faithful performance of the requirements of the prospecting or mining contract, the approved exploration or mining plan, the regulations of this part, and all other applicable regulations. The bond shall be in an amount sufficient to secure diligent performance of the terms of the contract and approved plan, and to satisfy the reclamation requirements of these and other applicable regulations. In determining the amount of the bond, consideration shall be given to the required rental and royalty payments under the contract, and to the chararacter and nature of the reclamation requirements and the estimated cost of reclamation in the event that the prospector or operator forfeits his/her performance bond.

(b) Liability under the bond shall be for the duration of the prospecting or mining operations and for the period of five years thereafter. The Superientendent and the Mining Supervisor may, after consultation with the Indian mineral owner, permit complete or partial release of the bond prior to the expiration of five years after the cessation of operations, in accordance with § 177.8 of this subpart.

(c) The right is specifically reserved to the Superintendent to increase the amount of the bond during the term of the contract if changed economic conditions make such an increase necessary to secure performance under the contract or to satisfy the reclamation requirements of all applicable regulations.

(d) In lieu of a bond, a bank letter of credit may be submitted for the same amount as a bond.

§ 177.7 Responsibilities.

The responsibilities stated in § 171.10 of Part 171 of this title are applicable to the provisions of this subpart.

§ 177.8 Reports, cessation of operations.

(a) Upon completion or suspension of prospecting operations, and as provided in the prospecting contract, a prospector shall submit to the Superintendent and to the Mining Supervisor, signed copies of all records, and geologic data of all prospecting operations conducted on the subject lands, including all calculations of recoverable mineral reserves, maps showing all prospecting activities, and any other data or maps revealing the mineral composition of the subject lands and the accessibility of the minerals.

(b) Within 60 days after the end of each calendar year, and within 90 days after the cessation of operations, the prospector or operator shall submit a report to the Superintendent and the Mining Supervisor containing the following information:

(1) Identification of the contract and the location of the operation;

(2) A description of the operations performed during the period of time for which the report is filed;

(3) Identification of the area of land affected by the operations during the report period and a description of the manner in which the land has been affected;

(4) The latest statistics on the employment of the local Indian labor force on the operation, including data on hiring, firing, and resignations in each job classification;

(5) A statement of the number of acres disturbed by the operations and the number of acres which were reclaimed during the report period;

(6) A description of the methods utilized for reclamation, and data showing the success of such reclamation; and

(7) A statement and description of the reclamation work remaining to be done and a time schedule.

Such reports shall be sent to a tribal mineral owner, and shall be provided to individual Indian mineral owners upon request. Such reports shall be regarded as privileged and confidential trade secrets or commercial or finanical information within the meaning of section 552(b)(4) of Title 5 of the U.S. Code.

(c) Upon completion of such grading and backfilling as may be required by an approved exploration or mining plan and applicable regulations, the prospector or operator shall make a report thereon to the Mining Supervisor and the Superintendent, who shall advise the Indian mineral owner, and request their inspection for approval. Whenever it is determined by such inspection that backfilling and grading have been carried out in accordance with the established requirements and approved exploration or mining plan, the Superintendent and the Mining Supervisor may issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that the required revegetation program is carried out.

(d) Upon completion of such revegetation as may be required by an approved contract or exploration or mining plan and applicable regulations, the prospector or operator shall make a report thereon to the Mining Supervisor and the Superintendent, who shall advise the Indian mineral owner. Such report shall—

(1) Identify the contract;

(2) Show the type of planting or seeding, including mixtures and amounts, and equipment used;

(3) Show the date(s) of planting or seeding;

(4) Identify or describe the areas of the lands which have been planted or seeded;

(5) Describe any mulching, surface manipulation, fertilization, and irrigation procedures;

(6) Describe the weather conditions (precipitation, temperature, wind) preceding, during, and following vegetation, as these may have affected revegetation;

(7) Describe plant nutrient fertilizers incorporated into the soils of the revegetated lands; and

(8) Contain such other information as may be relevant.

As soon as possible after the completion of the first full growing season, the Superintendent and the Mining Supervisor shall make an inspection and evaluation of the vegetative cover to determine if a satisfactory growth has been established. If it is determined that a satisfactory vegetative cover has been established in accordance with the approved contract or exploration or mining plan and applicable regulations, and that it is likely to continue to grow, any remaining portion of the performance bond may be released if all other requirements have been met by the prospector or operator.

(e) Not less than 60 days prior to cessation or abandonment of operations, the prospector or operator shall report to the Mining Supervisor and the Superintendent, who shall advise the Indian mineral owner, of his/her intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his/her operations, the extent and kind of reclamation accomplished, a statement and description of the structures and other facilities that remain in the affected area, and any other relevant information. Upon receipt of such a report, the Mining Supervisor shall inspect the affected area and consult with the Superintendent and, where applicable, the tribal mineral owner, to determine whether operations have been carried out in accordance with the terms of the contract. Individual Indian mineral owners shall also be consulted, where practicable. Operations may not be abandoned without the approval of the Mining Supervisor.

§ 177.9 Enforcement; appeals.

(a) The provisions of this subpart may be enforced as provided by § 171.13 of Part 171 of this title, or 30 CFR Part 231. The Mining Supervisor shall promptly notify the Superintendent of violations or impending violations of the provisions of this part so that he/she may in turn notify the Indian mineral owner, and take appropriate action.

(b) Appeals shall be governed by § 171.15 of Part 171 of this title, except that appeals from decisions of the Mining Supervisor may be made pursuant to 30 CFR Part 290.

§ 177.10 Waiver.

The Indian mineral owner may seek a waiver from any of the provisions of this part by making a written request to the Commissioner, detailing the provisions sought to be waived and the reasons therefor. The Commissioner may grant such a waiver in accordance with § 1.2 of Part 1 of this title, but the authority to waive these regulations shall not be delegated outside the immediate office of the Commissioner. Waivers may not be made by the inclusion of a waiver provision in a Federal government contract form.

4. A new Part 182 of 25 CFR is proposed to be created to read as follows:

PART 182—OIL AND GAS CONTRACTS

Sec.

182.1 Purpose and scope.
182.2 Definitions.
182.3 Applicability of U.S. Geological Survey regulations.
182.4 Authrity and responsibility of Oil and Gas Supervisor.
182.5 Removal of restrictions.
182.6 Geological and geophysical permits.
182.7 Application for geological or geophysical permits.
182.8 Authority to contract.
182.9 Procedures for awarding contracts and types of contracts authorized.
182.10 Duration of contracts.
182.11 Approval of contracts.
182.12 Economic considerations.
182.13 Environmental assessment.
182.14 Persons signing in representative capacity; furnishing of corporate and other information.
182.15 Bonds.
182.16 Rentals; minimum royalty; production royalty.
182.17 Manner of payments
182.18 Inspection of premises; books and accounts.
182.19 Assignments; operating and development agreements; overriding royalties.
182.20 Restrictions on operations; work-over and shut-in applications.
182.21 Unitization, communitization and well spacing.
182.22 Contracts for subsurface storage for oil and gas.
182.23 Termination and cancellation; enforcement of orders
182.24 Penalties.
182.25 Appeals.
182.26 Fees.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d). Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. S&¢ and 477); sec 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. § 4332).

§ 182.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian

owned oil and gas reserves. These regulations are intended to insure that Indians desiring to have their oil and gas reserves developed receive, at least, fair market value for their ownership rights; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to allow Indian oil and gas owners to enter into contracts which reserve to them the responsibility for overseeing the development of their oil and gas reserves.

(b) The regulations in this part do not apply to leasing and development governed by the regulations in 25 CFR Parts 174, 183, and 184.

(c) The regulations in this part shall become effective and in full force 30 days after the date of their publication in the Federal Register, and shal be subject to change or alteration at any time by the Secretary of the Interior: *Provided,* that no regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract. All former regulations governing the leasing of tribal and alloted lands for oil and gas development purposes are superseded by the regulations in this part.

§ 182.2 Defintions.

As used in the regulations in this part;

(a) "Bureau" means the Bureau of Indian Affairs.

(b) "Commissioner" means the Commissioner of Indian Affairs, United States Department of the Interior, or his/her authorized representative.

(c) "Contract" means any written contract or legally-binding agreement, and is not limited in its meaning to leases, licenses, or geological and geophysical permits.

(d) "Gas" means any fluid, either combustible or non-combustible, which is produced from a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(e) "Indian oil and gas owner" means—

(1) An Indian tribe, band, nation, community, group, colony, or pueblo with an organization recognized by the Secretary, or an agency or subdivision thereof; or

(2) An individual Indian; who owns trust or restricted oil and gas or rights to oil and gas, or is entitled to the proceeds or benefits of the development of oil and gas, title to which is held by the United States.

(f) "Indian-owned oil and gas" means—

(1) Oil and/or gas, title to which is held by the United States in trust for the benefit of an Indian oil and gas owner, or

(2) Oil and/or gas in which an interest is held by an Indian oil and gas owner subject to federal restrictions against alienation or encumbrance.

(g) "individual Indian oil and gas owner" means an Indian oil and gas owner as defined in paragraph (e)(2) of this ection.

(h) "Oil and Gas Supervisor" means the Area Oil and Gas supervisor, United States Geological Survey, having responsibility for the area in which the property covered by a contract under this part is located.

(i) "Oil" means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(j) "Operator" means a person, proprietorship, partnership, coporation, or other business asssociation which has made application for, is negotiating with an Indian oil and gas owner with respect to, or has entered into an oil and gas development contract.

(k) "Secretary" means the secretary of the Interior or his/her authorized representative.

(l) "Superintendent" means the Bureau Agency Superintendent or his/her authorized representative having immediate jurisdiction over the oil and gas reserves covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or his/her authorized representative.

(m) "Tribal oil and gas owner" means an Indian oil and gas owner as defined in paragraph (e)(1) of this section.

§ 182.3 Applicability of Geological Survey regulations.

The regulations of the United States Geological Survey published in 30 CFR Part 221, as amended, are applicable to contracts governed by this part where not inconsistent with the regulations of this part.

§ 182.4 Authority and responsibility of Oil and Gas Supervisor.

The Oil and Gas Supervisor is authorized and empowered to approve, supervise, and direct operations under oil and gas contracts governed by the regulations of this part; to furnish to the Superintendent and the Indian oil and gas owner scientific and technical information and advice; to ascertain and record the amount and value of production; to determine and record rentals and royalties due and paid. He/she shall also be responsible for reviewing and reporting to the Superintendent his/her recommendations concerning any proposed oil and gas contract.

§ 182.5 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Department of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the oil and gas owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue subject to the supervision of the Superintendent until such time as the holder of the contract and the unrestricted oil and gas owner shall furnish to him/her satisfactory evidence that adequate arrangements have been made to account for the oil and gas upon the restricted land separately from that upon the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Superintendent, and the restricted portion shall continue subject to such supervision as is provided by the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract which provides that payments to the oil and gas owners shall thereafter be paid to each owner in the proportion which his/her acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian oil and gas owner at the time and in the manner specified by the regulations in this part.

§ 182.6 Geological and geophysical permits.

Geological and geophysical permits may be granted by the Superintendent to search for evidence of oil and gas. Prior consent of the tribe must be obtained for geological or geophysical permits on tribal land. The consent of a majority of the ownership interests, if known, must

be obtained for individually owned land. Such permits must describe the area to be explored, and definitely state the term and the consideration to be paid. A geological or geophysical permit will not give the permittee any option or preference right to a lease or other development contract nor authorize the production or removal of oil and gas.

§ 182.7 Application for geological or geophysical permits.

Applications for geological or geophysical permits accompanied by a plan of the work which the applicant intends to perform may be made to the Superintendent, or to the Indian mineral owner. The Superintendent shall immediately notify the Indian mineral owner of the receipt of any such application or request.

§ 182.8 Authority to contract.

(a) Contracts authorizing exploration or prospecting for, or development and production of, Indian-owned oil and gas may be entered into by a tribal oil and gas owner through its governing body, by an individual Indian oil and gas owner, or by a group of Indian oil and gas owners acting jointly or through an association or entity in which they all participate. Such contracts, as well as amendments thereto, shall be subject to the approval authority described in § 182.11 of this part, and shall not be valid until such approval has been secured. Indian oil and gas owners are encouraged to consult with the Superintendent and the Oil and Gas Supervisor during the negotiation of an oil and gas contract.

(b) An Indian oil and gas owner may at any time seek technical or other advice or assistance regarding development of Indian-owned oil and gas from the Oil and Gas Supervisor, who shall provide such advice or assistance upon request consistent with his/her authority.

(c) The Superintendent may enter into contracts authorizing exploration for or development of Indian-owned oil and gas on behalf of individual Indian oil and gas owners only under the following circumstances:

(1) Where the individual Indian oil and gas owner of record is deceased and the heirs to or devisees of any oil and gas interest have not been determined; or

(2) Where there are multiple individual Indian oil and gas owners in an individed tract which is sought for exploration or development, and

(i) One or more owners desires to enter into a contract pursuant to this part but the remainder of the owners cannot be located, or

(ii) None of the owners can be located; or

(3) Where the individual oil and gas owner or a majority ownership interest in the tract is incapacitated by reason of minority, or has been determined to be mentally incompetent; *Provided,* that the procedures in § 182.9(d) of this part must be followed.

(d) The Superintendent may not otherwise award any contracts affecting rights in Indian-owned oil and gas unless he/she has been requested in writing to do so by the Indian oil and gas owner.

§ 182.9 Procedures for awarding contracts and types of contracts authorized.

(a) Tribal oil and gas owners organized under section 16 of the Act of June 18, 1934 (25 U.S.C. § 476), or incorporated under section 17 of that Act (25 U.S.C. § 477), and individual Indian oil and gas owners may utilize the following procedures, among others, in entering into an oil and gas contract. A contract may be entered into through competitive bidding, negotiation, or a combination of both, and may relate to exploration or production.

(b) Oil and gas leases by tribal oil and gas owners who are not organized under section 16 of the Act of June 18, 1934 (25 U.S.C. § 476), or incorporated under section 17 of that Act (25 U.S.C. § 477), shall be entered into in accordance with the procedures of subsection (d) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Superintendent determines that it is unwise in the interest of the tribal oil and gas owner to accept the highest bid, the Superintendent may readvertise the lease for sale, subject to the consent of the tribal oil and gas owner and approval in accordance with § 182.11 of this part, or the lease may be let through private negotiations. This provision does not apply to oil and gas contracts which are not leases.

(c) Indian oil and gas owners may also request the Superintendent to undertake the preparation, advertisement, negotiation, and/or award of an oil and gas contract on his/her behalf. If so requested, the Superintendent shall undertake such responsibility in accordance with the procedures of paragraph (d) of this section and, where applicable, the provisions of subsection (b). If application is made to the Superintendent by a potential prospector or operator for a contract to develop Indian-owned oil and gas, the Superintendent shall promptly notify the Indian oil and gas owner thereof, and advise the owner in writing of the alternatives open to him/her, and that he/she may decline to permit any oil and gas exploration or production.

(d) When the Superintendent exercises his/her authority to enter into contracts on behalf of individual Indian oil and gas owners pursuant to § 182.8(c) of this part, or where he/she has been requested by the Indian oil and gas owner under subsection (a) of this section to assume the responsibility of awarding the contract, he/she shall offer contracts to the highest responsible qualified bidder subject to the following procedures, unless he/she determines in accordance with subsection (e) of this section that the highest return can be obtained on the oil and gas by other methods of contracting (such as negotiation):

(1) Contracts shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published at least 60 days in advance of sale or such longer time as is necessary to achieve optimum competition.

(2) The advertisement shall specify any terms requested by the Indian oil and gas owner and may, where sufficient information exists, and after consultation with the Oil and Gas Supervisor, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Superintendent reserves the right to reject any or all bids, and that acceptance of the contract bid by or on behalf of the Indian oil and gas owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful;

(4) If no bid is received which meets the criteria of § 182.11, or if the successful bidder fails to complete the contract, or if the Indian oil and gas owner refuses to accept the highest bid, the Superintendent may readvertise the contract, or if deemed advisable, and in accordance with subsection (f) of this section, he/she may attempt to award a contract by private negotiations, provided that he/she shall not award a contract by private negotiations without the written concurrence of the oil and gas owner unless he/she is exercising his authority under § 182.8(c) of this part.

(5) A successful bidder must, within 30 days after notification of the bid

award, remit to the Superintendent the balance of the bonus, the first year's rental, a $25 filing fee, his/her share of the advertising costs, and file with the Superintendent all required bonds. The successful bidder shall also file the contract in completed form at that time. However, for good and explicit reasons the Superintendent may grant an extension of time of up to 30 days for filing of the contract. Failure on the part of the bidder to comply with the foregoing will result either in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner, or, at the Indian oil and gas owner's option, readvertisement of the forfeited lease with the defaulting bidder required to pay any difference between his/her bid and the high bid received at the subsequent sale, plus the cost of the advertising for such subsequent sale. The readvertisement option must be reflected in the original advertisement to be effective.

(e) When the Indian oil and gas owner has requested the Superintendent to offer a contract to the highest responsible qualified bidder in accordance with subsection (d) of this section, the Superintendent shall advise the Indian oil and gas owner of the results of the bidding, and shall not award the contract to the successful bidder until the consent of the Indian oil and gas owner has been obtained.

(f) When a contract has been entered into by methods other than the competitive bid procedure (whether by the Superintendent or by the Indian oil and gas owner), or when a contract contains provisions not appearing in an approved Bureau contract form, the contract shall be submitted to the local Field or Regional Solicitor's Office for review for legal sufficiency, prior to approval pursuant to § 182.11 of this part.

§ 182.10 Duration of contracts.

(a) No oil and gas contract with an Indian oil and gas owner shall exceed a term of ten years and as long thereafter as oil and gas are produced in paying quantities.

(b) Where an oil and gas contract specifies a term of years and "as long thereafter as oil and gas are produced in paying quantities" or similar phrase, the term "paying quantities" shall mean: That quantity of recovered oil and gas which produces during the fiscal year of the contract, a profit to the operator, over and above the total cost of: extraction (exclusive of exploration), processing, and handling to the point of sale; all rents and royalties (exclusive of overriding royalties and production payments) paid under the contract; all salaries and expenses incident to such extraction, processing, and handling; all taxes incident thereto, except tribal severance taxes; all depreciation on salvageable production equipment; all administrative expenses attributable to the operation; any other expenses attributable to the operation; and any other expenses so attributable, such as business licenses, repair of equipment, and transportation.

(c) In order to continue production in paying quantities the operator must not suspend oil and gas operations at any time for a period of 30 days or more without the prior express written approval of the Superintendent unless production is impossible as a result of an act of God or some other cause clearly beyond the operator's control.

(d) At the expiration of the primary term of the oil and gas contract and at the end of each fiscal year thereafter until expiration of the contract, the operator shall present sufficiently detailed written evidence to the Indian oil and gas owner and to the Superintendent to demonstrate that oil and gas are being produced in paying quantities.

(e) Where development or production contracts are for a primary term of five years or less, it may be provided in the contract that if actual drilling operations have commenced prior to the end of the primary term, and are being diligently prosecuted at the expiration of the primary term, the operator shall have the right to drill such well or wells to completion with reasonable diligence, and, if oil or gas as covered by the contract is found in paying quantities, the contract shall continue in force and effect as if such well or wells had been completed within the primary term.

§ 182.11 Approval of contracts.

(a) An oil and gas contract shall be approved by the Superintendent if he/she determines in writing that the following conditions are met:

(1) The contract provides a fair and reasonable remuneration to the Indian oil and gas owner;

(2) The contract does not have adverse cultural or environmental consequences to the Indian lands and community affected sufficient to outweigh its benefits to the Indian oil and gas owner;

(3) The contract complies with the requirements of this part, all other applicable regulations, the provisions of applicable federal law, and applicable tribal law where not inconsistent with federal law.

Such determinations must also be made prior to the award of any contract pursuant to § 182.9(d) of this part.

(b) The determination required by subsection (a) of this section shall be based on the written findings required by § 182.12(a) and § 182.13 of this part.

(c) "Fair and reasonable remuneration" within the meaning of paragraph (a)(1) of this section means a return on the Indian-owned oil and gas:

(1) not less than that received by non-Indian oil and gas owners in comparable contemporary contractual arrangements for the development of oil and gas,

(2) not less than that received by Federal Government in comparable contractual arrangements for the development of oil and gas, and

(3) not less than the minimum rental and royalty payments which would be applicable to oil and gas were they federally-owned.

A determination of what constitutes a comparable contemporary contractual arrangement is within the sound discretion of the Commissioner.

§ 182.12 Economic considerations.

(a) To aid in the Superintendent's consideration of the criteria in § 182.11 of this part, he/she shall prepare a written economic assessment of the contract with the assistance of the Oil and Gas Supervisor. Such assessment shall include the following findings to the extent of their applicability to oil and gas exploration or production:

(1) Assurances in oil and gas contracts that oil and gas operations will be conducted with appropriate diligence;

(2) The availability of water in the amount needed for purposes of operations under the contract;

(3) The adequacy of production royalties or other form of return on oil and gas;

(4) If a method of contracting other than the competitive bid procedure is used, whether that method clearly provides the Indian oil and gas owner with a greater share of the return on the production of his/her oil and gas than he/she might otherwise obtain through competitive bidding;

(5) The adequacy of payment and enforcement provisions in the contract;

(6) Provisions for the training and preferential employment of the local Indian labor force;

(7) The size and shape of the area to be developed (the oil and gas tract shall be contained in a reasonable compact body and the acreage leased must not exceed that necessary to promote the orderly development of oil and gas resources); and

(8) The reputation of the prospector or operator for responsible and diligent development of oil and gas resources. Contracts shall not be entered into primarily for purposes of speculation.

Information required to be included in such an assessment may be incorporated therein by reference to attached documentation. Such an assessment shall be regarded as an intra-agency memorandum, but shall be made available to the Indian oil and gas owner in all cases.

(b) In all cases where the mineral estate has been severed from the surface estate, the Superintendent shall seek the counsel of the Solicitor's Office and shall then advise the Indian oil and gas owner in writing of any potentially adverse legal and economic consequences of such severance. At his/her discretion, the Superintendent may postpone approval of a contract until problems of severed ownership have been resolved. Prior to approval, the Superintendent shall insure that attempts have been made to provide all users and owners of the surface estate with the best practicable notice of the impending operation.

(c) In aid of his/her consideration of whether approval should be given to a contract, the Superintendent may request that any party thereto submit additional information regarding his/her financial structure or experience in oil and gas development or any other relevant matter. Failure to supply such information may be regarded as a ground for declining to grant approval.

§ 182.13 Environmental assessment.

(a) To aid in the Superintendent's consideration of the environmental consequences of a contract or contracts, pursuant to § 182.11(a)(2) of this part or other provision governing approval of contracts for exploration or production of oil and gas, and to determine whether preparation of an environmental impact statement is required by § 102(2)(C) of the National Environmental Policy Act of 1969, and the Council on Environmental Quality regulations, 40 CFR Parts 1500–1508, he/she shall prepare a written environmental assessment of the contract(s). When the contract(s) is to be awarded by competitive bidding, the assessment shall be prepared prior to the advertisement.

(b) Such assessment shall examine the prospective effects of the proposed operation upon the environment and the local Indian culture, and shall specifically consider:

(1) The prevention and control of flooding, erosion, and earth slides;

(2) The effect of the operation on the quality and flow of water and watercourses in the affected area;

(3) The effect on air quality;

(4) The need for reclamation of the affected area by revegetation, replacement of soil, or other means;

(5) Land uses both before and after operations;

(6) The protection of fish and wildlife and their habitat;

(7) Measures designed to guarantee health and safety;

(8) The effect on items of historical, scenic, archeological, and ethnological value;

(9) The impact on the local Indian population, with particular reference to:

(i) The possible dislocation of people from their homes or occupations;

(ii) The influx of non-Indians into the Indian community, and its effect on the local cost of living, tribal government, housing, educational services, police protection, transportation and communication facilities, health care, and intercultural relationships;

(iii) Noise and esthetics; and

(iv) Threats to vegetation, wildlife, and natural or other monuments which play an important role in local Indian culture or religion; and

(10) Any other potentially adverse effects on the environment. Such an assessment shall be prepared in accordance with regulations promulgated by the Council of Environmental Quality, 40 CFR § 1508.9, and the Environmental Quality Handbook, 30 BIAM Supplement 1. When it is recognized prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made specifically available to the Indian oil and gas owner and to the governing body of the local Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(c) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63 and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. § 469a–1 *et seq.*, the Superintendent shall, prior to approval of a contract, perform surveys of the cultural resources so as to evaluate and make a determination of the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C § 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in The National Register will be affected, the Superintendent shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Superintendent shall ensure that the properties will either be avoided, the effects mitigated or the data preserved.

§ 182.14 Persons signing in a representative capacity; furnishing of corporate and other information.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, contracts or assignments, bonds, or their instruments required by these regulations constitute certification that the individual signing, except a surety agent, is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and gas shall file with the instrument a statement showing:

(1) The state in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the state where the land described in the instrument is situated; and

(2) That it has power to conduct all business and operations as described in the instrument; and

(3) Such other information as the Superintendent may require in the exercise of his/her trust responsibility to the Indian oil and gas owner.

(c) The Superintendent may, either before or after the approval of a permit, contract, assignment, or bond, call for any additional information necessary to carry out the regulations in this part, other applicable laws and regulations and his/her trust responsibility to the Indian oil and gas owner. Failure to furnish the requested information will be deemed sufficient cause for disapproval or cancellation of the instrument, whichever is appropriate.

§ 182.15 Bonds.

(a) The Secretary may require a geological or geophysical permittee to furnish a surety bond in such amount as he/she deems advisable.

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Oil and Gas Supervisor and the approving official, but in no event less than $10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file one bond for $50,000 for all oil and gas contracts in any one state, or such lesser jurisdiction, as determined by the Secretary, including contracts on that part of an Indian reservation extending into states contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under subsections (a), (b), and (c) of this section, an operator or permittee may file with the Commissioner, a bond in the sum of $150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonds shall be by corporate surety bonds.

(f) The right is specifically reserved to the Secretary to increase the amount of bonds in his/her discretion.

(g) In lieu of a bond, a bank letter of credit may be submitted for the same amount as a bond.

§ 182.16 Rentals; minimum royalty; production royalty.

(a) An oil or gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of not less than $2 per acre or such other rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty of production paid during any year aggregates less than $2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on the participating acreage.

(c) Unless otherwise provided by the Secretary (or his/her authorized representative prior to the offering of land for oil and gas leases), a royalty of not less than 25 percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered at the time of production for a significant portion of the oil of the same gravity, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less than the content of foreign substances as determined by the Oil and Gas Supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, and the lessor is an Indian mineral owner, gas shall, if requested by the lessor, be furnished by the lessee to the Indian mineral owner. Such gas furnished shall be received by the Indian mineral owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee and the Indian mineral owner shall pay a price therefore equal to the current wellhead price, less royalty, or if gas is not being sold, the price to paid by the Indian mineral owner shall equal the highest price that could be obtained from another gas purchaser, less royalty. In addition to the above payments, the Indian mineral owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian mineral owner. The acquisition and use of any such gas purchased by the Indian mineral owner shall be at the Indian mineral owner's sole risk at all times. *Provided,* that this requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that waste would not result. Gas furnished to the Indian mineral owner under this section may be terminated only with the approval of the Superintendent.

§ 182.17 Manner of payments.

(a) All payments shall be paid to the Secretary or such party as he/she may designate and shall be made at such time as provided in the advertisement, permit, or contract. When there is production, each payment shall be remitted through the Supervisor, with a statement by the operator in duplicate, showing the specific contract payment that remittance is intended to cover, identified by both Departmental contract and other lease or contract number. Such statement shall identify each remittance by number, date, amount, name of each payee, and shall be supported by a copy of the purchaser's settlement or pipeline statement for each lease under which royalties are paid.

(b) Operators may make arrangements with the purchasers of oil and gas for the payment of the royalties as provided in the lease and regulations, but such arrangement, if made, shall not relieve the operator from responsibility should the purchaser fail or refuse to pay the royalties when due.

§ 182.18 Inspection of premises; books and accounts.

Operators shall agree to allow Indian mineral owners, their representatives or any authorized representatives of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk, and that books and records shall be available only during business hours, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the contracts and regulations.

§ 182.19 Assignments; operating and development agreements; overriding royalties.

(a) *Assignments.* Contracts hereafter approved, or any interest therein, may be assigned or transferred only with the approval of the Secretary. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof. An operator must assign either his/her entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area; *Provided,* that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons such assignment shall be subject to both the consent of the Secretary and the Indian oil and gas owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of the execution by all parties.

(b) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an assignment. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such

agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of the operator with the Indian oil and gas owner under his/her contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to subsection (a) of this section. An agreement creating overriding royalties or payments out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

§ 182.20 Restrictions on operations, work-over and shut-in applications.

(a) The Secretary may impose such restrictions as in his/her judgment are necessary for the protection of Indian-owned natural resources.

(b) The Secretary may, under such terms and conditions as he/she may prescribe and after obtaining the consent of any Indian mineral owner affected, authorize suspension of operating and producing requirements whenever it is considered that marketing facilities are inadequate or economic conditions unsatisfactory or transportation facilities unavailable. Such suspensions shall not extend beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a-g). Applications by operators for relief from operating and producing requirements shall be filed in triplicate in the office of the Supervisor and a copy thereof filed with the Superintendent. Complete information must be furnished showing the necessity for such relief. Suspension of operations and production shall not relieve the operator from the obligations of continued payment of annual rental or minimum royalty. The operator shall pay as shut-in royalty an additional $2.50 per acre in advance for each annual period of suspension, provided that if the period of suspension is less than 12 months, the rate will be prorated. Said shut-in royalty shall not be recoverable out of royalties or otherwise from subsequent production; *Provided,* that concurrent with initial execution of the contract, the Indian oil and gas owner may, in his/her discretion, waive his/her right of consent to an approval of any subsequent suspension of operations heretofore mentioned.

(c) The Secretary may, after obtaining the consent of any Indian mineral owner affected, and under such terms and conditions as he/she may prescribe, authorize suspension of operating and producing requirements whenever it is determined that reworking or drilling operations is in the best interest of the Indian mineral owner, *provided,* that such reworking or drilling operations are commenced within 60 days and thereafter conducted with reasonable diligence during the period of nonproduction. Any suspension under this subsection shall not relieve the operator from liability for the payment of rental and minimum royalty or other contract payments due under the terms of the contract.

§ 182.21 Unitization, communitization and well-spacing.

(a) For the conservation and proper utilization of natural resources, the Superintendent, subject to obtaining the prior consent of the tribe where the tribe is the mineral owner, may approve, recognize and require that contracted areas shall be subject to cooperative or unitization agreements, or communitization agreements and well-spacing or development programs. All applications and documents incident to such agreements shall be filed with the Oil and Gas Supervisor and a copy of the application fully describing the lands and listing the contracted areas shall be filed with the Superintendent.

(b) Any acreage not participating in a communitized or unitized area shall be released to the Indian mineral owner(s) at the end of the primary term of the lease.

§ 182.22 Contracts for subsurface storage of oil or gas.

(a) The Superintendent may approve, subject to obtaining the prior consent of the Indian mineral owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such storage fee or rental, or in lieu thereof, for a royalty or percentage payment other than that prescribed in the oil and gas production contract when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary may approve, subject to obtaining the prior consent of the Indian mineral owners, a provision in an oil and gas contract, under which storage of oil and gas is authorized for continuance of the contract at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Oil and Gas Supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for approval of the Secretary to permit retention of five copies by the Department after approval.

§ 182.23 Termination and cancellation, enforcement of orders.

(a) Any lease or contract area on which there has been no drilling, exploration or surface disturbance activity shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the due date. If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next office working day shall be deemed timely.

(b) If the Superintendent determines—

(1) that a permittee or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or drilling plan, his/her orders or the orders of the Oil and Gas Supervisor, and

(2) such noncompliance does not threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; he/she shall serve a notice of noncompliance upon the permittee or operator by delivery in person or mailed to him/her at his/her last known address. Copies of said notice shall be sent to the Indian oil and gas owner and the Oil and Gas Supervisor. Failure of the permittee or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Superintendent, or to

initiate an appeal pursuant to § 182.25 of this part, shall be grounds for suspension of operations by the Superintendent, or grounds for the initiation of action for cancellation of the contract and forfeiture of any compliance bonds.

(c) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, laws, terms of the drilling plan or contract, or the orders of the Superintendent or the Oil and Gas Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Superintendent when such noncompliance has been corrected.

(d) If, in the judgment of the Superintendent, a permittee or operator is conducting activities on lands subject to the provisions of this part

(1) which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or drilling plan, his/her orders or the orders of the Oil and Gas Supervisor, and

(2) which threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources;

the Superintendent shall order the immediate cessation of such activities, without prior notice of noncompliance. The Superintendent shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted. Both the cessation order and the statement of the reasons for the order shall be delivered to the Indian oil and gas owner.

(e) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon him/her pursuant to subsection (b), or if a permittee or operator fails to take action in accordance with the cessation order statement served upon him/her pursuant to subsection (d), the Superintendent may issue a notice of cancellation of the contract, specifying the basis for the cancellation. The permittee or operator may, within 30 days of issuance of the notice, request a hearing at which he/she, the Indian oil and gas owner, the Superintendent, and the Oil and Gas Supervisor shall be entitled to present evidence. After such hearing, or after 30 days if no hearing has been requested, the Superintendent may order cancellation of the contract.

(f) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian oil and gas owner as set forth in the contract or otherwise available at law.

(g) Nothing in this section is intended to supersede the independent authority of the Oil and Gas Supervisor under 30 CFR Part 221. However, the Oil and Gas Supervisor and the Superintendent should consult with one another, when feasible, before taking any enforcement actions.

§ 182.24 Penalties.

Violation of any of the terms or conditions of any contract or of the regulations under this part shall subject the permittee or operator to a fine of not more than $1,000 per day for each day of such violation or noncompliance with the orders of either the Superintendent or the Oil and Gas Supervisor: *Provided*, that prior to the determination that a fine will be imposed as provided for in this section, the permittee or operator shall receive a 30-day notice with respect to the terms of the contract or of the regulations violated and, if he/she so requests, may receive a hearing before the Superintendent. Payment of penalties more than 10 days after notice of final decision is given shall be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid.

§ 182.25 Appeals.

(a) Appeals from decisions of the Superintendent under this part may be taken pursuant to Part 2 of this title.

(b) Cessation orders issued pursuant to Section 182.23(d) of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian oil and gas owner or upon submission of a bond deemed adequate by both the Indian oil and gas owner and the Superintendent to indemnify the Indian oil and gas owner from any resulting loss or damage.

§ 182.26 Fees.

Unless otherwise authorized by the Superintendent, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of $25.

Thomas W. Fredericks,
Assistant Secretary—Indian Affairs.
August 6, 1980.

[FR Doc. 80-24137 Filed 8-8-80; 8:45 am]
BILLING CODE 4310-10-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Comments Received From Federal Agencies on the Virginia 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 Virginia 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 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 their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Virginia Department of Conservation and Economic Development, Division of Mined Land Reclamation, Drawer U. Big Stone Gap, Virginia 24219, Telephone: (703) 523-2925.

Office of Surface Mining Reclamation and Enforcement, 950 Kanawha Blvd., East Charleston, WV 25301, Telephone: (304) 344-2331.

Office of Surface Mining, Department of the Interior, Room No. 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4728.

FOR FURTHER INFORMATION CONTACT:

Mr. Dick Leonard, Office of Surface Mining Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 342-8127.

Mr. Carl C. Close, Assistant Director, State and 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 Virginia permanent regulatory program submitted by Virginia for his review on March 3, 1980. See 45 FR 15576 (March 11, 1980), 45 FR 28167–28168 (April 28, 1980), 45 FR 41973–41976 (June 23, 1980). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Virginia 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 Virginia program:

Advisory Council on Historic Preservation
Appalachian Regional Commission
Council on Environmental Quality
Department of Agriculture:
  Agriculture Stabilization and Conservation Service
  Farmers Home Administration
  Forest Service
  Science and Education Administration
  Soil Conservation Service
  Farmers Home Administration
Department of Energy
Department of the Interior:
  Bureau of Indian Affairs
  Bureau of Land Management
  Bureau of Mines
  Fish and Wildlife Service
  Geological Survey
  Heritage Conservation and Recreation Service
  National Park Service
Department of Labor:
  Mine Safety and Health Administration
Environmental Protection Agency
Ohio River Basin Commission
Tennessee Valley Authority
U.S. Army Corps of Engineers
Water Resources Council

Of those agencies invited to comment, OSM received comments from the following offices:

Advisory Council on Historic Preservation
Appalachian Regional Commission
Department of Agriculture:
  Forest Service
  Science and Education Administration
  Soil Conservation Service
Department of Energy
Department of the Interior:
  Bureau of Land Management
  Bureau of Mines
  Fish and Wildlife Service
  National Park Service
Department of Labor: Mine Safety and Health Administration
Environmental Protection Agency
Tennessee Valley Authority
U.S. Army Corps of Engineers

These comments are available for review and copying during business hours at the locations listed above under "Addresses."

Dated: August 5, 1980.

R. Bruce Carroll,

Acting Assistant Director, State and Federal Programs.

[FR Doc. 80-24114 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Ch. VII

Comments Received From Federal Agencies on the West Virginia 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 West Virginia 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 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 their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

West Virginia Department of Natural Resources, Division of Reclamation, 1800 Washington Street, East, Charleston, WV 25305, Telephone: (304) 348–3267.

Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 344–2331.

Office of Surface Mining, Department of the Interior, Room No. 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343–4728.

FOR FURTHER INFORMATION CONTACT:

Mr. Dick Leonard, Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 342–8127.

Mr. Carl C. Close, Assistant Director, State and 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 West Virginia permanent regulatory program submitted by West Virginia for his review on March 10, 1980. See 45 FR 15190 (March 10, 1980), 45 FR 28164–28165 (April 28, 1980), 45 FR 41654–41656 (June 20, 1980). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the West Virginia Program may not be approved until the Secretary has solicited and publicly disclosed the views of the Adminstrator 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 West Virginia Program:

Advisory Council on Historic Preservation
Appalachian Regional Commission
Council on Environmental Quality
Department of Agriculture:
  Agriculture Stabilization and Conservation Service
  Extension Service
  Farmers Home Administration
  Forest Service
  Science and Education Administration
  Soil Conservation Service
Department of Energy
Department of the Interior:
  Bureau of Indian Affairs
  Bureau of Land Management
  Bureau of of Mines
  Bureau of Reclamation
  Fish and Wildlife Service
  Geological Survey
  Heritage Conservation and Recreation Service
  National Park Service
Department of Labor: Mine Safety and Health Administration
Environmental Protection Agency
Ohio River Basin Commission
U.S. Army Corps of Engineers
Water Resources Council

Of those agencies invited to comment, OSM received comments from the following offices:

Appalachian Regional Commission
Department of Agriculture:
  Forest Service
  Soil Conservation Service
Department of Energy
Department of the Interior:
  Bureau of Land Management
  Bureau of of Mines
  Fish and Wildlife Service
  National Park Service
Department of Labor: Mine Safety and Health Administration
Environmental Protection Agency
U.S. Army Corps of Engineers

These comments are available for review and copying during business hours at the locations listed above under "Addresses."

Dated: August 5, 1980.

R. Bruce Carroll,

Acting Assistant Director, State and Federal Programs.

[FR Doc. 24115 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Ch. VII

Comments Received From Federal Agencies on the Maryland 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 Maryland 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 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 their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Maryland Department of Natural Resources, Tawes State Office Bldg., Annapolis, MD 21401, Telephone: (301) 269-3041.

Office of Surface Mining Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 344-2331.

Office of Surface Mining, Department of the Interior, Room No. 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4728.

FOR FURTHER INFORMATION CONTACT:

Mr. Dick Leonard, Office of Surface Mining Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 342-8127.

Mr. Carl C. Close, Assistant Director, State and 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 Maryland permanent regulatory program submitted by Maryland for his review on March 3, 1980. See 45 FR 15189 (March 10, 1980), 45 FR 28169-28170 (April 28, 1980), 45 FR 41976-41977 (June 23, 1980). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Maryland 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 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 Maryland Program:

Advisory Council on Historic Preservation
Appalachian Regional Commission
Council on Environmental Quality
Department of Agriculture:
- Agriculture Stabilization and Conservation Service
- Farmers Home Administration
- Forest Service
- Science and Education Administration
- Soil Conservation Service

Department of Energy
Department of the Interior:
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Bureau of Reclamation
- Fish and Wildlife Service
- Geological Survey
- Heritage Conservation and Recreation Service
- National Park Service

Department of Labor:
- Mine Safety and Health Administration

Environmental Protection Agency
Ohio River Basin Commission
U.S. Army Corps of Engineers
Water Resources Council

Of these agencies invited to comment, OSM received comments from the following offices:

Advisory Council on Historic Preservation
Appalachian Regional Commission
Department of Agriculture:
- Forest Service
- Science and Education Administration
- Soil Conservation Service

Department of Energy
Department of the Interior:
- Bureau of Land Management
- Fish and Wildlife Service
- National Park Service

Department of Labor: Mine Safety and Health Administration
Environmental Protection Agency
U.S. Army Corps of Engineers

These comments are available for review and copying during business hours at the locations listed above under "Addresses."

Dated: August 5, 1980.

R. Bruce Carroll,

Acting Assistance Director, State and Federal Programs.

[FR Doc. 80-24116 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Ch. VII

Comments Received From Federal Agencies on the Pennsylvania State Permanent Program Submitted Under P.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 Pennsylvania 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 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 their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Pennsylvania Department of Environmental Resources, Fulton Bank Bldg., 10th Floor, Third and Locust Streets, Harrisburg, PA 17120, Telephone: (717) 787-4686.

Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 344-2331.

Office of Surface Mining, Department of the Interior, Room No. 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4728.

FOR FURTHER INFORMATION CONTACT:

Mr. Dick Leonard, Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 342-8127.

Mr. Carl C. Close, Assistant Director, State and 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 Pennsylvania permanent regulatory program submitted by Pennsylvania for his review on February 29, 1980. See 45 FR 15575–15576 (March 11, 1980), 45 FR 28165–28167 (April 28, 1980), 45 FR 41656–41659 (June 20, 1980). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Pennsylvania 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 Pennsylvania Program:

Advisory Council on Historic Preservation
Appalachian Regional Commission
Council on Environmental Quality
Delaware River Basin Commission
Department of Agriculture:
  Agriculture Stabilization and Conservation Service
  Farmers Home Administration
  Forest Service
  Science and Education Administration
  Soil Conservation Service
Department of Energy
Department of the Interior:
  Bureau of Indian Affairs
  Bureau of Land Management
  Bureau of Mines
  Bureau of Reclamation
  Fish and Wildlife Service
  Geological Survey
  Heritage Conservation and Recreation Service
  National Park Service
Department of Labor:
  Mine Safety and Health Administration
Environmental Protection Agency
Great Lakes Basin Commission
Ohio River Basin Commission
U.S. Army Corps of Engineers
Water Resources Council

Of those agencies invited to comment, OSM received comments from the following offices:

Appalachian Regional Commission
Department of Agriculture:
  Forest Service
  Science and Education Administration
  Soil Conservation Service
Department of Energy
Department of Interior:
  Bureau of Land Management
  Bureau of Mines
  Fish and Wildlife Service
  National Park Service
Department of Labor:
  Mine Safety and Health Administration
Environmental Protection Agency
Great Lakes Basin Commission
U.S. Army Corps of Engineers

These comments are available for review and copying during business hours at the locations listed above under "Addresses."

Dated: August 5, 1980.

Carl C. Close,

Assistant Director, State and Federal Programs

R. Bruce Carroll,

Acting Assistant Director, State and Federal Programs.

[FR Doc. 80-24122 Filed 8-8-80; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Parts 715, 816 and 817

Performance Standards

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

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining is proposing amendments to its general performance standards, its performance standards for surface mining activites, and its performance standards for underground activities. The changes are made to the portion of the regulations that relate to the disposal of excess spoil on benches existing prior to August 3, 1977. The proposed rule would amend the current regulations by allowing controlled gravity transport of excess spoil from an upper bench to a lower bench where the lower highwall meets the upper bench, provided spoil is not placed on the downslope of the lower bench.

DATES: Comments are due on or before September 10, 1980. A public hearing will be held beginning at 9:00 a.m. local time on August 29, 1980.

ADDRESSES: Written comments must be mailed on hand delivered to the Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Interior South, Room 153, Washington, D.C. 20240. The public hearing will be held at the Department of the Interior Main Auditorium, 18th and C Street, N.W., Washington, D.C. 20240. Additional comment and hearing information is located below in Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Raymond F. Aufmuth, Physical Scientist, Technical Services Division, Telephone: (202) 343–4264.

SUPPLEMENTARY INFORMATION: Section 501 of the Surface Mining Control and Reclamation Act ("Act") requires the Secretary to promulgate regulations establishing a regulatory program for surface coal mining operations. Regulations concerning disposal of excess spoil were promulgated on March 13, 1979, 44 FR 15311, (permanent program) and May 25, 1979, 44 FR 30610 (interim program).

This proposed rulemaking addresses questions raised by the Virginia Surface Mining Reclamation Association (VSMRA) concerning the disposal of excess spoil. Specifically, the questions relate to the disposal of excess spoil on pre-existing benches in previously mined steep slope areas.

Prior to passage of the Surface Mining Control and Reclamation Act surface coal mine operators commonly disposed of spoil by pushing it downslope of the bench. In steep slope areas with multiple coal seams, this often resulted in spoil being end-dumped from an active mining bench to a lower pre-existing bench. However, the Act (30 U.S.C. 1265(b)(22)(A)), the interim program regulations (30 CFR 715.15) and the permanent program regulations (30 CFR 816.71(a) and 817.71(a) (1979)) prohibit uncontrolled disposal of excess spoil, in particular disposal of spoil downslope of the active mining bench (30 U.S.C. 1265(d)(1)). The primary reason for the prohibition of uncontrolled end-dumping and disposal of spoil on the downslope is that rock and soil dumped downslope destroy existing vegetation and cause erosion, slides and increased sedimentation of streams. Therefore, the regulations currently allow end-dumping only in limited situations (durable rockfills) under specific environmental constraints (30 CFR 715.15(d), 816.74 and 817.74 and (1979)).

The general questions raised by VSMRA concern the disposal of excess spoil material on lower, pre-existing benches on previously mined steep slopes. VSMRA raises several issues that are discussed below:

a. The Disposal of Excess Spoil on Pre-existing Benches:

This practice is addressed in both the interim and final regulations (30 CFR 715.15, 816.71, 817.71 and 826.16) and is permitted, provided the operator adheres to certain requirements. A legislative rule to allow disposal of excess spoil on natural benches provided backfilling and grading requirements are met has been proposed. 45 FR 32331 (May 16, 1980).

b. Downslope Transport of Excess Spoil:

Two situations have been considered here. The first is gravity-induced downslope movement ("gravity transport") of excess spoil where there is a distinct natural slope between the two benches in question. This practice was discussed at length during the drafting of both the Act and regulations and is prohibited by both, which require that excess spoil be "placed in a controlled manner" (30 U.S.C. 1265(b)(22)(A) and 30 CFR 715.15, 816.71 and 817.71) and which prohibit disposal of spoil on the downslope. For this reason, the OSM has decided not to

allow gravity transport of excess spoil where there is a distinct natural slope between an actively mined upper bench and existing lower bench. OSM, however, has recognized the potential utility of gravity transport systems under certain conditions (see below) and has authorized an experimental practice utilizing "spoil lanes" where there is a distinct natural slope between the two.

The second situation is gravity transport of excess spoil where the highwall of the lower bench meets the upper bench such that there is no natural slope between the two. It is the prohibition of this practice that VSMRA is specifically questioning.

The preamble to the final permanent program regulations, at 44 FR 15203, 3rd column, March 13, 1979, cites legislative history indicating that excess spoil must be transported by vehicle, not be end-dumping or gravity transport, to its ultimate storing place. However, in that context the legislative history (123 Cong. Rec. H-7584, July 21, 1977) shows that Congress was primarily concerned with uncontrolled disposal of spoil on the downslope and approved of disposal of excess spoil on pre-exisiting benches:

> The surplus spoil disposal standards do not allow the dumping or pushing of spoil downslope of the bench. These standards require controlled placement of the spoil. Spoil must be transported—hauled by truck or other vehicle—placed and compacted at the exact location of its permanent disposal. This controlled placement concept is essential to the long term stability of spoil. . . . Suitable disposal areas must be found. It would seem that solid portions of old mine benches would be most suitable since they would offer the best foundation for stability.

OSM recognized in the preamble to the final permanent program regulations, at 44 FR 15203, 2nd column, March 13, 1979, "the constructive and beneficial results for disposal of excess spoil in such workings and excavations [as pre-existing benches], and strongly encourages this practice." In addition, one of the main purpose of the Act is to "promote the reclamation of mined areas left without adequate reclamation." 30 U.S.C. 1202(h). Therefore, OSM believes that Congress intended to prohibit uncontrolled gravity transport of spoil, especially where it resulted in placement of spoil on down slopes. Controlled gravity transport of excess spoil that protects against disposal of spoil on the downslope and leads to reclamation of preexisting benches would be consistent with Congressional intent.

After review and investigation of this method of excess spoil disposal and discussion with industry and State regulatory authorities, OSM is proposing a rule that will permit the gravity transport of excess spoil from an active upper bench to the pre-existing solid portion of a lower bench where the highwall of the lower bench meets the upper bench. The allowance of this practice should benefit operators by saving fuel, labor and capital costs involved in vehicular transport of excess spoil to disposal sites. At the same time, it should promote reclamation of pre-existing mined benches that otherwise would not be reclaimed. This practice will only be permitted on a site specific basis and must meet certain environmental standards in addition to those already in the regulations. Since the practice will be permitted only where no natural slope exists between the two benches and only upon the condition, among others, that no spoil moves to the downslope of the lower bench, the proposed rule does not authorize disposal of spoil on downslopes.

The proposed legislative rule would function as follows with respect to surface coal mining operations:

Gravity transport of excess spoil from an upper actively mined bench to a lower pre-existing bench will be permitted on a site specific basis provided:

(1) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them.

(2) Only spoil in excess of that necessary to eliminate the highwall and return the upper actively mined bench to the approximate original contour may be placed on the solid portion of the lower bench.

(3) Gravity transport points are determined on a site specific basis. It is anticipated that there will be specific points along the upper bench at which gravity transport will occur. Although uncommon, continuous gravity transport could occur along extended lengths of the upper bench where there is a short highwall on the lower bench. The limiting of gravity transport points will provide for equipment operator safety on the lower bench, ensure, environmental protection of the downslope below the lower bench and provide ease in rehandling of the excess spoil.

(4) The excess spoil is placed only on solid portions of the lower pre-existing bench.

(5) The excess spoil on the solid portion of the lower bench is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing of the excess spoil on the solid portion of the lower bench is necessary to provide for revegatation and long-term stability, and should consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrent compacting as necessary to ensure mass stability and prevent mass movement, and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(6) A safety berm is constructed on the lower bench of sufficient height and width and length to prevent any spoil from moving over the bench to the downslope following end-dumping. Movement of excess spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 826.12(a)(i).

The safety berm must be removed by the operator during final grading operations.

(7) The area of the lower bench used to facilitate the disposal of excess spoil shall be considered an affected area and as such is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing wastes requirements.

The proposed legislative rule would function as above with respect to surface activities resulting from underground coal mining operations with the following exceptions:

(1) Consistent with the distinct differences between surface and underground coal mining operations, underground development waste as well as spoil not required to achieve approximate original contour may be placed on the lower solid bench;

(2) The gravity transport method may be conducted from a bench from which a portal is constructed for underground mining operations.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The Department of the Interior has also determined that the adoption of this rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. These determinations are available in the Administrative Record. The Act provides that issuance of regulations as part of the interim regulatory process shall not constitute a major Federal action within the meaning of the Section 102(2)(c) of the National Environmental Policy Act, 30 USC

§ 1251(a). Therefore only the impacts of amendments to the permanent regulatory program were analyzed.

Summary

Part 715—30 CFR 715.15(a) is proposed to be amended by adding a paragraph at the conclusion of the section permitting gravity transport of excess spoil in certain situations.

Part 816—30 CFR 816.71 is proposed to ba amended by adding a paragraph at the conclusion of the section permitting gravity transport of excess spoil in certain situations.

Part 817—30 CFR 817.71 is proposed to be amended by adding a paragraph at the conclusion of the section permitting gravity transport of underground development waste and excess spoil in certain situations.

Proposed Amendment

Part 715—30 CFR 715.15(a) is proposed to be amended as follows:

Part 715—General Performance Standards

§ 715.15(a)—Disposal of Excess Spoil: General Requirements

(1)–(14) * * *

(15) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(A) The operator receives the prior written approval of the regulatory authority; and

(B) The following conditions and performance standards in addition to the Environmental Performance Standards of this part are met:

(i) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(ii) Only spoil in excess of that necessary to eliminate the highwall and return the upper actively mined bench to the approximate original contour may be placed on the lower solid bench;

(iii) The gravity transport points are determined on a site specific basis by the regulatory authority; to minimize hazards to health and safety and to ensure that damage will be minimized should spoil accidently move downslope of the lower bench;

(iv) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(v) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacting as necessary to ensure mass stability and prevent mass movement and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(vi) A safety berm is constructed on the lower bench of sufficient height, width and length to prevent any spoil from moving over the lower bench to the downslope following end-dumping (movement of excess spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 716.2(a)(1)) and the safety berm is removed by the operator during final grading operations;

(vii) The area of the lower bench used to facilitate the disposal of excess spoil is considered an affected area and, as such, is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing wastes requirements.

Part 816—30 CFR 816.71 is proposed to be amended as follows:

Part 816: Permanent Program Performance Standards: Surface Mining Activities

§ 816.71—Disposal of Excess Spoil: General Requirements

(a)–(n) * * *

(o) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(1) the operator receives the approval of the regulatory authority; and

(2) the following conditions and performance standards in addition to the Environmental Performance Standards of this part are met:

(A) the highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(B) only spoil in excess of that necessary to eliminate the highwall and return the upper actively mined bench to the approximate original contour may be placed on the lower solid bench;

(C) the gravity transport points are determined on a site specific basis by the regulatory authority to minimize hazards to health and safety and ensure that damage will be minimized should spoil accidently move downslope of the lower bench.

(D) the excess spoil is placed only on the solid portions of the lower pre-existing bench;

(E) all excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrent compacting as necessary to ensure mass stability and prevent mass movement and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(F) a safety berm is constructed on the lower bench of sufficient height, width and length to prevent spoil from moving over the lower bench to the downslope following end-dumping (movement of excess spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 826.12(a)(i)) and the safety berm is removed by the operator during final grading operations;

(G) the area of the lower bench used to facilitate the disposal of excess spoil is considered an affected area and, as such, to be is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing wastes requirements.

Part 817—30 CFR 817.71 is proposed to be amended as follows:

Part 817: Permanent Program Performance Standards: Surface Mining Activities

§ 817.71—Disposal of Underground Development Waste and Excess Spoil: General Requirements

(a)–(n) * * *

(o) Disposal of underground development waste and excess spoil from a bench from which a portal has been constructed to a lower pre-existing bench by means of gravity transport is permitted provided that:

(1) The operator receives the approval of the regulatory authority; and

(2) The following conditions and performance standards in addition to the Enivronmental Performance Standards of this part are met:

(A) The highwall of the lower bench intersects (meets) the upper bench from which a portal has been constructed with no natural slope between them;

(B) Only underground development waste and spoil in excess of that necessary to eliminate the highwall and return the upper bench to the approximate original contour may be placed on the lower solid bench;

(C) The gravity transport points are determined on a site specific basis by the regulatory authority to minimize hazards to health and safety and insure that damage will be minimized should spoil accidentally move downslope of the lower solid bench.

(D) The underground development waste and excess spoil is placed only on solid portions of the lower pre-existing bench;

(E) All underground development waste and excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess material on the lower solid bench shall consist of placing the excess material in horizontal lifts in a controlled manner, concurrently compacting as necessary to ensure mass stability and prevent mass movement and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(F) A safety berm is constructed on the lower bench of sufficient height, width and length to prevent any material from moving over the lower bench to the downslope following end-dumping (movement of spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 826.12(a)(i)) and the safety berm is removed by the operator during final grading operations;

(G) The area of the lower bench used to facilitate the disposal of underground development waste and excess spoil is considered an affected area and, as such, to be is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing waste requirements.

Hearing and Comment Procedures

The hearing site was selected on the basis of its proximity to the mining area most likely to be impacted by the proposed rule change.

Individual testimony at this hearing will be limited to 15 minutes. The hearing will be transcribed. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions that could be asked to clarify the statement of, or to request more specific information from, the person testifying. Persons seeking further information or wishing to speak at the hearing should contact Raymond E. Aufmuth at (202) 343-4022. Persons wishing to speak who have not contacted Mr. Aufmuth will be heard following the scheduled speakers. Written and oral comments should be as specific as possible. OSM will appreciate any and all comments. The most useful comments, however, are those that are supported by discussion of the Act, the legislative history and pertinent technical literature.

Dated: August 1, 1980.

Charles P. Eddy,

Acting Assistant Secretary, Energy and Minerals.

Environmental Assessment

The proposed action would amend the interim and permanent regulatory program of the Surface Mining Control and Reclamation Act of 1977 ("Act"). The Act provides that issuance of regulations as part of the interim regulatory program shall not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act. 30 USC § 1251(a). Therefore, only the impacts of amendments to the permanent regulatory program will be analyzed. The proposed regulations would apply to remining operations and would permit gravity transport of material from one bench to another, provided the highwall of the lower bench intersects the upper bench. The permanent program regulations were published at 44 FR 15312 *et seq.* (March 13, 1979). A programmatic environmental impact statement (OSM-EIS-1) was prepared which addressed the environmental impact of the permanent regulatory program.

This EA analyzes the proposed regulations to determine if any significant effects on the human environment result. The environmental impacts of an alternative is also analyzed.

Proposed Action

OSM proposes to amend the permanent regulatory program to include regulations applicable to remining operations permitting gravity transport of material from an upper bench to an existing lower bench. Use of this method would be restricted to situations where the highwall of the existing lower bench intersects the upper bench. The proposed regulations would include provisions requiring construction of a berm on the lower bench to prevent spoil movement off the bench and rehandling of the material on the lower bench to assure stability.

Gravity transport methods are not directly analyzed in the programmatic EIS, but the general subject of spoil disposal, of which gravity transport is one method, is analyzed at BIII-11-14. The existing regulations require backfilling and grading mined land to restore the approximate original contour (AOC), including the elimination of highwalls, and prohibit disposal of spoil on the downslope. The present regulations apply to mining operations after passage of the Act. The proposed regulations would apply to remining operations where an operator makes a new bench cut above benches existing prior to the date of the Act. The operator is not required to reclaim those existing benches. The proposed rules would encourage reclamation of existing benches by allowing the operator to gravity dump the excess spoil from an upper bench on to a lower existing bench under certain circumstances.

Alternatives

1. No action.
2. Amend the regulations to allow gravity transport of material from an upper bench to a lower existing bench.

Discussion of Alternatives

1. No action. The alternative of taking no action will result in application of the regulations as they are now promulgated. The environmental impacts of this alternative have been adequately addressed in the Environmental Impact Statement developed for the permanent program regulations, primarily at B-III-11-12, 39-41 and 60-61 (Final Environmental Impact Statement, OSM-EIS-1).

As analyzed in the programmatic EIS, the impacts of the current regulations are primarily beneficial, consisting of improved postmining productive capacity and soil quality, reduction in disturbed area for fills and minimization of contributions of sediment and dissolved solids to the prevailing hydrologic system.

2. Amend the regulations to allow controlled gravity transport of material from an upper actively mined bench to an existing lower bench. This alternative would preserve the beneficial impacts of the present regulations, since the requirement to build a berm would prevent soil movement off the bench and prevent contributions of sediment to the hydrologic system, while spoil rehandling requirements, including compaction and regrading, would assure stability of the bench and decrease the erosivity of the material to prevent additional contributions of sediment and dissolved solids to the hydrologic system. Additional significant benefits are the elimination of orphaned highwalls and benches in areas of remining.

Finding of No Significant Impact

The environmental assessment prepared by OSM identifies environmental impacts that would occur

as a result of a proposed rule modification to the permanent regulatory program. A previous environmental impact statement (OSM-EIS-1) was prepared which identified and discussed the impact of that program. In particular, the impacts of the proposed regulations and alternatives within the scope of the programmatic EIS.

The environmental impacts of the proposed rule modification are minimal in degree and their individual and cumulative impacts would not be significant.

Based on the discussion of impacts in the environmental assessment, I have concluded that the proposed rulemaking will result in no significant impact on the human environment not already identified and discussed in the programmatic environmental impact statement and that another environmental impact statement is therefore not required.

Dated: July 29, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

Approved: August 1, 1980.

Charles P. Eddy,

Acting Assistant Secretary, Energy and Minerals.

Determination of Significance for Proposed Rule on Gravity Transport Method

The Office of Surface Mining (OSM) proposes to amend the internal and permanent regulatory program to include a regulation to permit gravity transport of material from an upper bench to an existing lower bench. Use of this method would be limited to situations where the highwall of the lower existing bench and the upper bench intersect. Use of this method would not be allowed on the downslope.

I have concluded, based on a review of the criteria for determining significance, that the proposed rule will not be significant and does not require the preparation of a regulatory analysis.

Criteria for Significance

1. *The proposed rule will not have a major and national or regionwide impact on State or local governments.* 43 CFR 14.3(c)(1).

The proposed rule will have no effect on interstate relations, relations between State and local governments, internal organizations of State and local governments, personnel practices of State and local governments, the role and functions of heads of State and local governments, or eligibility criteria for Federal financial assistance. The amending of the regulations will result in additional work for the operator and the regulatory authority in terms of the permit application and reclamation plan. The operator will have to identify the disposal method, berm construction, etc. which will have to be reviewed by the RA. However, this will be generally offset because the operator will not have to permit additional area for a fill, nor will he have to have this fill structure designed and certified. The RA will not have to review the fill design which generally will be more complex than disposal on a bench. For these reasons, this proposed amendment will not have a major impact on State or local governments.

2. *The proposed rule will impose no major new recordkeeping or reporting requirements on individuals, businesses, organizations or State or local governments.* 43 CFR 14.4(c)(2).

The proposed rule does not impose any new recordkeeping or reporting requirements because it does not impact the recordkeeping portions of the regulatory program.

3. *The proposed rule does not constitute a major Federal action for which an environmental impact statement is required.* 43 CFR 14.3(c)(3).

An environmental assessment has been prepared which found that the proposed rule will not have a significant effect on the quality of the human environment so as to require the preparation of an environmental impact statement. The environmental assessment is on file in the administrative record for this rulemaking.

4. *The proposed rule would not have a major impact on other programs of the Department, other Federal agencies or the allocation of Federal funds.* 45 CFR 14.3(c)(4). The proposed rulemaking does not involve allocation of Federal funds by the Office of Surface Mining.

The proposed rule affects only the programs of the Office of Surface Mining and does not affect other Federal agencies or impact on the allocation of Federal funds.

5. *The proposed rule is not likely to have a substantial economic effect on the entire economy or on an individual region, industry or level of government.* 43 CFR 14.3(c)(5).

The proposed rule does not make any substantial change in the present regulatory program. The economic impact on coal operators would be reduced as the rule may provide a cheaper method of moving excess spoil material from one bench to another. However, the number of operations impacted is small since this type of operation may only occur in remining of areas mined prior to August 3, 1977.

Dated: July 29, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

Approved: August 1, 1980.

Charles P. Eddy,

Acting Assistant Secretary, Energy and Minerals.

[FR Doc. 80-24128 Filed 8-8-80; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 6 and 35

[FRL 1557-5]

Municipal Wastewater Treatment Works; Construction Grant Requirements Provided by Section 316 of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance of proposed rulemaking invites public participation in the revision of Environmental Protection Agency (EPA) regulations implementing the municipal wastewater treatment works construction grants program and/or the National Environmental Policy Act (NEPA) to include additional provisions clarifying the requirements under section 316 of the Clean Air Act, as amended (Pub. L. No. 95-95). The Clean Air Act requires each state to develop a state implementation plan (SIP) to attain and maintain each national ambient air quality standard (NAAQS) and to prevent significant deterioration of air quality. Section 316 allows the Administrator of EPA to withhold, condition or restrict municipal wastewater treatment works construction grants funded under section 201 of the Clean Water Act (Pub. L. No. 95-217) in areas where the SIP has not been approved or conditionally approved, is not being implemented, or does not provide for the increased air pollution emissions resulting directly or indirectly from the proposed treatment works. EPA requests, by this notice, recommendations of any revisions to its regulations that are needed to better cary out the requirements of section 316.

DATE: Comments on this advance notice of proposed rulemaking must be received on or before October 10, 1980.

ADDRESS: Comments should be sent to: Roger Rihm, Office of Water Program Operations (WH-595), Environmental Protection Agency, 401 M Street, S.W., Room 1139, East Tower, Washington, D.C. 20260.

All comments received will be available for examination by any interested person at the above address.

FOR FURTHER INFORMATION CONTACT: Cary B. Hinton, Office of Transportation and Land Use Policy (ANR-445), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-0570; or Roger Rihm, Office of Water Program Operations (WH-595), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-8056.

SUPPLEMENTARY INFORMATION:

I. Background

EPA announces elsewhere in today's Federal Register the final policy and procedures for determining whether any limitations on federal assistance for the construction of sewage treatment works under the Clean Water Act (33 U.S.C. 1251 et seq.) are necessary to implement section 316 of the Clean Air Act (42 U.S.C. 7616).

The basic elements of the section 316 policy include:

A. Assuring compliance of new sewage treatment works with the new source performance standards and the national emission standards for hazardous air pollutants.

B. Withholding construction grants in areas where states have not made good faith efforts to submit or carry out a SIP revision.

C. Reconciling population projections used for air and water quality planning to ensure that SIPs provide an accurate accounting of the increased indirect emissions associated with new sewage treatment capacity

D. Withholding portions of construction grants for major growth-related projects in attainment areas, based upon case-by-case determinations by the EPA Regional Administrators in the following situations:

—Where the emissions associated with the project will contribute to the violation of any NAAQS.

—Where the SIP and water quality planning population projections are inconsistent.

Portions of the grants that fund increased capacity will be withheld until the governor is notified of the need to accommodate any unaccounted emissions in a SIP revision or the grant applicant adopts a mitigation program.

E. Consulting with adjacent states to prevent the increased emissions associated with new sewage treatment capacity from interfering or being inconsistent with any other SIP.

II. Request for Comments

EPA solicits comments on whether the municipal wastewater treatment works construction grants regulations (40 CFR 35 et seq.) and/or the regulations to implement NEPA (40 CFR 6 et seq.) should be revised to better inform grant applicants of their responsibilities and facilitate EPA's implementation of the section 316 policy.

The municipal wastewater treatment works construction grants regulations (40 CFR 35.925-14) stipulate that sewage treatment works must "comply with all pertinent requirements of applicable federal, state and local environmental laws and regulations (. . . and the Clean Air Act)." The municipal wastwater treatment works construction grants program's cost-effectiveness analysis guidelines (40 CFR 35 App. A) require that the new treatment works' "potential secondary environmental effects" should be assessed to ensure "that air quality standards will not be violated." Both the cost-effectiveness guidelines and the construction grants regulations (40 CFR 30.405-1 and 35.925-8) require a grantee to prepare an adequate environmental assessment, in compliance with EPA's NEPA regulations (44 FR 64174-64193), before any award of step 2 (facility design) or step 3 (facility construction) grant assistance.

The EPA regulations implementing NEPA (40 CFR 6.506, 6.507, and 6.203) require that the environmental assessment prepared during the step 1 (facility planning) phase, and any subsequent environmental impact statement (EIS), will document the treatment works' effect upon local ambient air quality caused by direct emissions from the treatment works or indirect emissions from induced development. These regulations (40 CFR 6.507) also provide that the environmental assessment and the EIS will describe the steps that have been taken to mitigate or eliminate any significant adverse air quality effects from the constuction and operation of the treatment works. The NEPA regulations (40 CFR 6.509) provide that a step 2 or step 3 grant shall not be awarded, if the grant applicant has not made, or agreed to make, pertinent changes in the project to mitigate or eliminate the significant adverse air quality effects. Moreover, the step 2 or step 3 grant award may be conditioned to ensure that the grantee will comply, or seek to obtain compliance, with the mitigation requirements.

The NEPA regulations (40 CFR 6.505 and 6.303) also establish procedures to ensure that sewage treatment works, that may significantly affect air quality, will conform to the requirements of an approved or promulgated SIP. These procedures provide an opportunity for state and local air quality agencies to concur or nonconcur with a grantee's demonstration of conformity with the SIP. In addition, they provide that EPA will ensure the conformity of the treatment works with the SIP in the finding of no significant impact or the final EIS.

Recommendations are requested by EPA on what revisions are needed to its regulations to include provision for the section 316 requirements. This may include clarification of grant applicants' responsibilities to:

A. Assess the sewage treatment works' impact on air quality;

B. Mitigate increased direct and indirect emissions; and

C. Ensure conformity with the SIP.

III. Public Participation in Rulemaking

Extensive public participation is planned thoughout the rulemaking process. Public participation activities will be undertaken in accordance with the requirements pursuant to the Clear Water Act (40 CFR 25 et seq.) and the municipal wastewater treatment works construction grants program (40 CFR 35.917-5). In addition to publication, this notice will be distributed to national interest groups and state and local government. Comments on the section 316 requirements are invited throughout the rulemaking process.

Two public hearings are planned after the proposed regulation(s) is published in the Federal Register. These will be held in San Francisco, CA, and Washington, D.C. Notice of the hearings will be widely distributed, along with background on the proposals. Upon request, EPA staff will be available to consult with interested parties on this rulemaking.

IV. Authority

This advance notice of proposed rulemaking is issued under the authority of section 301(a)(1) and section 316(b) of the Clean Air Act, as amended [42 U.S.C. 7601(a)(1) and 7616(b)]; section 201(g)(1) of the Clean Water Act [33 U.S.C. 1251(g)(1)]; the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]; Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977); and the Council on Environmental Quality regulations to

implement the procedural requirements of NEPA (40 CFR 1500–1508).

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations as "specialized." I have reviewed this rulemaking and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

August 4, 1980.

[FR Doc. 80-24006 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 460 and 461

PSRO Area Designations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed regulation.

SUMMARY: HCFA proposes to amend the regulations establishing guidelines for the designation of Professional Standards Review Organization (PSRO) areas. PSRO's are non-profit physician review organizations funded, for a particular geographic area, to review the medical necessity, appropriateness, and quality of health care services provided to Medicare, Medicaid, and Maternal and Child Health patients. The proposed changes will allow the Administrator to redesignate PSRO areas for the purpose of increased efficiency in PSRO operations. In addition, HCFA proposes to remove from the regulations the State and County specific PSRO area descriptions and to publish these in the future by notice in the Federal Register. Finally, obsolete sections of the Professional Standards Review regulations will be deleted.

DATE: Consideration will be given to comments or suggestions received on or before October 10, 1980.

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17082, Baltimore, MD 21235.

In commenting, please refer to HSQ-71P. Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G Humbert H. Humphrey Bldg., 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to the rule.

FOR FURTHER INFORMATION CONTACT: Marjorie Geller, 301/594-5033.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services has broad discretion to establish the boundaries of PSRO area under the Social Security Act. Section 1152(a) of the Social Security Act provides that the Secretary shall establish "appropriate areas with respect to which Professional Standards Review Organizations may be designated." Under this authority the Secretary has published regulations incorporating the criteria to be considered in developing areas (42 CFR 460.2).

The legislative history of the PSRO program exhibits a marked congressional preference for local sponsorship and operation of PSROs. In recognition of this preference, the Department developed area designation criteria designed to encourage the development of independent, local review organizations. Although this policy permitted such development, it also resulted in numerous small PSROs, some of which have lacked sufficient volume of review in order to operate in an efficient, cost effective manner. In many States, local peer review responsibility and active physician participation could be maintained with fewer PSRO areas. The consolidation of some smaller PSRO areas offers the potential for substantial administrative cost savings and improvements in the overall operational efficiency and economy of the PSRO program.

According to the statute, a PSRO must be "capable of performing, in an effective * * * manner and at reasonable cost" its "duties, functions, and activities." We believe this provision permits the designation or redesignation at a reasonable cost not merely with respect to an individual PSRO area but also considering national program effectiveness and costs.

HCFA also proposes to remove from the regulations the area specific State and County designation descriptions and to publish future changes in notice form. This will administratively simplify the redesignation process by eliminating the need for formal rule changes to alter the area designation descriptions. Although area designations will no longer appear in the *Code of Federal Regulations*, they will be maintained on file at HCFA and be available for public inspection. Notice procedures will also provide for a public comment period before any final changes in area designations are made.

Finally, HCFA is making changes to increase the clarity of these regulations and eliminate obsolete provisions. The obsolete provisions include all of Part 461—Notification and Polling of Physicians, which applies only in the case of agreements entered into prior to January 1, 1978. Since compliance with these provisions is now complete, Part 461 is no longer of general applicability and future effect and should be deleted from the *Code of Federal Regulations*.

42 CFR Chapter IV is amended as set forth below:

1. Part 460 is amended by revising the table of contents, revising §§ 460.1 and 460.2, to read as set forth below and deleting §§ 460.2a thru 460.56:

PART 460—PSRO AREA DESIGNATIONS

Sec.
460.1 Definitions.
460.2 Guidelines for designation of areas.

§ 460.1 Definitions.

As used in this part:

(a) "Act" means the Social Security Act, as amended, (42 U.S.C. Chapter 7).

(b) "Administrator" means the Administrator of the Health Care Financing Administration and any other officer or employee of the Health Care Financing Administration to whom the authority involved may be delegated.

(c) "Physician" means a licensed doctor of medicine or osteopathy.

(d) "PSRO" means Professional Standards Review Organization.

(e) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

(f) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Trust Territory of the Pacific Islands.

§ 460.2 Guidelines for designation of areas.

(a) *General requirements.* The Administrator will:

(1) Designate appropriate areas for which Professional Standards Review Organizations may be designated; and

(2) From time to time, review the area designations and revise those that, in his judgment, need revision.

(b) *Specific guidelines.* In designating areas or revising the designations, the Administrator will take into consideration the following factors:

(1) Political boundaries;

(2) Existing medical review organizations and health planning organization;

(3) Medical service patterns as exemplified by the location of existing medical centers and natural geographic barriers;

(4) Representation and distribution of medical specialties;

(5) Coordination with Medicare and Medicaid fiscal agents;

(6) Operational efficiency and cost-effectiveness.

(c) *Application of guidelines.* If more than one possible designation in a particular geographic area is equally consistent with the guidelines, the Administrator will determine the designations most likely to result in effective review at reasonable cost.

2. Part 461 is vacated and reserved.

(Sections 1102 and 1152 of the Social Security Act 42 U.S.C. 1302 and 1320c-1)

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program;
No. 13.773—Medicare-Hospital Assurance;
No. 13.774—Medicare-Supplementary Medical Assurance)

Dated: June 6, 1980.

Earl M. Collier Jr.,

Acting Administrator, Health Care Financing Administration.

Approved: July 28, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-24152 Filed 8-8-80; 8:45 am]
BILLING CODE 4110-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1080

[Ex Parte No. 364 (Sub-1)]

Freight Forwarder Contract Rates—Implementation of Pub. L. 96-296

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to modify existing rules to allow the filing of contract rates between freight forwarders and rail and water carriers. Other editorial changes to the rules are proposed both to comport with other legislated changes and to eliminate obsolete provisions.

DATE: An original and 15 copies of comments are due September 10, 1980.

ADDRESS: Send comments to: Office of Proceedings, Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane Mackall, (202) 275-7693

SUPPLEMENTARY INFORMATION:

Background

In our Notice of Proposed Change of Policy served June 7, 1979, in the lead proceeding, Ex Parte No. 364, *Railroad Freight Forwarder Contract Rates,* we proposed to issue a general policy statement permitting railroads to file, in tariff form, contract rates with freight forwarders. In Ex Parte No. 358-F, Change of Policy—Railroad Contract Rates, we had announced that railroad contract rates with shippers would be examined on an individual basis and, where lawful, be permitted to become effective. Our Ex Parte No. 358 policy statement deferred a decision on whether to permit railroads to publish contract rates with freight forwarders. The Commission had in the past found that these rates were prohibited by the Interstate Commerce Act and we were not prepared to re-examine that holding in Ex Parte No. 358.

In the lead proceeding, an amendment to 49 CFR 1039.1 was proposed to make our railroad-shipper contract rate rules applicable to these contracts.

The major issue raised in our Notice was our jurisdiction to permit these rail freight forwarder contract rates. This issue has been mooted by enactment, in Pub. L. 96-296, of new section 10703(a)(4)(E). That section specifically authorizes freight forwarder contracts with rail and water carriers.

Section 22 of Pub. L. 96-296 and the pertinent legislative history make it clear that, for the purposes of contract rates, freight forwarders are to be treated as common carriers. The legislative history states:

> This provision would enable freight forwarders to enter into contracts with other common carriers, including rail carriers for transportation services. The contracts contemplated by this section would be negotiated arrangements between common carriers relative to a mutual understanding. The contracts would be subject to rules promulgated by the Commission. Such rules should take into consideration that freight forwarders are common carriers. This provision is meant to foster intermodal transportation [1] * * *.

Our prior notice is the lead proceeding approached the issue differently. Basically, it treated freight forwarders as shippers. The Ex Parte No. 358 standards proposed to be applicable concern carrier-shipper relationships and related statutory requirements (e.g., common carrier obligation, discrimination among shippers). Thus, our prior approach was inconsistent with the new statute's direction and the comments, as well, reflected issues of carrier-shipper instead of carrier-carrier relationships.

Explanation of Proposed Rule Changes

A. Rail and Water Contracts

49 CFR 1080 contains rules for the filing of freight forwarder contracts with motor carriers under Section 10766 (b) (former section 409). We propose to implement new Section 10703(a)(4)(E) by extending these rules to freight forwarder contracts with rail and water carriers. These rules govern the filing of these contracts. Contracts with rail and water carriers will be subject to the same standards of lawfulness as are now used to judge motor carrier Section 10766(b) contracts.

We recognize that certain aspects of the current rules (e.g., public inspection of contracts under § 1080.6) may be objectionable to freight forwarders. The changes proposed in this notice should not be interpreted as a barrier to a future reassessment of these provisions. However, Pub. L. 96-296 provides a 180-day timetable for implementing new Section 10703(a)(4)(E). We believe it appropriate to separate these technical amendments necessary to implement the new legislation from consideration of substantive amendments of a much more controversial nature. Accordingly, following completion of this proceeding, we will, if asked, undertake further review of the impact of these rules.

B. Motor Contracts

Section 10(d) of Pub. L. 96-296 also makes a change in the standards for contracts with motor carriers. The prior requirement that contracts for truckload line haul transportation of more than 450 miles may not be at rates less than the underlying motor carrier rates is deleted. (See new Section 10766(b) of the Act). Accordingly, 49 CFR 1080.2(c) will be amended to delete reference to this prior restriction.

Section 10(d) (new Section 10766(b) of the Act) also permits freight forwarders to contract with motor contract carriers. We will amend the rules to include this added option.

[1] H.R. Rep. No. 96-1069, 96th Congress, 2d Session, p. 35 (1980).

C. Elimination of Other Obsolete Provisions

49 CFR 1080.5 was adopted to legitimize contracts entered into prior to September 20, 1951. We see no present need to maintain this rule. We also propose to eliminate unnecessary, legalistic language from all of Part 1080.

Proposed Rules

In addition to amending the title of Part 1080 to read: "Contracts, Forwarders—Motor Common and Contract Carriers, Rail and Water Common Carriers," 49 CFR Part 1080 is proposed to be revised as follows:

PART 1080—CONTRACTS, FORWARDERS—MOTOR COMMON AND CONTRACT CARRIERS, RAIL AND WATER COMMON CARRIERS

Sec.
1080.1 Filing.
1080.2 Specifications.
1080.3 Amendments.
1080.4 Timing of filing and notice of termination.
1080.5 Public inspection.

Authority: 49 U.S.C. 10321, 10703(a)(4)(E), 10749, and 10766(b), 5 U.S.C. 553.

§ 1080.1 Filing.

All contracts and amendments between freight forwarders and motor, rail, and water common carriers and motor contract carriers entered into under 49 U.S.C. 10766(b) or 49 U.S.C. 10703(a)(4)(E) shall be in writing. The freight forwarder must file 2 copies of all these contracts with the Interstate Commerce Commission.

§ 1080.2 Specifications.

Contracts shall show:

(a) In the upper right-hand corner, a number in the consecutive series of the forwarder;

(b) The full name and address of each party to the contract, and the ICC number, omitting subnumbers, identifying the operating authority of each;

(c) A description of the transportation and any other services to be performed by the motor, rail, or water carrier; the points or area where the service will be performed; the compensation (set forth in dollars or cents per unit of weight or other measure, or as a specific percentage of the otherwise applicable motor, rail, water, or freight forwarder charge. If the latter method is used, the contract must cite the governing tariff either by ICC number or by ICC Alpha Code designation);

(d) The effective date of the contract; and

(e) All other terms and conditions agreed upon between the parties to the contract.

§ 1080.3 Amendments.

Amendments to contracts shall show their effective dates, and indicate all superseded provisions. They shall reflect the same series number as the original contract and be consecutively numbered.

§ 1080.4 Timing of filing and notice of termination.

Contracts, amendments, and termination notices shall be filed within 10 days after their effective dates. If a new contract, rather than an amendment, is filed, it shall specifically cancel the old contract. If names of parties are changed but the contract is to be continued, a new contract showing the names of the new parties or a document adopting the old contract and reflecting the new names shall be filed within 30 days.

§ 1080.5 Public inspection.

All contracts and amendments filed with the Commission under the rules and regulations of this part shall be open to public inspection.

Conclusion

Comments, limited to the rule changes proposed in this notice and their environmental and energy impact, if any, are invited.

Authority: 49 U.S.C. 10321, 10703(a)(4)(E), 10749, and 10766(b), 5 U.S.C. 553.

Decided: July 31, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-24132 Filed 8-8-80; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 45, No. 156
Monday, August 11, 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.

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the California Advisory Committee (SAC) of the Cummission will convene at 7:30 p.m. and will end at 9:30 p.m., on September 12, 1980, at the Holiday Inn at the Wharf, 1355 North Harbor Drive, San Diego, California, 92101.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 3660 Willshire Blvd., Suite 810, Los Angeles, California 90010.

The purpose of this meeting is to finalize the Communications Subcommittee project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 5, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-24108 Filed 8-8-80; 8:45 am]

BILLING CODE 6335-01-M

California Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the California Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and will end at 3:30 p.m., on September 13, 1980, at the Holiday Inn at the Wharf, 1355 North Harbor Drive, San Diego, California, 92101.

Persons wishing to attend this open meeting should contact the Committee Chairperson; or the Western Regional Office of the Commission, 3660 Wilshire Blvd., Suite 810, Los Angeles, California, 90010.

The purpose of this meeting is to review subcommittee reports of their respective projects and preparation for SAC Chairpersons Conference in Washington, D.C.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. August 5, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-24109 Filed 8-8-80; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nebraska Advisory Committee (SAC) of the Commission will convene at 1:30 p.m. and will end at 5:00 p.m., on September 15, 1980, at the First National Bank Building, 1620 Dodge, Suite 2100, Omaha, Nebraska.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, Old Federal Office Building, Rm. 3103, 911 Walnut Street, Kansas City, Missouri, 64106.

The purpose of this meeting is to discuss program planning for FY 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 4, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-24110 Filed 8-8-80; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Dakota Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 4:00 p.m., on September 27, 1980, at the Imperial, 400 Motel, 125 Main Street, Rapid City, South Dakota, 57701.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colorado, 80202.

The purpose of this meeting is to review the subcommittee's project on political participation.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 4, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-24111 Filed 8-8-80; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Subsection 301.8 of the Regulations provides in pertinent part:

"The applicant shall *on or before the 20th* day following the date of such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an

extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period.

* * * If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant secretary whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of Subsection 301.11." (Emphasis added).

The meaning of the subsection is that should an applicant either fail to notify the Deputy Assistant Secretary of its intent to resubmit another application for the same article to which the denial without prejudice relates *within the 20-day* period, or fails to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above; therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Subsection 301.8 further provides:

"* * * the Deputy Assistant secretary shall transmit a summary of the prior denial without prejudice to resubmission to the Federal Register for publication, to the Commissioner of Customs, and to the applicant."

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Deputy Assistant Secretary.

Docket No.: 79-00094. Applicant: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812. Article: Data Display System and Accessories. Date of denial without prejudice to resubmission: June 1, 1979.

Docket No.: 79-00095. Applicant: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812. Article: High Rate Multiplexer Interface Simulator. Date of denial without prejudice to resubmission: August 3, 1979.

Docket No.: 79-00096. Applicant: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812. Article: SDF and Level IV CDMS Simulator and Accessories. Date of denial without prejudice to resubmission: August 3, 1979.

Docket No.: 79-00098. Applicant: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812. Article: Mitra 125 S Computer and Accessories. Date of denial without prejudice to resubmission: August 28, 1979.

Docket No.: 79-00367. Applicant: U.S. Department of the Interior—U.S. Geologial Survey, Topographic Division, 12201 Sunrise Valley Drive, Mail Stop 526, Reston, Virginia 22092. Article: Accessories to the Kern PG-2 Stereoplotter consisting of (7) each Earth Curvature Correction Devices and L-type Pantographs. Date of denial without prejudice to resubmission: January 11, 1980.

Docket No.: 79-00393. Applicant: University of California at Los Angeles, Purchasing Department, Los Angeles, California 90024. Article: Scanning Tandem Fabry-Perot Interferometer. Date of denial without prejudice to resubmission: January 29, 1980.

Docket No.: 79-00419. Applicant: The Pennsylvania State University, Department of Chemistry, Whitmore Laboratory, University Park, PA 16802. Article: NMR Spectrometer System, Model WP-200 with Aspect 2000-i Data System and Accessories. Date of denial without prejudice to resubmission: January 18, 1980.

Docket No.: 79-00439. Applicant: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. Article: LKB ultrotome IV 2128-010 Ultramicrotome and Accessories. Date of denial without prejudice to resubmission: March 3, 1980.

Docket No.: 79-00062. Applicant: NOAA—National Ocean Survey, Engineering Development Lab., 6501 Lafayette Avenue, Riverdale, MD 20840. Article: Current/Depth Measurement System. Date of denial without prejudice to resubmission: January 16, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer, Ph.D.,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-24104 Filed 8-8-80; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the Federal Register on March 19, 1979 (44 FR 16466), the National Bureau of Standards announced the exclusion criteria and procedures for maintaining an exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. The exclusion list also pertains to Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems, approval of which by the Secretary of Commerce was announced in the Federal Register on August 27, 1979 (44 FR 50078). The March 19, 1979, notice stated that once the exclusion list was established, interested parties would be invited to submit to the Director, Institute for Computer Sciences and Technology (ICST), comments or recommendations regarding that list, and that notice of any proposed changes in the exclusion list would be published in the Federal Register. Comments specifically identifying candidate systems which should be added to or removed from the exclusion list are especially encouraged.

By notice published in the Federal Register on July 29, 1980 (45 FR 50377), NBS announced the latest changes to the exclusion list.

As a result of a review and analysis of comments and recommendations received recently, NBS is proposing the following additions to and removals from the exclusion list:

Manufacturer and Model	
Additions:	
CDC	Cyber 18 System
Honeywell	Series 60 Level 64 DPS 330
ICL, Inc.	ME29/35
Sperry Univac	System 80 Model 3
Sperry Univac	System 80 Model 5
Removals:	
CDC	Cyber 18-10 (now included in Cyber 18 system being added)
CDC	Cyber 18-20 (now included in Cyber 18 system being added)
CDC	Cyber 18-30 (now included in Cyber 18 system being added)
CDC	1700
CDC	1700-SC
Honeywell	Series 60 Level 64 DPS 320

Interested parties will be allowed until September 25, 1980 to submit written comments regarding the proposed changes. Such written comments should be submitted to the

Director, ICST, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Following review of comments received in response to this notice, NBS will make a determination on the proposed changes and will announce that determination in a subsequent notice published in the Federal Register.

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments in response to this notice.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: August 5, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-24086 Filed 8-8-80, 8:45 am]

BILLING CODE 3510-13-M

Verification Procedures for Advanced Data Communications Control Procedures Federal Information Processing Standard

On May 14, 1980, notice was given in the Federal Register (45 FR 31769-31770) that the Secretary of Commerce had approved the standard for Advanced Data Communications Control Procedures as a Federal Information Processing Standard (FIPS) and that the standard would be published as FIPS Publication 71. This standard includes provision for vertification of conformance to be made by demonstration or other means acceptable to the Government prior to acceptance of equipment or services that are required to conform.

The National Bureau of Standards (NBS) intends to provide a verification service for this standard that is expected to result in conforming equipment and services being placed on a list to be maintained and distributed by NBS for use in Federal Automatic Data Processing procurement.

The verfication service will provide for review of documentation which has been provided to NBS for its permanent retention along with a suitable statement from the supplier that it has evaluated its equipment or service and believes it to be in conformance with FIPS 71, against which the documentation is to be reviewed. Any supplier desiring to initiate such a review must make a request indentifying the equipment or service and providing the documentation. The Government will provide, within 30 days, as estimate of the costs which will be incurred to perform the review. If the costs are subsequently authorized by the supplier, the review will be performed on a fully reimbursable basis.

For each review requested, a determination in one of the following categories will result:

I. The documentation provided has been compared to the standard and no significant deviations have been identified. The equipment or service described will be included on the verification list maintained by NBS. Any subsequent indication, based on attempts to use equipment or service actually delivered or to test that equipment or service with suitable instrumentation, that the equipment or service does not conform to the standard will result in removal from the verification list.

II. Review of the documentation provided shows significant deviations from the standard. In this case, the nature of such deviations will be summarized with specific details provided.

III. Inadequate documentation has been provided to complete the review.

The result of each review will be reported to the supplier submitting the documentation and to appropriate Federal agencies, and will be publicly available.

The general policy for test procedures is specified in Part 200 of Title 15, Code of Federal Regulations, and in the publication "Calibration and Test Services of the National Bureau of Standards" (NBS Special Publication 250). Procedures for formally requesting services, and use of a certificate are included. Specific instructions for a manufacturer desiring a formal review are provided below.

NBS does not approve, recommend, or endorse any commercial product. NBS in no way guarantees that equipment or services for which documentation has been reviewed conforms to the standard. However, a manufacturer may certify that equipment or services bearing the same identification as that reviewed by NBS, for which no significant deviations were identified, does conform to the standard. Such a claim will make the equipment or service eligible for procurement and use by Government agencies. However, no express or implied agreement for such procurement can be made by NBS.

In accordance with Federal law (15 U.S.C. 275a), fees are chargeable for services performed by the National Bureau of Standards. Fees will include the cost of labor, materials, and contractor support (if needed) used in performing the review and in issuing a validation certificate. NBS labor costs will include administrative and engineering personnel participating in the review; labor rates will be determined by the cost of the personnel, including applicable overhead. Material costs will be actual costs to NBS. Travel costs, when necessary, will be actual costs to NBS. Bills will be issued upon completion or termination of the review. A verification certificate will be issued upon receipt of payment.

Persons requesting this service or desiring any further information about this announcement may contact S. A. Recicar, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3723.

Dated: August 5, 1980.

Ernest Ambler,

Director.

[FR doc. 80-24088 Filed 8-8-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining Programmatic Environmental Impact Statement Scoping and Notice of Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Programmatic Environmental Impact Statement Scoping and Notice of Public Meeting.

SUMMARY: Pursuant to Section 109(c)(2) of Public Law 96-283, the Deep Seabed Hard Mineral Resources Act (the "Act"), the National Oceanic and Atmospheric Administration (NOAA) is preparing a programmatic environmental impact statement (PEIS) on deep seabed mining for the area of the oceans in which exploration and commercial recovery by any United States citizen will likely first occur under the authority of the Act.

Requirements of Section 109(c) of the Act and requirements of 40 CFR Parts 1500-1508 [Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act (NEPA)] apply to the preparation of the PEIS. 40 CFR 1501.7 specifically requires an early and open "scoping" process.

This notice and the public meeting of which the public is informed by this notice are part of NOAA's actions to comply with the scoping requirement.

DATE: A public scoping meeting will be held from 9:00 a.m. to 12:00 noon on September 4, 1980, in Room B841 of the Department of Commerce Building, located on 14th Street, between E Street and Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the PEIS development effort and/or the public meeting contact: Amor L. Lane or John W. Padan, Marine Minerals Division (PP/MM), National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, Telephone (301) 443-8323.

SUPPLEMENTARY INFORMATION: During early 1979, NOAA formed a Deep Seabed Mining Environmental Assessment Report (EAR) Task Force to begin the assembling and interpretation of the results of environmental research pertaining to deep seabed mining. In NOAA's view this effort was needed to accelerate the process of synthesizing information from five years of NOAA sponsored research on deep seabed mining environmental effects. In addition, however, NOAA recognized it would have the further benefit of generating information suitable for ready inclusion in a PEIS, should then-pending domestic legislation be enacted. In order to assure this further benefit, the format of the EAR had to resemble closely what was anticipated to be the format of the PEIS. Hence, a considerable amount of attention was devoted to identifying the purposes and scope of a PEIS, so that the EAR could be appropriately structured.

The purposes of the PEIS were identified, in a preliminary sense, to be as follows: (a) assess the environmental impacts of exploration for and commercial recovery of deep seabed hard minerals; (b) describe and compare alternative strategies for the development of regulations; and (c) identify areas where more information is needed or desirable.

The Federal actions were identified, again in a preliminary sense, to be as follows: (a) the development and consideration of alternative regulatory concepts pertaining to exploration for and commercial recovery of seabed minerals; and (b) ultimate adoption of certain of these concepts.

These purposes and Federal actions were reviewed with EPA during April 1980 and again before the publication of this notice. Based upon further interaction with EPA and other agencies and upon responses to this notice and comments received in the public meeting, NOAA will develop a statement of purposes and of Federal actions to be used in the PEIS.

A draft PEIS is to be published by March 25, 1981, under provisions of the Act. Comments on this draft PEIS will be solicited and evaluated in accordance with provisions of 40 CFR Part 1503.

The following is a preliminary table of contents for the PEIS which has been developed for discussion purposes:

1. Cover sheet/abstract
2. Summary
3. Table of Contents
4. Purpose of and need for action
4.1 The law and need for regulations
4.2 Purposes and scope of document
4.3 The resource and potential future development
4.4 First generation technology
4.5 Environmental concerns and NOAA response
5. Alternatives, including proposed action
5.1 Provisions in the legislation over which broad latitude is provided to regulators
For each provision discuss:
brief description and detail comparison of reasonable alternative regulatory options
alternative regulatory options eliminated from further consideration
5.2 Provisions in the legislation over which little or no latitude is provided to regulators by legislation. For each provision, describe the action required by the legislation
6. Affected Environment
6.1 Deep ocean
6.2 Relevant coastal areas
6.2.1 U.S. coastal areas
6.2.2 Foreign coastal areas
7. Environmental Consequences
7.1 Scientific Research Findings—Anticipated environmental effects of Deep Seabed Mining
7.1.1 Marine environment
7.1.2 Coastal environment
7.2 Environmental effects of provisions in the legislation which confer discretionary authority in rule-making.
For each provision describe all reasonable alternative regulatory options
For each regulatory option, consider:
the affected physical environment (both marine & coastal)
the affected human environment and describe; where appropriate:
beneficial effects
potential adverse impacts which can be mitigated and the methods for mitigating them
adverse impacts that can't be avoided
local short term uses vs. long term productivity
irreversible or irretrievable commitments of resources
7.3 Listing of provisions in legislation which confer little or no discretionary authority in rule making, and the environmental effect of such provisions.
7.4 Other Consequences
7.4.1 Energy Supplies
7.4.2 Global environment which may be affected by deep seabed mining
7.4.3 Impact on other governmental agencies
7.4.4 Effects if deep seabed mining does not occur or if initiation of Deep Seabed Mining is greatly delayed
8. List of Preparers and their Qualifications
9. List of agencies (etc.) to whom sent
10. Index
11. Appendices

The initial version of the EAR was designed to provide text for Sections 4—Purpose and Need, 6—Affected Environment, 7—Environmental Consequences, and 8—List of Preparers. A subsequent version would have added text for several additional sections. Further action on the subsequent version will now be superseded by the PEIS development effort.

The initial version of the EAR was completed on June 30, 1980. Copies may be requested from NOAA's Marine Minerals Division at the address given above. Anyone wishing to submit comments to NOAA on this segment of the EAR should do so, in writing, to the same address. Comments received will be evaluated and used on an informal basis to assist in the PEIS development process.

NOAA has separately initiated contact with affected and concerned interests on the PEIS and other aspects of implementation of the Act. Thus, there may be some overlaps in contacts from NOAA. While this may lead to some inconveniences, it is believed to be preferable to risking a failure to contact interested parties.

Dated: August 4, 1980.

M. P. Snidero,

Deputy Assistant Administrator for Management and Budget.

[FR Doc. 80-24108 Filed 8-8-80; 8:45 am]

BILLING CODE 3510-11-M

COMMUNITY SERVICES ADMINISTRATION

Proposed Community Energy Planning Initiative

AGENCY: Community Services Administration.

ACTION: Notice of a proposed community energy planning initiative.

SUMMARY: CSA is proposing to fund approximately 15 grants to Community Action Agencies or to FY-80 CSA-funded limited purpose agencies serving seasonal farmworkers; Native Americans; and non-CAA areas for activities related to comprehensive community energy planning. (See Catalogue of Federal Domestic Assistance; 49.014, "Emergency Energy Conservation Services.") This notice describes the type of proposals which will be considered by CSA. Proposals must be submitted to CSA by October 31, 1980.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Kate Jackson, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506, Telephone (202) 632-6503, Teletypewriter (202) 254-6218.

SUPPLEMENTARY INFORMATION: As part of its on-going support for Community Action Agency efforts addressing the energy-related needs of the poor in a comprehensive way, CSA will consider funding projects that focus on comprehensive community energy planning, a process that 1) assesses current energy use patterns in the community; 2) projects local energy need over a given period, and 3) plans better ways to meet those needs through conservation or alternative, renewable energy supply. Approximately 15 grants of $30,000 to operate no longer than for a maximum of 18 months may be funded.

CAA GRANTS: CSA is inviting interested CAAs and other eligible applicants to submit proposals. Proposals should focus on the local energy planning activities recently begun or about to start in their communities. The proposal should describe the role the CAA or other applicant will play in ensuring that the locally developed plans will reflect the energy-related problems of the poor and solutions to these problems. For example, needs that may be addressed include, but are not limited to, energy source and supply; employment potential of renewable energy supply alternatives; and community priorities in conservation measures for residential retrofits, building code amendments, and the like.

Given the nature of the program, CSA suggests that applicants discuss the following elements in their proposals:

1. Public commitments already secured for comprehensive community energy planning efforts, including, where appropriate, letters of commitment and amount and nature of non-CSA resources that will support the project in the community.

2. Description of the on-going or projected comprehensive planning efforts including a listing of participating groups and organizations, both public and private, with preliminary ideas of how critical energy problems of the community and of the poor could be alleviated or lessened over time and through what technologies or methods.

3. Description of the specific objectives, goals, and activities that the CAA or other applicant will undertake to ensure that the needs of the poor will be incorporated in the adopted plans and policies, and explanation of why the chosen activities and strategies are the most suitable for the applicant organization in the comprehensive community energy planning effort.

4. Description of the applicant's experience in energy programming for the poor, or in local planning and policy formulation, or of ways the applicant's activities have led to a change in a law, regulation, policy, procedure, or institutional behavior affecting the low-income population.

APPLICATION PROCESS: This comprehensive community energy planning initiative will be administered by the national office of the Community Services Administration, Office of Community Action.

Applicants should use the application process found at 45 CFR 1067.40, applying for a grant under Title II, Sections 221, 222(a) and 231 of the Economic Opportunity Act of 1964 as amended. All interested applicants must follow the Project Notification and Review System Procedures (A-95) as outlined in 45 CFR 1067.10. Applications should be forwarded to: Kate Jackson, Energy Programs, Office of Community Action, Community Services Administration, 1200—19th Street, N.W., Room 334, Washington, D.C. 20506.

Authority: Sec. 602, 78 Stat 530; 42 U.S.C. 2942.

Richard J. Rios,
Director.

[FR Doc. 80-24013 Filed 8-8-80; 8:45 am]
BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Administrative Instruction No. 51]

Part-Time Career Employment Program

AGENCY: Office of the Secretary of Defense.

ACTION: Notice.

SUMMARY: The Office of the Secretary of Defense (OSD) is establishing a program to provide civilian career part-time employment opportunities. A draft outline of the program is being submitted for public comments.

DATES: Comments received by October 10, 1980 will be considered.

ADDRESS: Written comments should be addressed to the Director of Personnel and Security, WHS, Room 3B347, ATTN: RA, Washington, D.C. 20301.

FOR FURTHER INFORMATION: Mr. Robert Arnold, 202-697-5171.

SUPPLEMENTARY INFORMATION: Pub. L. 95-437, The Federal Employees' Part-Time Career Employment Act of 1978, requires federal agencies to publish their proposed program on this subject in the Federal Register for public comment. After comments are received, considered, and necessary changes are made, the OSD will adopt the proposed program as Administrative Instruction No. 51.

OSD Part-Time Career Employment Program

References: (a) Pub. L. 95-437.
(b) Title 5, U.S.C.

A. Purpose

This Instruction implements references (a) and (b) by establishing a continuing program to provide civilian career part-time employment opportunities.

B. Applicability and Scope

1. The provisions of this Instruction apply to all civilian employees in all organizational entities of the OSD, Organization and the Joint Chiefs of Staff, and other activities deriving administrative support from the Washington Headquarters Services (WHS).

2. The provisions of this Instruction apply to all civilian occupations and authorized positions in Grade GS-15 or below and equivalent grades in other pay systems, and to part-time career employees, as defined in section C., unless excluded under one of the following categories:

a. Positions requiring a mixed tour of duty.

b. Temporary or intermittent employees. Exclusion of these employees does not prohibit their employment on an intermittent or temporary part-time basis.

C. Definitions

1. *Career employment. Permanent employment in either the competitive or excepted service, in which the employee serves in tenure group I or II. This*

includes employees serving on career, career-conditional, excepted, or excepted-conditional appointment.

2. *Permanent part-time employee.* An employee serving on a permanent appointment who works a regularly scheduled tour of duty from 16 to 32 hours per work week.

3. *Temporary employment.* Employment under any appointment during which the employee serves in other than tenure groups I and II, including temporary NTE, indefinite, term, TAPER, status quo, overseas limited, or any other non-permanent appointment.

4. *Intermittent employment.* Employment on an irregular basis without a prescheduled tour of duty.

5. *Mixed Tour of Duty.* Consists of annually recurring periods of full-time, part-time, or intermittent service.

D. Background

1. In the legislative action cited in P.L. 95–437 and 5 U.S.C., references (a) and (b), Congress found that:

a. Many individuals possess productive potential that goes unused because they cannot meet the requirements of a standard workweek; and

b. Part-time permanent employment:

(1)Provides older individuals with a gradual transition into retirement;

(2) Provides employment opportunities to handicapped individuals or others who require a reduced workweek;

(3) Provides parents opportunities to balance family responsibilities with the need for additional income;

(4) Benefits students who must finance their own education or vocational training;

(5) Benefits the government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling occupational shortages; and

(6) Benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), increasing jobs available to reduce unemployment, and retaining the skills of individuals who have training and experience.

2. Consistent with these findings, the part-time program objectives are to:

a. Increase productivity and demonstrate the OSD commitment as a concerned employer;

b. Expand the number and scope of permanent part-time employment opportunities, to include professional, administrative, technical, clerical, trades, and other occupations.

c. Provide an additional management device to support the achievement of equal employment objectives.

d. Encourage managers at all levels to eliminate any artificial constraints that inhibit expansion of part-time employment.

E. Policy

1. It is the policy of the Office of the Secretary of Defense to provide career part-time employment opportunities in positions through GS–15, or their equivalent, subject to availability of resources and mission priorities.

2. Part-time positions are subject to the same position classification standards and merit promotion procedures as full-time positions. Authorized positions need no other special designation, upon approval by the Director, Organization and Management Planning (O&MP), Office of the Assistant Secretary of Defense (Administration) (ODASD(A)), to be considered for filling on a part-time basis.

3. Part-time employment is not intended to be a feeder system for staffing full-time positions. However, part-time employees may apply and be considered for full-time positions. Any procedures developed for conversion of part-time employees to full-time positions shall be designed to prevent the use of the part-time program to circumvent merit principles. Job Opportunity Announcements for part-time positions may not be used for the purpose of discouraging potential applicants and returning the selectee within a short period of time to a full-time tour of duty.

4. Permanent part-time employees have the same appeal rights and protections in adverse actions and reduction-in-force proceedings as comparable full-time employees. Specifically included in the list of appealable adverse actions is the involuntary reduction in the scheduled number of hours of duty for a part-time employee. In a reduction-in-force, part-time employees can compete only for other part-time jobs and are not entitled to a full-time job if there is no part-time job available. Similarly, full-time employees do not have assignment rights to part-time jobs.

5. It is the prerogative of management to make a decision to meet the needs of the organization to: (a) increase the hours of work of part-time employees to the maximum prescribed; or (b) reassign part-time employees back to their former full-time positions. When such a decision is made, the affected employee must be given at least 2 calendar weeks' advance notice. Failure of the part-time employee to comply with this management decision can result in management's taking adverse action against the employee.

6. No permanent part-time positions may be established with a scheduled tour of duty of less than 16 nor more than 32 hours per week. This does not preclude a temporary increase of hours worked above 32 hours for a limited time to meet workload or training needs; however, the employee's schedule must remain at 16 to 32 hours per week. Permanent part-time employees who have continuous service on a schedule other than as described, beginning before April 8, 1979, are not affected by this restriction so long as they continue to work part-time.

7. No position occupied by a full-time emplyee may be abolished to make the duties of such positions available on a part-time basis. Nor will any full-time employee be required to accept part-time employment as a condition of continued employment. This provision does not preclude changing a full-time employee to a part-time schedule at the voluntary request of the employee; nor does it preclude the offer of a vacant part-time position to a full-time employee who has been reached for release in a reduction in force.

F. Responsibilities

1. The *Director, Personnel and Security (P&S), WHS,* has overall responsibility for the administration of the part-time program, and shall:

a. Establish and publish annual goals for expansion of permanent part-time opportunities, in coordination with the Director, OM&P, DASD(A), and in consideration of Under Secretary of Defense, Assistant Secretary of Defense, and Assistant to the Secretary of Defense, or their equivalents, management official projections.

b. Maintain required statistics and provide semiannual reports to the Office of Personnel Management (OPM).

c. Review activity programs during regular civilian personnel management evaluation surveys.

d. Provide advice and assistance, as necessary or requested, on program development.

e. Designate an OSD Part-Time Employment Program Coordinator to serve as point of contact for the program.

2. The *Director, Organizational and Management Planning, DASD(A),* shall:

a. Request, as part of each budget cycle, that all activities serviced by WHS include in their budget submission the number of part-time person-years they wish to use.

b. Keep the Director, P&S, WHS, advised of the number of part-time person-years available for use by each activity.

c. Approve any changes in the number of authorized part-time person-years for each activity.

3. The *Under Secretaries of Defense, Assistant Secretaries of Defense, and Assistant to the Secretary of Defense, their equivalents or designees,* shall:

a. Identify, during each budget cycle, the number of part-time person-years that can be used effectively within their organizations.

b. Increase hours of work of part-time employees to the maximum prescribed to meet the needs of the organization or reassign part-time employees to former full-time positions.

c. Review all positions, GS-15 and below or their equivalent, as they become vacant, and identify those that may be filled on a part-time career-appointment basis.

G. Procedures

1. Employees desiring a change in employment from full- to part-time in their current position shall:

a. Consult with their immediate supervisor to determine the effects such a change shall have on their rights and benefits.

b. Make a formal request, in writing, to their immediate supervisor.

2. Upon receipt of the formal request, the supervisor shall:

a. Evaluate the request against the following criteria:

(1) Regular and peak workloads that might lend themselves to part-time schedules.

(2) Additional space and equipment requirements.

(3) Benefits to employees.

(4) Retention of valuable employees.

b. Attach their recommendation to the request and forward it to the second-level supervisor or other official as designated by the employing organization.

3. The second-level supervisor or other designated official shall:

a. Review the request and recommendation and approve or disapprove after evaluating it in terms of this Instruction and consulting with the organizational administrative officer as to the availability of part-time person-years.

b. Make a decision within 5 workdays from receipt of the request by the immediate supervisor.

c. If the request is approved, the employee's request, and SF-52, "Request for Personnel Action," and any other documents arising from the request, shall be forwarded to the Part-Time Employment Coordinator, Directorate for P&S, WHS, through the Director, O&MP, DASD(A). If approved, the SF-50, "Notification of Personnel Action," shall be prepared from these forms.

d. If the request is disapproved, a copy of all documents shall be forwarded to the Part-Time Employment Coordinator.

4. A copy of all requests shall be maintained by the Part-Time Employment Coordinator for statistical purposes.

5. An employee desiring a change in employment from full to part-Time in another position or organization shall:

a. Consult with the immediate supervisor to determine the effects such a change has on rights and benefits.

b. submit a request to the Part-Time Employment Program Coordinator, Directorate for P&S, WHS, for positions at or below the current grade of the employee or at a higher grade previously held under a permanent competitive appointment. Positions that represent a promotion or have promotion potential to a grade higher than those previoulsy held under a permanent competitive appointment must be filled by competitive procedures.

6. Part-time career opportunities shall be announced by Job Opportunity Announcements to provide notice to the public of vacant part-time positions.

7. Managment officials shall review all positions, GS-15 and below or equivalent, as they become vacant to determine if the position could be filled on a part-time career employment basis.

8. A semiannual report covering the 6 months ending March 31 and September 30 shall be provided by the Director, P&S, WHS, to OPM on May 15 and November 15.

9. Permanent part-time employees have the following rights and benefits:

a. *Retirement.* Retirement benefits are computed in the same way for all career employees, both full and part-time. Annunities are based on an employee's length of service and the highest average annual pay received for any 3 consecutive years.

b. *Life Insurance.* Permanent part-time employees are eligible for coverage under the Federal Employees Group Life Insurance Program. the amount of insurance for which an employee is eligible is based on annual salary, but cannot be less than $10,000. A part-time employee's annual salary is the amount of hour scheduled to work times pay rate.

c. *Health Benefits.* Permanent part-time employees are eligible to participate in the Federal Employees Health Benefits Program. The coverage is the same as that provided for full-time employees, but the employee cost for the premiums is greater for people who become part-time employees on or after April 8, 1979. For these employees, the government contribution is prorated according to the number of hours the part-timer is scheduled to work. For example, a part-time employee scheduled for 20 hours of work a week will pay the employee's share of the premium plus one half the government's share. Part-time employees on board before April 8, 1979, continue to receive the same government contributions as full-time employees for as long as they remain part-time without a break in service.

d. *Leave.* (1) Annual leave is earned on a prorated basis depending upon the leave category the employee is in:

(a) *Leave Category 4.* One hour for each 20 hours of work.

(b) *Leave Category 6.* One hour for each 13 hours of work.

(c) *Leave Category 8.* One hour for each 10 hours of work.

(2) Part-time employment status does not affect the amount of annual leave that may be carried over into the next leave year.

(3) Sick leave is earned at the rate of 1 hour for every 20 hours in pay status.

(4) Leave-without-pay is credited in the same way as for full-time employees.

(5) Court leave is credited in the same way as for full-time employees.

(6) A part-time employee is not eligible for military leave.

e. *Holidays.* Part-time employees are eligible for pay for the number of hours regularly scheduled to be worked on the day the holiday is legally observed.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

August 5, 1980.

[FR Doc. 80-24076 Filed 8-8-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

National Petroleum Council; Refinery Capability Task Group and the Coordinating Subcommittee of the Committee on Refinery Flexibility; Meetings

Notice is hereby given that the Refinery Capability Task Group and the Coordinating Subcommittee of the National Petroleum Council's (NPC) Committee on Refinery Flexibility will meet on Tuesday, August 19; and Friday, September 5, 1980, respectively in Suite 601 of the National Petroleum Council

Headquarters, 1625 K Street N.W., Washington, D.C. An additional Coordinating Subcommittee meeting has also been tentatively scheduled for Friday, September 12, 1980, also at the NPC Headquarters.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas of the meetings are as follows:

Agenda for the Refinery Capability Task Group meeting, Tuesday, August 19, 1980, beginning at 9:00 a.m.:

1. Review and approve summary minutes of the July 1, 1980 meeting of the Task Group.
2. Review and discuss progress of study groups A, B, and C.
3. Discuss plans for the final phase of the Refinery Flexibility report.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Coordinating Subcommittee Meeting, to be conducted on either September 5 or September 12, 1980, beginning at 10:00 a.m.: [1]

1. Review and discuss the progress of the Refinery Capability Task Group.
2. Review and discuss the progress of the Oil Supply, Demand and Logistics Task Group.
3. Review and discuss introductory materials for the overall report on refinery flexibility.
4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairmen of the Task Group and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either the Task Group or the Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements at any of the meetings should inform Joan Walsh Cassedy, National Petroleum Council, (202) 393-6100, prior to the meeting, and provision will be made for their appearance on the respective agendas. Transcripts of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B180, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 6, 1980.

Robert H. Lawton,

Acting Deputy Assistant Secretary for Resource Development and Operations.

[FR Doc. 80-24118 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

[1] Note.—Interested parties should contact NPC Headquarters prior to September 5 to confirm which meeting date(s) are confirmed.

Compliance With the National Environmental Policy Act; Amendment to Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to guidelines to provide for a categorical exclusion for certain exemptions under the Fuel Use Act.

SUMMARY: Section D of the Department of Energy guidelines for compliance with the National Environmental Policy Act (NEPA) identifies classes of DOE action which normally do not require either an environmental impact statement or an environmental assessment. These are termed "categorical exclusions." Classification of an action as a categorical exclusion raises a rebuttable presumption that any such actions will not significantly affect the quality of the human environment. In the NEPA guidelines, it was specified that DOE might add or remove, after an opportunity for public review, actions identified as categorical exclusions based on experience gained during implementation of the guidelines.

On the basis of recent experience, DOE has determined that certain exemptions authorized under the Fuel Use Act normally are not major Federal actions significantly affecting the quality of the human environment with respect to the provisions of NEPA and therefore are eligible for categorical exclusion status. The actions considered eligible for a categorical exclusion are the grant or denial of a permanent exemption to any electric powerplant or major burning installation for limited use, i.e., fuels mixture of 25 percent or less petroleum or natural gas; peakload powerplants; certain scheduled equipment outages; emergency purposes, and automatic exemptions based on cost for units operated no more than 600 hours per year. DOE proposes to add these exemptions to its list of categorical exclusions in Subpart D of its NEPA guidelines. Public comment is invited on this proposal. Pending final adoption or rejection of this proposal DOE will utilize the categorical exclusion process for these actions on an interim basis.

COMMENTS BY: September 15, 1980.

ADDRESS COMMENTS TO: Dr. Robert J. Stern, at the address listed below.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, Forrestal Building, Room 4G-064, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4600.

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW., Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980 (45 FR 20695), the Department of Energy (DOE) published in the Federal Register final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). The guidelines are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of DOE.

Section D of the DOE NEPA guidelines identified typical classes of DOE action which normally do not require either an environmental impact statement or an environmental assessment. These classes of action were identified pursuant to Section 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." Section 1508.4 of the CEQ regulations defines a categorical exclusion as a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Further, allowance must be provided by an agency for extraordinary circumstances in which a

normally excluded action may have a significant environmental effect.

The DOE NEPA guidelines state that DOE may add to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the guidelines. Pursuant to the guidelines, substantive revisions are to be published in the Federal Register and adopted only after opportunity for public review.

This notice proposes to revise the guidelines by adding certain classes of actions to the list of categorical exclusions in Section D of the guidelines. Those actions are as follows:

1. The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new electric powerplant or major fuel burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum. This exemption is authorized by Section 212(d) of the Act.

2. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant. This exemption is authorized by Section 212(g) of the Act.

3. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel burning installation to permit operation for emergency purposes only. This exemption is authorized by Section 212(e) of the Act.

4. The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period. These exemptions are authorized by Section 212(j) and 312(l) of the Act.

5. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new major fuel burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year. This exemption is authorized by Section 212(a)(1)(A)(ii) of the Act, and DOE by regulation has refined this section to provide for an automatic exemption for facilities which are operated only for the stated amount of time.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from the grant or denial of one of the above exemptions, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an environmental assessment or environmental impact statement would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. To assist DOE in making this determination, DOE has required in the regulations covering applications for permanent exemptions that: (1) a petitioner for any of these exemptions certify that he will comply with all applicable environmental permits and approvals prior to operating the facility; and (2) he complete an environmental checklist designed to determine whether the facility in question will have an impact in certain areas regulated by specified laws which impose consultation requirements on DOE (10 CFR 403.15). This will allow DOE to verify that no significant impact will result, or that the categorical exclusion does not apply. The typical environmental impacts of each of the proposed categorical exclusion exemptions are discussed below.

B. Mixtures Exemptions

To date, peitions for fuels mixture exemptions from 10 companies have been accepted or are in the process of being reviewed. In all cases reviewed thus far, it has been determined that neither an environmental assessment nor an environmental impact statement was required in order to satisfy NEPA requirements.

Key to all cases has been the fact that the Federal action in question (proposal to grant the exemption) results in an insignificant impact as *compared to a baseline*. In the replacement boiler situation, for example, the baseline is formed by the existing conditions, such as air and water emissions, surrounding the facility as it currently operates. In this situation, the resulting environmental impact either above or below the baseline is very small.

In the case of a totally new facility, the baseline becomes that action which the petitioner could take and not be subject to the Fuel Use Act prohibitions. This action would involve constructing the facility with units which use ony alternate fuel. Since petroleum and natural gas are ordinarily cleaner-burning than other fuels, use of up to 25 percent of those regulated fuels will result in impacts slightly below the baseline level.

Based on DOE's experience to date with mixture exemption petitions, the following generalities can be drawn in each of four main categories of impact.

Air Quality

In all cases, the proposed action (granting the mixtures exemption) has resulted in air quality that is improved over baseline levels. This is because replacement boilers are generally more efficient than existing boilers and must meet New Source Performance Standards (NSPS) if they are large enough to come within NSPS jurisdiction. New facilities burning a fuel mixture also will result in cleaner emission than would result from combustion of an alternate fuel (coal in most cases). In the majority of mixtures cases to date, the petitioners have already received the appropriate air quality permits, thus indicating that the responsible state and Federal agencies consider the potential effects of the new units to be acceptable.

Water Quality

In the case of a replacement boiler, the existing water treatment system and the plant's National Pollutant Discharge Elimination (NPDES) permit usually is sufficient so that no new permit or treatment is necessary. In the case of a new facility, there is little difference from the baseline if coal is part of the mixture exemption, and there is a net benefit if the petitioner's non-option would have involved coal and the mixture in question does not (due to coal pile runoff related impacts).

Land Use

Little additional land has been required in the case of replacement units, because the area already is industrialized and owned by the company. In the case of a new facility, the difference in impact is dependent upon whether coal would have been used with the base case, the same as with water quality.

Other Areas

Other potential impact categories (e.g., socioeconomic, sociocultural) have never been a significant issue in any case to date.

C. Peakload Exemptions

Petitions for peakload powerplant exemptions from eight utilities have been accepted by DOE; of that number, four have been reviewed for NEPA requirements. Each case has involved some added impact; however, key in all cases is the fact that the new unit is only

a small addition to the existing environmental baseline, both in size (peakload units normally are about 75 megawatt units and are often located at the larger existing baseload powerplants, e.g., 500 to 1000 megawatts) and in extent of usage (peakload units can operate no more than 1500 hours per year, which equates to a capacity factor of only 17.1 percent). Impact categories for peakload powerplants can be described as follows:

Air Quality

In general, oil or gas firing has resulted in only minor increases in ambient concentrations of air pollutants (less than 15 percent). Often the increases are below the "levels of significance" established by the Environmental Protection Agency. In each case, the petitioners either have already secured or are in the process of securing the required air permits.

Water Quality

As in the case of mixtures exemptions, the existing systems and NPDES permits usually are sufficient to cover any increase in effluents from the new unit. In some other cases, whatever controls have been required by new permits make the resultant impacts insignificant.

Land Use

The area to be used in building a new peakload unit usually has already been industrialized. Normally a peakload unit requires only two to three acres of additional land.

D. Scheduled Equipment Outages, Emergencies, and Automatic Cost Exemptions

To date, no petitions for scheduled equipment outages exemptions or automatic cost exemptions have been filed with DOE. One emergency exemption petition has been accepted and a memorandum for the file demonstrating the insignificance of the action has been prepared. Common to these exemptions, however, is the fact that the new unit only will be operating when a larger existing unit or units are shut down—either in the case of a true emergency or a scheduled shutdown for maintenance, or other reasons.

The impact categories for these exemptions are characterized as follows:

Air Quality

In every case there will be a positive impact, as compared with existing emissions, because of the shutdown situation mentioned above.

Water Quality

Normally the existing system and permit will be sufficient to cover the new unit.

Land Use

Normally the area will already by industrialized and the new unit will usually be constructed within existing plant boundaries. If the unit is not to be built within existing boundaries, little extra land will be needed, probably less than one acre.

Other Areas

There is no reason to believe that any significant impacts will occur in other areas.

Proposals to deny an exemption would result in no net change to the environmental baseline.

Issued in Washington, D.C., August 5, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-24091 Filed 8-8-80, 8:45 am]

BILLING CODE 6450-01-M

[OFC Case No. 55381-2900-01-12; Docket No. ERA-FC-80-020]

Economic Regulatory Administration

Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On January 16, 1980, Republic Steel Corporation (Republic) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting one major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibit the use of petroleum and natural gas as a primary energy source in new MFBIs. Republic requested a permanent fuel mixtures exemption for the MFBI in order to use a fuel mixture of blast furnace gas, natural gas and/or oil. The natural gas or oil is to be used as a supplemental fuel for pilot, flame stabilization and process requirements.

The MFBI for which the petition is filed is a field-erected boiler (identified as unit No. 3 high pressure (HP) boiler) to be installed at Republic's Mohoning Valley District, Warrne, Ohio facility. The proposed boiler will have a design heat input rate of 467 million Btu's per hour with a steam generating capacity of 300,000 pounds per hour and will be capable of burning blast furnace gas, coke oven gas, natural gas and residual fuel oil.

ERA accepted the petition February 15, 1980, and published notice of its acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the Federal Register on February 26, 1980 (45 FR 12478). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to Section 701 of FUA. During this period, interested persons were afforded an opportunity to request a public hearing. The period expired April 11, 1980. No comments were submitted. No hearing was requested.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Determination has been made recommending that ERA issue an order which would grant the requested permanent exemption to use a mixture of blast furnace gas, with natural gas and/or residual fuel oil in which the amount of natural gas and/or oil would not exceed 25 percent of the total annual Btu heat input in the MFBI.

The public file containing a copy of the Tentative Staff Determination and other documents and supporting materials on this proceeding is available upon request at: ERA, 2000 M Street, NW, Room B-110, Washington, DC, Monday through Friday, 8:00 AM-4:30 PM.

ERA will issue a final order granting or denying the petition for permanent exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the Federal Register.

DATES: Written comments on the Tentative Staff Determination are due on or before August 25, 1980.

ADDRESSES: Fifteen copies of written comments shall be submitted to the Department of Energy, DOE Case Control Unit, Box 4629, Room 3214, 2000 M Street, NW, Washington, DC 20461. Docket Number ERA-FC-80-020 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW, Room B-110, Washington, DC 20461, (202) 653-4055.

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration,

Department of Energy, 2000 M Street, NW, Room 3128, Washington, DC 20461, (202) 653-3679.

Edward Jiran, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6G-087, Washington, DC 20585, (202) 252-2967.

William H. Freeman, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW, Room 3207, Washington, DC 20461, (202) 653-4226.

SUPPLEMENTARY INFORMATION: Republic Steel Corporation (Republic) proposes to install a field-erected boiler at its Warren, Ohio facility. The proposed unit has a design heat input rate of 467 million Btu's per hour with a steam generating capacity of 300,000 pounds per hour and will be capable of burning blast furnace gas, coke oven gas, natural gas and petroleum.

ERA published Interim Rules on May 15 and 17, 1979 (44 FR 28530 and 44 FR 28950) to implement provisions of Title II of FUA. Title II prohibits the use of natural gas or petroleum in certain new MFBIs unless an exemption for such use has been granted.

On January 16, 1980, in accordance with Section 505.28 of the Interim Rules, Republic filed a petition with ERA requesting a permanent fuel mixtures exemption for the subject boiler in order to use a fuel mixture of blast furnace gas and natural gas and/or residual fuel oil, with natural gas and/or oil being used as a supplemental fuel for pilot, flame stabilization and process requirements. Republic certified that the total amount of natural gas and/or oil proposed to be used in the unit will not exceed 25 percent of the total annual Btu heat input of the boiler.

ERA's staff has reviewed the information contained in the record of this proceeding to date and made a Tentative Staff Determination recommending that an order be issued granting a permanent fuel mixtures exemption for boiler No. 3 to use a mixture of blast furnace gas with natural gas and/or residual fuel oil, provided that the amount of natural gas and/or oil to be used in the unit does not exceed 25 percent of the total annual Btu heat input of the unit. This determination also takes into account the purposes for which the minimum percentage of natural gas provided by a fuels mixtures exemption is to be used, i.e. to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Therefore, should these exemptions be granted, ERA will not exclude any fuel from the definition of primary energy source for the purposes of unit ignition, start-up, testing, flame stabilization, and control uses for Boiler Numbers 1, 2, and 3.

On the basis of the analysis provided by the Office of Fuels Conversion, and reviewed by the Office of Environment, with consultation from the Office of the General Counsel, DOE has concluded that the granting of this exemption will not be a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

TERMS AND CONDITIONS: ERA staff also has tentatively determined and recommends that any order granting the exemption described above should, pursuant to Section 214 of the Act, be on certain terms and conditions including:

1. The total combined use of petroleum and/or natural gas may not exceed 25 percent of the total annual Btu heat input for No. 3HP boiler.

2. All steam pipes must be insulated and all steam traps properly maintained and:

3. The quality of any petroleum to be burned in the unit will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

4. In accordance with the reporting requirement in Section 503.38(g), Republic shall submit an annual report to the Economic Regulatory Administration, DOE Case Control Unit Box 4629, Room 2313, 2000 M Street, NW, Washington, DC 20461, on the anniversary of the effective date of the exemption containing the following:

a. A certification that the amount of natural gas and/or residual fuel oil used in the unit did not exceed 25 percent of the total annual Btu heat input of the unit for the year. The certification must be executed by Republic's duly authorized representative;

b. Identification of the actual quantities of blast furnace gas, coke oven gas, natural gas (in MCF), and petroleum (in barrels) used in the unit during the year, as well as the heating value (in Btu's) of each of those fuels. The following format for quantities shall be used:

Fuel Type, Amount Used (MCF or Bbl), Btu Equivalent, Percent of Annual Fuel Consumption

5. If any exemption is granted, the petitioner must submit a duly executed annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order.

The Tentative Staff Determination does not constitute a decision by ERA to grant the exemption requested. Such a decision will be made in accordance with Section 501.66 of the Interim Rules on the basis of the entire record of this proceeding, including any comments received on the Tentative Staff Determination.

Issued in Washington, DC on August 1, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-24090 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-015; OFC Case No. 65012-9122-03-15]

Minnegasco Energy Center, Inc., Petition for Exemption

AGENCY: Economic Regulatory Administration Department of Energy.

ACTION: Notice of acceptance of petition for exemption pursuant to the interim rule implementing the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On April 8, 1980, Minnegasco Energy Center, Inc. (MEC) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) under Section 505.22 of the Interim Rule for an order permanently exempting a new major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrail Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBIs. The basis for the Section 505.22 exemption is the applicant's lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum in the unit for which the exemption is requested.

The MFBI for which the petition is filed is an oil or natural gas-fired packaged boiler (identified hereafter as Unit 3) to be installed at MEC's heating plant located in Minneapolis, Minnesota. Unit 3's design heat input rate would be 242 million Btus per hour for natural gas and 233 million Btus per hour for residual fuel oil.

MEC evaluated the following energy sources that it might use in supplying steam heat to the downtown Minneapolis buildings which MEC serves: residual fuel oil, natural gas, coal, petroleum coke, coal-oil mixture, steam, and refuse derived fuel (RDF). MEC's petition for exemption includes evidence of its inability to use any of

these energy sources other than petroleum and natural gas, at a cost which does not substantially exceed the cost of using imported oil.

Section 202(a) of FUA imposes a prohibition against the use of natural gas and petroleum as a primary energy source by new MFBIs which consist of a boiler. ERA's decision in this matter will, therefore, determine whether MEC will be granted a permanent exemption from this prohibition, permitting it to use petroleum and/or natural gas as the primary energy source for Unit 3.

ERA determined that MEC's petition is complete in accordance with Section 501.3(c) of the Interim Rule and on May 8, 1980, notified MEC of acceptance of its petition for filing.

On June 6, 1980, ERA published its Final Rule on Criteria for Petitions for Exemptions from the Prohibitions of the Act for New Facilities (45 FR 38302), which revoked, upon publication, Sections 503.5 and 505.5 of the Interim Rule (10 CFR 503.5 and 505.5), which prescribed the cost calculation methodology that was to be used in connection with certain provisions of FUA. By Notice of Proposed Rulemaking (NOPR) published on June 23, 1980 (45 FR 42190), ERA proposed a new cost calculation methodology for use with such provisions, including the Section 505.22 exemption for lack of a fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, and called for public comment. A Final Rule on the cost calculation methodology is anticipated to be issued as 10 CFR 503.6 shortly after the close of the public comment period on August 20, 1980, and to become effective 60 days after Federal Register publication. Accordingly, at this time, there is no effective methodology for performing the cost calculation required by Section 505.22. Nevertheless, as this petition was filed with ERA prior to the revocation of Section 505.5, the pertinent interim rule cost calculation, MEC was given the option, as provided in the NOPR (45 FR 42190) of having ERA (1) analyze the petition using the NOPR as guidance, or (2) hold the petitioin in abeyance pending finalization of the cost calculation methodology. By letter of July 14, 1980, MEC requested that its petition be processed as expeditiously as possible using the NOPR as guidance. ERA is proceeding with its analysis accordingly. However, ERA will take no final administrative action with respect to the petition until it adopts a final rule for the cost calculation methodology.

Although ERA has found MEC's petition acceptable for filing, ERA retains the right to request additional relevant information from MEC at any time during the pendency of these proceedings where circumstances or procedural requirements may so require.

A review of the petition is provided in the Supplementary Information section below.

As provided for in Section 701(c) and (d) of FUA and Section 501.31 and 501.33 of the Interim Rule, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATE: Written comments are due on or before September 25, 1980. A request for public hearing must also be made within the same 45-day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Economic Regulatory Administration, Case Control Unit, Box 4629, Room 2313, 2000 M Street, NW, Washington, DC 20461.

Docket No. ERA-FC-80-015 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW, Room 3128, Washington, DC 20461, Phone (202) 653-3679.

Marya A. Rowan, Office of the General Counsel, Department of Energy, 1000 independence Avenue, SW, Room 6G-087, Washington, DC 20585, Phone (202) 252-2967.

William H. Freeman, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW, Room 3207, Washington, DC 20461, Phone (202) 653-3675.

William L. Webb, Office of Public Information, Economic Regulatory Administration, 2000 M Street, NW, Room B-110, Washington, DC 20461, Phone (202) 653-4055.

SUPPLEMENTARY INFORMATION: ERA published its Interim Rule implementing the provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) in the Federal Register on May 17, 1979 (44 FR 28950). The Act prohibits the use of natural gas and petroleum as a primary energy source in certain new units unless an exemption for such use has been granted by ERA.

On June 6, 1980, ERA published in the Federal Register its Final Rule on Criteria for Petitions for Exemption from the Prohibitions of the Act for New Facilities, implementing the new facilities provisions of FUA (45 FR 38302). The Final Rule revoked Sections 503.5 and 505.5 of the Interim Rule on the Cost Calculation methodology (10 CFR 503.5 and 505.5), effective June 6, 1980. The cost calculation methodology must be used in connection with those provisions of FUA that require a determination of whether the cost of certain alternate fuel operations substantially exceed the cost of a counter-part operation using imported petroleum as a primary energy source. A Notice of Proposed Rulemaking and Public Hearing on the Calculation for the Cost of Using Alternate Fuels Under the Powerplant and Industrial Fuel Use Act of 1978 (NOPR) was issued by ERA on June 13, 1980, and was published on June 23, 1980 (45 FR 42190). The NOPR states ERA's intention to treat petitions which require the use of a cost calculation and which were submitted prior to the revocation of the pertinent interim rule cost calculation as follows, at the option of the petitioner: (1) To analyze such petitions using the proposed rule as guidance, or (2) to hold such petitions in abeyance pending ERA's adoption of a final cost calculation methodology. ERA will issue a final rule on the cost calculation methodology shortly after the close of the public comment period on August 20, 1980, and the final rule will become effective 60 days following Federal Register publication. ERA cannot take final administrative action with respect to a petition which requires the use of a cost calculation until a final rule has been adopted and becomes final.

The new MFBI for which the permanent exemption based upon the lack of an alternate fuel supply at a cost that does not substantially exceed the cost of using imported petroleum is requested under Section 505.22 of the Interim Rule is an oil and natural gas-fired packaged boiler (hereafter referred to as Unit 3) owned and operated by the Minnegasco Energy Center, Inc. (MEC). This unit, with a steam generating capacity of 200,000 pounds per hour, would provide district heating to a number of buildings in downtown Minneapolis, Minnesota.

MEC filed its petition for exemption under Sec 505.22 of the Interim Rule. On August 5, 1980, Section 505.22 will be superseded by Section 503.32. To qualify for this exemption under Section 503.32 of the Final Rule, which will be applicable to the consideration of and determination on MEC's petition, the petitioner must demonstrate to the satisfaction of ERA that:

(1) The petitioner has made a good faith effort to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the

quality and quantity necessary to conform with the design and operational requirements of the proposed unit; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as will be defined in Section 503.6 (Cost Calculation Methodology) when that section of the regulations is adopted in final form by ERA.

In addressing the eligibility requirements in Section 505.22 of the Interim Rule, MEC states that the cost of using coal, petroleum coke, coal-oil mixtures, steam and refuse derived fuel (RDF) will substantially exceed the cost of using imported petroleum. MEC's exemption petition contains the evidence which it believes supports this contention and the evidence required under Section 505.22(b) which it believes demonstrates its eligibility to receive the exemption requested.

ERA accepted MEC's petition as adequate for filing on May 8, 1980, and so notified MEC of the acceptance in accordance with Section 501.3(c) of the Interim Rule. As the petition was filed with ERA prior to the revocation of Section 505.5, the pertinent interim rule cost calculation, MEC was given the option provided in the NOPR (45 FR 42190) of having ERA (1) analyze the petition using the NOPR as guidance or (2) hold the petition in abeyance pending finalization of the cost calculation provisions of FUA, including the provision applicable to Section 503.22 of the final rule for new facilities, which will supersede Section 505.22 of the interim rule on August 5, 1980.) In accordance with MEC's letter of July 14, 1980, asking that the petition be processed as expeditiously as possible using the NOPR as guidance, ERA is proceeding with its analysis. ERA will not, however, take any final action on this exemption request until the final rule on the cost calculation methodology (Section 503.6) is promulgated and made effective.

Although ERA has found the MEC petition acceptable for filing, ERA retains the right to request additional relevant information from MEC at any time during the pendency of these proceedings where circumstances or requirements may so require.

As set forth in Section 501.3(g) of the Interim Rule, the acceptance of the petition and supporting documentation by ERA does not constitute a determination that MEC is entitled to the exemption requested.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: Economic Regulatory Administration, Room B-110, 2000 M Street, NW, Washington, DC, Monday-Friday, 8:00 am-4:30 pm. Issued in Washington, DC, on August 1, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-24089 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

Champlain Oil Co., Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: July 7, 1980; Comments by: September 10, 1980.

ADDRESS: Send comments to Edward F. Momorella, District Manager of Enforcement, Northeast District, Economic Regulatory Administration, 10th Floor, 1421 Cherry Street, Philadelphia, Pennsylvania 19102

FOR FURTHER INFORMATION CONTACT: Edward F. Momorella, District Manager of Enforcement, Northeast District, Economic Regulatory Administration, 10th Floor, 1421 Cherry Street, Philadelphia, Pennsylvania 19102. 215-597-2633.

SUPPLEMENTARY INFORMATION: "On July 7, 1980, the Office of Enforcement of the ERA executed a Consent Order with Champlain Oil Company, Inc. (Champlain) of South Burlington, Vermont. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution."

I. The Consent Order

Champlain, with its home office located in South Burlington, Vermont, is a firm engaged in the sale and allocation of Motor Gasoline and is subject to the Mandatory Petroleum Price and Allication Regulations at 10 CFR, Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Champlain, the Office of Enforcement, ERA and Champlain entered into a Consent Order, the significant terms of which are as follows:

1. Champlain was a supplier of motor gasoline as defined in 10 CFR 211, 51 during the period November 1, 1973 to June 30, 1974 and its sales of motor gasoline are subject to the Mandatory Petroleum Allocation Regulations at 10 CFR 211, and the Price Regulations at 10 CFR 212.

2. During the period November 1, 1973 through June 30, 1974 Champlain recovered in its sales of regular and premium gasoline $40,754 more in revenues than allowed if selling prices were calculated in accordance with the applicable price rule 10 CFR 212.93 (as preceded by 6 CFR 150.359).

3. The amount that Champlain overcharged and the applicable interest is as follows:

Class	Amount	Interest (through 4/30/80)	Total
Wholesale	$38,877	$15,466	$54,343
Retail	1,877	777	2,654
Total	40,754	16,243	56,997

In addition, interest for the period May 1, 1980 to the date of restitution shall be computed and added at the rate of 12 percent per annum.

4. Champlain, without admitting that it has violated any DOE regulation, is willing to enter into a Consent Order as a means of settling all of its outstanding disputes with DOE concerning the subject matter of this Consent Order, and thus avoiding further disruption of its orderly business functions and the expense of protracted, complex litigation.

II. Disposition of Matters Covered By This Consent Order

In consideration of DOE and Champlain entering into this agreement, Champlain agrees to do the following:

All amounts, including interest shall be paid by certified check made payable to the United States Department of Energy. Delivery shall be made to the Assistant Administrator of Enforcement, Economic Regulatory Administration, Room 5302, 2000 "M" Street, N.W., Washington, D.C. 20461. The refund shall be made in monthly payments of $10,000 or the total unpaid balance, including interest, whichever is less, until all amounts have been paid. The first payment shall be made within thirty (30) days after the effective date of this Consent Order. The Assistant Administrator for Enforcement, ERA, shall direct that these monies be deposited in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded

overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Edward Momorella, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102. You may obtain a free copy of this Consent Order by writing to the same address or by calling 215-597-4356.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Champlain Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on September 10, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Philadelphia on the 15th day of July 1980.

Edward F. Momorella,

District Manager of Enforcement.

[FR Doc. 80-24117 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

Howell Drilling, Inc.; Action Taken on consent order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to executive a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: July 17, 1980.

COMMENTS BY: September 10, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager, Southwest District, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager, Southwest District, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone: 214/767-7745.

SUPPLEMENTARY INFORMATION: On July 17, 1980, the Office of Enforcement of the ERA executed a Consent Order with Howell Drilling, Inc. of San Antonio, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Howell Drilling, Inc., with its office located in San Antonio, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA and Howell Drilling, Inc., entered into a Consent Order, the significant terms of which are as follows:

1. The initial audit period was from September 1, 1973, through September 30, 1976. This period was extended through May 31, 1980 in order to resolve any additional overcharges that might have occurred subsequent to the original audit period.

2. Due to an alleged misapplication of the ceiling price definition, Howell Drilling, Inc. made sales from the Chappell, Gabrysch and Hillyer properties located in the Gabrysch field, and the Jolly property located in the Hornbuckle field, Jackson County, Texas, at prices which were in excess of the maximum lawful selling prices permitted under 6 CFR 150.354 and 10 CFR 212.73. Howell Drilling, Inc. leased their prices upon a posted price which was determined by the Department of Energy to be inapplicable to production from the Gabrysch and Hornbuckle fields.

II. Disposition of Refunded Overcharges

In this Consent Order, Howell Drilling, Inc. agrees to refund, in all settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $28,500.00 on or before August 30, 1980. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund

amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification of the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Howell Drilling Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on September 10, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 31st day of July, 1980.

Wayne I. Tucker,

District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-24040 Filed 8-8-80, 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of July 11 Through July 18, 1980

During the week of July 11 through July 18, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

August 4, 1980.

List of Cases Received by the Office of Hearings and Appeals

[Week of July 11 through July 18, 1980]

Date	Name and location of applicant	Case No.	Type of submission
July 11, 1980	Coastal States Gas Corp., et al., Houston, Texas	BRJ-0103	Motion for Protective Order. If granted: Coastal States Gas Corp. would enter into a Protective Order with the Office of Special Counsel, New England Power Co., Southern California Edison Company, and the City of Los Angeles Department of Water and Power regarding the release of proprietary information in connection with the Proposed Remedial Order issued to Coastal States Gas Corporation (Case No. DRO-0113).
July 14, 1980	Marine Trades Assoc. of New Jersey, Rumson, New Jersey.	BEE-1283	Price Exception. If granted: Marine Trades Assoc. of New Jersey would receive an exception from the provisions of 10 CFR 212 which would permit the firms to sell motor gasoline at a price above the applicable maximum lawful selling price.
July 14, 1980	Mars Oil Company, Washington, D.C.	BEA-0425	Appeal of an Assignment Order. If granted: The May 14, 1980, Assignment Order issued to Amoco Oil Company by the Economic Regulatory Administration, Region VII, regarding Amoco Oil Company's supply obligations to Charles W. Wacker would be rescinded.
July 14, 1980	Office of Special Counsel (Marathon), Washington, D.C.	BRD-0064	Motion for Discovery. If granted: Discovery would be granted to the Office of Special Counsel (Marathon) in connection with the Statement of Objections submitted in response to the January 9, 1980, Proposed Order of Disallowance (Case No. BRO-0983) issued to Marathon by the Office of Special Counsel.
July 14, 1980	Pester Refining Company, Washington, D.C.	BEE-1285	Exception from the Entitlements Program. If granted: Pester Refining Company would receive an exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
July 14, 1980	Winston Refining Company, Washington, D.C.	BEE-1284 and BEL-1284.	Exception from the Entitlements Program. If granted: Winston Refining Company would receive an exception and a temporary exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
July 15, 1980	Atlantic Richfield Company, Los Angeles, California	BEE-1294 and BEL-1294.	Exception and Temporary Exception from the Entitlements Program. If granted: Atlantic Richfield Company would receive an exception and a temporary exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
July 15, 1980	Clarks Petroleum Service, Inc., New York, New York.	BEE-1291	Allocation Exception. If granted: Clarks Petroleum Service, Inc., would receive an exception from the provisions of 10 CFR 211 which would permit the firm to receive an allocation of unleaded motor gasoline for the purpose of blending gasohol.
July 15, 1980	Deuterium Corporation, New Rochelle, New York	BFA-0419	Appeal of an Information Request Denial. If granted: The June 16, 1980, Information Request Denial issued by the San Francisco Operation Office would be rescinded, and Deuterium Corporation would receive access to materials deleted from a proposal submitted by the EIC Corporation.
July 15, 1980	Environmental Protection Corporation, Bakersfield, California.	BEE-1290	Exception from the Reporting Requirement. If granted: Environmental Protection Corporation would not be required to file Form ERA-69.
July 15, 1980	Grace Petroleum Corporation, Oklahoma City, Oklahoma.	BXE-1287	Extension of Relief granted in Grace Petroleum Corporation, 5 DOE Par. (May 0, 1980). If granted: Grace Petroleum Corporation would be permitted to continue to sell the crude oil produce from the Star Misoner Hunton Unit located in Blaine and Kingfisher Counties, Oklahoma, at upper tier ceiling prices.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of July 11 through July 18, 1980]

Date	Name and location of applicant	Case No	Type of submission
July 15, 1980	Powerine Oil Company, Santo Fe Springs, California.	EEE-1289	Exception from the Entitlements Program. If granted: Powerine would be issued additional entitlements to sell on a future entitlement notice to offset entitlements which Sector Refining, Inc., has failed to purchase pursuant to the entitlements notice issued for February 1980.
July 15, 1980	Ramona Public Works Authority, Ramona, Oklahoma.	EEE-1288	Exception from the Reporting Requirements. If granted: Ramona Public Works Authority not be required to file Form EIA-50.
July 15, 1980	San-Ann Service, Inc., Boaz, Alabama	EEX-0079	Supplemental Order. If granted: The July 3, 1980, Decision and Order (Case No. DXE-5064) issued to San-Ann Service, Inc., would be modified.
July 15, 1980	Young Refining Corp., Washington, D.C.	EEX-0081	Supplemental Order. If granted: Young Refining Corp. would receive a revised stay of a portion of its entitlements purchase obligations during the period from June 1980 through November 1980.
July 16, 1980	Aminoil USA, Inc. (California State Lease 332), Washington, D.C.	BXE-1295	Extension of relief granted in Aminoil USA, Inc. (California State Lease 332, DOE Par (October 24, 1979). If granted: Aminoil USA, Inc., would be permitted to continue to sell the crude oil produced from the California State Lease 332 at upper tier ceiling prices.
July 16, 1980	Geiger Enterprises, Inc., Tonawanda, New York	EEE-1293	Price Exception. If granted: Geiger Enterprises, Inc., would receive an exception of that portion of the gasoline reseller pricing regulations which specifies that an election as to which pricing rule to apply must be made by July 1, 1980, for each reseller subject to the rules.
July 16, 1980	Koch Exploration Co., Wichita, Kansas	BXE-1297	Extension of relief granted in Koch Exploration Co., 6 DOE Par. , (June 24, 1980). If granted: Koch Exploration Co. would be permitted to sell the crude oil produced from the Sink Draw #1 Lease located in Altamont-Bluebell Field, Duchesne County, Utah, at upper tier ceiling prices.
July 16, 1980	Skyline Radio Taxi, et al., New York, New York	EEA-0421	Appeal of an Assignment Order. If granted: The June 17, 1980, Assignment Order issued to Skyline Radio Taxi, *et al.*, by the Economic Regulatory Administration, Region II, regarding the increased assignment of motor gasoline would be rescinded.
July 17, 1980	Giant Industries, Inc., Washington, D.C.	EEA-0423	Appeal of the Entitlements Notice. If granted: The January 1980 Entitlements Notice would be modified with respect to Giant Industries, Inc.'s entitlements purchase obligations.
July 17, 1980	Wind Energy Report, Rockville Centre, New York	EFA-0420	Appeal of an Information Request Denial. If granted: Wind Energy Report would receive access to materials relating to a report entitled "Design, Fabrication, Installation, and Testing of a Darreus Vertical Axis Wind Turbine."
July 18, 1980	Special Counsel (Standard Oil Company of Indiana), Washington, D.C.	EFF-0007	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, in connection with the February 14, 1980, Consent Order between the Office of Special Counsel and Standard Oil Company of Indiana.

List of Cases Involving the Standby Petroleum Product Allocation Regulation for Motor Gasoline

[Week of July 11 through July 19, 1980]

If granted: The following firms would be granted relief which would increase their base period allocation of motor gasoline.

Name	Case No.	Date	State
Union Oil Co. of California (Downers).	BEE-1282	7/14/80	Illinois.
Alger Oil	BEN-0920	7/15/80	Maryland.
Colstrip Town Pump, Inc.	BEN-1158	7/15/80	Montana.
Covered Bridge Texaco.	BEE-1292	7/15/80	Florida.
Ft. Oglethorpe Tire & Service.	BEN-0044	7/16/80	Georgia.
City of Philadelphia.	BEN-1080	7/17/80	Pennsylvania.
Melvine Sunoco	BEN-0045	7/17/80	Maryland.

Notices of Objection Received

[Week of 7/11/80 through 7/18/80]

Date	Name and location of applicant	Case No.
7/11/80	Metro Oil Co., Inc., Oklahoma City, Okla.	DEE-3257

Notices of Objection Received—Continued

[Week of 7/11/80 through 7/18/80]

Date	Name and location of applicant	Case No
7/14/80	Walley's Texaco Service, Dayton, Wash	BEO-1269
7/14/80	Young Refining Corp., Washington, D.C.	BEE-1038
7/15/80	Metzer Petroleum Corp., New York, N.Y.	BEE-0840
7/15/80	Seaview Petroleum Co., Chicago, Ill.	DEE-0342
7/17/80	Sage Creek Refining Co., Inc., Tulsa, Okla.	BEE-0004

[FR Doc. 80-24009 Filed 8-8-80; 9:10 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 18 Through July 25, 1980

During the week of July 18 through July 25, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Thomas L. Wieker,

Deputy Director, Office of Hearings and Appeals.

August 4, 1980.

List of Cases Received by the Office of Hearings and Appeals

[Week of July 18 through July 25, 1980]

Date	Name and location of applicant	Case No.	Type of submission
July 18, 1980	*Chevron USA, Inc./Little America Refining Co., Washington, D.C.	BEJ-0106 and BED-0106.	Motion for Protective Order and Discovery. If granted: Discovery would be granted to Chevron USA, Inc., in connection with Little America Refining Co.'s Applications for Exception, Temporary Exception and Stay. Chevron USA, Inc., would also enter into a Protective Order with Little America Refining Co. regarding the release of proprietary information to Chevron USA, Inc., in connection with Little America Refining Co.'s Applications for Exception, Temporary Exception and Stay. (Case Nos. BEE, BEL, BES-1064).

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of July 18 through July 25, 1980]

Date	Name and location of applicant	Case No.	Type of submission
July 18, 1980	Energy Cooperative, Inc., Washington, D.C	BEE, BEL, BES-1298.	Exception, Temporary Exception, and Stay of the Buy/Sell Program and Entitlements Notice. If granted: Energy Cooperative, Inc., would receive an exception, temporary exception and a stay of the provisions of 10 CFR 211.65 regarding the firm's participation in the crude oil Buy/Sell Program. The firm would also receive an exception, temporary exception, and a stay of the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
July 18, 1980	Energy Cooperative, Inc., Washington, D.C	BEA-0424	Appeal of an Order relating to the Crude Oil Buy/Sell Program. If granted: The June 10, 1980, Decision and Order issued by the Economic Regulatory Administration would be modified with respect to Energy Cooperative, Inc.'s participation in the Crude Oil Buy/Sell Program.
July 18, 1980	Little America Refining Co., Washington, D.C	BEL-0085 and BES-0085.	Temporary Exception and Stay from the Entitlements Program. If granted: Little America Refining Co. would receive a temporary exception and a stay from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
July 18, 1980	Powder River Basin Resource Council, Sheridan, Wyoming.	BFA-0422	Appeal of an Information Request Denial. If granted: The June 11, 1980, Information Request Denial issued by the Office of Procurement Operations would be rescinded, and Powder River Basin Resource Council would receive access to the EHSS information for the following proposals submitted under the DOE Alternative Fuel Program: (a) Feasibilities Studies: AM Methyl Fuel Corp., Hampshire Energy, Jacobs Engineering, Mountain Fuel Supply, Ranchester Packing, Northwestern Pipeline Corp., Transwestern Coal Gas Corp. and Gulf R & D; (b) Cooperative Agreements: Mobil R & D and Panhandle Eastern Pipeline Co.
July 21, 1980	Wagoner Gas and Oil, Inc., West Newton, Pennsylvania.	BMR-0053	Request for Modification. If granted: The June 25, 1980, Decision and Order (Case No. DEE-4837) issued to Wagoner Gas and Oil, Inc., by the Office of Hearings and Appeals would be modified.
July 21, 1980	Atlantic Richfield Company, Washington, D.C	BEE-1301	Price Exception. If granted: Atlantic Richfield Company would be granted an exception from the provisions of 10 CFR 212, subpart E which would permit the firm to pass through the Connecticut gross receipts tax solely in the prices it charges for covered products sold in Connecticut.
July 21, 1980	Brock Exploration Corp., Washington, D.C	BEN-0066	Interim Decision and Order. If granted: Brock Exploration Company would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. BEE-0066).
July 21, 1980	Chevron USA, Inc./Crown, Central Petroleum, Washington, D.C.	BEJ-0108	Motion for Protective Order. If granted: Chevron USA, Inc., would enter into a Protective Order with Crown Central Petroleum regarding the release of proprietary information to Chevron USA in connection with Crown Central Petroleum's Appeal (Case No. BEA-0332).
July 21, 1980	Chevron USA, Inc./International, Processors, Washington, D.C.	BEJ-0107	Motion for Protective Order. If granted: Chevron USA, Inc., would enter into a Protective Order with International Processors regarding the release of proprietary information to Chevron in connection with International Processor's Appeal (Case No. BEA-0333).
July 21, 1980	Chevron USA, Inc./Little America Refining Co., Washington, D.C.	BES-0086 and BED-0086.	Request for Stay and Motion for Discovery. If granted: Discovery and a stay would be granted to Chevron USA in connection with Little America Refining Co.'s Application for Temporary Exception and Application for Stay (Case Nos. BEL-0085 and BES-0085).
July 21, 1980	Chevron USA, Inc./Seaview Petroleum, Washington, D.C.	BEJ-0105	Motion for Protective Order. If granted: Chevron USA, Inc., would enter into a Protective Order with Seaview Petroleum regarding the release of proprietary information to Chevron in connection with Seaview Petroleum's Appeal (Case No. BEA-0340).
July 21, 1980	Crown Central Petroleum, Baltimore, Maryland	BEA-0428	Appeal of an Assignment Order. If granted: The May 2, 1980, Assignment Order issued to Crown Central Petroleum by the Economic Regulatory Administration, Region II, would be rescinded.
July 21, 1980	Crown Central Petroleum, Baltimore, Maryland	BEA-0429	Appeal of an Assignment Order. If granted: The May 2, 1980, Assignment Order issued to Crown Central Petroleum by the Economic Regulatory Administration, Region II, would be rescinded.
July 21, 1980	Exxon Company USA, Washington, D.C	BSG-0029	Request for Special Redress. If granted: The Office of Hearings and Appeals would review the proceedings regarding the compliance of the April 23, 1980, Decision and Order (Case No. BFA-0295).
July 21, 1980	Kentel Realty Corp., Levittown, New York	BEA-0430	Appeal of an Assignment Order. If granted: The May 5, 1980, Assignment Order issued to Kentel Realty Corp. by the Economic Regulatory Administration, Region II, regarding Bell Petroleum, Inc.'s supply obligations to Kentel Realty Corp. would be modified.
July 21, 1980	Maureen Holcher, Oakland, California	BFA-0426	Appeal of an Information Request Denial. If granted: The July 12, 1980, Information Request Denial issued by the Office of Classification would be rescinded and Maureen Holcher would receive access to the name of the nuclear component in a letter from R. M. Anderson, Acting Secretary of Defense to President Eisenhower dated December 8, 1954.
July 21, 1980	Tom Brown, Inc., Midland, Texas	BEE-1300	Price Exception. If granted: Tom Brown, Inc., would be permitted to sell the crude oil produced from the Neta Crawford Lease No. 10169 at stripper well prices.
July 21, 1980	Trends Publishing, Inc., Washington, D.C	BFA-4032	Appeal of an Information Request Denial. If granted: Trends Publishing, Inc., would receive access to certain DOE data.
July 22, 1980	Bell Fuels, Inc./R. W. Trock Oil Co., Washington, D.C.	BSG-0028	Request for Special Redress. If granted: The Office of Hearings and Appeals would review the Decision denying the Application to Quash Subpoenas submitted by Bell Fuels, Inc., and R. W. Trock Oil Co.
July 22, 1980	Commonwealth Oil Refining Company/Charter Company, Washington, D.C.	BEE-1302	Request for an Exception. If Granted: Commonwealth Oil Refining Company and the Charter Company would be granted an exception permitting the two firms to operate as separate entities.
July 22, 1980	Oleum Corporation, Washington, D.C	BFA-0431	Appeal of an Information Request Denial. If granted: The June 16, 1980, Information Request Denial issued by the District Manager of the ERA Southeast District Office of Enforcement would be rescinded, and Oleum Corporation would receive access to copies of all documents in possession in the Region IV Office of the DOE concerning Oleum Corporation.
July 22, 1980	Standard Oil Company (Indiana), Chicago, Illinois	BEE-1303	Price Exception. If granted: Standard Oil Company (Indiana) would be allowed to exclude marketing costs of propane outlets from its May 15, 1973, base non-product costs.
July 23, 1980	Bracewell and Patterson, Washington, D.C	BFA-0433	Appeal of an Information Request Denial. If granted: Bracewell and Patterson would receive access to documents relating to the proposed crude oil reseller regulations.
July 23, 1980	Gulf Oil Corporation, Houston, Texas	BEE-1304 and BEL-1304.	Request for Temporary Exception and Exception. If granted: Gulf Oil Corporation would be granted an exception and a temporary exception from the provisions of 10 CFR 212, subpart E which would permit the firm to pass through the Connecticut gross receipts tax solely in the prices it charges for covered products sold in Connecticut.
July 23, 1980	Office of Special Counsel, Washington, D.C	BRD-0067	Motion for Discovery. If granted: Discovery would be granted to the Office of Special Counsel in connection with a Statement of Objections submitted in response to the April 27, 1977, Notice of Proposed Disallowance (Case No. BRO-0984) issued to Murphy Oil Corporation.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of July 18 through July 25, 1980]

Date	Name and location of applicant	Case No	Type of submission
July 23, 1980	Office of Special Counsel, Washington, D.C	BRD-0068	Motion for Discovery. If granted: Discovery would be granted to the Office of Special Counsel in connection with a Statement of Objections submitted in response to the April 27, 1977, Notice of Proposed Disallowance (Case No. BRO-0965) issued to Amerada Hess Corporation.
July 24, 1980	Blum & Nash, Washington, D.C	BFA-0434	Appeal of an Information Request Denial. If granted: The June 13, 1980, Information Request Denial issued by the Office of Regulations and Emergency Planning would be rescinded, and Blum and Nash would receive access to documents regarding the Mandatory Petroleum Price Regulations.
July 24, 1980	Caribou Four Corners, Inc., Afton, Wyoming	BEX-0082	Supplemental Order. If granted: The Office of Hearings and Appeals would review the entitlements exception relief granted to Caribou Four Corners, Inc., during its 1979 fiscal year in order to determine whether the level of exception relief accorded the firm was appropriate.
June 24, 1980	Texas Gas Exploration Corporation, Washington, D.C.	BEN-0047	Request for Interim Order. If granted: The April 28, 1980, Proposed Decision and Order issued to Texas Gas Exploration Corporation would be implemented on an interim basis pending a final determination on the firm's Application for Exception (Case No. DEE-2118).
July 24, 1980	Witco Chemical Corporation, Arlington, Virginia	BEE-1306	Exception from the Entitlements Program. If granted: Witco Chemical Corporation would receive an exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

[Week of July 18 through July 25, 1980]

If granted: The following firms would be granted relief which would increase their base period allocation of motor gasoline.

Name	Case No.	Date	State
The Oasis	BEN-0046	7/21/80	California.
Hershey Entertainment and Resort Co.	BEE-1305	7/24/80	Pennsylvania.
Parker Energy & Petroleum Co.	BEN-1234	7/24/80	Virginia.

Notices of Objection Received

[Week of 7/18/80-7/25/80]

Date	Name and location of applicant	Case No.
7/21/80	United Engineers and Constructors, Inc., Philadelphia, Pa.	BEO-1279
7/23/80	Lou Nargiso, Danbury, Conn	DEE-7095
7/22/80	Spring Creek Store, Globe, Ariz	DEE-7533
7/23/80	South Florida Gasohol, Inc., Wash., D.C.	BEE-0932

[FR Doc. 80-24037 Filed 8-8-80; 9:10 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of June 2 through June 6, 1980

During the week of June 2 through June 6, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Crown Central Petroleum Corp., Baltimore, Md., BEA-0096, motor gasoline

Crown Central Petroleum Corporation filed an Appeal of an Assignment Order issued to the firm by ERA Region II. In considering the Appeal, the DOE determined that the ERA had failed to provide Crown with a statement of the factors which caused it to select Crown as a substitute supplier for J & B Automotive. Accordingly, Crown's Appeal was granted in part, and ERA Region II was ordered to provide Crown with such a statement.

Total Petroleum, Inc., Alma, Mich., DEA-0538, motor gasoline

Total Petroleum, Inc. filed an Appeal of an Assignment Order which was issued to the firm on July 9, 1979 by ERA Region V. In considering the Appeal, the DOE determined that the Assignment Order contained an inadequate explanation as to why Total was chosen to supply the U.S. Oil Company with 350,000 gallons of motor gasoline. Accordingly, Total's Appeal was granted in part, and the matter was remanded to ERA Region V for the issuance of an amended Assignment Order.

Requests for Exception

Alpha Fitness Center, Omaha, Nebr., DEE-7779, temperature restrictions

Alpha Fitness Center filed an Application for Exception from the provisions of 10 CFR Part 490 in which the firm sought permission to raise its maximum heating temperature above 65°F and to lower its minimum cooling temperature below 78°F. In considering the request, the DOE found that the firm had not demonstrated that persons using its facilities were facing a health risk as a result of the prescribed temperature levels. Accordingly, exception relief was denied.

Lonnie Bailey, St. Louis, Mo., BEO-0664, motor gasoline

Lonnie Bailey filed an Application for Exception from the provisions of 10 CFR Part 211 in which it sought an increase in its base period allocation of motor gasoline. On December 20, 1979, the DOE issued a Proposed Decision and Order in which it tentatively determined that Bailey's Application should be denied. In considering Bailey's Statement of Objections to the Proposed Decision and Order, the DOE determined that: (1) Bailey had not entered into a binding contract for the conversion of its outlet into a self-service facility prior to the updating of the allocation base period; (2) the firm had not suffered a drop in its sales volume during the base period as a result of nearby highway construction; and (3) since there were a large number of other service stations in Bailey's immediate vicinity, the community was not suffering a gross inequity. The firm's Application for Exception was therefore denied.

Bert's Exxon, Potomac, Md., DEE-2496, motor gasoline

Bert's Exxon filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that there are a large number of motor gasoline retail outlets in Bert's area and that consequently, the residents of the community are not experiencing an unfair distribution of burdens. Accordingly, exception relief was denied.

Buchanan Shell, Inc., Pittsburgh, Calif., BEO-0223, motor gasoline

Buchanan Shell, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that the DOE allocation regulations placed an unfair burden on the citizens of Buchanan's market area or that the area was receiving substantially less gasoline per capita than other communities of a similar size. Accordingly, exception relief was denied.

Central Mobil of Sunnyvale, Sunnyvale, Calif., BEO-0393, motor gasoline

Central Mobil of Sunnyvale filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that there was no indication

that motorists in the Sunnyvale area were experiencing significantly greater difficulty in obtaining gasoline than those in other areas of the country. Accordingly, exception relief was denied.

Continental Oil Co., Houston, Tex., DEE-1889, petroleum products

Continental Oil Company (Conoco) filed an Application for Exception from the provisions of 10 CFR § 212.83 in which the firm sought to adjust its May 1973 marketing costs for purposes of determining the amount of increased non-product cost which it may reflect in its current sales prices for petroleum products. In considering the request, the DOE found that exception relief was necessary to eliminate an impediment to Conoco's divestiture program. Accordingly, exception relief was granted in part.

Craft's Superette, Chandler, Tex., BEO-0600, motor gasoline

On June 6, 1979, Craft's Superette filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing financial difficulties serious enough to warrant exception relief. Accordingly, exception relief was denied.

D & D Gulf Service, Fitchburg, Mass., DEE-7179, motor gasoline

D & D Gulf Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had not satisfied the criteria set forth in *Leo Anger, Inc.*, 4 DOE ¶ 81,037 (1979) and had failed to demonstrate that it was experiencing a serious financial hardship as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Dow Jones & Co., Princeton, N.J., BEE-0506, motor gasoline

Dow Jones & Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an allocation of motor gasoline. In considering the request, the DOE found that Dow Jones does not qualify as a wholesale purchaser-consumer of gasoline and that the burdens which the firm is encountering as a result of the current gasoline shortage are like those facing many similar firms. Accordingly, exception relief was denied.

Dwyer Motors, Inc., New Orleans, La., DEE-7617, motor gasoline

Dwyer Motors, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was experiencing a gross inequity, serious hardship, or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Faith Oil Co., Oxnard, Calif., BEO-0016, motor gasoline

Faith Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which it sought an increase in the base period allocation of motor gasoline of a retail outlet located in Oak View, California. In a Proposed Decision and Order, the DOE tentatively determined that exception relief should be denied. In considering Faith's Statement of Objections to the Proposed Decision and Order, the DOE found that Faith's station was operating profitably and that the firm had failed to demonstrate that it had been adversely affected by the grant of an allocation of motor gasoline to a new retail outlet which had opened near the Oak View station. Accordingly, exception relief was denied.

Favre's Standard, Staunton, Ill., BEO-0108, motor gasoline

Favre's Standard filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had not made a large enough capital investment to qualify for exception relief under the criteria set forth in *Leo Anger, Inc.*, 4 DOE ¶ 81,037 (1979). Accordingly, exception relief was denied.

Glenn's Freeway Service, Winslow, Ariz., BEO-0691; motor gasoline

Glenn's Freeway Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to show that citizens in its market area were experiencing difficulty in obtaining adequate supplies of motor gasoline. Accordingly, exception relief was denied.

Kennedy Variety Store, Maysville, N.C. BEO-0576, motor gasoline

Kennedy Variety Store filed an Application for Exception from the provisions of 10 CFR Part 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that although Kennedy had filed a Statement of Objections to the Proposed Decision and Order which had been issued to the firm, it no longer had any objections to the issuance of the Proposed Decision and Order in final form. Accordingly, exception relief was denied.

Morgan Oil Co., Bloomfield, Iowa, BEO-0034, motor gasoline

Morgan Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that although Morgan had made a substantial capital investment in its retail outlet, road construction had prevented the firm from realizing the intended benefits of that investment during the new base period for motor gasoline allocation. Accordingly, exception relief was denied.

Prudential Overall Supply, Santa Ana, Calif., BEO-1134, motor gasoline

Prudential Overall Supply filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that is was unable to satisfy its current needs by purchasing motor gasoline at retail outlets or that it was experiencing financial difficulties as a result of the DOE regulations. Accordingly, exception relief was denied.

Snow Stumph Shell, Parma, Ohio, BEO-1125, motor gasoline

Snow and Stumph Shell filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was experiencing a serious hardship or gross inequity as a result of DOE regulations or that insufficient supplies of motor gasoline were available to purchasers in its community. Accordingly, exception relief was denied.

Town and Country Food Markets, Inc., Wichita, Kans., DEE-2863; Champlin Petroleum Co., Tulsa, Okla., DEA-0598, motor gasoline.

Town and Country Food Markets, Inc., filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought a change of supplier of its base period entitlement of motor gasoline. In considering the request, the DOE determined that exception relief was necessary to alleviate a serious hardship which Town and Country was experiencing as a result of the high prices for motor gasoline which were charged by the firm's primary supplier during certain base period months. Town and Country's request was therefore granted. The DOE also considered an Appeal, filed by Champlin Petroleum Company, of a Temporary Assignment Order issued to the firm incidental to the exception relief granted to Town and Country. In considering the Appeal, the DOE rejected Champlin's claim that the Temporary Assignment Order was procedurally defective. Accordingly, Champlin's Appeal was denied.

Requests for Modification and/or Rescission

Atlantic Richfield Co., Washington, D.C., BRR-0036; Gulf Oil Corp., Washington, D.C., DRR-0037; Marathon Oil Co., Washington, D.C., BRR-0038; Standard Oil Co., of Calif., Washington, D.C., BRR-0039; Standard Oil Co. (Ohio), Cleveland, Ohio, BRR-0040; Texaco Inc., Washington, D.C., BRR-0041; Louisiana Land & Exploration Co., Washington, D.C., BRR- crude oil.

The petitioners in this proceeding filed a Motion for Reconsideration or Clarification of a discovery order issued by the Office of Hearings and Appeals of the Department of Energy in connection with enforcement proceedings brought by the DOE's Office of Special Counsel. In the contested order, the DOE set forth its views with respect to the discovery of contemporaneous constructions of the agency's interpretations of various regulatory terms at tissue in the enforcement proceedings. In considering the Motion, the DOE determined that its order should be modified in one respect to extend the time

period for which discovery would be allowed. The DOE also clarified certain aspects of the discovery order, including the definition of a "reasonible agency officer" whose contemporaneous regulatory constructions would be subject to discovery.

Kimberly Gas Mart, Kimberly, Idaho, BMR-0035, motor gasoline.

Kimberly Gas Mart filed an Application for Modification or rescission of a Decision and Order in which the DOE had determined that an application for exception filed by Kimberly should be granted only in part. In considering the request, the DOE concluded that Kimberly's new Application did not raise any arguments or furnish any factual information that had not already been considered in the previous exception proceeding. Accordingly, the Application for Modification or Rescission was denied.

Office of Enforcement, Washington, D.C. BRR-0030, Crude Oil

The ERA Office of Enforcement filed a Motion for Reconsideration of a Decision and Order issued to the William Herbert Hunt Trust Estate. In that decision, the DOE had remanded a Proposed Remedial Order which had been issued to Hunt, directing the Office of Enforcement to allocate condensate recovered from dehydration and compression stations operated by Hunt to the crude oil producing properties from which the condensate had originated. In its Motion, the Office of Enforcement argued that Hunt did not maintain sufficient records to permit such an allocation to be made an that there was no practicable procedure for making such an allocation. In considering the Motion, the DOE determined that the condensate recovered at Hunt's facilities could not be allocated in the manner directed. Since Hunt's objections to the Proposed Remedial Order had been rejected in the earlier determination, the Office of Hearings and Appeals concluded that Hunt's unallocated condensate should be sold at lower tier prices. Accordingly, the Proposed Remedial Order was issued in final form.

Request for Stay

Ashland Oil, Inc., Ashland, Ky., BRS-0373, crude oil,

Ashland Oil, Inc., filed an Application for Stay form an Ancillary order which was issued to the firm by the ERA Southwest District of Enforcement. Under the terms of that Order, Ashland was required to collect refunds of overcharges from a firm that had entered into a consent order with the DOE. In considering the Application, the DOE noted that Ashland's request was identical to a previous stay request which had been granted to the firm in connection with another Ancillary Order. Accordingly, the Application for Stay was granted.

Supplemental Orders

Fields Field Co., Washington, D.C., BEX-0060, crude oil

On Janaury 5, 1979, the DOE issued a Decision and Order that permitted the working interest owners of the Wilcox Unit, located in Beauregard Parish, Louisiana, to sell a portion of their crude oil production at market prices not to exceed $15.21 per barrel. This determination was intended to provide the working interest owners with an economic incentive to continue a natural gas cycling project at the property. On its own motion, the DOE determined that the market price limitation in the January 5, 1979 Decision and Order was enabling the purchaser of the crude oil to receive certain unintended benefits. Accordingly, the level of exception relief was adjusted, and the market ceiling price limitation was removed.

Weber's Chevron, Service, et al., San Francisco, Calif., BRX-0058, motor gasoline

The law firm of Hawkins, Sauvage and Donahue filed Notices of Objection to Proposed Remedial Orders on behalf of several retailers of motor gasoline. Because the firm stated that the legal arguments to be made on behalf of the Proposed Remedial Order recipients were substantially identical, the DOE ordered the proceedings consolidated for argument and determined that certain procedural requirements pertaining to the proceedings should be modified.

Interim Orders

Southern Bell Telephone & Telegraph Co., Fort Lauderdale, Fla., BEN-0036, motor gasoline

Southern Bell Telephone & Telegraph Company filed a Motion for Interim Order in connection with its Application for Exception from the provisions of 10 CFR Part 211. In its Motion, Southern Bell requested that the exception relief tentatively granted to the firm in a Proposed Decision and Order be provided on an interim basis pending the issuance of a final Decision and Order. In considering the request, the DOE determined that the Motion should be granted, notwithstanding the fact that it had denied Southern Bell's Application for Temporary Exception when it had issued the Proposed Decision and Order. The DOE stated that the criteria for the granting of an Interim Order are somewhat less stringent than those for a Temporary Exception. Moreover, the DOE determined that the grounds for denying the Temporary Exception were no longer present.

The following firms were granted Interim exception relief which implemented the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Location, Case No.

J & B Automotive, Patchogue, NY., BEN-0628.
Schneider's Automotive Repair, Simi Valley, CA., BEN-0038.

Remedial Order

In the following case involving a Proposed Remedial Order, no Statement of Objections was filed. The DOE therefore issued the order in final form:

Company Name, Location, and Case No.

Phil Caputo d.b.a. Phil's Clark, Chicago, IL, BRW-0051.

Protective Orders

The following firms filed Applications for Protective Orders. The Applications, if granted, would result in the issuance by the DOE of the proposed Protective Orders submitted by the firms. The DOE granted the following applications and issued the requested Protective Orders as Orders of the Department of Energy:

Company Name, Location, and Case No.

Automatic Comfort/Sun Oil of PA; Mobil Oil Corp., Washington, D.C., BEJ-0089; BEJ-0090.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be granted:

Company Name, Location, and Case No.

Larry Mills Exxon, Olancha, CA, DEE-7105.
Upson's Trading Post, Oregon, IL, BEO-1146.

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied:

Company Name, Location, and Case No.

Ben Page, San Francisco, CA, DEE-4180.
Bill's Pershing Mobil, Ansonia, CA, DEE-3349.
Copsey, Inc., Scottsbluff, NE, DEE-4038.
FS Services, Inc., Bloomington, IL, DEE-7938.
Wauseon Wash n' Fill, Wauseon, OH, BEO-0115.

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued a Decision and Order which finalized the Proposed Decision and Order issued to each firm:

Company Name and Case No.

A. C. Fernald Sons, Inc., DEE-5353.
Aire Sheet Metal, Inc., DEE-5794.
All South Rentals Inc., DEE-7064.
Amos Post, Inc., DEE-8062.
Anaheim Car Wash, DEE-6363.
Anthony Alfana Service Station, DEE-5228.
Auburn Mini-Market Jr., DEE-6021.
Ball Oil Company, DEE-7102.
Barnacle Store, The, DEE-5365.
Benson General Store, BEE-0645.
Besto Gulf, DEE-6998.
Bob & Al Service Center, Inc., DEE-6623.
Bob's Standard Service, DEE-7136.
Bob's Texaco, DEE-4582.
Bonnett, W. R., DEE-6792.
Bosar Enterprises, Inc., DEE-7870.
Bowers & Burrows, Inc., BEE-1013.
Broad & Parham Exxon, DEE-7742.
Brown's Gas Station, DEE-5813.
Bubber's Exxon, DEE-7241.
Budget Rent-A-Car, DEE-7033.

Burke Auto Service, Inc., DEE-7419.
Burnsed Petroleum Corp., DEE-6074.
C. B. Shell, DEE-4254.
Castle Hills Texaco, DEE-6699.
Center 66 Service, DEE-7588.
Charles F. Argon & Co., DEE-6139.
Christensen, E. D., DEE-2525.
Chuck's Exxon, DEE-7362.
Cliff's Sunoco, DEE-4129.
Collins Texaco, DEE-4265.
Crossroads Gulf Service Station, DEE-7619.
D. Hubbard & Son, DEE-6509.
Daniel Turco, DEE-3929.
Dematteo's Gulf Services, DEE-4685.
Denny's Exxon, DEE-6857.
Dick's Hilltop Arco, DEE-7069.
Earl's Service Station, DEE-3355.
Expressway Arco, DEE-6826.
"F" Street Mobil, DEE-6668.
F. S. Williams Country Store, DEE-3469.
Fasgo, Inc., DXE-6697.
Fast Stop Marts, DEE-4995.
Fischer's Service Station Inc., DEE-7418.
Frazier Oil Company, DEE-3838.
Gardner, Kirk, Cowden, Inc., DEE-5468.
Geiger's Sunoco, DEE-7258.
General Dynamics Corp., DEE-7152.
General Services Administration, DEE-7664.
Globe-Wallys Fork Lift Company, DEE-5753.
Gloenco Newport, Inc., DEE-7722.
Graybill & Weigold, DEE-7159.
Great Lakes Development Company, DEE-6465.
Haywood Oil Company, DEE-6842.
Henderson Oil Company, DEE-4967.
Henkels Arco, DEE-4203.
Herbst Supply Company, DEE-2740.
Jake's Service Station, DEE-3394.
Jerry Menefee Shell Station, DEE-6977.
Johnson, Rory, DEE-6607.
Jones 66 Service Station, DEE-6864.
Ken's Soc Station, DEE-6182.
Kenny's Pioneer Trading Post, DEE-7046.
Lander's Chevron, DEE-6432.
Laroche Chevron, DEE-6940.
Linn Co-Operative Oil Company, DEE-6369.
Lowe, Wayne, DEE-4274.
Malache, Ramon, DEE-3533.
Malellan's Garage, DEE-7720.
Malibu Petroleum, BEE-1020.
Marlboro Sunoco, DEE-7035.
Marshfield Auto Body, DEE-7019.
Mason Oil Company, Inc., DEE-5746.
McCracken Texaco, DEE-6637.
Mildred Strickland Service Station, DEE-6856.
Mim's Oil Company, DEE-6259.
Myers Oil Company, DEE-2265.
New Interama Service Center, DEE-5869.
Norwalk Currie Tire Company, Inc., DEE-7714.
Omega Oil Company, DEE-3586.
Ormond Mall 66 Service, DEE-4812.
Palos Verdes Standard, DEE-6653.
Paquin's Garage, DEE-7692.
Patriot Petroleum, Inc., BEE-0222.
Pee Dee Oil Company, DEE-8259.
Pismo Chevron, DEE-2639.
Plaza Car Wash, DEE-6095.
Plaza Exxon, DEE-7614.
Pomperaug Shell, DEE-7402.
Pride Oil Company, Inc., DEE-4102.
Ravensworth Texaco, DEE-6274.
Richard R. Wheeler, Inc., DEE-5364.
River Oaks Amoco, DEE-7400.
Service Oil of Monroe, Inc., DEE-5865.
Ski's Shell Self Serve, DEE-3777.
Smith's Shell Service, DEE-4082.
Steve Lane Sunoco, DEE-7243.
Stevens Oil Company, DEE-5785.
Surry Lane Service Station, DEE-6566.
Telum, Inc., DEE-3869.
Tommy's Standard, DEE-7459.
Treadwell's Exxon DEE-6434.
Tripp Street Chevron, DEE-7199.
Tuscaloosa City Schools, BEE-0246.
Valley Exxon, DEE-7158.
Vish Chevron Service, DXE-8114.
Warner Hot Springs Resort, DEE-8016.
Watson Chevron, DEE-3529.
Whitehorse Soc Station, DEE-8331.
Wilkins, Earl, DEE-6041.
Winver's Lug-A-Jug, DEE-7010.
Yarber's Marathon Service DEE-7405.

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

Avery's Service Station, DEE-6815.
Crown Central Petroleum Corp., BEA-0184; BES-0184; BST-0184.
Edward Applegate, DEE-3526.
Hartsville Oil Co., DEE-6178.
I.T.S., Inc., BEE-1177.
Jack Ritter Oil Distributing Co., BEE-0868.
M & J Chevron, DEE-4550.
Office of Special Counsel, BRD-0008.
Belcher Oil Company, BRD-0029.
Pensacola Petroleum Company, Inc., DES-3030; DST-3030.
Rogers Oil Company, BEE-0358.
Ron Clancy's Inc., BEE-1059.
Shackelford Bros., Inc., DEE-4985.
Texaco Inc., DEA-0608.
Town & Country Food Markets, Inc., DEE-2863; DEA-0598; DES-0598.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, betweetn the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

August 4, 1980.

[FR Doc. 80-24038 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Uranium Hexafluoride; Charges, Enriching Services, Specifications, and Packaging Revision

Correction

In FR Doc. 80-22722, in the issue of Thursday, July 31, 1980, appearing on page 50928, please make the following correction:

In the third column, in the last chart appearing on this page, the first number under the heading "Special variation" reads "$41,915." This is incorrect and should read "$1,915."

BILLING CODE 1505-01

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-50016; FRL 1565-2]

Premanufacture Information; Access by Subcontractor and Consultants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with the Small Business Administration which has subcontracted with the Triton Corp., 910 17th St. NW., Washington, DC 20006, to supply trained chemical consultants to assist small chemical manufacturers, processors, and importers in the preparation of Premanufacture Notices (PMN's) submitted under Section 5 of the Toxic Substances Control Act (TSCA). During the training program at EPA for these consultants, Triton personnel and their field consultants may have access to PMN's containing confidential business information (CBI).

DATE: Access to information submitted in PMN's and claimed to be confidential will occur no sooner than Monday, August 25, 1980.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC, 202/544-1404, or Toll Free 800/424-9065.

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA, manufacturers and importers of chemical substances are required to submit PMN's for new chemical substances that they intend to manufacture or import and which are not included in EPA's Initial Inventory of Chemical Substances.

EPA has been concerned with helping small manufacturers, processors and importers of chemical substances with preparation of PMN's. Therefore, it has arranged with Triton Corp. to work with the Industry Assistance Office (IAO) of EPA to establish a field consultancy service that will provide broad technical assistance on an advisory basis to these companies. This service will initially deal with Premanufacture Notification Regulations but may later encompass other reporting requirements. It will complement the existing informational

services available to industry through IAO by offering, upon request, the personal, on-site technical help of qualified visiting consultants.

To prepare them for work in the field, two field consultants for Triton, serving the New Jersey and the Chicago, Illinois areas, respectively, and other selected Triton employees, will be trained by the Office of Pesticides and Toxic Substances in the techniques of preparing PMN forms. To provide them with the most useful and complete training, these consultants and personnel will work with actual PMN's filed with the Agency. This practical experience will offer them the opportunity to see actual cases and to observe how information submitted by chemical companies meets the regulatory needs of the agency. This training program will probably extend over a one-month period and will be conducted from August through September, 1980. Subsequent training may be needed at a later time if this pilot program proves successful.

During training, Triton and its consultants will need to work with complete PMN's and it is anticipated that they will be exposed to CBI. pursuant to 40 CFR 2.306(j), it has been determined that such disclosure of CBI to Triton and its consultants is necessary for the satisfactory performance of this contract.

At no time during training will Triton Corp., or its consultants, have any CBI in their files. They may have access to CBI during training sessions, but all files containing CBI will remain with EPA. At nok time will they be permitted to take any notes containing CBI.

Triton personnel and consultants will be required to sign a nondisclosure agreement before they are permitted access to TSCA CBI. They will be briefed on appropriate security procedures and be informed of the criminal penalties of TSCA section 14(d) for unlawful disclosure.

Details on the availability of these consultants to assist chemical companies, as well as information on procedures they will follow, may be obtained by contacting the Industry Assistance Office at the above address/ telephone numbers.

Dated: August 4, 1980.

John B. Ritch, Jr.,

Acting Deputy Assistant Administrator for Program Integration and Information.

[FR Doc. 80-24140 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1565-1]

Intent to Prepare an Environmental Impact Statement

AGENCY: Environmental Impact Statement Preparation Section, Region III, Environmental Protection Agency.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (EIS).

SUMMARY: To fulfill the requirements of the National Environmental Policy Act and the Clean Water Act, EPA has identified a need to prepare an EIS and, therefore, issues this Notice of Intent pursuant to 40 CFR 6.605.

FOR FURTHER INFORMATION CONTACT: Mr. Richard V. Pepino, Environmental Impact Statement Preparation Section (3IR61), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (Commercial) 215-597-8337, (FTS) 8-597-8337.

SUPPLEMENTAL INFORMATION:

1. Description of proposed action: An EIS will be prepared to address the impact of new source coal mining in the Little Kanawha River Basin between the Little Kanawha headquarters and the Burnsville Dam in Upshur, Lewis, and Braxton Counties, West Virginia.

2. Public and Private Participation in the EIS Process: Full participation by interested Federal, State and local agencies, as well as, other interested private organizations and parties is invited. The public will be involved to the maximum extent possible and is encouraged to participate in the planning process.

3. Issues: Strong public controversy over the proposed Holly Grove Surface Mine, particularly concerning potential impacts on the Little Kanawha caused by acid mine drainage, triggered this decision to prepare the EIS.

The EIS will evaluate the following specific issues of concern: (1) overburden analysis of the area; (2) overburden handling and replacement techniques; (3) synergistic effects of close or contiguous mining operations; (4) wetlands impacts; (5) effects of coal mining on aquatic biota; (6) effects of coal mining on the Burnsville Dam Reservoir, and (7) other issues specified to EPA by cooperating government agencies and citizens.

4. Scoping: A State and Federal scoping meeting was held on June 23 in Charleston with representatives of the West Virginia Department of Natural Resources, the U.S. Fish and Wildlife Service, the Corps of Engineers, the Office of Surface Mining, and other interested agencies. A public scoping meeting to present EPA's proposed format for the EIS was held July 24 in West Virginia. For additional information, contact the person indicated above. Public notice will be given prior to all subsequent meetings.

5. Timing: EPA estimates the draft EIS will be available for public review and comment 10 months after initiation of the project.

6. Requests for Copies of Draft EIS: All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

Dated: August 5, 1980.

Thomas R. Sheckells,

Acting Director, Office of Environmental Review (A-104).

[FR Doc. 80-24141 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. B-11]

TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: August 8, 1980.

Cut-Off Date: September 22, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application listed in the attached appendix will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission no later than the close of business on September 22, 1980. Any application previously accepted for filing and in conflict with any application listed in the attached appendix may also be amended as a matter of right not later than the close of business on September 22, 1980. Amendments filed pursuant to this notice are subject to the provisions of Section 73.3572(b) of the Commission's Rules.

Federal Communications Commission.
William J. Tricarico,
Secretary.

BPCT-791026LA (New), Nashville, Tennessee, Television Corporation of Tennessee. Channel 30, ERP: Vis. 3258 kW; HAAT: 1,075 feet.
BPCT-790703KG (New), Des Moines, Iowa, 220 Television, Inc. Channel 17. ERP: Vis. 3715 kW; HAAT: 1,769 feet.
BPCT-790507KI (New), Stockton California, Sterling Recreation Organization Co. Channel 64. ERP: Vis. 961 kW; HAAT: 1,017 feet.
BPCT-790910KF (New), Nashville Tennessee, American TV and Communications Corp. Channel 30 ERP: Vis. 3240 kW; HAAT: 1,248 feet.
BPCT-791019KG (New), Nashville, Tennessee, T.S.T.V., Inc. Channel 30. ERP: Vis. 2530 kW; HAAT: 1,454 feet.
BPCT-791025KF (New), Nashville, Tennessee, Domedia of Tennessee, Inc. Channel 30 ERP: Vis. 1440 kW; HAAT: 415 feet.
BPCT-791026KO (New), Nashville, Tennessee, Choice of Tennessee, Inc. Channel 30. ERP: Vis. 5000 kW; HAAT: 1,414 feet.
BPCT-791026KQ (New), Nashville, Tennessee, Consolidated Broadcasting Corp. Channel 30. ERP: Vis. 1617 kW; HAAT: 1,138 feet.
BPCT-791026KT (New), Nashville, Tennessee, Golden West Broadcasters. Channel 30. ERP: Vis. 2618 kW; HAAT: 1,389 feet.
BPCT-791026KV (New), Nashville, Tennessee, Music City Thirty, Inc. Channel 30. ERP: Vis. 712 kW; HAAT: 1,007 feet.
BPCT-791026KW (New), Nashville, Tennessee, Nash Broadcasting, Inc. Channel 30. ERP: Vis. 5000 kW; HAAT: 1,136 feet.
BPCT-791026KX (New), Nashville, Tennessee, Page Broadcasting Corporation. Channel 30. ERP: Vis. 1247 kW; HAAT: 1,141 feet.
BPCT-791026KY (New), Nashville, Tennessee, Satellite Broadcasting Systems, Inc. Channel 30. ERP: Vis. 1710 kW; HAAT: 422 feet.
BPCT-791026KZ (New), Nashville, Tennessee, Tillis Nashville Television, Inc. Channel 30. ERP: Vis. 5000 kW; HAAT: 1,412 feet.

[FR Doc. 80-24071 Filed 8-8-80; 8:45 am]
BILLING CODE 6712-01-M

[BC Docket No. 80-298, File No. BPCT-5237, et al.]

APW Enterprises, Inc. et al.; Hearing Consolidation Order

Released: August 1, 1980.

By the Chief, Broadcast Bureau:

In the matter of applications of APW Enterprises, Inc., Grand Rapids, Michigan (BC Docket No. 80-298, File No. BPCT-5237); Channel 17 Unlimited, Grand Rapids, Michigan (BC Docket No. 80-299, File No. BPCT-5166); and Good News Broadcasting, Inc., Grand Rapids, Michigan (BC Docket No. 80-300, File No. BPCT-5206).

1. On June 12, 1980, the Commission adopted, and on June 24, 1980, released, a hearing designation order (Mimeo 32824) for the above mentioned cases.

2. Due to an administrative oversight, a paragraph was omitted from the hearing designation order. It should appear as a footnote to paragraph two.

3. Paragraph six of the hearing designation order incorrectly conditioned a possible grant of APW Enterprises, Inc.'s application on all of its principals divesting themselves of their interest in WYGR, Wyoming, Michigan, WSHN and WSHN(FM), Freemont, Michigan. APW Enterprises, Inc., has no interest in those stations. The condition should have applied to Good News Broadcasting, Inc.

4. Accordingly, *it is ordered,* That the above-captioned hearing designation order be revised to add the following footnote to paragraph two.

The application of APW Enterprises, Inc., contemplates operating subscription television (STV) over its proposed facility. This party has an application for STV authorization pending before the Commission. The STV application will not be consolidated for hearing in this proceeding, however. STV is essentially an entertainment format undistinguishable from other entertainment packages except that it is supported directly by viewers' subscriptions rather than by advertising revenues. Accordingly the Commission's reluctance to compare applicants on the basis of entertainment formats expressed in *George E. Cameron, Jr. Communications,* 71 FCC 2d 460 (1979) provides ample precedent for precluding consideration of STV proposals in otherwise routine hearings on applications for television construction permits.

5. *It is further ordered,* That the above-captioned hearing designation order is revised to read as follows:

6. *It is further ordered,* That in the event Good News Broadcasting, Inc.'s application is granted, operation of the station shall not be commenced until all of its principals have divested all of their interest in and connection with WYGR, WSHN and WSHN(FM).

Federal Communications Commission.
Jerold L. Jacobs,
Chief, Broadcast Facilities Division.

[FR Doc. 80-24075 Filed 8-8-80, 8:45 am]
BILLING CODE 6712-01-M

[BC Docket Nos. 80-308 and 80-309, File Nos. BP-20,577 and BP-780728AK]

Car-Mel Broadcasting and Erin Broadcasting Co.; Hearing Designation Order (Modification)

Adopted: July 31, 1980.
Released: August 1, 1980.

In the matter of applications of Carl Como Tutera, Janice Redeagle Cummings and Ruben Guzman d/b/a Car-Mel Broadcasting, Sun Prairie, Wisconsin (BC Docket No. 80-308, File No. BP-20,577) Req: 1190 kHz, 500 W, DA, Day; and Erin Broadcasting Co., Inc., Sun Prairie, Wisconsin (BC Docket No. 80-309, File No. BP-780728AK) Req: 1190 kHz, 1 kW, DA, Day: for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Carl Como Tutera, Janice Redeagle Cummings and Ruben Guzman d/b/a Car-Mel Broadcasting (Car-Mel) and Erin Broadcasting Co., Inc. This Order modifies an earlier Hearing Designation Order, released July 11, 1980, which is hereby set aside pursuant to Section 1.113(a) of the Commission's Rules.

2. *Car-Mel Broadcasting.* Analysis of the financial data Car-Mel submitted reveals that at least $39,778 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment:	
Cash	$4,250
Down payment	9,198
Principal and interest	3,089
Land	1,000
Building	1,200
Legal expenses	800
Other construction costs	4,500
Operating costs	15,741
Total	39,778

Car-Mel plans to finance construction and operation with $1,000 existing capital, $2,000 new capital, and a $110,000 loan from Mr. Tutera.

3. However, this applicant has not established the availability of these funds. First, Car-Mel's balance sheet does not segregate current and long-term liabilities, so the availability of the claimed existing capital cannot be verified. Second, since neither of the partners contributing new capital has submitted a balance sheet in accordance with the requirements of paragraph 4b, Section III, FCC Form 301, no funds have been shown available from them. Third, Tutera's balance sheet does not identify

his stock holdings or show all his liabilities, contrary to the instructions of paragraph 4b of Section III, so his capacity to make the proposed loan cannot be determined. Finally, the basis of the projected equipment costs is not satisfactorily explained. In light of the several deficiencies cited, a general financial issue will be specified.

4. Car-Mel has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650 (1971), in that its study of the composition of Sun Prairie does not indicate the minority, racial, or ethnic breakdown of the community, as required by Question and Answer 9 of the *Primer.* A limited ascertainment issue will be specified.

5. Car-Mel also failed to comply satisfactorily with paragraph 16 of Section IV–A of Form 301, which requires the applicant to state its policy with respect to making time available for the discussion of public issues. This paragraph essentially requires an applicant to indicate that it will comply with the Fairness Doctrine, *i.e.,* that a reasonable opportunity will be afforded for the presentation of contrasting viewpoints on controversial issues of public importance. Car-Mel's response is not appropriately responsive. Accordingly, an issue will be specified.

6. *Erin Broadcasting Co., Inc.* Erin has failed to comply with the requirements of the ascertainment *Primer,* by failing to survey leaders of all significant population groups in Sun Prairie. From the information before us, it appears Erin failed to interview leaders representing consumer services and labor. Accordingly, a limited ascertainment issue will be specified.

7. Erin's corporate by-laws authorize two directors and no vice presidents. However, Table I of Section II of its application reports three directors and one vice president. Erin should file an amendment to clarify this apparent discrepancy.

8. *Other matters.* Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive primary service, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

10. Accordingly, *it is ordered,* That the Hearing Designation Order released July 11, 1980 in this matter is set aside.

11. *It is further ordered,* That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Car-Mel Broadcasting is financially qualified to construct and operate the proposed station.

2. To determine with respect to the efforts of Car-Mel Broadcasting to ascertain the needs of its proposed service area, whether the applicant adequately determined the minority, racial, and ethnic composition of Sun Prairie.

3. To determine whether Car-Mel Broadcasting has proposed a policy with respect to making time available for the discussion of public issues which complies with the Fairness Doctrine.

4. To determine whether Erin Broadcasting Co., Inc. interviewed leaders of consumer services and labor in connection with its ascertainment effort.

5. To determine which of the proposals would, on a comparative basis, better serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

12. *It is further ordered,* That Erin Broadcasting Co., Inc. shall file the amendment specified in paragraph 7 above within 30 days after this Order is published in the Federal Register.

13. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. *It is further ordered,* That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcasting Facilities Division.

[FR Doc. 80-24074 Filed 8-8-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-385, File No. BPCT-5101 et al.]

Tampa Broadcasting Corp et al.; Hearing Designation Order

Adopted: June 27, 1980.

Released: August 1, 1980.

In the matter of applications of Tampa Broadcasting Corporation, Tampa, Florida (BC Docket No. 80-385, File No BPCT-5101), Family Television Corporation, Inc., Tampa, Florida (BC Docket No. 80-386, File No. BPCT-5102) and Suncoast Telechoice, Inc., Tampa, Florida (BC Docket No. 80-387, File No. BPCT-5103) for construction permit for a new commercial television broadcast station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications, filed by Tampa Broadcasting Corporation (Tampa), Family Television Corporation, Inc. (Family), and Suncoast Telechoice, Inc. (Suncoast) for a new commercial television station on Channel 28, Tampa, Florida.

2. On August 3, 1979 Tampa and Suncoast filed a joint petition for approval of agreement under which Tampa would withdraw from the proceeding and receive approximately $20,000 in reimbursements from Suncoast. On September 5, 1979, the Commission responded to this filing, rejecting the proposed reimbursement without additional documentation as to the details of the expenses claimed by Tampa. It appears that Tampa failed to respond to this letter, so we must presume Tampa remains and applicant in this proceeding.

3. The application of Suncoast Telechoice, Inc. contemplates operating subscription television (STV) over its proposed facilities. This party has an application for STV authorization pending before the Commission. However, the STV application will not be consolidated for hearing in this proceeding. STV is essentially an entertainment format indistinguishable from other entertainment packages except that it is supported directly by viewers' subscriptions rather than by advertising revenues. Accordingly, the Commission's reluctance to compare

applicants on the basis of entertainment formats expressed in *George E. Cameron, Jr. Communications*, 71 FCC 2d 460 (1979), provides ample precedent for precluding consideration of STV proposals in otherwise routine hearing on applications for television construction permits.

4. Analysis of the financial data submitted by Tampa reveals that $591,106 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$325,106
Land	85,000
Buildings	100,000
Miscellaneous	21,000
Operating costs (three months)	60,000

To meet this requirement Tampa relies on:

Existing Capital	$8,000
New Capital	$675,000

The applicant's balance sheet shows $3,000 in cash, $5,000 on deposit for land purchase, and prepaid expenses of $7,075. No credit has been allowed for prepaid expenses since the application does not show these are the same expenses as proposed. Further, no credit is allowed for letters of intent to purchase broadcast time unless monies are prepaid. The balance sheet further shows a loan of $14,800 and sale of capital stock of $275 which is the source of cash, prepaid expenses and land purchase deposit. Five persons have subscribed for stock and submitted their stock subscriptions and their financial statements. Only one of these has established that he has net liquid assets available, and this amount is only $8,800. Reasons for failure to show sufficient liquid assets are: 1) balance sheet not dated within 90 days of application date (2 instances); 2) no balance sheet filed (1 instance); and 3) assets and liabilities not segregated into current/long term items (2 instances). In no instances have the subscribers supplied a statement of how they intend to rely upon non-liquid assets. Accordingly, a financial issue will be specified against Tampa.

5. Tampa has not responded to an October 26, 1977 letter from the Federal Aviation Administration rejecting its proposed tower as constituting a hazard to air navigation (Aeronautical Study Number 79–ASO–1711–OE). Consequently, an appropriate air hazard issue will be specified.

6. Tampa's calculation of its aural power appears to be incorrect and we are thus unable to determine whether it can meet its aural/visual ratio as proposed (Section 73.682(a)(15) of the Rules). Further, the applicant has apparently miscalculated its visual effective radiated power as required by Section 73.684(a) of the Rules. Tampa's participation in the hearing will be conditioned on its supplying corrected values in these areas, and any resultant changes necessary. Failure to cure these deficiencies by amendment within 30 days of the release of this Order will subject Tampa to dismissal for failure to prosecute its application. No comparative advantage will be permitted to be derived from these corrections, and no major changes to the application will be permitted.

7. Tampa proposes use of a transmitter which is not type-accepted by the Commission. Thus, any grant to Tampa will be conditioned on receipt of transmitter type-acceptance.

8. Tampa proposes a main studio location outside of its community of license which is not in accordance with Section 72.613 of the Rules. No justification for this location has been provided, and therefore a studio location issue will be specified.

9. Analysis of the financial data submitted by Suncoast reveals that $502,616 will be required to construct the proposed station and operate it for three months, itemized as follows:

Equipment	$357,116
Land	10,000
Miscellaneous	35,000
Operating Expenses (three months)	$100,500

To meet this requirement, Suncoast plans to rely on loans from its stockholders of $1,487,500. No stock subscription agreements, loan agreements or financial statements from proposed subscribers or lenders have been submitted. Consequently, a financial issue will be specified.

10. Suncoast has failed to adequately disclose the methodology used in its community leader ascertainment survey: namely, who conducted the survey and whether interviews were face-to-face. Consequently, an issue will be specified.

11. Except as indicated in the issues specified below, the Commission finds Tampa Broadcasting Corporation, Family Television Corporation, Inc., and Suncoast Telechoice, Inc. legally, financially, technically and otherwise qualified to operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that grant of these applications will serve the public interest, convenience and necessity. The applications must, therefore, be designated for hearing in a consolidated proceeding on the issue set out below.

12. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Tampa:

(a) whether Tampa has liquid assets in excess of current liabilities of at least $591,106;

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified;

(c) whether the tower height and location proposed would constitute a hazard to air navigation;

(d) whether the proposed studio location will violate Rule 73.613, and, if so, if the proposed location is in the public interest; and

(e) whether, in light of the evidence adduced pursuant to (c) through (d) above, the applicant is qualified to operate as proposed.

2. To determine with respect to Suncoast:

(a) whether Suncoast has liquid assets in excess of current liabilities of at leas $502,616;

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified;

(c) whether its community leader ascertainment survey was conducted by a principal, employee or proposed employee of the proposed station;

(d) whether community leader ascertainment interviews were conducted face-to-face; and

(e) whether, in light of the evidence adduced pursuant to (c) and (d) above, the applicant possesses the basic qualifications to be a Commission licensee.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the Fedederal Aviation Administration is MADE A PARTY RESPONDENT in respect to Issue 1 (c), above.

14. It is further ordered, that within 30 days of the release of this Order, Tampa Broadcasting Corporation shall provide:

(a) corrected values for its aural power and aural/visual ratio as required by Section 73.681(a)(15);

(b) corrected values for its visual effective radiated power as required by Section 73.684(a); and

(c) any other corrected or additional values or information that may be necessitated by (a) and (b) above.

15. It is further ordered, that none of the information required in paragraph 14 above shall be permitted to be considered for purposes of giving comparative advantage to Tampa Broadcasting Corporation in the proceeding.

16. It is further ordered, that none of the information required in paragraph 14 above shall be acceptable if it would constitute a major change as defined in Section 73.3572 of the Rules.

17. It is further ordered, that failure to provide the information required in paragraph 14 above shall be considered as failure to prosecute the application and shall subject the application to dismissal.

18. It is further ordered, that in the event of a grant to Tampa Broadcasting Corporation, the construction permit shall contain the following:

Before program tests commence, the transmitter specified herein must be type-accepted in accordance with Section 73.1660 of the Commission's Rules.

19. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

20. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission,

Jerold L. Jacobs,

Chief, Broadcast Failities Division.

[FR Doc. 80-24073 Filed 8-8-80; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-781215AG and BPH-790328AO, BC Docket Nos. 80-342 and 80-343]

Zia Broadcasting Co. and KICA, Inc.; Hearing Designation Order

Adopted: July 2, 1980.

Released: August 1, 1980.

In the matter of applications of Zia Broadcasting Company, Clovis, New Mexico Req: 107.5 MHz, Channel 298 100 kW (H & V), 568 feet (BC Docket No. 80-342, File No. BPH-781215AG) and KICA, Inc., Clovis, New Mexico Req: 107.5 MHz, Channel 298 100 kW (H & V), 538 feet (BC Docket No. 80-343, File No. BPH-790328AO) for a construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Zia Broadcasting Company and KICA, Inc. for a construction permit for a new FM station.

2. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

3. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

5. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission,

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-24072 Filed 8-8-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service—Performance Awards; Schedule for Awarding Bonuses

In accordance with Office of Personnel Management directive dated July 21, 1980, the Federal Home Loan Bank Board hereby gives notice that SES bonuses will be awarded on or after August 25, 1980.

FOR FURTHER INFORMATION CONTACT: Doris H. McGhee, Director of Personnel, Federal Home Loan Bank Board, (202) 377-6050.

Robert D. Linder,

Acting Secretary to the Board.

[FR Doc. 80-24092 Filed 8-8-80; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreements Nos. T-3912 and T3913]

Port Authority of New York and New Jersey, et al.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's (FMC) Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced agreements do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

Agreements Nos. T-3912 and T-3913 deal with two leases:

(1) A lease between the Port Authority of New York and New Jersey (the "Port Authority") and Associated Container Transportation (Australia) Ltd., ("ACT"); and

(2) A sublease between ACT and International Terminal Operating Co., Inc. ("ITO").

Both the lease and the sublease involve construction of a building and a parking area by the Port Authority at its Port Newark facility. The Port Authority will lease the premises to ACT under the lease, and ACT in turn will lease the premises to ITO under the sublease. The leased premises will be used primarily as an off-pier receiving and temporary refrigerated storage area for meat carried by ACT and the Australian National Line (ANL), the two members of the PACE service (FMC Agreement No. 9925). The ITO terminal in Port Elizabeth, at which the ships of both

ACT and ANL dock, is located approximately two miles from the premises covered by the lease.

The Office of Environmental Analysis' (OEA) major concern is whether the improvements made to the property in question will have a significant effect upon energy use and/or the quality of the air, water, noise or biological environment. The OEA has determined that the Commission's final resolution of Agreements Nos. T-3912 and T-3913 will cause no significant adverse environmental effects in excess of those created by existing uses.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the environmental assessment on or before September 2, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-24120 Filed 8-8-80; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3914]

Port of Oakland and Sea-Land Service, Inc.; Availability of Finding of No Significant Impact

Agreement No. T-3914 was filed with the Commission for approval, disapproval or modification under section 15 of the Shipping Act, 1916. Under this agreement, the Port of Oakland will lease to Sea-Land Service, Inc., terminal facilities and three cranes to be used on a non-exclusive preferential basis.

The Federal maritime Commission's Office of Environmental Analysis prepared an environmental assessment on this agreement. It found that this Commission action will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA) and that the preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the environmental assessment on or before September 2, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-24121 Filed 8-8-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, 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 interest, or unsound banking practices." Any comment on an application that requests a hearing must include 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 that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than September 3, 1980.

A. *Federal Reserve Bank of Cleveland* (Harry W. Hunning, Vice President) 1455 East sixth Street, Cleveland, Ohio 44101:

Mellon National Corporation, Pittsburgh, Pennsylvania (mortgage banking, Virginia): to engage through a subsidiary, Mellon Mortgage Inc., in mortgage banking activities, including acting as insurance agent with respect to the sale of credit life insurance and/or mortgage redemption insurance. Such activities will be conducted at a *de novo* office to be located at 6600 Louisdale Road, Springfield, Virginia and will serve the Washington, D.C. metropolitan area including nearby areas of Virginia and Maryland. Comments on this application must be received by August 28, 1980.

B. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

First Railroad & Banking Company of Georgia, Augusta, Georgia (finance activities; Louisiana and Tennessee): to engage, through a subsidiary known as CMC Group, Inc., and its subsidiary, Capitol Premium Plan, Inc., Charlotte, North Carolina, in the following activities: In the making or acquiring for its own account or for the account of others, loans and other extensions of credit principally consisting of insurance premium financing. Such business will be solicited in the states of Louisiana and Tennessee and processed at an office in Charlotte, North Carolina.

C. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. Orbanco Financial Services Corporation, Portland, Oregon (mortgage banking and insurance activities; Florida): to engage, through its subsidiary, Fort Wayne Mortgage Co., in making or acquiring, for its own account or for the account of others, mortgage loans or other extensions of credit, servicing loans and other extensions of credit for any person and acting as insurance agent or broker for any credit life insurance that is directly related to an extension of credit by it, originating conventional mobile home loans and mobile home loans insured by the Federal Housing Administration (FHA) or guaranteed by the Veterans Administration (VA) for sale to financial institutions, the Federal National Mortgage Association, or in mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA), which loans will be secured by installment sales contracts on mobile homes; servicing such mobile home loans for its investors by collecting payments, periodically inspecting collateral, and supervising repossessions in the event of unremedied defaults; related wholesale

financing of mobile homes, to permit them to carry inventories. The proposed activities would be conducted from an office in Orlando, Florida, serving the State of Florida.

2. Bankamerica Corporation, San Francisco, California (mortgage banking, servicing; Colorado, New Mexico, Arizona, Utah, Wyoming, Nebraska, and Kansas): to engage through its subsidiary, BA Mortgage and International Realty Corporation, in making or acquiring, for its own account or for the account of others, loans or other extensions of credit as would be made or acquired by a mortgage company and servicing such loans and other extensions of credit for itself and others. This activity would include making residential mortgage loans secured by residential real estate.

The proposed activity will be conducted at a *de novo* office in Denver, Colorado, serving the States of Colorado, New Mexico, Arizona, Utah, Wyoming, Nebraska, and Kansas.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, August 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-24082 Filed 8-8-80; 8:45 am]

BILLING CODE 6210-01-M

Bottom Interests of Nevada, Inc. and Bottom Interests, Inc.; Formation of Bank Holding Company

August 5, 1980.

Bottom Interests of Nevada, Inc., Carson City, Nevada, a 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 52.5 percent of the voting shares of The Border Bank, Hidalgo, Texas. In addition, Bottom Interests, Inc., Hidalgo, Texas, has applied for the Board's approval to become a bank holding company by acquiring 100 percent of Bottom Interests of Nevada, Inc., Carson City, Nevada. 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 applications 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 applications should submit views in writing to the Reserve Bank, to be received not later than September 4, 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 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-24080 Filed 8-8-80; 8:45 am]

BILLING CODE 6210-01-M

The Bridger Co.; Proposed Retention of General Insurance Agency

The Bridger Company, Wayzata, 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 operate a general insurance agency.

Applicant proposes that it would continue to engage in the sale of general insurance in a community that has a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Wayzata, Minnesota, and the geographic areas to be served are Carbon 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, 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 4, 1980.

Board of Governors of the Federal Reserve System, August 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-24081 Filed 8-8-80; 8:45 am]

BILLING CODE 6210-01-M

Burchard Bankshares, Inc.; Formation of Bank Holding Company

Burchard Bankshares, Inc., Tecumseh, Nebraska, 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 99.1 per cent or more of the voting shares of State Bank of Burchard, Burchard, Nebraska. 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 4, 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 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-24083 Filed 8-8-80; 8:45 am]

BILLING CODE 6210-01-M

Liberty Bancorporation; Formation of Bank Holding Compnay

Liberty Bancorporation, Durant, Iowa, 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 Liberty Trust & Savings Bank, Durant, Iowa. 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 September 4, 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 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-24085 Filed 8-8-80; 8:45 am]

BILLING CODE 6210-01-M

Wyandotte Ban Corp.; Formation of Bank Holding Company

Wyandotte Ban Corporation, Kansas City, 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 The Wyandotte Bank, Kansas City, 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 4, 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 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-24064 Filed 8-8-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Privacy Act of 1974; Proposed New Routine Use in Systems of Records

AGENCY: Department of Health and Human Services (DHHS), Public Health Service (PHS).

ACTION: Notification of a proposal to add two routine uses to seventeen (17) systems of records which are maintained by the Center for Disease Control (CDC), and National Institute for Occupational Safety and Health (NIOSH).

SUMMARY: In accordance with the requirements of the Privacy Act, PHS is publishing notice of a proposal to add two routine uses to seventeen (17) systems of records maintained by CDC/NIOSH. The texts of the proposed routine uses are listed in the supplementary information section along with a list of the system notices affected. PHS invites interested persons to submit comments on the proposed routine uses on or before September 10, 1980.

DATES: CDC will adopt the proposed routine uses without further notice on September 10, 1980, unless CDC receives comments which will result in a contrary determination.

ADDRESS: Comments should be addressed to: Director, National Institute for Occupational Safety and Health, Center for Disease Control, Public Health Service, Department of Health and Human Services, Room 8-05, 5600 Fishers Lane, Rockville, Md. 20857.

Comments received will be available for inspection from 8:00 a.m. to 4:30 p.m., Monday through Friday in Room 8-30, Parklawn Building, 5600 Fishers Lane, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Darlene Christian, Privacy Act Coordinator, NIOSH, Room 8-48, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-4220.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, proposes to add two routine uses to seventeen (17) Privacy Act system notices, listed below.

09-20-0001 Certified Interpreting Physician File HHS/CDC/NIOSH
09-20-0027 Radiation Exposure Records for NIOSH Employees HHS/CDC/NIOSH
09-20-0055 Research/Demonstration, and Training Grants, Application Files HHS/CDC/NIOSH
09-20-0059 Division of Training Mailing List HHS/CDC/NIOSH
09-20-0082 Diagnosis of Occupational Disease by Analysis of Body Fluids or Tissues through Biochemical or Clinical Chemical Analysis HHS/CDC/NIOSH
09-20-0083 Diagnostic Methods for Identification of Occupational Diseases through Biopsy and or Autopsy Specimens HHS/CDC/NIOSH
09-20-0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies HHS/CDC/NIOSH
09-20-0118 Study at Work-sites where Agents Suspected of being Occupational Hazards Exist HHS/CDC/NIOSH
09-20-0147 DSHEFS Occupational Health Epidemiological Studies HHS-CDC/NIOSH
09-20-0148 Results of DBBS Hearing Studies HHS/CDC/NIOSH
09-20-0149 DRDS General Industry Morbidity Studies HHS/CDC/ NIOSH
09-20-0150 DRDS Morbidity Studies in Coal Mining Activities HHS/CDC/NIOSH
09-20-0151 DRDS Mortality Studies in Coal Mining Activities HHS/CDC/NIOSH
09-20-0152 DRDS Morality Studies in Non-Coal Mining Activities HHS/CDC/NIOSH
09-20-0153 DRDS General Industry Mortality Studies HHS/CDC/NIOSH
09-20-0154 DRDS Medical and Studies HHS/CDC/NIOSH
09-20-0155 DRDS Morbidity Studies in Metal and Non-Metal Mining ActivitiesHHS/CDC/NIOSH

The texts of the proposed routine uses are as follows:

"Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards".

"In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected".

The reason for adding the first routine use is to allow NIOSH to utilize more effectively contractor personnel for data entry, programming, and systems analysis services. The Institute's workload has grown significantly without a matching growth in the personnel ceiling. This has forced NIOSH to look for alternative methods for accomplishing the assigned work. The contractors selected will be required to comply with the same security standards as NIOSH personnel are, so data subject to the Privacy Act will receive an equivalent degree of protection. The contractor will assure that each contractor employee knows the prescribed rules of conduct and is aware that he or she can be subject to criminal penalties for violations of the Privacy Act.

The reason for adding the second routine use is that in conducting investigations of places of employment under authority of 42 CFR Parts 85 and 85a, it may become necessary for NIOSH to subpoena a company's medical records or obtain a warrant to enter a place of employment to carry out its research function. In obtaining

subpoenas and warrants, NIOSH enlists the aid of the Department of Justice, and needs to be able to disclose information in individually identifiable form to that Department to enable it to present the NIOSH case in court.

The proposed routine uses are fully compatible with the purpose of each system affected. The proposed change does not affect the purpose of the system or the reason for the data collection. NIOSH is only changing the source of data entry, programming, and systems analysis from NIOSH personnel to contractor personnel, and allowing NIOSH to enable the Department of Justice to effectively represent the Institute in court.

The seventeen (17) system notices to which these proposed routine uses would apply are republished in their entirety below to include both the routine uses and a statement under "System Location" to provide for the location of records at contractor sites. These notices will be further updated to reflect the Department's new name, and to incorporate other minor changes, at the time of the 1980 annual publication of all of the Department's Privacy Act system notices.

Dated: August 5, 1980.

Jack N. Markowitz,

Acting Director, Office of Management.

09-20-0001

SYSTEM NAME:

Certified Interpreting Physician File—HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians who have been certified to interpret x-rays under the Federal Coal Mine Health and Safety Act of 1969.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physician's qualifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Coal Mine Health and Safety Act Section 203 (30 U.S.C. 843).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Name and address supplied to coal operators and x-ray facilities so that they may contact physician to do work for them.

2. Name, address and social security number supplied to Department of Labor to be used in approving Title IV Benefits under the Act.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, microfilm, computer tape, computer disk.

RETRIEVABILITY:

The main purpose is to provide certified physicians to read x-rays. Data is provided to the Social Security Administration to be used in approving Title IV Benefits under the Act. Name or social security number is the index used to retrieve records. Social security numbers which are supplied on a voluntary basis are used for retrieval.

SAFEGUARDS:

24-hour guard service in building

Locked building; locked rooms

Personnel screening

Locked computer room and computer tape vaults

Locked file cabinets

Computer tapes are password protected

For computerized records, safeguards are in accordance with Part 6, ADP Systems Security of the HEW/ADP Systems Manual.

RETENTION AND DISPOSAL

Records are retained indefinitely unless disposal of a record is requested by the individual physician. Disposal methods include erasing computer tapes and burning or shredding printouts.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b, 5(a)).above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0027

SYSTEM NAME:

Radiation exposure records for NIOSH Employees HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Safety Research (DSR), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Division of Technical Services (DTS), NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past NIOSH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, X-Ray exposure levels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 19 (29 U.S.C. 668).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Departmnent employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files.

RETRIEVABILITY:

The purpose of this system is to maintain X-Ray exposure records to prevent toxic exposure to harmful rays. Name is the index used to retrieve records from this system.

SAFEGUARDS:

24-hour guard service in building
Locked building; locked rooms
Personnel screening
Locked file cabinets

RETENTION AND DISPOSAL:

Record copy maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Physicist, Testing and Certification Branch, DSR, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Industrial Hygenist, DTS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

Director, DSR, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0055

SYSTEM NAME:

Research/Demonstration, and Training Grants. Application Files—HEW/CDC/NIOSH

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the addresses below.

Division of Research Grants, NIH, Westbard Bldg., Westbard Ave., Bethesda, Maryland, 20014.

Grants Administration and Review Branch, National Institute for Occupational Safety and Health (NIOSH), Parklawn Bldg., Rm. 8-63, 5600 Fishers Lane, Rockville, Maryland 20857.

Division of Training and Manpower Development, NIOSH, 4676 Columbia Pkwy., Cincinnati, Ohio 45226.

Grants Management Officer, NIOSH, Parklawn Bldg., Rm. 8-35, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for occupational safety and health research and demonstration grants, and training grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Draft and final Grant application and review history, awards, financial records and progress resports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Sections 20 and 21 (29 U.S.C. 669, 670).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referrals may be made of assignments of research investigations and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc. (42 CFR part 5b, Appendix B, item (2)).

(2) To the cognizant audit agency for auditing.

(3) In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) To qualified experts not within the definition of Department employees as prescribed in Department regulations (45 CFR, Part 5b.2) for opinions as a part of the application review process.

(6) To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(7) To individuals and organizations deemed qualified by PHS to carry out specific research related to the review and award processes of PHS.

(8) The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain privacy Act safeguards with respect to such records (42 CFR Part 5b, Appendix B, item (9)).

(9) To the grantee institution relative to performance or administration under the terms and conditions of the award.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

5X8 cards, computer tapes and discs, notebooks and file folders.

RETRIEVABILITY:

The purpose of this system is to review grant applications for research and training and to administer funded grants. This information is provided to NIH and to other components of NIOSH for review. Name is the index used to retrieve information.

SAFEGUARDS:

The records are maintained in locked cabinets with access limited to authorized personnel (system manager, principal investigator assigned to the project, project officer). For computerized records, safeguards are in accordance with Part 6, ADP Systems Security, of the HEW/ADP Systems Manual.

RETENTION AND DISPOSAL:

Information is kept for one year beyond termination and then sent to the Federal Records Center for five years, after which it is destroyed. Unfunded applications are treated in the same manner. Draft applications are kept for one year or until an official application is received and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Grants Section, Procurement and Grants Management Branch, (PGMP), Office of Administrative and Management Services, (OAMS), National Institute for Occupational Safety and Health, (NIOSH), Room 8-35, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Chief, PGMB, OAMS, NIOSH, Room 8-29, 5600 Fishers Lane, Rockville, Maryland 20857.

RECORD ACCESS PROCEDURES:

Contact the System Manager. Requesters should also reasonably specify the record contents being sought (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0059

SYSTEM NAME:

Division of Training Mailing List—HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Training and Manpower Development (DTMD), National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have taken a NIOSH Training Course or who ask to be placed on the list.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 21 (29 U.S.C. 670).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programing services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes, addressograph plates.

RETRIEVABILITY:

The purpose of this system is to advise prospective students of upcoming NIOSH training courses. Name and Student Number are the indexes used to retrieve records from this system.

SAFEGUARDS:

24-hour guard service in building.
Locked building; locked rooms.
Personnel screening.
Locked file cabinets.
Locked computer room and computer tape vaults.

For computerized records, safeguards are in accordance with Part 6, ADP Systems Security, of the HEW ADP Systems Manual.

RETENTION AND DISPOSAL:

Record copy maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes and burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Audio Visual Production Officer, DTMD, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Director DTMD, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2))).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0082

SYSTEM NAME:

Diagnosis of occupational disease by analysis of body fluids or tissues through biochemical or clinical chemical analysis—HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Biomedical and Behavioral Science (DBBS), National Institute for Occupational Safety and Health (NIOSH).

Robert A. Taft Laboratories, Cincinnati, Ohio 45226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial workers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical Records, information necessary to interpret the medical records, and results of clinical laboratory tests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 20 (29 U.S.C. 669).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Test results furnished to physician who requests analysis.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, 45 CFR Part 5b, item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will

be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files.

RETRIEVABILITY:

The main purpose is to identify occupational diseases. Name or code is used to retrieve records from this system.

SAFEGUARDS:

Building guards.

Personnel screening.

RETENTION AND DISPOSAL:

Record copy maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Clinical and Biochemical Support Section, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Director, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Private and Industrial physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0083

SYSTEM NAME:

Diagnostic methods for identification of occupational diseases through biopsy and/or autopsy specimens—HEW/CDC/NIOSH

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Biomedical and Behavioral Science, DBBS, National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial workers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records, and information necessary to interpret the medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM.

Occupational Safety and Health Act Section 20 (29 U.S.C. 669).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Test results are furnished to the physician who requests analysis.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims againt the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

Portions of records (name, social security number if known, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individaul has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, state, or local agency. Cause of death will enable NIOSH to evaluate whether excess occupationally related mortality is occurring.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files.

RETRIEVABILITY:

The main purpose is to identify occupational diseases. Name or code is used to retrieve records from this system.

SAFEGUARDS:

Building guards.
Personnel screening.

RETENTION AND DISPOSAL:

Record copy maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Pathology Section, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Director, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations 45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Private and Industrial physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I Potential Sources for Determination of Vital Status

Military Records.
Appropriate State Motor Vehicle Registration Departments.
Appropriate State Drivers License Departments.
Appropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Workman's Compensation, Disability Insurance.
Retail Credit Association Follow up.
Veteran's Administration Files.
Appropriate employee union or association records.
Appropriate company pension or employment records.
Company group insurance records.
Appropriate State Vital Statistics Offices.
Life Insurance Companies.
Railroad Retirement Board.
Area Nursing Homes.
Area Indian Trading Posts.
Mailing List correction cards (U.S. Postal Service).
Letters and telephone conversations with relatives.
Letters and telephone conversations with former employees of the same establishment as cohort member.
Appropriate local newspaper (obituaries).

69-20-0117

SYSTEM NAME:

Medical and test record results of individuals involved in NIOSH laboratory studies—HEW/CDC/NIOSH.

SECURITY CLASSIFICATION.

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Biomedical and Behavioral Sciences (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteer subjects from the general population.

CATEGORIES OF RECORDS IN THE SYSTEM:

Occupational history, medical history, results of medical tests, demographic data, results of psychological and psychometric tests, and data necessary to interpret the medical results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 20 (29 U.S.C. 669).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations (45 CFR Part 5b), item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer cards, computer tapes, computer listings, microfilm.

RETRIEVABILITY:

The purpose of this system is to develop composite data summaries to support the development of criteria for occupational safety and health standards, and to provide other recommendations for improving worker safety and health. Name and case

number are the indexes used to retrieve records from this system.

SAFEGUARDS:

Evening guard service in building.

Locked building; locked rooms.

Personnel screening.

Locked computer room and computer type vaults.

Locked file cabinets.

For computerized records, safeguards are in accordance with Part 6, ADP Systems Security, of the HEW/ADP Systems Manual.

RETENTION AND DISPOSAL:

Personal identifiers are destroyed as soon as they are no longer necessary for the protection of the individuals involved. Computer tapes are erased; paper records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Assistant, DBBS NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Director, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (these access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2))).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0118

SYSTEM NAME:

Study at work-sites where agents suspected of being occupational hazards exist—HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Biomedical and Behavorial Science, (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects employed at specific sites under study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Occupational history, medical history, results of medical tests, demographic data, employee records. Psychological and psychometric tests, and data necessary to interpret the medical results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 20 (29 U.S.C. 669).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other approriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer cards, computer tapes, computer listings, microfilm.

RETRIEVABILITY:

The purpose of this system is to determine the relationship between worker exposure to hazardous agents or stressors, and occupational disease. This information will be used to recommend procedures to reduce the incidence of occupational disease. Name and case number are the indexes used to retrieve records from this system.

SAFEGUARDS:

Evening guard service in building.

Locked building locked rooms.

Personnel screening.

Locked computer room and computer tape vaults.

Locked file cabinets.

For computerized records, safeguards are in accordance with Part 6, ADP Systems Security, of the HEW/ADP Systems manual.

RETENTION AND DISPOSAL:

Personal identifiers are destroyed as soon as the system has stabilized, and statistical summaries can be run. Computer tapes are erased; paper records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Assistant, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Director, DBBS, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual and from employee records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0147

SYSTEM NAME:

DSHEFS Occupational Health Epidemiological Studies, HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Federal Records Center, Dayton, Ohio.

Southwest Ohio Regional Computer Center, Medical Sciences Building, University of Cincinnati, Cincinnati, Ohio 45202.

In addition, data is occasionally at field work sites and contractor sites as studies are developed, data collected and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial workers exposed to physical and/or chemical agents that may damage the human body in any way. Some examples are: 1) organic carcinogens, 2) inorganic carcinogens, 3) mucosal or dermal irritants, 4) fibrogenic materials, 5) acute toxic agents including sensitizing agents, 6) neurotoxic agents, 7) mutogenic (male and female) and teratogenic agents, 8) bio-accumulating noncarcinogen agents, and 9) chronic vascular disease causing agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical exams, sputum cytology results, questionnaires, demographic information, smoking history, occupational histories, previous and current employment records, urine test records, X-rays, medical history, pulmonary function test records, medical disability forms, blood test records, drivers license data, hearing test results, spirometry results. The specific types of records to be collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301 (42 U.S.C. 241); Occupational Safety and Health Act, Section 20 (29 U.S.C. 669); Coal Mine Health and Safety Act, Section 501 (30 U.S.C. 951).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

Portions of records (name, social security number if known, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. Cause of death will enable NIOSH to evaluate whether excess occupationally related mortality is occurring.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer files, card files, microfilm, microfiche, and other files as appropriate.

RETRIEVABILITY:

The purpose of these studies is to evaluate mortality and morbidity of occupationally-related diseases: to determine the cause and prevention of diseases of industrial origin, and lead toward future prevention of occupationally-related diseases. Name, assigned number, plant name, year tested are some of the indices used to

retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

SAFEGUARDS:

Locked buildings, locked rooms, locked file cabinets, personnel screening, locked computer room and computer tape vaults, 24 hour guard service, password protection of computerized records, limited access to only authorized personnel. For computerized records, safeguards are in accordance with Part 6, ADP Systems Security, of the HEW/ADP Systems Manual. Two or more of the safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by an individual study. Departmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Records will be maintained from three to twenty years in accordance with retention schedules. Every attempt will be made to strip personal identifiers from records and destroy the records when they are no longer needed. Any paper records which are disposed of will be shredded or burned and computer tapes will be erased.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer (PMO), DSHEFS, F-1, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists write to:

Director, DSHEFS, F-1, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Vital status information is obtained from Federal, State and local Governments and other available sources selected from those listed in Appendix I. Information is obtained directly from the individual and employer records, whenever possible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I Potential Sources for Determination of Vital Status

Military Records.

Appropriate State Motor Vehicle Registration Departments.

Appropriate State Drivers License Departments.

Appropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Workman's Compensation, Disability Insurance.

Retail Credit Association Follow up.

Veteran's Administration Files.

Appropriate employee union or association records.

Appropriate company pension of employment records.

Company group insurance records.

Appropriate State Vital Statistics Offices.

Life Insurance Companies.

Railroad Retirement Board.

Area Nursing Homes.

Area Indian Trading Posts.

Mailing List Correction Cards (U.S. Postal Service).

Letters and telephone conversations with relatives.

Letters and telephone conversations with former employees of the same establishment as cohort member.

Appropriate local newspaper (obituaries).

Social Security Administration.

Internal Revenue Service.

09-20-0148

SYSTEM SAME:

Results of DBBS Hearing Studies, HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Biomedical and Behavioral Science (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

In addition, data is occasionally at field work sites and contractor sites as studies are developed, data collected and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request from the Systems Manager.

CATEORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Workers exposed to noise at a harmful or potentially hazardous level and individuals selected as control groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical examinations, results of laboratory tests (physiological, acceleration measures, performance tests); results of hearing tests, hearing acuity tests, occupational histories, medical history, demographic data, related anamnestic information. The specific types of records to be collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 20 (29 U.S.C. 669); Federal Coal Mine Safety and Health Act (30 U.S.C. 669 Section 20)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendi B, Department Regulations, 45 CFR Part 5b, Item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its component; or (c) any Department Employee in his or her individual capacity where the Justice Department has agreed to

represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manuel files, computer tape, mcirofilm, computer cards, index audiogram files, audiogram questionnaire forms.

RETRIEVABILITY:

The purpose of this system is to assist in the development of standards for occupational exposure to hazards. Name, case number and study number are the indices used to retrieve records from this system.

SAFEGUARDS:

24 hour guard service in buildings, locked buildings, personnel screening, access limited to authorized personnel. In most instances information is related to individual identifiers by case numbers. The file of individual case number relationships is available to a limited group of people. Departmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form as appropriate. Disposal methods include erasing computer tapes and burning or shredding printouts.

SYSTEM MANAGER(S) AND ADDRESS:

Industrial Hygiene Engineer, Noise Section, Physical Agents Effects Branch, DBBS, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

To determine if a record exists write to:

Director, DBBS, NIOSH, 4676 Columbia Parkway, Robert A. Taft Laboraories, Cincinnati, Ohio 45226.

An individual who requests notification of or access to medical records shall, (1) at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion, (2) supply the name of the study if known, (3) provide the approximate date and place of treatment or questionnaire administration. (These notification and access procedures are in accordance with Department Regulations 45 CFR, Section 5b.6).

RECORD ACCESS PROCEDURES:

(These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above. (These procedures are in accordance with Department Regulations 45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual, and employee records. Many of the hearing test results were obtained from Doctors Memorial Hospital Hearing and Speech Center, Atlanta, Ga.

SYSTEMS EXMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0149

SYSTEM NAME

DRDS Genereal industry Morbidity Studies, HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), Morgantown, West Virginia 26505.

In addition, data is occasionally at field collection sites and contractor sites as studies are developed, data collected, and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons working, or having worked at workplaces not identified as surface mining or below ground mining operations and exposed or potentially exposed to substances which are known or suspected respiratdory irritants or carcinogens. Also included are those individuals in the general population which have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM.

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data nd spirometry test results, permission forms, industrial environmental data, and questionnaires. The specific types of records to be collected and maintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 20 (29 U.S.C. 669); Federal Coal, Mine Health and Safety Act, Section 501 (30 U.S.C. 951).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtrain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any

employee of the Department in his or her official capacity: (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards, and printouts; microfiche; X-rays; and manual files.

RETRIEVABILITY:

The purpose of this system is to investigate occupationally related diseases and to determine the cause and prevention of such diseases. Plant name, study, name, and/or assigned numerical identifiers are some of the indicies used to retrieve records from this system. Social security numbers, supplied on a volutary basis may occuasionally be used for data retrieval.

SAFEGUARDS:

24 hour guard service in building, locked buildings, locked rooms, personnel screening, locked computer rooms, and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records coverd by each individual study. Septmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include burning or shredding paper materials, and erasing computer tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer (PMO), DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia, 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists write to:

Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, (1) at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion, (2) provide the name of the sutdy if known, (3) provide the approximate date and place of treatment or questionnaire administration. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

RECORD ACCESS PROCEDURES: SAME AS NOTIFICATION PROCEDURES. THESE ACCESS PROCEDURES ARE IN ACCORDANCE WITH DEPARTMENT REGULATIONS (45 CFR, SECTION 5B.5(A)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonable identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR. Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual and from employee records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0150

SYSTEM NAME:

DRDS Morbidity Studies in Coal Mining Activities, HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Data is also occasionally located at field collection sites and contractor sites as studies are developed, data collected, and reports written. A list of field and contractor sites where individuallly identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUAL'S COVERED BY THE SYSTEM:

Persons working or having worked at coal mining operations and exposed or potentially exposed to substances which are known or suspected respiratory irritants or carcinogens. Also included are those individuals in the general population which have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data, spirometry test results, permission forms, industrial environmental data, and questionnaires. The specific types of records to be collected and maintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Coal Mine Health and Safety Act Section 501 (30 U.S.C. 9511); Section 203 (30 U.S.C. 843); Occupational Safety and Health Act Section 20 (29 U.S.C. 669).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individuals mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual.

(Appendix B Department Regulations, 45 CFR Part 5b, item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department of any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Some data is sent to the Mining Enforcement and Safety Administration, Department of the Interior to report incidence of pneumoconiosis.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards, and printouts; microfiche; X rays, and manual files.

RETRIEVABILITY:

The purpose of this system is to investigate occupationally-related diseases and to determine the cause and prevention of such diseases. Plant name, study, name, and/or assigned numerical identifiers are some of the indices used to retrieve records from this system Social security numbers, supplied on a voluntary basis, may occasionally be used for data retrieval.

SAFEGUARDS:

24 hour guard service in buildings, locked buildings, locked rooms, personnel screening, locked computer room and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by each individual study. Departmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include burning or shredding paper materials, and erasing computer tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer (PMO), DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists write to:

Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification or access to a medical record shall, at the time the request is made, (1) designate in writing a responsible representative who will be willing to review the records and inform the subject individual of its contents at the representative's discretion, (2) name the study, if known, (3) name the industrial plants, location of the plant, and approximate date of treatment or questionnaire administration, if known. Notification procedures for medical records are in accordance with Department Regulations (45 CFR, Section 5b.6).

RECORD ACCESS PROCEDURES:

Same as notification procedures. These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual and from employee records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0151

SYSTEM NAME:

DRDS Mortality Studies in Coal Mining Activities, HEW/CDC/NIOSH

SECURITY CLASSIFICATION: NONE

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Data is also occasionally located at field collection sites and contractor sites as studies are developed, data collected, and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons working, or having worked at coal mining operations and exposed or potentially exposed to substances which are know or suspected respiratory irritants or carcinogens. Also included are those individuals in the general population which have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data and spirometry test results, permission forms, industrial environmental data, and questionnaries. The specific types of records to be collected and maintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301 (42 U.S.C. 241) Coal Mine Health and Safety Act, Section 501 (30 U.S.C. 951).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person

Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physcial condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, 45 CFR Part 5b, item 100).

Portions of records (name, social security number if known, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State, or local agency. Cause of death will enable NIOSH to evaluate whether excess occupationally-related mortality is occurring.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee is his or her individual capacity were the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards, and printouts; microfiche; X-rays; and manual files.

RETRIEVABILITY:

The purpose of this system is to investigate occupationally-related diseases and to determine the cause and prevention of such diseases. Plant name, study, name, and/or assigned numerical identifiers are some of the indices used to retrieve records from this system. Social security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

SAFEGUARDS:

Locked buildings, locked rooms, 24 hour guard service, locked file cabinets, locked computer rooms and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by an individual study. Departmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include burning or shredding paper materials and erasing computer tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer (PMO), DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists write to:

Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, at the time the request is made, (1) designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion, (2) provide the name of the study if known, (3) provide the approximate date and place of treatment or questionnaire administration. (These notification and access procedures are in accordance with Department Regulations 45 CFR, Section 5b.6).

RECORD ACCESS PROCEDURES:

Same as notification procedures. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations 45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual and from death certificates.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I Potential Sources for Determination of Vital Status

Military Records.

Appropriate State Motor Vehicle Registration Departments.

Appropriate State Drivers License Departments.

Appropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Workman's Compensation, Disability Insurance.

Retail Credit Association Follow up.

Veteran's Administration Files.

Appropriate employee union or association records.

Appropriate company pension or employment records.

Company group insurance records.

Appropriate State Vital Statistics Offices.

Life Insurance Companies.

Railroad Retirement Board.

Area Nursing Homes.

Area Indian Trading Posts.

Mailing List Correction Cards (U.S. Postal Service).

Letters and telephone conversations with relatives.

Letters and telephone conversations with former employees of the same establishment as cohort member.

Appropriate local newspaper (obituaries).

Social Security Administration.
Internal Revenue Service.

09-20-0152

SYSTEM NAME:

DRDS Mortality Studies in Non-Coal Mining Activities; HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Data is also occasionally located at field collection sites and contractor sites as studies are developed, data collected, and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons working, or having worked at mining operations other than coal operations and exposed or potentially exposed to substances which are known or suspected respiratory irritants or carcinogens. Also included are those individuals in the general population which have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data and spirometry test results, permission forms, industrial environmental data, and questionnaires. The specific types of records to be collected and maintained are determined by the research needs of the specific study.

AUITHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act Section 301 (42 U.S.C. 241); Federal Metal and Nonmetalic Mine Safety Act Section 4 (30 U.S.C. 723); Occupational Safety and Health Act Section 20 (29 U.S.C. 669).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, 45 CFR Part 5b, item 100).

Portions of records (name, social security number if known, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State, or local agency. Cause of death will enable NIOSH to evaluate whether excess occupationally-related mortality is occurring.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards and printouts, microfiche; X-rays; and manual files.

RETRIEVABILITY:

The purpose of this system is to investigate occupationally-related diseases and to determine the cause and prevention of such diseases. Plant name, study, name, and/or assigned numerical identifiers are some of the indices used to retrieve records from this system. Social security numbers, supplied on a voluntary basis may occassionally be used for data retrieval.

SAFEGUARDS:

24 hour guard service in buildings, locked buildings, locked rooms, personnel screening, locked computer rooms and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by each individual study. Departmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form as appropriate. Disposal methods include erasing computer tapes and burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer (PMO), DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists write to Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the

representative's discretion. These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations 45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, company personnel records, from death certificates, and from industry and union records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I Potential Sources for Determination of Vital Status

Military Records.
Appropriate State Motor Vehicle Registration Departments.
Appropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Workman's Compensation, Disability Insurance.
Retail Credit Association Follow up.
Veteran's Administration Files.
Appropriate employee union or association records.
Appropriate company pension or employment records.
Company group insurance records.
Appropriate State Vital Statistics Offices.
Life Insurance Companies.
Railroad Retirement Board.
Area Nursing Homes.
Area Indian Trading Posts.
Mailing List Correction Cards (U.S. Postal Service).
Letters and telephone conversations with relatives.
Letters and telephone conversations with former employees of the same establishment as cohort member.
Appropriate local newspaper (obituaries).
Social Security Administration.
Internal Revenue Service.
Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

09-20-0153

SYSTEM NAME:

DRDSA General Industry Mortality Studies, HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Data is also occasionally located at field collection sites and contractor sites as studies are developed, data collected, and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons working, or having worked at workplaces not identified as surface mining or below ground mining operations and exposed or potentially exposed to substances which are known or suspected respiratory irritants or carcinogens. Also included are those individuals in the general population which have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data and spirometry test results, permission forms, industrial environmental data, and questionnaires. The specific types of records to be collected and manintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 20 (29 U.S.C. 669); Public Health Service Act; Section 301 (42 U.S.C. 141).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Division to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

Portions of records (name, social security number if knwon, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State, or local agency. Cause of death will enable NIOSH to evaluate whether excess occupationally-related mortality is occurring.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provide such disclosure is

compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards, and printouts; microfiche; X-rays; and manual files.

RETRIEVABILITY:

The purpose of this system is to investigate occupationally-related diseases and to determine the cause and prevention of such diseases. Plant name, study, name, and/or assigned numerical identifiers are some of the indices used to retrieve records from this system. Social security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

SAFEGUARDS:

24 hour guard service in buildings, locked buildings, locked rooms, personnel screening, locked computer room and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by such individual study. Departmental security guidelines will be followed.

RETENTION AND DISPOSED:

Records copy maintained in accordance with retention schedules. Source documents for computer disposal of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include burning or shredding paper materials and erasing computer tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer (PMO), DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Notification procedures:

To determine if a record exists write to:

Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, (1) at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion, (2) provide the name of the study if known, (3) provide the approximate date and place of the treatment or questionnaire administration. These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6).

RECORD ACCESS PROCEDURES:

Same as notification procedures. (These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual, from employee records, from death certificates, and from industry and trade union records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I Potential Sources for Determination of Vital Status

Military Records

Appropriate State Motor Vehicle Registration Departments

Appropriate State Drivers License Departments

Appropriate State Government Division of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Workman's Compensation, Disability Insurance.

Retail Credit Association Follow up

Veteran's Administration Files

Appropriate employee union or association records.

Appropriate company pension or employment records.

Company group insurance records.

Appropriate State Vital Statistics Offices.

Life Insurance Companies.

Railroad Retirement Board.

Area Nursing Homes.

Area Indian Trading Posts.

Mailing List Corrections Cards (U.S. Postal Service).

Letters and telephone conversations with relatives.

Letters and telephone conversations with former employees of the same establishment as cohort member.

Appropriate local newspaper (obituaries).

Social Security Administration.

Internal Revenue Service.

09-20-0154

SYSTEM NAME:

DRDS Medical and Laboratory Studies, HEW/CDC/NIOSH

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had physical examinations at DRDS or who have had biochemical tests done on various samples submitted to DRDS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Analysis of biochemical data, occupational and medical histories, and results of medical tests. The specific types of records to be collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM.

Coal Mine Health and Safety Act Section 501 (30 U.S.C. 951), Occupational Safety and Health Act Section 20 (29 U.S.C. 669). Occupational Safety and Health Act Section 22(d) (29 U.S.C. 671(d)); Federal Coal Mine Health and Safety Act Section 427(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B, Department Regulations, (45 CFR Part 5b), item 100).

In the event of litigation where one of the parties is (a) the Department, any

component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purposes for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards, and printouts; microfiche; X-rays; and manual files.

RETRIEVABILITY:

The purpose of this system is to perform medical and epidemiological research, statistical analyses, and to identify early indicators of occupationally-related diseases (biochemical indices). Data is given to other NIOSH units for biochemical and epidemiological studies. Name and case number are the indices used to retrieve words from this system.

SAFEGUARDS:

24 hour guard service in buildings, locked buildings, locked rooms, personnel screening, locked computer room and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by such individual study. Departmental security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, as provided in the signed consent form as appropriate. Disposal methods include erasing computer tapes and burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Project Management Officer, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 56.6).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Information is obtained directly form the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Records subject to the Privacy Act will be disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors will promptly return all data entry records, and all computer work will be done on Government-owned computers. The contractors will be required to maintain Privacy Act safeguards.

09-20-0155

SYSTEM NAME:

DRDS Morbidity Studies in Metal and Non-Metal Mining Activities, HEW/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractors sites will be available by writing to the System Manager at the address below.

Division of Respiratory Disease Studies (DRDS).

National Institute For Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Data is also occasionally located at field collection site and contractors sites as studies are developed, data collected,and reports written. A list of field and contractor sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Person working, or having worked at mining operations other than coal mining operations and exposed or potentially exposed to substances which are known or suspected respiratory irritants or carcinogens. Also included are those individuals in the general population which have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary functions data and spirometry test results, permission forms, industrial environmental data, and questionnaries. The specific types of records to be collected and maintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act Section 20 (29 U.S.C. 669); Public Health Service Act Section 301 (42 U.S.C. 241).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of

an individual in response to an injuiry from the congressional office made at the request of that individual.

Records may be released to the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (Appendix B. Department Regulations, (45 CFR, Part 5b), item 100).

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her offical capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employeee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatiable with the purpose for which the records were collected.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape, cards, and printouts; microfiche; X-rays; and manual files.

RETRIVEABILITY:

The purpose of this system is to investigate occupationally related diseases and to determine the cause and prevention of such diseases. Plant name, study, name, and/or assigned numerical identifiers are some of the indicies used to retrieve records from this system. Social security numbers, supplied on a voluntary basis, may occasionally be used for data retrieval.

SAFEGUARDS.

24 hour guard service in buildings, locked buildings, locked rooms, personnel screening, locked computer room and tape vaults, password protection of computerized records, limited access to only authorized personnel. Two or more of these safeguards are used for all records covered by this system notice. The particular safeguards used are selected as appropriate for the type of records covered by such individual study. Department security guidelines will be followed.

RETENTION AND DISPOSAL:

Record copy maintained in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, and as determined by the system manager, as provided in the signed consent form as appropriate. Disposal methods include erasing computer tapes and burning or shredding paper material.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Director, DRDS, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designated in writing a responsbile representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procdures are in accordance with Department Regulations.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulations (45 CFR, Section 5b, 5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the offical at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7).

RECORD SOURCE CATEGORIES:

Vital status information is obtained from Federal, State and local Governments and other available sources. Information is obtained from the individual and from employer records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Third Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service accepts some suggestions for the addition of serveral items to the provisional agenda for the third regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and invites the public to provide information and comments on these additional items. A public meeting to receive information and comments on these additional items was announced in the Federal Register on August 1, 1980 (45 FR 51289).

ADDRESS: Information and comments should be sent to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240. Information and comments received will be open to public inspection during normal business hours at the Federal Wildlife Permit Office, room 616, 1000 N. Glebe Road, Arlington, Virginia.

DATES: The Service will consider information and comments concerning these additional items by September 1, 1980.

FOR FURTHER INFORMATION CONTACT: Richard M. Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235-2418.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international agreement designed to control international trade in certain animal and plant species which are or may become threatened with extinction. Currently 59 countries, including the United States, are CITES Parties. CITES provides for biennial (regular) meetings of the Conference of the Parties to review its implementation, make provisions enabling the Secretariat of CITES to carry out its duties, consider adopting amendments to the lists of

controlled species, consider any reports presented by the Secretariat or any Party, and make recommendations for improving the effectiveness of CITES.

In a notice of meeting of the Conference of the Parties to the Convention published in the Federal Register of May 9, 1980 (45 FR 3100), the Service announced that it had received the provisional agenda for the third regular meeting of the Conference of the Parties to be held in New Delhi, India on February 2–13, 1981. The notice set forth the provisional agenda, provided explanations of the agenda items of substance, requested information and comments on those items, including suggestions for additional agenda items, and announced a public meeting, one of the purpose of which was to receive information and comments on the provisional agenda and to receive suggestions for additional agenda items.

The purpose of this notice is to set forth the items suggested for addition to the provisional agenda and to give the bases for either their acceptance by the Service for transmission to the Secretariat for possible inclusion in the provisional agenda or for their non-acceptance. In addition, this notice calls for information and comments on the accepted items.

Fundamental Principles

The Service has developed a number of principles to assist it in developing and presenting the United States position for the New Delhi meeting and are here set forth in full.

Fundamental Principles for the Development and Presentation of the United States Position for the Third Regular Meeting of the Conference of the Parties.

1. Promote and support the conservation goals of CITES, especially (a) the effectiveness of Scientific Authorities in controlling import and export of protected species, and (b) taking into account the wise use of resources.
2. Support and encourage full and effective implementation and enforcement of CITES in each Party, including the development and implementation of practical tools and systems.
3. Encourage and assist nonparties, especially major wildlife and plant traders, to become parties.
4. Encourage development of sound financial and administrative structures to enhance the capabilities of the Secretariat.
5. Encourage broad public participation and cooperation in the process of developing a cohert, integrated and achievable U.S. position.
6. Propose and support amendments to the species appendices which satisfy the Fundamental Principles of Article II, the Berne Criteria and the Format for Proposals.
7. Select a delegation based on the following points:
   a. small enough to avoid negative impression on other delegations and to enhance coordination and control of delegation activities;
   b. broadly representative of the American people;
   c. composed of essential negotiators, from key agencies or fields of expertise.
8. Prepare the delegation through the development of a position paper covering all anticipated points, developed with thorough public and agency input.

These principles will serve to guide the Service in its preparations for the New Delhi meeting. Experience may show that they need to be added to or changed. The Service has already adopted several recommendations of sister agencies in the formulation of these principles. The Service will consider public comment on these principles received within the time period established for information and comments on additional provisional agenda items (see "Date" above).

Commenters

The following organizations provided information and comments on the provisional agenda for the third regular meeting of the Conference of the Parties:

American Ivory Association
Defenders of Wildlife
Fur Conservation Institute of America
International Convention Advisory Commission
Natural Resources Defense Council, Inc.
Society for Animal Protective Legislation
Southeastern Association of Fish and Wildlife Agencies
State of Montana Department of Fish and Game

Information and comments which were directed at existing provisional agenda items will not be discussed here but will be considered in the development of proposed negotiating positions which will be the subject of a separate Federal Register notice. What follows is a consideration of suggestions for additional provisional agenda items, some of which have been accepted and others have not for the reasons stated. Even though suggestions for such agenda items have not been accepted, they may be discussed informally by the Parties at New Delhi during plenary sessions. These informal discussions sometimes result in items on agendas of subsequent meetings. The Service wishes to acknowledge the information and comments submitted and expresses its appreciation of the effort which goes into this development and presentation either in writing or at the public meeting of June 2, 1980.

Suggested Provisional Agenda Items—Accepted

The following suggested provisional agenda items will be transmitted to the Secretariat together with a justification for their inclusion in the provisional agenda for the third regular meeting of the Conference of the Parties:

1. Listings to Control Trade in other Species: This item was suggested by the International Convention Advisory Commission. Unless exempted under Articles VII or XIV, findings of nondetriment are required for export of all Appendix I and II specimens and import of all Appendix I specimens, whatever the purpose of listing. However, if a species C is listed in Appendix I or II solely in order to control trade in some other species P, then trade in C could be controlled so that it is not detrimental to the survival of species P as it is in the United States, or it could be controlled so that it is not detrimental to the survival of species C. The Service believes that findings made by scientific authorities of other CITES parties do not take into consideration impacts on species P, and that the conservation goals and implementation of CITES would be enhanced by consideration of this matter.
2. Appendix I Imports: This item was suggested by the International Convention Advisory Commission. Article III of CITES requires the issuance of an import permit for specimens of Appendix I species. As a precondition to the issuance of permits the scientific authority must advise the management authority that the import will be for the purposes which are not detrimental to the survival of the species. As with findings of nondetriment concerning "control species," the Service believes that findings of scientific authorities of other CITES parties on imports of Appendix I species may vary from Party to Party and that consideration of this matter would enhance the conservation goals and implementation of CITES. The Service intends to transmit to the Secretariat a request that it include an agenda item entitled "Scientific Authority Findings on Nondetriment to the Survival of the Species". This will enable the United States to raise the issues addressed in this and the preceding item and provide for discussion of other issues in this area.
3. Trade with Nonparty Countries: Article X of CITES provides Party countries with the option to trade with nonparty countries provided comparable documentation issued by competent authorities is presented. Currently 59 countries are party to CITES. That

means that there are approximately 110 countries that are not CITES Parties, 31 of which have significant wildlife trade potential. CITES entered into force in July of 1975. The recently published report to the President, Global 2000, reportedly states that within the next 20–40 years there will be a 15 to 20 percent loss of all species on earth. Although much of this loss will likely be caused by actions not attributable to trade, CITES membership can influence attitudes towards wildlife and plant resources regarding all aspects of their use. The Standing Committee has encouraged its area members to urge countries within their respective areas to become parties. As an outgrowth of its deliberations with its management authority contacts group on the provisional agenda items concerning reservations, the Service believes consideration of this matter by the third regular meeting could serve the conservation goals of CITES and encourage nonparties to become parties. Such consideration would include possible limitations on trade with reserving and nonparty countries.

Suggested Provisional Agenda Items—Not Accepted

1. Review of Species Listed at or before First Regular Meeting of the Conference of the Parties: The Parties attending the first regular meeting (Berne 1976) expressed the need to review the species listed on Appendices I and II using the addition and deletion criteria they had adopted at that meeting. These so-called Berne Criteria were adopted as a response to a concern about certain wholesale listing proposals made at Berne. They provide separate criteria for adding species to or deleting species from Appendices I and II. The deletion criteria recognize that an error in deleting a species could have more serious consequences for the species than an error in listing it by requiring a stricter standard of information.

The United States in its preparations for this review, which culminated at the second regular meeting (San Jose 1979), developed a proposal that for a limited time would suspend the more stringent deletion criteria. This proposal, it was thought, would maintain the integrity of the Berne Criteria while providing a method whereby some species for which the then current data appeared to indicate no need for CITES protection could be deleted. This proposal met with considerable opposition at the second regular meeting. The proposal was modified and passed in a form that indicates that the Parties intended to uphold use of the deletion criteria.

Fur Conservation Institute of America and the International Association of Fish and Wildlife Agencies have suggested that the United States re-introduce its original proposal at New Delhi. To do this, an item would have to be added to the current provisional agenda. In light of the decision of the Parties taken at the second regular meeting, the Service will not recommend the addition of this item to the provisional agenda of the third regular meeting.

2. Control of Imports of Appendix II Species: A suggeestion was made by the Defenders of Wildlife that a resolution which was being drafted by the Standing Committee that would allow nations to monitor and potentially limit imports of Appendix II species should be brought out of committee and be addressed by the Parties at New Delhi. The Service is not aware of any such action being considerded by the Standing Committee which it chairs. Similarly, Natural Resources Defense Council wishes to have the so-called Swedish proposal reconsidered by the third regular meeting. The subject of control of Appendix II species was addressed by the Conference of the Parties at the second regular meeting which basically recommended that if a party believes species are being traded in a manner detrimental to their survival, the management authority of that country should consult directly with the management authority of the exporting country and, if this is not feasible or successful, make use of the Article XIII procedures which would invoke an inquiry by the Secretariat and the review of the Conference of the Parties. Alternatively the party could apply stricter domestic measures recognized in Article XIV and further limit or ban trade in the species in question. No mention was made of the standard for such a limitation or the procedures for its implementation, thus leaving it up to the country concerned to develop a standard appropriate to the particular situation and its own domestic requirements. The resolution also authorized the Technical Expert Committee on the Harmonization of Permits and Procedures to deal with control over trade in Appendix II and III species. The committee has produced five draft resolutions (reprinted in the Service's notice of May 9, 1980, 45 FR 3100) which, if adopted, would impose stricter requirements for findings underlying exports of CITES species from nonparty countries, standardize the forms for permits and certificates, provide for periodic review of annual reports of trade statistics, and require that all permits and certificates for unworked or simply worked ivory mention the actual country of origin. The Service believes that the Parties at the second regular meeting have, for the present, adequately addressed this issue and that the Technical Expert Committee is the appropriate organ for addressing this situation.

3. Extension of Duration of the CITES Export Permit: Article VI, para. 2 limits the duration of export permits to six months. The Southeastern Association of Fish and Wildlife Agencies has requested that the duration of export permits for bobcat, river otter and American alligator be increased from six months to a minimum of one year in order to enhance business continuity. The Service is developing a letter of authorization system which would enable an exporter of such species to obtain a permit from a U.S. Fish and Wildlife Service officer at one of the designated ports or at an office of a Special Agent in Charge. The duration of the validity of the letter of authorization would be two years while export permits issued under it would continue to comply with the six month limitation of CITES.

4. Prompt Reporting of Appendix II Violations: The Defenders of Wildlife has suggested that the Parties should be required to report promptly to the Secretariat all violations with regard to Appendix II species. The Service believes that each case should be treated separately so that responses can be tailored to meet particular facts and circumstances. Wholesale reporting of violations by all countries would tax the already limited staff of the Secretariat, could result in premature disclosure of investigations and run contrary to criminal and administrative procedures in Party countries.

5. Development by the Parties of the appendices to the Convention on Conservation of Migratory Wild Animals.

Monitor International has suggested that a new agenda item be added to the provisional agenda which would result in the development by the Parties of lists of CITES migratory endangered and threatened species of fauna that would benefit from being listed in the appendices of the Convention on the Conservation of Migratory Species of Wild Animals (CCMSWA) signed by 22 nations in Bonn, Federal Republic of Germany in 1979. This convention is not yet in force.

The United States had major difficulties with respect to the inclusion of marine species under the CCMSWA's controls, and felt that a number of species in the list of several thousand

adopted were not truly migratory. The Service believes that any initiative for developing lists of species to be protected by the CCMSWA should derive from the parties in accordance with the procedures of CCMSWA. In this regard, Article VIII, paragraph 5(c) authorizes the CCMSWA's Scientific Council to make recommendations to the Conference of the Parties as to the migratory species to be included in the appendices to CCMSWA.

Comments Received Regarding Items Already Included in the Provisional Agenda.

The Service, in response to its May 9, 1980 notice, received information and comments regarding items already included in the provisional agenda. These will be addressed in a notice of proposed negotiating positions tentatively scheduled for publication in the latter part of November 1980. The following is a list of the types of information and comments received in response to the May 9 notice and the agenda item to which they pertain:

Amendments to proposed resolutions of the committee of technical experts on the harmonization of permit forms and procedures (XIII, para. 1);
Definition of "transit" and "trans-shipment" as used in CITES Article VII, para. 1 (XIV, para. 4);
Clarification of when the provisions of the Convention apply to a specimen for purposes of Article VII, para. 2 (XIV, para. 4);
Comments on the IUCN Environmental Law Center's draft guideline for CITES implementing legislation (XIV, para. 7);
Timely submission of annual reports (IX, 1);
Ranching study should consider impact on wild specimens (XIII, para. 4);
Publication of the names, addresses and telephone numbers of management authorities by all parties (IX, para. 1);
Secretariat's report should emphasize parties' lag in plant enforcement (IX, para. 1).

U.S. Delegate Selection

Selection of members of the U.S. Delegation to the New Delhi meeting has begun. Organizations and persons interested in nominating delegation members should submit in writing the names of such nominees with supporting information. Nominees should have the background which would enable them to perform delegate functions as they relate to one or more provisional agenda items. The size of the delegation will be limited by the selection of a number of persons whose presence on the delegation is essential to the accomplishment of the business of the meeting. It would also be appropriate to have representatives of minorities or women on the delegation. Submissions should be addressed to the Federal Wildlife Permit Office (see Addresses, above).

This notice was prepared by Arthur Lazarowitz, Federal Wildlife Permit Office.

Dated: August 6, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-23003 Filed 8-8-80; 8:45 am]
BILLING CODE 4310-55-M

Geological Survey

Colorado and Wyoming; Request for Public Comment on Maximum Economic Recovery and Fair Market Value

AGENCY: U.S. Geological Survey, Interior.

The U.S. Geological Survey has identified 16 tracts as candidates for possible lease sale in the Green River-Hams Fork regional coal area of Colorado and Wyoming. The 16 tracts are those currently under consideration by the Green River-Hams Fork Regional Coal Team and are the subject of ongoing environmental analysis. A description of these tracts is contained in the table. More complete geologic data on these tracts are available in the economic recovery potential analysis reports prepared for each tract. These reports are available for public inspection at the Office of the Central Region Conservation Manager, Conservation Division, U.S. Geological Survey, Denver Federal Center, Denver, Colorado. additional data on these tracts are available from the Draft Environmental Impact Statement (DEIS). Copies of the DEIS are available from Dan Martin, EIS Teams Leader, Craig District Office, Bureau of Land Management, P.O. Box 248, 455 Emerson Street, Craig, Colorado 81625.

The U.S. Geological Survey will accept public comment on the maximum economic recovery attainable for each of the tracts listed in the table. The comments should focus on the following considerations:

1. The mining method which should be employed on each of the tracts;
2. The number of coal seams that can be mined consistent with maximization of net return on investment;
3. The total recoverable reserves on each of the tracts taking into account items (1) and (2) above; and,
4. Alternative mining methods on each of the tracts.

In addition, the public is invited to submit to the U.S. Geological Survey written comments that will be used in estimating fair market value for coal resources in the listed tracts. Comments should address specific factors related to fair market value, including, but not limited, to the following:

1. The quality and quantity of the coal resources;
2. Which of the tracts, if any, should be evaluated as part of a larger mining unit (those tracts which do not in themselves form a logical mining unit);
3. The configuration of the larger mining unit of which the tract may be a part;
4. The price that the mined coal would bring in the marketplace;
5. The cost of producing the coal;
6. The most desirable timing and rate of production;
7. Depreciation and other accounting considerations;
8. The minimum rate of return that would be desired by a coal company in the absence of inflation (real rate of return);
9. The value of the surface estate if privately held.

Documented information on recent lease transactions for coal properties in the area should also be submitted at this time. This information should include location of the property, terms of the transactions, and any major conditions specified in the contract. The data should not be limited to transactions involving private property; assignments of Federal leases should also be included. Information submitted will be evaluated on its own merits. Commenters are encouraged, however, to supply technical justification to support their assertions.

If information submitted is considered to be proprietary, the information should be so labeled as such in the first page of the written comment. The U.S. Geological Survey will treat this information as confidential if authorized by the exemption provisions of the Freedom of Information Act. Comments should be sent to Central Region Conservation Manager, Conservation Division, U.S. Geological Survey, Box 25046, Denver Federal Center, Denver, Colorado 80223. Comments should be received no later than 30 days after publication of this notice.

This request for comment should not be interpreted as a firm commitment by the Federal Government to lease any of the tracts listed in the Table. A decision to lease any or all tracts will be made not less than 30 days following publication of a final environmental impact statement (EIS) for the Green River-Hams Fork region. This sequence of steps is in accordance with the procedures specified in the 43 CFR 3400 series Federal coal management, regulations. This final EIS is now under preparation by the Bureau of Land Management, Colorado State Office. The final EIS is scheduled to be published August 29, 1980.

Departmental policy calls for release of all nonproprietary data which is used as input in the discounted cash flow evaluation model. Under this policy, this economic and geologic information would be released for public comment and review several months prior to the lease sale. However, because of the accelerated time schedule for the first sales in the Green River-Hams Fork region, these data will be released with the notices of the lease sale. The sale notices will therefore include these data as well as the minimum acceptable bid.

Dated: August 4, 1980.

Don E. Kash,

Chief, Conservation Division.

Tract name and State	County, township, and range (6th P.M.)	Acreage	Preliminary coal reserve estimate (millions of tons)	Probable type of mine	As received Btu per pound	Sulfur content (percent)	Ash content (percent)
Bell Rock Gulch, Colorado	Moffat, T. 6 N., Rs. 91, 92 W	434	11.5	Underground	10,800	0.54	9.02
China Buttes, Wyoming	Carbon, Ts. 17, 18, 19 N., Rs. 90, 91 W	5,560	62.8	Surface	8,800	0.56	7.35
Danforth Hills No. 1, Wyoming	Moffat, T. 3 N., R. 93 W	876	34.2	Surface	10,785	0.41	4.88
Danforth Hills No. 2, Colorado	Moffat, T. 3 N., R. 93 W	2,605	91.0	Surface	10,785	0.41	4.88
Danforth Hills No. 3, Colorado	Rio Blanco, T. 3 N., R. 93 W	1,769	89.6	Surface	10,785	0.41	4.88
Empire, Colorado	Moffat, T. 5 N., R. 91 W	691	12.9	Underground	10,450	0.52	7.50
Grassy Creek, Colorado	Routt, T. 5 N., R. 87 W	480	1.8	Surface	11,400	0.90	8.00
Hayden Gulch, Colorado	Routt, T. 5 N., Rs. 88, 89 W	5,567	80.1	Surface	10,030	0.71	8.21
Iles Mountain, Colorado	Moffat, T. 5 N., R. 92 W	4,200	32.8	Surface	10,432	0.40	4.10
Lay, Colorado	Moffat, Ts. 7, 8 N., Rs. 92, 93, 94 W	11,563	69.4	Surface	10,300	0.49	8.00
Medicine Bow, Wyoming	Carbon, Ts. 23, 24 N., Rs. 83, 84 W	4,680	15.2	Surface	10,268	0.60	10.02
Pinnacle,, Colorado	Routt, Ts. 4, 5 N., Rs. 86, 87 W	271	0.7	Surface	11,000	0.55	5.00
Red Rim, Wyoming	Carbon and Sweetwater, Ts. 19, 20, 21 N., Rs. 89, 90, 91 W.	10,320	34.5	Surface	8,560	0.45	9.30
Rosebud, Wyoming	Carbon, T. 23 N., Rs. 80, 81 W	3,520	14.4	Surface	10,500	0.80	10.00
Seminoe II, Wyoming	Carbon, Ts. 22, 23 N., Rs. 81, 82 W	1,440	7.8	Surface	10,600	0.90	10.30
Williams Fork Mountains, Colorado	Routt and Moffat, T. 5 N., Rs. 89, 90 W	10,560	34.8	Surface	10,097	0.63	7.47

[FR Doc. 80-24107 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[F-14919-A (Anchorage)]

Alaska Native Claims Selection

This decision rejects in part State Selection application and approves lands in the vicinity of Pitka's Point for conveyance to Pitka's Point Native Corporation.

I. State Selection Rejected in Part

On September 18, 1967, the State of Alaska filed community purposes grant selection application F-592, as amended, pursuant to Sec. 6(a) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(a) (1976)). This selection describes lands near the Native village of Pitka's Point, including portions of Tps. 22 and 23 N., R. 76 W., and T. 23 N., R. 77 W., Seward Meridian.

The village corporation selected lands which were withdrawn by Secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(a)).

Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by Sec. 11(a). Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The following described lands, which are State selected have been properly selected under village selection application F-14919-A. Accordingly, State selection application F-592 is hereby rejected as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

T. 22 N., R. 76 W.
- Sec. 4, all.
- Containing approximately 560 acres.

T. 23 N., R. 76 W.
- Sec. 7, excluding U.S. Survey No. 4101;
- Secs. 8 and 17, all;
- Secs. 18 and 19, excluding U.S. Survey No. 4101;
- Secs. 20 and 29, all;
- Sec. 30, excluding U.S. Survey No. 4101;
- Sec. 31, excluding U.S. Survey No. 4101 and Native allotment F-18299;
- Sec. 32, NE¼.
- Containing approximately 3,909 acres.

T. 23 N., R. 77 W.
- Secs. 9, 10 and 11, all;
- Secs. 12 and 13, excluding U.S. Survey No. 4101;
- Sec. 14, all;
- Sec. 15, excluding Native allotment F-16554;
- Sec. 16, excluding Native allotments F-16554 and F-18392 Parcel D;
- Sec. 21, excluding Native allotments F-16554, F-18392 Parcel D, F-027925 and F-18385 Parcel A;
- Sec. 22, excluding U.S. Survey No. 2272, Native allotments F-16555 Parcel B, F-16554 and F-027925;
- Sec. 23, all;
- Secs. 24 and 25, excluding U.S. Survey No. 4101;
- Sec. 26, excluding U.S. Survey No. 4101 and Native allotment F-18532 Parcel B;
- Sec. 28, NE¼;
- Sec. 35, N½, excluding U.S. Survey No. 4101; and SE¼;
- Sec. 36, excluding U.S. Survey No. 4101.
- Containing approximately 7,720 acres.

Aggregating approximately 12,195 acres.

The total amount of State selected lands rejected to permit conveyance to Pitka's Point Native Corporation is approximately 12,195 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA. Further action on the subject State selection application as to those lands not rejected herein, will be taken at a later date.

II. Lands Proper For Village Selection, Approved For Interim Conveyance

On November 8, 1974, Pitka's Point Native Corporation, for the Native village of Pitka's Point filed selection application F-14919-A, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Pitka's Point.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 64,023 acres, is considered proper for acquisition by Pitka's Point Native Corporation, and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Unsurveyed)

T. 22 N., R. 75 W.
Secs. 4, 5 and 6, excluding the East Fork of the Andreafsky River;
Sec. 7, all;
Secs. 8 and 9, excluding the East Fork of the Andreafsky River;
Secs. 16 and 21, inclusive all;
Secs. 28 to 31, inclusive all;
Sec. 32, excluding Native allotment F-18406 Parcel A;
Sec. 33, all.
Containing approximately 10,933 acres.

T. 22 N., R. 76 W.
Secs. 1, 2 and 3, inclusive all;
Secs. 4 and 5, excluding the Yukon River and the Andreafsky River;
Sec. 6, excluding Native allotments F-18116 Parcel B, F-18502 Parcel A and the Yukon River;
Sec. 7, excluding Native allotments F-18502 Parcel A, F-18740 Parcel A, Driftwood Slough and the Yukon River;
Sec. 8, excluding Native allotments F-18740 Parcel A, F-18404 Parcel A and the Yukon River;
Secs. 9 and 10, excluding the Yukon River;
Secs. 11 to 14, inclusive all;
Sec. 15, excluding the Yukon River and its interconnecting slough;
Sec. 16, excluding the Yukon River;
Sec. 17, excluding Driftwood Slough, the Yukon River and its interconnecting slough;
Sec. 18, excluding Driftwood Slough;
Sec. 19, all;
Sec. 20, excluding Native allotment F-16903 Parcel B, Driftwood Slough, the Yukon River and its interconnecting sloughs;
Sec. 21, excluding Native allotment F-16903 Parcel B and the Yukon River;
Sec. 22, excluding the interconnecting slough of the Yukon River;
Secs. 23, 24 and 25, all;
Sec. 26, excluding the interconnecting slough of the Yukon River;
Sec. 27, excluding Native allotments F-18403 Parcel A, F-17687 Parcel A, the Yukon River and its interconnecting sloughs;
Sec. 28, excluding Native allotment F-18403 Parcel A and the Yukon River;
Sec. 29, excluding Driftwood Slough;
Secs. 30 and 31, all;
Sec. 32, excluding Driftwood Slough;
Sec. 33, excluding the Yukon River;
Sec. 34, excluding the Yukon River and its interconnecting slough;
Sec. 35, excluding an interconnecting slough of the Yukon River;
Sec. 36, all.
Containing approximately 16,338 acres.

T. 23 N., R. 76 W.
Secs. 5 and 6, all;
Sec. 7, excluding U.S. Survey No. 4101;
Secs. 8 and 17, all;
Secs. 18 and 19, excluding U.S. Suryvey No. 4101;
Secs. 20 and 29, all;
Sec. 30, excluding U.S. Survey No. 4101;
Sec. 31, excluding U.S. Survey No. 4101, Native allotment F-18299 and the Yukon River;
Sec. 32, all.
Containing approximately 5,637 acres.

T. 22 N., R. 77 W.
Sec. 1, excluding Native allotment F-18403 Parcel B, the Yukon River and Driftwood Slough;
Secs. 2 and 12, excluding Driftwood Slough;
Sec. 13, all.
Containing approximately 1,965 acres.

T. 23 N., R. 77 W.
Secs. 1 to 5, inclusive, all;
Sec. 6, excluding Native allotment F-16922 Parcel D;
Secs. 9, 10 and 11, all;
Secs. 12 and 13, excluding U.S. Survey No. 4101;
Sec. 14, all;
Sec. 15, excluding Native allotment F-16554;
Sec. 16, excluding Native allotments F-16554 and F-18392 Parcel D;
Sec. 17, excluding Native allotment F-16922 Parcel D;
Sec. 20, excluding the Yukon River;
Sec. 21, excluding Native allotments F-18385 Parcel A, F-027925, F-16554, F-18392 Parcel D and the Yukon River;
Sec. 22, excluding U.S. Survey No. 2272, Native allotments F-16555 Parcel B, F-16554, F-027925 and the Yukon River;
Sec. 23, all;
Secs. 24 and 25, excluding U.S. Survey No. 4101;
Sec. 26, excluding U.S. Survey No. 4101, Native allotment F-18532 Parcel B and the Yukon River;
Sec. 28, exluding the Yukon River;
Sec. 34, excluding Native allotment F-18673 Parcel A, the Yukon River and Driftwood Slough;
Secs. 35 and 36, excluding U.S. Survey No. 4101 and the Yukon River.
Containing approximately 11,341 acreas.

T. 24 N., R. 77 W.
Secs. 8 to 30, inclusive, all;
Secs. 32 to 36, inclusive, all.
Containing approximately 17,809 acres.

Aggregating approximately 64, 023 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement At of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14919-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

a. (EIN 2 C3, D1, D9) An easement for an existingf access trail twenty-five (25) feet in width from the southernmost part of Steamboat Slough in Sec. 36, T. 23 N., R. 76 W., Seward Meridian, southeasterly to Pilot Station village. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter use.

b. (EIN 4 C3, D1) An easement sixty (60) feet in width for an existing road from St. Mary's village in Sec. 26, T. 23 N., R. 76 W., Seward Meridian westerly to an existing road on State land in Sec. 30, T. 23 N., R. 76 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

c. (EIN 4b, C3, D1) An easement sixty (60) feet in width for an existing road from PItka's Point village in Sec. 6, T. 22 N., R. 76 W., Seward Meridian, northeasterly to road EIN 4 C3, D1 in Sec. 32, T. 23 N., R. 76 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

d. (EIN 10 C5, D1) An easement for a proposed access trail twenty-five (25) feet in width from the end of the State airport land in Sec. 7, T. 23 N., R. 76 W., Seward Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

e. (EIN 14 C5) An easement twenty (20) feet in width, ten (10) feet on each side of the center line, for an existing buried powerline from road EIN 4 C3, D1 in Sec. 33, T. 23 N., R. 76 W., Seward Meridian, southwesterly to the village of Pitka's Point. The uses allowed are those activities associated with the construction, operation, and maintenance of the powerline facility.

The grant of the above described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid exiting rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. A right-of-way, AA-12922, two hundred (200) feet in width, located in Secs. 5, 8, 9, 10, 13, 14 and 15, T. 23 N., R. 77 W., Seward Meridian and Secs. 18, 19, 20 and 29, T. 23 N., R. 76 W., Seward Meridian, for a Federal Aid Highway, issued to the State of Alaska, Department of Transportation and Public Facilities. Act of August 27, 1958, as amended, 23 U.S.C. 317;

4. A right-of-way, AA-12952, located in Sec. 29, T. 23 N., R. 76 W., Seward Meridian, Alaska, for a Federal Aid Material Site, issued to the State of Alaska, Department of Transportation and Public Facilities. Act of August 27, 1958, as amended, 23 U.S.C. 317;

5. A right-of-way, AA-9236, located in Sec. 6, T. 22 N., R. 76 W., Seward Meridian, for a water plant and related pipeline, issued to Pitka's Point Safewater Corporation. Act of March 4, 1911 (36 Stat. 1253), as amended, 43 U.S.C. 961; and

6. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Pitka's Point Native Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved the total acreage conveyed or approved for conveyance is approximately 64,023 acres. The remaining entitlement of approximately 5,097 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to Pitka's Point Native Corporation and shall be subject to the same conditions as the surface conveyance.

Within the above described lands, only the following inland water bodies are considered to be navigable:

Yukon River and its unnamed interconnecting sloughs;

Driftwood Slough;

Andreafsky River and the East Fork of the Andreafsky River.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Tundra Drums. Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation any appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 710 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until September 10, 1980, to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Pitka's Point Native Corporation, Pitka's Point, Alaska 99658.

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501.

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 80-24119 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-84-M

Eastern States; Transfer of Submarginal Lands, L'Anse Indian Reservation

Correction

In FR Doc. 80-22927, in the issue of Thursday, July 31, 1980, on page 50938, in the first column, the tenth line from the bottom, is corrected to read as follows:

"Sec. 2, SE¼NW¼, SE¼SW¼, E½SE¼"

BILLING CODE 1505-01-M

National Park Service

Availability and of Public Meetings; Upper Mississippi River Conceptual Master Plan

Notice is hereby given of the availability of a conceptual master plan for the management of segments of the Upper Mississippi River as a component of the National Wild and Scenic Rivers System under the provisons of Public Law 90-542, 82 Stat. 906, October 2, 1968, the Wild and Scenic Rivers Act.

Notice is further given of public meetings to be conducted on the conceptual master plan, as follows:

September 8, 1980, 7 p.m.—Landowners Workshop, Rooms 1 and 2, Social Service Center, adjoining Crow Wing County Courthouse, Brainerd, Minnesota.

September 9, 1980, 7 p.m.—General public meeting, Rooms 1 and 2, Social Service Center, adjoining Crow Wing County Courthouse, Brainerd, Minnesota.

September 10, 1980, 7 p.m.—Landowners Workshop, Blandin Room, Holiday Inn, Grand Rapids, Minnesota.

September 11, 1980, 7 p.m.—General public meeting, Blandin Room, Holiday Inn, Grand Rapids, Minnesota.

September 12, 1980, 7 p.m.—Landowners Workshop, Courtroom, Clearwater County Courthouse, Bagley, Minnesota.

September 13, 1980, 2 p.m.—General public meeting, University Room Holiday Inn, Bemidji, Minnesota.

Copies of the conceptual master plan will be mailed to landowners of record

within the proposed boundary, to interested persons who have requested copies, and to appropriate agencies of Federal, state, and local government.

An environmental assessment of the conceptual master plan has been prepared. Copies of the environmental assessment and of the conceptual master plan are available at the Office of the Regional Director, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

Anyone wishing to provide written comments may do so by mailing them to the Regional Director at the above address by October 1, 1980.

Dated: August 1, 1980.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 80-24139 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-70-M

Water and Power Resources Service

Short-Term Municipal and Industrial Water Service Contracts, Columbia Basin Project, Washington; Intent to Enter Into Short-Term Water Service Contracts

The Regional Director of the Pacific Northwest Region, Water and Power Resources Service (Service), Department of the Interior, may enter into short-term water service contracts with individuals, corporations, districts, or municipalities for small quantities of municipal and industrial (M&I) water from the Columbia Basin Project, Washington. Contracts of this type can be entered into by the Regional Director upon short notice to meet emergency or temporary demands, in accordance with section 9(c)(2) of the Reclamation Project Act of 1939, pursuant to Departmental Manual paragraph 255.1.4B(1)(b) and Water and Power Instructions chapter 053.2.

The Service intends to offer 2-year contracts with an annual water charge of $10.00 per acre-foot. All contracts will specify quantities, rates, and other terms and conditions in compliance with Reclamation law and Service policy.

Presently, Northwest Land and Investment, Inc., of Bellingham, Washington, has requested a contract for 15 acre-feet of water per year from Banks Lake for a mobile home park. The total M&I demand within the project service area is expected to be less than 300 acre-feet for 1980.

Applications for this water should be submitted in writing to the Project Manager, Columbia Basin Project, P.O. Box 815, Ephrata, WA 98823. A draft contract form is available for public review. Unless significant public interest in the sale of M&I water from Columbia Basin Project works is demonstrated in response to this notice, announcement of proposed contractual actions will be limited to those parties involved in specific actions. All written correspondence concerning any specific contract proposal will be made available upon written request pursuant to the Freedom of Information Act (80 Stat. 383). Further information may be obtained from Mr. William H. Hewitt, Chief of the Water and Land Operations Division at the address above; telephone (509) 754-4611.

Dated: August 1, 1980.

Clifford I. Barrett,

Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-23906 Filed 8-8-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication (August 28, 1980). Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication (September 8, 1980), or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC-FC-78563 (Republication). By decision of July, 1980 issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved to transfer to KANSAS CARTAGE CO., a corporation, of Kansas City, KS, a corporation, of Certificate of Registration No. MC-120770 (Sub-No. 1) issued 6/17/64, to Robert J. Creason, d.b.a. KANSAS CARTAGE CO., at Kansas City, KS, evidencing a right to engage in transportation in interstate comerce corresponding in scope to certificate of Convenience and Necessity No. 17376-M, dated 10/6/37, amended 6/2/43 and 10/22/52, transferred to transferor by order dated 12/24/57, and issued by the State Corporation Commission of the State of Kansas, subject to the following conditions: Transferee must furnish the commission proof that the underlying intrastate rights supporting the Certificate of Registration have been transferred by the appropriate state commission before this transaction can be consummated. The operating rights approved for transfer and described at the end of this notice. Applicant's representative is: John E. Jandera, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601. Transferee holds no authority. A TA lease application has not been filed. This application is directly related to No. MC-120770 (Sub-No. 2 F) publish in another section of this Federal Register issue. The rights being Transferred in No. MC-FC-78563 are: * * * Property between points wholly within Kansas, intrastate, and between points in Kansas and points in Oklahoma, interstate, with the privilege of and restricted to hauling oil field machinery, supplies and materials and heavy machinery, buildings and box cars within and between oil fields and between supply points and oil fields. * * * Applicant may also engage in the transportation of the following commodities pursuant to Route 807: Bridge Builders' contractors', graders', house movers', outfits and supplies;

Grading or roadmaking implements and equipment: Shovels, power; Drag lines, power; Cranes, power; Pile drivers, power; Engines, steam or combustion, traction or tractors, other than farm and not including tractors with vehicle beds or fifth wheels; Poles, telephone, telegraph or electric, wood or iron and steel, including pole line fixtures and materials; Cable or wire on spools or reels; Dehydrators and parts; Generators, Motors, Condensers, transformers, electric and other machinery, machinery parts and equipment used in power stations or electric generating plants; Pumping station machinery, equipment and supplies, water and other than water pumping; Pipe, iron or steel; Pipe, concrete, or concrete reinforced machinery and equipment, heavy or bulky, used in or incidental to mining, manufacturing, industrial or machine shop use; Boilers and parts, iron or steel; Iron or steel, structural or reinforcing fabricated or unfabricated; Refinery machinery and equipment, oil or other than oil; Tanks; Filling station equipment; Safes & Vaults; Scales, platform, factory or warehouse; Bakery ovens and equipment; Houses; set up or fabricated; Factory tools and equipment; Lumber; railroad equipment; box cars; rails; trucks; bridge timbers, piling and girders; Farm machinery; Airplanes, wrecked, set up, motors, wings, fuselage and parts; And all other articles, the movement of which require special motor vehicle equipment such as that used in oil field hauling. Wrecked and disabled motor vehicle equipment of all types, including automobiles, trucks, tractors and trailers: Between points and places within a 50-mile radius, of Wichita, Kansas; Also: Between points and places within said 50-mile radius of Wichita, Kansas, on the one hand, and on the other, points and places in the State of Kansas.

Note.—The prior publication of this proceeding on May 15, 1980, was in error and should be disregarded.

MC 120770 (Sub-2 F), filed March 28, 1980. Applicant: KANSAS CARTAGE CO., a Kansas corporation, 712 Sunshine Road, Kansas City, KS 66115. Representative: John E. Jandera, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. (1) *Oil Field Machinery, supplies and materials and heavy machinery; buildings and box cars; Bridge Builders' contractors' graders' house movers' outfits and supplies; grading or roadmaking implements and equipment; shovels, power; drag lines, power; cranes, power; pile drivers, power; engines, steam or combustion, traction or tractors,* other than farm and not including tractors with vehicle beds or fifth wheels; *poles, telephone, telegraph or electric, wood or iron and steel,* including pole line fixtures and materials; cable or wire on spools or reels, *dehydrators and parts; generators, motors, condensers, transformers, electric and other machinery, machinery parts and equipment* used in power stations or electric generating plants; *pumping station machinery, equipment and supplies, water and other than water pumping' pipe, iron and steel; pipe, concrete or concrete reinforced machinery and equipment, heavy or bulky,* used in or incidental to mining, manufacturing, industrial or machine shop use; *boilers and parts, iron and steel; iron or steel,* structural or reinforcing fabricated or unfabricated; *refinery machinery and equipment, oil* or other than oil; *tanks; filling station equipment; safes & vaults; scales, platform, factory or warehouse; bakery ovens* and equipment; *houses;* set up or fabricated; *factory tools and equipment; lumber; railroad equipment; box cars; rails; truck; bridge timbers, piling and girders; farm machinery; airplanes; wrecked, set up, motor, wings, fuselage and parts, articles,* which because of their size or weight, require the use of special equipment, between points in Kansas (2) *Wrecked and disabled motor vehicle equipment* of all types, including automobiles, trucks, tractors and trailers, between points in Harper, Sumner, Cowley, Kingman, Sedgwick, Butler, Reno, Harvey, McPherson, and Marion Counties, Kansas, on the one hand, and on the other, points in Kansas. (Hearing site: Kansas City, MO.)

Note.—The above authority represents conversion of Certificate of Registration No. MC-120770 (Sub-No. 1) to a Certificate of Public Convenience and Necessity. This application is directly related to No. MC-FC-78563, published in another section at this Federal Register issue.

MC-FC-78600. By decision of June 3, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. The Motor Carrier Board approved the transfer to DAWN ENTERPRISES, INC., d.b.a. DAWN TRUCKING CO., of Farmington, NM, of Certificates No. MC-117169 (Subs 1 and 4) issued 5/8/67 and 1/29/75 to Beasley Trucking Inc., of Denver, Co., authorizing the transportation of *Oilfield tools, equipment, and supplies,* with each individual shipment restricted to not more than 5,500 pounds, between points in San Juan County, NM, on the one hand, and, on the other, points in San Juan and Grand Counties, Utah, and Montezuma, La Plata, Archulleta, Dolores, San Miguel, Montrose, and Mesa Counties, CO. *Oilfield tools, equipment, and supplies,* used in replacing, servicing or repairing machinery and equipment, and *sucker rods* used in connection with the discovery, development and production of natural gas and petroleum and their products and by-products, between points in San Juan County, NM, on the one hand, and, on the other, points in Arizona, Colorado, Nevada, Utah, and that part of Wyoming on and south of U.S. Highway 26. (1) *Machinery, equipment, materials and supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products and (2) *machinery, materials, equipment, and supplies* used in or in connection with the construction, operation, repair, servicing maintenance, and dismantling of pipelines (except the stringing of picking up of pipe in connection with main or trunk pipelines), between points in Apache, Navajo, Coconino, and Mohave Counties AZ, that part of Colorado on and south of U.S. Highway 50 (except Pueblo), New Mexico, and Utah (except Provo, Orem, and Geneva). Applicant's representative: Richard S. Mandelson, Suite, 1600 Lincoln Center, 1600 Lincoln St., Denver, CO 80264. Transferee holds no authority from the Commission. An application seeking temporary lease has not been filed.

MC-FC-78623. By decision of June 17, 1980, issued under 49 U.S.C. 10924 and the transfer rules at 49 CFR Part 1133 Review Board Number 5 approved the control by OHIO MOTORISTS ASSOCIATION OF CLEVELAND, OH of License No. MC-130350 issued 6/29/76 to Huron County Automobile Club, Inc. of Norwalk, OH, authorizing a broker service at Norwalk, OH, as follows; passengers and their baggage, in round-trip special and charter operations, beginning and ending at points in Huron County, OH, and extending to points in the United States, including Alaska and Hawaii. Applicant's representative is: Gerald P. Wadkowski, 85 East Gay St., Columbus, OH 43215. Transferee hold authority as a broker in No. MC-130501F.

MC-FC-78624. On July 16, 1980, under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 Review Board Number 5 approved the transfer to THOMAS EXPRESS CO., INC. of Highstown, NJ, of Certificate No. MC-31023 issued 3/8/68 to Moon Carrier of New York, NY authorizing the transportation of *general commodities,* except those of unusual value, classes A

and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between New York, N.Y., and Philadelphia, Pa., serving the intermediate and off-route points of Newark, New Brunswick, Princeton, Highstown, Burlington, Camden, and Trenton, N.J., and those in Pennsylvania within 25 miles of Philadelphia, as follows: From New York over U.S. Highway 1 to Philadelphia, and return over same route. From New York over U.S. Highway 1, to Morrisville, N.J., thence over U.S. Highway 13 to Philadelphia, and return over the same route. From New York over U.S. Highway 1 to Newark, N.J., thence over New Jersey Highway 27 to New Brunswick, N.J., thence over U.S. Highway 130 (formerly New Jersey 25) to Camden, N.J., and thence across the Delaware River to Philadelphia, and return over the same route. Between Clifton, N.J., and Philadelphia, Pa., serving all intermediate points; and the off-route points in Pennsylvania within 25 miles of Philadelphia, as follows: From Clifton over New Jersey Highway 7 to Newark, N.J., thence over U.S. Highway 1 to Philadelphia, and return over the same route. From Clifton to Newark as specified above, thence over U.S. Highway 130 (formerly New Jersey Highway 25) to Camden, N.J., thence across the Delaware River to Philadelphia, and return over the same route, Between Clifton, N.J., and points in Union, Bergen, Essex, Hudson, Passaic, Morris, Middlesex, and Somerset Counties, N.J. Between Clifton, N.J., and points in Union, Bergen Essex, Hudson, Passaic, Morris, Middlesex, and Somerset Counties, N.J., on the one hand, and, on the other, New York, N.Y., and points in Westchester, Rockland, and Nassau Counties, N.Y. Between New York, N.Y., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Passaic, Union, Middlesex, Morris, Somerset, Sussex, Warren, Mercer, Monmouth, Burlington, Camden, and Gloucester Counties, N.J. Applicant representative is: Michael R. Werner, P.O. Box 1409, Fairfield, NJ 07006 TA appln. has been filed.

MC-FC-78626. By decision of July 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 The Review Board Number 5 approved the transfer to ROSS TRANSFER & STORAGE, INC., of Hagerstown, MD, of Certificate No. MC-134639 issued November 13, 1970, to ZIMMERMAN MOVING & STORAGE CO., of Chambersburg, PA authorizing the transportation of *Household goods* as defined by the Commission, Between points in Franklin County, Pa., on the one hand, and on the other, points in New York, New Jersey, Maryland, Ohio, Virginia, West Virginia, Delaware, and the District of Columbia. *Such commodities* as are dealt in by mail order houses which operate retail stores, from Chambersburg, Pa., to points in Maryland and West Virginia within 40 miles of Chambersburg; and *damaged, defective, and traded-in shipments of general merchandise,* from the next above-specified points of destination, to Chambersburg. Applicant's Representative is: Transferee: Mr. Edward N. Button, 580 Northern Avenue, Hagerstown, MD 21740. Transferor: Lee & Kaye, 37 West Queen Street, Chambersburg, PA 17201. Application has been filed for TA. Transferee presently holds no authority from the Commission.

MC-FC-78627. On July 16, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to MABEY'S MOVING & STORAGE, INC., of Chatham, NY, of Certificate No. MC-2221 issued September 2, 1970, to Mabey's Leasing, Inc., of Chatham, NY, authorizing the transportation of *Household goods,* between Hudson, NY, on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Between Hudson, NY, on the one hand, and, on the other, points in Indiana and Ohio. *Household goods,* as defined by the Commission, between points in Columbia County, NY, within 20 miles of Hudson, NY, on the one hand, and, on the other, points in Connecticut, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont. Between Hudson, NY, and points in Columbia County, NY, within 20 miles of Hudson, on the one hand, and, on the other, points in Delaware, Maryland, and the District of Columbia. *Bakery products,* from Hudson, NY, to Pittsfield, Mass.; and *empty containers* used in transporting bakery products, from Pittsfield, Mass., to Hudson, NY. Applicant's representative is: Mr. Neil D. Breslin, Attorney, 600 Broadway, Albany, NY 12207. Application for TA has not yet been filed. Transferee presently holds no authority from the Commission.

MC-FC-78628. On July 16, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Tom O'Connor, an individual, d.b.a. KERRY MOTOR SERVICE of Chicago, IL, of Certificate No. MC-115092 (Sub-No. 43) issued April 12, 1977, to TOMAHAWK TRUCKING, INC., of Vernal, UT, authorizing the transportation of *expanded plastic foam,* with or without backing (1) from La Mirada, CA, to points in CO, ID, and UT, restricted to the transportation of shipments originating at the above-named origin point; and (2) from the facilities of Apache Foam Products Company at or near Belvidere, IL, to points in that part of the United States in and east of AZ, ID, and NE, restricted to the transportation of shipments originating at the above-named facilities in (2). Applicant's representative is: Mr. Dennis W. Thorn, Attorney, 100 North LaSalle St.—Suite 2510, Chicago, IL 60602, (312) 726-7023. TA application has been filed. Transferee presently holds no authority from the Commission.

MC-FC-78637. By decision of July 16, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to TRANSPORT BRUNO BOULIANNE Ltee., Beauce, Quebec, Canada, of Permit No. MC-141697 (Sub-1), issued June 28, 1978, to Hygin Veilleux, Beauce, Quebec, Canada, authorizing the transportation of *Wood chips,* from ports of entry on the United States-Canada Boundary line located at or near Jackman, ME, to Jay, ME, under continuing contract(s) with Guimont & Freres Ltee., of Montmagny, Canada. Applicants representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108.

Note.—Transferee presently holds no authority from this Commission.

MC-FC-78638. By decision of July 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to STEWART INTERMODAL TRANSPORT, INC., Cincinnati, OH, of Certificates MC-107906, and MC-107906 (Sub-Nos. 27, 28, 29, 30, 31, 32, and 34), issued March 19 1970, March 2, 1972, October 3, 1975, August 8, 1975, August 1, 1974, July 28, 1975, February 6, 1975, and May 20, 1977, respectively, to Transport Motor Express, Inc., Fort Wayne, IN, authorizing the transportation of *General commodities,* with exceptions, over specified regular routes, between named points in IN, IL, KY, and PA; and, over irregular routes, of *Iron and steel articles,* from the plant site of Jones & Laughlin Steel Corp., in Putnam County, IL, to points in IN and OH, *material, equipment, and supplies* used in the manufacture and processing of iron and steel articles, from points in IN and OH, to the plant site of Jones &

Laughlin Steel Corp., in Putnam County, IL, subject to restrictions; *general commodities,* between points in IL within the Chicago, IL Commercial Zone as defined by the Commission; *General commodities,* with exceptions, between points in the Chicago, IL Commercial Zone as defined by the Commission, and between Pittsburgh, PA, on the one hand, and, on the other, points in a described part of PA; *Salt,* from Rittman, OH, to Peru, Decatur, Fort Wayne, Columbia City, and Plymouth, IN; *Fish,* from Cleveland, OH, to Fort Wayne, IN; *Better and cheese,* from Decatur and Huntington, IN, to Freeport, IL, and from Freeport, IL to Pittsburgh, PA; *motor oil and grease* (in containers), from Petrolia, Emlenton, Coraopolis, Oil City, McClintock, Rouseville, East Butler, Freedom, and Pittsburgh, PA, to Fort Wayne, IN; *Refrigerators,* from Mansfield, OH, to Fort Wayne, IN; *Kraut and oleomargarine,* from Norwalk, OH, to Fort Wayne, IN; *Commodities* classified as dairy products, *frozen eggs, and canned condensed milk,* from Fort Wayne, IN, to Akron and Lima, OH, Sharon, Farrell, Philadelphia, Harrisburg, and Pittsburgh, PA, and Wilmington, DE; *cream,* in cans, *canned condensed milk, butter, and cheese,* from Peru, IN, to Bucyrus, Canton, Cleveland, Columbus, Kenton, Lima, Mansfield, Marion, Toledo, Upper Sandusky, Wooster, and Youngstown, OH, Braddock, Butler, Erie, East Pittsburgh, Indiana, Jeannette, New Castle, Oil City, Pittsburgh, Uniontown, and West Pittsburgh, PA and Wheeling and Wierton, WV; *Dairy products,* from Fort Wayne, IN, to Buffalo, Syracuse, and New York, NY, Camden, NJ, Baltimore, MD Washington, DC, Norfolk, VA, Boston, MA, Altoona, Shippensburg, and Lebanon, PA, Bridgeport, CT, Providence, RI and Fairmount, WV; *empty containers,* for cream, canned condensed milk, butter, cheese, and dairy products, designated immediately above, in the reverse direction; *butter, cheese, cream, and butter tubs,* between Decatur, IN, on the one hand, and, on the other, Chicago, IL, Cleveland and Youngstown, OH, and Pittsburgh, PA; *butter, cheese, cream, frozen poultry and frozen eggs,* between Fort Wayne, Decatur and Huntington, IN, on the one hand, and, on the other, Cleveland, and Youngstown, OH and Pittsburgh, PA; *synthetic resin lacquer,* and *thinner* used in connection therewith, both in bulk in tank vehicles, from Pittsburgh and Rochester, PA, to Chicago, IL, Milwaukee, WI, and St. Louis MO, and *empty tank trailer equipment* used in connection with the operation described next above, from Chicago, IL, Milwaukee, WI, and St. Louis, MO, to Pittsburgh and Rochester, PA; *general commodities,* with the usual exceptions, between points in IL in Lake, Cook, Du Page, Kane, Kendall and Will Counties, that part of McHenry County on and south of IL Hwy 120 and on and east of IL Hwy 47, and that part of Kankakee County on and north of IL Hwy 114 and 17, excluding Kankakee; and *General commodities* with the usual exceptions, between points in Marion County, IN, between Fort Wayne, IN, on the one hand, and, on the other, Ferguson, Baer Field, and points within 5 miles of Fort Wayne, IN, subject to a restriction.

"Federal Register" Summary for Certificate or Permit

MC-FC-78652. By decision of July 18, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, The Motor Carrier Board approved the transfer to TRUBIAN CORPORATION, Four Star Lines Division of Siren, WS of Certificate No. MC-44770 (Sub-No. 15) in part issued August 3, 1978 to Midland Lines, Inc., Zephyr Division of Minneapolis, MN, authorizing the transportation of passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, between Minneapolis, Minn., and Ashland, Wis., serving all intermediate points except New Richmond, Wis., and points east thereof to junction Wis. Hwys 64 and 46, and Turtle Lake, Wis., on traffic originating at or destined to St. Paul, and Minneapolis, Minn.: From Minneapolis over Minn. Hwy 212 to the St. Croix River, thence across the St. Croix River to junction Wis. Hwy 64, thence over Wis. Hwy 64 to junction U.S. Hwy 63, and thence over U.S. Hwy 63 to Ashland, and return over the same route. Between Ashland, Wis., and Ironwood, Mich., serving all intermediate points: From Ashland over U.S. Hwy 2 to Ironwood, and return over the same route. Between St. Paul, Minn., and junction U.S. Hwy 12 and Wis. Hwy 35, serving all intermediate points: From St. Paul over U.S. Hwy 12 to junction Wis. Hwy 35 (also from St. Paul over Inter. Hwy 94 to junction Wis. Hwy 35), and return over the same route. Between St. Paul, Minn., and Webster, Wis., serving all intermediate points: From St. Paul over U.S. Hwy 61 to Forest Lake, Minn., thence over U.S. Hwy 8 to junction Wis. Hwy 35, thence over Wis. Hwy 35 to Webster, Wis., and return over the same route. Between St. Paul, Minn., and Rice Lake, Wis., serving all intermediate points: From St. Paul over Inter. Hwy 94 to junction Wis. Hwy 65, thence over Wisconsin Highway 65 to New Richmond, Wis., thence over Wis. Hwy 64 to junction Wis. Hwy 46, thence over Wis. Hwy 46 to junction U.S. Hwy 8, thence over U.S. Hwy 8 to Cameron, Wis., thence over U.S. Hwy 53 to Rice Lake (also from junction U.S. Hwy 8 and Wis. Hwy 35 over U.S. Hwy 8 to junction U.S. Hwy 8 and Wis. Hwy 46), and return over the same route. Between Deer Park, Wis., and junction U.S. Hwy 8 and Wis. Hwy 46, serving all intermediate points: From Deer Park over Wis. Hwy 46 to junction U.S. Hwy 8 and return over the same route. Between junction U.S. Hwy 8 and Wis. Hwy 35, and Cameron, Wis., serving all intermediate points: From junction U.S. Hwy 8 and Wis. Hwy 35, over U.S. Hwy 8 to Cameron, and return over the same route. Between Cameron, Wis., and Rice Lake, Wis., serving all intermediate points: From Cameron over Wis. Hwy 53 to Rice Lake, and return over the same route. Applicant's representative is Elvin S. Douglas, Jr., P.O. Box 280, Harrisonville, MO 64701. TA appln. has not been filed. Transferor holds no authority.

MC-FC-78653. By decision of July 18, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 5 approved the transfer to R.J.R. MOVING & STORAGE CORP., d.b.a. R.J.R. MOVING & STORAGE CORP., and Broser Bros., New York, NY, of Certificate No. MC-30718, issued October 13, 1958, to Broser Bros., Inc., New York, NY, authorizing the transportation of *machinery and equipment,* when moving to or from factories or printing establishments, and in connection therewith, *such raw materials* as are intended for manufacture and *such finished products* as are manufactured therein when a part of the stock or supply of such factories or establishments, between New York, NY, on the one hand, and, on the other, points in CT and RI, those in NY north of and including Mercer and Monmouth Counties, those in PA east of a line beginning at the PA-NY State line and extending along U.S. Hwy 220 to Muncy, PA, then along U.S. Hwy 15 to Harrisburg, PA, and then along the Susquehanna River to the PA-MD State Line, those in NY, through NJ, south and southeast of a line beginning at the NY-VT State line and extending along NY Hwy 347 to Ticonderoga, NY, then along NY Hwy 8 to Deposit, NY, and then along the east side of Broome County, NY, those in MA east of U.S. Hwy 5 including points on the indicated portions of the highways specified; *household goods,* as defined by the Commission, between New York, NY, on the one hand, and, on the other, points

in CT, and those in the above-specified territory in MA, NY, NJ, and PA; *electric motors, steam boilers, garment* pressing machines, and printing machines, between New York, NY, on the one hand, and, on the other, points in CT and those in the above-specified territory in NJ and NY; *advertising displays,* between New York, NY and Newark, NJ; *partitions, shelving, window guards and shutters, and steel lockers and radiator guards,* between New York, NY, on the one hand, and, on the other, points in the above-specified territory in NJ, NY, and PA; *empty paper boxes and cartons,* between New York, NY, on the one hand, and, on the other, points in the above-specified territory in NY and NJ. Applicants representative: Leon Baer Borstein, 350 Madison Ave., New York, NY 10017.

MC-FC-78655. By decision of July 21, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 5, approved the transfer to CHANDALAR TRANSPORTATION, INC., Canton, IL, of Certificate No. MC-138792 (Sub-No. 2F), issued June 29, 1979, to D. J. VISKOE TRUCKING, INC., Big Falls, MT, authorizing the transporation of *foodstuffs* (except in bulk), from the facilities of Anderson Clayton Foods, Inc., at or near Jacksonville, IL, to Baltimore, Landover, and Jessup, MD, Secaucus, NJ, Philadelphia and Pittsburgh, PA, Boston, MA, Syracuse and Rochester, NY, and points in CT and VA, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. Applicants' representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701.

MC-FC-78659. By decision of July 23, 1980 issued under 49 U.C.S. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to TOWNS TRANSFER, INC., Cordova, AL, of Certificate of Registration No. MC-96819 (Sub-No. 1), issued October 22, 1963, to TOWNS EXPRESS, INC., Birmingham, AL, evidencing a right to engage in transportation in interstate commerce corresponding in scope to Motor Carrier Certificate of Public Convenience and Necessity No. 633, dated September 10, 1957, issued by the Alabama Public Service Commission, subject to the condition that applicants supply evidence of the State Commission's approval of the transfer of the underlying instrastate operating rights, prior to or concurrently with consummation of this transfer. Applicants representative: John W. Cooper, 200 Woodward Bldg., 1927 First Ave., N., Birmingham, AL 35230.

MC-FC-78660. By decision of July 17, 1980 issued under 49 U.S.C. 10924, The Review Board No. 5, approved the transfer to The OHIO AUTOMOBILE CLUB (a Corporation), Columbus, OH, of the brokers' licenses of CANTON AUTOMOBILE CLUB, INC., Canton, OH, The COLUMBUS AUTOMOBILE CLUB, Columbus, OH, and NORTH CENTRAL OHIO AAA, Wooster, OH, authorizing operations as a broker, as follows: MC-12830 (Sub-No. 1), issued March 24, 1975, at Canton and Plain Township (Stark County), OH, *Passengers and* their baggage, in special and charter operations, beginning and ending at points in Stark County, OH, and extending to points in the United States (including AK but excluding HI); MC-12830 (Sub-No. 2), issued March 24, 1975, at Canton, Akron, Wooster, and Plain Township (Stark County), OH, *passengers and their baggage,* in special and charter operations, beginning and ending at points in Summit and Wayne Counties, OH, and extending to points in the United States (excluding HI); MC-130027, issued April 17, 1978, at Upper Arlington, Delaware, Mt. Vernon, Lancaster, and Circleville, and Columbus, OH, passengers and their baggage in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Franklin, Champaign, Delaware, Fairfield, Fayette, Knox, Licking, Logan, Madison, Ross, Perry, Pickaway, and Union Counties, OH, and extending to points in the United States (excluding HI), subject to a restriction; MC-130306, issued October 17, 1975, at Orrville and Wooster, OH, passengers and their baggage, in special and charter operations, in all-expense tours, beginning and ending at points in Wayne and Holmes Counties, OH, and extending to points in the United States (including AK and HI); and MC-130306 (Sub-No. 1), issued April 27, 1977, at Wooster, Orrville, Lodi, and Medina, OH, passengers and their baggage, in the same vehicle with passengers, in special and charter operations, in all-expense tours, beginning and ending at points in Medina County, OH, and extending to points in the United States (including AK and HI). Transferee presently holds Broker's License No. MC-130311. Representative: Gerald P. Wadkowski, 85 E. Gay St., Columbus, OH 43215.

MC-FC-78667. By decision of July 16, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Review Board No. 5 approved the transfer to Bert Pettigrew, Ellensburg, WA, of Certificate No. MC-134375 (Sub-No. 13), issued January 26, 1978, to Eldon Graves, d.b.a. ELDON GRAVES TRUCKING, YAKIMA, WA, authorizing the transportation of *paper packing partitions and wood pulp packing partitions,* from Sacramento, CA, to points in WA in and east of Okanogan, Chelan, Kittitas, Yakima, and Klickitat Counties. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210.

Note.—No application for temporary authority has been filed. Transferee holds no authority from this Commission.

MC-FC-78669. By decision of July 16, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1133, The Review Board No. 5 approved the transfer to YOUNG'S TRAVEL SERVICE, INCORPORATED, Worcester, MA, of the following portion of License No. MC-121365 (Sub-No. 6), issued December 17, 1977, to COLLETTE TRAVEL SERVICE, INC., Pawtucket, RI, authorizing operation as a broker at Framingham, MA, in connection with transportation by motor vehicle of Passengers and their baggage, in special and charter operations, Between points in the United States, including AK and HI. Applicants' representative: Gerald A. Joseloff, 80 State St., Hartford, CT 06103.

MC-FC-78674. By decision of July 14, 1980 issued under 49 U.S.C 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to SPECIAL SERVICE DELIVERY COMPANY, INC., of Cleveland, OH, of Certificate of Registration No. MC-121205 (Sub-No. 1) issued 7/8/65, to WHK INVESTMENT CORPORATION, INC., a.k.a. SPECIAL SERVICE DELIVERY COMPANY, INC. (same address), evidencing a right to engage in transportation in interstate commerce corresponding in scope to Certificate No. 9064-I dated 12/28/61 issued by the Public Utilities Commission of Ohio, authorizing property from and to Cleveland, OH, and its Commercial Zone, restricted to a small package (75 lbs. or less) delivery service. Applicant's representative is: David A. Turano, 100 E. Broad St., Columbus, OH 43215. TA lease is not sought. transferee holds ETA in MC-150407.

MC-FC 78675. By decision of July 18, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 conditionally approved the transfer to BLUE RIBBON TRUCKING, INC. of Fairfield, NJ of the following certificates issued to STANDARD TRANSPORTATION CO., INC. of Lincoln, Rhode Island; MC 2642,

authorizing the transportation of regular routes: *general commodities,* between Providence, R.I. and Boston, Mass., from Providence, R.I. over U.S. 1 to North Attleboro, Mass., from Providence, R.I. over U.S. 1 via North Attleboro, Mass., thence Mass. 1A., from Providence, R.I. over U.S. 44 to Taunton, Mass., thence Mass. 138, return over these routes to Providence, R.I., service is authorized to and from all intermediate points on the above-specified routes, and the off-route points of Brockton, Mansfield, Needham, and Norton, Mass., those within 12 miles of Boston, and those within 12 miles of Providence, between Pawtucket, R.I. and New Bedford, Mass., from Pawtucket, R.I. over city streets and connecting highways to East Providence, R.I., thence U.S. 6 via Fall River, Mass., from Pawtucket, R.I. over city streets and connecting highways to East Providence, R.I., thence U.S. 44 to Taunton, Mass., thence Mass. 138 to Fall River, Mass., thence U.S. 6, from Pawtucket, R.I. over city streets and connecting highways to East Providence, R.I., thence U.S. 44 to Taunton, Mass., thence Mass. 140. Return over these routes to Pawtucket, R.I., service is authorized to and from the intermediate and off-route points of Fall River, Seekonk, Fairhaven, and Taunton, Mass. Irregular routes: *heating equipment, accessories and parts,* from Boston, Mass., and points and places within 12 miles thereof, to points and places in Kent, Providence, and Washington Counties, R.I., *paper,* from Pawtucket, R.I., to Holyoke, Lowell, Salem, Springfield and Whitman, Mass., return, with no transportation for compensation except as otherwise authorized. *Textile machinery and mill equipment,* from Fall River and New Bedford, Mass., to Northbridge and North Adams, Mass., from Fall River and New Bedford, Mass., to Moosup, Conn., from Fall River and New Bedford, Mass., to points and places in that part of Maine south of U.S. 2 and west of U.S. 201 and Maine 123, including points and places on the indicated portions of the highways specified with no transportation for compensation on return, except as otherwise authorized, between Central Falls and Pawtucket, R.I., on the one hand, and, on the other, Franklin and Millbury, Mass. *Clothes cleaning and pressing machinery, accessories and parts,* between Pawtucket, R.I., on the one hand, and, on the other, points and places in Mass., R.I., Conn., that part of New Hampshire on and south of a line beginning at the New Hampshire-Maine State Line near East Rochester, N.H., and extending along New Hampshire Highway 11 to Claremont, N.H., thence along N.H. 103 to the New Hampshire-Vermont State Line, those in Essex, Hudson, Union, and Cape May Counties, N.J., and those in the New York, N.Y., Commercial Zone (Note 10). Irregular routes: *cotton and cotton yarn,* between Fall River, Mass., on the one hand, and, on the other, Plainfield, Conn., and Manchester, N.H., and Holyoke and Northbridge, Mass., between Pawtucket and Providence, R.I., on the one hand, and, on the other, Lowell and Northbridge, Mass., and New London, Conn. *Filler used in the manufacture of paper and empty containers therefor,* between Pawtucket, R.I., and Lawrence, Mass. *Rags, burlap bags, shoddy and textile waste,* between Pawtucket, and Providence, R.I., on the one hand, and, on the other, Norwich and Taftville, Conn., Dracut, Franklin, Lowell, Methuen, Webster and Worcester, Mass. *Scrap metal,* between Pawtucket and Providence, R.I., on the one hand, and, on the other, Chicopee Falls, Mass., Torrington, Conn., New York, N.Y., and Jersey City, N.J. *Wool,* between Pawtucket and Providence, R.I., on the one hand, and, on the other, Douglas, Franklin, and Metuen, Mass. Regular routes: *general commodities,* between Providence, R.I., and Boston, Mass., serving the intermediate points of Pawtucket, R.I. and North Attleboro, Mass., from Providence, over U.S. Highway 1 to Boston and return over the same route, between Providence, R.I., and Boston, Mass., serving the intermediate points of Plainville, Wrentham, Walpole, Norwood and Dedham, Mass., and the off-route points of Attleboro, Norton, Mansfield, Sharon, and Medfield, Mass., from Providence over Rhode Island Highway 1A to junction Massachusetts Highway 1A, thence over Massachusetts Highway 1A to Boston, and return over the same route. Irregular routes: *general commodities,* between Providence, R.I., on the one hand, and, on the other, points in Rhode Island, Massachusetts and Connecticut. (ICC MC 2642, Sub 4) such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses (except in bulk), from the facilities Saylesville Warehouse, Inc., located in Saylesville, Ashton and Pawtucket, R.I., to points in New Hampshire. Applicant's representative is: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, New Jersey 07006. TA lease authority is sought. Transferee holds no authority from the Commission. An application, directly related in part, has been filed in No. MC-151089 (Sub-No. 5F), published in another section of this Federal Register issue.

MC 151089 (Sub-5F), filed June 25, 1980. Applicant: BLUE RIBBON TRUCKING, INC., 167 Fairfield Road, Fairfield, New Jersey 07006. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, New Jersey 07006. Authority to operate as a motor common carrier, over regular routes, in the transportation of: *General commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) serving all intermediate and off-route points in Connecticut, Massachusetts and Rhode Island, (1) between Greenwich, CT and Williamstown, MA, from Greenwich over Int. Hwy. 95 to junction US Hwy. 7 then over US Hwy. 7 to Williamstown, and return over the same route. (2) Between Greenwich, CT and Metheun, MA, (A) from Greenwich over Int. Hwy. 95 to junction Int. Hwy. 91, then over Int. Hwy. 91 to junction Int. Hwy. 86, then over Int. Hwy. 86 to junction Int. Hwy. 90, then over Int. Hwy. 90 to junction Int. Hwy. 93, then over Int. Hwy. 93 to Metheun, and return over the same route, (B) from Greenwich to Int. Hwy. 90 as in 2 (A) above, then over Int. Hwy. 90 to junction Int. Hwy. 495, then over Int. Hwy. 495 to junction Int. Hwy. 93, then over Int. Hwy. 93 to Methuen, and return over the same route, (C) from Greenwich over Int. Hwy. 95 to junction Int. Hwy. 93, then over Int. Hwy. 93 to Methuen, and return over the same route. (3) Between Greenwich, CT and N. Bernardston, MA, from Greenwich over Int. 95 to junction Int. Hwy. 91, then over Int. Hwy. 91 to N. Bernardstown, and return over the same route. (4) between Greenwich, CT and N. Adams, MA, from Greenwich over Int. Hwy. 95 to junction CT Hwy. 8, then over CT Hwy. 8 and MA Hwy 8 to N. Adams, and return over the same route. (5) Between Greenwich, CT and Salisbury, MA, from Greenwich over US Hwy. 1 to Salisbury, and return over the same route. (6) Between Lakeville, CT and Provincetown, MA, from Lakeville over US Hwy. 44 to junction Int. Hwy. 84, then over Int. Hwy. 84 to US Hwy. 6, then over US Hwy. 6 to Provincetown, and return over the same route. (Hearing site: New York, N.Y) This application is directly related in part to an application filed by application under 49 U.S.C. 10926 wherein Blue Ribbon Trucking, Inc., seeks to purchase the operating authority of Standard Transportation Co., Inc. That application is docketed as No. MC-FC-78675 and is published in another section of this Federal Register issue. As the above converted authority

is broader than that sought to be purchased in No. MC-FC-78675, no certificate will be issued until applicant remits the filing fee of $350 to the Commission.

MC-FC-78676. By decision of July 23, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 5, approved the transfer to Robert Joseph Arrington, Sr., d.b.a. R. J. ARRINGTON & SONS TRUCKING, Agawam, MA, of Certificate No. MC-56324, issued January 25, 1974, to Henry S. Stefanik, d.b.a. NORTHSIDE TRUCKING CO., Westfield, MA, authorizing the transportation of *Road building materials,* from Springfield, MA, and points in MA within 10 miles of Springfield, to points in Hartford, Tolland, Litchfield, and Windham Counties, CT, subject to the condition that, prior to or concurrently with consummation, transferor shall settle its debts with owner-operators and confirm this in writing to the Commission. Applicants representative: Patrick A. Doyle, 60 Robbins Rd., Springfield, MA 01104.

MC-FC-78677. By decision of July 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 5, approved the transfer to McPHERSON TRUCKING, INC., Cairo, MO, of Certificate No. MC-144283 (Sub-No. 2F), issued August 23, 1979, to Eugene (Gene) McPherson, Cairo, MO, authorizing the transportation of *coal,* in bulk, in dump vehicles, from points in Howard and Randolph Counties, MO, to points in IL. Applicant's representative: Roselee A. Maier, 202 Guitar Bldg., Columbia, MO 65201.

MC-FC-78678. By decision of July 15, 1980 issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board No. 5 approved the transfer to WORLD SALES, INC., Bell, CA, of Certificate of Registration No. MC-121213 (Sub-No. 1), issued October 9, 1964 to REDWAY TRUCK & WAREHOUSE COMPANY, a corporation, Long Beach, CA, evidencing a right to engage in transportation in interstate commerce corresponding in scope to Certificate of Public Convenience and Necessity granted in Decision No. 61816, dated April 11, 1961, and transferred to transferor in Decision No. 65620, dated July 2, 1963, by the Public Utilities Commission of the State of California, subject to the condition that prior to or concurrently with the consummation of this transfer, applicants file a certified copy of the State certificates as reissued to transferee, or—if the State Commission does not reissue the certificate—a certified copy to the State order approving the transfer of the underlying intrastate rights. Applicant's Representative: Fred H. Mackensen, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212.

MC-FC-78682. By decision of July 23, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 5 approved the transfer to LIEN TRANSPORTATION INC., of Aberdeen, SD, of Certificate No. MC-142687 issued 11/22/77 to E. L. Lien & Sons, Inc., of Aberdeen, SD, authorizing the transportation of: *Aggregates, gravel, rock, sand, clay, dirt, hot mix, mineral filler, fly ash,* and *boiler slag,* between points in Wilkin, Traverse, Big Stone and Lac Qui Parle Counties, MN; Richland, Sargent, Dickey, McIntosh, and Emmons Counties, ND; and Campbell, Walworth, McPherson, Edmunds, Brown, Spink, Marshall, Roberts, Day, Clark, Codington, and Grand Counties, SD. Applicant's representative is: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transferee holds no authority. TA lease not filed.

MC-FC-78641. By decision of July 19, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 5 approved the transfer to BOB STEWART TRUCKING, INC., of Klamath Falls, OR, of a portion of Permit/Certificate No. MC-98327 (Sub-No.) issued 11/29/74 to System 99, of Oakland, CA, authorizing the transportation of: *Construction, drainage, mining, and logging equipment,* which because of size or weight requires the use of special equipment, between points in Klamath County, OR, on the one hand, and, on the other, points in Modoc and Siskiyou Counties, CA, and *iron and steel* articles, from Klamath Falls, OR, to points in Modoc and Siskiyou Counties, CA. Applicant's representative is: John G. McLaughlin, Suite 1440—200 S.W. Market St., Portland, OR 97201. Transferee is not a carrier. An application seeking TA lease has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-24052 Filed 8-8-80; 8:45 am]
BILLING CODE 7035-01-M

Permanent Authority Decisions; Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's rules of practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the trasportation service and to comply with the appropriate statutes and Commission regulations. A copy of an application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrents a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able 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 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 in the form of verified statements filed within 45 days of publication of this decision-notice (September 22, 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 notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verfied statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications

for motor contract carrier authority are those where service is for a named shipper "under contract."

Agatha L. Mergenovich,
Secretary.

MC 96769 (Sub-9F), filed July 28, 1980. Applicant: LIBERTY TEX-PACK EXPRESS, INC., Suite 508, Regal Plaza Building, Dallas, TX 75247. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting shipments weighing 100 lbs. or less, if transported in a motor vehicle in which no one package exceeds 100 lbs., between points in the U.S.

MC 107839 (Sub-191F), filed July 21, 1980. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Ave., Denver, CO 80216. Representative: David E. Driggers, Suite 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *General commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 115669 (Sub-200F), filed July 23, 1980. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar Street, P.O. Box 95, Clay Center, NE 68933. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 134838 (Sub-28F), filed July 23, 1980. Applicant: SOUTHEASTERN TRANSFER & STORAGE CO., INC., P.O. Box 39236, Atlanta, GA 30318. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 140389 (Sub-86F), filed July 24, 1980. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 142909 (Sub-9F), filed July 23, 1980. Applicant: TIMBER TRUCKING, INC., 35 South 600 West, Salt Lake City, UT 84101. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 150339 (Sub-2F), filed July 23, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Vol. No. OP4-004

Decided: July 27, 1980.

By the Commission, Review Board No. 1, members Carleton, Joyce, and Jones.

MC 59117 (Sub-75F), filed July 23, 1980. Applicant: ELLIOTT TRUCK LINE, INC., P.O. Box 1, Vinita, OK 74301. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *general commodities* (except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 108587 (Sub-31F), filed July 17, 1980. Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Ave., Colchester, CT 06415. Representative: S. Harrison Kahn, Suite 733 Investment Bldg., Washington, DC 20005. Transporting *general commodities* (except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 150367 (Sub-1F), filed July 17, 1980. Applicant: GLENDELL L. HARPER, d.b.a. G & G TRUCKING, 766 E. Rosedale, E. Alton, IL 62024. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners,* and *agricultural fertilizers,* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 151337F, filed July 18, 1980. Applicant: PROFIT BY AIR, INC., P.O. Box 388, Valley Stream, NY 11582. Representative: Edward D. Greenberg, 1054 31 St., N.W., Washington, DC 20007. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Vol. No. OP2-008

Decided: August 1, 1980.

By the Commission, Review Board No. 1, Carleton, Joyce, and Jones.

MC 109462 (Sub-30F), filed July 24, 1980. Applicant: LUMBER TRANSPORT, INC., Highway 85—East, Madisonville, KY, 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY, 42431. Transporting: *General commodities* (except household goods as defined by the Commission, hazardous or secret material, and sensitive weapons and munitions) for the US Government, between points in the US.

[FR Doc. 80-24049 Filed 8-8-80; 8:45 am]
BILLING CODE 7035-01-M

Permanent Authority Decisions; Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's rules of practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able 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 noted, this decision is neither a major Federal action significantlay 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 in the form of verified statements filed within 45 days of publication of this decision-notice (September 22, 1980) (or, if the application later become 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 notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

MC 148769 (Sub-3F), filed July 21, 1980. Applicant: SHELDON J. GOLDFIN, d.b.a. NEVADA PRODUCE, 50 Freeport Blvd., Unit No. 17, Sparks, NV 89431. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) between points in the U.S. under a continuing contract(s) with Morton Chemicals Company, a Division of Morton Norwich Products, Inc., of Woodstock, IL.

Vol. No. OP4005

Decided: July 28, 1980.

By the Commission, Review Board No. 1, members Carleton, Joyce, and Jones.

MC 13547 (Sub-10F), filed July 23, 1980. Applicant: LEONARD BROS. TRANSPORT CO., INC., 1528 West 9th St., Kansas City, MO 64101. Representative: Joe M. Lock (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 Kansas City, MO and Wichita, KS: (a) From Kansas City over U.S. Hwy 40 and Interstate Hwy 70 to Topeka, KS, then over the KS Turnpike to the junction of Interstate Hwy 35, then over Interstate Hwy 35 to Wichita, and return over the same route, and (b) over Interstate Hwy 35, (2) Between Wichita and Hutchinson, KS, over U.S. Hwy 96, (3) Between Topeka and Hutchinson, KS: From Topeka over U.S. Hwy 40 and Interstate Hwy 70 to Salina, KS, then over U.S. Hwy 81 and Interstate Hwy 135 to Newton, KS, then over U.S. Hwy 50 to Hutchinson, and return over the same route; and (4) Between Kansas City, MO and Omaha, NE over Interstate Hwy 29; serving no intermediate points in (1), (2), (3) and (4) above.

MC 46797 (Sub-6F), filed July 16, 1980. Applicant: PHILLIPS TRUCK LINE, INC., 785 East St., Memphis, TN 38126. Representative: Edward G. Grogan, Suite 2020, First Tennessee Bldg., Memphis, TN 38103. 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 Jackson, MS and Memphis, TN, over Interstate Hwy 55, serving no intermediate points; (2) between Jackson and Eupora, MS, from Jackson over U.S. Hwy 51 to Durant, MS, then over MS Hwy 12 to Ackerman, MS, then over MS Hwy 9 to Eupora, and return over the same route, serving all intermediate points; (3) between Eupora and Bruce, MS, over MS Hwy 9, serving all intermediate points; (4) between Calhoun City and Houlka, MS, from Calhoun City over MS Hwy 8 to Houston, MS, then over MS Hwy 15 to Old Houlka, MS, then over MS Hwy 32 to Houlka, and return over the same route, serving all intermediate points; (5) between Eupora and Houston, MS, from Eupora over U.S. Hwy 82 to Mathison, MS, then over MS Hwy 15 to Houston, and return over the same route, serving all intermediate points, and serving Pheba, MS as an off-route point; (6) between Bruce and Houlka, MS, over MS Hwy 32, as an alternate route for operating convenience only; and (7) between Jackson and Calhoun City, MS, from Jackson over Interstate Hwy 55 to Grenada, MS, then over MS Hwy 8 to Calhoun City, and return over the same route, as an alternate route for operating convenience only.

MC 65697 (Sub-58F), filed July 17, 1980. Applicant: THEATRES SERVICE CO., INC., P.O. Box 1695, Atlanta, GA 30301. Representative: Paul W. Smith (same address as applicant). Transporting, *such commodities* as are dealt in by retail department stores, between the facilities of Rich's at or near Stone Mountain, GA on the one hand, and, on the other, points in AL, KY, MS, SC and TN.

MC 148737 (Sub-4F), filed July 17, 1980. Applicant: SUNSET EXPRESS CORP., 3665 West 1987 South, Salt Lake City, UT 84104. Representative: Carl I. Sundeaus (same address as applicant). Transporting, *such commodities* as are dealt in or used by discount department stores, (except commodities in bulk), from points in the U.S. (except AK, HI, ID, MT, ND, NM, OR, and WY), to the facilities of Gibson Discount Center, at or near Salt Lake City, UT, restricted to traffic destined to the named facilities.

MC 151026 (Sub-1F), filed July 21, 1980. Applicant: LEONARD THOMAS MILLER, d.b.a. MILLCO, Route 7, Box 49, Mankato, MN 56001. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. *Contract carrier*, transporting, *such commodities* as are dealt in by hardware stores, between points in the U.S. (except AK and HI), under continuing contracts(s) with Cotter and Company, of Mankato, MN.

Vol. No. OP2-007

Decided: August 1, 1980.

By the Commission, Review Board No. 3 members Parker, Fortier, and Hill.

MC 144303 (Sub-20F), filed July 22, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, 406 World Center Building, 918 16th Street, N.W., Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) between points in the US, under a continuing contracts(s) with Ecusta Paper and Film Group, Olin Corporation, of Pisgah Forest, NC, and its subsidiaries and affiliates.

[FR Doc. 80-24048 Filed 8-8-80; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29428]

St. Maries River Railroad Co.—Operation of Lines of Railroad From Bovill to St. Maries, ID and From St. Maries to Plummer, ID

St. Maries River Railroad Company (SMRR), represented by Fritz R. Kahn, Esquire, Suite 1100, 1660 L Street, NW., Washington, D.C. 20036, hereby gives notice that on the 24th day of July, 1980, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 10901 for a decision approving and authorizing it to operate over tracks conveyed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) from Bovill to St. Maries, ID, the Bovill

Branch (a distance of approximately 52 miles) and the line segment from St. Maries to Plummer, ID (a distance of approximately 19 miles) for a total of 71 miles. This section of tracks was the subject of Commission proceeding AB-7 (Sub-No. 86F) in which the Commission approved its abandonment. Final approval of the abandonment was entered by order on April 2, 1980, by the U.S. District Court for the Northern District of Illinois.

SMRR is a newly formed corporation, organized under the laws of the State of Idaho, established for the purpose of acquiring and operating certain segments of railroad lines conveyed by the Trustee of the property of the MILW and by the Washington, Idaho and Montana Railway Company. SMRR is a wholly-owned subsidiary of the Potlach Corporation, a Delaware corporation. It is operating pursuant to the Commission's Service Order No. 1472, served May 23, 1980, as extended by Service Order 1474, served June 11, 1980.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra,* at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-24050 Filed 8-8-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29279]

The Mississippian Railway, Inc.—Acquisition and Operation Between Amory and Fulton, Miss.; National Railway Utilization Corp.—Control—The Mississippian Railway, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition of the properties of the Mississippian Railway (Mississippian) by the Mississippian Railway, Inc., (MR-SC) and the acquisition of control of MR-SC by the National Railway Utilization Corporation (NRUC), from the requirements of 49 U.S.C. 10901 and 49 U.S.C. 11343-11347, which require prior consideration and approval of the transaction by the Commission.

DATE: This decision is effective on August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly (202) 275-7564.

SUPPLEMENTARY INFORMATION:

Procedural Background

On March 7, 1980, MR-SC and NRUC filed a joint petition for exemption under 49 U.S.C. 10505 requesting that the proposed acquisition of the properties of the Mississipian by MR-SC and the proposed acquisition of control of MR-SC by NRUC be exempted from the requirements of obtaining prior Commission approval under 49 U.S.C. 10901 and 11343-11347. In response to the petition, we published a notice in the Federal Register on May 7, 1980, 45 FR 30175 (1980), requesting comments on the proposed exemption. We also noted that concern had been expressed regarding the financial condition of the NRUC, and that interested parties might wish to address this issue in their comments. NRUC filed the only comment. NRUC also filed a petition for leave to amend its previously filed comment. This additional pleading consists of a press release issued by NRUC subsequent to the date the comments in this proceeding were due, June 6, 1980, and related directly to the Commission's concern about NRUC's financial condition. Inclusion of this document will supplement the evidence in this proceeding, and will not prejudice any party, since no other comments either in favor or in oppostion to the proposed exemption have been received. Accordingly, NRUC's petition is granted, and the additional evidence is received into the record.

Our previous notice set forth the facts in this proceeding. As noted, no comments have been filed controverting or otherwise questioning the facts presented in our notice. We will adopt the facts presented and refer to them as needed in our discussion.

NRUC's Financial Status

NRUC's comments address our concern regarding NRUC's financial condition. NRUC states that it incurred a loss of $5.9 million in the first quarter of 1980, compared with an operating profit of $1.6 million in the first quarter of 1979. This result was attributable, in part, to the recent general downturn in the economy, petitioner claims, and the proposed acquisition by MR-SC of the Mississippian will help alleviate considerably NRUC's financial dilemma.

A substantial portion of petitioner's revenues are derived from per diem car-hire rentals on its fleet of over 7,000 50-foot general purpose boxcars. NRUC experienced a significant reduction in the level of boxcar utilization during the first quarter of 1980. NRUC operates the St. Lawrence Railroad, a shortline railroad in northern New York State. Many of the boxcars owned by NRUC, and bearing the markings of the St. Lawrence Railroad have been idled because the railroad's sole connection is with Consolidated Rail Corporation (Conrail) at Norwood, NY. In the past, a substantial number of St. Lawrence boxcars were utilized by Conrail. In recent months, however, Conrail has failed to utilize St. Lawrence boxcars, and, instead, has been directing them "home" empty. Since Conrail has the only connection with St. Lawrence, St. Lawrence cars returning empty from Conrail do not pass over the lines of any other railroad and, thus, there is no opportunity for another carrier to utilize the cars. Further, there is no way for NRUC to make these cars available to other carriers except for Conrail to transport the cars to a junction with the carrier needing them. The cost of such moves is prohibitive. The acquisition of the rail properties of the Mississippian by MR-SC is expected to ameliorate the situation. A number of boxcars bearing the St. Lawrence Railroad markings will be transferred to MR-SC upon consummation of the proposed transaction and the "home road" for cars bearing the markings of MR-SC will be in Mississippi rather than New York State. MR-SC will connect with the St. Louis-San Francisco Railway Company. Positioning these boxcars in Mississippi will make them available to other railroads whom NRUC believes

will be able to utilize the empty boxcars. This will result in greater financial revenues for NRUC.

NRUC's press released dated June 10, 1980, admitted into the record, states that NRUC has obtained concurrence from a committee of its major secured lenders of a proposed plan of debt restructure and modification. NRUC believes that the plan, if accepted, will aid in its efforts to increase utilization of its boxcar fleet and help its financial posture.

We believe that NRUC has satisfactorily shown that while its financial status is less than desirable, the proposed transaction will greatly aid in its efforts to achieve a more balanced and sound financial condition.

Rail Exemption Authority

The acquisition and operation of a line of railroad requires the approval of the Commission under 49 U.S.C. 10901. To obtain such an approval, an application must be filed in compliance with the procedures established in the ICC *Construction, Extension, Acquistion, or Operation of Railroad Lines,* 49 CFR Part 1120 (1978). MR-SC and NRUC have requested an exemption from 49 U.S.C. 10901 so that they will not have to file under Part 1120, *supra.* Similarly, petitioners request exemption from 49 U.S.C. 11343-11347. Those sections require that a carrier must file an application in accordance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures,* 49 CFR Part 1111 (1978). *(Consolidation Procedures).*

We are authorized by 49 U.S.C. 10505 to exempt from our regulation a transaction because of its limited scope. This exemption is available when we find that continued regulation:

(1) Is not necessary to carry out the transportation policy of 49 U.S.C. § 10101;

(2) Would be an unreasonable burden on a person, class of persons, or interstate or foreign commerce; and

(3) would serve little or no useful public purpose. We may act under 49 U.S.C. 10505 only after an opportunity for a proceeding. The notice and request for comments on the petition for exemption provided that opportunity. We must now determine whether the proposed exemption meets the statutory requirements.

Scope of the transaction. The threshold inquiry is whether the transaction is limited in scope. We believe it is.

NRUC is a Class III common carrier by railroad. It presently leases and operates the rail properties of Ogdensburg Bridge and Port Authority under the name of St. Lawrence Railroad and service is provided over two lines: (1) Between Ogdensburg and Norwood, NY, a distance of 25.2 miles; and (2) between Waddington and Norwood, a distance of 18.0 miles. NRUC also controls two Class III railroads, Pickens Railroad Company and the Peninsula Terminal Company.

MR-SC is a non-carrier corporation organized to acquire the assets of the Mississippian and to operate it. The Mississippian is a Class III common carrier by railroad and operates 24.62 miles of line between Fulton and Amory Counties, MS. The line to be acquired by this transaction is less than 25 miles long and is not connected to any other rail properties owned or controlled by NRUC.

The record demonstrates that the proposal would be without operational import, competitive effect, or employee impact. MR-SC intends to invest funds to upgrade the line over the next several years and believes that car volumes (presently eleven shippers utilize the line) will increase when service on the line improves. In view of the record, we conclude that the acquisition of control of MR-SC by NRUC is a transaction of limited scope within the statutory intent.

National Transportation Policy. To insure the development, coordination and preservation of a transportation system that meets the transportation needs of the United States, Congress has declared that it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to Subtitle IV of Title 49, *United States Code.* 49 U.S.C. 10101. In regulating those modes, the transportation policy is to (1) recognize and preserve the inherent advantage of each mode; (2) promote safe, adequate, economic, and efficient transportation; (3) encourage sound economic conditions in transportation, including conditions among carriers; (4) encourage reasonable rates without unreasonable discrimination or unfair or destructive competitive practices; (5) cooperate with each State and its officials on transportation matters; and (6) encourage fair wages and working conditions in the transportation industry.

We believe that advance scrutiny of this transaction is not necessary to carry out the national transportation policy. The proposed transaction should have no effect on any of the policy considerations listed above since the only change involves the acquisition of the properties of the Mississippian by MR-SC and the acquisition and control of MR-SC by NRUC.

Burden. As noted above, to acquire and operate a line of railroad, the applicant must pursuant to 49 U.S.C. 10901 file an application in compliance with 49 CFR Part 1120. Similarly, for NRUC to obtain control of MR-SC pursuant to 49 U.S.C. 11343-11347 it must file a complete application under our *Consolidation Procedures.* Compilation of the necessary material under these sections is a time-consuming task since much of the material must be presented in great detail to be meaningful. In reviewing the record here, we believe that requiring the parties to prosecute applications under 49 U.S.C. 10901 and 11343-11347 would place an unreasonable burden on them and on interstate and foreign commerce.

Public Purpose. Our function under 49 U.S.C. 10901 and 11343-11347 is to determine whether a proposed transaction is required by the public convenience and necessity and is consistent with the public interest. Having found that the instant proposal is of limited scope, that no adverse comments were filed concerning the proposal, and that our regulation of it would be both unnecessary and unreasonably burdensome, we conclude that our review of the matter would serve little or no useful public purpose.

We find:

The application of the requirements of 49 U.S.C. 10901 and 11343-11347 to the proposed acquisition of the properties of the Mississippian Railway by the Mississippian Railway, Inc., and the acquisition of control of the Mississippian Railway, Inc., by the National Railway Utilization Corporation is of a limited scope and (a) is not necessary to carry out the transportation policy of section 10101, (b) would be an unreasonable burden on petitioners and (c) would serve little or no useful public purpose. This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

(1) The Mississippian Railway, Inc. and the National Railway Utilization Corporation are exempted under section 10505 from the requirements of 49 U.S.C. 10901 and 11343-11347 for the limited purpose of the transaction described in this decision.

(2) If the authority is exercised, the Mississippian Railway, Inc., and the National Railway Utilization Corporation shall within 60 days submit three copies of a sworn statement showing all general entries required to record the transaction.

(3) This decision shall be effective on the date of publication in the Federal Register.

(4) This decision is issued under the authority of 49 U.S.C. 10505 and pursuant to 5 U.S.C. 553 and 559.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam.

Dated: July 29, 1980.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-24053 Filed 8-8-80; 8:45 am]

BILLING CODE 7035-01-M

Commission Issuance Regarding Regional Motor Carrier Boards

AGENCY: Interstate Commerce Commission.

ACTION: Notice of amendment.

SUMMARY: The following is an amendment to the Commission Issuance of December 19, 1978 (43 FR 57211, December 6, 1978; amended at 45 FR 31506, May 13, 1980). The purpose of the amendment is to reflect changes in the composition, and titles of members, of the six Regional Motor Carrier Boards. The amendment to Section 41, *Employee Boards Under Section 10304,* does not involve any change in the responsibility of the Boards. Because this document concerns only the internal operations and procedures of the Commission, it is being issued in final form, and comments are not requested.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Kathleen King (202) 275-0956.

Boards

41. Employee Boards under Section 10304.

The last part of paragraph (d), *Current listing of employee board members,* is amended to read as follows:

Regional Motor Carrier Boards

(Regions 1-6)

Assistant Regional Director for Consumer Assistance (Chairman).

Branch Chief, Compliance Branch.

Branch Chief, Complaint and Authority Branch.

This action is taken under the authority of 49 U.S.C. § 10301 and 10321(a).

Decided: August 1, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-24126 Filed 8-8-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

The following applications were filed in Region I. Send protests to Regional Authority Center, Interstate Commerce Commission, 150 Causway St., Rm. 501, Boston, MA 02114.

MC 148596 (Sub-1-1TA), filed July 31, 1980. Applicant: RONALD LAZARO, d.b.a. J. LAZARO TRUCKING, 24 Freeman Street, Newton, MA 02166. Representative: George C. O'Brien, 12 Vernon Street, Norwood, MA 02062. *Clay products, viz; face brick and fire brick,* from Somerville and Boston, MA, to points in Cheshire, Hillsboro, Merrimack, Rockingham and Strafford Counties, New Hampshire. Supporting shipper: Spaulding Brick Company, Somerville, MA.

MC 136393 (Sub-1-1TA), filed July 31, 1980. Applicant: NY, NJ, CT, FREIGHT & MESSENGER CORP., 351 West 38th Street, New York, NY 10018. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10123. *Such merchandise as is dealt in by retail department stores* between San Francisco, CA, on the one hand, and, on the other, the commercial zones of New York, NY, Baltimore, MD, Chicago, IL, Boston, MA, and Philadelphia, PA. Supporting shipper: Montgomery Ward, Oakland, CA.

MC 113843 (Sub-1-11TA), filed July 31, 1980. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MA 02210. Representative: Lawrence T. Sheils, 316 Summer Street, Boston, MA 02210. *Such items as are dealt in by discount and department stores* between points in MA and TX and points in Continental United States. Supporting shippers: Foxmoor Casuals, Bridgewater, MA, Chess King, Worcester, MA.

MC 134401 (Sub-1-1TA), filed July 31, 1980. Applicant: SHERWOOD HUME TRANSPORTATION LTD., 734 Main Street East, R.R. 1, Milton, Ontario, Canada L9T 2X5. Representative: Robert D. Gunderman, Esq., 710 Statler Building, Buffalo, New York 14202. *Common carrier,* irregular routes *such commodities as are dealt in or used by agricultural equipment dealers (except commodities in bulk),* from Albany, GA; Stratton, NE; Fulton, MO; Dewey, OK; Athens, TN; and Lockney, TX, to ports of entry on the United States-Canada Boundary line located in MI and NY, restricted to the transportation of traffic in foreign commerce destined to the facilities and/or dealers of Allied Farm Equipment (Canada), Ltd. in CN. Supporting shipper: Allied Farm Equipment Canada Ltd., Box 910, St. Marys, Ontario, Canada NOM 2VO.

MC 148387 (Sub-1-3TA), filed July 1, 1980. Applicant: S.M.P. INC., 166 Sitgreaves St., Phillipsburg, NJ 08865. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Refractory Products; and (2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above (except commodities in bulk),* Between points in CT, MD, PA, NY, NJ, VA, and DC. Supporting shipper: John Konopka &

Sons, P.O. Box 5923, Tacony & Sanger Sts., Philadelphia, PA 19137.

MC 151392 (Sub-1-1TA), filed July 29, 1980. Applicant: ALPHA MOTOR WAYS, INC., 25 County Ave., Secaucus, NJ 07094. Representative: Harold L. Reckson, 33-28 Halsey Rd., Fair Lawn, NJ 07410. *General commodities,* with the usual exceptions, between Chicago, IL, and points in its commercial zone, on the one hand, and, on the other, Concord, NH, Baltimore and Hagerstown, MD, and points in their respective commercial zones, and points in CT, MA, RI, NY, NJ, PA, DE and DC, restricted to traffic with a prior or subsequent movement by rail. Supporting shippers: There are six certificates of support appended to the application.

MC 8713 (Sub-1-3TA), filed July 30, 1980. Applicant: BRAUN'S EXPRESS, INC., 1494 Main Street (Rear), Millis, MA 02054. Representative: Edward J. Kiley, 1730 M Street, N.W., Washington, D.C. 20036. *Computers, computer parts, and materials and supplies used in the manufacture and distribution of computers,* between Northborough, Westminster and Westfield, MA, on the one hand, and, on the other, Contoocook, NH. Supporting shipper:. Digital Equipment Corp., 444 Whitney Street, Northborough, MA 01532.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St. Room 620, Philadelphia, PA 19106.

MC 145221 (Sub-II-2TA), filed July 28, 1980. Applicant: P.D.F TRUCKING CO., Rt. 250 N.—P.O. Box 398, Milan, OH 44846. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Cabinets and vanities and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above* between pts. in Holmes County, OH, on the one hand, and, on the other, pts. in IL, IN, KY, MD, MI, NY, NC, PA, SC, TN, VA, WV, and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wilson Cabinet Co., Inc., 160 Jones St., Millersburg, OH 44654.

MC 107012 (Sub-II-69TA), filed July 29, 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). *Such commodities as are used by laboratories,* (1) from Oxnard, CA to points in CO, IL, IN, MO, NJ, OR, PA, TX, UT and WA and (2) from Shipshewana, IN to points in AL, CT, DE, DC, FL, GA, IL, KY, ME, MD, MA, MI, MS, NJ, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Becton Dickinson Labware, Division, of Becton Dickinson Corp., 1950 Williams Dr., Oxnard, CA 93030.

Note.—Common control may be involved.

MC 107012 (Sub-II-68TA), filed July 28, 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 address as applicant). *Store fixtures,* from the facilities of Crown Store Co., Inc. at or near New Castle, VA to points in AL, CT, DE, FL, GA, IA, KY, LA, MA, MD, ME, MN, MS, NC, ND, NH, NJ, NY, PA, RI, SC, SD, TN, VT, and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Crown Store Co., 1302 Kittle Rd., Holland, OH 43528.

Note.—Common control may be involved.

MC 52932 (Sub-II-1TA), filed July 28, 1980. Applicant: NORTH PENN TRANSFER, INC., Box 230, Lansdale, PA 19446. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. *Plastic materials and plastic granules,* from Nesquehoning, PA, to the facilities of Rancocas Valley Warehouse and Storage Co., at Mt. Holly, NJ, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Rancocas Valley Warehouse & Storage Co., P.O. Box 1112, Mt. Holly, NJ 08060.

MC 144184 (Sub-II-1TA), filed July 28, 1980. Applicant: R. T. PUGH MOTOR TRANSPORTATION, INC., 233 Whiley Ave., Lancaster, OH 43130. Representative: James Duvall, 220 W. Bridge St., Dublin, OH 43017. *Glass cullet, in bulk, in dump vehicles,* from Marion, OH, to Dunkirk, Lawrenceburg and Marion, IN, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Anchor Hocking Corp., 109 N. Broad St., Lancaster, OH 43130.

MC 136343 (Sub-II-11TA), filed July 28, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Vinyl siding* from Hillsboro County, NH to pts. in the U.S. in and east of WI, IL, KY, TN, MS and LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Gold Bond Building Products, Division of National Gypsum Co., 2001 Rexford Rd., Charlotte, NC 28211.

MC 150339 (Sub-2-7TA), filed July 28, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as applicant). *Contract; irregular: General commodities, except household goods as defined by the Commission and classes A and B explosives,* between points in the U.S., for 270 days, under a continuing contract with Aluminum Smelting & Refining Co., Inc., 5463 Dunham Road, Maple Heights, OH 44137. An underlying ETA seeks 120 days authority. Supporting shipper(s): Aluminum Smelting & Refining Co., Inc., 5463 Dunham Rd., Maple Heights, OH 44137.

MC 107012 (Sub-II-67TA), filed July 25, 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). *Books, toys, games, paper products, telescopes, microscopes and microscope slides* from the facilities of Western Publishing Co., Inc. at Fayetteville, NC to points in AR, IL, IN, MI, MO and TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Western Publishing Co., Inc., 1220 Mound Ave., Racine, WI 53404.

Note.—Common control may be involved.

MC 119821 (Sub-II-3TA), filed July 30, 1980. Applicant: OCHROCH TRANSPORTATION CO., INC., Second St. & Erie Ave., Philadelphia, PA 19140. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. *Paper products,* from the facilities of Sterling Paper Co., Philadelphia, PA to Hartford, CT, and the Baltimore, MD and Washington, DC commercial zones, for 270 days. Supporting shipper(s): Sterling Paper Co., Castor & Tremont Ave., Philadelphia, PA 19137.

MC 119821 (Sub-II-4TA), filed July 29, 1980. Applicant: OCHROCH TRANSPORTATION CO., INC., Second St. and Erie Ave., Philadelphia, PA 19140. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. (1) *Unfinished piece goods,* from Philadelphia, PA to Del Mar, MD and Long Branch, NJ; and, (2) *Finished apparel, on hangers,* from Del Mar, MD and Long Branch, NJ to Philadelphia, PA for 270 days. Supporting shipper: Devon Apparel, Inc., 3300 Frankford Ave., Philadelphia, PA 19134.

MC 2202 (Sub-II-12TA), filed July 25, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014. Common, regular: *General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and*

those requiring special equipment), serving points in Chattooga County, GA as off-route points in connection with applicant's regular routes to and from Rome, GA for 270 days. Applicant proposes to tack the authority sought herein with its regular routes at Rome, GA. Applicant proposes to interline at existing gateways throughout its system. Supporting shipper: Best Manufacturing Co., Menlo, GA.

MC 109124 (Sub-II-8TA), filed July 24, 1980. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. (1) *Refractory products and materials, clay, and bricks* from Negley, OH to Niagara Falls, NY, and (2) *refractory products and materials* from Mexico, MO to Huron, OH, for 270 days. Supporting shippers: Erie Furnance Supply, Inc., 309 Cleveland Rd., W., Box 360, Huron, OH 44839; Lakeway Manufacturing, Inc., 309 Cleveland Rd., W., Box 486, Huron, OH 44839.

MC 106920 (Sub-II-7TA), filed July 24, 1980. Applicant: RIGGS FOOD EXPRESS, INC., West Monroe St., P.O. Box 26, New Bremen, OH 45869. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh St. NW., Washington, D.C. 20001. *Foodstuffs, in vehicles equipped with mechanical refrigeration,* from the facilities of Marzetti Foods, Division of Lancaster Colony at or near Columbus, OH to Baltimore, MD, Minneapolis, MN, St. Louis, MO, Detroit, MI, Worcester, MA, Northlake, IL, Falmouth, VA, Philadelphia and Pittsburgh, PA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Marzetti Foods, Division of Lancaster Colony, 3838 Indianola Ave., Columbus, OH 43214.

MC 50069 (Sub-II-5TA), filed July 24, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon, OH 43616. Representative: William P. Fromm (address same as applicant). *Roofing asphalt, in packages on flat bed trailers,* from Louisville, KY to points in TN and IN for 270 days. Supporting shipper: Ashland Oil, Inc., P.O. Box 391, Ashland; KY, 41101.

MC 151346 (Sub-II-1TA), filed July 28, 1980. Applicant: ZEE CORPORATION, P.O. Box 693, Langhorne, PA 19047. Representative: Robert W. Flowers, P.O. Box 248, Langhorne, PA 19047. *Contract, irregular:* (a) iron and steel articles, (b) building materials, (c) metal floor and roof decking, (d) supplies used in the installation, manufacture, sale, or production of the above specified commodities between points in the United States (except Alaska and Hawaii) under continuing contracts with United Steel Deck, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: United Steel Deck, Inc., 14 Harmich Rd., S. Plainfield, NJ.

MC 57591 (Sub-II-3TA), filed July 28, 1980. Applicant: EVANS DELIVERY COMPANY, INC., P.O. Box 268, Pottsville, PA. 17901. Representative: Albert L. Evans, Jr. (same address as above). *Malt Beverages, Ale, Beer, Beer Tonic, Porter, Stoudt, non-intoxicating Cereal Beverages, Advertising Material, and Empty Malt Beverage Containers,* from the plant site of The F. & M. Schaefer Brewing Co. at Fogelsville, PA, to pts. in CT, DE, KY, ME, MD, MA, NH, NJ, NY, OH, RI, TN, VT, VA and DC, with the right to return Empty Malt Beverage Containers, for 270 days, an underlying ETA seeks 120 day authority. Supporting shipper: The F. & M. Schaefer Brewing Co., P.O. Box 2568, Allentown, PA. 18001.

Note.—Common control may be involved.

MC 125687 (Sub-II-2TA), filed July 28, 1980. Applicant: EASTERN STATES TRANSPORTATION PA., INC., 1060 Lafayette St., York, PA 17405. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW, Washington, DC 20005. *Paper and paper products* from Erie and Lock Haven, PA and Oswego, NY to pts. in CT, ME, MA, NH, NJ, NY, RI, and VT for 270 days. An underlying ETA seeks 120 days authority. Restriction: The transportation authorized herein is restricted to the transportation of traffic originating at the facilities of Hammermill Paper Co. Supporting shipper: Hammermill Paper Co., P.O. Box 1440, 1540 E. Lake Rd., Erie, PA 16533.

MC 2605 (Sub-II-4TA), filed July 29, 1980. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 E. Adams Ave., Phila., PA 19124. Representative: Donald Campanile (same as applicant). *(1) Carbonated and non-carbonated beverages, except in bulk, and (2) empty containers,* between Baltimore, MD, Phila., Concordville, Lancaster, Reading, Pottsville, Allentown, Harrisburg and Shiremanstown, PA for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to tack. Supporting shipper: Beverage Capital Corp., 1620 Whitehead Ct., Baltimore, MD 21207.

MC 110525 (Sub-II-14TA), filed July 29, 1980. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E. Lancaster Ave., Downingtown, PA 19335. Representative: Thomas J. O'Brien (same as applicant). *Paint and varnish, in bulk, in tank vehicles,* from Fort Wayne, IN to MO, NY and OH for 270 days. Supporting shipper: The Valspar Corp., 1101 3rd St. S., Minneapolis, MN 55415.

MC 488 (Sub-II-2TA), filed July 28, 1980. Applicant: BREMAN'S EXPRESS CO., 318 Haymaker Rd., Monroeville, PA 15146. Representative: Leslie S. Breman (same as applicant). *(1) Refractory products (except in bulk) and (2) materials and supplies used in the manufacture and installation of refractories,* between the facilities of Crescent Brick Co., Inc. at E. Canton, OH, on the one hand, and, on the other, pts. in PA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Crescent Brick Co., Inc., Box 1110, Clearfield, PA 16830.

MC 488 (Sub-II-1TA), filed July 28, 1980. Applicant: BREMAN'S EXPRESS CO., 318 Haymaker Rd., Monroeville, PA 15146. Representative: Leslie S. Breman (same as applicant). *Metals, metal products, and materials and supplies used in the production or distribution of metals and metal products (except commodities in bulk),* between the facilities of Cerro Metal Products, in Centre County, PA, on the one hand, and, on the other, pts. in OH, NJ, and NY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cerro Metal Products, P.O. Box 388, Bellefonte, PA 16823.

MC 148522 (Sub-II-5TA), filed July 28, 1980. Applicant: PAUL E. ACE TRUCKING, INC., 930 Clay Ave., Stroudsburg, PA 18360. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Malt beverages, in containers,* from Newark, NJ to Shamokin, Milton, Montrose, Williamsport and Burnham, PA and Geneva, NY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: There are 6 supporting shippers. Their statements may be viewed at the ICC Phila. Regional Office, Phila., PA.

MC 107012 (Sub-II-28TA), filed May 7, 1980. First published in the Federal Register on May 29, 1980 and again on July 14, 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 as applicant). *General commodities (except commodities in bulk, those of unusual value, class A & B explosives, household goods as defined by the Commission,*

* The purpose of republication is to change destination state of NM back to MN as it was originally published on May 29, 1980.

and those requiring special equipment), from the facilities of Black & Decker (U.S.), Inc. at or near Raleigh, NC to points in AZ, AR, CA, CO, DC, FL, GA, IL, IN, IA, KS, MN, LA, MD, MI, MS, MO, NE, NV, NY, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Black & Decker (U.S.), Inc., 701 East Joppa Rd., Towson, MD 21204.

Note.—Common control may be involved.

MC 151002 (Sub-II-1TA), filed June 6, 1980. Originally published in F.R. dated 6/23/80. Applicant: C & H TRUCK BROKERS, P.O. Box 236, Harrington, DE 19952. Representative: John A. Guernsey, 2001 The Fidelity Bldg., Phila., PA 19109. Contract, irregular: *Canned clam products,* from the plant facility of American Original Clam Co. in Cannon, DE to pts. in AL, AR, AZ, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, NE, NH, NV, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, and WI, for 180 days. Supporting shipper: American Original Clam Co., 215 High St., Seaford, DE. Republished to show VT which was omitted from first publication.

The following applications were filed in Region 3. Send protests to: ICC, P.O. Box 7520, Atlanta, GA 30309.

MC 129537 (Sub-3-3TA), filed July 25, 1980. Applicant: REEVES TRANSPORTATION COMPANY, Route 5, Dews Pond Rd., Calhoun, GA 30701. Representative: John C. Vogt, Jr., 406 N. Morgan St., Tampa, FL 33602. *General commodities, in truckload quantities (except those of unusual value, class A & B explosives, hazardous materials or waste, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* from KY to the states of GA and TX. Supporting shipper: Curtis Industries, Industrial Park Road, Shelbyville, KY 40065.

MC 151385 (Sub-3-1TA), filed July 29, 1980. Applicant: CENTRAL LINES, INC. OF FLORIDA, 2006 N.W. 100th St., Miami, FL 33167. Representative: Gerard J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328. *Coffee beans, in bags, and coffee, roasted in packages* between the Ports of Miami, FL, Jacksonville, FL on the one hand and points in Jacksonville and Miami, FL on the other. Supporting shipper: General Coffee, Inc., 16000 N.W. 49th Ave., Miami, FL.

MC 136123 (Sub-3-7TA), filed July 29, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same address as above). *(1) Air conditioning equipment, furnaces, stoves and parts and accessories thereto;* and (2) *materials, supplies and equipment used in the manufacture, thereof* in (1) above between the facilities of Carrier Corporation in Marion County, IN and points in AL, AR, CO, CT, DC, FL, GA, IL, IO, LA, KA, MI, MN, MS, MO, NJ, NY, NC, OH, PA, SC, TN, TX, and VA. Supporting shipper: Carrier Corporation, P.O. Box 4800, Syracuse, NY 13221.

MC 128095 (Sub-3-2TA), filed July 28, 1980. Applicant: IBCO TRUCK LINE, INC., Senter Drive (P.O. Box 1402), Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. (1) *Furniture and furniture parts* from Atlanta, GA to points in the states of AL, AR, LA, MS and TN; and, (2) *Equipment, material and supplies* used in the manufacture distribution, and sale of the commodities named in (1) above in the reverse direction (except commodities in bulk, in tank vehicles). Supporting shipper: Simmons U.S.A., 6 Executive Park, Atlanta, GA 30329.

MC 115162 (Sub-3-10TA), filed July 28, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate, P.O. Drawer 500, Evergreen, AL 36401. *Metal Can Ends* from Oil City, PA to New Orleans, LA. Supporting shipper: Continental Can Company, U.S.A.; 22 Executive Part West, NE; Atlanta, GA 30329.

MC 141326 (Sub-3-5TA), filed July 29, 1980. Applicant: C. C. SALTER d.b.a., SALTER TRUCKING COMPANY, P.O. Box 67, Eufaula, AL 36027. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. (1) *Metals, metal articles, fabrications, grain bends, augers, fans, heaters, parts and accessories* between the facilities of or used by Conrad-American, Inc. at or near Eufaula, AL, Grand Island, NE, and Houghton, IA, on the one hand, and, on the other, all points in AL, GA, SC, NC, VA, FL, LA, MS, TN, KY, and AR; (2) *materials, equipment and supplies* used in the manufacture of commodities in (1) above between the destination states in (1), on the one hand, and, on the other, facilities of Conrad-American, Inc. at or near Eufaula, AL, Grand Island, NE, and Houghton, IA. Supporting shipper: Conrad-American, Inc. P.O. Box 2, Eufaula, AL 36027.

MC 143921 (Sub-3-3TA), filed July 29, 1980. Applicant: BAMA EXPRESS, INC., P.O. Box 222, Tuscaloosa, AL 35401. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. (1) *Building materials, equipment and supplies;* (2) *forest products;* (3) *metal articles;* (4) *nonmetallic minerals;* (5) *lumber or wood products;* (6) *furniture and fixtures;* (7) *rubber or miscellaneous plastic products;* (8) *clay, concrete, glass or stone products;* (9) *primary metal products;* (10) *fabricated metal products; and* (11) *machinery and supplies* between points in AL, AR, FL, GA, IN, KY, LA, MS, NC, SC, TN, and VA. Supporting shipper: Moore-Handley, Inc., P.O. Box 2607, Birmingham, AL (35202).

MC 146281 (Sub-3-11TA), filed July 29, 1980. Applicant: SILVER FLEET EXPRESS, INC., 4521 Rutledge, Pike, P.O. Box 6089, Knoxville, TN, 37194. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004. *New Furniture and material, supplies and equipment used in the manufacture of same (except commodities in bulk),* between the facilities of James David, Inc., at or near Clinton, TN, on the one hand, and, on the other, New Orleans, LA. Supporting shipper(s): James David Incorporated, P.O. Box 7240, St. Louis, MO 63177.

MC 124887 (Sub-3-6TA), filed July 29, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1. Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Machinery and supplies used in the manufacture of machinery including metal articles primary and fabricated,* between points in Coweta County, GA, on the one hand, and, on the other, points in the United States. Supporting shipper: Humbolt Wedag USA, 50 Amberjack Blvd., Shenandoah, GA 30263.

MC 107515 (Sub-42TA), filed July 25, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. (1) *Such commodities as are dealt in by wholesale and retail food chain and grocery business,* and (2) *materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above* from facilities of The Clorox Company at or near Houston, TX to points in AR and NM. Supporting shipper: The Clorox Company, 1221 Broadway, Oakland, CA 94612.

MC 128720 (Sub-3-8TA), filed July 25, 1980. Applicant: MERCHANTS FREIGHT LINE, INC., 1185 Omohundro Drive, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Appliances and*

hand tools and parts and (3) materials, supplies and equipment used in the manufacture, sale and distribution of same (except commodities in bulk), between the facilities of Oster, division of Sunbeam Corp. located in TN, on the one hand, and, on the other, points in IL, IN, OH, NJ, PA, and WI. Supporting shipper(s): Oster, Division of Sunbeam Corp., 5055 North Lydell Ave., Milwaukee, WI 53217.

MC 121664 (Sub-3-23TA), filed July 29, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 1st Ave. S., Birmingham, AL 35233. *Lumber, Forest products, and Wood products.* Between AL on the one hand, and on the other IN, OH, and MI. Supporting shipper: Timber Sales, P.O. Box 35124.

MC 143540 (Sub-3-6TA), filed July 29, 1980. Applicant: MARINE TRANSPORT COMPANY, Post Office Box 2142, Wilmington, NC 28402. Representative: Ralph McDonald, Attorney at Law, Post Office Box 2246, Raleigh, NC 27602. *Contract* carrier: Irregular: *Plastic and plastic articles* from points in Posey and Vanderburgh Counties, IN to Port Elizabeth, NJ, Baltimore, MD, Newport News, Norfolk and Portsmouth, VA, Morehead City and Wilmington, NC, Charleston, SC, Savannah, GA, Jacksonville and Pensacola, FL, and New Orleans, LA. Supporting shipper(s): General Electric Company, Lexan Lane, Mount Vernon, IN 47620.

MC 151407 (Sub-3-1TA), filed July 31, 1980. Applicant: T & T TRUCKING, INC., 274 N.W. 37th St., P.O. Box 370762, Miami, FL 33137. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, Texas 75245. *Recreational equipment* from Dade Co., FL to points in the states of AZ, AR, CA, CO, ID, IA, KS, MN, TM, NV, NE, MO, NM, OK, LA, ND, SD, OR, TX, UT, WA and WY. Supporting shipper(s): Ebonite Corporation, 14000 Northwest 57th Court, Miami Lakes, FL 33014.

MC 115654 (Sub-317TA), filed July 29, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same address as above). *Frozen foods,* from the facilities of Eggo & Mrs. Smiths Pie Co., Div. of Kellogg, Inc., in Atlanta, GA to Niles IL. Supporting shipper: Eggo & Mrs. Smiths Pies, Div. of Kellogg, Inc., 5601 Bucknell Dr., Atlanta, GA 30336.

MC 107515 (Sub-3-43TA), filed July 29, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Hospital Supplies* from the facilities of Johnson & Johnson at North Brunswick, NJ to facilities of Johnson & Johnson at or near Menlo Park, CA. Supporting shipper: Johnson & Johnson, 501 George Street, New Brunswick, NJ 08903.

MC 146293 (Sub-3-22TA), filed July 30, 1980. Applicant: REGAL TRUCKING CO., INC., 95 Industrial Park Circle, N.E., Lawrenceville, GA 30245. Representative: Richard M. Tettelbaum, Esq., 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Packaging Materials and Cabinetry* (1) from Columbus, GA and Cleveland, TN to Beaver Dam, WI; and (2) from Beaver Dam, WI to facilities of Yamaha Music Manufacturing, Inc. at or near Thomaston, GA. Supporting shipper: Yamaha Music Manufacturing, Inc., 100 Yamaha Park, Thomaston, GA 30286.

MC 148490 (Sub-3-5TA), filed July 29, 1980. Applicant: C. &. N. EVANS TRUCKING COMPANY, INC., RFD 2, Box 39-E, Stoneville, NC 27048. Representative: Clarence B. Evans, President (same address as applicant). *Containers and packing materials,* between points in NC, GA, NY, TX and WI. Supporting shipper: Miller Brewing Co., 3939 West Highland Blvd., Milwaukee, WI. 53201.

MC 138308 (Sub-3-11TA), filed July 29, 1980. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Electrical and non-electrical portable household appliances* between Canton and Jackson, MS on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: National Presto Industries, Inc., 3925 North Hastings Way, Eau Claire, Wisconsin 54701.

MC 107515 (Sub-3-44TA), filed July 29, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *(1) Air conditioning equipment, furnaces and component parts and accessories therefor; and (2) materials, equipment and supplies used in the manufacture, distribution and sale of the commodities in (1) above* between the facilities of Carrier Corp. in the states of NY, TN, TX and AR. Supporting shipper: Carrier Air Conditioning Group, Divisions of Carrier Corporation, Carrier Parkway, DeWitt, NY 13221.

MC 140484 (Sub-3-10TA), filed July 29, 1980. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same as above). *Commodities dealt in or used in the manufacture and distribution of chemicals (except in bulk),* between points in Cook and McHenry Counties, IL, on the one hand, and, on the other points in the states of AL, FL, GA, KY, LA, MS, NC, SC, TN, TX, and WV. Supporting shipper: Morton Chemical, 2 North Riverside Plaza, Chicago, IL 60606.

MC 121222 (Sub-3-1TA), filed July 29, 1980. Applicant: KING MOTOR LINE, INC., 1607 North Ripley Street, Montgomery, AL 36104. Representative: R. S. Richard, 57 Adams Avenue, Montgomery, AL 36197. *Common carrier:* regular route: *General commodities (except those of unusual value, Classes A and B explosives, household goods as by the Interstate Commerce Commission, commodities in bulk in tank vehicles, and those requiring special equipment):* I. (1) between Mobile and Greenville, AL, over U.S. Hwy No. 31, serving all intermediate points and serving all points in Mobile and Baldwin Counties, AL, as off-route points; (2) from Greenville, AL, over AL Hwy 10 to Camden, AL, then over AL Hwy 28 to its intersection with AL Hwy 21, then over AL Hwy 21 to its intersection with U.S. Hwy 80, then over Hwy 80 to Montgomery, AL, and return over the same route, serving all intermediate points and the off-route points of Forest Home, Allenton and Letohatchee, AL; (3) from Atmore, AL, over AL Hwys 21 and 41 to Camden, AL; then from Camden, AL, via AL Hwy 41 to Selma, AL; then from Selma, AL, via U.S. Hwy 80 to Montgomery, AL, and return over the same route, serving all intermediate points and serving all points in Dallas, Montgomery and Baldwin Counties, AL, as off-route points; and from Montgomery, AL, via U.S. Hwy 31 to Greenville, AL, and return over the same route, serving all intermediate points. II. (a) between Mobile, AL, and Pensacola FL: from Mobile over U.S. Hwy 90 to Pensacola, and return over the same route, serving all intermediate points; (b) between Mobile, AL, and Pensacola, FL: from Mobile to Pensacola over Interstate Hwy 10, and return over the same route, serving all intermediate points; (c) between Mobile, AL and Pensacola, FL: from Mobile over U.S. Hwy 31 to Atmore, AL, then over AL Hwy 21 to the AL-FL state line, then over FL Hwy 97 to its intersection with U.S. Hwy 29, then over U.S. Hwy 29 to Pensacola, FL and return over the same route, serving all intermediate points; (d) between Mobile, AL, and Pensacola, FL: from Mobile over U.S. Hwy 98 to Pensacola,

FL, and return over the same route, serving all intermediate points; (e) between Selma, AL, and Pensacola, FL: from Selma over U.S. Hwy 80 to Montgomery, AL, then over U.S. Hwy 31 to Flomaton, AL, then over U.S. Hwy 29 from Flomaton, AL to Pensacola, FL and return over the same route, serving Forest Home, Allenton, and Letohatchee, AL; (f) between Montgomery, AL and Pensacola, FL: from Montgomery over U.S. Hwy 80 to its intersection with AL Hwy 21, then over Hwy 21 to Camden, AL, then over AL Hwys 21 and 47 to Monroeville, AL, then over AL Hwy 41 to its intersection with U.S. Hwy 31 at or near Brewton, AL, then over U.S. Hwy 31 to Flomaton, AL, then over U.S. Hwy 29 to Pensacola, FL and return over the same route, serving all intermediate points; (g) between Montgomery, AL and Mobile, AL: from Montgomery over Interstate Hwy 65 to Mobile and return over the same route, serving all intermediate points; (h) between Monroeville, AL and Pensacola, FL: from Monroeville over AL Hwy 21 to Atmore, AL, then over AL Hwy 21 to the AL-FL state line, then over FL Hwy 97 to its intersection with U.S. Hwy 29, then over U.S. Hwy 29 to Pensacola and return over the same route, serving all intermediate points; (i) between Selma, AL and Pensacola, FL: from Selma, AL, over AL Hwy 41 to Camden, AL, then over AL Hwy 10 to its intersection with U.S. Hwy 31, then over U.S. Hwy 31 to Flomaton, AL, then over U.S. Hwy 29 to Pensacola and return over the same route, serving all intermediate points; (j) In connection with the routes described in (a) through (i) above, authority is sought to serve all points in Dallas, Montgomery, Mobile and Baldwin Counties, AL, and Escambia and Santa Rosa Counties, FL, as off-route points. Supporting shipper: There are 69 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA. Note: Applicant intends to interline at Montgomery, Selma, Monroeville and Mobile, AL, and at Pensacola, FL.

Note.—Applicant seeks authority to serve the commercial zones of all points on the routes described above.

MC 123872 (Sub-3-4TA), filed July 30, 1980. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Allen E. Bowman (address same as applicant). *(1) Cotton; synthetic fibre; yarn, rope and twine; tape, and (2) materials and supplies used in the manufacture of items listed in Item (1) above (except commodities in bulk),* Between the plantsites and facilities of Shuford Mills, Inc. at Alexander, Burke, Caldwell and Catawba Counties, NC and DeKalb County, GA, on the one hand, and, on the other points in AZ, CA, CO, GA, IA, ID, IL, KS, MN, MO, MT, NC, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, WI and WY. Supporting shipper: Shuford Mills, Inc., Highland Ave & 15th St NE, Hickory, NC 28601.

MC 115841 (Sub-3-16TA), filed July 30, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same address as applicant). *Drugs, medicines, solutions, distilled water, syringes, rubber articles, plastic articles, gloves, in-patient treatment kits, and expandable administration sets,* from North Chicago, IL to points in AR, CA, CO, GA, KS, LA, MO, MS, OK, NC, TN, TX, and VA. Supporting shipper: Abbott Laboratories, 14th & Sheridan Road, North Chicago, IL 60064.

MC 151410 (Sub-3-1TA), filed July 30, 1980. Applicant: DAVID OSMENT d.b.a. DAVID OSMENT COMPANY, Route 3, Old Hickory Boulevard, Nashville, Tennessee 37218. Representative: Michael E. Moore, Esq., Waller Lansden Dortch & Davis, 2100 One Commerce Place, Nashville, Tennessee 37239. *Contract carrier:* irregular routes: *brick and related masonry accessories* from Nashville, Tennessee to KY, OH, IN, IL, MO, AR, AL, MS and GA. Supporting shipper: Herbert Materials Incorporated, 1136 Second Avenue, North, Nashville, Tennessee 37208.

MC 115840, (Sub-3-3TA), filed July 31, 1980. Applicant: COLONIAL FAST FREIGHT LINES, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (Same address as applicant). *Iron or steel articles,* from Ashville, AL to points in FL, GA, LA, MS, and TN. Supporting shipper: Dietrich Industries, P.O. Box 400, Ashville, AL 35953.

MC 143059 (Sub-3-14TA), filed July 30, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40232. *Non-ferrous metals (except in bulk),* from the facilities of ASARCO Incorporated or Federated Metals Corp., subsidiary of ASARCO Incorporated, at or near El Paso, TX, Hayden, AZ, East Helena, MT, Denver, CO, and Tacoma, WA to points in the U.S. (except AK and HI). Supporting shipper: ASARCO Incorporated, 611 Olive St., Suite 1755, St. Louis, MO 63101.

MC 150576 (Sub-3-2TA), filed July 29, 1980. Applicant: COASTAL TRANSPORT, INC., P.O. Box 1277, Goldsboro, NC 27530. Representative: Ralph McDonald, Attorney at Law, P.O. Box 2246, Raleigh, NC 27602. *Petroleum and petroleum products* from Chesapeake, VA to points in NC on and east of U.S. Highway #1. Supporting shipper(s): Harrison Oil Co., Inc., P.O. Box 466, Williamston, NC 27892; Jordan Oil Co., Inc., P.O. Box 176, Pangego, NC 27810; and Bellamy Oil Co., Inc., P.O. Box 7, Scotland Neck, NC 27874.

MC 106644 (Sub-3-2TA), filed July 29, 1980. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (Same as applicant). *(1) Commodities, the transportation of which because of size or weight require the use of special equipment, and (2) Self-propelled articles, each weighing 15,000 pounds or more* between points in GA, FL, AL, SC, on the one hand, and, on the other, points in ME, NH, VT, KS and MN. Supporting shipper: There are 20 statements of support which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 111545 (Sub-3-7TA), filed July 31, 1980. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, SE., Marietta, GA 30067. Representative: J. Michael May (same address as applicant). *Iron and steel articles,* from Oakland and Richmond, CA, to Carrollton, TX. Supporting shipper: Eagle Steel Corporation, Suite 150, 123 Northpoint Blvd., Houston, TX 77060.

MC 138882 (Sub-3-23TA), filed July 24, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, Alabama 36081. Representative: John J. Dykema (same address as applicant). (1) *Beverages (except in bulk, in tank vehicles) and* (2) *Materials, equipment and supplies used in the manufacturing and distribution of commodities in (1) above (except in bulk, in tank vehicles)* (1) Between St. Louis, MO on the one hand, and, on the other, points in AL, GA, and TN and (2) Between points in GA on the one hand, and, on the other, points in AL and TN. Restricted to traffic between King Cola Southeast, LTD, its suppliers and customers. Supporting shipper: King Cola Southeast, LTD., 2810 New Spring Road, Suite 112, Atlanta, Georgia 30339.

MC 105120 (Sub-3-3TA), filed July 10, 1980. Republication—Originally Published in Federal Register of 7-21-80, Page 48727 Volume 45, No. 141. Applicant: FREIGHTWAYS EXPRESS, INC., 2700 Sterick Rd., Memphis, TN 38103. Representative: James N. Clay, III (same as above). *General commodities, usual exceptions,* between the facilities

of American Greeting Corp. at McCrory, AR and Little Rock, AR and its commercial zone. Supporting shipper: American Greetings Corp., 10500 American Rd., Cleveland, OH 41444.

Note.—Applicant proposes to tack with existing authority and to interline with other carriers at Little Rock, AR.

MC 136315 (Sub-3-3TA), filed July 8, 1980. Republication—Originally Published in Federal Register of 7-21-80, Page 48726, Volume 45, No. 141. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 236 East Capital St., P.O. Box 22807, Jackson, MS 39205. (1) *Treated and untreated forest products, lumber, posts, poles, piling, timber, cross-ties, particle board, insulation board, insulation sheets, gypsum wallboard, plywood, laminated wood products, veneer,* and (2) *material, equipment and supplies (except commodities in bulk, in tank vehicles)* used in the production and distribution of those products listed in (1) above. Between points in the United States lying in and east of ND, SD, NE, KS, OK, and TX. *Restriction:* restricted to transportation of shipments originating at or destined to facilities of Weyerhaeuser Company, and suppliers of Weyerhaeuser Company, when making shipments for Weyerhaeuser Company and its subsidiaries. Supporting shippers: Weyerhaeuser Company, P.O. Box 2288, Columbus, MS 39701.

MC 112520 (Sub-3-7TA), filed July 31, 1980. Applicant: MCKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Black Liquor, in bulk, in tank vehicles,* from Prattville, AL, to Cantonment, FL. Supporting shipper: Union Camp Corporation, P.O. Box 326, Montgomery, AL 36101.

MC 148183 (Sub-3-9TA), filed August 1, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *Meat and meat products and meat by-products in mechanically refrigerated vehicles, in cans, containers, cartons or packages,* from Gainesville, GA to points in CA or OR. Supporting shipper: Dutch Quality House, P.O. Box 239, Old Oakwood Rd., Gainesville, GA 30503.

MC 147113 (Sub-3-1TA), filed August 1, 1980. Applicant: TEPPCO TRANSPORT, INC., 1111 E. 39th Street, Chattanooga, TN 37409. Representative: Jon G. Soderlund (same address as above). *Molded polystyrene foam egg cartons,* (a) between Lawrenceville, GA, on the one hand, and, on the other, all points in SC, NC, VA, WV, FL, AL, MS, LA, AR and TN; (b) between Decatur, IL, on the one hand, and, on the other, all points in VA, WV, OH, KY and TN. Supporting shipper: Dodlco Packaging Corp., 13400 Riverside Dr., Sherman Oaks, CA.

MC 124896 (Sub-3-4TA), filed August 1, 1980. Applicant: WILLIAMSON TRUCK LINES, INC., Corner Thorne & Ralston Streets, P.O. Box 3489, Wilson, NC 27893. Representative: Peter A. Greene, 404 Farragut Building, 900 Seventeenth St. NW., Washington, DC 20006. *Bananas, agricultural commodities and foodstuffs,* (1) From MD to AL, DE, FL, GA, IL, IN, IA, KY, MI, MO, NJ, NC, OH, PA, SC, TN, WV, WV, and WI; (2) From VA to AL, DE, FL, GA, IL, IN, IA, KY, MD, MI, MO, NJ, NC, OH, PA, SC, TN, WV, WI; (3) From NJ to AL, DE, FL, GA, IL, IN, IA, KY, MD, MI, MO, NC, OH, PA, SC, TN, VA, WV and WI. Supporting shipper: Williamson Distributors, Inc., Florida, Homestead, FL 33030.

MC 120727 (Sub-3-1TA), filed July 29, 1980. Applicant: GALLATIN-PORTLAND FREIGHT LINES, INC., P.O. Box 888, Gallatin, TN 37066. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Common carrier,* regular: *General Commodities, with the usual exceptions,* between Memphis, TN and Paragould, AR, from Memphis, TN over Interstate Hwy 55 to its intersection with U.S. Hwy 63, then over U.S. Hwy 63 to Jonesboro, AR, then over Arkansas Hwy 1 to Paragould, AR and return over the same route, serving the intermediate points of Marked Tree, Truman and Jonesboro, AR. Supporting shipper(s): There are 27 statements of support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

Note.—Applicant proposes to tack with existing authority in MC-120727 and subs thereunder and interline at Memphis, Nashville and Gallatin, TN and Jonesboro, AR.

MC 127634 (Sub-3-1TA), filed July 2, 1980. Republication—Originally Published in Federal Register of 07-21-80 Page 48727, Volume 45, No. 141. Applicant: GAMBRELL TRANSMOBILE, INC., 1820 Fairview Ave., Augusta, GA 20904. Representative: Nathan I. Finkelstein, 1619 New Hampshire Ave. NW., Washington, DC 20009. *Mobile homes,* from all points in GA to all points in SC, FL and AL. Supporting shipper(s): Harrison Mobile Homes Sales, 2049 Gordon Hwy, August, GA 30309 and Colonial Mobile Homes, 1851 Gordon Hwy, Augusta, GA 30909.

MC 150211 (Sub-3-4TA), filed August 1, 1980. Applicant: ASAP EXPRESS, INC., P.O. Box 3520, Jackson, TN 38301. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. *Sheet steel lamination,* from the facilities of Tempel Steel Company located at or near Niles, IL to points in TN, AL, MS and AR. Supporting shipper(s): Tabuchi Electric Co., 99 Whalley Drive, Jackson, TN 38301 and Tempel Steel Company, 5990 Touhy Ave., Niles, IL 60648.

MC 151375 (Sub-3-2TA), filed August 1, 1980. Applicant: COMPUTER TRANSPORT OF GEORGIA, INC., 3914 Shirley Dr., SW., Atlanta, GA 30336. Representative: John C. Fudesco, 1333 New Hampshire Ave., NW., Suite 960, Washington, DC 20036. *Duplicating and reproducing machines, computers, receivers, transmitters, printers, collaters, typerwriters, x-ray equipment, and parts and supplies used in connection with the foregoing commodities,* between Allegheny County, PA, on the one hand, and, on the other, points in OH and WV; and between points in Cumberland County, PA, on the one hand, and, on the other, points in NJ. Supporting shipper: Xerox Corporation, 3000 Des Plaines Ave., Des Plaines, IL 60018.

MC 103051 (Sub-3-4TA), filed July 9, 1980. Republication—Originally Published in Federal Register of 7/21/80, page 48727 Volume 45, No. 141. Applicant: FLEET TRANSPORT CO., INC., 934-44th. Ave., No., P.O. Box 90408, Nashville, TN 37209. Representative: Russell E. Stone (same address as applicant). *Alcohol, in bulk, in tank vehicles* from Savannah, GA and Mobile, AL to points in AL, FL, GA, MS, NC, SC, and TN. Supporting shipper: Scientific South of Alabama, Inc., 2513 31st. Street, SW, Birmingham, AL 35228.

MC 149498 (Sub-3-10TA), filed June 30, 1980. Republication—Originally Published in Federal Register of 7/21/80, page 48733 Volume 45, No. 141. Applicant: RIVER BEND TRANSPORTATION, INC., P.O. Box 5808, Pearl, MS 39208. Representative: Dale Yeager, Sr. (same address as applicant). *General commodities (except those of unusual value, Classes A & B explosives, HHG's as defined by the Commission, commodities in bulk, and those requiring special equipment) which are at the time moving on bills of lading issued by ABC-TNT and Acme Fast Freight, a freight forwarder as defined in Section 10102(8) of the Interstate Commerce Act,* between points in AL, AR, AZ, CA, CO, CT, FL, GA, ID, IL, IN, KY, LA, MI, MO, MS, NC,

NJ, NM, NY, OH, OR, PA, SC, TN, TX, UT, VA, WA, WI, WV, and WY. Supporting shipper: ABC-TNT and Acme Fast Freight, 2000 Santa Cruze, Anaheim, CA 92804.

MC 111485 (Sub-3-3TA), filed May 30, 1980. Republication—Originally Published in Federal Register of 06-18-80, page 41234 Volume 45, No. 119. Applicant: PASCHALL TRUCK LINES, INC., Route 4, Murray, KY 42071. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. *General commodities, usual exceptions,* serving Union City, TN and its commercial zone as off-route points in connection with applicant's existing regular route authority. Supporting shipper: There are 60 statements of support attached to this application which may be examined at the I.C.C. regional office, Atlanta, GA.

Note.—Applicant intends to tack with existing authority in MC-111485, Subs 7, 10 and 19. Also applicant intends to interline with other carriers at Memphis, Nashville and Paris, TN; St. Louis, MO and Louisville and Paducah, KY.

MC 144827 (Sub-3-7TA). Republication—Originally Published in Federal Register of 06-30-80, page 43890 Volume 45, No. 127. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *General commodities* with the usual exceptions from facilities of Acme Fast Freight, Inc. at Norfolk, VA to facilities of Acme Fast Freight, Inc. at Memphis, TN and at points in CA and from facilities of Acme Fast Freight, Inc. at Memphis, TN to facilities of Acme Fast Freight, Inc. at points in CA. Supporting shipper: Acme Fast Freight, Inc., 1289 Pennsylvania St., Memphis, TN 38106.

MC 139797 (Sub-3-2TA), filed June 9, 1980. Republication—Originally Published in Federal Register of 6-23-80, page 42060 Volume 45 No. 122. Applicant: AUGUSTA AIR CARGO, INC., Route 3, Box 60, Augusta, GA 30906. Representative: R. G. Tolar (same as above). *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk),* between Richmond County, GA, on the one hand, and, on the other, points in Columbia, McDuffie, Lincoln, Wilkes, Green, Taliaferro, Hancock, Warren, Clascock, Washington, Jefferson, Burke, Jenkins, Emanuel, Candler, Screven, and Bullock Counties, GA and points in Aiken, Barnwell, Allendale, Hampton, Edgefield and Saluda Counties, SC. Supporting shipper: There are 11 statements in support of this application which may be examined at the I.C.C. Regional Office, Atlanta, GA. Applicant intends to tack with its existing authority in MC-139797. Also, applicant intends to interline with other carriers in Richmond County, GA.

MC 144503 (Sub-3-1TA), filed June 6, 1980. Republication—Originally Published in Federal Register of 6-23-80 page 42059 Volume 45, No. 122. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. *(1) Yarn, (2) Thread, sewing, cotton, yarn, fasteners, slide (zippers), dry goods, books, cloth plastic articles, needles, notions, display cases, racks, sheet steel articles and friction fabric,* and *(3) Thread, sewing, cotton, yarn, fasteners, slide (zippers), dry goods, books, cloth, plastic articles, needles, notions, display cases, racks, sheet steel articles and friction fabric.* (1) From the plantsite of Coats & Clark Sales Corp. located at or near Albany, GA to the states of MO, KS, NB, IA, IL, IN, OH, MI, WI, MN, SD, KY, AL, MS, SC, NC, TN, & LA. (2) From the plantsite of Coats & Clark Sales Corp. located at or near Doraville, GA to the state of MO, (3) From the plantsite of Coats & Clark Sales Corp. located at or near St. Louis, MO to the state of MN. Supporting shipper: Coats & Clark Sales Corp., 2915 N.E. Parkway, Doraville, GA 30340.

The following protests were filed in Region 4. Send protests to: Interstate Commerce Commission, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 36556 (Sub-4-1TA), filed July 28, 1980. Applicant: BLACKMON TRUCKING, INC., P.O. Box 186, Somers, WI 53171. Representative: Howard E. Blackmon, P.O. Box 186, Somers, WI 53171. *Canned goods, and such commodities as or dealt in, or used by manufacturers of canned goods,* (except in bulk, in tank vehicles) between the plantsites and/or facilities utilized by the Friday Canning Corporation, at or near (a) Antigo, Cambria, Clintonville, Galesville, Markesan, and Theresa, WI; (b) Louisville, KY; and (c) St. Louis, MO; and points in IL, IN, MI, and OH. Supporting shipper: Friday Canning Corp., 660 North Second Street, New Richmond, WI 54017.

MC 123294 (Sub-4-8TA), filed July 28, 1980. Applicant: WARSAW TRUCKING CO., INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H.E. Miller, Jr. (same address as applicant). *Scrap or waste paper* from the plantsite of Diamond International Corp. at Morris, IL, to the plantsite of Diamond International Corp. at Lockland, OH, and Middletown, OH. Supporting shipper: Diamond International Corporation, 407 Charles Street, Middletown, OH 45042. An underlying ETA seeks 120 days authority.

MC 123294 (Sub-4-9TA), filed July 28, 1980. Applicant: WARSAW TRUCKING CO., INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (Same address as applicant). *Brattice cloth, mine vents, and ridged pipe* from Warsaw, IN, to points in MN, IA, MO, AR, ND, SD, NE, KS, OK, NM, UT, CO, and WY. Supporting shipper: Peabody-ABC, Warsaw, IN 46580. An underlying ETA seeks 120 days authority.

MC 134477 (Sub-4-39TA), filed July 28, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 W. Mendota Rd., West St. Paul, MN 55118. Representative: Thomas Fischbach, P.O. Box 43496, St. Paul, MN 55164. *Such commodities as dealt in by retail department and variety stores (except commodities in bulk),* between the facilities of Ben Franklin, Division of City Products Corp. at or near Baltimore, MD; Chicago, IL, Memphis, TN; Minneapolis, MN; Dallas, TX; Seymour, IN; North Bergan, NJ; Kansas City, MO; and Los Angeles, CA and points in their commercial zones. Supporting shipper: Ben Franklin, 1700 S. Wolf Rd., Des Plaines, IL 60018.

MC 138896 (Sub-4-5TA), filed July 28, 1980. Applicant: AJAX TRANSFER COMPANY, 550 East 5th Street So., So. St. Paul, Minnesota 55075. Representative: Randy Busse, Traffic Manager, 550 East 5th Street So., So. St. Paul, Minnesota 55075. *Such commodities as are handled by retail grocery stores, drug stores, hardware stores, also Chemicals (except in bulk),* from Minneapolis-St. Paul, MN to points in MT. Supporting shipper: Central Warehouse Company, 739 Vandalia, St. Paul, MN 55114.

MC 145437 (Sub-4-3TA), filed July 28, 1980. Applicant: JWI TRUCKING, INC., 8100 N. Teutonia Avenue, Milwaukee, WI 53209. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Contract;* irregular; *Wearing apparel and materials, equipment and supplies used or useful in the manufacture, sale or distribution of wearing apparel* between Minneapolis, MN and Memphis, TN, on the one hand, and, on the other, points in the United States (except AK and HI). Restricted to service to be performed under a continuing contract(s) with Munsingwear, Inc. and Vassarette, a

division of Munsingwear, Inc. An underlying ETA seeks 120 day authority. Supporting shipper: Munsingwear, Inc. and Vassarette, a division of Munsingwear, Inc., 718 Glenwood Av. Minneapolis, MN.

MC 146314 (Sub-4-4TA), filed July 25, 1980. Applicant: G & T TRUCKING CO., Route #1, County RD 2 & I-35 South, Elko, MN 55020. Representative: Thomas Zwiers (same as above). *Construction equipment* between points in LA, MI, MN, NY, TX and WY. Restricted to the transportation of traffic originating at and destined to points in the named states. An underlying ETA application seeks corresponding authority for 120 days. Supporting shipper: General Tractor & Equipment, Shakopee, MN.

MC 146438 (Sub-4-2TA), filed July 28, 1980. Applicant: ETV INC., P.O. Box 393, Comstock Park, MI 49321. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Commodities* dealt in by retail grocery and department stores and *materials and supplies* used in the operation of such stores from all points in the US (except AK, HI and MI) to the facilities of Meijer, Inc. and its subsidiaries in MI. Shipper: Meijer, Inc., 2727 Walker Road, NW., Grand Rapids, MI 49501.

MC 147943 (Sub-4-1TA), filed July 29, 1980. Applicant: E.W.K. CARTAGE, INC., 4855 South Leamington, Chicago, IL 60638. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. *General commodities* (with the usual exceptions) between Chicago, IL and its commercial zone, on the one hand, and, on the other, points in WI and IA. Restricted to the transportation of traffic having a prior or subsequent movement by rail. Supporting Shippers: Cornell Shipping Terminal Services, 3301 S. Ridgeland Av. Berwyn, IL. 60402, Earl's Agency, 430 Maple Av., Aurora, IL. 60505

MC 150103 (Sub-4-7TA), filed July 29, 1980. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington Street, Jefferson, Wisconsin 53549. Representative: Michael J. Wyngaard, 150 E. Gilman Street, Madison, Wisconsin 53703. *Contract;* irregular; *Synthetic stable fiber and synthetic yarn* from Arcadia, Spartanburg and Johnsonville, SC and Charlotte and Kinston, NC to Jefferson, WI. Restricted to service to be performed under a continuing contract(s) with Borg Textile Corporation, a division of Bunker Ramo. An underlying ETA seeks 120 days authority. Supporting Shipper: Borg Textile Corporation, a division of Bunker Ramo, Suite 101, Branklin Building, Eastgate Center, Chattanooga, TN.

MC 150247 (Sub-4-2TA), filed July 29, 1980. Applicant: VANEERDEN TRUCKING COMPANY, INC., 1150 Freeman Ave., SW., Grand Rapids, MI 49503. Representative: J. Michael Smith, 465 Old Kent Bldg., Grand Rapids, MI 49503. *Fresh and frozen meat, meat products and meat byproducts* Between the facilities of Murco, Inc. at or near Plainwell, MI, to Norfolk, Portsmouth, and Williamsburg, VA; Jacksonville, Miami, and Tampa, FL; Nashville, Knoxville, and Memphis, TN; Charleston and Columbia, SC; Bayonne and Camden, NJ; Alameda and Los Angeles, CA; Fort Worth and Houston, TX; Seattle, WA; New Orleans, LA; Chicago, IL; Denver, CO; Atlanta, GA; Watertown, MA; Landover, MD; Birmingham, AL, and all their commercial zones. An underlying ETA seeks 120 days authority. Supporting Shipper: Murco, Inc., P.O. Box 247, Plainwell, MI 49080.

MC 151365 (Sub-4-1TA), filed July 25, 1980. Applicant: MAC OF WISCONSIN, INC., 26 Lake View Dr., Sullivan, WI 53178. Representative: Steven L. Weiman, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Microwave oven cavities, phone booths and equipment, materials and supplies used in their production,* between Osceola and Watertown, WI, on the one hand, and, on the other, Memphis, TN, Columbia, MD, Minneapolis, MN and Northbrook, IL and points in their commercial zones. Supporting Shipper: Watertown Metal Products Company, Inc., 1141 S. 10th St., Watertown, WI 53094.

MC 151376 (Sub-4-1TA), filed: July 28, 1980. Applicant: MORELLI'S DISTRIBUTING, INC., Highway 2 East, Minot, ND 58701. Representative: David C. Britton, 1425 Cottonwood Street, Grand Forks, ND 58201. *Commodities dealt in or used by wholesale distributors of alcoholic beverages, except in bulk,* from LaCrosse and Milwaukee, WI, Peoria, IL, St. Paul, MN, and St. Louis, MO to Bismarck, ND. Supporting shipper: McQuade Distributing Co., Inc., 3433 East Rosser Avenue, Bismarck, ND 58501.

MC 80430 (Sub-4-8TA), filed: July 28, 1980. Applicant: GATEWAY TRANSPORTATION, CO., INC., 455 Park Plaza Drive, La Crosse, 54601. Representative: Lem Smith, 455 Park Plaza Drive, La Crosse, WI 54601. Common regular *General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* (1) Between Des Moines, IA and Albert Lea, MN over U.S. Highway 65, and return over the same route, serving all intermediate points; (2) Between Des Moines, IA and Albert Lea, MN over U.S. Highway 69, and return over the same route, serving all intermediate points; (3) Between the junction of U.S. Highway 65 and IA Highway 330 and Tama, IA over IA Highway 330 to the junction of U.S. Highway 30, then over U.S. Highway 30 to Tama, and return over the same route, serving all intermediate points; (4) Between Mason City, IA and Decorah, IA over U.S. Highway 18 to the junction of IA Highway 24, then over IA Highway 24 to the junction of U.S. Highway 52, then over U.S. Highway 52 to Decorah, and return over the same route, serving no intermediate points; (5) Between Mason City, IA and Waterloo, IA over U.S. Highway 18 to the junction of U.S. Highway 218, then over U.S. Highway 218 to Waterloo, and return over the same route, serving no intermediate points; (6) Serving as off route points, all points in the counties of: Cerro Gordo, Franklin, Hamilton, Hancock, Hardin, Marshall, Polk, Story, Tama, Winnebago, Worth, and Wright, IA and Freeborn, MN. There are 13 supporting shippers.

MC 80430 (Sub-4-9TA), filed: July 29, 1980. Applicant: GATEWAY TRANSPORTATION CO., INC., 455 Park Plaza Drive, La Crosse, 54601. Representative: Lem Smith, 455 Park Plaza Drive, La Crosse, WI 54601. *Common* regular *General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* to serve West Concord, MN as an off-route point in connection with carrier's present operations to and from Owatonna, MN. Supporting shipper: Radial Retreads, Inc., West Concord, MN 55985.

MC 107162 (Sub-4-7TA), filed: July 28, 1980. Applicant: NOBLE GRAHAM TRANSPORT, INC., Rural Route 1, Brimley, MI 49715. Representative: Michael S. Varda, 121 South Pinckney St., Madison, WI 53703. *Lumber,* from points in CT, MA, ME, NC, NH, NJ, OH, PA, RI, VT, VA and WV to points in the Lower Peninsula of MI and points in WI south Wisconsin Hwy 64. Supporting shipper: GMC Hardwoods, Inc., P.O. Box 218, Dover, MA 02030.

MC 143002 (Sub-4-5), filed July 28, 1980. Applicant: C.D.B. INCORPORATED, 155 Spaulding, SE., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing

Building, Lansing, MI 48933. Contract irregular *household and personal care products and materials and supplies used in the manufacture and distribution thereof* between Santa Ana, Los Angeles, Buena Park, Torrance, and La Mirada, CA; Kent, WA; Arlington, TX; Atlanta, GA; Aurora, CO; Des Moines, IA; Dayton, Jamesburg, Secaucus, Metuchen and New Brunswick, NJ, and their respective commercial zones, and the port of entry on the International Boundary Line between the U.S. and Canada at Sweetgrass, MT, on the one hand, and, on the other, various points in the Continental United States under continuing contract(s) with the Amway Corporation. Supporting shipper: Amway Corp., 7575 E. Fulton Rd., Ada, MI 49355.

MC 119750 (Sub-4-2), filed July 29, 1980. Applicant: PERKINS MOTOR TRANSPORT, INC., P.O. Box 218, Savage, MN 55378. Representative: Jack L. McGraw (same address as applicant). *Large off-the-road rubber tires and tubes, (except those used in connection with motor vehicles as defined in Section 203(a)(13) of the Interstate Commerce Act) the transportation of which because of size or weight requires the use of special equipment,* from the facilities of UniRoyal, Inc., at Eau Claire, WI on the one hand, and, on the other, points in the U.S. (Except AK and HI). Restricted to the transportation of traffic originating at or destined to the above named facilities. Supporting shipper: UniRoyal, Inc. Middlebury, CT 06749.

MC 144630 (Sub-4-12TA), filed July 28, 1980. Applicant: STOOPS EXPRESS, INC., 2239 Malibu Court, Anderson, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Steel shelving and bins, unassembled pallet racks, storage racks, screws, and storage cabinets and accessories for such commodities,* from the facilities of Frick-Gallagher Mfg. Co. at Wellston, OH to points in NV. Supporting shipper: Frick-Gallagher Mfg. Co., 201 S. Michigan, Wellston, OH 45692.

MC 128860 (Sub-4-6TA), filed July 25, 1980. Applicant: LARRY'S EXPRESS, INC., 720 Lake Street, Tomah, WI 54660. Representative: James A. Spiegel, Esq., 6425 Odana Road, Madison, WI 53719. *Contract;* Irregular; *Malt beverages and related advertising materials, premiums, and malt beverage dispensing equipment, in mixed loads with malt beverages,* from La Crosse, WI, to Carlyle, East St. Louis, and Nashville, IL. Restricted to transportation to be performed under continuing contracts with James Frerker and Gilbert Kueper, d.b.a. Carlyle Distributing Co., Cripe Distributing, Inc., and East Side Importing, Inc. An underlying ETA seeks 120 days authority. Supporting shippers: James Frerker and Gilbert Kueper, d.b.a. Carlyle Distributing Co., 1811 Fairfax Street, Carlyle, IL 62231; Cripe Distributing, Inc., 705 North Kaskaskia Street, Nashville, IL 62263; and East Side Importing, Inc., 2030 State, East St. Louis, IL 62205.

MC 93186 (Sub-4-4TA), filed July 29, 1980. Applicant: EUDELL WATTS, III d.b.a., WATTS TRANSFER CO., 825 First Avenue, Rock Island, IL 61201. Representative: Daniel C. Sullivan, 10 S. LaSalle, Suite 1600, Chicago, IL 60603. *Motorcyle and automobile parts* between Chicago and Rock Island, IL on the one hand, and, on the other, Davenport, Clinton, Waterloo, Iowa City and Des Moines, IA. An underlying ETA seeks 270 days authority. Supporting shipper: American Motor Honda Co., Inc., 811 2nd Avenue, Rock Island, IL, 61201.

MC 123048 (Sub-4-2TA), filed July 29, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021—21st Street, Racine, WI 53406. Representative: James C. Hardman, 33 North LaSalle Street, Chicago, IL 60602. (1) *Farm, dairy and water treatment equipment, materials and supplies and cleaning products and pesticides,* and (2) *Cleaning products, paint, pesticides and materials, equipment and supplies used in the manufacture, sale or distribution* of the commodities named in (1) above. Restricted against the transportation of commodities in bulk and those which because of size or weight require the use of special equipment. Supporting shipper: Babson Bros. Co., 2100 S. York Rd., Oak Brook, IL 60521.

MC 906 (Sub-4-5TA), filed July 29, 1980. Applicant: CONSOLIDATED CARTAGE COMPANY, INC., P.O. Box 171, Argo, IL 60501. Representative: Eugene L. Cohn, Rm. 2255, One North La Salle Street, Chicago, IL 60602. *Televisions, electronic equipment, materials, equipment and supplies used in the manufacture and distribution of electronic and television equipment,* between Chicago, IL, commercial zone, on the one hand, and, on the other Aurora, MO, Bryan, OH, Beaver Dam, WI, and their commercial zones. Supporting shipper: Matsushita Industrial Company, 9401 West Grand Ave., Franklin Park, IL 60131.

MC 106674 (Sub-4-30TA), filed August 1, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). (1) *Printed matter,* and (2) *materials and supplies used in the manufacture or distribution of printed matter except commodities in bulk* between the plant sites and storage facilities of R. R. Donnelley & Sons located at Harrisonburg, VA on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and LA. Restricted to shipments originating or terminating at the facilities of R. R. Donnelley at or near Harrisonburg, VA. Supporting shipper: R. R. Donnelley & Sons Company.

MC 108937 (Sub-4-4TA), filed July 31, 1980. Applicant: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Road, St. Paul, MN 55113. Representative: Jerry E. Hess, P.O. Box 43640, St. Paul, MN 55164. Common carrier, regular routes, *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 Cincinnati, OH and Atlanta, GA, over Interstate Hwy 75, serving all intermediate points; (2) between Cincinnati, OH and Winston-Salem, NC, over U.S. Hwy 52, serving all intermediate points in Ohio and North Carolina; (3) between Canton, OH and Charlotte, NC, over Interstate Hwy 77, serving all intermediate points in Ohio and North Carolina; (4) between Louisville, KY and junction Interstate Hwy 24 and Interstate Hwy 75; from Louisville over Interstate Hwy 65 to junction Interstate Hwy 24, thence over Interstate Hwy 24 to junction Interstate Hwy 75, and return over the same route, serving all intermediate points in Tennessee; (5) between Atlanta, GA and Greensboro, NC, over Interstate Hwy 85, serving all intermediate points; (6) between Raleigh, NC and Winston-Salem, NC, over Interstate Hwy 40, serving all intermediate points and the off-route points of Apex, Chapel Hill, Farmville, Greenville, Research Triangle Park, Rocky Mount, Tarboro, Washington and Wilson, NC; (7) between junction Interstate Hwys 85 and 26 and junction Interstate Hwys 75 and 40; from junction Interstate Hwys 85 and 26 over Interstate Hwy 26 to junction Interstate Hwys 26 and 40, thence over Interstate Hwy 40 to junction Interstate Hwy 75, and return over the same route; (8) between Louisville, KY and junction Interstate Hwys 64 and 77, over Interstate Hwy 64; (9) between Buffalo, NY and Albany, NY, over Interstate Hwy 90, serving all intermediate points and the off-route points of Rochester, Rome and Troy, NY.

There are 72 shippers certifications of support filed with this application.

MC 109154 (Sub-4-2TA), filed July 31, 1980. Applicant: BAYLOR TRUCKING, INC., R.R. 1, Milan, Indiana 47031. Representative: Robert W. Loser III, 1101 Chamber of Commerce Bldg., Indianapolis, Indiana 46204. (1) *Such commodities* as are dealt in by manufacturers and distributors of paper, and (2) *Printed matter,* and (3) *Materials, equipment and supplies* used in the manufacture and distribution of paper and printed matter, between Kalamzoo County, MI, on the one hand, and, on the other, points in DE, IL, IN, KY, MD, NJ, NY, OH, PA, VT, VA and DC. Supporting shipper: Printing Service, Inc., 1451 E. Lincoln, Madison Heights, MI 48071. An underlying ETA seeks 120 days authority.

MC 111310 (Sub-4-5TA), filed July 31, 1980. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, WI 54615. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Carbonated beverages* from (a) Granite City, IL and Columbus, OH to points in MI; and (b) from Lenexa, KS to points in MN, ND, SD, and WI. An underlying ETA seeks 90 days authority. Supporting shipper: Shasta Beverage, Inc., 55 Corporate Woods, 9300 W. 110th St., Overland Park, KS 66210.

MC 112801 (Sub-4-1TA), filed July 30, 1980. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (same as applicant). *Liquid chemicals,* in bulk, in tank vehicles, from the facilities of Jefferson Chemical Co. at or near Austin, Conroe, and Port Neches, TX to points in OH. An underlying ETA seeks 120 days authority. Supporting shipper: Tag Chemical Co., 1033 South Avenue, Toledo, OH 43609.

MC 124078 (Sub-4-32TA), filed July 31, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Flour and grain products* in bulk, from Hillsdale, MI to St. Charles, Melrose Park, Chicago, and Millstadt, IL, Boston, MA, New York, NY, Waverly, NJ & Canton, OH. Supporting shipper: DCA Food Industries, Inc., 919 Third Avenue, New York, NY 10022.

MC 124078 (Sub-4-33TA), filed July 31, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Chemicals,* in bulk, in tank vehicles, from Augusta, GA to points in the U.S. in, south and east of MN, NE, KS, OK & TX. Supporting shipper: Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63166

MC 128205 (Sub-4-8TA), filed July 28, 1980. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 S. Doty Ave., Chicago, IL 60623. Representative: Arnold L. Burke, 180 N. LaSalle St., Chicago, IL 60601. *Foundry facings, sand additives and core compounds,* from Burbank and Cincinnati, OH; Chicago, IL; and Birmingham, AL, to points in the U.S. in and east of WI, IL, KY, TN, and MS. Supporting shipper: Hill & Griffith, 1262 State Avenue, Cincinnati, OH.

MC 128205 (Sub-4-9TA), filed July 28, 1980. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 S. Doty Ave., Chicago, IL 60623. Representative: Arnold L. Burke, 180 N. LaSalle St., Chicago, IL 60601. *Sulfuric acid and sulfur dioxide* in bulk in tank vehicles, having a prior movement by rail, from the facilities used by C-I-L Chemicals, Inc. at Chicago, IL to points in IL, IN, IA, OH, MI, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: C-I-L Chemicals, Inc., 800 Marion Avenue, River Rouge, MI 48218.

MC 129974 (Sub-4-1TA), filed July 30, 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:* Irregular route: *meats, 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 with Held Beef Industries, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Held Beef Industries, Inc., Stockyard Road, West Fargo, ND 58078.

MC 143436 (Sub-4-5TA), filed July 29, 1980. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 8328 Hill Gail Road, P.O. Box 41228, Indianapolis, IN 46241. Representative: Stephen M. Gentry, 1502 Main Street, Speedway, IN 46224. *Confectionery items* in vehicles equipped with mechanical refrigeration from the facilities of M & M Mars, a division of Mars, Incorporated, at or near Cincinnati, OH to points in IN and KY. An underlying ETA seeks 270 days authority. Supporting shipper: M & M Mars, a division of Mars, Incorporated, High Street, Hackettsville, NJ 07840.

MC 145664 (Sub-4-6TA), filed July 30, 1980. Applicant: STALBERGER, INC., 223 S. 50th Ave., W. Duluth, MN 55807. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Particleboard or composition board,* from the port of entry on the Itnl. Boundary Line between the U.S. and Canada located at or near Grand Portage, MN to points in AZ, CO, NM, OK, TX, and UT restricted to the traffic originating at the facilities of MacMillan Bloedel Building Materials. An underlying ETA seeks 120 days authority. Supporting shipper: MacMillan Bloedel Building Materials, P.O. Box 608, Thunder Bay, Ontario, Canada P7C4W6.

MC 147499 (Sub-4-3TA), filed July 28, 1980. Applicant: D. H. TRANSFER INC., 671 M-73, Iron River, MI 49935. Representative: Donald Hooper (Same as above). Common; irregular; *(1) Hardwood systems, synthetic flooring systems, hardwood and synthetic flooring. (2) Materials and supplies used in the installation of the commodities in (1) above, and (3) lumber, wood products and millwork. From:* The facilities of Abendroth-Gamble-Ahonen at or near Amasa, MI *TO* points in the U.S. in and East of the States of IN, KY, TN, and MS. Supporting shipper: AGA, Inc., P.O. Box 25, Amasa, MI 49903.

MC 148064 (Sub-4-1TA), filed August 1, 1980. Applicant: M. T. TRUCKING, INC., Route 2, Zimmerman, MN 55398. Representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101. Contract, Irregular; *Cabinets and materials, equipment and supplies used in the manufacture thereof,* between points in the U.S. under continuing contracts with Crystal Cabinet Works, Inc. of Princeton, MN. Supporting shipper: Crystal Cabinet Works, Inc., P.O. Box 206, Rt. 2, Princeton, MN 55371.

MC 150103 (Sub-4-8TA), filed July 31, 1980. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington St., Jefferson, WI 53549. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Contract;* irregular; *Fabric* from points in GA, NC, SC, and TN to Booneville, MS. Restricted to a service to be performed under a continuing contract(s) with Curly's Fabric Company. An underlying ETA seeks 120 days authority. Supporting shipper: Curly's Fabric Company, 2076 Tennyson Lane, Highland Park, IL 60035.

MC 15033 (Sub-4-2TÂ), filed July 31, 1980. Applicant: DDI TRANSPORT, INC., 1010 Jorie Blvd., Oak Brook, IL 60521. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Intravenous solutions, drugs and health-care products, hospital supplies, (except in bulk),* from the facilities of Abbott Laboratories located at or near North Chicago, IL to Los Angeles, San Francisco and Santa Fe Springs, CA; Atlanta, GA; Des Moines, IA; Louisville, KY; Boston, MA; Rocky Montain, NC;

Buffalo, NY; Cincinnati, OH; Cleveland, OH; Philadelphia, PA; Pittsburgh, PA; Seattle, WA. Supporting shipper: Abbott Laboratories, 14th and Sheridan Rds., N. Chicago, IL 60064.

MC 151397 (Sub-4-1TA), filed July 30, 1980. Applicant: FLEET ROAD SERVICE, INC., 558 W. 20th Place, Chicago, IL 60616. Representative: James E. O'Grady, 1338 N. Jackson Street, Waukegan, IL 60085. *Contract* carrier *automotive parts, materials, and supplies; steel tubing, mufflers, and necessary parts for installation; hand tools, and grinding wheels; and raw materials and supplies, containers; and shipping materials used in the manufacture of gaskets and seals, and packing devices,* between the County of Cook, IL on the one hand and the State of IL, IN, MI, OH, SD, OK, KS, TN, MO, TX, KY, GA, NC and NY on the other hand. Supporting shippers: 1. Midas International Corporation, 4101 W. 42nd Place, Chicago, IL 600632. 2. Dresser Industries, Hand Tool Division, 11100 West Belmont, Franklin Park, IL 60131. 3. C. R. Industries, 900 N. State Street, Elgin, IL 60120.

MC 151403 (Sub-4-1TA), filed July 31, 1980. Applicant: WM. L. AMMANN, 49 Cardinal Lane, Highland, IL 62249. Representative: (Same as above). Contract: Irregular. *Food and kindred products (except commodities in bulk, in tank vehicles),* between St. Louis, MO and its commercial zone and the States of IL and WI. Supporting shipper: Sunmark Companies, 10795 Watson Rd., St. Louis, MO 63127.

MC 151404 (Sub-4-1TA), filed July 31, 1980. Applicant: NORTHLAND PRODUCE, INC., 4350 Lincoln Rd., Holland, MI 49423. Representative: Edward N. Button, 580 Northern Avenue, Hagerstown, MD 21740. Contract; irregular; *Sausage,* from Grand Rapids, MI, and its commercial zone to Jackson, MS, and its commercial zone, for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper: Kent Provisions, Inc., 703 Leonard, NW., Grand Rapids, MI 49504.

MC 151415 (Sub-4-1TA), filed August 1, 1980. Applicant: HORIZON CHARTER COACHES, INC., 10542 W. Donges Court, Milwaukee, WI 53224. Representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Passengers and their baggage,* in the same vehicle, in charter operations beginning and ending at points in WI and extending to points in IA, IN, IL, MI, and MN, for 270 days. An underlying ETA seeks 120 days authority. 9 supporting shippers.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, Tx. 76102.

MC 13547 (Sub-5-4TA), filed July 23, 1980. Applicant: LEONARD BROTHERS TRANSPORT COMPANY, INC., 1528 West 9th Street, Kansas City, MO 64101. Representative: Joe M. Lock, 1528 West 9th Street, Kansas City, MO 64101. *General Commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment,* between the Kansas City, Missouri-Kansas Commercial Zone on the one hand and the facilities of Our Own Hardware Company at or near Ottawa, KS on the other. Supporting shipper: Our Own Hardware Company, 2300 West Highway Thirteen, Burnsville, MN 55337.

MC 29910 (Sub-5-41TA), filed July 23, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (same as applicant). Common, Regular. Regular Routes. *General commodities, except those of unusual value, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,* Between Denver, Colorado, and Fort Garland, Colorado: From Denver over U.S. Highway 85 to Walsenburg, Colorado, and then over U.S. Highway 160 to Fort Garland, and return over the same route. Service is authorized to and from the intermediate points of Pueblo and Walsenburg, Colarado, and those between Walsenburg and Fort Garland, except for livestock, coal, and commodities requiring special equipment originating at or destined to points in Colorado; those between Denver and Walsenburg other than Pueblo except for traffic moving in interstate or foreign commerce between points in Colorado where transportation by said carrier is wholly within Colorado; and the off-route point of LaVeta, Colorado, except for livestock, coal, and commodities requiring special equipment. Service at Fort Garland is restricted against commodities requiring special equipment originating at or destined to points in Colorado. Between junction U.S. Highway 85 and Colorado Highway 393, and junction U.S. Highway 85 and Colorado Highway 105, as an alternate route for operating convenience only: From junction U.S. Highway 85 and Colorado Highway 393 over relocated U.S. Highway 85 to junction U.S. Highway 85 over Colorado Highway 105, and return over the same route. Service is not authorized to or from intermediate points. Between Pueblo, Colorado, and Leadville, Colorado: From Pueblo over U.S. Highway 50 to Salida, Colorado, then over Colorado Highway 291 to junction U.S. Highway 285, then over U.S. Highway 285 to junction U.S. Highway 24, and then over U.S. Highway 24 to Leadville, and return over the same route. Service is authorized to and from all intermediate points between Salida and Leadville, including Salida, unrestricted; those between Pueblo and Salida, restricted to traffic moving to or from points beyond Salida. Between South Fork, Colorado, and Durango, Colorado: From South Fork over U.S. Highway 160 to Durango, and return over the same route. Service is authorized to and from all intermediate points, and the off-route point of Ignacio, Colorado. Between Wheeler, Colorado, and Dowd, Colorado: From Wheeler over U.S. Highway 6 to Dowd, and return over the same route. Between junction Colorado Highway 115 and U.S. Highway 85, near Colorado Springs, Colorado, and junction Colorado Highway 115 and U.S. Highway 50, near Florence, Colorado: From junction Colorado Highway 115 and U.S. Highway 85 over Colorado Highway 115 to junction U.S. Highway 50, and return over the same route. Between junction Colorado Highway 120 and 115, near Penrose, Colorado, and junction Colorado Highway 120 and U.S. Highway 50, near Canon City, Colorado: From junction Colorado Highways 120 and 115 over Colorado Highway 120 to junction U.S. Highway 50, and return over the same route. Service is not authorized to or from intermediate points on the above-specified routes. Between Denver, Colorado, and Farmington, New Mexico, as follows: From Denver over U.S. Highway 6 to Wheeler, Colorado, then over Colorado Highway 91 to Leadville, Colorado, then over U.S. Highway 24 to Grand Junction, Colorado, then over U.S. Highway 50 to Montrose, Colorado, and then over U.S. Highway 550 to Farmington. From Denver over U.S. Highway 85 to Colorado Springs, Colorado, then over U.S. Highway 24 via Leadville to Grand Junction, and then as specified above to Farmington; and return over these routes to Denver. Service is authorized to and from the intermediate points of Leadville, Colorado, and those between Leadville and Farmington. Between Denver, Colorado, and Creede, Colorado, as follows: From Denver over U.S. Highway 285 to junction Colorado Highway 291, then over Colorado Highway 291 to Salida, Colorado, then over U.S. Highway 50 to junction U.S. Highway 285, then over U.S. Highway

285 via junction U.S. Highway 285 and Colorado Highway 17 to Monte Vista, Colorado, (also from junction U.S. Highway 285 and Colorado Highway 17 over Colorado Highway 17 to Alamosa, Colorado, then over U.S. Highway 160 to Monte Vista), then over U.S. Highway 160 via South Fork, Colorado, to junction Colorado Highway 149, and then over Colorado Highway 149 to Creede, and return over the same route.

Service is authorized to and from intermediate points of Salida, Colorado, and those between Salida and Creede; and off-route points on Colorado Highway 112 between Hooper and Del Norte, Colorado. Between Colorado Springs, Colorado, and Montrose, Colorado: From Colorado Springs over U.S. Highway 85 to Pueblo, Colorado, then over U.S. Highway 50 to Montrose, and return over the same route. Service is authorized to and from the intermediate poins of Salida, Colorado, and those between Salida and Montrose. Between Delta, Colorado, and Somerset, Colorado: From Delta over Colorado Highway 92 to Hotchkiss, Colorado, then over Colorado Highway 135 to Somerset, and return over the same route. Service is authorized to and from all intermediate points. Between Pueblo, Colorado, and Canon City, Colorado: From Pueblo over U.S. Highway 50 to Canon City, and return over the same route. Service is not authorized to or from intermediate points. Between Cortez, Colorado, and Durango, Colorado: From Cortez over U.S. Highway 160 to Durango, and return over the same route. Service is authorized to and from the intermediate points of Mancos and Hesperus, Colorado. Between Denver, Colorado, and Salida, Colorado: From Denver over U.S. Highway 85 to Pueblo, Colorado, then over U.S. Highway 50 to Salida, and return over the same route. Service is authorized to and from all intermediate points, and the off-route points of Fort Logan, Louviers, Camp Carson, and Minnequa, Colorado. Between Fort Garland, Colorado, and Del Norte, Colorado: From Fort Garland over U.S. Highway 160 to Del Norte, and return over the same route. Service is authorized to and from all intermediate points, and the off-route point of Center, Colorado. Between Alamosa, Colorado, and Antonito, Colorado: From Alamosa over U.S. Highway 285 to Antonito, and return over the same route. Service is authorized to and from all intermediate points; and the off-route points of Capulin, Sanford, and Manassa, Colorado. *Ore and ore concentrates, in bulk, in special equipment.* From Red Mountain Pass, Colorado, to Montrose, Colorado. From Red Mountain Pass over U.S. Highway 550 to Montrose, with no transportation for compensation on return, except as otherwise authorized. Service is not authorized to or from intermediate points. Any repetition in the statement of the authority granted herein shall be construed as conferring only a single operating right. Regular routes. *General Commodities, except those of unusual value, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.* Service is authorized to and from the site of the United States Atomic Energy Plant at or near Marshall, Colorado, as an off-route point in connection with regular route operations held by carrier to and from Denver, Colorado. Between Denver, Colorado, and Canon City, Colorado: From Denver over U.S. Highway 85 to Pueblo, Colorado, then over U.S. Highway 50 to Canon City. Service is authorized between Denver and the intermediate points of Colorado Springs and Pueblo, on the one hand, and, on the other, all intermediate points between Pueblo and Canon City. Between junction Colorado Highway 120 and U.S. Highway 50, at or near Hobson, Colorado, and Canon City, Colorado: From junction Colorado Highway 120 and U.S. Highway 50, over Colorado Highway 120 to Canon City. Service is authorized to and from the intermediate points of Concrete, Portland and Florence, Colorado, and the off-route points of Wetmore, Coal Creek, Rockvale and Chandler, Colorado. Between junction Colorado Highways 267 and 120, and junction Colorado Highway 267 and U.S. Highway 50, serving no intermediate points: From junction Colorado Highways 267 and 120 over Colorado Highway 267 to junction U.S. Highway 50. Service at junction Colorado Highways 267 and 120 is authorized for the purpose of joinder only. Between Colorado Springs over Colorado Highway 115 to junction U.S. Highway 50 approximately one mile south of Penrose, Colorado, then over U.S. Highway 50 to Canon City. Service is authorized to and from the intermediate point of Penrose, Colorado. Between Colorado Springs, Colorado, and Canon City, Colorado: From Colorado Springs over Colorado Highway 115 to junction U.S. Highway 50, approximately one mile south of Penrose, Colorado, then over U.S. Highway 50 to Canon City. Service is authorized to and from the intermediate point of Penrose, Colorado. Between junction Colorado Highway 115 and U.S. Highway 50, and junction Colorado Highways 115 and 120, two miles east of Florence, Colorado:

From junction Colorado Highway 115 and U.S. Highway 50 over Colorado Highway 115 to junction Colorado Highway 120. Service is not authorized to or from intermediate points. Service at junction Colorado Highways 115 and 120 is authorized for the purpose of joinder only and return over these routes. Alternate route for operating convenience only. *General commodities, except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* over an alternate route for operating convenience only in connection with regular route operations between Denver, Colorado, and Farmington, New Mexico: Between Denver, Colorado, on the one hand, and, on the other, junction U.S. Highway 6 and U.S. Highway 40 about five miles east of Idaho Springs, Colorado, with service at junction U.S. Highways 6 and 40 for the purpose of joinder only: From Denver over U.S. Highway 6 to junction U.S. Highway 40, and return over the same route. Between Denver, Colorado, on the one hand, and, on the other, junction Colorado Highway 185 and U.S. Highway 85 near Castle Rock, Colorado, with service at junction Colorado Highway 185 and U.S. Highway 85 for the purpose of joinder only with carrier's authorized route between Denver and Fort Garland over U.S. Highways 85 and 160: From Denver over Colorado Highway 185 to junction U.S. Highway 85, and return over the same route. Regular route. *General commodities, except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.* Between Cortez, Colorado, and McElmo Canyon, Colorado, serving all intermediate points: From Cortez over U.S. Highway 666 to junction unnumbered county road, then over unnumbered county road to McElmo Canyon, and return over the same route. Regular route. *Ore and ore concentrates, in bulk.* Between Pandora, Colorado, and junction Colorado Highway 62 and U.S. Highway 550 at or near Ridgeway, Colorado, serving no intermediate points and serving junction Colorado Highway 62 and U.S. Highway 550 for the purpose of joinder only: From Pandora over Colorado Highway 108 to junction Colorado Highway 145, then over Colorado Highway 145 to Placerville, Colorado, then over Colorado Highway 62 to junction U.S. Highway 550 at or near Ridgeway and return over the same route. Regular route. *General commodities, except those of unusual*

value, household goods defined by the Commission, commodities requiring special equipment, and commodities in bulk. Serving the site of the Glen L. Martin plant, near Waterton, Colorado, as an off-route point in connection with carrier's regular route operations to and from Denver, Colorado. Restriction: The service authorized herein is subject to the following conditions: The authority granted herein is restricted against the transportation of Classes A and B explosives, between the site of the Glen L. Martin plant, near Waterton, Colorado, on the one hand, and, on the other, points in Utah. Between Grand Valley, Colorado, and the Union Oil Company's shale oil plant at Parachute Creek, Colorado, serving all intermediate points: From Grand Valley over unnumbered county highway extending in a northwesterly direction for approximately 15 miles to the Union Oil Company's plant at Parachute Creek, and return over the same route. Serving the Navajo Dam Site near Blanco, New Mexico, and points in Rio Arriba County, New Mexico, within 10 miles of the site as off-route points in connection with carrier's regular route operations between Durango, Colorado, and Farmington, New Mexico. Between Somerset, Colorado, and the site of the Paonia Dam (located approximately 5 miles north and east of junction Colorado Highways 133 and 135), serving no intermediate points: From Somerset over Colorado Highway 135 to junction unnumbered highway to the site of the Paonia Dam, and return over the same route. Serving missile launching sites located at or near Lowry Bombing and Gunnery Range and Elizabeth, Colorado, as off-route points in connection with carrier's regular route operations to and from Denver, Colorado. Irregular routes. *General commodities, except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between Aztec and Farmington, New Mexico, and Blanco, New Mexico. Regular route. *Ore and ore concentrates,* between the mill site of the Standard Metal Corporation, located approximately 2 miles east of Silverton, Colorado, and Montrose, Colorado, serving no intermediate points: From the mill site of the Standard Metals Corporation, approximately 2 miles east of Silverton, Colorado, over Colorado Highway 110 to Silverton, then over U.S. Highway 550 to Montrose and return over the same route. Regular route. *General commodities, except those of unusual value, commodities in bulk, livestock, household goods as defined by the Commission, and commodities requiring special equipment.*

Serving the Four Corners Electric Generating Plant and Dam near Fruitland, New Mexico, as an off-route point in connection with carrier's regular route operations. Serving the site of the Lemon Dam, located on the Florida River approximately 16 miles northeast of Durango, Colorado, as an off-route point in connection with carrier's regular route operations. Between Provo, Utah, and Park City, Utah: From Provo over U.S. Highway 189 to Heber, Utah, then over U.S. Highway 40 to junction unnumbered highway to Park City and return over the same route. Between Orem, Utah, and junction Utah Highway 52 and U.S. Highway 189: From Orem over Utah Highway 52 to junction U.S. Highway 189 and return over the same route. Serving all intermediate points on the above specified routes and the off-route points of Midway, Hot Pots and Center Creek, Utah. Between Salt Lake City, Utah, and junction U.S. Highway 40 and unnumbered highway (formerly Utah Highway 6), approximately one mile north of Park City, Utah, serving all intermediate points: From Salt Lake City over U.S. Highway 40 to junction unnumbered highway (formerly Utah Highway 6), and return over the same route. Between Salt Lake City, Utah and Price, Utah, serving all intermediate points and the off-route points of Kenilworth, Peerless, Spring Canyon, Standardville, Rains, Latuda, and Mutual, Utah: serving the off-route point of the Provo Airport (located above two miles west of Provo, Utah) in the transportation of GENERAL COMMODITIES, except Classes A and B explosives, livestock, household goods as defined by the Commission, and commodities requiring special equipment; and serving the off-route point of Storrs, Utah, and the Carbon Dioxide Plant near Wellington, Utah (serving the Carbon Dioxide Plant from Price, Utah, over U.S. Highway 50 to Wellington, Utah, and then over unnumbered highway and return) in the transportation of GENERAL COMMODITIES, except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment: From Salt Lake City over U.S. Highway 91 via Springville, Utah, to Spanish Fork, Utah, and then over U.S. Highway 6 to Price, and return over the same route. Between Springville, Utah, and junction alternate U.S. Highway 50 (formerly U.S. Highway 50) and U.S. Highway 6, approximately four miles east of Spanish Fork, Utah, serving all intermediate points in the transportation of general commodities, except Classes A and B explosives, livestock, household goods as defined by the Commission and commodities requiring special equipment: From Springville over Alternate U.S. Highway 50 (formerly U.S. Highway 50) to junction U.S. Highway 6 and return over the same route. Between Spanish Fork, Utah, and Marysvale, Utah, serving all intermediate points and off-route points of Spring City, Glenwood, Monroe, Mayfield, Austin, Wales, Venice, Annabella, Fairview, and Mt. Pleasant, Utah (serving Fairview and Mt. Pleasant from Moroni, Utah, over Utah Highway 116 to Mt. Pleasant, then over U.S. Highway 89 to Fairview and return): From Spanish Fork over U.S. Highway 91 to Nephi, Utah, then over Utah Highway 11 to junction U.S. Highway 89, and then over U.S. Highway 89 to Marysvale, and return over the same route. Between Pleasant Grove, Utah, and Provo, Utah, serving all intermediate points, and the off-route of the Provo Airport (located about two miles west of Provo): From Pleasant Grove over Utah Highway 114 to Provo and return over the same route. Between Nephi, Utah, and Gunnison, Utah, serving all intermediate points: From Nephi over U.S. Highway 91 to junction Utah Highway 28 and then over Utah Highway 28 to Gunnison, and return over the same route. Between Price, Utah, and Grand Junction, Colorado, serving all intermediate points and all off-route points within ten miles of the indicated portion of the specified highway, except Sunnyside, Sunnydale, Columbia, Dragerton, and Horse Canyon, Utah: From Price over U.S. Highway 50 to Grand Junction and return over the same route. Between Springville, Utah, and Emery, Utah, serving all intermediate points between Springville and Price, Utah, including Price, restricted to traffic moving to or from points south of Price; all other intermediate points without restriction; and the off-route points within five miles of the portion of Utah Highway 10 specified immediately below: From Springville over alternate U.S. Highway 50 (formerly U.S. Highway 50) to junction U.S. Highway 50 (approximately four miles east of Spanish Fork, Utah), then over U.S. Highway 50 to Price, and then over Utah Highway 10 to Emery, and return over the same route. Between Glenwood Springs, Colorado, and Aspen, Colorado, with service to and from Aspen and all intermediate points restricted to traffic moving to or from Glenwood Springs or points beyond Aspen or Glenwood Springs: From Glenwood Springs over

Colorado Highway 82 to junction Colorado Highway 133, then over Colorado Highway 133 to Carbondale, Colorado, then over unnumbered highway to junction Colorado Highway 82, then over Colorado Highway 82 to Aspen, and return over the same route. Serving Joe's Valley Dam Site near Orangeville, Utah as an off-route point in connection with carrier's authorized regular route operations between Springville and Emery, Utah. Between Pagosa Springs, Colorado, and Blanco, New Mexico, serving all intermediate points and the off-route points in Archuleta County, Colorado, located south and east of U.S. Highway 160 and those in that part of Rio Arriba County, New Mexico, located north of an imaginary line running 10 miles south and parallel to New Mexico Highway 17. From Pagosa Springs over U.S. Highway 84 to junction New Mexico Highway 17, then over New Mexico Highway 17 to Blanco and return over the same route. Between Basalt, Colorado, and Meridith, Colorado, serving all intermediate points and the off-route points of the Ruedi Dam and Reservoir Site:

From Basalt over unnumbered highway to Meredith and return over the same route. Between Fort Garland, Colorado, and the mine and mill site of the Molydenum Corporation of America located on New Mexico Highway 38 approximately four miles west of Red River, New Mexico, serving the intermediate point of San Luis, Colorado, for the purposes of joinder with the route described immediately below only: From Fort Garland over Colorado Highway 159 to the Colorado-New Mexico State line, then over New Mexico Highway 3 to Questa, New Mexico, then east over New Mexico Highway 38 approximately seven miles to the said mine and mill site, and return over the same route. Between Alamosa, Colorado, and San Luis, Colorado, serving no intermediate points and serving San Luis for purposes of joinder with the route described immediately above only: From Alamosa over U.S. Highway 285 to junction Colorado Highway 142, then over Colorado Highway 142 to San Luis, and return over the same route. Between Alamosa, Colorado, and Fort Garland, Colorado, serving no intermediate points and serving Fort Garland for purposes of joinder with the route described in the first paragraph above only: From Alamosa over U.S. Highway 160 to Fort Garland and return over the same route. Between Leadville, Colorado, and Dowd, Colorado, serving all intermediate points on U.S. Highway 6 except Wheeler Junction, Colorado: From Leadville over Colorado Highway 91 to junction U.S. Highway 6, then over U.S. Highway 6 to Dowd, and return over the same route. Serving the plant site of Montezuma Plywood Company, near Colorado Highway 145 about seven miles north of Cortez, Colorado, as an off-route point in connection with carrier's presently authorized regular route operation to and from Cortez, Colorado. Serving points in San Juan County, New Mexico, located within 20 miles of U.S. Highway 550 and New Mexico Highway 17, (except points located on U.S. Highway 550 west of Farmington, New Mexico) as off-route points in connection with carrier's presently authorized regular route operations to and from Farmington, New Mexico. *Irregular routes: Molybdenum concentrates, in bulk,* from the mine and mill site of the Molybdenum Corporation of America, located on New Mexico Highway 38, approximately four miles west of Red River, New Mexico, to Alamosa, Colorado with no transportation for compensation on return except as otherwise authorized. *Regular routes: Classes A and B explosives,* between Grand Junction, Colorado, and Price, Utah, serving all intermediate points: From Grand Junction over U.S. Highway 6 to Price, and return over the same route. *Regular routes: General commodities, except those of unusual value, household goods as defined by the Commission, livestock, commodities in bulk, and those requiring special equipment,* serving points in Pitkin County, Colorado, and points in Lake County, Colorado, which are within 10 miles of Leadville, Colorado, except Climax, Colorado, and points in its Commercial Zone, as defined by the Commission, as off-route points in connection with carrier's presently authorized regular-route operations. Between Antonito, Colorado, and Tres Piedras, New Mexico, serving all intermediate points and serving the off-route points of No Agua, New Mexico, the plant site of Johns-Manville Corp., approximately 1.5 miles east of No Agua, and the plant site of the United Perlite Corp., approximately 16 miles east of No Agua: From Antonio over U.S. Highway 285 to Tres Piedras, and return over the same route. Serving Climax, Colorado, located on Colorado Highway 91 between Wheeler Junction, Colorado, and Leadville, Colorado, as an off-route point in connection with carrier's regular-route operations. Restriction: The service authorized herein is subject to the following conditions: Service at Climax is restricted to the transportation of shipments originating at, or destined to, points west of the Colorado-Utah State line. Between Alamosa, Colorado, and Cortez, Colorado, serving the intermediate points of Hesperus and Mancos, Colorado, and the off-route point of Montezuma Plywood Company, at or near Cortez, Colorado: From Alamosa over U.S. Highway 160 to Cortez, and return over the same route. Between Huntington and Fairview, Utah, over U.S. Highway 31, serving all intermediate points, and serving the plant-site and dam-site of the Utah Power & Light Company, located near Huntington, Utah, as off-route points in connection with carrier's authorized regular-route operations at Huntington and Fairview, Utah. Serving the site of the Twin Lakes Power Plant, located near Twin Lakes, Colorado, as an off-route point in connection with carrier's authorized regular-route authority. Between Salt Lake City, Utah, and Oregon, Utah, serving no intermediate points: From Salt Lake City over U.S. Highway 91 to Ogden, and return over the same route. Between Denver, Colorado, and Craig, Colorado, serving the intermediate points of Steamboat Springs, Milner, McGregor, Tow Creek, Bear River, Mount Harris, Hayden, Kremmling, Hot Sulphur Springs, Granby, Fraser, West Portal, and Idaho Springs, Colorado; and the off-route points of Haybro, Oak Creek, Phippsburg, Yampa, and Toponas, Colorado: From Denver over U.S. Highway 40 to Craig and return over the same route. Serving the site of the Yampa Project located near Craig, Colorado, as an off-route point in connection with carrier's authorized regular-route operations. Serving the facilities used by Valley Camp of Utah, Inc., at or near Scofield, Utah, as off-route points in connection with carrier's otherwise authorized regular-route operations. Between Price, Utah, and Sunnyside, Utah: From Price over U.S. Highway 50 to junction Utah Highway 123, then over Utah Highway 123 to Sunnyside, and return over the same route. Service is authorized to and from all intermediate points, and the off-route points of Columbia and Horse Canyon, Utah. Between Price, Utah, and Mohrland, Utah, serving all intermediate points: From Price over Utah Highway 10 to junction Utah Highway 122, then over Utah Highway 122 to Mohrland, and return over the same route. Description of the transportation service authorized to be conducted solely within the State of Colorado, in intrastate commerce, as a common carrier by motor vehicle. Transportation of general freight, between Pueblo and Boone, and

intermediate points; Pueblo and Coal Creek, and intermediate points; and Pueblo and Beulah, and intermediate points as follows: (a) Commencing at Pueblo, then on the state highway leading through Vineland and Avondale to Boone: (b) Commencing at Pueblo, then on the public highway to Rock Creek and Beulah. Conduct of a transfer, moving and general cartage business from and to Pueblo and to and from all other points in the State of Colorado, subject to the following conditions: (a) For the transportation of commodities other than household goods between points served singly or in combination by scheduled carriers, the carrier shall charge rates which in all cases shall be at least twenty percent in excess of those charged by the scheduled carriers; (b) The carrier shall not operate on schedule between any points. (c) The carrier shall not be permitted, without further authority from the Commission, to establish a branch office or to have any agent employed in any other town or city than Pueblo, for the purpose of developing business: Between Farmington, and Albuquerque, NM: Over New Mexico Highway 17 to junction New Mexico Highway 44 near Bloomfield, NM, then over New Mexico Highway 44 to junction Interstate Highway 25, then over Interstate Highway 25 to Albuquerque, NM, and return over the same route, serving no intermediate points. The sole purpose of this application is to substitute single-line for joint-line operations in which applicant has been participating. Applicant intends to tack this authority with its existing authority and interline with other carriers.

MC 41116 (Sub-5–19TA), filed July 21, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. Contract, Irregular; *Commodities used by, manufactured by or distributed by International Paper Company and its subsidiaries (except in bulk),* between the facilities utilized by International Paper Company on the one hand and all points in the U.S. on the other. Supporting shipper: International Paper Company, 220 E. 42d St., New York, NY 10017.

MC 96769 (Sub-5–1TA), filed July 22, 1980. Applicant: LIBERTY TEX-PACK EXPRESS, INC., Suite 508, Regal Plaza Building, 1499 Regal Row, Dallas, TX 75247. Representative: Thomas F. Sedberry, Lanham, Hatchell, Sedberry & Hoffman, P.O. Box 2165, Austin, TX 78768. *General commodities moving in express service (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 Dallas, TX, and Oklahoma City, OK, via Interstate Hwy. 35 and U.S. Hwy. 77, serving Ardmore, OK, as an intermediate point. Restriction: (1) No service shall be rendered in transportation of any package or article weighing more than 100 pounds. (2) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 500 pounds, from one consignor at one location to one consignee at one location on any one day. Supporting shippers: 39.

MC 96992 (Sub-5–4TA), filed July 22, 1980. Applicant: HIGHWAY PIPELINE TRUCKING CO., P.O. Box 1517, Edinburg, TX 78539. Representative: Kenneth R. Hoffman, Lanham, Hatchell, Sedberry & Hoffman, P.O. Box 2165, Austin, TX 78768. *Foodstuffs and materials and supplies used in the sale and distribution thereof (except commodities in bulk)* from the facilities of Globe Products Company, Inc., in Clifton, NJ to points in AL, AR, GA, LA, KY, MS, NY, TN, TX and OK. Supporting shipper: Globe Products Company, Inc., P.O. Box 1927, 55 Webro Rd., Clifton, NJ 07015.

MC 10556 (Sub-5–10TA), filed July 18, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. *Baby food,* between facilities of Ross Laboratories at Sturgis and Battle Creek, MI, on the one hand, and, on the other, points in the United States, except AK and HI. Supporting shipper: Ross Laboratories, 625 Cleveland Avenue, Columbus, OH 43216.

MC 110817 (Sub-5–1TA), filed July 22, 1980. Applicant: E. L. FARMER & COMPANY, P.O. Box 3512, Odessa, TX 79760. Representative: Mike Cotten, P.O. Box 1148 Austin, TX 78767. *(1) Machinery, equipment, materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, equipment, materials, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof. (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 and wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes and wells,* between points in AR, AZ, CO, KS, LA, MO, MT, NV, NM, OK, TX, UT, and WY, on the one hand, and, on the other, points in CA, IA, ID, NM, ND, NE, OR, SD, and WA. Supporting shipper: 6.

MC 111401 (Sub-5–11TA), filed July 22, 1980. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, 2510 Rock Island Blvd., Enid, OK 73701. Representative: Victor R. Comstock, Vice President, Traffic, (same as applicant). *Crude oil, in bulk, in tank vehicles,* from points in Dundy, Hitchock and Red Willow Counties, NE to Shallow Water, KS. Supporting shipper: Central Crude Corporation, 930 Fourth Financial Center, Wichita, KS 67202.

MC 112713 (Sub-5–9TA), filed July 21, 1980. Applicant: YELLOW FREIGTH SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records, P.O. Box 7270, Shawnee Mission, KS 66207. Common; Regular. *General Commodities (except household goods as defined by the Commission and classes A and B explosives), which are at the time moving on bills of lading of freight forwarders under 49 U.S.C. 10102(8),* between San Antonio, TX and Brownsville, TX, serving no intermediate points: From San Antonio over U.S. Hwy 181 to junction U.S. Hwy 77, then over U.S. Hwy 77 to Brownsville and return over the same route. Supporting shipper: Yellow Fowarding Co., 10990 Roe Avenue, Overland Park, KS 66207.

MC 112713 (Sub-5–10TA), filed July 21, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records, P.O. Box 7270 Shawnee Mission, KS 66207. *General Commodities (except household goods as defined by the Commission and classes A and B explosives),* between points in Berkeley County, SC, on the one hand, and, on the other, points in the United States. Supporting shipper: Alumax of S.C., Inc., P.O. Box 1000, Goose Creek, SC 29445.

MC 113651 (Sub-5–20TA), filed July 23, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Road, Omaha, NE 68154. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA

50309. *Malt beverages* from the facilities of The F. M. Shaefer Brewing Co., Allentown, PA, commercial zone, to points in FL. Supporting shipper the F. M. Shaefer Brewing Co., Box 2568, Allentown, PA 18001.

MC 114273 (Sub-5-24TA), filed July 22, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, Corporate Counsel (same as above). *Televisions and radios,* from Springfield, MO to Fargo, ND and points in the states of CT, DE, IL, IN, IA, KS, KY, MD, MA, MI, MN, NE, NJ, NY, NC, OH, PA, RI, SC, SD, IN, VA, WV, and Washington D.C. Supporting shipper(s): Zenith Radio Corp., 1900 N. Austin Avenue, Chicago, IL 60639.

MC 118468 (Sub-5-13TA), filed June 27, 1980. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract irregular (1) *Refractory products and insulating materials and (2) materials and supplies used in the manufacture and distribution of the commodities in* (1), between the facilities of A. P. Green Refractories Company located at or near Climax, Leetsdale, Philadelphia and Tarentum, PA; East Greenville, Oak Hill, and Jackson in Jackson County, OH; Goose Lake, IL; Mexico and Fulton, MO; Woodridge, NJ; Pueblo, CO; Kimberly and Bessemer, AL; Macon, GA; Thermo, (Hopkins County), TX; Pryor, OK and Troy, ID, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: A. P. Green Refractories Company, Mexico, MO 65265.

MC 125951 (Sub-5-3TA), filed July 21, 1980. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 7000 West Center Road, Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same as applicant). *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the the Report in Descriptions in Motor Carrier Certificates 61 MCC 209 and 766 (except hides and commodities in bulk).* From the facilities of Iowa Beef Processors, Inc. at or near Dakota City, NE and Sioux City, IA to points in the states of AZ, NV, and CA. Supporting shipper: Iowa Beef Proceesors, Inc., Dakota City, NE 68731.

MC 129328 (Sub-5-4TA), filed July 22, 1980. Applicant: PALTEX TRANSPORT CO., P.O. Box 296, Palestine, TX 75801. Representative: Kenneth R. Hoffman, P.O. Box 2165, Austin, TX 78768. Contract irregular *paper and paper products; supplies and materials used in the manufacture and distribution thereof* between the facilities of Sonoco Products Company at or near Tulsa, OK and points in AR, KS, CO, MO, MS, NM, TX, and LA. Supporting shipper: Sonoco Products Company, North Second Street, Hartsville, SC 29550.

MC 133805 (Sub-5-17TA), filed July 22, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1-Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., Post Office Box 1065, Fayehreville, AR 72701. *Chemicals NOI*-from the facilities of Triangle Chemicals, Inc., at or near Bridge City and Houston, TX on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Triangle Chemicals, Inc., Post Office Box 668, Bridge City, TX 77611.

MC 135033 (Sub-5-4TA), filed July 21, 1980. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 7000 West Center Road-Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same as applicant). Contract, Irreg, *commodities as are dealt in by retail department stores.* From points east of the SD, ND, NE, KS, OK, and TX state lines to the facilities of Bomgaars Supply Company, Inc. located at or near Sioux City, Iowa under a continuing contract or contracts with Bomgaars Supply Company, Inc. Supporting shipper: Bomgaars Supply Company, Inc., P.O. Box 3408, Sioux City, IA 51103.

MC 135678 (Sub-9TA), filed July 23, 1980. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. (1) *Air cleaners, coolers other than watervaporative type, dehumidifiers, heaters other than portable, humidifiers or washers with blowers or fans, electric motors,* (2) *Lathes, metal working; machinery or machines, or parts thereof, NOI; presses, as described in NMFC Item 127000 to 127180; tools, power, other than hand tools, separate or combined, with or without stands (as described NMFC Item 131670 to 131674); well boring or drilling machines, portable or self-propelled,* between points in OK, CO, UT, WA, OR, NV, CA, AZ and TX. Supporting shipper: International Environmental Corp., 518 N. Indiana St., Oklahoma City, OK 73108.

MC 136786 (Sub-5-26TA), filed July 21, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *1) such commodities as are dealt in or used by manufacturers and distributors of fire safety equipment and related products; and 2) materials, equipment and supplies used in the manufacture of product listed in 1) above,* between points in Providence County, RI, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Trilling Resources, Ltd., 105 Mason Street, Woonsocket, RI 02895.

MC 136786 (Sub-5-27TA), filed July 21, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Such commodities as are dealt in or used by manufacturers and distributors of bakery products and packaging supplies* between Minneapolis, MN, on the one hand, and, on the other, Milwaukee, WI, and points in their respective commercial zones. Supporting shipper: McGlynn Bakeries, Inc., 7752 Mitchell Road, Eden Prairie, MN 55344.

MC 136786 (Sub-5-28TA), filed July 21, 1980. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50306. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Confectionary (except commodities in bulk),* from the facilities of Fine Candy Company at Oklahoma City, OK, to points in the U.S. (except AK and HI). Supporting shipper: Fine Candy Company, 2700 South May Avenue, P.O. Box 82817, Oklahoma City, OK 73168.

MC 138328 (Sub-5-9TA), filed July 22, 1980. Applicant: CLARENCE L. WERNER, d/b/a WERNER ENTERPRISES, I-80 & Hwy. 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same as applicant). *Silicon carbide and silicon carbide briquettes,* from Milwaukee, WI; Saginaw, MI; and points in Jefferson County, AL, to points in and east of ND, SD, NE, CO and NM, restricted to traffic originating at the facilities of Miller & Company. Supporting shipper: Miller & Company, 55 E. Monroe St., Chicago, IL 60603.

MC 138328 (Sub-5-10TA), filed July 23, 1980. Applicant: CLARENCE L. WERNER, d/b/a WERNER ENTERPRISES, I-80 & Hwy. 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same as applicant). *General commodities (except commodities in bulk, those requiring special equipment, commodities of unusual value, classes A and B explosives, and household goods as*

defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilities of or used by Ardan, Inc. Supporting shipper: Ardan, Inc., 2320 Euclid Ave., Des Moines, IA 50310.

MC 140364 (Sub-5-4TA), filed July 21, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, Manager-Transportation, 111 West Clarendon, Phoenix, AZ 85013. Contract, irregular; (a) *Meats, meat products, meat by-products, dairy products, articles distributed by meat packinghouses, and such commodities as are used by meat packers in the conduct of their business when destined to and for use by meat packers as described in Sections A, B, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 MCC 209 and 766 (except hides and commodities in bulk)* and (b) *Foodstuffs and such commodities as are dealt in by grocery and food business houses, and such commodities used in the manufacturing thereof;* between points in AZ, CA, ID, MT, OR, WA, and WY on the one hand, and, on the other, points in IL, IA, MN, MO, NE, SD, and WI. Restricted to the transportation of traffic originating at, for the account of, or destined to the facilities of Armour and Company, and Armour-Dial Inc. Supporting shipper: Armour and Company, Greyhound Tower, Phoenix, AZ 85077.

MC 140665 (Sub-5-24TA), filed July 21, 1980. Applicant: PRIME, INC., P.O. Box 4208 G. S., Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, Ohio 44266. *Plastic boxes, Cosmetics, and Toilet Preparations,* from the Eli Lilly and Company facilities in Roanoke, VA to the Eli Lilly and Company facilities in Fresno, CA. Supporting shipper: Eli Lilly and Company, 307 E. McCarty St., Indianapolis, IN 46285.

MC 140755 (Sub-5-2TA), filed July 21, 1980. Applicant: BRAY TRANSPORTS, INC., P.O. Box 270, 1401 N. Little Street, Cushing, OK 74023. Representative: Dudley G. Sherrill (same address as applicant). *Zinc ammonium carbonate, in bulk, in tank vehicles,* from Coffeyville, KS to Odessa, TX. Supporting shipper: Sherwin Williams Company, Box 855, Coffeyville, KS 67337.

MC 141865 (Sub-5-7TA), filed July 23, 1980. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, TX 75051. Representative: A. William Brackett, 1108 Continental Life Building, Fort Worth, TX 76102. Contract; Irregular. *Such commodities as are dealt in or used by rental stores (except commodities in bulk)* between points in the United States. Supporting shipper: Ardan, Inc., 2320 Euclid Avenue, Des Moines, IA.

MC 141865 (Sub-5-8TA), filed July 23, 1980. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, TX 75051. Representative: A. William Brackett, 1108 Continental Life Building, Fort Worth, TX 76102. Contract; Irregular. *Foundry core compounds* between points in the United States. Supporting shipper: Foundry Specialists, Inc., 1213 Harrison Ave., Arlington, TX 76011.

MC 141914 (Sub-5-8TA), filed July 22, 1980. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same as applicant). *Foodstuffs* between Franklin County, OH and points in the US except NY, MD, IL, PA, GA, TX, LA, FL, KS, MA and CA. Supporting shipper: T. Marzetti Company, 3838 Indianola Avenue, Columbus, OH 43214.

MC 142508 (Sub-5-32TA), filed July 23, 1980. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Cheese and cheese products and materials, equipment, and supplies used in the manufacture and/or distribution thereof* between Hartington, NE, and points in the United States. Supporting shipper: Neu Cheese Company, Box 577, Hartington, NE 68739.

MC 144622 (Sub-5-44TA), filed July 23, 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. *Power pumps, working heads, or power pump or working head parts, and measuring power pumps, and the materials and supplies used in the manufacture and distribution thereof* between Ft. Wayne, IN and Jasper and Newbern, TN, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Tokheim Corporation, 1602 Wabash Ave., Ft. Wayne, IN 46801.

MC 134501 (Sub-5-9TA), filed July 21, 1980. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. *Furniture,* from the facilities of Spec-Pak, Inc. at or near Columbus, OH, to points in the U.S. (except AK, AR, AZ, CA, HI, LA, MS, TX, and Shelby County, TN) and; *fixtures,* from the facilities of Spec-Pak, Inc. at or near Columbus, OH, to points in the U.S. (except AK and HI). Supporting shipper: Spec-Pak, Inc., 987 Freeway Drive No., Columbus, OH 43299.

MC 145319 (Sub-5-1TA), filed July 21, 1980. Applicant: DALE BRADBURY, d.b.a. BRADBURY COAL COMPANY, P.O. Box 145, Welch, OK 74369. Representative: Fred Rahal, Jr., Esq., Rahal & Anderson, Suite 305 Reunion Center, 9 East Fourth St., Tulsa, OK 74103. *Coal,* from Craig County, OK to points in Labette, Cherokee, Montgomery, Crawford, Neosho and Allen Counties, KS. Supporting shipper: Patch Coal Co., P.O. Box 95, Welch, OK 74369.

MC 145441 (Sub-5-22TA), filed July 23, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Rubber scrap in bags; flammable solid, NOS. Item 3171800,* between all points in the United States. Supporting shipper: Baker Rubber, Inc., P.O. Box 2551, South Bend, IN 46680.

MC 145715 (Sub-5-7TA), filed July 22, 1980. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Rd., Van Buren, AR 72965. Representative: Elaine M. Conway, 10 S. LaSalle St., Chicago, IL 60603. *Plastic film,* from Cleveland and Akron, OH to the facilities of Land O'Frost, Inc. at Hammond and Lansing, IL. Supporting shipper: Land O'Frost, Inc., 16850 Chicago Ave., Chicago, IL, 60438.

MC 145802 (Sub-5-1TA), filed July 21, 1980. Applicant: RONALD E. REED, d.b.a. TRIPLE R TRUCKING, RFD, Laurens, IA 50554. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Frozen bakery products,* from the facilities of Tennessee Doughnut Corporation at Nashville, TN to points in AL, CA, CO, CT, DE, FL, GA, IN, KY, LA, ME, MD, MA, MS, NC, NH, NJ, NY, OH, PA, RI, SC, VT, VA, WV and DC. Supporting shipper(s): Tennessee Doughnut Corporation, 2975 Armory Drive, Nashville, TN 37204.

MC 146898 (Sub-5-2TA), filed July 21, 1980. Applicant: MICKS SERVICE, INC., 2146 Camanche Avenue, Clinton, IA 52732. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *Contract,* Irregular, *casein and sodium caseinate, dry, in packages,* from Erie, IL, to points in IN, IA, KS, MI, MN, MO, OH and WI, under continuing contracts with the Erie Casein Company, Inc., Erie, IL. Supporting shipper: Erie Casein Co., Inc., P.O. Box 648, Erie, IL 61250.

MC 148444 (Sub-5-2TA), filed July 23, 1980. Applicant: RAHMEIER

TRUCKING, INC., P.O. Box 283, Salina, KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Contract,* irregular, (1) *Frozen foods, frozen products and ingredients thereof, except in bulk, in tank vehicles.* (2) *Ingredients, materials, supplies and equipment used in the manufacture and/or distribution of frozen foods and frozen products or ingredients thereof,* (1) From the facilities of Tony's Pizza—a Division of Schwans Sales Enterprises, Inc., at or near Salina, KS to points and places in the United States. (2) From points in the United States (except AK and HI) to the facilities of Tony's Pizza, a Division of Schwans Sales Enterprises, Inc. at or near Salina, KS. Supporting shipper: Schwans Sales Enterprises, Inc., 115 W. College Dr., Marshall, MN 56258.

MC 151209 (Sub-5-1TA), filed July 22, 1980. Applicant: GULF WESTERN EXPRESS, INCORPORATED, P.O. Box 2653, Natchitoches, LA 71457. Representative: John Williams, P.O. Box 2653, Natchitoches, LA 71457. *Contract,* irregular, *floor tile and related accessories,* from the plant site of Uvalde Rock Asphalt Company in Houston, TX to points in AZ and CA. Supporting shipper(s): Uvalde Rock Asphalt Company, P.O. Box 34030, San Antonio, TX 78233.

MC 151238 (Sub-4-1TA), filed July 22, 1980. Applicant: ZERO TANK & TRUCK LINES, INC., P.O. Box 551, Channelview, TX 77530. Representative: Billy R. Reid, 1721 Carl St., Ft. Worth, TX 76103. (1) *Irrigation systems,* (2) *parts for irrigation systems,* (3) *solar energy systems, fuel heating appliances, parts and accessories used in the installation, operation and maintenance of such systems or appliances,* (4) *pipe, tubing, poles and such materials, equipment and supplies as are used in the installation and maintenance thereof,* (5) *iron and steel articles,* (6) *accessories, parts, equipment, materials and supplies used in the manufacture or assembly of the commodities described in (1) through (5) above; and ocean carrier owned or leased equipment loaded or empty,* between the facilities of Valmont Industries, Inc., at or near, Valley, NE, on the one hand, and, on the other, the ports of Houston and Galveston, TX, and New Orleans, LA. Supporting shipper: Valmont Industries, Inc., Hwy 275 West, Valley, NE 68064.

MC 151342 (Sub-5-1TA), filed July 23, 1980. Applicant: CITY-WIDE CONTRACT CARRIER, INC., P.O. Box 65231, West Des Moines, IA 50265. Representative: James M. Hodge, 1980 Finnacial Center, Des Moines, IA 50309. *Candy, confectionery, and display and advertising materials relating thereto,* from Des Moines, IA to all points in IA, traffic will be interlined at Applicant's terminal in Des Moines, IA. Supporting shippers: Tootsie Roll Industries, 7400 S.W. Cicero, Chicago, IL 60629. Leaf Confectionary, Inc., 1155 North Cicero Avenue, Chicago, IL 60651.

MC 2392 (Sub 5-5TA), filed July 26, 1980. Applicant: WHEELER TRANSPORT SERVICE, INC., 7722 F Street, P.O. Box 14248, West Omaha Station, Omaha, NE 68124. Representative: Keith D. Wheeler, P.O. Box 14248, West Omaha Station, Omaha, NE 68124. *Denatured alcohol in bulk in tank vehicles* from Council Bluffs, IA, Grand Island, NE, and Lincoln, NE to points in the states of IA, KS, NE, and SD. Supporting shipper: Farmers Union Co-op Elevator Association, P.O. Box 400, Grand Island, NE, 68801; Jones Oil Company, 2930 N. 33rd, Lincoln, NE, 68504; Ecological Energy, 3150 S. 58th St., Lincoln, NE, 68506; Land O'Lakes Agricultural Services, 2827 8th Ave. S., Fort Dodge, IA, 50501; Oil Products, Inc., P.O. Box 521, Council Bluffs, IA, 51502.

MC 29910 (Sub-5-20TA), filed June 9, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR. 72902. As published in the Federal Register of June 23, 1980, the following application for regular TA appeared in error. Corrections are as follows: 1. Page 42069, Column 2, Paragraph 1, Line 33, should read, "to junction WI"; 2. Page 42070, Column 3, Para. 1, Line 12, should read, "authorized to be served by it in regular route"; 3. Page 42070, Column 3, Para. 2, Line 15, should read, "route operations. Between Madison, WI., on"; 4. Page 42071, Column 2, Para. 1, Line 2, should read, "Hwy 53 and Interstate Hwy 94"; 5. Page 42071, Column 2, Para. 1, Lines 3, and 4 should be omitted in full; 6. Page 42071, Column 2, Para. 1, Line 5, should read, "over Interstate Hwy"; 7. Page 42071, Column 2, Para. 1, Line 8, should read, "junction with WI Hwy 15"; 8. Page 42071, Column 2, Para. 1, Line 9, should read, "located near Beloit"; 9. Page 42071, Column 2, Para. 1, Line 10, should read, "WI thence over WI Hwy 15 to its junction with US Hwy 51"; 10. Page 42071, Column 2, Para. 1, Line 18, 19, and 20 should be omitted in full; 11. Page 42071, Column 3, Para. 1, Line 32, should read, "points: From Hamilton over OH Hwy 129"; 12. Page 42071, Column 3, Para. 1, Line 56, should read, "over US Hwy 27 to Richmond, and"; 13. Page 42073, Column 1, Para. 1, Line 34, should read, "over SD Hwy 37 to Mitchell; between"; 14. Page 42073, Column 1, Para. 1, Line 52, should read, "US Hwy 16, approximately 12 miles east of".

MC 29910 (Sub-5-23TA), filed June 12, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. As published in the Federal Register of June 23, 1980, the following application for regular TA appeared in error. Corrections are as follows: 1. Page 42078, Column 1, Para. 1, Line 38, should read, "IN and Lafayette, IN serving all intermediate points"; 2. Page 42079, Column 2, Para. 2, Line 22, should read, "Highway 114 to Junction Indiana"; 3. Page 42083, Column 2, Para. 1, Line 24, should read, "Highway 64 and US Highway 460, located at Edwardsville"; 4. Page 42084, Column 1, Para. 1, Line 1, should read, "value, Classes A and B"; 5. Page 42084, Column 1, Para. 1, Line 10, should read, "unusual value, livestock, Classes A and B".

MC 29910 (Sub-5-26TA), filed June 13, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as above). As published in the Federal Register of June 23, 1980, the following application for regular TA appeared in error. The correction is as follows: Page 42087, Column 1, Paragraph 1, Line 18, should read, "over New LA Hwy 8 to Vivian, and return".

MC 30844 (Sub-5-17TA), filed July 24, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2424 West Skelly Drive, Tulsa, OK 74107. Representative: Thomas J. Beener, 67 Wall Street, New York, NY 10005. *Ladies sportswear, and such articles, and supplies as used in the manufacture and distribution of ladies sportswear* from Bolivar, MO to Banning, CA. Supporting shipper: Pantsmaker Manufacturing Corporation, 1407 Broadway, New York, NY.

MC 109397 (Sub-5-14TA), filed July 24, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). (1) *Heat exchangers and equalizers for air, gas, or liquids;* (2) *machinery and equipment for heating, cooling, conditioning, humidifying, dehumidifying and moving of air, gas, or liquids;* (3) *parts, attachments and accessories used in the installation and operation of commodities in (1) and (2);* (4) *metal and metal articles;* between the facilities of Struthers Wells-Gulfport, Inc. located at or near Gulfport, MS, on the one hand,

and, on the other, points in the United States (except AK and HI). Supporting shipper: Struthers Wells-Gulfport, Inc., 1500 34th St., Gulfport, MS.

MC 109397 (Sub-5-15TA), filed July 24, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). *Metal and metal articles,* between Harrison County, MS, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Southern Metal Service, Inc., P.O. Box 7097, Gulfport, MS 39501.

MC 110098 (Sub-5-6TA), filed July 24, 1980. Applicant: ZERO REFRIGERATED LINES, 1400 Ackerman Road (Box 20380), San Antonio, TX 78220. Representative: T. W. Cothren (same address as applicant). *Foodstuffs (except in bulk),* from the facilities of Alex Foods, Inc. at Vernon, CA, to points in OK, AR, KS, MO, and LA. Supporting shipper: Alex Foods, Inc., 2750 E. 50th Street, Vernon, CA 90058.

MC 113651 (Sub-5-21TA), filed July 25, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Road, Suite 4, Omaha, NE 68154. Representative: James F. Crosby, James F. Crosby & Associates, Oak Park Office Building, Suite 210B, 7363 Pacific St., Omaha, NE 68114. *(1) Wood burning stoves, and (2) parts, equipment materials, and supplies used in the manufacture, sale, and distribution of wood burning stoves,* from Bloomsburg, PA to points in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Alaska Company, Inc.; Magee Industrial Complex; 480 W. 5th Street; Bloomsburg, PA 17815.

MC 114284 (Sub-5-4TA), filed July 25, 1980. Applicant: FOX-SMYTHE TRANSPORTATION CO., P.O. Box 82307, Oklahoma City, OK 73148. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. *Meat, 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 Carriers Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from points in Hughes County, OK to points in CO and TX. Supporting shipper: County Custom Packers, Route 4, Box 1, Holdenville OK 74848.

MC 119399 (Sub-21TA), filed July 25, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). *Silica Sand (except in bulk)* from the facilities of Axtell Mining Corporation near Gate, OK to points in Los Angeles, County, CA and Muscatine County, IA. Supporting shipper: Axtell Mining Corporation, Gate, OK 73844.

MC 119399 (Sub-5-22TA), filed July 24, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). (1) *Paper and paper products and products produced or distributed by manufacturers and converters of paper and paper products; (2) materials and supplies used in the manufacture and distribution of commodities in (1) above (except commodities in bulk and commodities which because of size or weight require the use of special equipment)* between the plant sites of St. Regis Paper Company, Southland Division, at or near Herty (Angeline County) and Sheldon (Harris County) TX on the one hand, and, on the other points in AR, IL, IA, KS, KS, KY, MO, OK and TN. Supporting shipper: St. Regis Paper Company, 150 East 42nd St., New York, NY 10017.

MC 125254 (Sub-5-5TA), filed July 25, 1980. Applicant: MORGAN TRUCKING CO., P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50319. *(1) expanded plastic articles,* and *(2) fiberboard containers,* (1) From the facilities of Southwest Forest Industries at or near Elk Grove Village, IL to points in IN and WI, and (2) from the facilities of Southwest Forest Industries at or near Bloomington and Bridgeview, IL to points in IN and WI. Supporting shipper: Southwest Forest Industries, P.O. Box 7548, Phoenix, AZ 85011.

MC 128273 (Sub-5-15TA), filed July 25, 1980. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban, P.O. Box 189, Fort Scott, KS 66701. *Beer,* from the facilities of Anheuser Busch, Inc. at or near Houston, TX, to points in the state of LA. Supporting shipper: Anheuser Busch, Inc., 775 Gellhorn Drive, Houston, TX

MC 134405 (Sub-5-7TA), filed July 24, 1980. Applicant: BACON TRANSPORT COMPANY P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Coal tar pitch solution, in bulk, in tank vehicles,* from Channelview, TX to Andover, KS. Supporting shipper: Vickers Industrial Coating, Inc., P.O. Box 506, Channelview, TX 77532.

MC 136786 (Sub-29TA), filed July 25, 1980. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50306. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Fireplace logs,* from Akron, OH, to points in IN, IL MI, NY, PA, ME, MA, VT, NH, CT, RI, and KY. Supporting shipper: Concept One Marketing, Inc., 8440 Market Street, Youngstown, OH 44512.

MC 138469 (Sub-5-17TA), filed July 25, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73147. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200, Park Ridge, IL 60068. *Such commodities as are dealt in by hardware stores and hardware dealers (except in bulk),* from Farmingdale, NY to points in the states of GA, FL, TN, AR, MO, KS, TX, CA. Supporting shipper: Duro Dyne Corp., Route 110, Farmingdale, NY 11735.

MC 139206 (Sub-5-10TA), filed July 24, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura Berry (same address as applicant). Contract, Irregular. *General Commodities* between points in the United States. Supporting shipper: Marketing Associates of America, Inc., 2345 Millpark Drive, St. Louis, MO 63043.

MC 142672 (Sub-5-12TA), filed July 24, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., Post Office Drawer F, Mulberry, AR 72947. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Rebonded polyurethane carpet padding* (1) from Dallas, TX, to points in AR, CO, KS, LA, NE and OK; and, (2) from Shelbyville, TN, to points in AL, AR, GA, IA, IL, IN, KS, KY, LA, MN, MO, MS, NC, OH, SC, WI and WV. Supporting shipper: General Felt Industries, Inc., 90 Plaza West-One, Saddlebrook, NY 07662.

MC 144603 (Sub-5-9TA), filed July 24, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). *Primary metal products, including galvanized; except coating or other allied processing; Fabricated metal products; except ordnance; chemicals or allied products; lumber or wood products, except furniture (except commodities in bulk, in tank vehicles)* between St. Louis, MO and its commercial zone (restricted to facilities of Precoat Metals Co.) and states of AL; AR; CO; GA; IA; IL; IN; KS; LA; MI; MO; MN; MS; NC; NE; OH; OK; PA; TN; TX; UT, and WI. Supporting shipper: Precoat Metals Co., 4301 S. Spring, St. Louis, MO 63116.

MC 146360 (Sub-5-7TA), filed July 24, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., 4415 Highline Blvd., Suite 107, Oklahoma City, OK 73148. Representative: Timothy R. Stivers, Registered Practitioner, P.O. Box 162, Boise, ID 83701. *Such commodities as are dealt in by grocery and food business houses and equipment, materials and supplies used in the conduct of such business,* from points in the U.S. (except AK and HI) to Clearfield, UT and points in its commercial zone. Restricted to shipments originating at or destined to the facilities utilized by Sysco Corporation and its subsidiary and affiliated companies. Supporting shipper: Sysco Corporation, 1177 West Loop South, Houston, TX 77027.

MC 147321 (Sub-5-2TA), filed July 24, 1980. Applicant: BILL STARR TRUCKING, INC., 1716 Berry Road, Independence, MO 64057. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. *Malt beverages and related advertising materials,* from Tarrant County, TX, to points in Clay, Jackson and Platte Counties, MO, and Johnson and Wyandotte Counties, KS. Supporting shippers: Orin T. Miller Distributing Co., Inc., R.R. 1, Hwy 92, Excelsior Springs, MO 64024, and High Life Sales Company, 1325 N. Topping, Kansas City, MO 64120.

MC 150783 (Sub-5-5TA), filed July 24, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, AR 72756. *Chewing gum, confectionery, dessert preparations, gum ball machines and stands (except in bulk),* from the facilities of Leaf Confectionery, Inc. at or near Chicago, IL to points in AL, AZ, AR, CA, CO, GA, KS, LA, MS, MO, NM, OK, TN, TX and UT. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cirero Avenue, Chicago, IL 60551.

MC 151162 (Sub-5-3TA), filed July 25, 1980. Applicant: LOWELL E. CAWOOD, d.b.a. CAWOOD PRODUCE, Post Office Box 83, Springdale, AR 72764. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Metal shelving, assembled and unassembled members, component parts and accessories used in the manufacture thereof,* from points in OH to points in TX, restricted to the transportation of traffic originating at or destined to the facilities of or used by Austin Material Handling Company. Supporting shipper: Metal Products, Inc., d.b.a. Austin Material Handling, 2307 Kramer Lane, Austin, TX 78758.

MC 151244 (Sub-5-1TA), filed July 25, 1980. Applicant: EDWARD YELLI d.b.a. E & E TRUCKING, Ewing, NE 68735. Representative: James F. Crosby, James F. Crosby & Associates, Oak Park Office Building, Suite 210B, 7363 Pacific St., Omaha, NE 68114. *Disposable syringes, and needles,* from the facilities of Sherwood Medical Supply Co. at/or near Norfolk, NE to Anaheim and Hayward, CA. Supporting shipper: Sherwood Medical Supply Company, 1831 Olive Street, St. Louis, MO 63103.

MC 151302 (Sub-5-1TA), filed July 24, 1980. Applicant: DONALD E. REYNOLDS, d.b.a. BAR-TRAN. CO., 506 Manor Circle, Rock Port, MO 64482. Representative: Donald E. Reynolds, d.b.a. Bar Tran. Co., 506 Manor Circle, Rock Port, MO 64482. *Crude Petroleum, Natural Gas, or Gasoline, (Revised STCC Major Industry Grouping 13), Chemicals or Allied Products (but not alcoholic beverages) (Revised STCC Major Industry Grouping 28) and Petroleum or Coal Products (Revised STCC Major Industry Grouping 29)* between Wyandotte County, KS on the one hand and DeKalb County, MO, Clay County, MO, Holt County, MO, and Atchison County, MO on the other. Supporting shipper: Rock Port Oil Co., Inc., 517 South Main Street, Rock Port, MO 64482; C.S.D., Inc. d.b.a. Casey's General Store, 5224 North Lydia, Kansas City, MO 64118; Schoonover Oil Company, Main Street, Mound City, MO 64470; Farmer's Oil Company, Mound City, MO 64470; Amthor's Skelly Service, 315 North Main, Rock Port, MO 64482; True Agricultural Products, Inc., Hwy. 136 E., Rock Port, MO 64482.

MC 151339 (Sub-5-1TA), filed July 25, 1980. Applicant: LOCK TRUCK LEASING, INC., 122 Penn Street, P.O. Box 274, Irving, TX 75060. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Merchandise as dealt in by wholesale and retail chain and grocery and food business houses* from Dallas, Denton, Ft. Worth, Grand Prairie and Houston, TX, to the facilities of United Food Service, Inc., located at or near Denver, CO. Supporting shipper(s): United Food Service, 3770 E. 40th Avenue, Denver, CO 80216.

MC 151360 (Sub-5-1TA), filed July 24, 1980. Applicant: MARK MILLER TRUCKING, INC., Cottonwood Falls KS 66845. Representative: Erle W. Francis, Esq., 719 Capitol Federal Bldg., Topeka, KS 66603. *Beer in bottles, cans and containers, except in bulk,* from the facilities of Adolp Coors Co., Jefferson County, Colorado to Emporia, KS. Supporting shipper: DeBauge Bros., Inc., 2915 West 15th Street, Emporia, KS 66801.

MC 151364 (Sub-5-1TA), filed July 24, 1980. Applicant: SOUTHERN EXPRESS, INC., 1238 Meadowbrook Lane, Cape Girardeau, MO 63701. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. Contract, irregular, *Tires, tubes, and batteries,* between Waco, TX; Huntsville, AL; Buffalo, NY; St. Louis, MO; Greenville, SC; Franklin, IN; Mt. Vernon, IL; Kansas City, KS; and Kansas City, MO, on the one hand, and, on the other, points in KY, IN, TN and OH. Supporting shipper: Disney Tire Company, Louisville, KY.

MC 151368 (Sub-5-1), filed July 25, 1980. Applicant: KOCH TRUCK LINE, INC., 619 Iowa, Sabetha, KS 66534. Representative: Eugene W. Hiatt, Hiatt, Crockett, Hiatt & Carpenter, Chartered, 207 Casson Building, 603 Topeka Boulevard, Topeka, KS 66603, Phone (913) 232-7263. *Dry fertilizer.* From the facilities of Farmland Industries, Inc., at Lawrence, KS to points in the states of MO, CO, NE, OK, IA, AR and TX. Supporting shipper: Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116.

MC 151178 (Sub-5-1TA), republication filed June 30, 1980. Applicant: KENNETH DIXON, DIXON FARM SUPPLY, 101 S.W. A St., Stigler, OK 74462. Representative: Louis E. Striegel, 6110 S. 221 East Avenue, Broken Arrow, OK 74012. Contract, Irregular *agricultural machiner and equipment including parts except commodities in bulk* from Canton, East Moline, Moline, and Rock Island, IL; Mountville and Belleville, PA; Grand Island and Lexington, NE; Fowler, CA, Houston, TX and New Orleans, LA to Stigler, OK and points in OK within a 200 mile radius of Stigler, OK. Supporting shippers: Stewart Martin Inc., 333 N. Central, Okmulgee, OK 74447; Tulsa Tractor Company, Inc., 1026 N. Mingo Road, Tulsa, OK 74115; Busby White, Inc., 2815 N. Main, McAlester, OK 74501.

MC 23618 (Sub-5-4TA), filed August 1, 1980. Applicant: McALISTER TRUCKING COMPANY, d.b.a. MATCO, 2014 S. Treadaway Blvd., Abilene, TX 79604. Representative: E. Larry Wells, Suite 1125, Exchange Park, Dallas, TX 75235. (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 *Machinery, materials, equipment and supplies used in, or in connection with the*

construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof; (b) *Machinery, equipment, materials and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products and by-products, water or sewage, restricted to the transportation of shipment moving to or from pipeline rights of way;* (c) *Earth drilling machinery and equipment, and machinery, equipment, materials and supplies and pipe incidental to, used in, or in connection with, (1) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (2) the completion of holes or wells drilled,* (3) *the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (4) the injection or removal of commodities into or from holes or wells;* (d) *Machinery, equipment, materials and supplies used in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines for the transportation of water and sewage, including the stringing and picking up of pipe;* (e) *Machinery, equipment, materials and supplies, used in, or in connection with, the drilling of water wells* between points in AZ, NM, TX, OK, KS and LA, on the one hand, and, on the other, points in CA. Supporting shipper(s): 7.

MC 61396 (Sub-5-5TA), filed July 31, 1980. Applicant: HERMAN BROS., INC., 2565 St. Mary's Avenue, Omaha, NE 68105. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam, Omaha, NE 68102. *Kiln dust, in bulk,* from Artesia, MS, Hunter and Midlothian, TX to Westlake, LA. Supporting shipper(s): Solididust, Inc., 8114 Misty Vale, Houston, TX 77075.

MC 61396 (Sub-5-7TA), filed July 31, 1980. Applicant: HERMAN BROS., INC., 2565 St. Mary's Avenue, Omaha, NE 68105. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam, Omaha, NE 68102. *Cement, in bulk,* from the facilities of Missouri Portland Cement Company located at Decatur, AL to points in TN, GA, MS, NC and SC. Supporting shipper(s): Missouri Portland Cement Company, 7711 Carondelet, St. Louis, MO 63105.

MC 87511 (Sub-5-4TA), filed July 31, 1980. Applicant: SAIA MOTOR FREIGHT LINE, INC., P.O. Box 10157, Station One, Houma, LA 70360. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *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 all points in the parishes of Webster, Claiborne, Franklin, Caldwell, Winn, Jackson, Bienville, Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Quachita, Lincoln, Tensas, Lasalle, Catahoula, Concordia and Grant in the state of LA as off-route points in connection with carrier's authorized regular-route operations. Supporting shippers: 47.

Note.—Applicant intends to tack or join this authority with its authority in MC 87511.

MC 113908 (Sub-5-17TA), filed July 31, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: Jim G. Erickson (same address as applicant). *Fruit juice and fruit juice concentrates, in bulk,* between points in NY and PA, on the one hand, and, on the other, points in AR, CO, KS, KY, LA, MS, MO, OK, OR, TN, TX, and WA. Supporting shippers: Canandiagua Wine Company, Inc., 116 Buffalo Street, Canandigua, NY 14424; Keystone Foods, Inc., North East, PA 16428.

MC 114273 (Sub-5-25TA), filed August 1, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, Corporate Counsel (same as above). *Plastic articles and commodities used in the manufacturing and distribution of same* between Indianapolis, IN and Reading, PA, on the one hand, and on the other, points in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: W. R. Grace & Co., P.O. Box 295, Reading, PA 19603.

MC 117119 (Sub-5-18TA), filed July 31, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Chemicals (except in bulk),* from Moss Point, MS to St. Louis, Mo and Kansas City, KS and their respective commercial zones. Supporting shipper: Thiokol Corporation/Specialty Chemicals Div., P.O. Box 8296, Trenton, NJ 08650.

MC 117119 (Sub-5-19TA), filed August 1, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Lawn mowers, snow blowers, and lawn tractors and parts and accessories used in the maintenance and sale of such equipment* from the facilities of Jacobsen Textron at Brookhaven, MS to points in AZ, CA, CO, IL, IN, KS, MA, MI, MN, MO, MT, NE, NC, NH, NY, OH, OK, OR, PA, UT, VA, WV, and WI. Supporting shipper: Jacobsen Textron, P.O. Box 568, Brookhaven, MS 39601.

MC 118468 (Sub-5-15TA), filed August 1, 1980. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: Williama L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Contract,* irregular *General commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S. in and east of ND, SD, NE, KS, OK and TX, restricted to traffic originating at the facilities of United States Gypsum Company, under contract with United States Gypsum Company for 180 days. Supporting shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 118959 (Sub-5-8TA), filed August 1, 1980. Applicant: JERRY LIPPS, INC., 130 S. Frederick Street, Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *General Commodities* Between Cape Girardeau, MO and points in MO, IL, KY, TN, AR and IN. Restricted to traffic having a prior or subsequent movement by rail or water. Supporting shippers: 13 Supporting Shippers.

MC 118959 (Sub-5-9TA), filed August 1, 1980. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle Street, Chicago, IL 60603. *Vinyl and Vinyl Products, Chipboard and Chipboard Products, Polyethylene and Polyethylene Products, Labels, and Packaging Supplies and Materials, Equipment and Supplies used in the manufacture, distribution or sale of Vinyl and Vinyl Products, Chipboard and Chipboard Products, Polyethylene and Polyethylene Products, Labels and Packaging Supplies (Except Commodities in Bulk)* Between the facilities of Service Packaging Corporation located at or near Cape Girardeau, MO and Blair Industries, Inc. located at or near Scott City, MO on the one hand, and on the other AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, OH, OK, TN, TX and WI. Supporting shippers are: Service Packaging Corporation, Route 1, Cape Girardeau, MO 63701; and Blair Industries, Inc., Madison & Berkley Streets, Scott City, MO 63780.

MC 120080 (Sub-5-1TA), filed July 31, 1980. Applicant: MORGAN EXPRESS, INC., 10130 Monroe Drive, Dallas, TX 75229. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. *General commodities (except Classes A and B explosives) moving in express service* between Junction City, LA and El Dorado, AR; from Junction City over U.S. Hwy 167 to El Dorado, and return over the same route, serving El Dorado for purposes of interchange. Supporting shippers: 8. Applicant intends to tack and interline.

MC 121741 (Sub-5-2TA), filed July 31, 1980. Applicant: WESTERN TEX-PACK, INC., 3200 Bolt St., Fort Worth, TX 76110. Representative: Austin L. Hatchell, Lanham, Hatchell, Sedberry & Hoffman, P.O. Box 2165, Austin, TX 78768. *Common;* regular. *General commodities* (except Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), moving in express service, to, from or between all points along the routes shown below: (1) Between Dallas, TX and Fort Worth, TX as follows: From Dallas, TX over State Hwy. 114 and 121 to Fort Worth, TX and return over the same route. (2) Between Fort Worth, TX and Jacksboro, TX as follows: From Fort Worth, TX over State Hwy. 199 to Jacksboro, TX and return over the same route. (3) Between Jacksboro, TX and Rule, TX as follows: From Jacksboro, TX over U.S. Hwy. 380 to Rule, TX and return over the same route. (4) Between Wichita Falls, TX and Abilene, TX as follows: From Wichita Falls, TX over U.S. Hwys. 277, 83, and 82 to Abilene, TX and return over the same routes. (5) Between Munday, TX and Knox City, TX as follows: From Munday, TX over State Hwy. 222 to Knox City, TX and return over the same route. (6) Between Benjamin, TX and Rule, TX as follows: From Benjamin, TX over State Hwy. 283 to Rule, TX and return over the same route. (7) Between Anson, TX and Aspermont, TX as follows: From Anson, TX over U.S. Hwy. 83 to Aspermont, TX and return over the same route. (8) Between Anson, TX and Roby, TX as follows: From Anson, TX over U.S. Hwy. 180 to Roby, TX and return over the same route. (9) Between Roby, TX and Rotan, TX as follows: From Roby, TX over State Hwy. 70 to Rotan, TX and return over the same route. (10) Between Rotan, TX and its intersection with U.S. Hwy. 277 near Stamford, TX as follows: From Rotan, TX over State Hwy. 92 and its intersection with U.S. Hwy. 277 near Stamford, TX and return over the same route. (11) Between Aspermont, TX and Girard, TX as follows: From Aspermont, TX over U.S. Hwys. 380 and 70 to Girard, TX and return over the same route. (12) Between Aspermont, TX and Albany, TX as follows: From Aspermont, TX over State Hwy. 6, U.S. Hwy. 183 and U.S. Hwy. 180 to Albany, TX and return over the same route. (13) Between Dallas, TX and Fort Worth, TX as follows: From Dallas, TX over U.S. Hwy. 80, State Hwy. 183 and I.H. 20 to Fort Worth and return over the same route. (14) Between Fort Worth, TX and Itasca, TX as follows: From Fort Worth, TX over I.H. 35W and U.S. 81 to Itasca, TX and return over the same route. (15) Between Itasca, TX and Osceola, TX as follows: From Itasca, TX over F.M. Road 66 and 934 to Osceola, TX and return over the same route. (16) Between Osceola, TX and Cleburne, TX as follows: From Osceola, TX over State Hwy. 171 to Cleburne, TX and return over the same route. (17) Between Burleson, TX and Cleburne, TX as follows: From Burleson, TX over State Hwy. 174 to Cleburne, TX and return over the same route.

(18) Between Cleburne, TX and its intersection with State Hwy. 220; thence over State Hwy. 220 to Hico, TX as follows: From Cleburne, TX over U.S. Hwy 67 and its intersection with State Hwy. 220; thence over State Hwy. 220 to Hico, TX and return over the same route. (19) Between Hico, TX and Hamilton, TX as follows: From Hico, TX over U.S. Hwy. 281 to Hamilton, TX and return over the same route. (20) Between Hamilton, TX and Gatesville, TX as follows: From Hamilton, TX over State Hwy. 36 to Gatesville, TX and return over the same route. (21) Between Gatesville, TX and McGregor, TX as follows: From Gatesville, TX over U.S. Hwy 84 to McGregor, TX and return over the same route. (22) Between McGregor, TX and Valley Mills, TX as follows: From McGregor, TX over State Hwy. 317 to Valley Mills, TX and return over the same route. (23) Between Valley Mills, TX and Meridian, TX as follows: From Valley Mills, TX over State Hwy. 6 to Meridian, TX and return over the same route. (24) Between Meridian, TX and Glen Rose, TX as follows: From Meridian, TX over State Hwy. 144 to Glen Rose, TX and return over the same route. Restrictions: (1) The holder of this authority is prohibited from (a) transporting any shipments originating at and destined to Wichita Falls, Fort Worth, Dallas, Albany and Abilene; (b) performing any service to any intermediate point between Fort Worth and Dallas; (c) serving any intermediate point between Fort Worth and Throckmorton on State Hwy. 199 except Lake Worth, Azle, and Springtown. (25) Between Middlothian, TX and Cleburne, TX as follows: From Midlothian, TX over U.S. Hwy. 67 to Cleburne, TX serving Keene, TX and return over the same route. (26) Between Cleburne, TX and Meridian, TX as follows: From Cleburne, TX over State Hwy. 174 to Meridian, TX, and return over the same route. (27) Between Whitney, TX and Hamilton, TX as follows: From Whitney, TX over State Hwy. 22 to Hamilton, TX and return over the same route. (28) Between Jonesboro, TX and Turnersville, TX as follows: From Jonesboro, TX over F.M. Road 217 to Turnersville, TX and return over the same route. (29) Between Turnersville and its intersection with State Hwy. 36 as follows: From Turnersville over F.M. Road 182 to its intersection with State Hwy. 36 and return over the same route. (30) Between U.S. Hwy. 84 and Oglesby, TX as follows: From U.S. Hwy. 84 over R.M. Road 1996 to Oglesby, TX and return over the same route. (31) Between State Hwy. 174 and State Hwy. 22 as follows: From State Hwy. 174 over F.M. Road 56 and its intersection with State Hwy. 22 and return over the same route. (32) Between Morgan, TX and Lakesde Village, TX as follows: From Morgan, TX over F.M. Road 927 to Lakeside Village, TX and return over the same route. (33) Between Seymour, TX and Benjamin, TX as follows: From Seymour, TX over U.S. Hwy. 82 to Benjamin, TX and return over the same route. (34) Between U.S. Hwy. 82 and its intersection with State Hwy. 222 as follows: From the intersection with F.M. Road 267 and U.S. Hwy. 82 and its intersection with State Hwy. 222 and return over the same route. (35) Between U.S. Hwy. 380 and Peacock, TX as follows: From the intersection of F.M. Road 2211 and U.S. Hwy. 380 and Peacock, TX and return over the same route. (36) Between (a) Hamilton, TX and Evant, TX and (b) Evant, TX and Gatesville, TX as follows: From Hamilton, TX over U.S. Hwy 281 to Evant, TX and from Evant, TX over U.S. Hwy. 84 to Gatesville, TX and return over the same routes. (37) Between Mansfield, TX and Joshua, TX as follows: From Mansfield, TX over F.M. Road 917 to Joshua, TX and return over the same route. (38) Between Clifton, TX and Cranfills Gap, TX as follows: From Clifton, TX over F.M. Road 219 to Cransfills Gap, TX and return over the same route. Restriction: Restricted to the transportation of shipments having no single article, piece or package weighing in excess of 100 pounds and which have a total weight of 500 pounds or less per

shipment. 7 Supporting Shippers. Applicant intends to interline.

MC 121742 (Sub-5-1TA), filed July 31, 1980. Applicant: MISTLETOE TEX-PACK EXPRESS, INC., 702 E. 40th St., Lubbock, TX 79404. Representative: Austin L. Hatchell, Lanham, Hatchell, Sedberry & Hoffman, P.O. Box 2165, Austin, TX 78768. *Common;* regular. *General commodities (except Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), moving in express service, to, from or between all points along the routes shown below:* (1) Between Dallas and the intersection of U.S. Hwy. 82 with F.M. Road 143, east of Guthrie, without service to any intermediate point, as follows: From Dallas over U.S. Hwy. 80, I.H. 10, and/or State Hwys. 144, 121 and 183 between Dallas and Fort Worth; thence over State Hwy. 99 and U.S. Hwy. 92 to the above named intersection and return over the same route. (2) Between Dallas, TX and Spur, TX without service to any intermediate point except for the purpose of interlining with other carriers, as follows: From Dallas, TX over U.S. Hwy. 80, I.H. 10, U.S. Hwy. 180, State Hwy. 6, and State Hwy. 70 and return over the same route. (3) Between Quanah, TX and Crowell, TX as follows: From Quanah, TX over State Hwy. 283 to Crowell, TX and return over the same route. (4) Between Spur, TX and Turkey, TX as follows: From Spur, TX over State Hwy. 70 to Turkey, TX and return over the same route. (5) Between Vernon, TX and Earth, TX as follows: From Vernon, TX over U.S. Hwys. 70 and 62 to Earth, TX and return over the same route.
(6) Between Dickens, TX and Lubbock, TX as follows: From Dickens, TX over U.S. Hwys. 82 and 62 to Lubbock, TX and return over the same route. (7) Between Turkey, TX and Tulia, TX as follows: From Turkey, TX over State Hwy. 86 to Tulia, TX and return over the same route. (8) Between Lubbock, TX and Amarillo, TX as follows: From Lubbock, TX over U.S. Hwy. 87 to Amarillo, TX and return over the same route. (9) Between Springlake, TX and Hereford, TX as follows: From Springlake, TX over U.S. Hwy. 385 to Hereford, TX and return over the same route. (10) Between Floydada, TX and Ralls, TX as follows: From Floydada, TX over U.S. Hwy. 62 to Ralls, TX, and return over the same route. (11) Between the intersection of F. M. Road 54 and U.S. Hwy. 62 and its intersection with U.S. Highway 87 as follows: From the intersection with U.S. Hwy. 62 over F.M. Road 54 to the intersection with U.S. Hwy. 87 and return over the same route. (12) Between Childress, TX and Paducah, TX as follows: From Childress, TX over U.S. Hwys. 62 and 83 to Paducah, TX, serving all intermediate points along said routes, except as hereinafter restricted, and coordinating this service with service presently being rendered under existing authority and interlining with other carriers at appropriate points. RESTRICTED to the holder of this authority from (1) transporting any shipments originating at and destined to Amarillo, Childress, Vernon, Quanah, Forth Worth and Dallas; and (2) performing any service to any intermediate point between Fort Worth and Dallas, TX. (13) Between the intersection of State Hwy. 222, east of Guthrie, TX to Dickens, TX as follows: From the intersection of U.S. Hwy. 82 with State Hwy. 222, east of Guthrie, TX to Dickens, TX and return over the same route. (14) Between Silverton, TX and Floydada, TX as follows: From Silverton, TX over State Hwy. 207 to Floydada, TX and return over the same route. (15) Between the intersection with State Hwy. 70 east of Olton, TX to its intersection with F.M. Road 37 in Cotton Center, TX, and then, F.M. Road 37 to its intersection with U.S. Hwy. 87 south of Hale Center, TX, as follows: From the intersection with State Hwy. 70 east of Olton over F.M. Road 179 to its intersection with F.M. Road 37 in Cotton Center, TX, and thence, F.M. Road 37 to its intersection with U.S. Hwy. 87 south of Hale Center, TX, and return over the same route. (16) Between the intersection with State Hwy. 70 south of Turkey, TX to the intersection with F.M. Road 599 at Flomot, TX as follows: From the intersection with State Hwy. 70 over F.M. Road 97 south of Turkey, TX, to intersection with F.M. Road 599 at Flomot, TX, and return over the same route. (17) Between the intersection with U.S. Hwy. 82 south of Crosbyton, TX to its intersection with F.M. Road 261 west of Kalgary, TX; and, thence, F.M. Road 261 to its intersection with State Hwy. 70 at Spur, TX, as follows: From the intersection of F.M. Road 651 and U.S. Hwy. 82 south of Crosbyton to its intersection with F.M. Road 261 west to Kalagary, TX, and; thence, F.M. Road 261 to its intersection with State Hwy. 70 at Spur, TX, and return over the same route. (18) Between Spade, TX and Olton, TX, as follows: From Spade, TX over F.M. Road 168 to Olton, TX and return over the same route. (19) Between its intersection with U.S. Hwy. 87 and Spade, TX as follows: From the intersection of U.S. Hwy. 87 and F.M. Road 54 and Spade, TX, and return over the same route. (20) Between the intersection of F.M. Road 168 and Fieldton, TX, as follows: From the intersection of F.M. Road 168 and F.M. Road 37 and Fieldton, TX, and return over the same route. (21) Between the intersection with U.S. Hwy. 82 and its intersection with F.M. Road 28, then over F.M. Road 28 to its intersection with U.S. Hwy. 70 as follows: From R.M. Road 264 to the intersection with U.S. Hwy. 82 and its intersection with F.M. Road 28, then over F.M. Road 28 to its intersection with U.S. Hwy. 70 and return over the same route. Restriction: Restricted to the transportation of shipments having no single article, piece or package weighing in excess of 100 pounds and which have a total weight of 500 pounds or less per shipment. Supporting shippers: 18. Applicant plans to interline.

MC 124236 (Sub-5-32TA), filed July 31, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Rodney D. Cokendolpher (same as above). *Potash* from or near Carlsbad and Hobbs, NM to Teague, Bryan, Carthage, and Kilgore, TX and Elk City, OK. Supporting shipper: Mobley Company, Inc., Post Office Box 1640, Kilgore, TX 75662.

MC 124711 (Sub-5-4TA), filed August 1, 1980. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Rod Parker (same as applicant). *Dry Urea and Urea Liquor,* from the facilities of Cominco American, Inc., at or near Borger, TX to points in CO, KS, OK, NE and NM. Supporting shipper: Cominco American, Inc., Route 3, Beatrice, NE 68310.

MC 125535 (Sub-5-3TA), filed August 1, 1980. Applicant: NATIONAL SERVICE LINES, INC. of New Jersey, 12015 Manchester Road, Suite 118, St. Louis, MO 63131. Representative: (same as applicant). Contract; Irregular. *(1) Copper, copper products, insulated tubing and (2) commodities used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk in tank vehicles),* between the facilities of Cerro Copper Products Company at or near East St. Louis, IL on the one hand, and on the other, points on the U.S. in and west of CO, MT, NM, WY; between Shelbina, MO on the one hand, and on the other, points in the U.S. Supporting shipper: Cerro Copper Products Company, P.O. Box 681, East St. Louis, IL 62202

MC 126822 (Sub-5-22TA), filed August 1, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, 66061. Representative: John T. Pruitt (same as

applicant). *(1) Telephone and electrical equipment and (2) materials and supplies used in the installation and maintenance of (1) above* between points in the United States, except AK and HI, restricted to the transportation of shipments from, to, or between the facilities of GTE Automatic Electric, Incorporated. Supporting shipper: GTE Automatic Electric, Incorporated, Northlake, IL 60164.

MC 133805 (Sub-5-18TA), filed July 31, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1-Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Frozen fruits and vegetables and canned fruits and vegetables*—between points in the United States restricted to the traffic of San Antonio Foreign Trading Company. Supporting shipper: San Antonio Foreign Trading Company, 306 West Rhapsody, San Antonio, TX 78216.

MC 133805 (Sub-5-19TA), filed July 31, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1 Box 48, Tolar, TX 76476. Representative: Don Garrison, Post Office Box 1065, Fayetteville, AR 72701. *Confectionery (except in bulk), dessert preparations, gum ball machines and stands*—from the facilities of Leaf Confectionary, Inc., at or near Chicago, IL to points in the United States (except AK and HI). Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651.

MC 133805 (Sub-5-20TA), filed July 31, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1-Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *Frozen and dry canned goods*—from Laredo, TX—to points in the United States (except AK and HI)—restricted to the traffic of United States Custom Brokers. Supporting shipper: United States Custom Brokers, 1400 Santa Rita Avenue, Laredo, TX 78040.

MC 133959 (Sub-5-5TA), filed August 1, 1980. Applicant: ALBAUGH TRUCK LINE, INC., 123 Main Street, Elkhart, IA 50073. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Contract irregular, *such merchandise as is dealt in by wholesale and retail department stores* between the facilities of Ardan Wholesale, Inc. in Des Moines, IA, on the one hand, and, on the other, points in TN, NC and IN. Supporting shipper: Ardans Wholesale, Inc. 2323 Euclid Avenue, Des Moines, IA 50309.

MC 135797 (Sub-5-57TA), filed August 1, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 73745. Representative: Paul R. Bergant, Esq. (address same as applicant). (1) *Spring and air powered guns, shot, pellets, and cylinders,* and (2) *materials, equipment and supplies used in the manufacture of the commodities named in (1) above,* between Rogers, AR and points in the United States (except AK and HI). Supporting shipper: Daisy Manufacturing Company, 2111 So. 8th St., Rogers, AR 72756.

MC 135797 (Sub-5-58TA), filed August 1, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 73745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Paint (except in bulk),* from the facilities of Dominion Paint Company at Virginia Beach, VA to points in the United States (except AK and HI). Supporting shipper: Dominion Paint Company, 5808 Ward Court, Virginia Beach, VA 23455.

MC 135797 (Sub-5-59TA), filed August 1, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 73745. Representative: Paul R. Bergant, Esq. (same as above). *Such commodities as are manufactured and dealt in by distributors of lawn and garden products,* between points in and west of MT, WY, CO and NM on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK and TX. Restricted to traffic originating at or destined to the facilities of Lakeshore Equipment and Supply Company. Supporting shipper: Lakeshore Equipment and Supply Co., 300 S. Abbe Road, Elyria, OH 44035.

MC 135936 (Sub-5-3TA), filed August 1, 1980. Applicant: C & K TRANSPORT, INC., Box 205, Webster City, IA 50595. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Equipment, materials and supplies used in the manufacture of washing machines* from points in MN, WI, IL, MO, OH, IN, MI, and KY to the facilities of Webster City Products, Inc. at Webster City and Jefferson, IA. Supporting shipper: Webster City Products, Webster City, IA 50595.

MC 140665 (Sub-5-26TA), filed August 1, 1980. Applicant: PRIME, INC. P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. *Inedible fatty acid of animals; fatty acid of vegetable oil; stearic acid; azelaic acid; pelargonic acid; chemicals; organic ammonia compounds; esters; glycerines; lubricating oils; petroleum oils; plastic pellets or flakes; liquid plastic; candle tar; resin plasticizer and cleaning compounds (except in bulk),* between the facilities of Emery Industries, Inc., at or near Mauldin SC, Linden, NJ, Lock Haven, PA, Cincinnati, OH Los Angeles and Santa Fe Springs, CA, on the one hand, and on the other, points in the United States (except AK and HI). Supporting shipper: Emery Industries, Inc., 1300 Carew Tower, Cincinnati, OH 45202.

MC 142508 (Sub-5-34TA), filed July 31, 1980. Applicant: NATIONAL TRANSPORTATION, INC., Post Office Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, Post Office Box 37096, Omaha, NE 68137. *Foodstuffs (except in bulk)* between points in the contiguous United States restricted to traffic originating at or destined to the facilities utilized by Niagara Trading. Supporting shipper: Niagara Trading Company, Inc., 690 Delaware Ave., Buffalo, NY 14209.

MC 143701 (Sub-5-3TA), filed July 31, 1980. Applicant: HODGES FREIGHT LINES, IND., P.O. Box 73-I, Metairie, LA 70033. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Foodstuffs,* between points and places in the United States. Restricted to traffic originating at or destined to points of supplies and/or shippers that are customers of Winton Sales Company. Supporting shipper: Winton Sales Company, 3379 Peachtree Road, N.E., Atlanta, GA 30326.

MC 145119 (Sub-5-4TA), filed August 1, 1980. Applicant: LINT TRANSFER, INC., 4549 Delaware Avenue, Des Moines, IA 50313. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract irregular *Tires, tire parts and inner tubes,* from Des Moines, IA, to Lenexa, KS, and (2) from Lenexa, KS, to points in IL, IA and NE, under contract with The Firestone Tire & Rubber Company. Supporting shipper: The Firestone Tire & Rubber Company, 2nd and Hoffman, P.O. Box 1295, Des Moines, IA 50305.

MC 145955 (Sub-5-9TA), filed August 1, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106; 7101 Mercy Rd., Omaha, NE 68106. *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Peoria and Tazewell Counties, IL, on the one hand, and, on the other, points in IA, KS, MN, MO, NE, and SD, restricted to traffic originating at or destined to the facilities of Federal Warehouse Company. Supporting shipper: Federal Warehouse Company, 200 National Road, East Peoria, IL 61611.

MC 147046 (Sub-5-2TA), filed August 1, 1980. Applicant: SUNRISE DAIRY, INC., 1440 S.E. Cortina Dr., Ankeny, IA 50021. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines,

IA 50309. *Materials and supplies used in the manufacture and distribution of ice cream and dairy products, except liquids in bulk,* from Kansas City, MO, and Kansas City, KS, to Rochester and Minneapolis, MN, and Des Moines and Perry, IA.. Supporting shippers: Merigold Foods, Inc., 2929 University, Minneapolis, MN, and Beatrice Foods, Inc., 1900 Grand, Des Moines, IA.

MC 148819 (Sub-5-4TA), filed August 1, 1980. Applicant: G AND J TRUCKING, INC., P.O. Box 4201, Ft. Smith, AR 72914. Representative: Jay C. Miner, P.O. Box 313, Harrison, AR 72601. *Carbonated beverages, in containers,* from the facilities of Mid-America Container Corp. in Lenexa, KS to Ft. Smith, AR. Supporting shippers: Mid-America Container Corp., 10001 Industrial Blvd., Lenexa, KS 66215 and The Coca-Cola Bottling Co. of Ft. Smith, 122 Rogers Ave., Ft. Smith, AR 72901.

MC 149026 (Sub-5-7TA), filed July 31, 1980. Applicant: TRANS-STATES LINES, INC., 633 Main St., P.O. Box 1485, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Chemicals or allied products and rubber or miscellaneous plastic products and materials, equipment, and supplies used in the manufacture and distribution of the commodities named above (except in bulk),* between Fort Smith, AR; Chicago, IL; Newnan, GA, on the one hand, and, on the other, to points in the U.S. (except AK and HI). Supporting shipper: Crain Industries, 5401 S. Zero St., Ft. Smith, AR 72901.

MC 150102 (Sub-5-4TA), filed July 31, 1980. Applicant: MUSTANG TRANSPORTATION, INC., 1101 Rue Corton, Slidell, LA 70458. Representative: Albert T. Riddle, 1101 Rue Corton, Slidell, LA 70458. Contract, irregular *Tires, tubes, wheels, wheel nuts, wheel weights tire valves, and hub wheel clips* between Dallas, TX and B.F. Goodrich facilities located in Natchez, MS. Supporting shipper: B.F Goodrich, 44 E. Franklin St., Natchez, MS.

MC 150311 (Sub-5-13TA), filed July 31, 1980. Applicant: P & L MOTOR LINES, INC., P.O. box 4616, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Alcoholic beverages,* from points in CT, DE, KY, MA, MD, NJ & NY.

MC 150578 (Sub-5-8TA), filed August 1, 1980. Applicant: STEVENS TRANSPORT, a division of STEVENS FOODS, INC., 2944 Motley Drive, Mesquite, TX 75150. Representative: Jackson Salasky, P.O. Box 45538, Dallas, TX 75245. *Meat, meat products and articles distributed by meat packing houses as described in Sections A & C to Appendix I to the Report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 & 766 (except commodities in bulk), frozen or unfrozen,* from Seward County, KS to Philadelphia, PA, New York, NY, Baltimore, MD, Indianapolis, IN, Cincinnati, OH, Chicago, IL, Louisville, KY, Washington, DC, Newark, NJ, Boston, MA, Hartford and New Haven, CT. Supporting shipper: National Beef Incorporated, 1501 East 8th Street, Liberal KS 67901.

MC 150626 (Sub-5-2TA), filed July 31, 1980. Applicant: HAROLD IVES TRUCKING CO., P.O. Box 885, Highway 79 East, Stuttgart, AR 72160. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. *Foodstuffs.* Between Hudson County, NJ, on the one hand, and, on the other, points and places in the states of TX, LA and FL. Supporting shipper: Goya Foods, Inc., 100 Seaview, Secaucus, NJ.

MC 151378 (Sub-5-2TA), filed July 31, 1980. Applicant: BIG B TRUCK LINES, INC., P.O. Box 67, Jonesburg, MO 63351. Representative: John Clark (same address as applicant). *Milking machines, dairy farm equipment, peening machines, tanks, and industrial cleaning equipment, and material and supplies used in the manufacture and distribution of such commodities,* between the facilities of Zero Manufacturing Company at or near Washington and Berger, MO, on the one hand, and, on the other, points in the St. Louis, MO, E. St. Louis, IL and Kansas City, MO, Kansas City, KS commercial zones. Supporting shipper: Zero Manufacturing Company, 811 Duncan Ave., Washington, MO 63090.

MC 151378 (Sub-5-3TA), filed July 31, 1980. Applicant: BIG B TRUCK LINES, INC., P.O. Box 67, Jonesburg, MO 63351. Representative: John F. Clark (same address as applicant). *Vinyl and leather manufactured goods, and materials, equipment and supplies used in their manufacture and distribution,* between Washington, MO, on the one hand, and, on the other, points in the commercial zones of St. Louis, MO, E. St. Louis, IL, Kansas City, MO and Kansas City, KS. Supporting shipper: Hazel Company, 1200 S. Stafford St., Washington, MO 63090.

MC 151379 (Sub-5-2TA) filed July 1, 1980. Applicant: T. J. KERVIN TRUCKING COMPANY, P.O. Box 48, Winnfiled, LA 71483. Representative: Fletcher W. Cochran, 1338 Gause Blvd., Suite 245, P.O. Box 741, Slidell, LA 70459. Contract; Irregular: *Lumber, lumber products and forest products* between Washington Parish, LA and Lamar County, MS on the one hand and on the other the forty-eight states under a continuing contract with Crown Zellerbach Corporation. Supporting shipper: CROWN ZELLERBACH CORPORATION, P.O. Box 1060, Bogalusa, LA 70427.

MC 151338 (Sub-6-1TA), filed July 22, 1980. Applicant: COLORADO SPECIALTY FOODS TRANSPORTATION COMPANY, 4750 Nome, Denver, CO 80239. Representative: Steven K. Kuhlmann, 2600 Energy Center, 717 17th Street, Denver, CO 80202. *Contract Carrier,* Irregular routes: *Foodstuffs, health care products, and cosmetics,* from points in CA to Denver, CO, for the account of Colorado Specialty Foods Corporation, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Colorado Specialty Foods Corporation, 4750 Nome, Denver, CO 80239.

MC 151345 (Sub-6-1TA), filed July 23, 1980. Applicant: ROBERT ALLEN HARTER d.b.a. HARTER TRUCKING, 307 McCampbell St., Fillmore, CA 93105. Representative: Donald R. Hedrick, Post Office Box 88, Norwalk, CA 90650. *Contract carrier,* Irregular routes: *Beer,* from Golden, CO to Santa Maria, CA, for the account of Larrabee Brothers Distributors, for 270 days. Supporting shipper: Larrabee Brothers, Distributors, 815 South Blosser Rd., Santa Maria, CA 93454.

MC 151137 (Sub-6-1TA), filed July 21, 1980. Applicant: RAPIDO FREIGHT LINES, INC., 1744 Hacienda Place, El Cajon, CA 92020. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Bananas,* From Wilmington, CA, to points in AZ, AK, CA, CO, ID, IL, IA, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI and WY, for 270 days. Supporting shipper: Chiquita Brands, Inc., 15 Mercedes Drive, Montvale, NJ 07645.

MC 54567 (Sub 6-2TA), filed July 23, 1980. Applicant: RELLIANCE TRUCK CO, 2500 N. 24th Ave., Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *(1) Fabricated steel and steel plate, and (2) materials, machinery, equipment and supplies moving in connection with the above,* from the facilities of Cyprus Specialty Steel Co. in Phoenix, AZ to the mine site of Anaconda Copper Co. located approximately 35 miles Northwest of Tonopah, NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cyprus Specialty Steel Co., 1500 S. 7th St., Phoenix, AZ 85001.

MC 52709 (Sub-6-17TA), filed July 22, 1980. Applicant: RINGSBY TRUCK LINES, INC., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barber

(same as applicant). *Common carrier:* regular routes: *General commodities* (except commodities in bulk and commodities requiring special equipment), serving Phoenix, AZ, as an off-route point in connection with carrier's presently authorized regular routes, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: None.

MC 151344 (Sub-6-1TA), filed July 22, 1980. Applicant: MICHAEL T. SPENCER, d.b.a., MIKE SPENCER TRUCKING, P.O. Box 996, Yuba City, CA 95991. Representative: Ronald C. Chauvel, 100 Pine Street, Ste. 2550, San Francisco, CA 94111. *Contract Carrier,* irregular routes: *salt and salt products,* between Newark, CA, on the one hand, and, on the other, OR, WA and NV, under continuing contract with Leslie Salt Company, for 270 days. Supporting shipper: Leslie Salt Company, P.O. Box 364, Newark, CA 94560.

MC 151169 (Sub-6-1TA), filed July 22, 1980. Applicant: TRANS WORLD OIL CORPORATION, 1633 26th St., Santa Monica, CA 90404. Representative: J. Michael Alexander, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. *Gasoline and diesel fuel,* between points in NC, SC, GA, and FL. Restricted to traffic originating at or destined to the facilities of USA Petroleum Corporation, USA Gasoline Corporation, Supersave Petroleum Corporation, Colonial Oil Company, Colonial Service Stations, Inc., Houston Oil Company, and Oasis Petroleum Corporation, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: There are 7 supporting shippers. Their statements may be examined at the Regional Office listed.

MC 149344 (Sub-6-2TA), filed July 23, 1980. Applicant: JERRY R. WHITE, WILLIAM (NMI) CROSS AND 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 90659. *Contract carrier,* irregular routes: *Bakery goods,* from points in CA to points in TX, MO, LA, FL, GA, TN, IL, MI, VA, PA, NY; MN, OH, for the account of S & G Food Co., for 270 days. Supporting shipper: S & G Food Co., 4613 Alameda St., Los Angeles, CA 90058.

MC 121626 (Sub-6-3TA), filed July 25, 1980. Applicant: BAYVIEW TRUCKING, INC., 7080 Florin Perkins Rd., Sacramento, CA 95828. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. *Foodstuffs, pet foods, and materials, equipment, and supplies used in the manufacture, sale, and distribution of foodstuffs and pet foods (except commodities in bulk)* between points in the United States (except AK and HI) on and west of an imaginary North-South line which begins at Sault Ste. Marie, MI, on the north and ends at Mobile, AL, on the south; restricted to traffic originating at or destined to Campbell Soup Company and its subsidiaries, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Campbell Soup Company, Inc., Campbell Place, Camden, NJ 08101.

MC 11722 (Sub-6-5TA), filed July 25, 1980. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 NE Weidler Street, Portland, OR 97232. *Liquid sugar in bulk in tank vehicles,* from Harrah, WA, to the U.S./Canada boundary line at or near Sweet Grass, MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Liquid Sugar, Inc., 1299 NE Front Street, Salem, OR 97310.

MC 151318 (Sub-6-2TA), filed July 24, 1980. Applicant: CALIFORNIA CONTRACT CARRIERS, 8543-B Unsworth Ave., Sacramento, CA 95828. Representative: J.R. Fallabel (same as applicant). *Contract Carrier:* Irregular Routes: *Paper Printing, other than newsprint,* from the plant site of Simpson Paper Company, Ripon, CA to points in AZ for 270 days. Supporting shipper; Simpson Paper Company, P.O. Box 757, Ripon, CA.

MC 126635 (Sub-6-1TA), filed July 25, 1980. Applicant: CHRISTIE-LAMBERT VAN & STOARAGE CO., INC., 1010 6th Avenue North, Kent, WA 98031. Representative: Michael D. Duppenthaler, 211 South Washington Street, Seattle, WA 98104. *Household goods and personal effects,* between points in WA, OR, CA, AZ, NM, TX, NV, UT, CO, WY, ID and MT, for 270 days. There are five (5) shippers. Their statements may be examined at the Regional Office listed.

MC 148158 (Sub-6-6TA), filed July 28, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91479. Representative: Robert L. Cope, Suite 501, 1730 M Street NW., Washington, DC 20036. *General Commodities* (except Classes A and B explosives, and household goods as defined by the Commission), between the facilities of East-West Shippers Association, Inc., located at or near Chicago, IL, and the facilities of West Coast Shippers Association, Inc., at or near Hoboken, NJ, and Philadelphia, PA, on the one hand, and, on the other, points in PA, IL, NJ, FL, TX, UT, AZ, CO, NV, GA, MO, LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: East-West Shippers Association, Inc., Chicago, IL, and West Coast Shippers Association, Inc., 2000 South 71st Street, Phildadephia, PA 19142.

MC 136208 (Sub-6-9TA), filed July 24, 1980. Applicant: CREAGER TRUCKING CO., INC., P.O. Box 308, Yreka, CA 96097. Representative: Donald L. Smith, (same as applicant). *Steel, and steel rebar, pipe, beams, plates, rod and sheet* from CA to Medford, OR, restricted to shipments destined to Far West Steel Corp., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Far West Steel Corp., 741 So. Grape St., Medford, OR 97501.

MC 136208 (Sub-6-10TA), filed July 28, 1980. Applicant: CREAGER TRUCKING CO., INC., P.O. Box 308, Yreka, CA 96097. Representative: Donald L. Smith (same as applicant). *K.D. Metal buildings, parts and accessories* (1) from Spanish Forks, UT to CA, OR, WA and NV, and (2) from Medford, OR to CA, OR, WA, NV, and ports of entry on the U.S.-Canada International Boundry Line in WA, ID and MT, for 270 days. Supporting shipper: Fabrite Building Systems, 688 Rosshanley Dr., Medford, OR.

MC 123157 (Sub-6-1TA), filed July 28, 1980. Applicant: CTI, P.O. Box 397, Rillito, AZ 85246. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Sulfuric acid,* in bulk in tank vehicles, from Hidalgo, NM to points in AZ, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Western States Chemical Supply Corporation, 2602 Halladay St., Santa Ana, CA 92705.

MC 151374 (Sub-6-1TA), filed July 25, 1980. Applicant: D. B. WATSON, d.b.a. DOT-LINE TRANSPORTATION, 18903 Anelo St., Gardena, CA 90248. Representative: Richard C. Celio, 2300 Camino del Sol, Fullerton, CA 92633. *Such commodities as are dealt in or used by retail stores and wholesale distributors (except alcoholic beverages and commodities in bulk)* between points in CA on the one hand, and, on the other, points in CO, IL, IN, IA, KS, MI, MO, NJ, OH, OK, OR, PA, TX, UT, WA, and WI, for 270 days. Supporting shipper(s): There are 6 shippers. Their statements may be examined at the Regional office listed.

MC 145915 (Sub-6-1TA), filed July 25, 1979. Applicant: EAGLE TRANSPORT, INC., P.O. Box 189, Montpelier, ID 83254. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Oil drilling mud compounds,* from Evanston, WY,

and its commercial zone, to Montpelier, ID and points in the UT counties of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Weber and Wasatch, for 270 days, an underlying ETA seeks 120 days authority. Supporting shippers: IMCO Services, Rock Springs, WY 82901.

MC 148602 (Sub-6-1TA), filed July 23, 1980. Applicant: ECKDAHL WAREHOUSE CO., 501 South Anderson Street, Los Angeles, CA 90033. Representative: John Paul Fischer, 256 Montgomery Street, San Francisco, CA 94104. *Contract Carrier,* Irregular routes: *Such merchandise as is dealt in by wholesale and retail chain department and food stores and equipment; materials and supplies used in conducting such business,* from the K mart Corporation distribution center at Ontario, CA to points in CA, AZ and NV under a continuing contract with K mart Corporation, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: K mart Corporation, 5600 E. Airport Drive, Ontario, CA 91761.

MC 124679 (Sub-6-20TA), filed July 28, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Robert H. Cannon, (same as applicant). *Sporting goods, sporting goods apparel,* and materials and supplies used in the manufacture and distribution and sale of such commodities between the facilities of Atomic Ski and Salt Lake City, UT and Manchester, NH and points in the US for 270 days. Supporting shipper: Atomic Ski, 516 Mondale, Salt Lake City, UT 84115

Note.—Applicant holds motor contract carrier authority in number MC-128813 and sub numbers thereunder, therefore dual operations may be involved. An underlying ETA seeks 120 days authority.

MC 124679 (Sub-6-21TA), filed July 28, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Robert H. Cannon, (same as applicant). *Woodwaste products* from (1) Los Angeles, CA to points in WA, OR, AZ, UT, ID, MT, WY, CO, NM, and IL and (2) from Salt Lake City, UT to points in IL for 270 days. Supporting shipper: Forest Products, 621 Fulton, Salt Lake City, UT 84104.

Note.—Applicant holds motor contract carrier authority in number MC 128813 and sub numbers thereunder, therefore dual operations may be involved. An underlying ETA seeks 120 days authority.

MC 124679 (Sub-6-22TA), filed July 28, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Robert H. Cannon, (same as applicant). *Commodities dealt in by wholesale and retail appliance business* from Los Angeles, CA and its commercial zone to the facilities of Ryan Distributing at Salt Lake City, UT for 270 days. Supporting shipper: Ryan Distributing, 990 South 770 West, Salt Lake City, UT 84104.

Note.—Applicant holds motor contract carrier authority in number MC 128813 and sub numbers thereunder, therefore dual operations may be involved. An underlying ETA seeks 120 days authority.

MC 125433 (Sub-6-30TA), filed July 28, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt lake City, UT 84104. Representative: John B. Anderson, (same address as applicant). (1) *Paper and paper products,* (2) *wood and wood products and equipment,* and (3) *equipment materials and supplies* used in the manufacturing and distribution of (1) and (2) above, between the facilities of the Manville Forest Products Corporation at or near West Monroe, LA, Lillie, LA; Winnfield, LA, Shreveport, LA; Huttig, AR; Cincinnati, OH; Kankakee, IL on the one hand, and on the other, points in the United States (except AK), for 270 days. Supporting shipper: Manville Forest Products Corporation (a Johns Manville Company), P.O. Box 488, West Monroe, LA 71291.

MC 107151 (Sub-6-1TA), filed July 25, 1980. Applicant: H. F. JOHNSON, INC., P.O. Box 1435, Billings, MT 59103. Representative: Donald L. Sand, (same as applicant). *Residual oil,* in bulk, in tank vehicles, from Williams County, ND to Richland County, MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Western Crude Oil Inc., Denver, CO 80217.

MC 119636 (Sub-6-2TA), filed July 28, 1980. Applicant: INCO EXPRESS, INC., 3600 South 124th Street, Seattle, WA 98168. Representative: James T. Johnson, 1610 IBM Building, Seattle, WA 98101. *Frozen foods* from Walla Walla, Pasco and Othello, WA to Seattle, WA for 270 days. Supporting shipper: D S Food Sales Co., Inc., 105 Cascade Key, Bellevue, WA 98006.

MC 146561 (Sub-6-1TA), filed July 28, 1980. Applicant: L.M.T., INC., 15005 Faulkner Rd., Santa Paula, CA 93060. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Foodstuffs* (except in bulk), from Chatsworth, CA, to points in OR and WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Serv-A-Portion, Inc., 9140 Lurline, Chatsworth, CA 91311.

MC 151388 (Sub-6-1TA), filed July 28, 1980. Applicant: JOHN D. LITTLE, 2422 South Peck Road, Whittier, CA 90601. Representative: John D. Little (same as applicant). *Contract carrier,* Irregular Routes: *Commodities sold or distributed by retail department stores,* between the facilities of Fed Mart Corporation located in the CA counties of Los Angeles, Orange and San Diego and points in the States of AZ, LA, NM; OK and TX, for 270 days. Supporting shipper: Fed Mart Corporation, 7130 Miramar Road, San Diego, CA 92121.

MC 138069 (Sub-6-1TA), filed July 25, 1980. Applicant: LUCIUS, INC., 6075 E. 60th Ave., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Animal food, in bags;* between Denver, CO on the one hand, and, on the other, Houston, TX, Galveston, TX and New Orleans, LA for 270 days. Supporting shipper: Ralston Purina, One Checker Board Square, St. Louis, MO.

MC 148351 (Sub-6-2TA), filed July 24, 1980. Applicant: MANKE TRUCK LINE, INC., 2550 Boynton Lane, Reno, NV 89502. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Beer, wine, fruit juices and canned soft drinks,* (except commodities in bulk in tank vehicles), between points in OR, WA and CA on the one hand, and points in Washoe County and Carson City, NV on the other hand, for 270 days. Supporting shippers: Morrey Distribution Co., 1250 Terminal Way, Reno, NV 89502, and Crown Beverages, 1440 Hymer, Sparks, NV 89431.

MC 44605 (Sub-6-3TA), filed July 28, 1980. Applicant: MILNE TRUCK LINES, INC., 2500 West California Avenue, Salt Lake City, UT 84104. Representative: Edward J. Hegarty, 100 Bush Street, 21st Floor, San Francisco, CA 94104. *Small household appliances, radios and tape recorders,* from the facilities of General Electric Company at Seattle, WA to Garden Grove and San Leandro, CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: General Electric Company, 1285 Boston Ave., Bridgeport, CT 06602.

MC 32882 (Sub-6-4TA), filed July 28, 1980. Applicant: MITCHELL BROS. TRUCK LINES, 3841 North Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217. *Metal Tubing* from the facilities of Torrance Tubing at or near Torrance, CA to points in AZ, NM, TX, OK, and LA, for 270 days. Supporting shipper: Torrance Tubing, 1729 W. 213th Street, Torrance, CA.

MC 730 (Sub-6-9TA), filed July 24, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., 25 North Via Monte, Walnut Creek, CA 94598. Representative: Alfred G. Krebs

(same address as applicant). *Common Carrier:* Regular Routes: *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 Farmington, NM as an off-route point in connection with carrier's authorized regular-route operations, for 270 days. There are 7 supporting shippers. Their statements may be examined at the Regional offices listed.

Note.—Applicant proposes to serve the commercial zone of the above-named point, and it also intends to tack and interline. Common control may be involved.

MC 149100 (Sub-6-4TA), filed July 28, 1980. Applicant: JIM PALMER TRUCKING, 9730 Derby Drive, Missoula, MT 59801. Representative: John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202. *Paper drying and processing equipment and the parts and components used in the manufacture, installation and maintenance thereof* (except commodities in bulk), between the facilities utilized by Tec Systems, a Division of W. R. Grace and Co., in Brown and Outagamie Counties, WI on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY, for 270 days. Supporting shipper: Tec Systems, Division of W. R. Grace Company, 830 Prosper Road., Depere, WI 54115.

MC 144957 (Sub-6-4TA), filed July 28, 1980. Applicant: PETERCLIFFE, LTD., 12623 E. Imperial Hwy., Santa Fe Springs, CA 90670. Representative: Les Peters (same address as applicant). *General Commodities* (except commodities in bulk, A and B explosives and commodities requiring special equipment) between points in AZ, CA, NV, UT, and DE, IN, KY, ME, MI, NH, OH, VT, and RI. Restricted to traffic moving on bills of lading of freight forwarders, for 270 days. Supporting shipper(s): There are six (6) supporting shippers. Their statements may be examined at the regional office listed.

MC 151386 (Sub-6-1TA), filed July 28, 1980. Applicant: COLDRITE CORPORATION d.b.a. S & J TRUCKING AND LEASING CO., P.O. Box 58502, Vernon, CA 90058. Representative: Harold David Samson (same as applicant). (1) *Foodstuffs, chilled or frozen* and (2) *exempt agricultural commodities in mixed shipments with* (1) *above,* between the facilities of Johnston Pie Co., and the facilities of Andy's Seafood Inc., located in the CA counties of Los Angeles and Orange to points in AZ, for 270 days. Supporting shipper(s): Johnston Pie Co., Box 2931, Torrance, CA 90509; Andy's Seafood, Inc., 2198 Signal Place, San Pedro, CA 90731.

MC 124692 (Sub-6-13TA), filed July 24, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same as applicant). *Modular Panels for earth covered structures* from Centralia, IL to Salem, OR, Seattle and Tacoma, WA: Clay County, IN: Indianapolis, IN; Powder River County, MT: and points in ND and SD, for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper: American Solartron Corp., RR 5, Box 170, Centralia, IL. 62801.

MC 95920 (Sub-6-3TA), filed July 24, 1980. Applicant: SANTRY TRUCKING CO., 10505 N.E. 2nd Ave., Portland, OR 97211. Representative: George R. LaBissonier, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier: general commodities except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment* between Portland, OR, and its commercial zone, on the one hand, and points in the United States, on the other hand, excluding AK and HI, for 270 days. Supporting shipper: Western States Shippers Association, Inc., 5964 N.E. 87th, Portland, OR 97220.

MC 138875 (Sub-6-18TA), filed July 28, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Frankline Road, Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). *Plumbing fixtures (except commodities in bulk),* from Aurora, IL to Nampa, ID, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): James M. Miller, Traffic, Robertson Supply, Inc., 318 6 St. N., Nampa, ID 83651.

MC 145474 (Sub-6-1TA), filed July 28, 1980. Applicant: STAR SYSTEMS, INC., 12302 East Wardman, Whittier, CA 90602. Representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212, (213) 277-2323. *Contract Carrier,* Irregular routes: *Material and supplies used in manufacture of trunks and traveling bags,* from Nogales, AZ to El Paso, TX, for the account of Samsonite Corporation, Luggage Division, for 270 days. Support shipper: Samsonite Corporation, Luggage Division, 6855 Old Nogales Highway, Tucson, AZ 85706.

MC 147012 (Sub-6-2TA), filed July 24, 1980. Applicant: T. B. T., INC., P.O. Box 8472, Stockton, CA 95208. Representative: Mark J. Hannon, 1884 W. Willow Street, Stockton, CA 95203. *Contract Carrier:* Irregular routes: *Paper, in rolls,* from points in OR, WA and AR, to Bell, CA and Santa Fe Springs, CA, for the account of Inland Container Corporation; for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Inland Container Corporation, P.O. Box 925, Indianapolis, IN 46206.

MC 140053 (Sub-6-1TA), filed July 24, 1980. Applicant: TRK TRANS INC., 3200 Bandini Blvd., Vernon, CA 90023. Representative: Richard C. Eidson (same as applicant). *Contract Carrier,* Irregular routes: *General commodities* (except class A and B explosives, household goods, those requiring the use of special equipment, commodities in bulk and those of unusual value), between the facilities of MSA-Lamda Inc., located at or near Los Angeles, CA and points within the U.S. (except AK and HI) for 270 days. Supporting shipper: MSA-Lamda, Inc., 4430 E. Sheila St., Los Angeles, CA 90023.

MC 136476 (Sub-6-2TA), filed July 24, 1980. Applicant: TRANSPORT WEST, Inc., P.O. Box 2015, Eugene, OR 97402. Representative: Gene E. Cook (same as applicant). *Contract Carrier:* irregular routes: *Scaffolds, Shoring, Foundation Forms, Scissor Lifts, Scissor Lift Booms, and Related Materials and Supplies used in Construction Erection,* from Los Angeles, Long Beach, Compton, San Leandro, Sacramento, and San Francisco, CA to points in OR, and return, for 270 days. Supporting shipper: Ivy Rents, 195 Madison Eugene, OR 97402.

MC 26396 (Sub-6-38TA), filed July 28, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Barbara S. George (same as applicant). *General Commodities* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, in tank vehicles, and those requiring special equipment), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Olin Corporation, for 270 days. Supporting shipper: Olin Corporation, 120 Long Ridge Road, Stamford, CT 06904.

MC 141804 (Sub-6-67TA), filed July 24, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Titanium Dioxide* in packages, from the DuPont facility at DeLise, MS to points in AZ, CA, CO, ID, OR and WA, for 270 days. Supporting shipper: E. I. DuPont De Nemours & Co., 1007 Market Street, Wilmington, DE 19898.

MC 141804 (Sub-6-68TA), filed July 28, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Insulation Materials, mineral wool* and materials and equipment used in the production thereof, between all points in the U.S. (except AK & HI). Restricted to traffic orginating at or destined to the facilities of Rockwool Industries, Inc., for 270 days. Supporting shipper: Roy H. Whitman, National Traffic Manager, Rockwood Industries, Inc. 7400 South Alton Court, Englewood, CO 80112.

MC 150485 (Sub-6-5TA), filed July 28, 1980. Applicant: WESTSPAN HAULING, INC., 9122 South Tacoma Way, Tacoma, WA 98499. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. *Contract Carrier,* irregular routes: *Mobile homes and portable buildings* and *equipment, materials and supplies* used in the distribution and installation of mobile homes and portable buildings, from points in the commercial zone of Boise, ID to points in the commercial zone of Tacoma, WA, for the account of Happy Homes, Inc., of Tacoma, WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Happy Homes, Inc., 10418 Pacific Highway S.W., Tacoma, WA 98499.

MC 123329 (Sub-6-3TA), filed July 28, 1980. Applicant: H. M. TRIMBLE & SONS LTD., P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: D. S. Vincent (same as applicant). *Asphalt Emulsion,* in bulk, in tank vehicles, from ports of entry on the International Boundary Line betwen the United States and Canada located in WA to points in Whatcom County, WA for 270 days. Restricted to traffic in foreign commerce. An underlying ETA seeks 120 days authority. Supporting shipper(s): Chevron Asphalt Ltd. 19770—101st Ave. Langley, B.C.

MC 151191 (Sub-6-1TA), filed July 28, 1980. Applicant: ESPENSCHIED TRANSPORATION CORPORATION, 322 South 600 East, Centerville, UT 84014. Representative: Raymond M. Kelley, 450 Capitol Life Center, Denver, CO 80203. *Contract Carrier,* Irregular routes: (1) *Such commodities as are dealt in or used by retail department stores and* (2) *materials, supplies and equipment used in the manufacture, distribution, warehousing and sale of the commodities named in (1) above,* between points in ID, MT, NV, UT, WA and WY under continuing contract(s) with J.C. Penney Co., Inc. for 270 days. Applicant intends to interline with other carriers at Butte, MT, and Spokane, WA. An underlying ETA seeks 120 days authority. Supporting shipper: J.C. Penney Co., Inc., 1301 Avenue of the Americas, Floor Number 37, New York, NY 10009.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-24054 Filed 8-8-80; 8:45 am]
BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Arkansas Power & Light Co., Arkansas Nuclear One, Unit 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 13 to Facility Operating License No. NPF-6 issued to Arkansas Power and Light Company for Operation of Arkansas Nuclear One, Unit 2 (the facility) located at the licensee's site in Pope County, Arkansas. The amended license is effective as of its date of issuance.

The amendment changes the required date for the implementation of further containment radiation monitoring instrumentation to be consistent with the staff's requirements as set forth in NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short Term Recommendations", and the letter of Mr. H. Denton, Director, NRR, dated October 30, 1979 to all power reactor licensees.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 21, 1980, (2) Amendment No. 13 to Facility Operating License No. NPF-6, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and the Arkansas Polytechnic College, Russellville, Arkansas 72801. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 31st day of July, 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,
Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-24032 Filed 8-8-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-389A]

Florida Power & Light Co., the City of Orlando, Florida, Orlando Utilities Commission; Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, the following additional advice from the Attorney General of the United States, dated July 28, 1980, with respect to St. Lucie Nuclear Generating Station, Unit No. 2.

"You have requested our advice pursuant to Section 105(c) of the Atomic Energy Act as amended, regarding a proposed amendment to the construction permit of the above referenced nuclear unit to allow the City of Orlando, Florida and Orlando Utilities Commission (collectively referred to as "Orlando") to become a co-owner of that unit. You have informed us that the Orlando Utilities Commission is part of the government of the City of Orlando but title to real estate is normally taken in the name of both the City of Orlando and the Orlando Utilities Commission. Orlando will acquire a 6.08951 percent ownership share of the St. Lucie Unit No. 2 which will be operated by Florida Power & Light Co.

"Our review of the information submitted for antitrust review purposes, as well as other information available to the Department, provides no basis at this time to conclude that the participation in St. Lucie Unit No. 2 by Orlando would create or maintain a situation inconsistent with the antitrust laws. Accordingly, it is the Department's view that no antitrust hearing is

necessary with respect to the proposed amendment to the construction permit."

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by September 10, 1980, either (1) by delivery to the NRC Docketing and Service Branch at 1717 H Street, NW, Washington, DC, or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Dated at Bethesda, MD, this first day of August, 1980.

For the Nuclear Regulatory Commission.

Jerome Saltzman,

Chief, Utility Finance Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 80-24029 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-316]

Indiana and Michigan Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Facility Operating License No. DPR-74, issued to Indiana and Michigan Electric Company (the licensee), which revised Technical Specifications for operation of Donald C. Cook Nuclear Plant, Unit No. 2 (the facility) located in Berrien County, Michigan. The amendment is effective as of the date of issuance.

The amendment revises: (1) the surveillance and monitoring requirements for the degraded voltage function; and (2) the surveillance requirements for onsite power source testing.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 22, 1980 and March 28, 1980, (2) Amendment No. 22 DPR-74, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of July, 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80-24033 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised Technical Specifications for operation of Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment approves the use of the Westinghouse Improved Thermal Design Procedure and the WRB-1 Critical Heat Flux Correlation for the Trojan Facility.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 5, 1979, as supplemented February 22 and November 5, 1979, (2) Amendment No. 46 to License No. NPF-1 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document room, 1717 H Street, N.W., Washington, D.C. and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 25th day of July, 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-24034 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has, pursuant to the Initial Decision of its Atomic Safety and Licensing Board (ASLB) dated July 11, 1980, issued Amendment No. 47 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensee), which revised the license and appended Technical Specifications for operation of the Trojan Nuclear Plant (the facility), located in Columbia County, Oregon. The amendment is effective as of its date of issuance.

The amendment authorizes modifications to the Control Building in order to substantially restore the originally intended seismic design margins and requires that the modification program be completed by not later than 12 months from the date of this amendment. In addition, the amendment adds 22 license conditions

related to the conduct of the modification program, and two new Technical Specifications applicable to the modified Control-Auxiliary-Fuel Building Complex. The Technical Specifications add operability and surveillance requirements for the new through-wall bolts used to tie reinforced concrete and the steel plate to the Control Building west and east walls, and add restrictions on any future modifications which may be made to the Control-Auxiliary-Fuel Building Complex.

The Initial Decision is subject to review by an Atomic Safety and Licensing Appeal Board prior to its becoming final. Any decision or action taken by an Atomic Safety and Licensing Appeal Board in connection with the Initial Decision may be reviewed by the Commission.

The amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

On May 26, 1978, the NRC's Director of Nuclear Reactor Regulation issued an Order for Modification of License that set forth findings that design errors in the Control Building shear walls had reduced the seismic capability of the Control Building; that the originally intended seismic capability should be substantially restored by modifications to that structure; and that operation of the facility with the Control Building in its as-built condition would violate the existing facility license. Based on the related safety evaluation by the NRC staff, however, the Order stated that the Control Building nevertheless had adequate structural capacity to resist the licensed Safe Shutdown Earthquake and that the facility operating license should be modified to permit operation, with conditions, in the interim period prior to approval and completion of modifications required by the Order.

The Order also provided opportunity for hearing and was published in the Federal Register on June 1, 1978 (43 FR 23768). Requests for hearing were to be filed by June 26, 1978, and, in the event that a hearing was ordered, the terms of the Order would not become effective until a further order issued pursuant to such hearing.

Numerous requests for a hearing were received. The requests filed by: Columbia Environmental Council; Eugene Rosolie, acting on his own behalf and as representative of the Coalition for Safe Power; Stephen M. Willingham; David B. McCoy; C. Gail Parson; Nina Bell; and the Bonneville Power Administration were granted. In addition, the State of Oregon was granted leave to participate as an interested State.

The hearing was subsequently divided into two phases. The first phase considered the safety of interim operation pending completion of modifications to restore the originally intended seismic design margins. This portion of the hearing was held October 23 through November 3, and December 11–14, 1978 in Salem and Portland, Oregon. A Partial Initial Decision allowing interim operation, subject to certain conditions, was issued by the ASLB on December 21, 1978, and a conforming license amendment was issued on December 22, 1978.

Phase II of the hearing involved consideration of the structural adequacy of the proposed Control Building modifications and the safety aspects of their implementation. This portion of the hearing was held in Portland, Oregon on March 31–April 3 and April 16–17, 1980. The above-referenced Initial Decision was subsequently issued on July 11, 1980.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the Initial Decision of the Atomic Safety and Licensing Board dated July 11, 1980; (2) Amendment No. 47 to License No. NPF-1; (3) Order for Modification of License dated May 26, 1978 and related Safety Evaluation; and (4) the Partial Initial Decision of the Atomic Safety and Licensing Board dated December 21, 1978.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051. Single copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 25th day of July, 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-24035 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-546 and 50-547]

Public Service Co. of Indiana, Inc., et al. (Marble Hill Nuclear Generating Station, Units 1 & 2); Request for Action Under 10 CFR 2.206

The Commission has referred a document docketed on May 14, 1980, to the NRC Staff for consideration under 10 CFR 2.206 of the Commission's regulations. The document, which was filed by Thomas Dattilo on behalf of Save the Valley, is entitled "Save the Valley Additional Comments to Commissioners Concerning Resumption of Work at Marble Hill". Another document, docketed on May 7, 1980, is incorporated by reference. Save the Valley requests that certain information and affidavits be reviewed to assure the NRC has confidence that Public Service Company of Indiana's quality assurance and control program is properly rehabilitated. Save the Valley also asks that the Commission consider whether further study of seismic information should be made for the Marble Hill site.

Appropriate action will be taken on Save the Valley's submittals within a reasonable time as provided under 10 CFR 2.206. Copies of the submittals are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana 47250.

Dated at Bethesda, Maryland this 26th day of June, 1980.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 80-24036 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-1162]

Western Nuclear, Inc.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to Commission order, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on a request for hearing and to preside over the proceeding in the event that a hearing is ordered.

Western Nuclear, Inc.

[Split Rock Uranium Mill]

Source Material License SUA-56

This action is in reference to an order of the Commission dated July 28, 1980, concerning an application filed by Western Nuclear, Inc. under 10 CFR Part 40 to renew license No. SUA-56 to operate its Split Rock Uranium Mill in Jefferson City, Wyoming.

The Chairman of this Board and his address is as follows: Sheldon J. Wolfe, Esq., U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Washington, D.C. 20555.

The other members of the Board and their addresses are as follows:

Dr. Jerry R. Kline, U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Washington, D.C. 20555.

Dr. Quentin J. Stober, Fisheries Research Institute, University of Washington, Seattle, Washington 98195.

Dated at Bethesda, Maryland, this 1st day of August, 1980.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 80-24030 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Reconstitution of Board

Elizabeth S. Bowers, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict, Mrs. Bowers is unable to continue her service on this Board.

Accordingly, Valentine B. Deale, Esq., whose address is 1001 Connecticut Avenue, N.W., Washington, D.C. 20036, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland, this 1st day of August, 1980.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 80-24031 Filed 8-8-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Improving Government Regulations; OMB Directive Covered by Executive Order 12044; Semi-Annual Agenda of Upcoming Action

August 4, 1980.

AGENCY: Office of Management and Budget.

ACTION: Publication of semi-annual agenda of regulations.

SUMMARY: The Office of Management and Budget is publishing the semi-annual agenda of upcoming action on OMB directives covered by Executive Order 12044, Improving Government Regulations. This action is in accordance with OMB's internal guidelines for implementing Executive Order 12044, as published in the Federal Register on June 15, 1979.

FOR FURTHER INFORMATION CONTACT: See agency contract person listed for entry in the agenda, c/o Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503. On background section, contact Linda Smith at the above address.

SUMMARY INFORMATION:

Background

OMB Circulars are directives that communicate significant government-wide policy of a continuing nature. A Circular falling within the requirements of Executive Order 12044 is one that is likely to affect:

(1) The existing procedures by which State or local governments contribute to or participate in the development of Federal policy;

(2) The nature and scope of information collected by Federal agencies from non-Federal respondents;

(3) The nature and scope of information provided by agencies of the Federal Government under the Privacy Act;

(4) The standards by which agencies establish requirements associated with grants, contracts, or other forms of financial assistance.

These Circulars that outline procedures to be followed by departments and agencies for the President's budget and legislative programs are not covered by the provisions of Executive Order 12044.

Summary of action under Executive Order 12044. A preliminary review of OMB Circulars indicates that twenty-seven are subject to Executive Order 12044 guidelines. These include:

A-21 Cost principles for educational institutions

A-25 User charges

A-40 Managing of Federal reporting requirements

A-63 Advisory committee management

A-73 Audit of Federal operations and programs

A-76 Policies for acquiring commercial or industrial products and services for Government use

A-84 Reporting of Federal outlays by geographic region

A-89 Catalog of Federal Domestic Assistance

A-90 Cooperating with State and local governments to coordinate and improve information systems

A-94 Discount rates to be used in time-distributed costs and benefits

A-95 Evaluation, review, and coordination of Federal and federally assisted programs and projects

A-97 Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperative Act of 1968

A-102 Uniform administrative requirements for grants-in-aid to State and local governments

A-104 Comparative cost analysis for decisions to lease or purchase general purpose real property

A-106 Reporting requirements in connection with the prevention, control, and abatement of environmental pollution at existing Federal facilities

A-108 Responsibilities for the maintenance of records about individuals by Federal agencies

A-109 Mayor system acquisitions

A-110 Uniform administrative requirements for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations

A-111 Jointly funded assistance to State and local governments and nonprofit organizations

A-116 Agency preparations of urban community impact analyses

A-119 Federal participation in the development and use of voluntary standards

*FMC 73-3 Cost sharing on Federal research

FMC 73-6 Coordinating indirect cost rates and audit at educational institutions

FMC 73-7 Administration of college and university research grants

*Circulars designated by "FMC" are those for which responsibility was transferred from GSA to OMB by Executive Order 11893, dated December 31, 1975.

FMC 74–3 Government-wide procedures for processing preaward protests against contract award

FMC 74–4 Cost principles applicable to grants and contracts with State and local governments

FMC 75–1 Ensuring consideration of users' experience with Federal agency supply support systems

Current internal guidelines require a sunset review of each Circular at least once every three years. Of the twenty-seven covered Circulars listed above, reviews have been initiated and/or completed on thirteen (A–25, 40, 63, 73, 89, 94, 95, 106, 108, and 110, and FMC 73–6, 73–8, and 74–4). During the next six months, reviews will be initiated on ten more Circulars (A–84, 90, 97, 104, 109, and 111, and FMC 73–3, 73–7, 74–3, and 75–1). The remaining four Circulars (A–21, 76, 116 and 119) have been newly issued or reissued during the past three years and do not warrant a review at this time.

Specific actions on covered directives. Actions on covered directives during the past six months are described in the attachment.

James T. McIntyre, Jr.,
Director.

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Circular A–106, Procedural Requirements in Connection with Federal Facility Compliance with Pollution Control Standards. This Circular sets forth the procedures to be followed by Federal agencies in carrying out the provisions of Executive Order 12088.	1. Comments may be received at any time.	August 15, 1981 rather than Sept. 1979, as previously reported.	Circular A–106 is being reviewed to clarify the procedures that must be followed by Federal agencies in controlling pollution at Federal facilities pursuant to Executive Order 12088. 1. Are the requirements for agency information on pollution control clear? 2. Does the schedule for agency reporting allow sufficient time for project review? 3. Does the schedule for reporting ensure that all projects that are needed will be included? 4. Are the information requirements for EPA's evaluation of agency proposals clear and adequate? Contact Person: Kathleen O'Halloran, Natural Resources, 395–6827.
Circular requiring states to prepare a substate distribution of population projections.	The public comments phase has been completed. 1. The draft circular was published in the Federal Register for comment in December 1979. 2. A series of public hearings was held in different cities.	November 1980 rather than July 1980, as previously reported.	OMB and the Department of Commerce are undertaking an effort to develop a standardized series of Federal, State and substate population projections for use by Federal agencies in funding capital facilities. This effort is expected to greatly reduce the often conflicting and duplicative projections now prepared by State and local governments, and to avoid the expenditure of Federal funds for facility capacities that will never be utilized. *Major issues:* The following issues have been referenced in the proposed circular: 1. Should the Federal Government finance the costs of preparing the substate projection? 2. Should the Federal Government establish an appeals process in the event of disputes between States and substate governments? 3. What sanction should the Federal Government apply if substate projections are not prepared? Contact person: Thomas Hadd, Assistance Policy Branch/IGA, 395–5156.
Policy guidance on standardizing citizen participation requirements applied to State and local governments by Federal agencies.	OMB has deferred publication of a paper summarizing the major options, pending the resolution of certain issues and the outcome of related legislative actions. Before the end of July, an announcement will be published indicating what will be done on the project.	Not determined	Studies have indicated that existing citizen participation requirements are often ineffective. In some instances, requirements should exist but do not. This effort is expected to review the present set of requirements and develop recommendations on how a more uniform, effective system of requirements could be established. *Major issues:* Two alternative proposals are likely to be reviewed. The first would substitute standards of performance for the present set of requirements. A citizen participation program would be developed on a case-by-case (project-by-project)/locality-by-locality basis as a result of negotiations between the Federal funding agency and the State and local government. Most of the existing nonstatutory requirements would be eliminated. The second alternative would establish a core set of requirements applicable nationally to all Federal agencies. It would likely increase and elaborate on the existing set of requirements specified by many Federal programs. Contact person: Thomas Hadd, Assistance Policy Branch-IGA, 395–5156.
Revision of Circular A–21, "Cost principles for educational institutions".	Study by interagency task force and affected groups. Further public involvement will depend on results of the study.	Sept. 1980 rather than July 1980, as previously reported.	1. Review is being done at the urging of university representatives as a result of comments received during the last revision of A–21. 2. *Major issue:* ● Recognition of independent research and development as an allowable cost. Contact person: John J. Lordan, Financial Management Branch/BRD, 395–6823.

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of property requirements in Circular A-110, "Uniform requirements for grants and agreements with universities, hospitals, and other nonprofit organizations".	Publication for comment in the **Federal Register** expected in August 1980 rather than Jan. 1980 as previously reported.	Sept. 1980 rather than March 1980, as previously reported.	Property management attachment is being revised to make it consistent with Circular A-21 and to further the goal of simplification of grant requirements and reduced paperwork. Contact person: John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of closeout requirements in Circulars A-102 and A-110.	Publication for comment in the **Federal Register** expected in Sept. 1980, rather than Jan. 1980, as previously reported.	Dec. 1980 rather than May 1980, as previously reported.	1. Closeout attachment being revised as the result of reports that substantial amounts of funds advanced to grantees but not spent for program purposes are being held by grantees. *Major issues:* ● Prompt refund of unspent cash advances. ● Greater specificity of closeout requirements. Contact person: John J. Lordan, Financial Management Branch/BRD, 395-6823.
A new OMB circular covering "Cost principles for nonprofit organizations".	1. Proposed circular was published for comment in the **Federal Register**, April 1977. 2. Recirculated to Federal agencies and interested parties in April 1978.	Issued June 27, 1980, as Circular A-122.	1. Circular was developed to assist nonprofit agencies by providing single set of cost principles as part of Federal effort to standardize and simplify grant procedures. 2. *Major issues:* ● Methods of allocating indirect costs. ● Uniform set of allowable costs. Contact person: John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of OMB Circular A-102 and A-110 to include a set of standard legal assurances for grants to State and local governments, universities, hospitals, and other nonprofit organizations.	Publication for comment in the **Federal Register** expected in August 1980, rather than Jan. 1980, as previously reported.	Sept. 1980 rather than March 1980 as previously reported.	1. Update of assurances in OMB Circular A-102 is needed because of the changes that have taken place in Executive Orders and Acts of Congress. Inclusion of standard assurances in OMB Circular A-110 will further the goal of standardization and simplification for grantees. 2. *Major issue:* ● Standardization of assurance language, assurance formats and forms. Contact person: John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments".	1. Proposing revision concerning expenses of officials has been circulated for comment to all the major public interest groups. 2. Extensive discussions on the interest issue have taken place with State and local officials and representatives of public interest groups. 3. Proposed revision was published for comment in the **Federal Register**, June 1979. Publication of the interest issue is dependent upon comments received from Federal agencies.	Final rule published in the **Federal Register**, April 22, 1980.	The circular was revised at the request of State, local and Federal officials. *Major issues:* 1. Whether to recognize travel cost of local legislators and chief executives as an expense when their work directly benefits grant programs. 2. Whether to recognize interest incurred in borrowing to construct building site as a reimbursable cost.

Directive under development	Opportunity for public participation	Completion date
Contact person: John J. Lordan, Financial Management Branch/BRD, 395-6823.		

Directive under development	Opportunity for public participation	Completion date
Revision of OMB Circular A-95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects".	1. Extensive discussions on A-95 improvements are taking place with State and local governments, representatives of public interest groups, and Federal agencies. 2. Draft of proposed revision to A-95 will be circulated to above groups prior to formal publication. 3. Proposed revision is expected to be published for comment in the **Federal Register** in late 1980.	Spring 1981.

Reasons for review and major issues
1. In follow-up to a national conference on A-95 in November 1979 which high-lighted the need for a major effort to improve implementation of the Circular, OMB has begun an A-95 improvement program in which revision of the Circular is an important item. 2. *Major issues:* —Emphasis on encouraging greater involvement of clearinghouses in reviewing projects in relation to functional and comprehensive planning. —Improved clearinghouse and Federal agency procedures for implementing the Circular. —Improved Federal compliance. —Funding alternatives. Contact Person: Dick Hite, Intergovernmental Affairs Division, 395-3774.

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Regulation designed to improve the management of reporting and recordkeeping the Federal Government imposes on the public, to replace OMB Circular A-40, "Management of Federal Reporting Requirements," and to implement Executive Order 12172, "Paperwork".	1. Proposed rules published in the **Federal Register** on January 11, 1980. 2. Public comment period closed March 11, 1980.	Approximately 120 comments have been received. A final rule should be issued in August, 1980.	Issuance of a new Executive Order on "Paperwork" and a need to clarify and update related OMB issuances have resulted in the development of consolidated OMB requirements. These are designed to increase effectiveness of the Government's paperwork control program and implementation of the Federal Reports Act of 1942.

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
			Major issues: (1) Are new policies and procedures adequate to ensure effectiveness of the paperwork control program? (2) Are public participation provisions adequate? (3) Is the development of a single set of OMB rules to control paperwork a sound idea? (4) Should guidelines of President's reporting burden reduction program or significant portions of them be incorporated into the circular? (5) Should circular be limited in subject matter to public reporting? (6) Are all items defined? Are definitions clear? Contact person: C. Louis Kincannon, Regulatory and Information Policy, 395-6880.
Guidance establishing policies, process, and agency performance standards for managing generally applicable requirements for domestic assistance programs, including competition, the handling of for-profit organizations, and dispute resolution. In addition, improvements in the Federal Grant and Cooperative Agreement Act will be examined.	1. OMB Study of Federal Assistance solicited and received extensive public comment on basic alternatives. 2. Proposed policies to be published in the Federal Register in Sept. and Oct. 1980 for public comment.	1980 Fall-Winter	The Federal Grant and Cooperative Agreement Act, (Pub. L. 95-224) required OMB to study the feasibility of a comprehensive system of guidance for Federal assistance activities, and report to Congress its recommendations for implementing the system. The study found major problems in the application of general Federal policies (e.g. protecting the enviorment, preventing decrimination, and conserving energy) and administrative requirements to assistance programs. The study report to Congress indicated the system of guidance should initially concentrate on these problems. *Major issues:* Each assistance program affected by these generally applicable requirements must serve multiple Federal objectives. There need to be policies and a process for the development, implementation, and evaluation of these requirements. Major issues include: 1. To what degree should these requirements be standardized for all programs and applicants? If they need to be kept flexible, how can recipients be assured of consistent instructions from different Federal agencies. 2. By what methods can the necessary interagency coordination and cooperation be achieved without inordinate time delays or increased costs? 3. How can the performance of agencies in complying with the new policies and process be measured and assured? 4. What policies and procedures will assure compliance with generally applicable requirements without detracting from assistance agencies' primary program objectives. 5. How should competition involving both for-profit and non-profit organizations be handled? 6. To what extent should Government-wide policies on treatment of commercial and industrial organizations be adopted. 7. What minimum standards for dispute resolution should apply to all assistance agencies? Contact person: Dick Hite, Intergovernmental Affairs Div. 395-3774.

[FR Doc. 80-23846 Filed 8-6-80; 8:45 am]
BILLING CODE 3110-01-M

President's Commission for a National Agenda for the Eighties; Meeting

August 5, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given for a meeting of the Executive Committee of the President's Commission for a National Agenda for the Eighties, scheduled August 18, 1980 from 2:00 p.m. to 5:00 p.m. in the Boettcher West Seminar Room, The Aspen Institute, Aspen, Colorado.

The purpose of the meeting is to discuss The United States and International Competitiveness: The Japanese Model.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20036, (202) 275-0616.

Brenda Mayberry,

Acting, Budget and Management Officer.

[FR Doc. 80-24093 Filed 8-8-80; 8.45 a.m.]
BILLING CODE 3110-01-M

President's Commission for a National Agenda for the Eighties; Meeting

August 5, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given for a meeting of the staff of Panel V (Policies for Metropolitan and Non-Metropolitan Areas) of the President's Commission for a National Agenda for the Eighties, scheduled August 19, 1980 from 9:00 a.m. to 5:00 p.m. in the Boettcher West

Seminar Room, The Aspen Institute, Aspen, Colorado.

Panel members will meet with members of the State and Local Government Advisory Group.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20036, (202) 275-0616.

Brenda Mayberry,

Acting, Budget and Management Officer.

[FR Doc. 80-24094 Filed 8-8-80; 8:45 am]

BILLING CODE 3110-01-M

President's Commission for a National Agenda for the Eighties; Meeting

August 5, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given for a meeting of the Executive Committee of the President's Commission for a National Agenda for the Eighties, scheduled August 19, 1980 from 8:30 p.m. to 10:00 p.m. in the Paepke Auditorium, The Aspen Institute, Aspen, Colorado.

The purpose of the meeting will be to present a town meeting in order to discuss the Commission's activities.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington D.C. 20036, (202) 275-0616.

Brenda Mayberry,

Acting, Budget and Management Officer.

[FR Doc. 80-24095 Filed 8-8-80; 8:45 am]

BILLING CODE 3110-01-M

Agency Forms Under Review

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)

Revisions

Economics, Statistics, and Cooperatives Service
Brewers and Dealers Hop Stocks Survey
Semi-annually
Hop Brewers and Dealers, 102 responses; 8 hours
Charles A. Ellett, 395-7340

Reinstatements

Rural Electrification Administration
Prospective Large Power Service (REA Borrowers)
REA Form 170
On occasion
REA electric borrowers, 75 responses; 300 hoursFederal Register
Charles A. Ellett, 395-7340

DEPARTMENT OF COMMERCE

(Agency Clearance Officer—Edward Michals, 377-3627)

New Forms

Economic Development Administration
Business Loan Project Inspection and Certification of Acceptability
ED-269
On Occasion
Business Firms Expanding or Building New Facilities, 900 Responses; 2,700 Hours
William T. Adams, 395-4814
Economic Development Administration
Status of Payments on Project Accounts
ED-268
On Occasion
Business Entities Constructing New or Expanded Facil., 1,800 Responses; 1,800 Hours
William T. Adams, 395-4814

Revisions

Economic Development Administration
Employment Data of Recipient or Other Party Connected With EDA Assistance
ED-525
On Occasion
Usually Organizations With at Least 50 Employees, 288 Responses; 2,304 Hours
William T. Adams, 395-4814
Maritime Administration
Ship Characteristic Card, Dry and Tanker
MA-91, MA-92
On Occasion
U.S. Merchant Ship Owners, 15 Responses; 75 Hours
William T. Adams, 395-4814

Reinstatements

Economic Development Administration
Borrower's Certification of Current Status and Request for EDA Action
ED 270
On Occasion
Business Entities and Local Development Corp., 600 Responses; 1,800 Hours
William T. Adams, 395-4814
Economic Development Administration
Borrower's Request for Equity Credit
ED 266
On Occasion
Business Entities Expanding or Building New Facilities, 15 Responses; 45 Hours
William T. Adams, 395-4814

DEPARTMENT OF DEFENSE

(Agency Clearance Officer—John V. Wenderoth, 697-1195

Revisions

Departmental and Other Request for Report From (Employer)—(School)—(Personal Reference)
DD370
Annually
Employers and Schools, 900,000 Responses; 180,000 Hours
Edward C. Springer, 395-4814

EDUCATION DEPARTMENT

(Agency Clearance Officer—William A. Wooten, 376,0436)

New Forms

National Center for Education Statistics
High School & Beyond—
Parent Questionnaire
NCES 2408-25
Single Time
Sample of Parents, 6,500 Responses; 4,875 Hours
Jefferson B. Hill, 395-7340

DEPARTMENT OF ENERGY

(Agency Clearance Officer—Diane W. Lique, 633-8526)

New Forms

Weatherization Assistance Progress Report
CS-434
Monthly
State Grantees in Weatherization Program, 888 Reponses; 3,552 Hours
Jefferson B. Hill, 395-7340

Revisions

Energy Savings Report
CS-462
Annually
State Energy Offices, 56 Responses; 16,128 Hours
Jefferson B. Hill, 395-7340

DEPARTMENT OF HEALTH AND HUMAN SERVICES

(Agency Clearance Officer—Joseph H. Strnad, 245-7488)

New Forms

Public Health Service
Health Action Survey
Single Time
Employees of One Workplace—Machinists, 230 Responses; 96 Hours
Maria Gonzales, 395-6132

Revisions

Social Security Administration
Statement of Employer
SSA-7011
On Occasion
Any Employer Who Has Wages To Report for an Employee, 850,000 Responses; 283,333 Hours
Barbara F. Young, 395-6880

ENVIRONMENTAL PROTECTION AGENCY

(Agency Clearance Officer—Mr. Mel Kollander, 287-0747)

New Forms

Notice of Intent To Certify
On Occasion
Automotive Part Manufacturers of Various Sizes, 305 Responses; 610 Hours
Edward H. Clarke, 395-7340

Reinstatements

Inquiry for Information Exchange—Public Health Aspects of Viruses in Water
EPA-CIN-10
Semi-Annually
Research Scientists World-Wide, 180 Responses; 180 Hours
Edward H. Clarke, 395-7340

TENNESSEE VALLEY AUTHORITY

(Agency Clearance Officer—Eugene E. Mynatt, 857-2596)

Extensions

Tennessee Valley Annual Commercial Fish and Mussel
Dealers Survey
TVA 5596
Annually
Commercial Fish and Mussel Dealers, 72 Responses; 144 Hours
Charles A. Ellett, 395-7340

C. Louis Kincannon,
Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80-24123 Filed 8-8-80; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11285 (811-1569)]

American General Total Return Fund, Inc.; Filing of Application Pursuant to Section 3(f) of the Investment Company Act of 1940 for an Order Declaring That Company Has Ceased to be an Investment Company

August 4, 1980.

Notice is hereby given that American General Total Return Fund, Inc., 2777 Allen Parkway, Houston, Texas 77019 ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 10, 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.

The application states that Applicant, a Maryland corporation, registered under the Act on December 4, 1967; and on the same date it filed a registration statement (File No. 2-27779) under the Securities Act of 1933 covering 15,000,000 shares of its capital stock in connection with a proposed public offering of its shares. This registration statement was declared effective by the Commission on March 15, 1968, on which date the public offering commenced. At the close of business on November 30, 1979, Applicant had outstanding 4,024,356 shares with a net asset value of $8.00 per share for a total net asset value of $32,196,037.

At the annual meeting of shareholders held on November 28, 1979, holders of a

majority of Applicant's outstanding shares of capital stock approved an Agreement and Plan of Reorganization which provided for the transfer of all of Applicant's portfolio securities and substantially all of its other assets to the Fund of America, Inc. ("FOA"), in exchange for shares of capital stock of FOA, and for the dissolution of Applicant. Applicant's board of directors approved the transfer of assets to FOA on September 7, 1979. The application states that the transfer of assets was effected on November 30, 1979, and that Applicant distributed to its shareholders all of the FOA shares it acquired by establishing for each shareholder an FOA account and transferring to such account the shareholder's pro-rata portion of the FOA shares. The transfer of assets was based on the relative net asset value of the shares of the two companies, which was determined by Applicant and FOA on the same basis. Each shareholder of Applicant received approximately 0.96365 FOA shares for each share of Applicant then owned by the shareholder.

Applicant states that it currently has no debts or other liabailities outstanding because all of its debts and liabilities were either assumed by FOA or paid by Applicant; it has no assets; it has no securityholders; it is not a party to any litigation or administrative proceedings; and within the last 18 months Applicant has not for any reason transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Applicant also states that both FOA and it bore their own expenses in connection with the transfer of its assets to FOA. Finally, Applicant states that it was dissolved as a corporation under the laws of the State of Maryland by the filing of Articles of Dissolution on December 3, 1979, and that it is not now engaged, and does not propose to engage, in any business activities since it has completed the winding-up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or 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 rergistration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 29, 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 interest, the reasons 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 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-24144 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17045; SR-BSECC-80-1]

Boston Stock Exchange Clearing Corp. ("BSECC"); Order Approving Proposed Rule Change

August 4, 1980.

On January 8, 1980, BSECC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change establishing procedures whereby book-entry transfers within New England Securities Depository Trust Company may be used for settlement of trades clearing and settling through BSECC.

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. 34-16494, January 15, 1980) and by publication in the Federal Register (45 FR 5425, January 15, 1980). No written comments were 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 registered clearing agencies and, in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-24140 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21670, 70-6483]

The Connecticut Light & Power Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

August 4, 1980.

Notice is hereby given that The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to said application, which is summarized below, for a complete statement of the proposed transaction.

CL&P proposes to issue and sell, at competitive bidding, up to $75,000,000 principal amount of its First and Refunding Mortgage ——% Bonds, Series FF, due October 1, 2010. The interest rate, which shall be a multiple of ⅛ of 1%, and the price, exclusive of accrued interest, to be paid to CL&P, which will not be less than 98% nor more than 102% of the principal amount thereof, will be determined by competitive bidding. The bonds will be issued under the Indenture of Mortgage and Deed of Trust dated as of May 1, 1921, between CL&P and Bankers Trust Company, Trustee, as heretofore supplemented by a supplemental indenture to be dated as of October 1, 1980. The supplemental indenture provides, among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to October 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by CL&P at an effective cost of less than the effective interest cost of the bonds.

The coverage ratio of net earnings to total annual interest charges is 2.35 on an actual basis and 2.01 on a *pro forma* basis.

The net proceeds from the sale of the bonds will be used by CL&P to repay a portion of the company's short-term borrowings estimaed to total $155,000,000 at the time of such sale, including $15,000,000 to be borrowed on a temporary basis, to refund a bond issue maturing on October 1, 1980. Except for said $15,000,000 of temporary borrowings, such short-term borrowings were or will be applied to finance CL&P's 1979–1980 construction program. The company's 1980–1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, are expected to total about $317,043,000 ($154,150,000 in 1980 and $162,893,000 in 1981) of which $61,377,000 had been expended as of June 30, 1980. In addition to the sale of the Bonds, the Company estimates that in 1980 it will require an additional $199,600,000 of funds from external sources to complete its 1980 construction program, to repay at maturity $15,000,000 of 3% Bonds on October 1, 1980, and to refinance approximately $88,200,000 of short-term debt that had been incurred before 1980. Of the required amount, approximately $75,000,000 is expected to be realized from the sale of the bonds, $18,000,000 is expected to be realized from the sale of a 1.5% interest (out of CL&P's remaining 4.5% interest) in the Seabrook, New Hampshire, nuclear unit, $40,000,000 is expected to be realized from capital contributions, and the balance is expected to be financed through short-term borrowings.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. The approval of the Connecticut Department of Public Utilities is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 28, 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 Regulation 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 hearing (if ordered) and any postponements thereof.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

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National Association of Securities Dealers, Inc.; 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. 94-29, 16 (June 4, 1975) notice is hereby given that on June 12, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following are the texts of proposed amendments to Appendix E to Article III, Section 33 of the Association's Rules of Fair Practice and proposed new Part IV to Schedule D or Article XVI, Section 3 of the Association's By-Laws. With respect to the amendments to Appendix E, additional material is italicized and deleted material is indicated by brackets. The entire text of proposed Part IV to Schedule D is new.

Article III, Section 33, Appendix E

Sec. 1 General.

(a) Applicability—The Rules in this Appendix E shall be applicable: (1) *to the trading of option contracts issued by the Options Clearing Corporation and displayed on the NASDAQ System and to the terms and conditions of such contracts; (2)* to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange listed options by members who are not members of an exchange on which the option executed is listed; [(2)] *(3)* to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and [(3)] *(4)* other matters related to options trading.

Without limiting the generality of the foregoing, Sections 3 through 12 of this Appendix E shall apply only to transactions in options on common stock, and Sections 13 through 24 of this Appendix E shall apply to transactions in options on any security, including common stock.

(b) No change.

(c) No change.

Sec. 2 Definitions.

(A) Options Clearing Corporation—The term "Options Clearing Corporation" means The Options Clearing Corporation, the issuer of exchange listed options *and options displayed on NASDAQ.*

(b) No change.

(c) No change.

(d) Participant [Exchange] *Organization*—The term "participant [exchange] *organization*" means a national securities exchange *or association* which has qualified for participation in the Options Clearing Corporation pursuant to the provisions of Article VII of the By-Laws of the Options Clearing Corporation.

(e) No change.

(f) No change.

(g) NASDAQ Option Transaction—The term "NASDAQ option transaction" means a transaction effected by a member for the purchase or sale of an option contract which is displayed on the NASDAQ System or for the closing out of a long or short position in such option contract.

Existing subsections (g) through (k) are relettered (h) through (l) but are otherwise unchanged.

(m) Group of Options—The term "group of options" means all option contracts of the same class of options having the same exercise price and unit of trading but separate expiration dates.

Existing subsections (l) through (ll) are relettered (n) through (nn) but are otherwise unchanged.

(Additional relevant definitions pertaining to options trading are

contained in Section 1 of Part IV to Schedule D of the By-Laws of the Corporation.)

Sec. 3 Position Limits—No change.

Sec. 4 Exercise Limits—No change.

Sec. 5 Reporting of Options Positions.

(a) No change.

(b) No change.

(c) No change.

(d) In addition to the reporting provisions set forth in subsections (a) through (c) hereof, a member who is a registered NASDAQ options market maker shall be required to file information with the Corporation in respect to transactions and positions relative to conventional options on underlying securities subject to options displayed on NASDAQ. Such information shall be filed at a time and in a manner prescribed by the Corporation.

Sec. 6 Liquidation of Postions and Restrictions on Access—No change.

Sec. 7 Limit on Uncovered Short Positions.

Whenever the Corporation shall determine in light of current conditions in the markets for options or in the markets for underlying securities, that there are outstanding a number of uncovered short positions in options of a given class in excess of the limits established by the Corporation for purposes of this Section, or that a percentage of outstanding short positions in option contracts of a given class are uncovered, in excess of the limits established by the Corporation for purposes of this Section, the Corporation, upon its determination that such action is in the public interest and necessary for the protection of investors and the maintenance of a fair and orderly market in the option contracts or underlying securities, may prohibit any further opening writing transaction in option contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short position in option contracts of one or more series of options of that class. The Corporation *may exempt transactions in NASDAQ options by registered NASDAQ options market makers from restrictions imposed under this Section and it* shall rescind such restrictions upon its determination that they are no longer appropriate.

Sec. 8 Restrictions on Out-of-the-Money Options Transactions.

(a) Subject to the provisions of subsections (b) and (c) hereof, no member or person associated with a member shall enter on behalf of a customer, on behalf of any officer, director, partner, employee or affiliate of the member, or on behalf of the investment account of the member, any order for an opening transaction in any [exchange listed] call option contract if: (1) The exercise price is more than $5.00 above the closing *best bid or* market price of the underlying security for such call option on the last previous day in which such underlying security was traded; and, (2) the closing *best bid or* market price of such call option, in all markets in which such call option was traded on the last previous day on which there was a trade of the call option [on any exchange], was less than $.50 per share at option; and no member or person associated with a member shall enter on behalf of a customer, on behalf of any officer, director, partner, employee or affiliate of the member, or on behalf of the investment account of the member any order for an opening transaction in any [exchange listed] put option contract if: The exercise price is more than $5.00 below the closing *best bid or* market price of the underlying security for such put option on the last previous day in which such underlying security was traded; and, (2) the closing *best bid or* market price of such put option, in all markets in which such put option was traded, on the last previous day on which day there was a trade of the put option on any exchange, was less than $.50 per unit at option.

Subsections (b)(1) through (b)(4)—No change.

(5) Any transaction of a registered NASDAQ options market maker while acting as a registered NASDAQ options market maker.

(c) No change.

(d) No change.

Sec. 9 Other Restrictions on Options Transactions and Exercise—No change.

Sec. 10 Rights and Obligations of Holders and Writers—No change.

Sec. 11 Open Orders on "Ex-Date"—No change.

Sec. 12 Delivery of Current Prospectus—No change.

Sec. 13 Confirmations.

Every member shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying security, the expiration month, the exercise price, the number of option contracts, the premium, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, whether the transaction was effected on a principal or agency basis and for other than [exchange listed] options *issued by the Options Clearing Corporation* the date of expiration. The confirmation shall by appropriate symbols distinguish between [exchange listed] *NASDAQ* option transactions and other transactions in option contracts. *A member effecting a transaction in option contracts for a customer's account while acting as a market maker in both the option and its underlying security, shall also disclose such information to the customer on the confirmation.*

Sections 14 through 24—No change.

* * * * *

Schedule D of the Association's By-Laws would be amended by adding a new Part IV. Existing Parts I through III would remain unchanged while existing Parts IV through XI would be renumbered V through XII. The entire text of Part IV is new.

Article XVI, Sec. 3, Schedule D, Part IV—NASDAQ Options

Sec. 1. Definitions.

(a) Authorized Underlying Security—The term "authorized underlying security" means a security which is eligible to be subject to NASDAQ options subject to the provisions of Section 6 hereof and which has been designated by the Corporation to be an authorized underlying security.

(b) NASDAQ Option Contract—The term "NASDAQ Option contract" means an option contract which is eligible for quotation display on the NASDAQ System.

(c) Unit of Trading—The term "unit of trading" means the number of units of the underlying security designated by the Options Clearing Corporation as the subject of a single option contract. In the absence of any other designation, the unit of trading for a common stock is 100 shares.

(d) Best Bid and Asked—The term "best bid" means the best or highest price of all of the open active bids. The term "best asked" means the best or lowest (but greater than zero) price of all the open active askeds.

(e) Registered NASDAQ Options Market Maker—The term "registered NASDAQ Options market maker" means a member who meets the qualification for such as set forth in Section 3 hereof, is willing and able to serve as such in connection with NASDAQ Option contracts and who is authorized by the Corporation to do so.

(f) Dual Market Maker—The term "dual market maker" means a registered NASDAQ Options market maker who

makes a market in the underlying security of an option class displayed on the NASDAQ System while simultaneously making a market in one or more options series thereof; provided, however, that the provisons of Section 3(d) hereof have been satisfied.

(g) Unless the context otherwise requires, or unless otherwise defined herein, the terms used in this Part IV of Schedule D shall have the meanings as defined in Section 2 of Appendix E to Section 33 of the Association's Rules of Fair Practice.

Sec. 2 NASDAQ Options Services Available.

(a) Level 1 NASDAQ Options Service.

(1) Nature of Service—This service will provide the subscriber with data in the form of the best bid and asked quotations for each NASDAQ Option on which a minimum of two registered NASDAQ options market makers are entering quotes during the day.

(2) Availability—This service is available only through independent distributors authorized by the Corporation to obtain access to the data from the NASDAQ System for distribution to others. The subscriber must agree with the Corporation that the quotation data received through such service will not be used for illegal purposes nor will access thereto be granted on a continuous basis to any person not approved by the Corporation, and the independent distributor must obtain authorization in writing from the Corporation to serve the subscriber.

(b) Level 2 NASDAQ Options Service.

(1) Nature of Service—This service will provide the subscriber with access to the quotations of all of the registered NASDAQ options market makers entering quotes on each of the NASDAQ options.

(2) Availability—Level 2 NASDAQ options service is available only to a person approved and authorized by the Corporation fpr retrieval of NASDAQ options quotation data.

(c) Level 3 NASDAQ Options Service.

(1) Nature of Service—This service enable the registered NASDAQ optiqns market maker to enter quotations into the system only on the NASDAQ options as to which the Corporation has authorized it to enter quotes pursuant to the procedures set forth in Section 3 hereof. A subscriber to Level 3 NASDAQ options service shall also receive Level 2 NASDAQ options service.

(2) Availability—Level 3 NASDAQ options service is available to any member which, upon application, is approved and authorized by the Corporation to participate in the NASDAQ System as a registered NASDAQ options market maker.

Sec. 3 Registration, Qualification and Other Requirements of Market Makers and Others.

(a) Registration of Market Makers—Prior to acting as a market maker in NASDAQ options, a member must make application to the Corporation on a form prescribed by the Corporation and become registered as such with it. In connection with such application, a member must submit to the Corporation such financial and other information as required by the Corporation to determine if such member meets the qualifications of a registered NASDAQ options market maker specified herein. Such other information will include those classes and series of NASDAQ options in which such member desires to be registered as an options market maker.

(b) Market Maker Financial Requirements—A registered NASDAQ option market maker shall continually maintain a net capital of at least $50,000 computed in accordance with the provisions of paragraph (c)(2) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended, plus $5,000 per options series up to a maximum requirement of $150,000.

(c) Clearing Arrangements—A registered NASDAQ options market marker shall either be a member of the Options Clearing Corporation or shall have established a clearing arrangement with a member thereof.

(d) Dual Market Making.

(1) A member shall not become a dual market maker unless at, or prior to, the time such dual market making activity is to commence:

a. There are a minimum of ten registered NASDAQ market makers displaying quotations on the NASDAQ System in the underyling security; and,

b. There are a minimum of five NASDAQ options market makers registered in the NASDAQ options group in respect to which a dual market is intended to be made.

(2) Once dual market making has commenced in any NASDAQ options group, the occurrence of either of the following shall cause the Corporation to withdraw approval of further dual market making activity with respect to any succeeding options series to be opened in that NASDAQ options group:

a. There are fewer than seven registered NASDAQ market makers displaying quotations on the NASDAQ System in the underlying security; or,

b. There are fewer than three registered NASDAQ options market makers displaying quotations on the NASDAQ System in the NASDAQ options group.

(3) Whenever the Corporation shall withdraw its approval for dual market making activity in a particular NASDAQ options group, it shall not reinstate dual market making in that NASDAQ options group until the provisions of paragraph (d)(1) above have been satisfied.

(e) Character of Quotations Entered Into the System.

(1) All bids or offers for NASDAQ options shall be for at least one option contract for the minimum unit of trading.

(2) All bids or offers for NASDAQ options shall be expressed in terms of dollars per share of the underlying security (e.g., a bid of five shall represent a bid to pay a premium of $500 for an options contract having a unit of trading consisting of 100 shares of an underlying security, or a bid to pay a premium of $550 for an option contract having a unit of trading consisting of 110 shares of an underlying security).

(3) All bids or offers for a NASDAQ option contract for which the Options Clearing Corporation has established an adjusted unit of trading in accordance with paragraphs (c) and (d) of Section 11 of Article VI of the OCC's By-Laws shall be expressed in terms of dollars per the appropriate fractional part of the total securities and/or other property constituting such adjusted unit of trading (e.g., where the adjusted unit of trading of an option contract consists of 110 shares of an underlying security plus 15 rights, a bid of five shall represent a bid to pay a premium of $550 for each option contract covering both the shares of the underlying security and the rights).

(4) A registered NASDAQ options market maker will be permitted to enter a nominal quotations (0–1/16) with respect to those options which have no present market value.

(f) Transaction Reporting.

(1) NASDAQ Options.

a. Every member shall transmit to the Corporation reports of sale transactions in NASDAQ options executed during the operating hours of the Options Price Reporting Authority (OPRA), within one and one-half minutes after execution of the transaction. If such report is not transmitted within one and one-half minutes after execution, such report shall be designated as late. All reports of NASDAQ option transactions executed during the operating hours of OPRA shall be transmitted through the NASDAQ System or, if the system is unavailable, via Telex, TWX or telephone to the NASDAQ supervisory office in New York City. Last sale reports of NASDAQ option transactions executed outside of OPRA's operating

hours shall be reported weekly in writing to the NASDAQ supervisory office in New York City.

b. A member shall transmit a report for NASDAQ options for sale transactions in such options at the price recorded on the trade ticket exclusive of commission, taxes or other charges.

c. For purposes of this Section, a member shall not transmit to NASDAQ a report for option transactions executed on an exchange.

(2) Authorized Underlying Securities. Every member shall transmit to the Corporation, in accordance with rules and procedures adopted by the Board of Governors, reports of sale transactions in authorized underlying securities executed during the operating hours of the Consolidated Tape, within one and one-half minutes after execution of the transaction. If the last sale report is not transmitted within one and one-half minutes after execution, such report shall be designated as late. All last sale reports of transactions in authorized underlying securities executed during the operating hours of the Consolidated Tape shall be transmitted through the NASDAQ System or if the system is unavailable, via Telex, TWX or telephone to NASDAQ supervisory office in New York City. Last sale reports of transactions in authorized underlying securities executed outside the operating hours of the Consolidated Tape shall be reported weekly in writing to the NASDAQ supervisory office in New York City.

(3) Weekly and/or Monthly—A member shall report weekly and/or monthly to the Corporation such data on NASDAQ options quoted in the system as the Board of Governors shall require. Such report shall be on a form prescribed by the Corporation.

(4) All trade tickets on transactions in NASDAQ options and authorized underlying securities must indicate the time the order was received and the time the order was executed or cancelled.

(g) Normal Business Hours—A registered NASDAQ options market maker shall keep the Corporation advised as to the normal business hours during which it shall enter quotations. All firms should be open and active as of 10:00 a.m. (Eastern Time) and no registered NASDAQ options market maker shall close sooner than 4:00 p.m. (Eastern Time). The system shall publish a "closed symbol" for a registered NASDAQ options market maker on Level 2 and 3 terminals at the close of such firm's normal business hours. However, a registered NASDAQ options market maker will be able to enter quotes outside such normal business hours, provided the system is operating, by appropriate notification to the operator of the NASDAQ System of the desire to enter quotes.

(h) Initiation of Service—Upon initial application, the registration of a NASDAQ options market maker in a NASDAQ options series shall be effective at the start of business on the second business day following receipt of his registration application by the Corporation; provided however, said registration is accepted by the Corporation. If said initial registration is received for a NASDAQ option series which has not previously been authorized by the Corporation, the registered NASDAQ options market maker's registration shall be effective at the start of business on the first day that the NASDAQ option series is authorized for quotation by the Corporation; provided, however, said registration is accepted by the Corporation.

(i) Withdrawal Procedure.

(1) With the approval of the Corporation, upon showing that it is seriously impaired in its ability to enter quotations, a registered NASDAQ options market maker may suspend its quotations in a NASDAQ option series for a specified period of time in the case of contemplated financing in the underlying security, the presence of statutory prohibitions or restrictions, or such other reason acceptable to the Corporation.

(2) A registered NASDAQ options market maker who withdraws quotations in a NASDAQ option series may not re-enter quotations in such series during the same trading day without the prior approval of the Corporation.

(3) A registered NASDAQ options market maker whose quotation in any NASDAQ option series is withdrawn, without the approval of the Corporation shall at or before the daily close of the system, have its registration in that NASDAQ option series terminated subject, however, to the re-registration procedure set forth in paragraph (4) below.

(4) A registered NASDAQ options market maker may, by making application to the Corporation under the procedures and requirements set forth in Sections 3(a) through 3(c) of Part IV of Schedule D, re-register as a registered NASDAQ options market maker in a NASDAQ option series in which his registration is terminated pursuant to paragraph (3) above.

(j) Voluntary Termination—A registered NASDAQ options market maker may voluntarily terminate its registration as to any NASDAQ option series by withdrawing its quotations from the system without prior approval of the Corporation.

(k) Suspension and Termination of a Registered NASDAQ Options Market Marker's Authority to Enter Quotations by Action of the Corporation—The Corporation may, pursuant to provisions specified in the Code of Procedures for Handling Trade Practice Complaints, suspend, condition or terminate a registered options market marker's authority to enter quotations on one or more series of NASDAQ options for violations of the applicable rules of this Schedule D.

(l) Termination of Service on Failure to Promtly Pay Fines and Assessments.

(1) The Corporation, upon notice, may terminate service on any level of NASDAQ options service for failure of a subscriber to maintain the standards of availability specified in Section 2 of this Part IV for such service or to pay the system operator for services rendered.

(2) Any member which is a respondent in a complaint pursuant to this Schedule D is required promptly to pay any fine or costs imposed to the Treasurer of the Corporation. In the event that the respondent fails to do so, the Corporation may, after ten business days' notice in writing to such respondent, suspend his authority to enter options quotations into or receive options quotations from levels 2 and 3 of the NASDAQ System.

Sec. 4 Option Contracts Authorized for Trading.

The Corporation may from time to time approve for display on NASDAQ put option contracts and call option contracts in respect of underlying securities which have been selected in accordance with and which meet the criteria of Section 6 hereof. All such option contracts shall be designated as to the type of option, the underlying security, the expiration month and the exercise price. Only quotations in respect to option contracts in a class or series of options approved by the Corporation and currently open for display on NASDAQ may be quoted by a registered NASDAQ options market maker on the NASDAQ System.

Sec. 5 Series of Options Open for Trading.

(a) After a class of options has been approved for display on NASDAQ and quotation thereon by registered NASDAQ options market makers, the Corporation may from time to time open for display series of options in such class. Prior to the opening of trading in any series of options, the Corporation shall fix the expiration month and exercise price of option contracts included in each such series. At the

commencement of display on NASDAQ of a particular class of options, series of options therein having three different expiration months will normally be opened. The first such expiration month shall be within approximately three months after such series is initially opened for display. The second such month shall be approximately three months after the first and the third such month shall be approximately three months after the second. Additional series of options of the same class may be opened for display on NASDAQ and quotation by registered NASDAQ options market makers at or about the time a prior series expires. The expiration month of each such series shall normally be approximately nine months following the opening of such series. The exercise price of each series of options opened for display on NASDAQ and quoted by registered NASDAQ options market makers shall be fixed at a price per share which is reasonably close to the best bid in the underlying security at the time such series of options is first opened for display on NASDAQ. Additional series of options of the same class may be opened for display on NASDAQ as the best bid of the underlying security moves substantially from the initial exercise or prices but in no event shall the exercise price be less than $10.

(b) No transaction in NASDAQ option contracts of a particular series of NASDAQ options shall be effected after 3:00 p.m. Eastern time on the business day prior to the expiration date of that series.

(c) The unit of trading and the exercise price initially established for option contracts of a particular series are subject to adjustment by the Options Clearing Corporation in accordance with the rules of the Options Clearing Corporation. When such adjustment or adjustments have been determined, announcement thereof shall be made by the Corporation and shall be effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series of options.

(d) NASDAQ option contracts shall be subject to adjustments in accordance with the rules of the Options Clearing Corporation.

Sec. 6 Qualifications for Authorized Underlying Securities.

(a) Approval of Underlying Securities—Authorized underlying securities shall be determined solely by the Corporation. Said determination shall be made in accordance with the criteria established pursuant to the Participant Agreement entered into by the Corporation with the Options Clearing Corporation and this Section. The criteria specified in the Participant Agreement are as follows:

(1) Such security is registered under Section 12(g)(1) of the Securities Exchange Act of 1934, as amended, and display on the NASDAQ System; is registered on a national securities exchange in accordance with the requirements of Section 12(b) of the Securities Exchange Act of 1934, as amended; or is issued by an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934, as amended;

(2) The issuer thereof has complied in all respects including timeliness with the reporting and disclosure requirements of Sections 13 and 14 of the Securities Exchange Act of 1934, as amended, unless exempted therefrom, for a period of at least the last three fiscal years;

(3) The issuer and its consolidated subsidiaries have had not more than one annual deficit, before extraordinary items, during the last four fiscal years, and have had no such deficit in the most recent fiscal year;

(4) The issuer thereof and its significant subsidiaries have not during the past three years defaulted in the payment of any dividend or sinking fund installment on any preferred stock or in the payment of any principal interest or sinking fund installment on any indebteness for borrowed money, or in the payment of rentals under long-term leases; and,

(5) The issuer thereof and its consolidated subsidiaries had an aggregate net income, after taxes, but before extraordianary items net of tax effect, of at least $1,000,000 in each fiscal year in three out of the last four fiscal years including the most recent fiscal year.

(b) The following additional criteria must be met in order for a security to qualify to be an authorized underlying security:

(1) The issuer thereof has a minimum of eight million shares which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934, as amended;

(2) There are a minimum of 10,000 shareholders of such security;

(3) There was aggregate trading volume reported to the NASDAQ System of at least two million shares per year in each of the two previous calendar years; and,

(4) There was a best bid of at least $10 per share each business day of the six calendar months preceding the date of selection.

(c) In exceptional circumstances an underlying security may be approved by the Corporation even though it does not meet all of the criteria set forth in subsection (b) above. The Corporation will notify the Securities and Exchange Commission of any instance in which it approves an underlying security which does not satisfy all of the aforementioned selection criteria.

(d) The list of approved underlying securities shall be representative of issuers engaged in a wide variety of business activities.

(e) Withdrawal of Approval of Underlying Securities—Once qualified, the occurrence of any one of the following shall, in the absence of exceptional circumstances, cause the Corporation to withdraw its approval of a security to continue as an authorized underlying security. The Corporation will notify the Securities and Exchange Commission of any instance in which it allows a security which meets any of the following criteria to continue to serve as an authorized underlying security:

(1) The issuer and its consolidated subsidiaries have incurred a net deficit after taxes, but before extraordinary items net of tax effect, in more than one of the preceding four fiscal years;

(2) The issuer and its consolidated subsidiaries have a net income after taxes, but before extraordinary items net of tax effect, of less than $250,000 in more than one of the preceding four fiscal years;

(3) The issuer and its significant subsidiaries have defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rental under long-term leases, and such default has not been incurred within six months of the date on which the default occurred;

(4) The issuer has failed to make timely reports as required by Sections 13 and 14 of the Securities Exchange Act of 1934, unless exempted therefrom, and such failure has not been corrected within 30 days after the date the report was due to be filed;

(5) There is a failure to have a minimum of 7,200,000 shares of the underlying security held by persons other than those who are subject to the requirements of Section 16(a) of the Securities Exchange Act of 1934 as amended;

(6) There is a failure to have a minimum of 9,000 shareholders of such security;

(7) The volume of trading in the underlying security is less than 1,800,000 shares in the preceding calendar year; and

(8) The best bid of an underlying security closes below $10 on a majority of the business days in any six month period.

(f) In the event the Corporation withdraws approval of an underlying security, no additional series of option contracts of the class covering that underlying security shall be opened. In addition, no additional series of option contracts of the class covering an underlying security shall be opened at any time when the price per share of the underlying security, as measured by the best bid recorded on the NASDAQ System is less than $7.50.

(g) Whenever the Corporation shall announce that approval of an underlying security has been withdrawn for any reason, each member shall, prior to effecting any transaction in option contracts in respect of such underlying security for a customer, inform such customer of such fact.

(h) Whenever the Corporation withdraws the approval of an underlying security, it shall not open a class of option contracts covering that underlying security until such security is able to comply with the provisions of subsections (a) and (b) of this Section.

Sec. 7 Unit of Trading.

The unit of trading in each series of options displayed on NASDAQ shall be the unit of trading established by the Options Clearing Corporation pursuant to the rules of the Options Clearing Corporation.

Sec. 8 Suspension of Authorization of an Underlying Security and/or a NASDAQ Option.

(a) In particular instances, where the Corporation deems it necessary and appropriate in order to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors or the public interest in fair and orderly markets, to assure adequate trading interest and the likelihood of a competitive market, or if one or more of the events set forth in subsection (b) hereof occur, it may suspend the authorization of an underlying security and/or a NASDAQ option.

(b) An authorized underlying security and/or a NASDAQ option shall be subject to suspension if:

(1) It has been and is currently suspended from being traded by the Securities and Exchange Commission pursuant to Section 12(k) of the Securities Exchange Act of 1934, as amended;

(2) The Corporation has been advised that the issuer is about to make an important announcement affecting such issuer;

(3) There has been and is currently a failure by the issuer promptly to disclose to the public through the press any material information which may affect the value of its securities or influence investors' decisions;

(4) There has been and is currently a failure to file with the Corporation, the issuer's annual and quarterly reports required to be filed with the Securities and Exchange Commission. Issuers which are not required by law to file an annual or quarterly report with the Securities and Exchange Commission must file with the Corporation their annual and quarterly reports required to be filed with the appropriate regulatory authority; or

(5) There has been and is currently a failure to comply with any obligation of any person regarding filing or disclosure of information material to the issuer, whether the obligation arises under a federal or state statute or rule and the Corporation shall determine that the public interest requires suspension.

(c) Trading in an underlying security and/or a NASDAQ option that has been the subject of a suspension of authorization by the Corporation may be renewed upon a determination by the Corporation that the conditions which led to the suspension are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading.

Sec. 9 Trade Comparison Procedures for NASDAQ Options.

(a) Scope and Applicability—All transactions in NASDAQ options shall be reported for comparison to the Corporation pursuant to procedures for such established by the Corporation. The Corporation shall report all compared transactions to the Options Clearing Corporation for clearance and settlement. All compared transactions in NASDAQ options which are cleared and settled through the facilities of the Options Clearing Corporation shall be subject to the rules of the Options Clearing Corporation.

(b) Responsibility of Clearing Members—Every member which is a member of the Options Clearing Corporation (a "clearing member") shall be responsible for the clearance and settlement of every NASDAQ option transaction to which it is a party and for each NASDAQ option transaction of a member for which it acts as correspondent and/or clearing agent pursuant to a written agreement. Unless specifically authorized by the Corporation, no member shall be permitted to have more than one such agreement with a clearing member in effect at any time.

(c) Trade Comparison.

(1) Filing of Trade Information—A clearing member shall individually report each transaction in a NASDAQ option, for which it has a responsibility to report, each business day to the Corporation at a location, time and in the manner specified by the Corporation. A clearing member shall also report each NASDAQ option transaction in which it participates to the member for whom such NASDAQ option transaction was made.

(2) Contract Lists and Uncompared Trade Lists—Each business day the Corporation shall perform a comparison and matching of each item of information reported to the Corporation by clearing members and shall issue to each such clearing member a contract list for each account maintained by such clearing member with the Options Clearing Corporation which will show such clearing member's compared trades in such account on such day, and an uncompared trade list, which will contain a list of:

a. Such clearing member's trades on such day for which the Corporation did not receive from another clearing member trade information which compares with the trade information filed by such clearing member (called "uncompared trades"); and,

b. All trades reported by other clearing members for which such clearing member submitted no trade information which compares with the trade information filed by such other clearing members (called "advisory trades").

Compared trades shall include only trades where the trade information agrees as to the identify of the other party to the transaction, the type of option contract, the underlying stock, the exercise price, the expiration month, the number of option contracts, the amount of the premium, the designation of the parties as purchaser and writer respectively, and the trade date, if other than date of submission.

(3) Verification of Contact List and Reconciliation of Uncompared Trades—Each clearing member shall promptly review each report received, reconcile all uncompared and advisory trades and report corrected trade information to the Corporation as soon as possible, but in any event not later than the hour which shall be from time to time prescribed by the Corporation. It shall be the sole responsibility of the clearing member to review the accuracy of all reports promptly upon receipt, and the

Corporation shall not assume any responsibility for reviewing such reports for accuracy or for making any corrections not reported by a clearing member.

(4) Unreconciled Trade Report—Upon receipt of the clearing member's corrected report, the Corporation shall make available to the clearing member a final unreconciled trade report which will contain a list of any new or remaining uncompared and advisory trades of such clearing member. Any trades contained on this report which are then reconciled by the clearing member shall be submitted to the Corporation on the next business day in accordance with the provisions set forth in paragraph (1) of this subsection (c). Trades which are not so reconciled by the clearing member shall be closed out in the manner prescribed in paragraph (5) below.

(5) Resolution of Uncompared Trades—When a disagreement between members arising from an uncompared NASDAQ option transaction cannot be resolved by mutual agreement prior to 10:00 a.m. Eastern Time on the first business day following the trade date, the parties shall promptly, but not later than 3:30 p.m. Eastern Time on such day, take the following action. The member representing the purchaser in the uncompared NASDAQ option transaction shall promptly enter into a new NASDAQ option transaction to purchase the option contract that was the subject of the uncompared NASDAQ option transaction. The member representing the writer in the uncompared NASDAQ option transaction shall promptly enter into a new NASDAQ option transaction to sell (write)the option can tract that was the subject of the uncompared NASDAQ option transaction. The purchase and sale (writing) of new option contracts in such a manner shall serve to nullify an uncompared NASDAQ option transaction; provided, however, that the appropriate reversing notations closing out the original uncompared NASDAQ option transaction are also recorded by the clearing members. All such new purchase and writing (sale) NASDAQ option transactions shall then be submitted to the Corporation in accordance with the provisions set forth in paragraph (1) of this Section. All claims for damages resulting from uncompared NASDAQ option transactions must be made promptly for the accounts of the members involved and not for the accounts of their respective customers. Notwithstanding the foregoing, if either member is acting for a firm account in an uncompared NASDAQ option transaction and not for the account of a customer, such member need not enter into a new transaction, in which event money differences will be based solely on the closing transaction of the other party to the uncompared transaction.

In the event an uncompared transaction involves an option contract of a series in which trading has been terminated or suspended before a new NASDAQ option transaction can be effected to establish the amount of any loss, the member not at fault may claim damages against the other member involved in the transaction based on the terms of such transaction. All such claims for damages shall be made promptly.

(6) Reporting of Compared Trades to the Options Clearing Corporation—On each business day at or prior to such time as may be prescribed by the by the Options Clearing Corporation, the Corporation shall furnish the Options Clearing Corporation a report of each clearing member's compared trades based on the comparison service performed by the Corporation on that day. Only trades which have been compared in accordance with the provisions of paragraph (2) of this subsection shall be furnished by the Corporation to the Options Clearing Corporation, and the Corporation shall assume no responsibility with respect to any uncompared trade nor for any delays or errors in the reporting of trades for comparison.

(7) Maintaining Office and Filing Signatures—Every member which is a member of the Options Clearing Corporation shall maintain an office at a location approved by the Corporation for the purpose of comparing NASDAQ option transactions. Any clearing member may use for the purposes of this paragraph the office of another member which is a member of the Options Clearing Corporation. There shall be present at such office, between such hours as the Corporation shall from time to time fix, on every business day a representative of the member authorized to sign in the name of the member all instruments and transact all business requisite in connection with the comparison of NASDAQ option transactions. Each such member shall file with the Corporation, in such form as the Corporation shall prescribe, a certified list of signatures of its representatives who are authorized to sign instruments and transact all business necessary for conducting comparison of NASDAQ option transactions.

Sec. 10 Clearance and Settlement Procedures for NASDAQ Options.

(a) Failure to Pay Premium—Whenever the Options Clearing Corporation shall reject a NASDAQ option transaction because of the failure of a clearing member acting on behalf of the purchaser to pay the premium due thereon as required by the rules of the Options Clearinghouse Corporation, the member acting as or on behalf of the seller (writer) shall have the right either to cancel the transaction by giving notice thereof to the defaulting clearing member or to enter into either a new opening writing transaction or closing sale transaction, as the case may be, in respect of the same NASDAQ option contract that was the subject of the rejected NASDAQ option transaction, charging any loss resulting therefrom (including any commissions paid or payable in connection with such new transaction) to the defaulting clearing member. Such action shall be taken as soon as possible but in any event not later than the close of trading on the day the NASDAQ option transaction was rejected by the Options Clearing Corporation, unless the Corporation shall extend such time.

In the event the rejected transaction involves a NASDAQ option contract of a series in which trading has been terminated or suspended before a new NASDAQ option transaction can be effected to establish the amount of any loss, the member acting as or on behalf of the seller shall have a claim against the defaulting clearing member for the amount of the premium due thereon.

(b) Option Contracts of Suspended Members—When announcement is made of the suspension from membership in the Corporation of a member, other than a clearing member of the Options Clearing Corporation (a "non-clearing member"), pursuant to the By-Laws of the Corporation, all open short positions in option contracts of such member and all open positions resulting from the exercise of option contracts, other than positions that are secured in full by a specific deposit or evidenced by an escrow receipt in accordance with the rules of the Options Clearing Corporation, shall be closed out without unnecessary delay by all members carrying such positions for the account of the suspended non-clearing member; provided, however, that upon any such suspension, the Corporation may, in its descretion and where it determines that such is necessary for the protection of investors, suspend the mandatdory close-out provisions hereof and may, in its discretion and where it determines that such is necessary for

the protection of investors, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions hereof shall relieve any suspensed non-clearing member of its obligations or of any damages incurred by members carrying positions for the account of such suspended non-clearing member. Should an open short position or an open position resulting from an exercise of an option contract not be closed when required by this Section, the price for the purpose of determining claims shall be fixed by the price current at the time when such position should have been closed under this Section. When a member of the Options Clearing Corporation is suspended pursuant to the provisions of the By-Laws, the positions of such clearing member shall be closed out in accordance with the rules of the Options Clearing Corporation.

Sec. 11 Rules of General Applicability.

The provisions of Part X of Schedule D to Article XVI of the By-Laws shall, to the extent not inconsistent with the provisions hereof, apply to NASDAQ options.

The NASD's Statement of Purpose of Proposed Rule Change

The purpose of these proposed rules is to provide the necessary regulatory framework to govern the display of quotations in standardized options on the NASDAQ System and to govern member trading in connection therewith. The Association's plan would permit the display of quotations in standarized options on the NASDAQ System. These options will be issued, or subject to issuance, by the Options Clearing Corporation (the "Clearing Corporation"). Accordingly, the options to be displayed on the NASDAQ System, on which quotations may be entered by registered NASDAQ options market makers, will be limited to options authorized by the Association on underlying securities selected in accordance with criteria and guidelines established by the Associaiton and the Clearing Corporation.

The terms of the options to be listed on the NASDAQ System will be standardized as to exercise price and expiration date in accordance with rules of the Association and the by-laws and rules of the Clearing Corporation. Comparison of trade information will be accomplished by a processor under contract to the Association. Matched trades will be forwarded on a daily basis to the Clearing Corporation for clearance and settlement in accordance with its by-laws and rules.

The NASD's Statement of Basis Under the Act for the Proposed Rule Change

Section 15A of the Securities Exchange Act of 1934 provides, pursuant to subsection (b)(2), that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that its rules provide it with the capacity to carry out the purposes of the Act, to enforce compliance with the Act by its members and persons associated with its members, and the rules and regulations thereunder, and to protect investors and the public interest. Further, the Commission must determine pursuant to subsection (b)(6) that the Rules of the Association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. Finally, the Rules of the Association are required by subsection (b)(7) to provide that its members and persons associated with its members shall be appropriately disciplined for violation of any provisions of the Act or the rules and regulations thereunder, or the Rules of the Association and under subsection (h)(1), by adjudication and the subsequent imposition of appropriate penalties. The provisions of Article III, Section 33 prohibit a member or a person associated with a member from effecting transactions in options if such were inconsistent with the rules, regulations and procedures adopted by the Board of Governors. Under the authority granted pursuant to Section 33, the Board has developed a regulatory program of rules, regulations and procedures consistent with existing standardized options trading plans and SEC requirements.

Comments Received From Members, Participants and Others on Proposed Rule Change

No comments were solicited or received in connection with this particular rule change filing. Comments on the NASDAQ options plan submitted in January 1977 were solicited in Notices to Members Nos. 76-8 and 76-31. As indicated previously, this filing is similar in most respects to the 1977 submission.

The NASD's Statement on Burden on Competition

The Association believes the proposed rule changes impose no burden on competition. Rather, by introducing standardized options trading to the over-the-counter market, the Association believes that it is enhancing competition among members in a manner entirely consistent with the purposes of the Securities Exchange Act of 1934.

On or before September 15, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (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 September 2, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

July 15, 1980.

[FR Doc. 80-24147 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17046; File No. SR-NSCC-80-24]

National Securities Clearing Corporation; 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 31, 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

Amend, effective with transactions includable in the September 1980 billing cycle and thereafter, Section II.A.2 of National Securities Clearing Corporation's SCC Division

Consolidated Rate Structure as follows: Section II.A.

2. For each side of each bond trade submitted, [$.01] *$.40* per [$1,000 calculated on total face value of items submitted per month.] *side.*

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

NSCC's bond comparison fee, which is currently based on the par value of trades, results in more costly clearance fees as the trade size increases. The proposed rule change should encourage the submission of large bond transactions by either existing or new members. The forty cent fee per side was derived from the Price Waterhouse audited cost study, upon which NSCC's existing fees are based. The proposed rule change is in keeping with the comments made in a letter to Mr. Jack Nelson, President of NSCC, from Bradford Securities Processing Services, Inc., dated July 19, 1977.

The proposed rule change in NSCC's rate structure relates to NSCC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 by equitably allocating among its participants the fees for bond transactions submitted based on sides submitted rather than on the par value of the bond. The proposed fee will encourage the submission of large bond transactions, and therefore increase NSCC's ability to facilitate the prompt and accurate clearance and settlement of securities transactions.

Comments on the proposed rule change have been solicited. Comments received by NSCC will be forwarded to the Commission.

NSCC does not perceive that the proposed rule change would constitute a 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 protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested parties are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street N.W., Washington, D.C. Copies of such 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 September 2, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-24149 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17047, File No. SR-NYSE-77-14]

New York Stock Exchange, Inc.; Proposed rule change

Pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29 (June 4, 1975), notice is hereby given that on July 28, 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 Constitutional and Rule Changes

The proposed changes reinstate amendments originally contained in Exchange filing SR-NYSE-77-14 dealing with domicile requirements for member organizations. The text of the proposed amendments is contained in Exhibit I-A.

Purpose of the Proposed Constitutional and Rule Changes

This Section of original File No. SR-NYSE-77-14 is amended by adding the following paragraphs:

SR-NYSE-77-14 originally contained proposed Rule 311(f) which required each member organization to be created or organized under the laws of, and maintain its principal place of business in, the United States or any State thereof. Amendment No. 1 to the filing deleted the proposed Rule pending further study by the Exchange and discussion with The Securities Investor Protection Corporation (SIPC).

Proposed Rule 311(f) is hereby reinstated as originally filed and the corresponding Article IX, Section 7(j) is hereby proposed for deletion from the Constitution. The new Rule represents a repositioning of Article IX, Section 7(j) with an amendment to remove Canada as a qualifying domicile for member organizations. The purpose of this change is to ensure equal treatment of organizations domiciled in foreign countries by removing the advantage heretofore accorded solely to Canadian domiciliaries.

The basis for the U.S. domicile requirement is to maintain the degree of regulatory control necessary for the effective protection of investors. Fundamental considerations in requiring a member organization to maintain its principal place of business in the U.S. are to assure that in the event of liquidation: assets will be available to satisfy customer claims; books and records will be available to substantiate customer claims; and that the ability exists to secure such assets and books and records through service of legal process. In this connection, in a letter to Chairman Hills dated January 24, 1977, Chairman Hugh Owens of SIPC expressed concern over potential problems which may arise were foreign broker-dealers to become members of a national securities exchange and thereby become members of SIPC by operation of Section 3(a)(2)(B) of the securities Investors Protection Act of 1970 (SIPA). SIPC indicated that it would probably be impossible to carry out the purposes of SIPA with respect to customers of foreign broker-dealers if these foreign members have no place of business in the United States and do not maintain substantial assets in this country. The Exchange believes that the amendments contained herein would serve to continue to provide SIPC with the ability to administer SIPA effectively.

One existing Canadian domiciled Exchange member organization—Transatlantic Securities Company—would be affected by the proposed amendments. Compliance with the new provisions would require Transatlantic to substantially alter the manner in which their business is conducted. The Exchange would grant Transatlantic a "grandfather" exemption to allow them to retain Canada as their place of domicile.

Basis Under the Act

This section of original File No. SR-NYSE-77-14 is amended to add the following paragraph:

(v) The provisions of Section 6(b)(5) are served in that the amendment relating to a U.S. domicile requirement protects investors and the public interest by establishing an equal legal basis under which the purposes of the Securities Investor Protection Act may be carried out.

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 September 2, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

The new language *italicized* and deleted language in [brackets] reinstates the original language contained in File No. SR-NYSE-77-14 which was withdrawn in Amendment No. 1 thereto.

Article IX

Membership—Allied Membership—Member Firms—Member Corporations

* * * * *

[Sec. 7(j) Every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall maintain its principal place of business in, the United States or Canada or any State or Province thereof.]

* * * * *

Rule 311

Formation and Approval of Member Organizations

* * * * *

(f) Every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof.

[FR Doc. 80-24148 Filed 8-8-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-17044; File No. SR-NYSE-80-27]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29 (June 4, 1975), notice is hereby given that on July 24, 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 will implement, on a pilot basis, trade comparison procedures using universal contra-party names for post-opening trades involving orders received by the Exchange through its Designated Order Turnaround System. The pilot will hereinafter be referred to as the "DOT/TOD" pilot.

DOT and TOD are universal contra names that will be used to report executions involving DOT market orders in pilot stocks. Comparison procedures for DOT/TOD pilot stocks will be as follows:

(1) Specialists will represent DOT market orders as they do today and will continue to indicate the actual names of trade participants on mark sense cards.

(2) Specialists will give up the contra *DOT* to the sides trading against DOT orders in pilot stocks.

(3) DOT subscribers will receive system reports of executions against *TOD* in pilot stocks.

(4) Member firms will submit trades for comparison on trade date +1 (T+1) as they do today, using the universal contras supplied by the system or specialist.

(5) If a clearing firm that is a DOT subscriber fails to submit a trade for comparison on T+1 or submits it incorrectly, the information on the DOT system log will be relied on to prepare an *add or correction on T+2* after research by the SIAC purchase and sale group.

(6) If a clearing firm that the specialist indicated as the side opposite the DOT order fails to submit the trade on T+1 or submits it incorrectly, the name of the specialist will be *substituted on T+2* as the contra side of the trade after research by SIAC.

DOT/TOD universal contras were initiated on a pilot basis on July 31, 1980. Stocks in the pilot use universal contras for market orders as outlined above; all other order types and stocks will use conventional names and procedures. Following an evaluation period, usage of the universal contras may be expanded.

The Exchange's Statement of Purpose of Proposed Rule Change

The purpose of the proposed rule change is to facilitate the implementation and operation of the DOT/TOD pilot.

The pilot program, using universal contra-party names to report and compare executions of DOT market orders, will reduce reporting errors, isolate each side from comparison problems caused by the other side to a trade and help make comparison of DOT trades more reliable.

DOT/TOD promises to benefit the member firm community and the NYSE Floor in the following ways:

- Each side will be isolated from errors made by the other side in reporting or submitting trades for comparison. Member firms will be assured of compared trades, even if the other side fails to submit correctly.
- Use of a universal contra for DOT executions on the Floor should help in exchanging names.
- Trades involving DOT orders will be uniquely identified during the comparison process, helping to pinpoint patterns or sources of errors and facilities corrective procedures.
- The Securities Industry Automation Corporation ("SIAC") will monitor DOT/TOD daily operations, in addition to OARS. This group will be the single point of contact for member firms in resolving uncompared DOT trades, resulting in efficiencies and cost savings to member firms.

Exchange's Statement of Basis Under the Act for the Proposed Rule Change

The pilot program proposed herein is expect to lead to fewer "questioned trades" and more efficient and accurate comparison and settlement procedures. The pilot program should better enable the Exchange to carry out the purposes of the Securities Exchange Act of 1934 (the "Act") in general, and Sections 6(b)(5) and 11A(a) in particular, which include the maintenance of fair and orderly markets, the fostering of cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to transactions in securities and facilitating transactions in securities.

Finally, the proposed pilot program is consistent with and should advance the purpose of the Act set forth in Section 17A(a)(1), including the prompt and accurate clearance and settlement of

securities transactions and the introduction of more efficient procedures for the clearance and settlement operation.

Comments Received From Members, Participants or Others in Proposed Rule Change

The Exchange has not solicited comment on this proposed change and it has not received any.

Burden on Competition

The Exchange does not perceive any burden on competition that will be imposed by 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 purpose 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 six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such 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 September 2, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 4, 1980.

[FR Doc. 80-24142 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17048; SR-PSE-80-12]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 5, 1980.

On June 9, 1980, the Pacific Stock Exchange, Incorporated, 301 Pine Street, San Francisco, California 94104 ("PSE") 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 defines combination orders and extends to such orders a limited exception to book priority and clarifies the definitions of spread orders and straddle orders.

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. 34-16916, June 21, 1980) and by publication in the Federal Register (45 FR 43918, June 30, 1980). No written statements with respect to the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-24150 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21669 (70-6482)]

Western Massachusetts Electric Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

August 4, 1980.

Notice is hereby given that Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to said application, which is summarized below, for a complete statement of the proposed transaction.

WMECO proposes to issue and sell, at competitive bidding, up to $30,000,000 principal amount of its First Mortgage Bonds, Series N, ——% due October 1, 2010. The interest rate, which shall be a multiple of ⅛ of 1%, and the price, exclusive of accrued interest, to be paid to WMECO, which will be not less than 100% nor more than 103% of the principal amount thereof, will be determined by competitive bidding. The bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of August 1, 1954, between WMECO and The First National Bank of Boston, Successor Trustee, as supplemented and amended from time to time, and as to be further supplemented by a supplemental indenture to be dated as of October 1, 1980. The supplemental indenture provides, among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to October 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by WMECO at an effective interest cost of less than the effective interest cost of the bonds.

The coverage ratio of net earnings to total annual interest charges is 2.51 on an actual basis and 2.02 on a *pro forma* basis.

The net proceeds from the sale of the bonds together with capital contributions totaling $15,000,000 scheduled to be made by Northeast Utilities to WMECO prior to the sale of the bonds, will be used by WMECO to repay a portion of the company's short-term borrowings estimated to total $37,000,000 at the time of such sale. Such short-term borrowings have been or will be applied to finance WMECO's 1979-1980 construction program. The company's 1980-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, are expected to total about $86,122,000 ($42,082,000 in 1980 and $44,040,000 in 1981) of which $16,027,000 had been expended as of June 30, 1980. In addition to the sale of the Bonds, the Company estimates that in 1980 it will require an additional $70,700,000 of funds from external sources to complete its 1980 construction program and to refinance approximately $41,000,000 of short-term debt that had been incurred before 1980. Of the required amount, approximately $30,000,000 is expected to be realized from the sale of the bonds, $15,000,000 is expected to be realized from capital contributions, and the balance of $25,700,000 is expected to be financed through short-term borrowings.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. The approval

of the Connecticut Department of Public Utilities is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 28, 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 regulation 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 hearing (if ordered) and any postponements thereof.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-24143 Filed 8-8-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, Georgia, will hold a public meeting from 2:00 p.m., Thursday, September 4, 1980 to 12:00 noon, Friday, September 5, 1980, at the Holiday Inn, 200 Beach View Drive South, Jekyll Island, Georgia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Clarence B. Barnes, District Director, U.S. Small Business Administration, 1720 Peachtree Road, N.W., 6th Floor, Atlanta, Georgia 30309, 404/881-4749.

Dated: August 1, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-24017 Filed 8-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10:00 a.m., Friday, September 12, 1980, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Room C-270 (2nd Floor), Honolulu, Hawaii, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, (808) 546-8950.

Dated: August 4, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-24018 Filed 8-8-80; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Executive Board Meeting

The Small Business Administration Region X Advisory Council Executive Board will hold a public meeting at 9:00 a.m., Wednesday, August 27, 1980, at the Federal Building, Rooms 223 through 229, 1220 SW 3rd Avenue, Portland, Oregon, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Larry C. Gourlie, Regional Administrator, Region X, U.S. Small Business Administration, 710 Second Avenue, Seattle, Washington 98104, (206) 442-5676.

Dated: August 4, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-24019 Filed 8-8-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-100]

Ship Structure Committee; Renewal

The Charter for the Ship Structure Committee has been renewed by the Secretary of Transportation for a two year period commencing July 1, 1980, through June 30, 1982. The Secretary has determined that this renewal is in the public interest.

The purpose of the Committee is to conduct an aggressive research program which will, in the light of changing technology in marine transportation, improve the design, materials, and construction of the hull structure of ships and marine platforms by an extension of knowledge in these fields for the ultimate purpose of increasing the safe and efficient operation of all marine structures.

The Committee is composed of the following ex-officio members:

Commandant, U.S. Coast Guard, Department of Transportation;
Commander, Naval Sea Systems Command, Department of the Navy;
Commander, Military Sealift Command, Department of the Navy;
Assistant Secretary for Maritime Affairs, Department of Commerce;
Director, U.S. Geological Survey, Department of the Interior;
President, American Bureau of Shipping.

The above members have designated the following ex-officio members as their representatives:

Chief, Office of Merchant Marine Safety, U.S. Coast Guard;
Deputy Director, Hull Group, Naval Sea Systems Command;
Chief Engineer, Military Sealift Command;
Assistant Administrator for Commercial Development, Maritime Administration;
Chief, Branch of Marine Oil and Gas Operations, U.S. Geological Survey;
Vice President, American Bureau of Shipping.

Interested persons may seek additional information by writing CDR T. H. Robinson, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters (G-MMT-4/13), Washington, D.C. 20593.

This notice is issued under the authority of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) of October 6, 1972.

Dated: July 1, 1980.

Henry H. Bell,

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

[FR Doc. 80-24151 Filed 8-8-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-80-21]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 1, 1980.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 1, 1980.

John H. Cassady III,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
20474	Coral Air, Inc	14 CFR 135.243(a)	To allow Mr. Frank McGill to serve as pilot-in-command without holding an airline transport pilot certificate until Feb. 16, 1981, his 23rd birthday.
20517	William R. Wallace	14 CFR 65.91(c) (1) and (2)	To allow Mr. Wallace to become eligible for an Inspection Authorization without meeting the time limit requirements.
12468	Petroleum Helicopters, Inc	14 CFR 43.3(h)	To renew Exemption No. 1821F which permits trained pilots to remove, inspect, and reinstall magnetic chip detector plugs in Allison 250 C series engines.
20524	Pipe Fabricators, Inc	14 CFR 43.3(h)	To permit its trained and certificated pilots to remove, check, and reinstall magnetic chip detector plugs on Allison 250 C series engines.
20508	Falcon Jet	14 CFR 21.195	Issuance of experimental Certificates for Market Survey to other than a U.S. Manufacturer.
20470	Mayo Aviation, Inc	14 CFR 135.89(b)(3)	To permit operation of Learjet Models 24 and 25 aircraft above FL 350 up to and including FL 410 under the provisions of Section 121.333 of the FAR.
19475	Flight Safety Int'l	14 CFR various sections	To extend the expiration date past October 31, 1980 of Exemption No. 2854 which permits FSI trainees to complete a practical test for a type rating in a flight simulator.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20242	Dorado Wings, Inc	14 CFR 135.243(a)	To allow petitioner to use pilots on commuter air carrier routes who do not possess an airline transport pilot certificate. *Granted 7/29/80.*
20035	Energy Helicopters Inc	14 CFR 43.3(h)	To allow pilots to remove, check and reinstall magnetic chip detector plugs on Allison 250 C series engines, main transmission, and tail rotor gear boxes on Hughes Model 369 helicopters. *Granted 7/29/80.*
20376	Hessenatie-Sotramat Aviation	14 CFR 91.27(a)(1)	To allow petitioner to operate a U.S. registered Mitsubishi MU-2B-60 airplane, using a master minimum equipment list. *Granted 7/29/80.*
19645	Thermonetics, Inc	14 CFR Parts 135 and 91, Subpart D.	To allow the petitioner to operate a Super King 200 Beechcraft small aircraft (less than 12,500 pounds) in accordance with Subpart D of Part 91. The petitioner intends to dry-lease the aircraft for use in transporting its own employees and guests as well as those associated with its subsidiaries, which are separate corporate entities, and charging those subsidiaries for their use of the aircraft. *Denied 7/29/80.*

[FR Doc. 80-23904 Filed 8-8-80; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Public Debt Series—No. 23-80]

Supplement to Department Circular

August 6, 1980.

The Secretary announced on August 5, 1980, that the interest rate on the notes designated Series L-1983, described in Department Circular—Public Debt Series-23-80, dated July 31, 1980, will be 9⅞ percent. Interest on the notes will be payable at the rate of 9⅞ percent per annum.

Gerald Murphy,
Acting Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 80-24124 Filed 8-8-80; 8:45 am]
BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Addition and Renovation for Clinical Functions, Veterans Administration Medical and Regional Office Center Fargo, N.D.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential impacts that may occur as a result of a Clinical Improvement Project at the VA Medical and Regional Office Center (VAMROC) Fargo, North Dakota.

The project consists of a two-story and basement addition in the north court of building No. 9.

Findings conclude that the proposed action will not cause a significant effect on the physical and human environment and, therefore, does not require preparation of an Environmental Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 1, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,
Associate Deputy Administrator.

[FR Doc. 80-24101 Filed 8-8-80; 8:45 am]
BILLING CODE 8320-01-M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration Facilities will be held in Room 442 of the Lafayette Building, 811 Vermont Avenue, NW, Washington, DC on October 17, 1980, at 10 a.m. The Committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. James Lefter, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202-389-2864), prior to October 13, 1980.

Dated: July 31, 1980.

By direction of the Administration.

Maury S. Cralle, Jr.,
Associate Deputy Administrator.

[FR Doc. 80-24096 Filed 8-8-80; 8:45 am]
BILLING CODE 8320-01-M

60-Bed Nursing Home Care Unit; Veterans Administration Medical Center, Fresno, Calif.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of the 60-Bed Nursing Home Care Unit (NHCU) at the Veterans Administration Medical Center (VAMC), Fresno, California.

The project calls for construction of a one or two story building containing approximately 17,000 net square feet. In addition, 40 to 50 parking spaces associated with the nursing home, plus any spaces possibly displaced by the NHCU construction, will be provided.

There are five sites being considered for the NHCU, all within the VAMC station property. Site A is located in the northeast corner of the station and sites B and C are located south of the main hospital building along Clinton Avenue. Site D is east of building no. 1 and site E would replace buildings nos. 12, 13, 14 and 16.

Development of the project will have minimal impacts on the human and natural environment as it affects topography, surface runoff, floodplains, traffic and parking as well as aesthetic and cultural elements. In addition, construction noise, dust, fumes and visual impacts will exist during construction of the project. Long term open space and visual impacts will result from the project developments.

Findings conclude the proposed actions will not cause a significant effect on the physical and human environment and therefore, the project does not require preparation of an Environment Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: July 31, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,
Associate Deputy Administrator.

[FR Doc. 80-24102 Filed 8-8-80; 8:45 am]
BILLING CODE 8320-01-M

Development of 3.7 Acres, Veterans Administration National Cemetery, Springfield, Mo.; Findings of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the acquisition and development of an additional 3.7 acres of land adjacent to the existing VA National Cemetery at Springfield, Missouri.

The proposed project action will provide approximately 2,000-2,500 gravesites and will insure that sufficient gravesites are available for the

continuation of interments. The development will be staged to provide sufficient time for turf and landscape planting to become established.

The expansion project will not involve construction of any buildings, but will include clearing, grading, construction of roads and curbs, drainage facilities, water distribution lines and gravesite control monumentation. Total estimated project construction cost is approximately $300,000.

Development of the proposed project will have impacts on the environment affecting soil stability relative to erosion and minor aspects of air quality.

The mitigation of project impacts on the environment include: implementation of erosion and sedimentation controls; onsite noise abatement measures; and air quality controls related to construction.

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: July 31, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 80-24097 Filed 8-8-80; 8:45 am]

BILLING CODE 8320-01-M

Expansion of Clinical, Outpatient and Education Space Veterans Administration Medical Center, New Orleans, LA.; Proposed Action

The Veterans Administration proposes the construction of a clinical addition, service core, and renovations to building no. 1 for the expansion of clinical, outpatient and education space. The clinical addition will be an eight-story structure (plus basement and mechanical penthouse) of approximately 200,000 gross square feet and will be located on a 1.1 acre site adjacent to the Veterans Administration Medical Center (VAMC), New Orleans, Louisiana.

The Veterans Administration (VA) has determined that the project is a "Critical Action" as defined by Executive Order 11988 and as such should avoid being sited within the 500 year floodplain. The Dallas Regional Office of the Federal Emergency Management Agency (FEMA) indicated that the New Orleans VAMC and the project site is within Zone B or the 500 year floodplain boundary. The floodplain is defined as having a 0.2 percent chance of flooding as a result of unusual and rapid accumulation of runoff of surface waters from any source. However, a determination has been made by the VA that the proposed project will not adversely affect the floodplain. The potential for flooding will be considered in the design of the building.

Accepted floodproofing and other flood protection measures shall be applied for the new construction. Development will be in total conformance with existing floodplain management objectives. Project alternatives have been considered in the planning process. Due to the location of the existing hospital within the 500 year floodplain and the necessity of accessibility to the existing hospital, no sites outside of the floodplain were considered.

In view of the proposed design incorporating flood protection measures, it is the determination of the VA that there will be no significant increase in the elevation of flood waters due to this project.

The VA is soliciting comments from State and local levels. The comment period will be open until September 10, 1980. This Notice of Proposed Action is in compliance with the announcement requirements of Executive Order 11988, Floodplain Management Guidelines (February 1978). Comments on this action should be addressed to:

Mr. Willian A. Salmond, Acting Assistant Administrator for Construction (08), Veterans Administration, 810 Vermont Ave, NW., Washington, D.C. 20420.

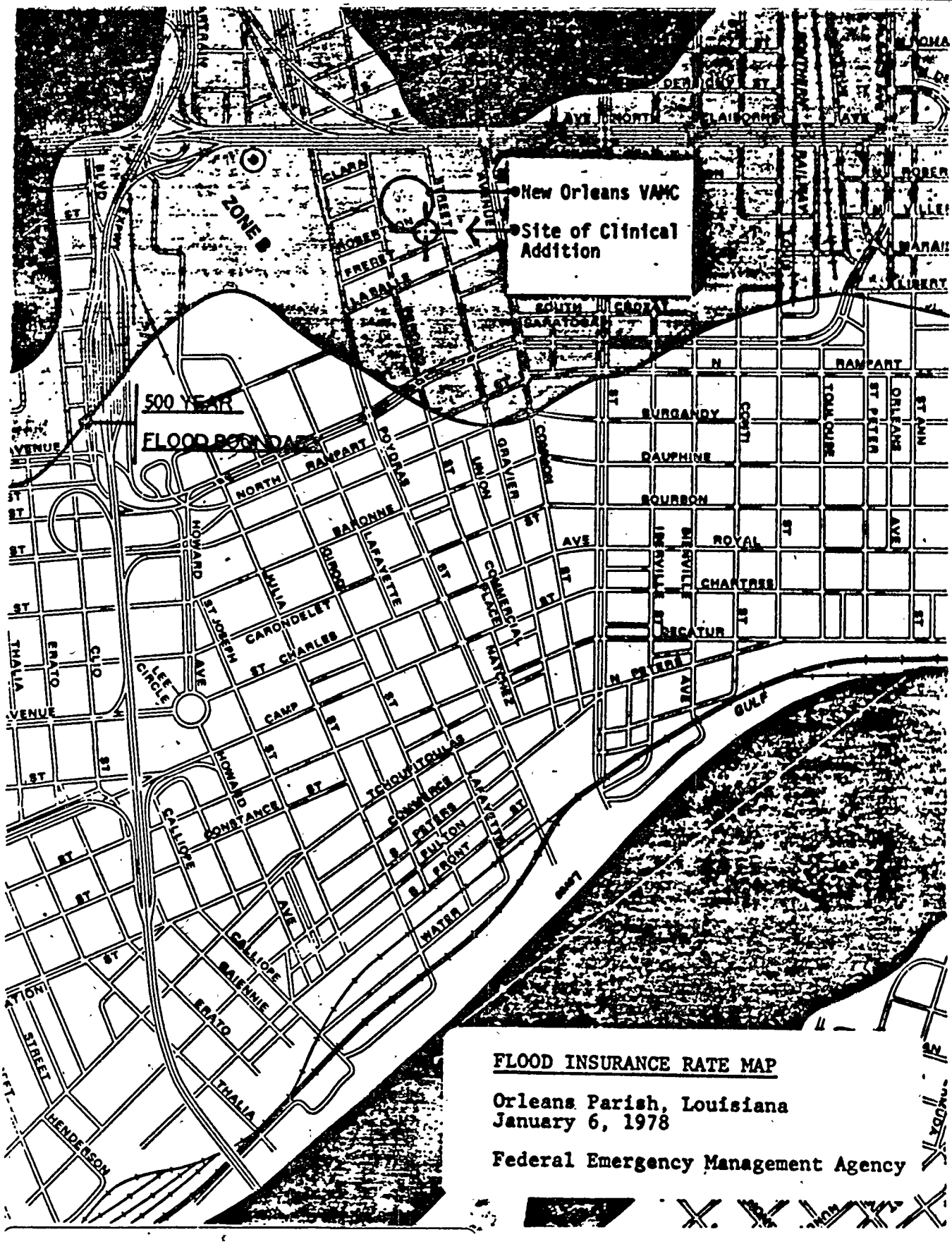
Dated: July 31, 1980.

By direction of the Administrator:

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

BILLING CODE 8320-01-M



[FR Doc. 80-24100 Filed 8-8-80; 8:45 am]
BILLING CODE 8320-01-C

Land Use and Development Master Plan Veterans Administration Medical Center, Denver, Colo.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the implementation and development of a land use master plan at the Veterans Administration Medical Center (VAMC), Denver, Colorado.

The proposed development would include a 60-bed nursing home care unit (NHCU), new access roadway and parking, and possible boiler plant expansion. Estimated construction costs have not been generated.

Development of the plan will have possible impacts on the human and natural environment affecting open space, soil stability, air quality related to construction, and noise levels.

The mitigation of the project impacts on the environment include: implementation of erosion and sedimentation controls; onsite noise abatement measures; and air quality controls. Short term impacts of dust and fumes associated with the project construction will be minimized.

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

This assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 1, 1980.

By direction of the Administrator:

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 80-24099 Filed 8-8-80; 8:45 am]

BILLING CODE 3320-01-M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

President's Commission on White House Fellowships Privacy Act of 1974; Notice of Systems of Records

In accordance with the requirements of 5 U.S.C. 552a(e) (4) and (11), Section 3 of the Privacy Act of 1974 (Public Law 93-579), the Commission hereby publishes its annual notice of the system of records it maintains which is subject to the Act. With one revision, this notice continues in effect the notice published in the Federal Register at 40 FR 39225 and 41 FR 44029. The revision to the previously published notice is as follows.

Records on spouses of White House Fellows will not be maintained. It has been determined that information on spouses is no longer necessary since the spouse program is arranged by the spouses themselves. The information on previous spouses has been destroyed.

W. Landis Jones,

Director, President's Commission on White House Fellowships.

PCWHF—1

SYSTEM NAME:

White House Fellowships—PCWHF

SYSTEM LOCATION:

President's Commission on White House Fellowships, Room 1308, 1900 E Street, N.W., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for White House Fellowships, speakers for the White House Fellows' education program, and commission and regional panel members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, index cards and supplemental material on individuals applying for White House Fellowships; biographical and other material regarding speakers for the White House Fellows' seminars, and index cards on prospective and current regional panel members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11183, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Applications are used to select candidates for White House Fellows; biographical and other material regarding speakers are distributed to White House Fellows before they meet with them; and cards on commission and regional panel members are a source file for memberships.

b. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in filing cabinets in a secured room. Records are available only to personnel authorized by the President's Commission on White House Fellowships.

RETENTION AND DISPOSAL:

The applications for White House Fellows are selected are maintained indefinitely. Applications for those not selected are destroyed 60 days after non-selection notice has been mailed. Biographical and other material regarding speakers for White House Fellows' seminars are destroyed when they become obsolete. The index cards of applicants are maintained indefinitely. The index cards on prospective and current commission and regional panel members are destroyed when obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Administration, President's Commission on White House Fellowships, Room 1308, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Contact the system manager listed above. It is necessary to furnish the following information in order to identify the individual whose records are requested.

a. Full name

b. Date of birth.

c. Year of application (if applicable).

RECORD ACCESS PROCEDURES:

An individual can obtain information on the procedures for gaining access to the records through: Assistant Director for Administration, President's Commission on White House Fellowships, Room 1308, 1900 E Street, NW., Washington, D.C. 20415.

CONTESTING RECORD PROCEDURES:

An individual can obtain information on the procedures for contesting the records through: President's Commission on White House Fellowships, Room 1308, 1900 E Street, N.W., Washington, D.C. 20415.

RECORD SOURCE CATEGORIES:

White House Fellows and their evaluators, applicants for White House Fellowships, speakers, and commission and regional panel members.

[FR Doc. 80-24157 Filed 8-8-80; 8:45 am]

BILLING CODE 6325-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 156
Monday, August 11, 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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1

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: Room 456 Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

TIME AND DATE: Commission Meeting, Thursday, August 14, 1980, 10 a.m.

STATUS: Part Open to the Public, Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public.

1. *Briefing on Gas-Fired Space Heaters.*
The staff will brief the Commission on issues related to a draft final safety standard for unvented gas-fired space heaters. The Commission proposed the rule in December 1979.

2. *Briefing on Electric Blankets: Emerging Hazard.*
The staff will brief the Commission on possible regulatory actions CPSC could take with regard to possible fire hazards associated with electric blankets.

Closed to the Public

3. *Section 15 Matters (OS #810 and OS #823)*
The Commission and staff will discuss issues related to two matters under section 15 of the Consumer Product Safety Act. (Closed under exemption 10: civil action.)

Contact Person: Richard A. Danca, Office of the Secretary, suite 300, 1111 18th St. NW., Washington, DC 20207, (202) 634-7700.

Agenda approved August 5, 1980.

[S-1506-80 Filed 8-7-80; 12:10 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION.

(Revised Agenda) [1]

TIME AND DATE: 9:30 a.m., Commission meeting, Wednesday, August 13, 1980.

LOCATON: Third floor hearing room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Chain Saws:* The Commission will consider a draft Federal Register document announcing its intention to develop a safety standard for chain saws to address the hazard of kickback. The Commission and staff discussed chain saws at the July 16 meeting.

2. *Architectural Glazing Standard, Partial Revocation: Glazed Panels:* The Commission will consider a partial revocation of the glazed panel requirements of the Safety Standard for Architectural Glazing. The Commission proposed the revocation in May 1979; the staff briefed the Commission on the matter at the July 24 meeting.

3. Cribs: *Regulatory Options:* The Commission will provide guidance to the staff on regulatory options concerning entrapment and entanglement hazards associated with crib headboards. The staff briefed the Commission on this matter at the July 16 meeting.

4. *Fiscal year 1982 Budget:* The Commission and staff will discuss issues related to CPSC's budget for fiscal year 1982.

CONTACT PERSON: Richard A. Danca, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, (202) 634-7700.

[S-1505-80 Filed 8-7-80; 12:10 pm]

BILLING CODE 6355-01-M

[1] Agenda revised August 7, 1980, with the addition of current item 1, Chain Saws. Agenda originally approved August 5, 1980.

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-1473-80.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Friday, August 8, 1980.

CHANGE IN THE MEETING: The following matter was added to the agenda for the open portion of the meeting:

Office of Special Projects and Programs—Transfer of Functions and Responsibilities.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Eleanor Holmes Norton, Chair.
Ethel Bent Walsh, Commissioner.
Armando M. Rodriguez, Commissioner.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued August 5, 1980.

[S-1504-80 Filed 8-7-80; 11:03 am]

BILLING CODE 6570-06-M

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: 10:00 a.m., Monday, August 18, 1980.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S-1507-80 Filed 8-7-80; 12:20 pm]

BILLING CODE 6715-01-M

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FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., August 13, 1980.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—458th Meeting, August 13, 1980, Regular Meeting (10 a.m.)

CAP-1. Docket No. EL78-43, City of Bountiful, Utah, Utah Power & Light Co., City of Santa Clara, Calif., and Pacific Gas & Electric Co.
CAP-2. Project No. 768, City of Colorado Springs, Colo.
CAP-3. Project No. 2905, Vermont Public Power Supply Authority.

CAP-4. Project No. 3101, City of Winooski, Vt.
CAP-5. Project No. 3055, Merced Irrigation District.
CAP-6. Project No. 3056, South San Joaquin Irrigation District.
CAP-7. Project Nos. 3105 and 3106, Power Authority of the State of New York.
CAP-8. Project No. 2197, Yadkin, Inc.
CAP-9. Docket No. ER80-329, Central Power & Light Co.
CAP-10. Docket No. ER80-108, Missouri Public Service Co.
CAP-11. Docket No. ER80-113, Central Telephone & Utilities Corp.
CAP-12. Docket No. ER80-222, Georgia Power Co.
CAP-13. Docket Nos. ER80-215 and ER80-214, Pacific Gas & Electric Co.
CAP-14. Docket Nos. ER76-827 and ER77-427, Minnesota Power & Light Co.
CAP-15. Docket Nos. ER77-75, ER77-97, ER78-78 and ER78-79, New England Power Co.
CAP-16. Docket No. ER79-217, Boston Edison Co.

Miscellaneous Agenda—458th Meeting, August 13, 1980, Regular Meeting

CAM-1. Docket No. RM80- , Discontinuance of FPC Form Nos. 12-A and 12-B.
CAM-2. Docket No. RM79-47, Statewide exemptions from incremental pricing.
CAM-3. Docket No. RA80-10, Pinecrest Texaco.
CAM-4. Docket No. RA80-47, Brock Exploration Corp.

Gas Agenda—458th Meeting, August 13, 1980, Regular Meeting

CAG-1. Docket No. RP78-58, Valero Interstate Transmission Co.
CAG-2. Docket No. RP80-106, Trunkline Gas Co.
CAG-3. Docket No. RP80-114, Inter-City Minnesota Pipelines Ltd., Inc.
CAG-4. Docket No. TA80-1-25 (AP80-1), Mississippi River Transmission Corp.
CAG-5. Docket No. TA80-2-33 (PGA80-2) (IPR80-2) (AP80-1) (TT80-1) and (LFUT80-1), El Paso Natural Gas Co.
CAG-6. Docket Nos. RI74-188 and RI75-21, Independent Oil & Gas Association of West Virginia.
CAG-7. Docket No. CI80-332, Texaco, Inc.; Docket No. CI80-298, Exxon Corp.
CAG-8. Docket Nos. CS67-95, et al., Estate of Fred Turner, Jr. (Fred Turner, Jr.) et al.; Docket No. CS79-87, Ambra Oil & Gas; Docket No. CI80-285, Northwestern Mutual Life Insurance Co.; Docket No. CI80-304, Amoco Production Co.; Docket Nos. CI75-346, et al., Conoco, Inc. et al.; Docket No. CI 80-3091, Mesa Petroleum Co.; Docket Nos. CI70-635, et al., Arco Oil & Gas Co., et al.; Docket No. CI79-611, Union Oil Co. of California; Docket Nos. G-8920, G-10338, G-14164, G-14242 and G-17563, The Superior Oil Co., et al.; Docket Nos. CI77-345, et al., Amoco Production Co., et al.; Docket No. CI78-616, Hondo Oil & Gas Co.; Docket No. CI65-849, The Superior Oil Co.
CAG-9. Docket No. TC80-89, El Paso Natural Gas Co.
CAG-10. Docket Nos. ST79-8, ST79-9, ST79-10, ST79-11, ST79-12, ST80-6, ST80-102, ST80-150 and ST80-193, Producer Gas Co.
CAG-11. Docket No. CP80-58, Panhandle Eastern Pipe Line Co.
CAG-12. Docket No. CP80-310, Tennessee Gas Pipeline Co.
CAG-13. Docket No. CP80-67, Lone Star Gas Co.
CAG-14. Docket No. CP80-158, Texas Gas Transmission Corp.; Docket No. CP80-212, Michigan Wisconsin Pipe Line Co.
CAG-15. Docket No. CP80-344, Northwest Pipeline Corp.
CAG-16. Docket Nos. CP79-352 and RP80-97, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG-17. Docket No. CP80-251, Michigan Wisconsin Pipe Line Co.
CAG-18. Docket No. CP80-389, Western Gas Interstate Co.
CAG-19. Docket No. CP80-280, Tennessee Gas Pipe Line Co., a division of Tenneco Inc.
CAG-20. Docket No. CP80-378, Columbia Gas Transmission Corp.
CAG-21. Docket No. CP80-386, Buckeye-Tennessee Gas Gathering Co.
CAG-22. Docket No. CP79-416, ANR Storage Co.; Docket No. CP79-374, Southern Natural Gas Co.; Docket No. CP79-382, South Georgia Natural Gas Co.; Docket No. CP79-478, Great Lakes Gas Transmission Co.; Docket No. CP79-498, Michigan Wisconsin Pipe Line Co.

Power Agenda—458th Meeting, August 13, 1980, Regular Meeting

I. Licensed Project Matters

P-1(A). Project No. 405, Susquehanna Power Co. and Philadelphia Electric Power Co.
P-1(B). Project No. 1888, York Haven Power Co.
P-1(C). Project No. 1025, Safe Harbor Water Power Corp.
P-1(D). Project No. 1881, Pennsylvania Power & Light Co.
P-1(E). Docket No. , Philadelphia Electric Power Co. & Susquehanna Power Co., Safe Harbor Water Power Co., Pennsylvania Power & Light Co. and York Haven Power Co.
P-2. Project Nos. 176, et al., Vista irrigation district.

II. Electric Rate Matters

ER-1. Docket No. ER80-473, Duke Power Co.
ER-2. Docket Nos. ER80-308 and ER80-468, Georgia Power Co.
ER-3. Docket No. ER80-490, Lockhart Power Co.
ER-4. Docket Nos. ER80-484 and ER80-485, Pennsylvania-New Jersey-Maryland Interconnection and Virginia Electric & Power Co.
ER-5. Docket No. ER80-488, Cleveland Electric Illuminating Co. and the City of Cleveland.
ER-6. Docket Nos. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.
ER-7. Docket Nos. E-9329, ER76-792 and ER76-716, Indiana & Michigan Electric Co.
ER-8. Docket No. ER77-614, Union Electric Co.
ER-9. Docket No. ID-1839, H. Russell Smith.
ER-10. Docket No. ID-1860, Robert L. Loughead.

Miscellaneous Agenda—458th Meeting, August 13, 1980, Regular Meeting

M-1. Docket No. QF80-4, Consolidated Water Power Co.—Small power production and cogeneration facilities—qualifying status.
M-2. Docket No. RM79-79, Price squeeze—procedural rules; Docket No. RM79-80, Price squeeze—substantive rules.
M-3. Reserved.
M-4. Reserved.
M-5. Docket No. RM79-76, High-cost natural gas produced from tight formations.
M-6. Docket No. RM79-34, Transportation certificates for natural gas for the displacement of fuel oil.
M-7. Docket No. RM80-34, Nondiscriminatory access to the Outer Continental Shelf.
M-8. Docket No. GP80- , USGS New Mexico section 108 NGPA determination; Depco, Inc., Hancock well No. 6; USGS Docket No. NM 2732-79 FERC No. JD80-415.
M-9. Docket Nos. RA80-5 and RA80-82, San Ann Service, Inc.

Gas Agenda—458th Meeting, August 13, 1980, Regular Meeting

I. Pipeline Rate Matters

RP-1. Reserved.

II. Producer Matters

CI-1. Reserved.

III. Pipeline Certificate Matters

CP-1. Docket No. TC80-7, Michigan Wisconsin Pipe Line Co.
CP-2. Docket No. CP78-161, Consolidated Gas Supply Corp.
CP-3. Docket No. CP80-51, Northern Natural Gas Co., division of Internorth, Inc.

Kenneth F. Plumb,
Secretary.

[S-1510-80 Filed 8-7-80; 3:53 pm]
BILLING CODE 6450-85-M

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FEDERAL RESERVE SYSTEM.
(Board of Governors)
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR, 51332, August 1, 1980.
PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, August 6, 1980.
CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item(s) was added:

1. Proposed amendments to Regulation D (Reserves of Member Banks) to implement the Monetary Control Act by applying new reserve requirements to member and nonmember depository institutions. (Proposed earlier for public comment; Docket No. R-0306.)

2. Proposed amendment to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement the Monetary Control Act by providing access to Federal Reserve credit through the discount window for depository institutions subject to reserve requirements. (Proposed earlier for public comment; Docket No. R-0307.)

Both items were previously announced for the open meeting on Tuesday, August 5, 1980.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated; August 6, 1980.

Theodore E. Allison,

Secretary of the Board.

[S-1508-80 Filed 8-7-80; 1:21 pm]

BILLING CODE 6210-01-M

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NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, August 13, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Wednesday, August 13:

2 p.m.

Briefing on Upgrade of Material Accounting and Control (approximately 1 hour, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,

Office of the Secretary.

August 6, 1980.

[S-1509-80 Filed 8-7-80; 3:10 pm]

BILLING CODE 7590-01-M

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CIVIL AERONAUTICS BOARD.

Notice of Deletion of Item From the August 7, 1980, Board Meeting

TIME AND DATE: 9:30 a.m., August 7, 1980.

PLACE: Room 1027, 1825 Connecticut Aveune, N.W., Washington, D.C. 20428.

SUBJECT: 12. Docket EAS-645, EAS-646, EAS-647 and 37703; Appeal of Essential Air Service Determination for Aguadilla, Mayaguez and Ponce, Puerto Rico; Sun International's notice of intent to suspend service at Aguadilla, Puerto Rico. (Memo #9828, BDA, OCCR, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

[S-1513-80 Filed 8-8-80; 8:45 am]

BILLING CODE 6320-01-M

Federal Register

Monday
August 11, 1980

Part II

Department of Transportation

Federal Aviation Administration

Domestic, Flag, and Supplemental Air Carriers and Commercial Operators and Air Taxi Operators; Flight Crewmember Flight and Duty Time Limitations and Rest Requirements

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 17669; Notice No. 78-3B Operations Review Program Notice No. 7]

Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft: Air Taxi Operators and Commercial Operators; Flight Crewmember Flight and Duty Time Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposes to revise the flight and duty time limitations and rest requirements for flight crewmembers utilized by domestic, flag, and supplemental air carriers, commercial operators and air taxi operators. These proposed amendments are part of the operations review program that provided a comprehensive review of the Federal Aviation Regulations (FAR), taking into account the significant changes in the environment in which airmen and aircraft operators function by updating the regulations which apply to them.

DATES: Initial comments on the proposals contained in this supplemental notice must be received on or before October 10, 1980. Reply comments on these initial comments must be received on or before November 10, 1980.

ADDRESS: Send comments on the proposals in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-24), Docket No. 17669, 800 Independence Avenue, S.W., Washington, D.C. 20591 or deliver in duplicate to: Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 17669. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman C. Miller, Safety Regulations Staff, Regulatory Review Branch (AVS-22), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Comments are also invited regarding the implementation date of the final rule. The FAA proposes to establish an effective date of 180 days after the issue of the final rule. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All initial comments received on or before October 10, 1980, and all reply comments received on or before November 10, 1981, will be considered by the Administrator before taking action on the proposed rule.

The proposals 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. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this supplemental notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

This supplemental notice is based upon two notices of proposed rulemaking issued in 1977 and 1978 as part of the FAA's Regulatory Review Program. Notice 78-3 (43 FR 8070; February 27, 1978) proposed to amend Part 121 and Part 123 provisions pertaining to flight and duty time limitations and rest requirements for flight crewmembers serving with domestic, flag and supplemental air carriers, commercial operators and air travel clubs using large aircraft. Notice 77-17 (42 FR 43490; August 29, 1977) proposed substantially revised requirements in Part 135 for air taxi operators and commuter air carriers. Although Notice 77-17 was issued prior to Notice 78-3, the flight and duty time provisions in it contained concepts which were similar in many respects to the concepts which were proposed later in Notice 78-3.

Both notices developed a wealth of helpful information in the public comments which were submitted by a broad spectrum of interested persons. The Part 135 notice generated more than 1,600 comments. Comments on the Parts 121 and 123 flight and duty time limitations notice were also extensive and comprise 16 volumes in the FAA's public regulatory docket.

Preliminary FAA analysis of the comments received in response to Notice 78-3 indicated the need for extensive research and additional conceptual development before that rulemaking action could proceed. Consequently, in view of the conceptual similarity between the flight and duty time limitations proposal in Part 135 and the proposal in Notice 78-3, when the FAA issued the amendments to Part 135, the FAA decided to defer changing the flight and duty time limitations in Part 135 until they could be given further consideration. Accordingly, this supplemental notice proposes changes to both Part 121 and Part 135 and includes a discussion of comments received in response to Notices 78-3 and 77-17 pertaining to flight and duty time limitations. The changes proposed to Parts 121 and 135 differ in certain respects from the proposals in those notices as fully explained in the discussions pertaining to each part. These revised proposals carry out the goal of regulatory simplification which was discussed in Notice 78-3.

Preliminary to a discussion of specific proposals and comments, there are two areas which merit separate treatment. The first is the matter of the safety justification for the proposals and the second concerns economic impact.

Safety

Various commenters, including a large industry association, objected to the proposals in Notice 78-3 contending that the FAA did not explain why the proposed changes were required by safety considerations. In contrast, a large professional organization commenting on this issue, and specifically on the contention of the industry association, took the position that the proposals have adequate safety

justification as a general proposition because the FAA is attempting to prevent fatigue in flight crews.

Arguments on the safety issue were discussed in the preamble to Notice 78-3 in response to a contention made at the Operations Review Conference that flight and duty time limitations should be left to the labor contracts negotiated between air carriers and unions. The FAA pointed out that the Administrator has an explicit statutory duty under Section 601(a)(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1421(a)(5)) to promote safety of flight in air commerce by prescribing reasonable rules and regulations governing, in the interests of safety, the maximum hours or periods of service of airmen and other employees of air carriers. In addition, the agency made it clear that, even if there were no statutory obligation, it does not agree that regulation of this subject should be left to negotiated labor agreements.

Although a connection between flight crewmember fatigue and the likelihood of crewmember error clearly exists (ref: NASA, TND-8365, Pilot Workload and Fatigue, 11/76; CAMI, AM 65-13, Fatigue In Aviation Activities, 3/65; ICAO, Circular 52-AN/47/5, Flight Crew Fatigue and Flight Time Limitations, 1975) the FAA believes it is impossible to precisely quantify and directly measure the safety benefits associated with different hours of flight and duty time limitations. Therefore, the FAA is unable to estimate the number of accidents or injuries that might be avoided by the implementation of the limitations proposed in this notice. However, the proposals in this notice have been developed based on the extensive technical expertise of agency personnel. This expertise has been used to make qualitative judgments on various proposals and to analyze and weigh the opinions expressed by knowledgeable commenters. These proposals are a product of these experts' deliberations and fully comply with the Congressional mandate to develop reasonable flight time limitations for flight crewmembers.

With respect to flight time limitations for flight crewmembers serving with commuter air carriers, on October 17, 1979, the National Transportation Safety Board (NTSB) recommended to the FAA that the agency "expedite rulemaking which would make the flight time and duty time limitations and rest requirements for commuter air carriers the same as those specified for domestic air carrier crewmembers." This recommendation resulted from the NTSB's investigation of a June 17, 1979, accident involving the crash of an Air New England de Havilland DHC-6 airplane during a nighttime instrument landing approach. This recommendation lends added emphasis to the need for flight and duty time limitations for commuter air carrier flight crewmembers.

In the preamble to Notice 78-3, the FAA also pointed out that the flight time limitations which apply to air carriers and commercial operators have remained essentially unchanged for over 30 years and that it was timely for those rules to be re-examined. This is especially true in view of the enactment of the Airline Deregulation Act of 1978 (Pub. L. 95-504) on October 24, 1978 (the "Act"). Under the Act, many aspects of economic regulation by the Civil Aeronautics Board (CAB) have either disappeared or have been substantially reduced. Thus, the factors which traditionally have distinguished the operations of various classes of air carriers are fading in importance. For example, air carriers once recognized as essentially local service in their operations are conducting operations similar in many respects to domestic air carriers. As another example, some supplemental air carriers have received CAB authority to provide scheduled domestic or flag service, or both. The proposals in this supplemental notice are responsive to today's circumstances arising under the climate created by airline deregulation and are intended to prevent any derogation in safety.

Economic Impact—Analysis

A considerable amount of industry data was submitted in response to Notice 78-3 on the cost of implementing the flight time limitations proposed in that NPRM. In addition, cost data for commuter air carrier implementation of the Notice 77-17 proposals were included in a report titled "Cost Impacts of FAR Part 135 Changes on the Commuter and Air Taxi Industries," dated May 1978. Based on an analysis of this data, the FAA estimates that the first year industry costs of implementing the provisions of this supplemental notice would be $107 million. However, as discussed more fully below, this cost figure is based on incomplete data. Much of this data was derived from industry sources and could not be fully substantiated by the FAA. The FAA believes that with more complete data, which are requested below, the estimated implementation costs of the proposals would likely be significantly reduced. The FAA does not intend to issue a costly regulation unless clearly justified by the benefits that would be accrued. In view of this and the great difficulty in quantifying the safety benefits associated with the proposal, the proposal will be reconsidered if the FAA estimate of implementation costs is not substantially reduced or unless greater safety benefits are quantified.

Although estimates have not been made of non-safety related economic benefits associated with the proposals, the FAA believes they will be substantial. Government costs involved in responding to the numerous requests for interpretation of the existing flight time limitations would be significantly reduced if the proposal is adopted. The FAA believes that those subject to the proposed requirements would experience important savings associated with the implementation of a simplified rule. Comments are invited on the savings that would result.

The major cost impact from this supplemental notice will be incurred by trunk, charter and air taxi operators, respectively (See Table A). Airlines included within each of the carrier groups are listed in Table B.

- Truck Carriers—First year costs for this group have been estimated at $41.4 million which is approximately 40 percent of the total industry cost. The inclusion of new flight and duty time considerations, such as a regulatory definition of duty time and daily duty time limitations, account for the major cost impacts. The change from 24 hours duty free in 168 hours to 30 hours duty free in seven days is also more restrictive, as is the change from eight to 10 hours in minimum rest required after a duty period.
- Charter Carriers—It is estimated that charter (supplemental) carriers would incur first year costs of $17.5 million. Although labor contracts for charter carriers were not available, the public comments and the inclusion of such items as monthly limits and deadhead time as duty time provided a sufficient basis for estimation. It should be noted, however, that the impacts may be somewhat overstated due to the data limitations discussed under the paragraph entitled, "Limitations of Estimates."
- Air Taxi operators—Since air taxi Operators were not included in Notice No. 78-3, there are no industry cost estimates available in the public docket. Accordingly, the $19 million first year costs shown for air taxi operators were taken from the referenced Part 135 study which had a population size of approximately 2,200 operators. Although the magnitude of the cost impact of Part 135 operators is significant, it should be noted that the average first year cost per operator would be less than $9,000. Specific areas of change include: 40 hours flight time in seven days in

addition to a daily limit; a new rest requirement; and inclusion of duty time and landing provisions.

Comparative Costs

This supplemental notice contains changed proposals which are responsive to comments received in response to Notice 78-3. Further, it contains proposed revisions to Part 135 flight and duty regulations for commuter air carriers and air taxi operators. Finally, the supplemental notice is not applicable to Travel Clubs (Part 123 operators) while Notice 78-3 included this operator group. Table A compares the total first year carrier costs from Notice 78-3 to supplemental Notice 78-3B. The subtotal for Part 121 operators indicates that the changes made by the FAA in response to public comments accomplished a sixty-one percent (61%) cost reduction, with estimates from Notice 78-3 at nearly $197 million reduced to $80 million by supplemental Notice 78-3B. The major factors accounting for this cost reduction include:

- The definition of duty time was amended by adding "at a location specified by the certificate holder." Thus, this provision is less costly than Notice 78-3.
- Daily flight and duty time limits are less restrictive than the proposals in Notice 78-3. For example, that notice limited a two-pilot crew to 8 hours of flight time and 12 hours of duty time. This supplemental notice proposes limits of 10 hours of flight time and 14 hours of duty time.
- This supplemental notice proposes that the definition of flight time will revert to current practices, that is "total block-to-block time" instead of "time spent at a crewmember station."
- Deletion of yearly flight time limits.
- Travel clubs have been deleted as an operator group subject to Part 121 flight and duty time regulations. As shown in Table A this eliminated a potential four ($4) million dollars in industry costs.

Limitations of Estimates

Sufficient data were not available to independently estimate the cost impacts from this supplemental notice. Thus, the Part 121 estimates were derived from the public comment record for Notice 78-3. The primary data were the Air Transport Association (ATA) and National Air Carrier Association (NACA) comments and exhibits. The reported cost impacts were adjusted to reflect the differences between the Supplemental Notice and Notice 78-3. In addition, data for commuters and air taxis were obtained from the referenced Part 135 study. The absence of complete data required that hypothesized relationships be used to estimate incremental changes in cost impacts for Alaskan, Hawaiian, All Cargo, Commercial Operators and other carriers. Individual cost estimates for each carrier group and specific assumptions used to derive cost estimates for these groups are contained in the report "Economic Impact Assessment of Proposed Flight and Duty Time Rules," Docket No. 17669.

Table A.—*Flight and Duty Time Analysis Total First Year Costs ($000's) and Relative Share by Type of Carrier*

Carrier type	Estimate of industry costs from NPRM 78-3		Supplemental notice initial estimate	
	Dollars	Percent	Dollars*	Percent
Part 121 Operators:				
Trunk	113,628	57.7	41,401	38.6
Local Service	20,324	10.3	9,163	8.6
Alaskan	2,073	1.0	2,010	1.9
Hawaiian	312	0.1	0	0.0
Other Carriers	131	0.1	131	.1
Charter (Supplemental)	34,465	17.5	17,487	16.3
All Cargo	18,465	9.4	7,712	7.2
Commercial Operators	3,513	1.8	2,401	2.2
Travel Clubs	4,080	2.1	Not affected	0
Subtotal for 121 Operators	196,991	100.0	80,305	74.9
Part 135 Operator:**				
Commuter Air Carriers			7,557	7.1
Air Taxi Operators		19,287		18.0
Subtotal for 135 Operators			26,844	25.1
Total			107,149	100.0

*These amounts are a combination of initial "start-up" costs and first year costs.
**Source: Analysis of NPRM 77-17, "Costs Impacts" of FAR 135 Changes in the Commuter and Air Taxi Industries, May 1978 (Docket No. 16097).

Table B.—*Population for the Estimates*

Trunk

American Airlines*
Braniff Airways*
Continental Air Lines*
Delta Air Lines*
Eastern Air Lines*
National Airlines*
Northwest Airlines*
Pan American World Airways*
Trans World Airlines*
United Air Lines*
Western Air Lines*

Local Service

Allegheny Airlines*
Frontier Airlines*
Hughes Airwest*
North Central Airlines*
Ozark Air Lines*
Piedmont Airlines*
Southern Airways*
Texas International Airlines*

Alaskan

Alaska Airlines*
Kodiak-Western Alaska Airlines
Munz Northern Airlines
Reeve Aleutian Airways
Wien Air Alaska*

Hawaiian

Aloha Airlines
Hawaiian Airlines*

Other

Air Midwest
Air New England
Aspen Airways
Wright Air Lines

Air Taxi Operators

From Part 135 study

All Cargo

Airlift International
The Flying Tiger Line
Seaboard World Airlines

Charter (Supplemental)

Capitol International Airways*
Evergreen International*
McCulloch International
Modern Air Transport
Overseas National Airways
Rich International
Trans International Airlines*
World Airways*
Zantop International

Commercial Operators

(Intrastate scheduled carriers)
Air California
Pacific Southwest Airlines
Southwest Airlines

Travel Clubs

Ambassadair
Atlanta Skylarks
Bird of the Sun
Club Alaska
Club U.S.A. Inc.
Emerald Shillelagh, etc.
Fiesta
Florida Air Travel Assoc.
Four Winds
Great Valley
Jet Set
Nomads

Commuter Air Carriers

From Part 135 study

*Denotes Public Comment Submission.

Request for Economic Data

The models developed in the report "Economic Impact Assessment of Proposed Flight and Duty Times Rules," Docket No. 17669, are based on data supplied as comment to NPRM 78-3. As such, the models are sensitive only to the requirements of NPRM 78-3 and cannot be employed to evaluate the

economic impact of SNPRM 78–3B. The following data are requested from the industry so that a cost impact assessment of the provisions of SNPRM 78–3B can be prepared.

Data are being sought from both Part 121 and Part 135 operators. Questions have been prepared and are included in this NPRM for each operator group. In addition to providing the information delineated below, each Part 121 and Part 135 operator should furnish two (2) copies of the most recent crew-carrier labor contract. Further, Part 135 operators should submit two copies of their timetable for scheduled operations (if applicable). Each Part 121 and Part 135 operator should list a contact person for FAA and FAA consultant inquiries.

Please note that data are requested for October 1979. If for some reason the Part 121 or Part 135 operator believes that data for October 1979 are not representative, information for another month may be substituted. However, an explanation of the rationale for substituting data for a month other than October 1979 should be provided.

Part 121 Operators

It is anticipated that all carriers cannot provide the same level and depth of data requested. As such, the carriers may pursue any one of the following options:

1. Complete Part I of the questions *and* provide a listing of October 1979 trip pairings and crew bid lines; or,

2. Complete Part I of the questions *and* estimate the likely costs due to NPRM 78–3B by reallocating flights to crew pairings and constructing new bid lines which conform to the proposed regulation and are consistent with current contracts; the estimated cost of the revised crew schedules can be compared to the cost of the crew schedules constructed previously to conform to the current requlations and restrictions; or

3. Complete Part I and II of the questions.

Part 135 Operators

Existing data sources do not provide sufficient information concerning Part 135 operators to allow a complete cost impact assessment of SNPRM 78–3B to be completed. A set of questions has been prepared designed to obtain demographic and operating data concerning Part 135 operations necessary for an analysis of the likely cost impacts of SNPRM 78–3B. All Part 135 operators should answer all questions that are relevant to their operation.

Part 121

The following questions are designed for response from trunk carriers, flag carriers, supplemental/charter carriers, all cargo carriers, other Part 121 operators and section 408 carriers. It is recognized that each question may not be relevant to each certificate holder. Therefore, each operator should respond to those questions relevant to their operations. Please list and explain any assumptions employed in preparing responses to the questions. Further, all responses should be based on the October 1979 level of activity.

Part I

1. Based on October 1979, or the latest annual utilization statistics, please provide the following:

Aircraft type	Average utilization (hrs./mo.) per crewmember (total time = flight + credit hours)	Credits [1] as a percent of total time	Duty period	
			Trip	Deadhead

[1] When a pairing involves both duty period credits and trip (time away from base) credits only the more restrictive credit should be listed to avoid double counting.

2. a. Please estimate the additional costs, if any, incurred by the inclusion of *all* commercial flying in Part 121 flight and duty time limitations:

Aircraft type	Training flights	Ferry flights	Other flying (specify type)

b. Please estimate the additional costs, if any, incurred by the inclusion of other, non-flying company assignments as Part 121 duty time for purposes of calculating duty period limitations and intervening rest requirements:

Activity	Hours per month	Additional cost

3. Please advise if relief officers were used to augment normal crew complements in order to extend flight and duty time limits in any of the October 1979 pairings. YES/NO. (circle one) Would the proposed two hour extension of both flight and duty time limits per relief officer make the use of augmented crews any more or less expensive? MORE/LESS. (circle one) If MORE, how much additional cost would have been incurred in the October 1979 pairings? ————. If LESS, how much could have been saved? ————.

4. Separately identify and quantify any other costs (e.g. Administrative, Computer Programming, etc.) associated with the proposed changes in flight and duty time rules.

Item	Cost

5. Please provide the following crew staffing data:

Aircraft type	Number of regular line holding crewmembers	Number of reserve or standby crewmembers

Is the ratio of reserve crews to regular line holders specified by the crew labor agreement? YES/NO. (circle one) If YES, are the above levels of reserve crews at contractual minimum? YES/NO (circle one).

6. Please provide the training and/or new hire costs (includes salary while in training, simulator time, instructors, etc.) to qualify flight crewmembers into each of the following categories:

Aircraft type	Captain	First officer	Second officer or flight engineer

7. Please furnish the annual average cost (salary and benefits) per crewmember for each flight crew category:

Aircraft type	Captain	First officer	Second officer or flight engineer

Part II

Provide a listing of October 1979 trip pairings and crew bid lines, *or* provide the following (show the basis for all calculations and list any assumptions employed) for each aircraft type.

A(1) Percentage of trip pairings impacted by 10 hour minimum rest.

A(2) Any additional costs to comply with 10 hour minimum rest.

B(1) Percentage of trip pairings impacted by 11 hour minimum rest.

B(2) Any additional costs to comply with 11 hour minimum rest.

C(1) Percentage of trip pairings impacted by off-duty rest requirements as a function of previous duty period. (1 hour of rest for 1 hour of scheduled duty).

C(2) Any additional costs to comply with off-duty rest requirement as a function of previous duty period.

D(1) Percentage of trip pairings impacted by duty period time limitations (separate the trip pairings affected by duty time reductions due to landings).

D(2) Any additional costs to comply with duty period time limitations (separate costs associated with duty reductions due to landings).

E(1) Percentage of bid lines impacted by increasing the minimum rest period required every seven days from 24 to 30 hours.

E(2) Any additional costs associated with increasing the rest period required every seven days from 24 to 30 hours.

F(1) Percentag of trip pairings affected by the change in maximum flight time in a duty period.

F(2) Any costs associated with the change in maximum flight time in a duty period.

G(1) Percentage of bid lines affected by the change in seven day flight time limits.

G(2) Any costs associated with the change in seven day flight time limits.

H(1) Percentage of bid lines affected by the change in 30 day flight time limitations.

H(2) Any costs associated with the change in 30 day flight time limitations.

I(1) Contractual minimum number of days off (i.e., completely free of duty) required in the current flight crew labor agreement.

I(2) Average number of days off in October 1979 bid lines for regular line holders (i.e., not reserve or standby crews).

Part II Data Sheet

Aircraft type
A. 10-hour min. rest:
(1) Percent of Pairings
(2) Estimated Cost
B. 11-hour min. rest:
(1) Percent of Pairings
(2) Estimated Cost
C. Off-duty Rest Period (1 Hr. Per Scheduled Duty Hour):
(1) Percent of Pairings
(2) Estimated Cost
D. Duty period time limits:
(1) Percent of Pairings (14 hr.)
Percent of pairings (due to landings)
(2) Estimated Cost (14 hr.)
Estimated cost (due to landings)
E. Rest Period Every 7 Days:
(1) Percent of Bid lines
(2) Estimated Cost
F. Maximum Flight time in a Duty Period:
(1) Percent of Pairings
(2) Estimated Cost
G. 7 day Flight time Limits:
(1) Percent of Bid Lines
(2) Estimated Cost
H. 30-day Flight Time Limits:
(1) Percent of Bid Lines
(2) Estimated Cost
I. Days Off:
(1) Contractual Minimum
(2) Current Average

Part 135 Operators

The following questions are designed for responses from both commuter airlines and air taxis. It is recognized that all questions may not be relevant to each certificate holder. Therefore, each operator should respond to those questions relevent to their operation. Answers should be provided by significant aircraft type. In addition, answers may be aggregated when crew compliment (1 or 2 pilots) and the number of seats (0–9, 10–19, 10–30) are the same. Please list and explain any assumptions employed in preparing responses to the questions. Further, all responses should be based on the October 1979 level of activity.

1. Fleet Statistics:

number of seats (0–9, 10–19, 10–30) are the same. Please list and explain any assumptions employed in preparing responses to the questions. Further, all responses should be based on the October 1979 level of activity.

1. Fleet Statistics:

Aircraft type	Utilization per day (hours: minutes)	Number of aircraft in service as:	
		Commuter	Air taxi

2. Crew Statistics:

Aircraft type	Number of pilots per crew	Total number of pilots	Average monthly cost for pilot (salary and benefits)

3. Scheduling Data:

	Aircraft type	Average duty period per pilot			Monthly average per pilot	
		Flight time (hrs)	Duty time (hrs)	Number of landings	Days off	Flight time (hrs)
a. Commuter:						
b. Air taxi:						

4. Cost Impact of Proposed Rules:

a. Please estimate the additional number of pilots, if any, required to perform the October 1979 level of operations under the proposed flight and duty time rules _____.

b. If additional pilots would be required, please estimate the percentage increase attributable to each of the following proposed changes:

	Percent
Duty Period Rest Requirements of 1 hour rest for each hour on duty with a minimum of 10 hours	
Duty Period Time Limitations (14 hr. maximum)	
Duty Period Reductions Due to Landings	
30 hour rest period every 7 consecutive days	
40 hour flight time maximum every 7 consecutive days	
30 day flight time limitations (110 hours)	
Other (Explain)	
Total	100

c. If any other additional costs such as pilot benefits, administrative, or others would be incurred to comply with the new rules, please itemize and estimate one-time and/or recurring cost(s):

Item	Additional cost [1]	
	Initial	Recurring

[1] NOTE.—Initial costs are those that are incurred only once. Examples include: equipment costs and hiring costs. Recurring costs are those incurred repeatedly in the future. Examples include: salary and benefit expenses, meals, lodgings, recurrent training, etc.

Discussion of Proposals and Comments

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

The following discussions are keyed to like proposals in Notice 78–3 and the comments received relating to this notice. For the most part, the proposals contained in this supplemental notice are the same as those contained in Notice 78–3. The justification and explanation for sections that were not revised remain the same as was stated in Notice 78–3.

§ *121.13 Rules applicable to helicopter operations: deviation authority.*

It is proposed to amend § 121.13 by deleting the reference to § 121.501 which is contained in revoked Subpart R, and by referring to § 127.191. This latter section is referenced in § 121.501. The amendment is being proposed in place of § 121.483(d) which was proposed in Notice 78–3 so that all the references to Part 127 requirements are in one section of Part 121.

§ *121.471 Applicability.*

The many comments received on this section supported the combining of current Subparts Q, R and S into one subpart. Due to the issuance of Special Federal Aviation Regulation No. 38 (43 FR 58366; December 14, 1978), there is no need to retain the names of the different types of certificates in this section. Therefore, this section is amended by deleting "domestic, flag, and supplemental air carriers, and commercial operators".

One commenter was opposed to the proposal to put international operations under the domestic limitations stating that the proposed 30-hour weekly flight limit would create problems. These problems are mitigated by the raising of the weekly flight time limit to 40 hours, as discussed in detail under § 121.475.

§ *121.473 Definition of terms.*

"Additional flight crewmember"—Commenters stated that this definition created a problem due in part to the lack of required qualification or duty assignments for this crewmember. The definition of "additional flight crewmember" is dropped from the proposal.

"Augmented flight crew"—All commenters supported this definition, however, one commenter stated that bunks should be provided for relief officers and another stated that there should be takeoff or landing limits. The proposals have been revised in response to these comments. a requirement for bunks or seats to provide adequate in-flight rest facilities is included in proposed § 121.485(c) while a scale for reducing duty time based on the number of landings is included in § 121.483(d) to avoid excessive fatigue resulting from large numbers of landings and takeoffs in one duty perod. In addition, the word "basic" has been deleted and the word "Minimum" inserted in its place for consistency with § 121.385 which requires the use of the minimum flight crew stipuated in the airworthiness certificate but not less than two pilots.

"Basic flight crew"—This definition is deleted because it is covered by § 121.385.

"Boarding gate"—No changes. All commenters supported this definition.

"Deadhead Transportation"—No changes. One commenter suggested that "deadhead transportation" should be associated with air transportation only, and not with ground transportation. The explanation given in Notice 78–3 is still valid. Deadhead transportation should include all modes of transportation that a certificate holder requires or provides to transport crewmembers between airports. This is also discussed in § 121.477.

"Duty period"—No changes. All commenters supported this definition.

"Duty time"—Various commenters objected to the definition of duty time stating that it would be impossible for a certificate holder to control when an individual crewmember goes on duty if crewmembers perform required

assignments (such as home study courses, revision to manuals, etc.) at their convenience. The proposal as written would be very difficult to administer, thus this definition has been amended by adding "at a location specified by the certificate holder". This will define the duration of the crewmember's duty time for the purposes of this regulation since the duty period will commence at the time the crewmember is required by the certificate holder to report for duty and end when the crewmember is released from duty at that location.

One commenter complained that ferry flights were not considered as duty time. As proposed in Notice 78-3, "duty time" would include any operation for a certificate holder, including time spent in ferrying and positioning aircraft, receiving and conducting proficiency checks and other training flights. One commenter requested that the phrase "or in other commercial operations" be deleted on the theory that it should be the responsibility of the crewmember to be rested prior to a flight. Other commercial flight time should be counted as duty time because of its potential for causing fatique. This would preclude a flight crewmember from engaging in other commercial flying and then reporting for flight duty with a certificated operator without a rest period. However, a crewmember should be responsible to refrain from reporting for duty in an impaired state. The proposal has been modified to include this requirement by the addition of proposed § 121.487. In addition, any time spent on the ground between flights for a certificate holder in the same duty period would also constitute duty time.

However, the FAA is not irrevocably committed to the concept that flight or ground training should be included in the definition of duty time and is expressly requesting comments on an alternate definition of duty time. In this definition, duty time means "any time required by, or in connection with, a flight assignment, beginning at the commencement of preflight duties and terminating at the conclusion of post flight duties." This definition would not require assignments such as ground or flight training to be considered as duty time. If this definition were adopted, it would also require a revision of the proposed rule to ensure that a crewmember has been provided a rest period prior to being assigned flight duties by stating that the required rest period must be provided immediately preceding duty time. All comments received will be carefully considered before a final decision is made.

"Flight time"—Several commenters stated that flight time should be "block to block" regardless of the size of the crew since all assigned flight crewmembers on the same flight accumulate flight and duty time at the same rate without regard to whether some time is spent in a crewbunk. According to these commenters, this concept will promote efficiency in scheduling. In response to these comments, the proposal has been revised by deleting the words "at a flight crewmember's station" from the definition of "flight time." One commenter requested that the phrase "or in other commercial operations" be deleted, as it was the crewmember's responsibility to be adequately rested prior to a flight. The FAA's response to this comment is contained in the discussion under "duty time." The last sentence affecting flight navigators flight time has been deleted. Navigators should be allowed to log flight time from block to block as provided for the other flight crewmembers since it would be administratively difficult to ascertain when a navigator "serves as the primary means of navigation" and scheduling problems could result if one flight crewmember's flight time differed from other flight crewmember's flight time.

The FAA has been asked to further explain the definition of "flight time" for flight time limitation purposes. The main factor is whether the aircraft has departed the boarding gate "for the purpose of flight." If the aircraft is directed, for example, to go to the hangar for de-icing, its departure from the boarding gate would not be "for the purpose of flight" and would not be considered as "flight time." On the other hand, if an aircraft left the boarding gate for the purpose of flight but had to return because of mechanical difficulties, this taxi time under this definition would be considered as "flight time" even though the aircraft never left the ground.

Many persons commented on whether military flight time should be included in the flight time limitations. Many reserve organizations stated that the inclusion of military flying time in a flight crewmember's total flying time would severely impact the ready reserve capability of the United States. The Department of Defense submitted similar comments. Based on these comments, this supplemental notice does not propose to require military flight time to be included in a crewmember's total flight time accumulated in operations for a certificate holder.

"Relief officer"—Various commenters objected to the proposal because it did not specify what qualification would be required for a "relief officer." They stated that there is no justifiable basis for an increase in the flight time and duty time limitations based on the addition of a relief officer if that officer is not fully qualified for each position at which the officer is assigned to serve. In light of these comments, the proposal has been revised to require that a relief officer must be fully qualified and current except as provided in § 121.543. This has been accomplished by revising the definition of "relief officer" and adding a new paragraph (d) to § 121.485.

"Rest period"—Several commenters stated that the rest period should start when the crewmember arrives at the rest facility and end on departing the facility, in order to provide at least an eight hour period at the rest facility and that the time spent in debriefing, clearing customs or immigration, and the ride to and from the rest facility must be excluded from rest time. The comments present a difficult regulatory problem; to resolve this issue in an administratively simple manner while recognizing the legitimacy of the argument, the proposal has been revised to increase the required rest period from eight hours to ten hours, and to 11 hours if crewmembers must clear customs or immigration. These extended rest periods will provide the crewmembers with a reasonable opportunity to obtain nearly eight hours at a rest facility.

§ 121.475 Flight time and duty time limitations: weekly and monthly.

One commenter suggested inserting the phrase "be required to" between "no flight crewmember may" and "accumulate flight time." This suggestion would allow the flight crew to decide whether or not the flight and duty time limitations should be observed. This has not been included because it would not be in the best interests of aviation safety to allow the flight crew, either on its volition, or upon request by the certificate holder, to elect to disregard the flight and duty time limitations.

Some commenters questioned the use of the 168 consecutive hour period for the weekly limit, stating it is confusing and is inconsistent with proposed paragraphs (3) and (4) which use calendar month and year respectively. The 168-hour period was proposed to allow greater flexibility in scheduling flight time and rest periods. According to the comments, this is not the case. Consequently, the weekly flight time limitation is revised to apply to a period of seven consecutive days.

Although several commenters supported the 30-hour weekly flight time limitation, most of the commenters stated it was unrealistically low. Weekly limitations ranging from 35 to 50 hours were suggested as alternatives, but no explicit reasons were given to support the suggested limitations. In view of the comments, the proposal has been revised to increase the weekly flight time limitation to 40 hours. Commenters are urged to furnish precise reasons if they advocate that the 40-hour limit should be increased or decreased. Depending upon the comments received, it is possible that the FAA could adopt a weekly flight time limit differing by several hours from that proposed.

A few commenters suggested that the weekly flight time limit is unnecessary because the daily flight time limitation provides sufficient protection. The weekly limit serves to prevent excessive accumulations of flight time which could arise if flight crewmembers accumulated the maximum allowed flight time on each day of the week.

Many commenters opposed the monthly limit of 120 hours and suggested limits ranging from 80 to 100 hours. Some suggested it be entirely deleted. Current flight time rules allow from 100 to 120 hours of flight time to be accumulated per month. A monthly limit of 110 hours will provide sufficient flexibility to the operator yet not derogate safety due to the cumulative effects of fatigue. For consistency with § 121.475(a)(b), § 121.475(a)(3) is changed to read "any 30 consecutive days".

Various commenters vigorously opposed yearly flight time limits on the basis that a flight crewmember does not become fatigued by the year. These comments have merit; the proposal has been revised to delete yearly flight time limits.

Several commenters stated that the phrase "flight or duty" in § 121.475(b) should read "flight *and* duty" or "flight *and/or* duty". This change is not appropriate because flight time and duty time are factors which must be given equal consideration in the preparation of schedules. One commenter suggested adding the words "or rescheduling". Scheduling in the context of this subpart includes rescheduling.

One commenter proposed that the language in current § 121.471(g) be retained in place of § 121.475(b). Service in excess of flight time limitations is covered in § 121.475(c). It includes a prohibition on a crewmember departing the boarding gate if the elapsed flight time plus the flight time scheduled for the next flight will exceed any applicable flight or duty time limitation by more than two hours. Consequently, it would not be appropriate to include present § 121.471(g).

One commenter stated that more definitive language be used in § 121.475(b) and that the word "routinely", which is used in the preamble of Notice 78-3, should be defined. It is not possible in a regulation to specifically describe every situation which could arise. The word "routinely" in the preamble to Notice 78-3 was used in the usual dictionary sense. If a particular flight exceeds the time alloted to it so frequently that it becomes commonplace, then the scheduling of the flight should be reviewed.

Most commenters on § 121.475(c) said that the words "be required to" should be inserted between the phrase "a flight crewmember may not" and the phrase "depart the boarding gate". This would not be acceptable for the reasons previously explained.

Several commenters agreed with the allowable extension of a flight or duty time limitation by two hours. One crewmember opposed the two hour extension since it takes the flight crewmember at the most vulnerable state in regard to fatigue and allows the flight crewmember to fly beyound safe limits. Current Subpart Q allows a flight crewmember to exceed the applicable flight and duty time limitations if delays occur due to circumstances beyond the control of the air carrier but contains no explicit limit on the number of additional hours. An additional two hours provides a degree of flexibility to the certificate holder without imposing a significant burden on the individual crewmember. In addition, under proposed § 121.487, which is introduced in this supplemental notice, a flight crewmember is responsible to refrain from flight crew duty if fatigue will endanger the safety of the aircraft or of its occupants.

§ 121.477 Deadhead transportation.

Several commenters agreed with this section as proposed. Many commenters on this section stated that an eight hour minimum rest period was insufficient. This has been changed to 10 hours or to 11 hours if the flight crewmember must clear customs or immigration, or both, to be consistent with revised § 121.481. The reasons for the change are discussed under that section.

Several commenters wanted deadhead time to be counted as duty time under all circumstances. They stated that deadheading after a duty period is fatiguing and adds to chronic fatigue and that under the proposed rule a flight crewmember may be deadheaded without limitation at the end of the maximum on-duty period. Under the revised proposal, the minimum rest period must be provided immediately following deadheading if deadheading is not to be part of duty time. This rest period should be sufficient to overcome the effects of fatigue generated by the last duty assignment. In addition, a deadheading flight crewmember is not performing any work for the certificate holder and can rest or sleep. The contention that the deadheading could be without limitation is only theoretical because operational experience shows that deadheading usually has a specific limit based upon the destination to which the crew is being deadheaded. Other commenters suggested that the definition of deadhead should include all transportation required and provided by the employer without being limited to between airports. This has not been proposed because it would be overly broad by including ground transportation between the rest facility and the airport. While it is true that some rides between the airport and the rest factility may, on occasion, exceed one hour, it does not appear practicable to have the crew rest period commence upon arrival at the rest facility because of scheduling difficulties.

Another commenter contended that the definition should be limited to air transportation. This does not appear to be consistent with the goal of guarding against fatigue because there are some ground transportation trips between airports which require several hours of travel.

One commenter recommended that ground transportation should be duty time only when required and provided by the certificate holder between airports not in the same metropolitan area. Alternatively, the commenter suggested that ground transportation between two airports in the same duty period should be duty time without regard to whether it is followed be a rest period. The first suggestion is not being proposed because it would not protect against lengthy ground trips between airports in the same metropolitan area. The second suggestion is not being proposed because a flight crewmember is protected from the fatiguing effects of travel between airports when the travel is followed by a rest period.

A few commenters proposed that deadhead time should be among the factors which determine the length of the rest period. This would not be practical because deadhead time, a variable factor, would cause the rest period to vary, which, in turn, would result in scheduling difficulties.

Several commenters suggested that a combination of duty time followed by deadhead time should not exceed 16 hours. This is not practical because it would not allow augmented crews to be used if they were to be deadheaded after their duty period since the maximum duty period for augmented crews is 18 hours.

§ 121.479 Determination of applicable flight time and duty time limitations: flight crewmembers.

Most commenters supported the provisions of this section. Some commenters stated that ferry flights should be considered line operations, while others recommended the elimination of the words "in line operations". Based on these comments, the words "line operations" are changed to read "any operation". This would mean, for example, that a flight crewmember who served with an augmented crew in a line operation subject to limitations of 12 hours flight time and 16 hours duty time, and then served with a two person crew on a ferry flight, would be subject to a flight time limitation of 10 hours and a duty time limitation of 14 hours, provided both flights were made in the same duty period. Thus, if that flight crewmember had seven hours flight time with the augmented crew, only three hours could be flown with the two person crew on the ferry flight.

One commenter suggested that the phrase "as prescribed in § 121.483" be inserted between the phrases "duty time limitations" and "applicable to those flight crews." This phrase has been inserted.

In addition, since under the revised § 121.483 proposal, flight navigators are governed by the flight and duty time limitations of the crew with which they serve, the clause "other than flight navigators" is deleted from the title and "other than a flight navigator" is removed from the text.

§ 121.481 Rest period requirements.

The majority of the commenters concurred with § 121.481(a). One stated that it should not apply to Part 123 operators. As discussed above, proposed Subpart Q does not apply to those persons who are required to operate under Part 123. Two commenters stated that the rest period should be 36 hours instead of 24 hours and another stated that at least one calendar day off should be provided. Reasons given were the need to base rest requirements on the normal 24-hour clock and the diurnal cycle. This period of time would provide the flight crewmember with one full day free of duty, with at least one normal sleep cycle, to perform normal functions related to family, hobbies, and leisure time activities. This time period would avoid a 24-hour period off that might begin and end at 3:00 a.m., or some other time equally inappropriate in providing for normal diurnal considerations.

While in most cases, a flight crewmember would receive more than 24 hours off because the weekly flight time limitations would be exceeded first, it is proposed that the weekly rest period shall not be less than 30 hours. However, it has not appeared that the 24-hour rest period has created any problems. The Agency expressly solicits comments on whether the weekly rest period should be 24 or 30 hours.

Due to the many adverse comments received regarding the 168-hour period, which was proposed to provide more flexibility, the rest period is required every seven consecutive days.

Comments received in response to § 121.481(b) were mixed. Some commenters stated it should not be counted as rest period or should include a provision requiring "at least 8 hours of uninterrupted rest". They cited that receiving one or more calls in the middle of a rest period could interrupt a sleep cycle and be fatigue-causing. Other commenters concurred with or strongly supported the proposal.

As stated in the preamble to Notice 78-3, a flight crewmember's freedom may in some way be restricted by a requirement that the crewmember be available to receive a duty assignment. However, such a restriction does not have an adverse effect on safety, provided the flight crewmember is not otherwise performing any required assignment for the certificate holder. In addition, it is important to note that the minimum rest period required by proposed § 121.481(c) is increased to 10 hours or to 11 hours if the flight crewmember must clear customs or immigration, or both.

The vast majority of the commenters objected to the proposals that: (1) set the rest period at twice the number of hours of flight time accumulated, (2) provided a minimum of eight hours rest, or (3) both. Most commenters objected to the "two for one" proposal on the basis that it is excessive, too rigid, or inadequate. Commenters felt that it should be based on other factors, such as scheduled rather than actual flight time, duty time, twice duty time, or time zones, departure times and night time schedules. Others stated that rest based on twice the hours of flight time would be too long in some cases and proposed an upper limit of 16 hours. Based upon an analysis of the comments received and further review, the proposal is revised to base the rest required on the duty time scheduled to be served prior to the rest period. This has the advantage of providing increased flexibility in scheduling rest, and will, in most cases, reduce the costs due to the reduced rest requirements and yet not compromise safety since each flight crewmember will get no less than that proposed in § 121.481(c).

Many commenters objected to the minimum rest requirement of eight hours saying that it did not provide sufficient time for sleeping at the rest facility due to delays in clearing customs, the trip to and from the place of rest, check in and check out if required, time to eat or relax or do other necessary functions. Figures for minimum rest requirements ranged from nine to 14 hours or a "net time" at the rest facility of eight hours.

Due to the diverse factors involved, it would not be practical to regulate "net" hours of rest. However, a minimum rest period of eight hours appears to be insufficient to perform all necessary functions and yet obtain a sufficient number of hours of sleep. For this reason, and based on the comments received, the proposed minimum rest period is increased to 10 hours. In addition, it is proposed to increase the minimum rest period to 11 hours when it is necessary for the flight crewmember to clear customs or immigration, or both. The FAA expressly solicits comments on this latter proposal.

§ 121.483 Flight time and duty time limitations: duty periods.

One commenter supported § 121.483(a). Other comments were received which were not germane to the proposed text. Based on a comment received, the word "either" is inserted to clarify that a rest period is required if either flight time or duty time is exceeded.

Two changes made elsewhere in the proposed rule dictated a rethinking of this entire section. The definition of flight time, which now encompasses all time in the aircraft "block to block", rather than just the time spent at a flight crewmember station, necessitates an increase in allowable flight time limitations. The reduction in allowable duty hours based on the number of landings made in the duty period, as proposed in § 121.483(d), affects the allowable limits. The provision relating to an additional flight crewmember, on which several negative comments were received, is deleted for the reasons discussed under § 121.473. Since a new landing table is proposed in § 121.483(d), proposed §§ 121.483(b)(2) and (b)(3) are combined and the higher limits are

proposed. The flight and duty time limitations for a two pilot crew are the same as provided for a three member flight crew (pilot in command, second in command, flight engineer). The duty time limit for a two pilot crew is increased from 12 to 14 hours, and the flight time limit has been increased from eight to 10 hours. Flight time for a two pilot crew and a relief officer is increased from 10 to 12 hours. The allowable duty time for a three person crew with two or more relief officers is reduced from 20 to 18 hours.

The proposed changes to this section were based in part on the "Summary Report of 1977–1978 Task Force on Crew Workload" (Report No. FAA–EM–78–15; December 1978), a copy of which has been included in Docket No. 17669. The report discusses the airworthiness certification process, cockpit workload, and accident rates for two and three member crew aircraft. The report stated that there is no evidence that a flight-deck crew of two in an appropriately designed aircraft is less safe than a crew of three pilots. The report therefore implies that there should be no duty or flight time distinction between a two member crew and a three member crew aircraft. Commenters objecting to this provision are encouraged to provide empirical evidence to support their position. Comments are likewise solicited on the referenced study.

One commenter stated that a flight crew should be allowed to make a maximum of 10 landings in a duty period. Other commenters stated that the number of landings made during a duty period should reduce duty time because the takeoff and landing phases are more demanding, and thus more fatiguing than enroute flight, plus the fact that, in the case of augmented crews, less time is available for the pilot in command to rest.

One commenter stated, "I believe that the number of landings, particularly involving instrument approaches in instrument conditions, is a vital factor in fatigue induction, and should properly be considered in terms of flight and duty time". As fatigue is undoubtedly related to safety, although difficult to establish, and even more difficult to quantify, it is almost impossible to formulate rules to completely prevent fatigue. In an effort to combat fatigue, § 121.483(d), which reduces duty time based on the number of landings within the same duty period, has been developed based on the comments received and service experience.

Commenters are specifically invited to provide alternative reduction factors supported by any underlying analysis. Comments are invited on the proposed flight time and duty time limits in light of the changes made by the deletion of the additional flight crewmember, and the redefinition of flight time. Comments are also invited on the necessity for an absolute limit on the number of landings which can be made during one duty period.

Commenters did not object to proposed § 121.483(c) although one commenter did suggest that flight time be reduced to eight hours and duty time to 14 hours, but no justification was presented. However, after further analysis, and due to the change in the definition of flight time, it is proposed that flight navigators be subject to the same flight and duty time limitations as the crew with which they serve. In this context, they would also be subject to the provisions of proposed § 121.479. Even though flight navigators are not provided with relief when serving with augmented crews, it appears they would not be the primary means of navigation during the entire flight and, thus, would have opportunities to rest during the flight.

Proposed § 121.483(d) is not included in this supplemental notice. Instead, it is proposed to amend § 121.13 (discussed above) which will have the same effect. Only one comment was received on this paragraph and the commenter concurred.

Consideration has been given to the possible effects of circadian/diurnal rhythm and related factors upon the performance of flight crewmembers. While scientific study over many years has brought attention to some physiological parameters that may change with long travel across time zones, it has not clearly and objectively identified consistent decrements in pilot performance. Furthermore, the conclusions of some studies are in opposition to others done by equally qualified persons. The variation among individual test subjects and among pilots in observed study groups is great, making it most difficult for the data obtained to be used in a general rule. While some formulas for calculating the rest periods following pilot duties across multiple time zones have been proposed in the scientific literature, they are not practical for incorporation into this proposal.

§ 121.485 Augmented flight crews.

The commenters supported § 121.485(a) and it is unchanged. However, one commenter recommended that "when two pilots in command are scheduled to operate on a crew which is scheduled to exceed 12 hours flight time in a 24-hour period, they will both be designated in the dispatch or flight release, and the pilot in command of the flight at a specific time shall be the one who is operating the aircraft at that time." This suggestion has not been included because it would conflict with § 121.385(c) which states that one pilot shall be designated as the pilot in command. The commenter did not show why the present regulations should be changed and the FAA does not perceive any necessity for changing it.

The majority of the commenters supported § 121.485(b). One commenter stated that the pilot relieving the captain should be captain qualified and another commenter stated that the relief officer(s) should be properly licensed and qualified. Section 121.485(d) is added in response to these comments and § 121.485(b) is unchanged.

Many comments were received on § 121.485(c). Some commenters stated that the rules should define what constitutes a crew bunk while others recommended that specific requirements be established for these bunks. Several commenters objected to the cost of installing crew bunks and the corresponding reduction in the aircraft's passenger payload.

In certain type aircraft it may not be economically feasible to install crew bunks, thus it is proposed to allow the substitution of seats. However, since it may be difficult to rest in full view of the passengers with other ongoing distractions, the bunks or seats must be separated and screened from the flight deck and passengers. No specific requirements are proposed in the rules for the bunks or seats in order to allow the operator maximum flexibility.

Several commenters disagreed with the proposed requirement for bunks on flights in excess of 12 hours, stating crew bunks should be required for flights in excess of eight or nine or 11 hours, or whenever relief officers are assigned to a flight. Other commenters stated that time zone differences or the time of day a duty period commences should also be considered in determining the need for crew bunks. One commenter said that to require bunks to be installed which are equal to the number of relief officers is not feasible and is indefinite. Another commenter questioned the meaning of the word "flights" in proposed § 121.485(c). This section has been revised to delete this word.

Based on these comments and further review, the proposal has been revised to require approved crew bunks or approved seats whenever relief officers are used, regardless of the number of hours of the flight. This will ensure that the relieved crewmember will be able to rest in an area screened and separated

from the flight deck and passengers. This allows the flight time and duty time limits of augmented crews to be increased. However, to avoid excessive cost whenever bunks or seats would be required but not fully utilized, a maximum of two bunks or two seats would be required irrespective of the number of relief officers. This number should provide enough capability to ensure that all flight crewmembers are able to rest.

Several commenters requested that a new paragraph be added to ensure that relief officers are fully qualified for the position in which they are to relieve. In response to these comments, § 121.485(d) has been added which provides that any relief officer serving at a flight crewmember station must be qualified for the station (except as provided in 121.543) and that relief must be provided to each flight crewmember, except the flight navigator. This will ensure that each flight crewmember will have some time during the flight in which to rest.

§ 121.487 Fatigue or illness: responsibility of flight crewmember.

This new section is proposed based on comments received. It would prohibit a person from serving as a flight crewmember if that person is suffering from, or likely to suffer from, fatigue or illness which could endanger the safety of the aircraft or its occupants. This section is needed to ensure that each flight crewmember is sufficiently rested before each flight, even when provided the minimum rest period. There may be times when due to unusual circumstances a flight crewmember is ill or does not obtain sufficient rest to overcome the cumulative effects of fatigue.

Subparts R and S.

No comments were received on revoking Subparts R and S. This proposal is unchanged.

PART 123—CERTIFICATION AND OPERATIONS: AIR TRAVEL CLUBS USING LARGE AIRPLANES

§ 123.27 Applicable regulations of Part 121 and § 123.47: duty time limitations.

Many comments were received which opposed the inclusion of proposed Subpart Q in Part 123. The reasons cited were schedule difficulties and economics. Since the FAA is proposing to include Air Travel Clubs under proposed new Part 125, the proposal to make Subpart Q applicable to Part 123 certificate holders is withdrawn.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

Subpart F—Flight Crewmember Flight Time and Duty Time Limitations and Rest Requirements

The following discussion is keyed to the comments received in response to Notice 77–17 (42 FR 43490; August 29, 1977). The reasons for the proposals are the same as those contained in Notice 77–17 with changes discussed below based on the comments received.

§ 135.261 Applicability.

Many commenters objected to proposed Subpart F on the grounds of increased costs due to the necessity to hire more personnel and maintain additional records. They also stated that the proposed rules were too restrictive and would place an unreasonable burden on their operations.

Accordingly, the following major changes in Subpart F have been made from what was proposed in Notice 77–17. They are discussed in detail in the discussion of comments.

(1) The definitions for additional flight crewmember, augmented flight crew, basic flight crew, and relief officer have been deleted.

(2) Duty time is redefined as any required assignment for a certificate holder at a location specified by the certificate holder.

(3) Flight time is redefined as beginning when the aircraft departs the boarding gate for the purpose of flight and ending when the aircraft arrives at a boarding gate.

(4) The yearly flight time limitations have been deleted.

(5) The daily rest period, rather than being equal to twice the number of hours of flight time accumulated in a duty period (but not less than eight hours) as proposed, must be a minimum of 10 hours, or 11 hours if the crewmember must clear customs or immigration, or both.

(6) The duty time limitation for one and two pilot crews is 14 hours rather than 12 hours as proposed in Notice 77–17.

(7) Provisions for augmented flight crews have been deleted.

(8) A "seven consecutive day" period replaces the "168-consecutive hour" period proposed in §§ 135.203 and 135.209 of Notice 77–17.

(9) A provision has been added which reduces the daily duty time limits based on the number of landings made within the duty period.

Changes (1), (4), (5), (6) and (7), while representing departures from what was proposed in Notice 77–17, reflect the substance of current provisions contained in § 135.261 (old § 135.136), except for the monthly flight time limitation of 110 hours. Change (8), although seemingly only a change in form, is highlighted because applying a seven consecutive day period, rather than a 168-hour period, should not significantly increase record-keeping requirements for affected certificate holders.

Some commenters stated that the proposals contained in Notice 77–17 should be adopted for commuter air carriers only and that current flight time and duty time limitations should be retained for on demand air taxi operators. These proposals are consistent with the FAA's goal of achieving a general upgrade of Part 135. They also contain many of the same concepts used in Part 121 rulemaking and use the knowledge gained from an analysis of the comments received in response to Notice 78–3.

§ 135.263 Definitions.

One comment was received on the definition of "basic flight crew". However, with the modification of the proposal, this defintion is not needed and has been deleted.

Although no comments were received on the definitions for "Augmented flight crew" and "Relief officer", these definitions are not included in this proposal. At the present time, augmented flight crews are not utilized by Part 135 operators and it does not appear such crews will be utilized in the near future. Moreover, the circumstances which justify the use of augmented flight crews in Part 121 operations, such as larger equipment, extended overwater operations and longer duty periods, do not warrant their use in Part 135 operations. Accordingly, the definitions of "Augmented flight crew" and "Relief officer", in addition to §§ 135.215 and 135.217 proposed in Notice 77–17, dealing with augmented flight crews, have been deleted.

One commenter suggested deleting the phrase "not local in character" from the definition of "deadhead transportation" because at some locations, transportation to and from a hotel can be quite long and, therefore, should be classified as deadhead transportation rather than as part of a rest period. Prior Agency interpretations recognize that the phrase "not local in character" does not include transportation between one's residence and an airport or between a hotel and an airport. This type of transportation is merely normal commuting, and as such, a certificate holder should not be required to treat this as deadhead transportation. However, because the Agency has

received numerous requests for interpretation of the phrase "not local in character," the definition of "deadhead transportation has been revised to mean "transportation that a certificate holder requires and provides to transport a crewmember between airports."

Various comments were received on the inclusion of military flight time in the computation of total flight and duty time. These comments were identical in many instances to those received in response to Notice 78–3. In view of these comments and after futher review, military flight time is not proposed to be included in the definition of flight time or duty time.

Two commenters noted that flight time is defined in Part 1 of the FAR and stated that the definition in § 135.201 as proposed in Notice 77–17, was unnecessary. The proposed definition of flight time, for purposes of Subpart F, more accurately describes the relationship between crewmember responsibilities and aircraft movement necessary to accumulate flight time. In addition, the proposed definition includes other commercial operations and a separate definition of flight time for rotorcraft operations. Accordingly, the definition of flight time is retained with modifications as discussed in this preamble.

One commenter suggested eliminating the definition of "boarding point or location" since it is only used in the definition of "flight time" and adds noting to the subpart. This definition should be retained since it specifies when the computation of flight time must begin and end for airplanes, and since it is also used in § 135.265(c) dealing with the accumulation of excess flight or duty time. Minor editorial changes have been made in the definition proposed in Notice 77–17.

Another commenter opposed the proposed definition of flight time contained in Notice 77–17 as it relates to rotorcraft and stated that flight time should be based upon airborne time, rather than rotor time. This commenter stated that some government agencies using helicopters require that flight time be logged in this manner and retaining the proposed definition would add additional pilot duties. The commente also stated that airframe and engine overhauls are based on airborne time rather than rotor time.

The definition of flight time as used in this subpart is designed to prevent flight crewmember fatigue from adversely affecting the safety of flight. Accordingly, it is necessary to define flight time for purposes of Subpart F in a manner different from how it is defined for purposes of computing airframe or engine overhaul time. Since a flight crewmember would monitor the performance of a rotorcraft at all times from engine start-up to engine shut-down, this part of the definition will be retained except for minor editorial changes.

One commenter asked whether the phrase "performs any required assignment" in the definition of duty time would cause flight crewmembers on layover or overnight assignment to exceed applicable duty time limitations. Flight crewmembers on layover or overnight assignment would either be on duty, or in a rest period if not performing any required assignment for a certificate holder. Time spent in a hotel, therefore, ordinarily would be considered part of a rest period. In order to avoid the inclusion in duty time of such assignments as home study courses, updating charts or manuals at home, etc., the proposal is revised by adding the words ". . . at a location specified by the certificate holder . . ." to the definition.

One commenter stated that the proposed rules should consider the time between flights in the same duty period as rest, rather than duty time. Time on the ground between flights in the same duty period contributes to flight crewmember fatigue and should be considered duty time, notwithstanding the fact that a flight crewmember may be provided with accomodations during this time. Although a rest period must be provided prior to exceeding either the appropriate flight or duty time limitation, this does not mean a flight crewmember must reach the maximum limitation before a rest period is provided. Because of scheduling requirements, for example, a flight crewmember may be provided a rest period after accumulating only five hours of flight time and eight hours of duty time. If the minimum rest period of 10 hours were provided, the slate would be wiped clean and the flight crewmember could begin a new duty period. If less than the minimum rest were provided, then when the flight crewmember reported for duty, five hours of flight time, and eight hours duty time would have already been accumulated.

One commenter suggested a new sentence be added to the proposed definition of duty time to read as follows: "If an operator provides for rest between flights, en route delays do not count as duty time". Delays do occur which are due to circumstances beyond the control of the certificate holder and, therefore, § 135.265(c) will, as proposed in this notice, allow a flight crewmember to exceed any flight or duty time limitation. However, a flight crewmember may not depart the boarding gate if the crewmember's actual elapsed flight time, plus the flight time scheduled for the next flight, will cause the crewmember to exceed any applicable flight or duty time limitation by more than two hours. As this additional time does contribute to flight crewmember fatigue, a two-hour extension is the maximum permissible.

The definition of duty time in Notice 77–17 is proposed in this notice with the change discussed. Since the Agency received no comments concerning the definitions of duty period and rest period, they are retained in this proposal.

In addition to the changes in definitions previously discussed in this notice, the Agency is substituting the phrase "board gate" for "boarding point or location" proposed in Notice 77–17, because the words ". . . or location" are not necessary. This change is also being made to the definition of flight time which also refers to the board point.

The first sentence of the definition of flight time is being revised to read "the time during which a flight crewmember serves as either a pilot or flight engineer in any operation for a certificate holder or in other commercial operations". It is not necessary to differentiate between the pilot in command and the second in command and thus the definition simply used the term pilot. While there are no flight crewmembers serving as flight engineers in Part 135 operations, they could serve as flight engineers in Part 121 operations. Flight time accumulated in this capacity must also be included in total flight time because it contributes to fatigue.

One commenter recommended that the term "flight crewmember" be deleted in favor of more specific terms such as pilot and navigator. Since "Flight crewmember", as defined in Part 1 of the FAR, means a pilot, flight engineer or flight navigator assigned to duty in an aircraft during flight time and since this term is used in the flight time limitations for Part 121 operators, Part 135 should be consistent and use the same terminology.

In addition, the phrase "means a period of time which" in the rotorcraft section of the flight time definition has been deleted to make it consistent with the preceding clause pertaining to airplanes.

§ 135.265 Flight and duty time limitations: weekly.

Some commenters questioned the use of the 168 consecutive hour period and suggested the 40-hour flight time

limitation relate to seven consecutive days. The 168-hour period was proposed to give operators more flexibility in scheduling flight time and rest periods. Based on the comments received, it appears that adoption of the 168-hour base period would increase record-keeping burdens for certificate holders. Thus, the 40-hour flight time limitation in § 135.265(a)(2) is changed to apply to a period of seven consecutive days.

Another commenter proposed deleting the 40-hour weekly flight time limitation on the basis that it is contrary to the daily flight time limitations authorizing the accumulation of eight or 10 hours of flight time during a duty period. A crew consisting of a pilot in command and a second in command may accumulate 10 hours of flight time before receiving a rest period. However, 10 hours of flight time each duty period may only be accumulated up to the maximum weekly limitation of 40 hours. If this were done for four consecutive days, then these flight crewmembers would be required to receive three consecutive days off before they could be scheduled to fly again. However, this 40-hour weekly limit can be met in any combinations of days on and off provided the daily and weekly flight time limits and rest period requirements are met.

Various commenters objected to the monthly and yearly flight time limitations in proposed § 135.203(a) in Notice 77-17. The mainpoints raised were: (1) pilots would not be able to accumulate a sufficient amount of flight time to earn a decent living; (2) monthly and yearly limitations were not related to fatigue and thus were not related to safety; (3) additional crews would be required to meet peak demand, thereby increasing costs; and (4) the issue of monthly and yearly limitations should be resolved during labor negotiations rather than be included in a safety regulation.

Some commenters stated that if monthly and yearly limitations were retained, they should be increased to 140 hours per month and between 1,200 and 1,500 hours per year. However, even most of these commenters objected to monthly and yearly limitations for the same reasons stated above. One commenter, although favoring this proposal in principle, stated Part 135 operations should be governed by the same weekly, monthly and yearly flight time limitations as domestic air carrier operations under Part 121.

Other commenters suggested that only flight crewmembers employed by commuter air carriers and those operating turbojet powered aircraft or aircraft having a passenger seating capacity of 10 or more should be governed by Part 121 standards. These commenters stated that crewmembers employed by commuter air carriers make more takeoffs and landings in a duty period than crewmembers employed by domestic air carriers and that commuters operate in a higher density environment below 10,000 feet with less sophisticated landing aids than those availability of fewer support personnel, such as dispatchers, baggage handlers, and flight attendants was also cited as justification for increasing standards for commuter air carriers.

Current § 135.261 (old § 135.136) authorizes flight crewmembers to accumulate as much as 56-70 hours per week of flight time and up to 98 hours per week of duty time. This is because flight crewmembers may accumulate 14 hours of duty time every day for seven consecutive days including from eight to 10 hours of flight time (dependent on crew composition) without more than a 10-hour daily rest period. This appears to be excessive and can lead to flight crewmember fatigue during the latter portion of the week. Although many certificate holders have provided longer rest periods than those currently required by § 135.261, the potential would remain for pilots to accumulate excessive amounts of flight and duty time in a week if these provisions remain unchanged. Thus, the Agency is proposing a flight time limitation of 40 hours during any seven consecutive days. In addition, while recognizing the arguments advanced against a monthly flight time limitation for Part 135 operations, the Agency is concerned that excessive fatigue could result from situations in which pilots fly the 40-hour weekly maximum repetitively. In order to preclude fatigue which adversely affects safety, a monthly flight time limitation of 110 hours is proposed. However, yearly flight time limitations do not appear to be necessary for Part 135 operators at this time. The 40-hour weekly flight time limitation, in addition to a new requirement in § 135.271(a) that flight crewmembers receive 30 consecutive hours of rest at least once every seven consecutive days, and the proposed requirement for a monthly flight time limitation of 110 hours, will ensure that flight crewmembers are adequately rested while engaging in operations governed by Subpart F.

One commenter stated that the rules should require pilots to refuse any assignment of flight time if other commercial flyingwould cause them to exceed applicable flight and duty time limitations. Both § 135.265(a) and § 135.273(a) state that both pilots and certificate holders are responsible for complying with the appropriate flight and duty time limitations. Since other commercial flying (which is any other non-military flying for which the pilot is paid) is specifically included in the definitions of flight time and duty time, the rules impose responsibility for compliance on both parties.

Several commenters stated that it was not clear whether the proposed rules applied only to flight time accumulated in Part 135 operations. If a pilot accumulates flight time in Part 135 operations, all other flight time accumulated in any operation for the certificate holder, including ferrying, positioning aircraft, receiving and conducting proficiency checks, other training flights, and any other non-military flying for which the pilot is paid, must be considered when computing the pilot's total flight and duty time limitations.

Other than the changes to § 135.265 from the substance of the proposal in § 135.203 of Notice 77-17 previously discussed, the following editorial changes are also made: (1) Paragraph (a)(1) is revised to read "The flight or duty time limitations prescribed in § 135.273(b)" since certain limitations also will be contained in that section; and (2) The second clause of § 135.265(b) is being revised to read "a certificate holder shall base its computation on the time normally necessary for the performance of the flight or duty time involved." These changes are being made for clarity.

§ 135.267 Deadhead transportation.

All commenters responding to § 135.205 proposed in Notice 77-17 were in favor of its adoption. However, because the minimum required rest period in § 135.271(c) in this notice has been changed to 10 hours, the rest period option in this section has also been changed to 10 hours.

§ 135.269 Determination of applicable flight time and duty time limitations: flight crewmembers.

One commenter asked whether an operator may designate a second in command on any flight to take advantage of the 10-hour flight time limitation applicable to flight crews consisting of two pilots. If an operator elects to use a second pilot when a single pilot operation is allowed by this part, and the crew composition does not change during the duty period, the flight crewmembers are governed by the flight and duty time limitations of § 135.273(b)(2) and may accumulate 10 hours of flight time.

The phrase "during that duty period" has been added to the last sentence to

clarify that this section is applicable only when determining the appropriate flight and duty time limitations for a duty period. Because of confusion existing as to what consitutues a "line" operation, this word is changed to "any".

§ 135.271 Rest period requirements.

Many commenters objected to the use of the 168-hour period proposed in § 135.209(a) in Notice 77-17 for the same administrative reasons as previously discussed under § 135.265 dealing with the 40-hour weekly flight time limitation. These commenters stated that the 168-hour period would increase record-keeping requirements and lead to problems in scheduling. Consequently, this 168-hour period has been revised to a seven consecutive day period.

Several commenters objected to a weekly rest period because they felt it was a labor-management problem and not related to safety. The Agency disagrees. Other commenters supported a weekly rest period. A weekly rest period allows the flight crewmember to recuperate from short-term cumulative effects of fatigue. It is necessary in the interest of safety.

Notice 77-17 proposed a weekly rest period of 24 hours. As noted in the discussion of comment under § 121.481, several commenters advocated more than 24 hours in order to provide the crewmember with a weekly rest period which would relate to a normal calendar day cycle for sleep, family functions, and leisure time. In light of these comments, a weekly rest period of 30 hours is proposed. However, as in the case of the Part 121 proposal, the Agency expressly solicits comments on whether the weekly rest should 24 hours or 30 hours.

Another commenter recommended that § 135.209(a) should apply only to commuter air carriers and believed this proposal was unrealistic for remote helicopter operations where there are no nearby living quarters available for rest requirements. Remoteness of operation does not negate the need for a weekly rest period of 30 consecutive hours. In addition, while the kind of rest facilites provided will, of course, vary with the particular type and location of the operation, the rest facilities available at these remote locations to comply with the daily rest requirement, could be used to provide the 30-hour rest period.

While some commenters endorsed § 135.209(b) in Notice 77-17, others objected on the basis that a requirement for a flight crewmember to be available to receive a schedule of duty precludes the flight crewmember from adequately resting and should not be considered part of a rest period. While a flight crewmember's freedom may in some way be restricted by being on standby or reserve status, such a restriction does not have an adverse effect on safety, provided the flight crewmember is not otherwise performing any required assignment for a certificate holder. Since the operator would, of course, always choose to treat this time as part of a rest period the word "is" is substituted for the words "may be" for reasons of clarity.

Several commenters objected to paragraph (c) as proposed, urging that the daily rest requirement be based on duty time, rather than flight time. These commenters also stated that computing the rest period by doubling the amount of accumulated flight time is too restrictive and poses additional scheduling and record-keeping problems. Several other commenters also criticized the proposal since they believed its net effect would be to force a pilot into reporting for work progressively later on each successive day. This, in turn, would interfere with the crewmember's normal 24-hour cycle and result in a decrease in safety. Many of these commenters suggested either retaining the substance of rest period provisions contained in current § 135.261 (old § 135.136) or basing the daily rest on the amount of duty time.

Based upon an analysis of the comments received and further review, the proposal is revised to base the rest required on the duty time scheduled to be served prior to the rest period. This has the advantages of providing increased flexibilty in scheduling rest, and will, in most cases, reduce the costs due to the reduced rest requirements and yet not compromise safety since each flight crewmember will get no less than that proposed in § 135.271(c).

Since some commenters objected to the minimum rest period of eight hours, and in view of the fact that present Part 135 provides for a daily rest period of 10 consecutive hours, the proposal has been revised to a minimum daily rest period of 10 consecutive hours. In addition, drawing upon the informative comments received in response to Notice 78-3 concerning customs and immigration delays, it is proposed to increase the minimum rest period to 11 hours when it is necessary for the flight crewmember to clear customs or immigration, or both.

§ 135.273 Flight time and duty time limitations: duty periods.

Sections 135.211 and 135.213 proposed in Notice 77-17 have been combined into one section in order to streamline the regulation. Section 135.273(a) of this section places the responsibility for compliance on both the flight crewmember and the certificate holder and contains the general prohibition against exceeding either the flight time or duty time limitations set forth in § 135.273(b) without a rest period.

Most of the commenters objected to the 12-hour duty time limitation for both one and two pilot crews as proposed in §§ 135.211(b) and 135.213(b) in Notice 77-17, stating it was too short in relation to the operational requirements of Part 135 certificate holders and did not provide adequate flexibility in scheduling. The vast majority of commenters recommended that the current duty time requirement of 14 hours in § 135.261(b) (old § 135.136(b)) be retained. Although current § 135.261(b) does not specifically provide for a 14-hour duty time limitation, this provision does require a rest period of 10 consecutive hours during the 24-hour preceding the planned completion of an assignment. Thus, this section effectively serves to provide a 14-hour duty time limitation as well as a 10-hour rest requirement. The proposed duty time limitation of 12 hours was not sufficient to provide certificate holders the necessary flexibility to schedule a flight crewmember for the full eight or 10 hours of flight time authorized by § 135.273(b). Accordingly, a duty time limitation of 14 hours is proposed for both one and two pilot crews.

While other commenters suggested changes in the proposed flight time limitations (such as increasing the eight hours flight time limitation for one pilot crews to 10 hours or decreasing the 10-hour flight time limitation for two pilot crews to eight hours), these commenters presented insufficient justification for revising these proposals. The flight time limitations contained in § 135.136(a) have proven successful in preventing excessive flight crewmember fatigue while providing certificate holders adequate flexibility in conducting their operations.

A new § 135.273(c) has been added which reduces the duty time limitations if a certain number of landings is made within the same duty period. It has been recognized that multiple landings within the same period of time contribute more to fatigue than en route flight within the same time period. This is due to increased traffic and ground communications, greater monitoring of the cockpit environment, need for precision approaches, traffic avoidance, weather and wind shear considerations, and other factors. comments are specifically requested on this proposal.

§ 135.275 Fatigue or illness.

This is a proposed new section which requires the flight crewmember to refrain from flight crew duty if an impairment exists due to fatigue or illness. This section is needed to ensure that each flight crewmember is sufficiently rested before each flight even when provided the minimum rest period. There may be times that, due to unusual circumstances, a flight crewmember is ill or does not obtain sufficient rest to overcome the cumulative effects of fatigue.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

§ 121.13 [Amended]

1. By amending § 121.13(a) by deleting "121.501", and by adding "127.191," between "127.177" and "127.231" in § 121.13(b).

2. By revising the table of contents of Subparts Q, R, and S of Part 121 to read as follows:

Subpart Q—Flight Crewmember Flight Time and Duty Time Limitations and Rest Requirements

Sec.
121.471 Applicability.
121.473 Definition of terms.
121.475 Flight time and duty time limitations: weekly and monthly.
121.477 Deadhead transportation.
121.479 Determination of applicable flight time and duty time limitations: flight crewmembers.
121.481 Rest period requirements.
121.483 Flight time and duty time limitations: duty periods.
121.485 Augmented flight crews.
121.487 Fatigue or illness: responsibility of flight crewmember.

Subpart R—[Reserved]

Subpart S—[Reserved]

3. By revising Subpart Q of Part 121 to read as follows:

Subpart Q—Flight Crewmember Flight Time and Duty Time Limitations and Rest Requirements

§ 121.471 Applicability.

This subpart prescribes flight time and duty time limitations and rest requirements for certificate holders and flight crewmembers operating under this part.

§ 121.473 Definition of terms.

For the purposes of this subpart—

"Augmented flight crew" means a flight crew which includes one or more relief officers in addition to the minimum flight crew.

"Boarding gate" means the place at which passengers, cargo or flight crewmembers are enplaned for the purpose of flight, or are deplaned after a flight.

"Deadhead transportation" means transportation that a certificate holder requires or provides to transport a crewmember between airports.

"Duty period" means the time between successive required rest periods during which a crewmember accumulates duty time.

"Duty time" means the time during which a crewmember performs any required assignment for a certificate holder at a location specified by the certificate holder or accumulates flight time in other commercial operations. Duty time also includes time spent on the ground between flights in the same duty period.

"Flight time" means the time during which a flight crewmember serves as either a pilot, flight engineer, flight navigator, or relief officer in any operation for a cerrtificate holder, or in other commercial operations. Flight time begins when the aircraft departs the boarding gate for the purpose of flight and ends when the aircraft arrives at a boarding gate.

"Relief officer" means a flight crewmember who is scheduled and qualified to serve with an augmented flight crew in relief of one or more flight crewmembers.

"Rest period" means a continuous period of time required by this subpart during which a crewmember does not accumulate any duty time. A rest period does not include time spent in deadhead transportation.

§ 121.475 Flight time and duty time limitations: weekly and monthly.

(a) No certificate holder may schedule a flight crewmember and, except as provided in paragraph (c) of this section, no flight crewmember may accumulate flight time in excess of:

(1) The flight time or duty time limitations prescribed in § 121.483;

(2) 40 hours in any seven consecutive days; and

(3) 110 hours in any 30 consecutive days.

(b) In scheduling a flight crewmember for flight time and duty time under this subpart, a certificate holder shall base its computation on the time normally necessary for the performance of the flight time or duty time involved.

(c) A flight crewmember may serve in excess of any flight time or duty time limitation of this subpart only if the excess time is due to reasons beyond the control of the certificate holder; however, a flight crewmember may not depart the boarding gate for the purpose of flight if the crewmember's actual elapsed flight time, plus the flight time scheduled for the next flight, will cause the crewmember to exceed any applicable flight or duty time limitation by more than two hours.

§ 121.477 Deadhead transportation.

Deadhead transportation shall be considered duty time unless the deadhead transportation is followed immediately by a rest period. If a rest period is provided, it must be at least 10 hours and may be provided concurrently with any other rest period required by this subpart. If the flight crewmember must clear customs or immigration, or both, the minimum rest period must be at least 11 hours.

§ 121.479 Determination of applicable flight time and duty time limitations: flight crewmembers.

A flight crewmember who accumulates flight time with more than one flight crew during a duty period shall be governed by the lowest flight and duty time limitations as prescribed in § 121.483 applicable to those flight crews with which the crewmember serves in any operation for a certificate holder during that duty period.

§ 121.481 Rest period requirements.

(a) A certificate holder shall provide each flight crewmember with a rest period of not less than 30 consecutive hours at least once during any seven consecutive days. This 30-hour rest period may be provided concurrently with any other rest period required by this subpart.

(b) That period of time during which a flight crewmember, who is otherwise in a rest period, is required by the certificate holder to be available to receive a schedule of duty time is considered part of a rest period.

(c) The rest period required by § 121.483(a) must be at least the number of hours of duty time scheduled since the last rest period, but not less than 10 hours. If the flight crewmember must clear customs or immigration, or both, the minimum rest period must be not less than 11 hours.

§ 121.483 Flight time and duty time limitations: duty periods.

(a) No certificate holder may schedule a flight crewmember, and no flight crewmember may serve, in excess of either the flight time or duty time

limitations set forth in paragraphs (b), (c) and (d) without a rest period.

(b) The limitations for flight crewmembers serving with flight crews consisting of—

(1) A pilot in command and a second in command are 10 hours of flight time and 14 hours of duty time.

(2) A pilot in command, a second in command, and a flight engineer are 10 hours of flight time and 14 hours of duty time.

(3) A pilot in command, a second in command, and a relief officer are 12 hours of flight time and 16 hours of duty time.

(4) A pilot in command, a second in command, a flight engineer, and a relief officer are 12 hours of flight time and 16 hours of duty time.

(5) A pilot in command, a second in command, a flight engineer, and two or more relief officers are 16 hours of flight time and 18 hours of duty time.

(c) Whenever a flight navigator is assigned to a flight crew as specified in paragraph (b) of this section, the limitations for that flight navigator are the same as the flight crew in which that navigator serves.

(d) The duty time limitations set forth in paragraphs (b) and (c) of this section are reduced if the following numbers of landings occur within the same duty period.

(1) Three or less landings—no reduction.

(2) Four or five landings—duty time is reduced one hour.

(3) Six or seven landings—duty time is reduced two hours.

(4) Eight or nine landings—duty time is reduced three hours.

(5) Ten or more landings—duty time is reduced four hours.

§ 121.485 Augmented flight crews.

(a) The pilot in command, as designated in the dispatch or flight release, shall remain the pilot in command at all times during the flight.

(b) During operations involving one or more relief officers, either the pilot in command or the second in command, as designated in the dispatch or flight release, shall be at a pilot station at all times.

(c) Each certificate holder shall provide approved crew bunks or seats on the airplane equal to the number of relief officers, but no more than two, whenever an augmented flight crew is scheduled. The bunk or seat must be separated and screened from the flight deck and passengers.

(d) No certificate holder may schedule a relief officer, nor may any relief officer serve, at a required flight station, unless the relief officer is qualified and current for that flight station, except as provided in § 121.543. Whenever one or more relief officers are used to extend the flight time or duty time limitations under § 121.483(b)(3)(4) and (5), relief must be provided to each flight crewmember, except the flight navigator.

§ 121.487 Fatigue or illness: responsibility of flight crewmember.

No person may serve as a flight crewmember if that person is suffering from, or, considering the circumstances of the flight to be undertaken, is likely to suffer from, such fatigue or illness which impairs or will impair judgment or performance.

Subparts R and S—[Reserved]

4. By revoking Subparts R and S of Part 121 of the Federal Aviation Regulations and marking them reserved.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

5. By revising the table of contents of Subpart F of Part 135 to read as follows:

Subpart F—Flight Crewmember Flight Time and Duty Time Limitations and Rest Requirements.

Sec.
135.261 Applicability.
135.263 Definition of terms.
135.265 Flight time and duty time limitations: weekly and monthly.
135.267 Deadhead transportation.
135.269 Determination of applicable flight time and duty time limitations: flight crewmembers.
135.271 Rest period requirements.
135.273 Flight time and duty time limitations: duty periods.
135.275 Fatigue or illness: responsibility of flight crewmember.

6. By revising Subpart F of Part 135 to read as follows:

Subpart F—Flight Crewmember Flight Time and Duty Time Limitations and Rest Requirements

§ 135.261 Applicability.

This subpart prescribes flight time and duty time limitations and rest requirements for certificate holders and flight crewmembers operating under this part.

§ 135.263 Definition of terms.

For the purposes of this subpart—

"Boarding gate" means the place at which passengers, cargo or flight crewmembers are enplaned for the purpose of flight, or are deplaned after a flight.

"Deadhead transportation" means transportation that a certificate holder requires or provides to transport a crewmember between airports.

"Duty period" means the time between successive required rest periods during which a crewmember accumulates duty time.

"Duty time" means the time during which a crewmember performs any required assignment for a certificate holder at a location specified by the certificate holder or accumulates flight time in other commercial operations. Duty time also includes time spent on the ground between flights in the same duty period.

"Flight time" means the time during which a flight crewmember serves as either a pilot or flight engineer in any operation for a certificate holder, or in other commercial operations. Flight time begins when the aircraft departs the boarding gate for the purpose of flight and ends when the aircraft arrives at a boarding gate except that, in the case of rotorcraft, flight time begins when the rotor starts turning under engine power for the purpose of flight and ends when the engine and rotor are shut down at the end of the flight.

"Rest period" means a continuous period of time required by this subpart during which a crewmember does not accumulate any duty time. A rest period does not include time spent in deadhead transportation.

§ 135.265 Flight time and duty time limitations: weekly and monthly.

(a) No certificate holder may schedule a flight crewmember and, except as provide in paragraph (c) of this section, no flight crewmember may accumulate flight time in excess of:

(1) The flight or duty time limitations prescribed in § 135.273;

(2) 40 hours in any seven consecutive days; and

(3) 110 hours in any 30 consecutive days.

(b) In scheduling a flight crewmember for flight time and duty time under this subpart, a certificate holder shall base its computation on the time normally necessary for the performance of the flight time or duty time involved.

(c) A flight crewmember may serve in excess of any flight time or duty time limitation of this subpart only if the excess time is due to reasons beyond the control of the certificate holder; however, a flight crewmember may not depart the boarding gate for the purpose of flight if the crewmember's actual elapsed flight time, plus the flight time scheduled for the next flight, will cause the crewmember to exceed any applicable flight or duty time limitation by more than two hours.

§ 135.267 Deadhead transportation.

Deadhead transportation shall be considered duty time unless the deadhead transportation is followed immediately by a rest period. If a rest period is provided, it must be at least 10 hours and may be provided concurrently with any other rest period required by this subpart. If the flight crewmember must clear customs or immigration, or both, the minimum rest period must be at least 11 hours.

§ 135.269 Determination of applicable flight time and duty time limitations: flight crewmembers.

A flight crewmember who accumulates flight time with more than one flight crew during a duty period shall be governed by the lowest flight time and duty time limitations as prescribed in § 135.273 applicable to those flight crews with which the crewmember serves in any operation for a certificate holder during that duty period.

§ 135.271 Rest period requirements.

(a) A certificate holder shall provide each flight crewmember with a rest period of not less than 30 consecutivbe hours at least once during any seven consecutive days. This 30-hour rest period may be provided concurrently with any other rest period required by this subpart.

(b) That period of time during which a flight crewmember, who is otherwise in a rest period, is required by the certificate holder to be available to receive a schedule of duty time is considered part of a rest period.

(c) The rest period required by § 135.273 must be at least the number of hours of duty time scheduled since the last rest period, but not less than 10 hours. If the flight crewmember must clear customs or immigration, or both, the minimum rest period must not be less than 11 hours.

§ 135.273 Flight time and duty time limitations: duty periods.

(a) No certificate holder may schedule a flight crewmember, and no flight crewmember may serve, in exess of either the flight time or duty time limitation set forth in paragraphs (b) and (c) without a rest period.

(b) The limitations for flight crewmembers serving with flight crews consisting of—

(1) A pilot in command are eight hours of flight time and 14 hours of duty time.

(2) A pilot in command and a second in command are 10 hours of flight time and 14 hours of duty time.

(c) The duty time limitations set forth in paragraph (b) of this section are reduced if the following number of landings occur within the same duty period.

(1) Three or less landings—no reduction.

(2) Four or five landings—duty time is reduced one hour.

(3) Six or seven landings—duty time is reduced two hours.

(4) Eight or nine landings—duty time is reduced three hours.

(5) Ten or more landings—duty time is reduced four hours.

§ 135.275 Fatigue or illness: responsibility of flight crewmember.

No person may serve as a flight crewmember if that person is suffering from, or, considering the circumstances of the flight to be undertaken, is likely suffer from, such fatigue or illness which impairs or will impair judgment or performance.

Secs. 313, 314, and 601 through 610, Federal Aviation Act of 1958 (49 U.S.C. 1354, 1355, and 1421 through 1430) and section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a proposed regulation which is significant under Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 6, 1979). A copy of the draft analysis prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT:".

Issued in Washington, D.C., on August 4, 1980.

Kenneth S. Hunt,

Director, Office of Flight Operations.

[FR Doc. 80-23856 Filed 8-8-80; 8:45 am]

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Monday
August 11, 1980

Part III

Federal Emergency Management Agency

Disaster Response and Recovery

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

[Docket No. FEMA-DR 205]

Disaster Assistance: General (Subpart A)

AGENCY: Disaster Response and Recovery (FEMA).

ACTION: Final rule.

SUMMARY: By this rule the Federal Emergency Management Agency establishes the general provisions for implementing those sections of The Disaster Relief Act of 1974 assigned to the Director, Federal Emergency Management Agency (FEMA) by Executive Order 12148 and delegated to the Associate Director for Disaster Response and Recovery, FEMA. These general provisions prescribe standards which the Agency intends to apply in all aspects of the disaster assistance program.

EFFECTIVE DATE: September 10, 1980.

FOR FURTHER INFORMATION CONTACT: James Makris, Office of Program Support, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, DC 20472, Telephone: (202) 634-7845.

SUPPLEMENTARY INFORMATION: The notice issued in the Federal Register on May 2, 1979, establishing CFR Title and Chapter for FEMA regulations (Title 44, Chapter I, Federal Emergency Management Agency, with Subchapters A-E) indicated that Disaster Assistance would be Subchapter D, Parts 200-299.

FEMA published a Notice of Transfer and Redesignation, effective September 28, 1979, that transferred the Federal Disaster Assistance Regulations from 24 CFR Parts 2200-2205 to 44 CFR Part 200 *et seq.* The regulations implementing the Disaster Relief Act of 1974, Pub. L. 93-288 (44 CFR Part 205) are in the process of reorganization and revision. The final rule reflects the reorganization and revision of Subpart A. The material in several existing sections has been or is being transferred to more appropriate subparts as discussed hereafter. The existing "Nondiscrimination in Disaster Assistance" regulations are reserved. Agency-wide amendments to the nondiscrimination regulations are being drafted for comment at a later time. Pending completion of the amendments to the nondiscrimination regulations, old section 205.13 is renumbered as 205.16 of this Subpart and will remain in effect.

On November 1, 1979, the Associate Director for Disaster Response and Recovery published in the Federal Register (44 FR 63058) a proposed reorganization and revision of Subpart A-General, of the Federal Disaster Assistance Regulations (44 CFR Part 205). Comments were invited to December 31, 1979. In addition, copies were sent to each State official responsible for disaster operations.

The Agency received eighteen written comments on the proposed Subpart A. All comments were carefully considered in developing the final rule. A discussion of the major comments follows:

While the majority of the comments dealt with specific aspects of the program, many comments were of a general nature. Comments not relevant to Subpart A but which could be considered as other subparts of 44 CFR 205, such as the suggestion that "grants to eligible applicants should be recognized as mandatory, not discretionary," are considered in the appropriate rulemaking.

Three respondents commented on the Associate Director vs. Director authority and the Associate Director vs. Regional Director authority. Subpart A reflects the already established delegations of authority as published in the Federal Register on June 19, 1980 (45 FR 41421). In some instances the Associate Director and the Regional Director have approval authority delegated directly from the Director; in some instances approval authority is delegated to the Associate Director only. The references to the "Associate Director or the Regional Director" in each instance are used intentionally for clarification purposes. The recommendations requiring changes in the delegations of authority are rejected.

Editorial comments were reviewed and incorporated in those instances which resulted in improvments when compared to the proposed rule.

Specific Comments

1. As a result of comments received, the following changes are made in Section 205.2 Definitions:

a. The definition of "Applicant" is more precisely defined to include applicants for Individual Assistance as well as Public Assistance.

b. The reference to "Canal Zone" is eliminated. The area formerly known as the Canal Zone is no longer eligible for disaster assistance under Pub. L. 93-288 (see 44 FR 66062).

c. The definitions for "Categorical grants" and "Flexible funding" which appeared in Sec. 2205.2 are excluded from 205.2. These definitions apply to new Subpart H.

d. The definition of "Disaster Recovery Manager" is included, and the definition for "Regional Director" is expanded to include the "Disaster Recovery Manager" when one is designated to exercise the authority of a Regional Director.

e. It was recommended that the definition of "Private non-profit organization" be expanded to include clear and comprehensive definitions of these facilities. Such expansion is considered unnecessary in view of 205.71 which defines "Private non-profit facility" under Subpart E.

f. The recommendation to consolidate all definitions into one section was considered and rejected because the regulation is not being published in its entirety at one time. Also, it is better to define terms appearing only once at the point of use rather than in the "General" section.

2. It was suggested that new Sections 205.5 and 205.6 be modified to include qualifying language to allow other Federal agencies to weigh internal competing requirements for requested resources and other forms of assistance within the context of their primary mission responsibilities. Responsibility rests with Federal Agencies to determine whether the requested assistance can be provided without detriment to their primary mission and is not a burden to be assumed by FEMA. As the urgency of the need could only be determined at the time the request is made the suggestion is not adopted.

3. It was recommended that new Section 205.7 be revised to include National Guard units of the States, and the Navajo Nation be expressly stated in an additional subsection. While the National Guard may provide indispensable services in times of emergency or disaster, the request for National Guard activation is made direct from the Governor to the National Guard with no FEMA involvement. The recommendation that the Navajo Nation be expressly stated in this section is rejected in that the policy issue involved has no direct bearing on statements in this subpart.

4. It was recommended that new Section 205.13 be rewritten and/or expanded, as this section is the only section which addresses reporting, or even indirectly addresses level of performance or evaluation of public service. The Reviews and Reports section as written gives FEMA the necessary flexibility it needs to ensure that assistance is provided in a timely and cost-effective manner without being burdened with paperwork unnecessarily. Therefore the recommendation is rejected.

5. Four respondents commented on the Appeals section (205.14). The appeal

procedure is spelled out under Subpart H for Public Assistance and under Subpart D for Individual Assistance to clarify existing administrative policy and procedures. Therefore, the suggestion that the appeals procedure be articulated in detail in the "General" section is not adopted. The submission of an appeal at the Region level assures the applicant ample time for filing such additional information as is appropriate for justification to support claims, therefore, the suggestion that applicants have the right to waive the first appeal at the Regional level is rejected. One respondent recommended the appeals process be a review and re-evaluation process by a composite board or commission. This recommendation is rejected on the grounds that present practice has been viable.

Several sections in former Part A have been moved as follows:

Former sections 205.5 and 205.6 are renumbered as sections 205.601 and 205.602.

Former section 205.7 has been transferred to subpart H as new section 205.114.

Former section 205.11 has been transferred to new section 205.112(d)(6).

Former section 205.14 has been included in subpart J as new section 205.200(b).

Former section 205.19 relating to audit is dealt with in new section 205.112(e) and new 205.118.

Former sections 205.10 and 205.17 dealing with inspections and with financial management are dealt with in other sections of new subpart H.

The matter in section 205.75 to section 205.79 is now covered in 44 CFR Part 300. Hence, we need to delete these sections as redundant.

A Finding of Inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with 44 CFR Part 10. Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, DC 20472.

The regulation is in consonance with the provision of Executive Order 12044 dated November 16, 1979, and does not impose an unnecessary burden on the small business sector of the economy.

This regulation essentially is administrative in nature and does not influence project eligibility or program funding. Consequently, it does not impact, adversely, on the central cities, suburban communities, nor non-metropolitan communities. As provided in Executive Order 12044, March 23, 1978, this regulation does not have any significant economic consequence on the general economy, individual industries, geographic regions or levels of government.

The program number in the Catalog of Domestic Assistance is 83.300 "Disaster Relief".

Accordingly, (1) sections 205.5 and 205.6 are renumbered 205.601 and 205.602, respectively; (2) section 205.58 and section 205.59 are deleted; and (3) subpart A of Part 205 (sections 205.1–205.22) is revised and adopted as follows:

Subpart A—General

Sec.
205.1 Purpose.
205.2 Definitions.
205.3 Policy.
205.4 State emergency plans.
205.5 Assistance by Federal agencies.
205.6 Federal equipment and supplies.
205.7 Use and coordination of relief organizations.
205.8 [Reserved]
205.9 [Reserved]
205.10 Duplication of benefits.
205.11 Nonliability of the Federal Government.
205.12 Criminal and civil penalties.
205.13 Reviews and reports.
205.14 Appeals.
205.15 Effective date.
205.16 Nondiscrimination in disaster assistance.

Authority: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93–288, 88 Stat. 163 (42 USC 5201); Executive Order 12148; and Delegation of Authority, 44 FR 44792.

§ 205.1 Purpose.

The purpose of this part is to prescribe the standards and procedures to be followed in implementing those sections of Pub. L. 93–288 assigned to the Director, Federal Emergency Management Agency (FEMA) by Executive Order 12148 and delegated to the Associate Director for Disaster Response and Recovery, FEMA.

§ 205.2 Definitions.

(a) General. The following definitions have general applicability throughout this part:

(1) "The Act" means the Disaster Relief Act of 1974 Pub. L. 93–288, as amended: 42 USC 5121 *et seq.*

(2) "Applicant" (a) for public assistance (Subpart E) means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action, and (b) for individual assistance (Subpart D) means an individual or family who submits an application or request for assistance under the Act.

(3) "Associate Director" means the Associate Director for Disaster Response and Recovery, FEMA, or his/her designated representative.

(4) "Contractor" means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(5) "Designated area" means any emergency or disaster-affected portion of a State which the Associate Director has determined is eligible for Federal assistance.

(6) "Director" means the Director, FEMA.

(7) "Disaster Recovery Manager" means the person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(8) "Emergency" means any hurricane, tornado, storm, flood, high water, winddrive water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a major disaster. For the purpose of these regulations, an emergency exists when the President so determines.

(9) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(11) "Governor" means the chief executive of any State or the Acting Governor.

(12) "Governor's Authorized Representative" means the person named by the Governor in the Federal-State Agreement to execute on behalf of the State all necessary documents for disaster assistance and evaluate and to transmit local government, eligible private non-private facility, and State agency requests for assistance to the Regional Director following a major disaster or emergency declaration.

(13) "Local government" means (i) any county, city, village, town, district, or other political subdivision of any State; any Indian tribe or authorized tribal organization; or Alaska Native village or

organization, and (ii) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by State or political subdivision thereof.

(14) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(15) "Private nonprofit organization" means any nongovernmental agency or entity that currently has (i) an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under Section 501 (c), (d), or (e) of the Internal Revenue Code of 1954 or (ii) satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(16) "Public facility" means any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes, or any park.

(17) "Regional Director" means a director of a regional office of the Federal Emergency Management Agency (FEMA), of his/her designated representative. As used in these regulations Regional Director also means the Disaster Recovery Manager who has been appointed to exercise the authority of Regional Director for a particular emergency or major disaster.

(18) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(19) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the Federal Coordinating Officer.

(20) "State emergency plan" as used in Section 301(b) of the Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(21) "Temporary housing" means emergency or temporary accommodations provided by the Federal Government to individuals or families made homeless by an emergency or a major disaster (see 205.52).

(22) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(23) "Voluntary organization" means any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with a disaster.

(b) Definitions which apply to individual subparts are found in those subparts.

§ 205.3 Policy.

(a) It is the policy of the Federal Emergency Management Agency (FEMA) to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(1) Providing Federal assistance for public and private losses and needs sustained from disasters;

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance;

(5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

(b) It is also the policy of FEMA to foster the development of State and local government organizations and plans for coping with disasters, and to provide advice and guidance to Federal agencies and States and local governments on organization and preparedness to meet the effects of disasters.

(c) It is further a policy of FEMA to ensure that the individual disaster victims are informed of available Federal assistance and to assist individual victims in obtaining the Federal assistance to which they are entitled. Through coordination of all Federal programs and procedures, FEMA shall facilitate, wherever possible, the victims' understanding of these programs and simplify any actions required on the part of those victims who apply for assistance.

§ 205.4 State emergency plans.

The State shall set forth in the State's emergency plan all responsibilities and actions specified in the Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to disasters and to facilitate the delivery of Federal disaster assistance.

§ 205.5 Assistance by Federal agencies.

(a) Upon the declaration of a major disaster or an emergency by the President, the Associate Director or the Regional Director may direct any Federal agency to provide assistance to State and local governments by:

(1) Utilizing or lending their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any act;

(2) Distributing medicine, food, and other consumable supplies; and

(3) Rendering assistance under the authority of the Act. Such assistance is provided with or without compensation as considered appropriate by the Associate Director or Regional Director under the provisions of "Subpart I—Reimbursement of Other Federal Agencies" of these regulations.

(b) Federal agencies shall provide any reports or information about disaster assistance rendered under provisions of these regulations, that the FCO or Regional Director considers necessary and requests from the agencies.

(c) Assistance furnished by any Federal agency under paragraph (a) of this section is subject to the eligibility criteria provided by the Associate Director under these regulations and other instructions as the Associate Director or Regional Director may issue.

(d) Assistance under paragraph (a) of this section, when directed by the Associate Director or the Regional Director, shall not affect the authority of any Federal agency to provide disaster assistance independent of the Act.

However, disaster assistance by other Federal agencies is subject to the coordination of the Federal Coordinating Officer.

(e) In carrying out the purposes of the Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(f) Eligible work under the provisions of the Act is not performed by or under the direct supervision of a Federal agency except when the State or local government lacks the capability to perform or contract for the approved work or the Regional Director determines that direct assistance is necessary to meet an immediate threat to life, health, or safety. (See 205.121, Direct Federal Assistance.)

§ 205.6 Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

(c) In providing assistance under the Act, the Federal Government shall use surplus Federal property to the fullest extent feasible.

§ 205.7 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Act, the Associate Director or the Federal Coordinating Officer may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the Associate Director or the Federal Coordinating Officer finds that such utilization is necessary.

(b) In any major disaster or emergency, the Regional Director may provide assistance by distributing or rendering through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations medicine, food, and other consumable supplies or emergency services.

(c) The Associate Director may enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations under which the Federal Coordinating Officer may coordinate the disaster relief activities of such organizations whenever the organizations are engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with 205.16 (non-discrimination) and 205.10 (Duplication of Benefits) of these regulations and such other regulations as the Associate Director may issue.

(d) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Pub. L. 58-4, approved January 5, 1905 (33 Stat. 599).

§ 205.8 [Reserved]

§ 205.9 [Reserved]

§ 205.10 Duplication of benefits.

(a) The Associate Director, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster or emergency, shall establish policies to assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster or emergency, if such person, business concern, or other entity received compensation from insurance or any other source for that part of the loss. Partial compensation for a loss or a part of a loss suffered as the result of a major disaster or emergency shall not preclude additional Federal assistance for any part of the loss not compensated otherwise.

(c) The Regional Director and the Federal Coordinating Officer shall assure that no Federal assistance is provided under the Act for any part of a loss for which the applicant has been compensated from another source, as imposed by the duplication of benefits policies established by the Associate Director.

(d) Whenever the Associate Director, Regional Director or Federal Coordinating Officer determines (1) that a person, business concern, or other entity has received assistance both under this Act and from another source for the same loss and (2) that the amount received from all sources exceeded the amount of the loss, the Associate Director, Regional Director or Federal Coordinating Officer shall direct the person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which exceeds the loss.

§ 205.11 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

§ 205.12 Criminal and civil penalties.

(a) Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under the Act shall be fined not more than $10,000 or imprisoned for not more than one year or both for each violation.

(b) Any individual who knowingly violates any order or regulation under the Act shall be subject to a civil penalty of not more than $5,000 for each violation.

(c) Whoever knowingly missapplies the proceeds of a loan or other cash benefit obtained under any section of the Act shall be subject to a fine in an amount equal to one and one-half the times the original principal amount of the loan or cash benefit.

§ 205.13 Reviews and reports.

(a) The Associate Director shall review the activities of Federal agencies and State and local governments providing disaster assistance, in order to assure maximum coordination and effectiveness of such programs, and shall report to Congress from time to time on these activities.

(b) In carrying out this provision, the Associate Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of State and local

governments. Additionally, the Associate Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 205.14 Appeals.

Any appeal is a request for reconsideration of a determination on any action related to Federal assistance under the Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

§ 205.15 Effective date.

(a) These regulations are effective and supersede existing regulations as of September 10, 1980.

(b) Any action taken in accordance with previous regulations remains valid.

§ 205.16 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with Regulation 44 CFR Part 7.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, religion, sex, color, age, economic status, or national origin.

(c) As a condition of participation in the distribution of assistance or supplies under the Act or of receiving assistance under the Act, government bodies, and other organizations shall provide a written assurance of their intent to comply with regulations relating to non-discrimination promulgated by the President or the Associate Director and shall comply with such other regulations applicable to activities within an area affected by major disaster or emergency as the Associate Director deems necessary for the effective coordination of relief efforts. The provisions to be included in every Federal-State Agreement shall be the provisions provided by Executive Order 11246 as amended by Executive Orders 11375, 11478 and 12086.

Issued at Washington, D.C., July 17, 1980.

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

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Part IV

Federal Trade Commission

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Applicances under the Energy Policy and Conservation Act

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of Rulemaking on Proposed Amendments of the Final Rule Concerning Central Air Conditioners and Heat Pumps.

SUMMARY: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule that requires the disclosure of energy efficiency or cost information in labeling and retail sales catalogs for seven categories of appliances; mandates that the energy costs or energy efficiency ratings be based on standardized test procedures; requires a general disclosure on certain point-of-sale promotional materials of the availability of energy cost or energy efficiency rating information; and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures.

The Federal Trade Commission now proposes to amend the rule to include central air conditioners and heat pumps. The proposed amendments, which the Commission is required to consider under §§ 324(b)(1) and 336 of the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the National Energy Conservation Policy Act of 1978, prescribe disclosure requirements and methods for determining energy efficiency information for central air conditioner and heat pump applicances. The proposed amendments are intended to insure that consumers will have pre-purchase information necessary to compare the energy efficiencies of these and other competing climate control products covered by the regulation.

Notwithstanding this notice of further rulemaking, the previously-promulgated Appliance Labeling Rule, which covers refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces, remains in effect.

This notice sets out the text of the proposed amendments, the procedures to be followed, a list of general questions and issues upon which the Commission particularly desires comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to testify or otherwise participate in the proceedings.

DATES: Notification of intention to present views orally and copies of proposed testimony on or before September 10, 1980; written comments, on or before September 25, 1980. Public hearings commence September 25, 1980, in Washington, D.C.

ADDRESS: Submit written comments an exhibits in quintuplicate to "Raymond L. Rhine, Presiding Officer for Central Air Conditioner Rulemaking," Federal Trade Commission, Washington, D.C. 20480.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-724-1491 or Lucerne D. Winfrey, 202-724-1453, Attorneys, Bureau of Consumer Protection, Division of Energy and Product Information, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act requires the Federal Trade Commission to consider labeling rules for disclosure of annualized energy cost and alternate measures of energy consumption information for at least thirteen categories of appliances: (1) refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under Section 323 of EPCA, the Department of Energy (DOE) was given the responsibility for developing test procedures that measure how much energy the appliances use. In addition, DOE was required to determine how much a consumer is likely to use each appliance on the average during a year, and the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers; freezers; dishwashers; water heaters; clothes washers; room air conditioners; and furnaces. The Commission determined that clothes dryers, home heating equipment other than furnaces, television sets, kitchen ranges and ovens, and humidifiers and dehumidifiers should be exempted from the labeling requirements of the rule. Evidence received during the rulemaking indicated that labeling of these products would not be economically feasible or likely to assist consumers in making purchasing decisions (44 FR 66466, 66467-69).

Labels for central air conditioners were originally contemplated in the Commission's proposed rule (43 FR 31806, July 21, 1978), based on DOE's publication of a final test procedure for central air conditioners at that time (42 FR 60150, November 25, 1977). On April 19, 1979, however, DOE withdrew this test procedure, proposing that it be amended (44 FR 23468) also to include test procedures for heat pumps and a statistical sampling plan for ensuring reliability of test results. Since there was no longer an applicable DOE test procedure in effect for labeling purposes, the final rule could not cover the central air conditioner category. On December 27, 1979, DOE published a final test procedure, including a statistical sampling plan, for central air conditioners, including heat pumps, thereby requiring the Commission again to consider labeling requirements for these appliances. (44 FR 76700). The amendment proceeding announced here will consider the appropriateness of labeling requirements, including the issue of whether labeling of central air conditioners and heat pumps would be economically feasible or likely to assist consumers in making purchasing decisions.

The proposed amendments require central air conditioners and heat pumps to carry energy labels. The labels direct consumers to energy fact sheets for these appliances which disclose their energy efficiency rating, a range of ratings of comparable models, and regional annual cost figures for various cooling system combinations. The proposed amendments describe how the label and fact sheet information is to be derived from DOE's final test procedure for these appliances. Finally, the proposed amendments contain illustrations of sample labels for central air conditioners and heat pumps.

Section 324 of EPCA directs the Commission to prescribe that energy consumption information be disclosed in terms of an estimated annual energy cost unless the Commission determines that labeling is not technologically or economically feasible or that labels are not likely to assist consumers in making purchasing decisions. In the original rulemaking, the Commission determined that a disclosure of the estimated annual energy cost for climate-sensitive products would not be feasible. The Commission found that the energy use and efficiency of climate-sensitive products vary considerably according to geography and climate, making it very difficult to quantify an average annual

energy cost for such products. Accordingly, the final rule prescribed an alternative measure of energy consumption—an energy efficiency rating—for climate-control equipment, which would be independent of usage variables such as geography and climate. Since central air conditioners and heat pumps fall into the category of climate-sensitive equipment, the proposed amendments, like the labeling provisions for furnaces and room air conditioners in the final rule, require the use of an energy efficiency rating rather than an estimated annual energy cost for these products. However, the proposed amendments still require disclosure of regional cost figures to help consumers estimate their individual energy costs for each system they consider.

Interested persons are invited to comment on any of the proposed amendments, any of the issues listed after the proposed amendments in Section C, and on any other issue of fact, law, or policy which may have some bearing on the proposed amendments.

Section A. Proposed Amendments

In consideration of the foregoing, the Commission proposes the following amendments to the Applicance Labeling Rule, pursuant to § 324 (42 U.S.C. 6294) of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619), and to § 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedure). The proposed amendments appear in the following provisions of the rule:

Sec.
305.2(i)
305.3(h)-(i)
305.4(e)(2) & (3)
305.5(h)
305.7(h)-(i)
305.8(a) & (b)
305.11(a)(3)
305.11(a)(5)(ii)
305.11(b)(1)(i) & (ii)
305.11(b)(3)(viii)
305.14(a)(3)
Appendices H-J

This would amend Title 16, Chapter 1, by adding to Subchapter C, Part 305—Rules For Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act—provisions covering central air conditioners and heat pumps. The final rule, including the proposed amendments (*highlighted in boldface) and relevant appendices and illustrations, would be as follows:*

PART 305—RULES FOR USING ENERGY COSTS AND CONSUMPTION INFORMATION USED IN LABELING AND ADVERTISING FOR CONSUMER APPLIANCES UNDER THE ENERGY POLICY AND CONSERVATION ACT

Scope

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Representative Average Unit Energy Costs

305.9 Representative average unit energy costs.
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305.11 Labeling for covered products.
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305.17 Effect of other law.
305.18 When the rules take effect.
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Appendix A1—Refrigerators.
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Appendix B—Freezers.
Appendix C—Dishwashers.
Appendix D1—Water Heater-Gas.
Appendix D2—Water Heaters-Electric.
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Appendix E—Room Air Conditioners.
Appendix F—Clothes Washers.
Appendix G—Furnaces.
Appendix H—Central Air Conditioners, Cooling
Appendix I—Central Air Conditioners, Heating
Appendix J—Suggested Data Reporting Format.

Authority: Sec. 324, Energy Policy and Conservation Act, (Pub. L. 94-163, [42 U.S.C. 6294]); as amended by the National Energy Conservation Policy Act (Pub. L. 95-619).

PART 305—RULE FOR USING ENERGY COSTS AND CONSUMPTION INFORMATION USED IN LABELING AND ADVERTISING FOR CONSUMER APPLIANCES UNDER THE ENERGY POLICY AND CONSERVATION ACT

Scope

§ 305.1 Scope of the regulations in this part.

The rule in this part establishes requirements for consumer appliance products, as hereinafter described, in commerce, as "commerce" is defined in the Energy Policy and Conservation Act, 42 U.S.C. 6291, with respect to:

(a) Labeling the products with information indicating their estimated annual energy costs or energy efficiency ratings, and related information;

(b) Including in printed matter displayed or distributed at the point of sale of such products, or including in any catalog from which the products may be purchased, information concerning their energy consumption;

(c) Including on the labels, separately attaching to the products, or shipping with the products, additional information relating to energy consumption, energy efficiency, or energy cost; and

(d) Making representations, in writing or in broadcast advertising, respecting the energy consumption, energy efficiency, or the cost of energy consumed by consumer appliance products.

Definitions

§ 305.2 Definitions

(a) "Act" means the Energy Policy and Conservation Act (Pub. L. 94-163), and amendments thereto.

(b) "Commission" means the Federal Trade Commission.

(c) "Manufacturer" means any person who manufactures, produces, assembles, or imports a consumer appliance product. Assembly operations which are solely decorative are not included.

(d) "Retailer" means a person to whom a consumer appliance product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale. The term "retailer" includes purchasers of appliances who install such appliances in newly constructed or newly rehabilitated housing, or mobile homes, with the intent to sell the covered appliances as part of the sale of such housing or mobile homes.

(e) "Distributor" means a person (other than a manufacturer or retailer) to whom a consumer appliance product is

delivered or sold for purposes of distribution in commerce.

(f) "Private labeler" means an owner of a brand or trademark on the label of a consumer appliance product which bears a private label.

(g) "Range of comparability" means a group of models within a class of covered products, each model of which satisfies approximately the same consumer needs.

(h) "Estimated annual operating cost" or "estimated annual energy cost" means the aggregate retail cost of the energy which is likely to be consumed annually in representative use of a consumer product, determined in accordance with tests prescribed under Section 323 of the Act (42 U.S.C. 6293).

(i) "Energy efficiency rating" means the "annual fuel utilization efficiency" for furnaces, "energy efficiency ratio" for room air conditioners, *seasonal energy efficiency ratio for the cooling function of central air conditioners, and the heating seasonal performance factor for the heating function of central air conditioners* determined in accordance with tests prescribed under Section 323 of the Act (42 U.S.C. 6293).

(j) "Range of estimated annual operating costs" or "range of estimated annual energy costs" means the range of estimated annual operating costs of all models within a designated range of comparability.

(k) "Range of energy efficiency ratings" means the range of energy efficiency ratings for all models within a designated range of comparability.

(l) "New covered product," as used in § 305.4, means a covered product the title of which has not passed to a purchaser who buys the product for purposes other than resale or leasing for a period in excess of one year.

(m) "Catalog" means printed material which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.

(n) "Consumer appliance product" means any appliance product for which the Secretary of the Department of Energy has prescribed final test procedures pursuant to Section 323 of the Act (42 U.S.C. 6293).

(o) "Covered Product" means any consumer appliance product defined in § 305.3 of the rule which is, or may be, used for personal use or consumption by individuals.

§ 305.3 Description of covered products to which this part applies.

(a) Refrigerators and refrigerator-freezers.

(1) "Electric refrigerator" means a cabinet designed for refrigerated storage of food at temperatures above 32° F and having a source of refrigeration requiring an electric energy input only. It may include a compartment for the freezing and storage of food at temperatures below 32° F but does not provide a separate low-temperature compartment designed for the freezing of and long-term storage of food at temperatures below 8° F. It has only one exterior door, but may have interior doors or compartments.

(2) "Electric refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of foods at temperatures above 32° F and with at least one of the compartments designed for the freezing of and the storage of frozens foods at temperatures of 8° F or below and which may be capable of adjustment by the user to a temperature of 0° F or below. The source of refrigeration requires an electrical energy input only.

(b) "Freezer" means a cabinet designed as a unit for the storage of food at temperatures of 0° F or below and which has the ability to freeze food. The source of refrigeration requires an electric energy input only.

(c) "Dishwasher" means a cabinetlike appliance which, with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils and most cooking utensils by chemical, mechanical, and/or electrical means and discharges to the plumbing drainage system.

(d) "Water heater" means an automatically controlled, thermally insulated vessel designed for heating water and storing heated water. It is designed to produce hot water at a temperature of less than 180° F.

(1) "Electric water heater" means a water heater which utilizes electricity as the energy source for heating the water, which has a manufacturer's specified energy input rating of 12 kilowatts or less at a voltage of no greater than 250 volts, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 120 gallons.

(2) "Gas water heater" means a water heater which utilizes gas as the energy source for heating the water, which has a manufacturer's specified energy input rating of 75,000 Btu's per hour or less, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 100 gallons.

(3) "Oil water heater" means a water heater which utilizes oil as the energy source for heating the water, which has a manufacturer's specified energy input rating of 103,875 Btu's per hour or less and which has a manufacturer's specified storage capacity of 50 gallons or less.

(e) "Room air conditioner" means an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and/or heating.

(f) "Clothes washer" means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement.

(1) "Automatic clothes washer" means a class of clothes washer which has a control system capable of scheduling a preselected combination of operations, such as regulation of water fill level, and performance of wash, rinse, drain and spin functions, without the need for the user to intervene subsequent to the initiation of machine operation. Some models require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves.

(2) "Semi-automatic clothes washer" means a class of clothes washer that is the same as an automatic clothes washer except that the user must intervene to regulate the water temperature by adjusting the external water faucet valves.

(3) "Other clothes washer" means a class of clothes washer which is not an automatic or semi-automatic clothes washer.

(g) "Furnace" means a device designed to be the principal heating source for the living space of a residence and having a heat input rate of less than 300,000 Btu's per hour for boilers and less than 225,000 Btu's per hour for furnaces.

(1) "Forced air central furnace" means a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The heat generated by combustion of gas of oil is transferred to the air within a casing by conduction through heat exchange surfaces and is circulated through the duct system by means of a fan or blower.

(2) "Gravity central furnace" means a gas-fueled furnace which depends primarily upon natural convection for circulation of heated air and which is designed to be used in conjunction with a system of ducts.

(3) "Electric central furnace" means a furnace designed to supply heat through a system of ducts with air as the heating medium, and in which heat is generated by one or more electric resistance heating elements, and the heated air is circulated by means of a fan or blower.

(4) "Direct vent system" means a system supplied by a manufacturer which provides outdoor air directly to a furnace for combustion and draft relief if the unit is so equipped.

(5) "Electric boiler" means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250° F water temperature.

(6) "Low pressure steam or hot water boiler" means a gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250° F water temperature.

(h) "Central air conditioner" means a consumer product which is powered by single phase electric current, which is rated below 65,000 Btu's per hour, which is not contained within the same cabinet as a furnace whose rated capacity is above 225,000 Btu per hour, and which is either a "heat pump" or a "cooling only unit."

(1) "Condenser-evaporator coil combination" means a condensing unit made by one manufacturer and one of several evaporator coils, either manufactured by the same manufacturer or another manufacturer, intended to be combined with that particular condensing unit.

(2) "Condensing unit" means a component of a central air conditioner which is designed to remove heat absorbed by the refrigerant and to transfer it to the outside environment, and which consists of an outdoor coil, compressor(s), and air moving device.

(3) "Cooling only unit" means a "central air conditioner" which consists of an air cooled condensing unit and an evaporator coil, and which is designed to provide air cooling, dehumidifying, circulating, and air cleaning.

(i) "Heat pump" means a "central air conditioner" which is either an "air-source heat pump" or a "water-source heat pump."

(1) "Air-source heat pump" means a "heat pump" which consists of one or more assemblies, which utilizes an indoor conditioning coil, compressor(s), and refrigerant-to-outdoor air heat exchanger to provide air heating, and which may also provide air cooling, dehumidifying, circulating, and air cleaning.

(2) "Water-source heat pump" means a "heat pump" which consists of one assembly which utilizes and indoor conditioning coil with air moving means, compressor(s), and refrigerant-to-water heat exchanger(s) to provide both air heating and cooling, dehumidifying, circulating, and air cleaning.

General

§ 305.4 Prohibited acts.

(a) It shall be unlawful and subject to the enforcement penalties of Section 333 of the Act of a maximum civil penalty of $100 for each unit of any new covered product to which this part applies:

(1) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product unless such covered product is labeled in accordance with Section 305.11 with a label, flap tag, hang tag, or energy fact sheet which conforms to the provisions of the Act and this part.

(2) For any manufacturer, distributor, retailer, or private labeler knowing to remove or render illegible any label required to be provided with such product by this part.

(3) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product, if there is not included (i) on the label, (ii) separately attached to the product, or (iii) shipped with the product, additional information relating to energy consumption or energy efficiency which conforms to the requirements in this part.

(b) It shall be unlawful and subject to the enforcement penalties of section 333 of the Act of a maximum civil penalty of $100 per day for any manufacturer or private labeler knowingly to:

(1) Refuse a request by the Commission or its designated representative for access to, or copying of, records required to be supplied under this part.

(2) Refuse to make reports or provide upon [request] by the Commission or its designated representative any information required to be supplied under this part.

(3) Refuse upon request by the Commission or its designated representative to permit a representative designated by the Commission to observe any testing required by this part while such testing is being conducted or to inspect the results of such testing. This section shall not limit the Commission from requiring additional testing under this part.

(4) Refuse, when requested by the Commission or its designated representative, to supply at the manufacturer's expense, no more than two of each model of each covered product to any laboratory designated by the Commission for the purpose of ascertaining whether the information in catalogs or set out on the label as required by this part is accurate. This action will be taken only after review of a manufacturer's testing records and an opportunity to revalidate test data has been extended to the manufacturer.

(5) Distribute in commerce any catalog containing a listing for a covered product without the information required by section 305.14 of this Part. This subsection shall also apply to distributors and retailers.

(c) Pursuant to section 333(c) of the Act, it shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any manufacturer, distributor, retailer or private labeler in or affecting commerce to display or distribute at point of sale any printed material applicable to a covered product under this rule if such printed material does not contain the information required by § 305.13. This requirement does not apply to any broadcast advertisement or to any advertisement in a newspaper, magazine, or other periodical.

(d) Effective 180 days after a test procedure applicable to a consumer appliance product is prescribed by the Secretary of the Department of Energy, pursuant to section 323 of the Act (42 U.S.C. 6293), it shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any manufacturer, distributor, retailer, or private labeler to make any representation in or affecting commerce—

(1) In writing (including a representation on a label), or

(2) In any broadcast advertisement, respecting the energy consumption of the product or cost of energy consumed by the product, unless the product has been tested in accordance with the test procedure and the representation fairly discloses the results of the testing. This requirement is not limited to consumer appliance products covered by the labeling requirements of this part.

Any manufacturer, distributor, retailer, or private labeler may file a petition with the Commission not later than sixty (60) days before the expiration of the period involved for an extension of the 180-day period. If the

Commission finds that the requirements would impose an undue hardship on the petitioner, the Commission may extend the 180-day period with respect to the petitioner up to an additional 180 days.

(e) This part shall not apply to:

(1) Any covered product if it is manufactured, imported, sold, or held for sale for export from the United States, so long as such product is not in fact distributed in commerce for use in the United States, and such covered product or the container thereof bears a stamp or label stating that such covered product is intended for export.

(2) Any covered product if the manufacture of the product was completed prior to May 19, 1980. *Any central air conditioner if its manufacturer was completed prior to* [the effective date of this amendment].

(3) Any catalog or point of sale printed matter pertaining to covered products other than air conditioners and heat pumps and distributed prior to *May 19, 1980, and any catalog or point of sale printed matter pertaining to central air conditioners and heat pumps and distributed prior to* [the effective date of this amendment] except that if representations respecting the energy consumption or energy efficiency of any covered product or other consumer appliance product or cost of energy consumed by such product are included, they are subject to the requirements of paragraph (d) of this section.

(f) As used in paragraphs (a) and (b) of this section, the term "knowingly" means:

(1) The having of actual knowledge, or

(2) The presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

Testing

§ 305.5 Determinations of estimated annual energy cost and energy efficiency rating.

Procedures for determining the estimated annual energy costs and energy efficiency ratings of covered products are those found in 10 CFR Part 430, Subpart B, in the following sections:

(a) Refrigerators and refrigerator-freezers—§ 430.22(a).

(b) Freezers—§ 430.22(b).

(c) Dishwashers—§ 430.22(c).

(d) Water heaters—§ 430.22(e)

(e) Room air conditioners—§ 430.22(f).

(f) Clothes washers—§ 430.22(j).

(g) Furnaces—§ 430.22(n).

(h) Central air conditioners and heat pumps—§ 430.22(m).

§ 305.6 Sampling.

Any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.23 of 10 CFR Part 430, Subpart B.

§ 305.7 Determinations of capacity.

The capacity of covered products shall be determined as follows:

(a) Refrigerators and refrigerator-freezers—The capacity shall be the net refrigerated volume in cubic feet, rounded to the nearest one-tenth of a cubic foot, determined according to 3.2 of Appendix A1 to 10 CFR Part 430, Subpart B.

(b) Freezers—the capacity shall be the net freezer refrigerated volume in cubic feet, rounded to the nearest one-tenth of a cubic foot, determined according to 3.2 of Appendix B to 10 CFR Part 430, Subpart B.

(c) Dishwashers—The capacity shall be the place-setting capacity, calculated in conformance with AHAM Specification DW 1.

(d) Water heaters—The capacity shall be the first hour rating, determined according to 4.8 of Appendix E to 10 CFR Part 430, Subpart B.

(e) Room air conditioners—The capacity shall be the cooling capacity in Btu's per hour, determined according to 4.1 of Appendix F to 10 CFR Part 430, Subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the value of EER used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

(f) Clothes washers—The size shall be the tub capacity, rounded to the nearest gallon, determined according to 3.1 of Appendix J to 10 CFR Part 430, Subpart B, in the terms standard or compact as defined in Appendix J of this rule.

(g) Furnaces—The capacity shall be the heating capacity in Btu's per hours, rounded to the nearest 1,000 Btu's per hour, determined according to 4.7 or 4.10 of Appendix N to 10 CFR Part 430, Subpart B.

(h) Central air conditioners, cooling—The capacity shall be the cooling capacity in Btu's per hour, determined according to 3.1 of Appendix M to 10 CFR Part 430, Subpart B, rounded to the nearest 1,000 Btu's per hour for capacities less than 20,000 Btu's per hour; to the nearest 2,000 Btu's per hour for capacities between 20,000 and 37,999 Btu's per hour; and to the nearest 5,000 Btu's per hour for capacities between 38,000 and 64,999 Btu's per hour.

(i) Central air conditioners, heating—The capacity shall be the heating capacity in Btu's per hour, determined according to 3.2 of Appendix M to 10 CFR Part 430, Subpart B, rounded to the nearest 100 Btu's per hour for capacities less than 20,000 Btu's per hour; to the nearest 2,000 Btu's per hour for capacities between 20,000 and 37,999 Btu's per hour; and to the nearest 5,000 Btu's per hour for capacities between 38,000 and 64,999 Btu's per hour.

§ 305.8 Submission of data.

(a) Each manufacturer of a covered product shall submit to the Commission not later than January 21, 1980 (two months after publication of a final, amended rule for central air conditioners), a report listing the estimated annual energy cost (for refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, and clothes washers) or the energy efficiency rating (for room air conditioners, centeral air conditioners and furnances) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy cost or the energy efficiency rating; the number of tests performed; and its capacity, determined in accordance with § 305.7. For those models which use more than one energy source or more than one cycle, each separate amount of energy consumption, or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix *J* illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted by July 21, 1980 (eight months after publication of a final, amended rule for central air conditioners).

(b) Thereafter, all data required by § 305.8(a) except serial numbers, shall be submitted to the Commission annually, on or before the following dates:

Products	Deadline for data submission	Effective mandatory labeling date
Refrigerators, refrigerator-freezers and freezers.	Aug. 1	Dec. 1
Dishwashers	June 1	Oct. 1
Water heaters	May 1	Sept. 1
Room air-conditioners	May 1	Sept. 1
Clothes washers	Mar. 1	July 1
Furnaces	May 1	Sept. 1
Central Air-conditioners	May 1	Sept. 1

All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report. Serial number reports for new covered products are due sixty days after the annual effective mandatory labeling data for each product.

(c) All information required by paragraph (a) of this section must be submitted for new models prior to any distribution of such model. Models subject to design or retrofit alterations which change the date contained in any annual report shall be reported in the manner required for new models. Models which are discontinued shall be reported in the next annual report.

Representative Average Unit Energy Costs

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this Part.

Table 1[1]

	Electricity	Oil	Natural gas	Propane gas
Line:				
1	$0.0497 per kWh	$6.09×10⁻⁶ per Btu	$3.67×10⁻⁶ per Btu	$5.99×10⁻⁶ per Btu.
2	4.97¢ per kWh	84.1¢ per gal	36.7¢ per therm (100 ft³)	54.5¢ per gal.

[1] These figures are based on 1979 DOE calculations and are subject to change.

(b) Table 1, above will be revised on the basis of future information provided by the Secretary of the Department of Energy, but not more often than annually. Manufacturers shall use the revised information when submission of the annual data is made in accordance with § 305.8.

§ 305.10 Ranges of estimated annual energy costs and energy efficiency ratings.

(a) The range of estimated annual energy costs or range of energy efficiency ratings for each covered product shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the products. The Commission shall publish revised ranges annually in the Federal Register if appropriate, or a statement that specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy cost or the energy efficiency rating of the products within the range changes in a way that would alter the upper or lower cost or efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of any revision shall conform to the revised range. Products which have been labeled prior to the effective date of a modification under this section need not be relabeled.

(b) When the estimated annual energy cost or energy efficiency rating of a given model of a covered product falls outside the limits of the range found in the current appendix for that product, which could result from the introduction of a new or changed model, the manufacturer shall (1) omit placement of such product on the scale, and (2) add a sentence in the space just below the scale as follows:

The energy cost of this model was not available at the time the range was published; or

The energy efficiency rating of this model was not available at the time the range was published.

Required Disclosures

§ 305.11 Labeling for covered products.

(a) *Labels*—(1) *Layout.* All energy labels for each category of covered products use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size for all labels is 5⁹⁄₁₆" × 7⅜". Copy is to be set ×27 picas or ×29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely Figure 1, the prototype label appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype label.

(2) *Type size and setting.* The Helvetica series typeface or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 1, 2 and 3). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototype closely. Generally, text may be set flush left or right, line for line, or justified with one point leading except where otherwise indicated. Helvetica medium shall be used for all copy with the following exceptions only: (i) Numerals indicating "highest" and "lowest" energy cost or efficiency rating; (ii) chart headings and, if applicable, energy cost graph headings; (iii) the line "How much will this model cost you to run yearly?"

(3) *Colors.* The basic colors of all labels shall be process yellow or equivalent and process black. The label shall printed full bleed process yellow with a window dropped out (showing as white) over the table(s) displaying yearly cost. For labels to be used on furnaces and central air conditioners, the white window shall be over the text of the three energy-saving steps enumerated on the label. The window shall flush left right, top and bottom with the table rules. All type including chart or table rules shall be print process black.

(4) *Paper stock*—(i) *Adhesive labels.* All adhesive labels should be applied so they can easily be removed without use of tools or liquids, other than water. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25" × 38") or equivalent, exclusive of the release liner and adhesive. The adhesive shall have a minimum peel adhesion capacity of 24 ounces per inch width. The pressure-sensitive adhesive shall be applied in not less than two strips not less than 0.05 inches wide. The strips shall be within 0.5 inches of the opposite edges of the label. For a "flap tag" label, the pressure-sensitive adhesive shall be applie in one strip not less than 0.5 inches wide. The strip shall be within 0.25 inches of the top edge of the label.

(ii) *Hang tags.* The paper stock for hang tags shall have a basic weight of not less than 110 pounds per 500 sheets (25½" x 30½" index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(5) *Contents*—(i) Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters and room air conditioners.

(A) Headlines and texts, as illustrated in Figures 1 and 2, are standard for all labels. At the option of the manufacturer or private labeler, the appropriate year may be inserted in that portion of the label which discloses the national average unit utility rate upon which the cost estimates are based.

(B) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(A) The headline, as illustrated in Figure 3, is standard for all labels.

(B) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(C) Model number(s) will be the designation given by the manufacturer or private labeler.

(D) Capacity or size is that determined in accordance with § 305.7.

(E) Estimated annual energy cost for refrigerators, refrigerator-freezers, freezers, dishwashers, clothers washers and water heaters is that determined in accordance with § 305.5. Energy efficiency rating for room air conditioners is that determined in accordance with § 305.5.

(F) Ranges of comparability and of estimated annual energy costs or energy efficiency ratings, as applicable, are found in Section 1 of the appropriate appendices accompanying this part.

(G) Placement of the labeled product on the scale shall be proportionate to the costs of the lowest and highest costs or efficiency ratings forming the scale.

(H) Yearly Cost text and tables are found in Section 2 of the appropriate appendices accompanying this part. Cost figures are to be determined in accordance with § 305.5 for the unit energy costs found in Section 2 of the appropriate appendices. Revised appendices will be published by the Commission whenever necessary. Use the unit energy cost figures in the latest published appendices to determine the cost figures to be used for a particular covered product.

(I) The following statement shall appear at the bottom of the label:

IMPORTANT

REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302).

"Important

Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302)."

(J) A statement that the energy costs or energy efficiency ratings, as applicable, are based on U.S. Government standard tests is required on all labels, as indicated in Figures 1 and 2.

(K) No marks or information other than that specified in this Part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6-point type or smaller.

(ii) *Labels for furnaces, and central air conditioners.*

(A) The headline, as illustrated in Figure 3, is standard for all labels.

(B) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(C) The following statements shall appear on the label, as indicated in Figure 3:

You can save substantially on home heating and cooling energy costs by following the simple steps outlined below:

1. Weatherproof your house.
2. Assure energy efficient heating and cooling equipment selection and installation.
3. Operate and maintain your system to conserve energy.

Help conserve energy. Compare the energy efficiency rating and cost information for this model with others. Check the figures and spend less on energy. Your contractor has the energy fact sheets. Ask for them.

(D) The following statement shall appear at the bottom of the label:

IMPORTANT

REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302).

(E) No marks or information other than specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6-point type or smaller.

(6) *Placement.* Manufacturers shall affix a label to the exterior surface on covered products in such a position that it can easily by read while standing in front of the product as it is displayed for sale. The label should be generally located on the upper-right-front corner of the product, except that for low-standing products or products with configurations that make application in that location impractical, some other prominent location may be used. The top of the label should not exceed 74 inches from the base of taller products. The label in the form of a "flap tag" shall be adhered to the top of the appliance and bent (folded at 90°) to hang over the front, if this can be done with assurance that it will be readily visible.

(7) *Use of hang tags.* Information prescribed above for labels may be displayed in the form of a hang tag, which may be used in place of an affixed label. If a hang tag is used, it shall be affixed in such a position that it will be prominent to a consumer examining the product.

(b) *Fact sheets*—(1) *Distribution.* (i) Manufacturers and private labelers must give distributors and retailers, including assemblers, fact sheets for the furnaces *and central air conditioners* they sell to them. Distributors must give the fact sheets to the retailers, including assemblers, they supply. Each fact sheet must contain the information listed in § 305.11(b)(3).

(ii) Retailers, including assemblers, who sell furnaces *and central air conditioners* to consumers must have fact sheets for the furnaces *and central air conditioners* they sell. They must make the fact sheets available to their customers. The fact sheets may be made available to customers in any manner, as long as customers are likely to notice them. For example, they can be available in a display, where customers can take copies of them. They can be kept in a binder at a counter or service desk, with a sign telling customers where the fact sheets are. Retailers, including assemblers, who negotiate or make sales at a place other than their regular place of business must show the fact sheets to their customers and let them read the fact sheets before they agree to purchase the product.

(2) *Format.* All information required to be contained in fact sheets must be disclosed clearly and conspicuously.

(3) *Contents.* (i) "Energy Guide" headline is standard for all fact sheets, as for labels.

(ii) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(iii) Model number(s) will be the designation given by the manufacturer or private labeler.

(iv) Capacity or size is that determined in accordance with § 305.7.

(v) Energy efficiency rating is that determined in accordance with § 305.5.

(vi) Ranges of comparability and of energy efficiency ratings are found in Section 1 of the appropriate appendices accompanying this part.

(vii) Placement of the labeled product on the scale shall be proportionate to energy efficiency ratings of the lowest and highest efficiency ratings forming the scale.

(viii) Yearly cost information text and tables are found in Section 2 of Appendices G, *H and I* accompanying this part. Cost figures are to be determined in accordance with § 305.5 for the unit energy costs found in Section 2 of Appendices G, *H and I.* A revised appendix will be published by the Commission whenever necessary. Use the unit energy cost figures in the latest published Appendices G, *H and I* to determine the cost figures to be used for furnaces *and central air conditioners respectively.*

(ix) A statement that the energy costs and energy efficiency ratings are based on U.S. Government standard tests is required in all fact sheets.

§ 305.12 Additional information relating to energy consumption.

Additional information relating to energy consumption which must be included on labels, separately attached to the product, or shipped with the product will be published as a separate section 3 of the appendices accompanying this part. No additional information will be required without public notice and an opportunity for written comments.

§ 305.13 Promotional material displayed or distributed at point of sale.

(a) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product shall clearly and conspicuously include in such printed material the following required disclosure:

"Before purchasing this appliance, read important energy cost and efficiency information available from your retailer."

(b) This section shall not apply to:

(1) Written warranties.

(2) Use and care manuals, installation instructions, or other printed material containing primarily post-purchase information for the purchaser.

(3) Printed material containing only the identification of a covered product, pricing information and/or non-energy related representations concerning that product.

(4) Any printed material distributed prior to the effective date listed in § 305.18(f).

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer or private labeler who advertises a covered product in a catalog, from which it may be purchased by cash, charge account or credit terms, shall include in such catalog, on each page which lists a covered product, the following information required to be disclosed on the label:

(1) The capacity of the model.

(2) The estimated annual energy cost for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers and water heaters. The representative average unit costs for electricity, natural gas, oil and propane gas, published in § 305.9, which are current at the closing date for printing or the printing deadline date of the catalog, shall be used to compute the estimated annual energy cost.

(3) The energy efficiency ratings for room air conditioners, *central air conditioners and furnaces.*

(4) The range of estimated annual energy costs or energy efficiency ratings, which shall be those which are current at the closing date for printing or the printing deadline of the catalog.

(5) The following disclosure, appearing clearly and conspicuously:

IMPORTANT ENERGY INFORMATION IS AVAILABLE. TURN TO PAGE(S) [INSERT DESIGNATED PAGE NUMBER(S)].

(b) On the page(s) designated, as referred to in § 305.14(a)(5), the manufacturer, distributor, retailer or private labeler must disclose either instructions on how cost grid information, described in §§ 305.11(a)(5)(i)(H) and 305.11(b)(3)(viii), may be obtained from the cataloger, or the cost grid information itself, so long as all information thereon is clearly legible. Information contained in a catalog for a covered product shall be changed or modified in accordance with § 305.10.

Additional Requirements

§ 305.15 Test data records.

(a) Test data shall be kept on file by the manufacturer of a covered product for a period of two years after production of that model has been terminated.

(b) Upon notification by the Commission or its designated representative, a manufacturer or private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the estimated annual energy cost or energy efficiency rating for each basic model was derived.

§ 305.16 Required testing by designated laboratory.

Upon notification by the Commission or its designated representative, a manufacturer of a covered product shall supply, at the manufacturer's expense, no more than two of each model of each product to a laboratory, which will be identified by the Commission or its designated representative in the notice, for the purpose of ascertaining whether the estimated annual energy cost or energy efficiency rating disclosed on the label or fact sheet, or as required by § 305.14, is accurate. Such a procedure will only be followed after the Commission or its staff has examined the underlying test data provided by the manufacturer as required by § 305.15(b) and after the manufacturer has been afforded the opportunity to reverify test results from which the estimated annual energy cost of energy efficiency rating for each basic model was derived. A representative designated by the Commission shall be permitted to observe any reverification procedures required by this Part, and to inspect the results of such reverification. Charges for testing by designated laboratories will be paid by the Commission.

Effect of This Part

§ 305.17 Effect on other law.

This regulation supersedes any State regulation to the extent required by Section 327 of the Act. Pursuant to the Act, all State regulations that require the

disclosure for any covered product of information with respect to energy consumption, other than the information required to be disclosed in accordance with this Part, are superseded.

§ 305.18 When the rules take effect.

(Subsections (a) through (h), which do not apply directly to central air conditioning and heat pumps, are not reprinted today in order to avoid confusion.) *(i) All requirements pertaining to central air conditioners take effect not later than three months after publication of the amended rule in final form.*

§ 305.19 Stayed or invalid parts.

If any section or portion of a section of this part is stayed or held invalid, the remainder of the part will not be affected.

1. Range Information:

Appendix H.—*Central Air-Conditioners Cooling Performance and Cost*

Manufacturer's rated cooling (Btu per hour)	Ranges of energy efficiency ratings	
	Low	High
Up to 10,000		
10,001 to 16,000		
16,001 to 22,000		
22,001 to 28,000		
28,001 to 34,000		
34,001 to 40,000		
40,001 to 46,000		
46,001 to 52,000		
52,001 to 58,000		
58,001 to 64,000		
64,001 and over		

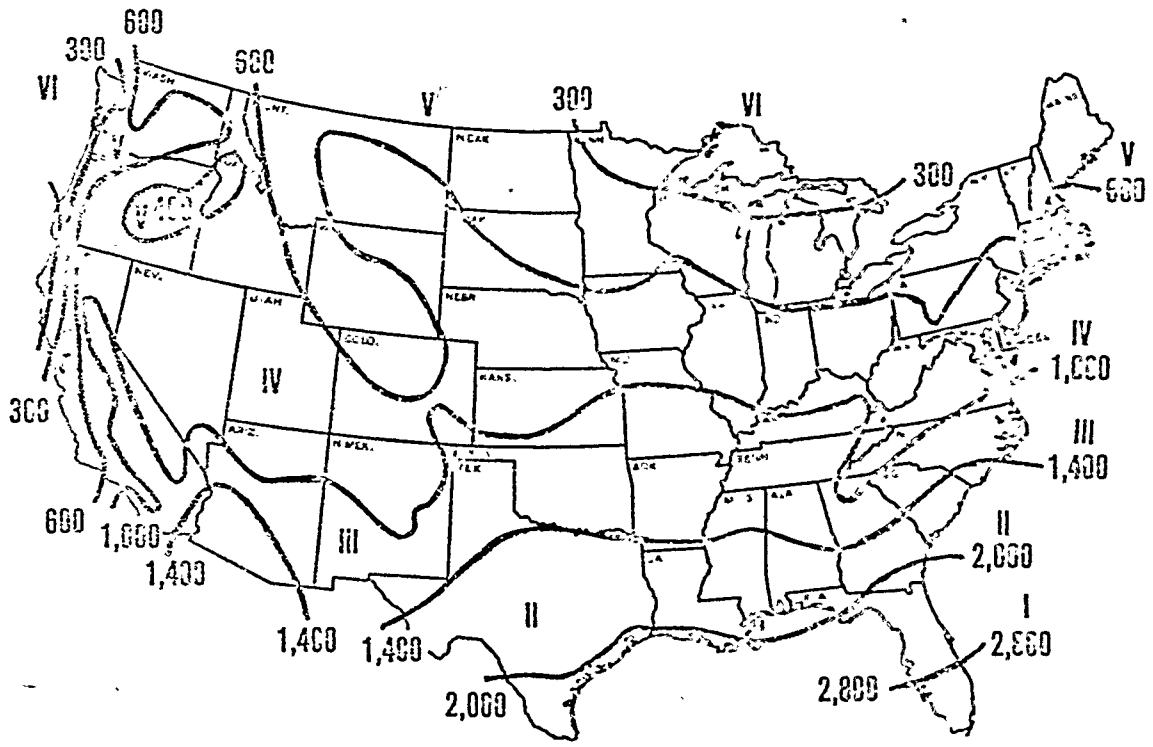
2. Yearly Cooling Cost Information: Check this table to estimate your yearly cooling cost. To determine the hours of use for each region, consult the map relating to hours of use for cooling. The illustrative table below was calculated using an average EER of 7.5.

Region	Hours of use	Cost per kilowatt hour					
		.02	.04	.06	.08	.10	.12
I	2,400	$230.40	$460.80	$691.20	$921.60	$1,152.00	$1,382.40
II	1,800	172.80	354.60	518.40	691.20	864.00	1,036.80
III	1,200	115.20	230.40	354.60	460.80	576.00	691.20
IV	800	76.80	153.60	230.40	307.20	384.00	460.80
V	400	38.40	76.80	115.20	153.60	192.00	230.40
VI	200	19.20	38.40	57.60	76.80	96.00	115.20

Below each kilowatt-per-hour cost in the table and beside the appropriate region, place the dollar cost estimate of the model being labeled.

3. Additional Information: [Reserved].

HOURS OF USE FOR COOLING



This map is reasonably accurate for most parts of the United States but is necessarily highly generalized and consequently not too accurate in mountainous regions particularly in the Rockies

Regional Cooling Hours of Use

Region	Hours
I	2,400
II	1,800
III	1,200
IV	800
V	400
VI	200

Alaska	- 0	Cooling Load Hours
Canal Zone	- 6,000	" " "
Guam	- 6,600	" " "
Hawaii	- 2,300	" " "
Puerto Rico	- 6,000	" " "
Samoa	- 6,600	" " "
Virgin Island	- 6,000	" " "

BILLING CODE 3510-19-C

1. Range Information:

Appendix I.—*Central Air Conditioners (Heat Pumps) Heating Performance and Cost*

Manufacturer's rated heating capacity in Btu's/hr.	Ranges of energy efficiency ratings *	
	Low	High
Up to 10,000		
11,000 to15,000		
16,000 to20,000		
21,000 to25,000		
26,000 to30,000		
31,000 to35,000		
36,000 to40,000		
41,000 to45,000		
46,000 to50,000		
51,000 to55,000		
56,000 to60,000		
61,000 to65,000		
66,000 and over		

*The EER shall be a Region IV value based on the appropriate average design heat loss from the table below. To determine the hours of use for each region, consult the map relating to hours of use for heating.

2. Yearly Heating Cost Information (by Regions):

Region I Btu Heat Loss of Home[1]

Cost per kilowatt hour:
2¢
4¢
6¢
8¢
10¢
12¢

[1] See table below.

The following table shows the heat loss values in Region I (in thousand Btu/hr.) to be used in the grid above:

Manufacturer's rated heating capacity of model to be labeled (BTU/hr.)	Average design heat loss of model to be labeled (KBTU/hr.)	Heat loss values to be used on the grid (KBTU/hr.)
Up to 10,000	10	5, 10
11,000 to 15,000	10	5, 10, 15
16,000 to 20,000	15	10, 15, 20
21,000 to 25,000	15	10, 15, 20, 25
26,000 to 30,000	20	15, 20, 25, 30
31,000 to 35,000	25	15, 20, 25, 30, 35
36,000 to 40,000	25	15, 20, 25, 30, 35, 40
41,000 to 45,000	30	20, 25, 30, 35, 40
46,000 to 50,000	35	20, 25, 30, 35, 40
51,000 to 55,000	35	25, 30, 35, 40, 50
56,000 to 60,000	40	25, 30, 35, 40, 50
61,000 to 65,000	40	30, 35, 40, 50, 60
66,000 and over	50	35, 40, 50, 60, 70

Beside each cost in the grid above, and below the appropriate heat loss value taken from the table above, place the cost estimate for the model being labeled using the table costs per kilowatt-hour and the appropriate EER for the given heat-loss value.

Region II Btu Heat Loss of Home[1]

Cost per kilowatt hour:
2¢
4¢
6¢
8¢
10¢
12¢

[1] See table below.

Region VI Btu Heat Loss of Home[1]

Cost per kilowatt hour:
2¢
4¢
6¢
8¢
10¢
12¢

[1] See table below.

The following table shows the heat loss values in Regions II and VI to be used in the grids above:

Manufacturer's rated heating capacity of model to be labeled (BTU/hr.)	Average design heat loss of model to be labeled (KBTU/hr.)	Heat loss values to be used on the grid (KBTU/hr.)
Up to 10,000	10	5, 10, 15
11,000 to 15,000	10	5, 10, 15, 20
16,000 to 20,000	15	10, 15, 20, 25
21,000 to 25,000	20	15, 20, 25, 30
26,000 to 30,000	25	20, 25, 30, 35, 40
31,000 to 35,000	30	20, 25, 30, 35, 40
36,000 to 40,000	35	25, 30, 35, 40, 50
41,000 to 45,000	35	25, 30, 35, 40, 50, 60
46,000 to 50,000	40	30, 35, 40, 50, 60
51,000 to 55,000	50	35, 40, 50, 60, 70
56,000 to 60,000	50	35, 40, 50, 60, 70
61,000 to 65,000	60	40, 50, 60, 70, 80
66,000 and over	70	50, 60, 70, 80, 90

Beside each cost in the grid above, and below the appropriate heat loss value taken from the table above, place the cost estimate for the model being labeled using the table costs per kilowatt-hour and the appropriate EER for the given heat loss value.

Region III Btu Heat Loss of Home[1]

Cost per kilowatt hour:
2¢
4¢
6¢
8¢
10¢
12¢

[1] See table below.

The following table shows the heat loss values in Region III to be used in the grid above:

Manufacturer's rated heating capacity of model to be labeled (BTU/hr.)	Average design heat loss of model to be labeled (KBTU/hr.)	Heat loss values to be used on the grid (KBTU/hr.)
Up to 10,000	10	5, 10, 15
11,000 to 15,000	15	10, 15, 20, 25
16,000 to 20,000	20	15, 20, 25, 30
21,000 to 25,000	25	15, 20, 25, 30, 35, 40
26,000 to 30,000	30	20, 25, 30, 35, 40, 50
31,000 to 35,000	35	25, 30, 35, 40, 50
36,000 to 40,000	40	30, 35, 40, 50, 60
41,000 to 45,000	50	35, 40, 50, 60, 70
46,000 to 50,000	60	35, 40, 50, 60, 70, 80
51,000 to 55,000	70	40, 50, 60, 70, 80, 90
56,000 to 60,000	70	50, 60, 70, 80, 90, 100
61,000 to 65,000	80	50, 60, 70, 80, 90, 100
66,000 and over	90	60, 70, 80, 90, 110, 130

Besides each cost in the grid above, and below the appropriate heat loss value taken from the table above, place the cost estimate for the model being labeled using the table costs per kilowatt-hour and the appropriate EER for the given heat loss value.

Region IV Btu Heat Loss of Home[1]

Cost per kilowatt hour:
2¢
4¢
6¢
8¢
10¢
12¢

[1] See table below.

Region V Btu Heat Loss of Home[1]

Cost per kilowatt hour:
2¢
4¢
6¢
8¢
10¢
12¢

[1] See table below.

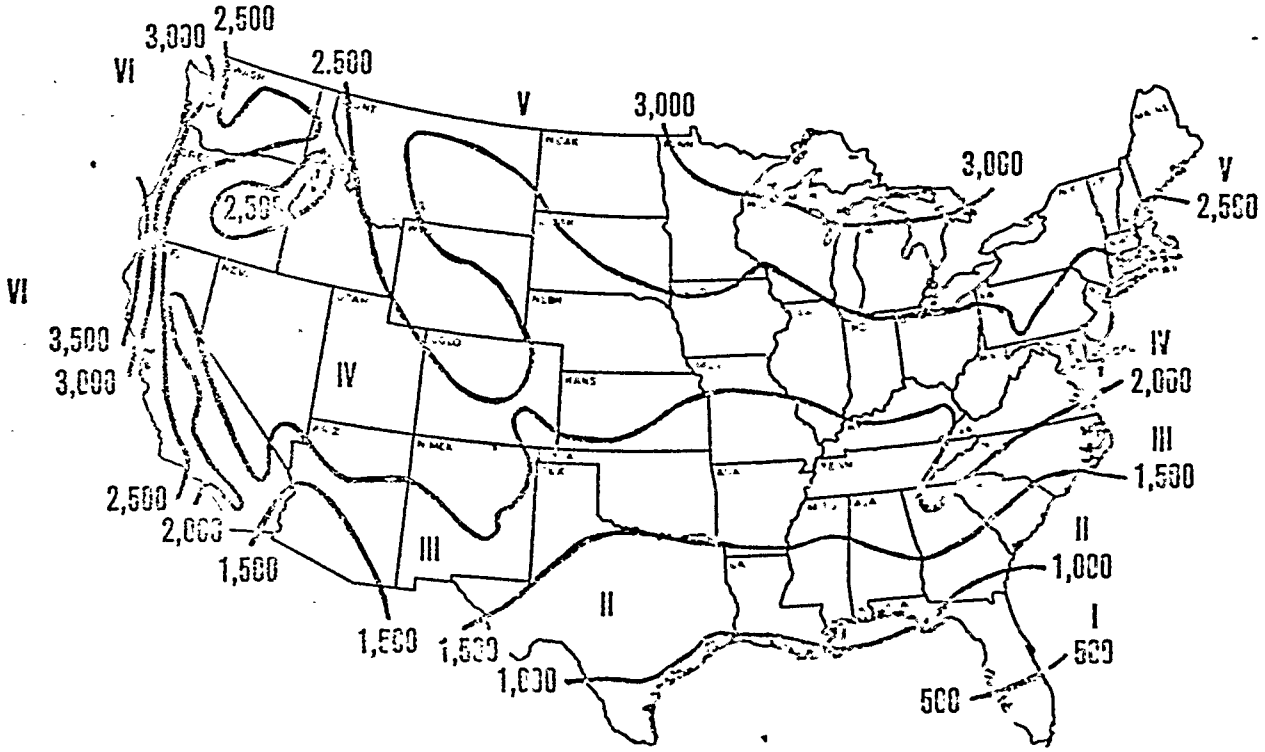
The following table shows the heat loss values in Regions IV and V to be used in the grids above:

Manufacturer's rated heating capacity of model to be labeled (BTU/hr.)	Average design heat loss of model to be labeled (KBTU/hr.)	Heat loss values to be used on the grid (KBTU/hr.)
Up to 10,000	10	10, 15, 20
11,000 to 15,000	20	10, 15, 20, 25, 30
16,000 to 20,000	25	15, 20, 25, 30, 35, 40
21,000 to 25,000	30	20, 25, 30, 35, 40, 50
26,000 to 30,000	35	25, 30, 35, 40, 50, 60
31,000 to 35,000	40	30, 35, 40, 50, 60, 70, 80
36,000 to 40,000	50	35, 40, 50, 60, 70, 80, 90
41,000 to 45,000	60	40, 50, 60, 70, 80, 90, 100
46,000 to 50,000	70	50, 60, 70, 80, 90, 100, 110
51,000 to 55,000	70	50, 60, 70, 80, 90, 100, 110
56,000 to 60,000	80	60, 70, 80, 90, 100, 110
61,000 to 65,000	90	70, 80, 90, 100, 110, 130
66,000 and over	90	70, 80, 90, 100, 110, 130

Besides each cost in the grid above, and below the appropriate heat loss value taken from the table above, place the cost estimate for the model being laveled using the table costs per kilowatt-hour and the appropriate EER for the given heat loss value.

3. Additional Information (Reserved).

HOURS OF USE FOR HEATING



This map is reasonably accurate for most parts of the United States but is necessarily highly generalized and consequently not too accurate in mountainous regions particularly in the Rockies

Regional Heating Hours of Use

Region	HLH
I	750
II	1,250
III	1,750
IV	2,250
V	2,750
VI	2,750

Alaska - 3,500 HLH

Hawaii and Territories - 0 HLH

BILLING CODE 3510-18-C

Appendix J—Suggested Data Reporting Format

1. Date of Report _____
2. Company Name _____
3. City _____
4. State _____
5. Product _____
6. Energy Type (gas, oil, etc.) _____
7. Model Number _____
8. Estimated Annual Energy Cost or Energy—Efficiency Rating _____
9. Capacity _____
10. Number of Tests Performed _____

All copy Helvetica medium or bold

All Copy x 27 picas

10/12 Helv → (For Furnaces and Central Air Conditioners)

ENERGYGUIDE

12/13 Helv → You can save substantially on home heating and cooling energy costs by following the simple steps outlined below:

10/11 Helv with 18' numerals →

1. Weatherproof your house
2. Assure energy efficient heating and cooling equipment selection and installation
3. Operate and maintain your system to conserve energy.

12/13 Helv → Help conserve energy. Compare the energy efficiency rating and cost information for this model with others. Check the figures and spend less on energy.

12 Helv Bold → **Your contractor has the energy fact sheets. Ask for them.**

14/15 Helv → Important Removal of this label before consumer purchase is a violation of

8/9 Helv → federal law (42 U.S.C. 6302)

SAMPLE LABEL

BILLING CODE 3510-18-C

Section B. Invitation to Comment

All interested persons are hereby notified that they may submit to Raymond L. Rhine, Presiding Officer for Central Air Conditioner Rulemaking, Federal Trade Commission, Washington, D.C. 20580, data, views, or arguments on any issue of facts, law, or policy which may have some bearing upon the proposed amendment to the rule. Such written comments will be accepted until no later than September 25, 1980. To assure prompt consideration, each comment should be identified both on the document and on the envelop as "Central Air Conditioner Rulemaking Comment" and furnished, when possible, in five copies.

Section C. General Questions and Issues

While interested persons are invited to address any questions of fact, law, or policy which they feel may have bearing upon the proposed amendments, listed below are several general questions and issues of fact bearing upon certain aspects of the proposed amendments concerning which the Commission particularly desires comments, orally or in writing, by persons concerned with and participating in this proceeding:

1. Are the requirements for additional information prescribed in the final rule applicable to and appropriate for central air conditioners and heat pumps? Is there a need for additional point-of-sale information for central air conditioners and heat pumps, beyond that already required by the final rule, which would provide suggestions for energy-efficient use of these products? If so, what information should be included?

During the development of the original labeling proposal, the Commssion investigated the current availability of energy saving suggestions. With respect to central air conditioners and heat pumps, the Commission is interested in the following:

a. What energy saving suggestions, if any, are currently supplied by manufacturers?

b. Are any energy saving suggestions being made which are misleading, incomplete, or otherwise inappropriate?

c. Do consumers understand and use the suggestions currently available?

2. The Appliance Labeling Rule requires a uniform label on furnaces directing consumers to a manufacturer's energy fact sheet which contains information for recommended combinations of systems components. The same format is proposed for central air conditioners. Like furnaces, these products vary in use according to climate, geography, insulation quality of the dwelling, and lifestyle of the purchaser's family. The Commission is interested in receiving any comments on the proposed labels and fact sheets for these products, primarily with regard to the following:

(a) Is the labeling/energy fact sheet format informative or should it be modified? If so, how?

(b) Is all the information included on the label and the fact sheets necessary?

(c) What, if any, additional information should be required on the label or fact sheet?

3. The Commission is interested in receiving comments on both the proposed measure of consumption (energy efficiency rating) and the proposed ranges of comparability for central air conditioners.

4. The Commission is interested in receiving comments concerning whether this rule is likely to have a significant adverse economic impact on small businesses. If so, how can the proposed rule be modified to minimize its economic impact, while still meeting the purposes outlined by Congress in EPCA?

5. Section 324(a)(2)(B) of the EPCA states that the Commission need not prescribe a labeling rule if the labeling "is not technologically or economically feasible or is not likely to assist consumers in making purchase decisions."

Do air central conditioners fall within these exceptions? If so, why?

6. The cooling and heating performance cost charts (Appendices H and I), prepared for the Commission by the Department of Energy, represent an effort to present a method for figuring an extremely complex problem.

a. Is either of these charts too complicated for manufacturers, contractors, or consumers to understand and use? If so, how could the charts be simplified without sacrificing reasonable accuracy?

b. If the charts are too complicated and cannot be effectively simplified, is there an alternate method for helping manufacturers, contractors and consumers figure the heating and cooling performance and cost for the central air conditioners (including heat pumps) they sell or buy?

Section D. Public Hearings

Public hearings on the proposed rule will be held commencing on [September 25], 1980, at 10 a.m. in Room 332 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, N.W., Washington, D.C. Persons desiring to present their views orally at these hearings should so advise Raymond L. Rhine, Presiding Officer for Central Air Conditioner Rulemaking, Federal Trade Commission, Washington, D.C. 20580 no later than September 10, 1980, and comply with the instructions in Section F of this notice.

Section E. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with Raymond L. Rhine, Presiding Officer for Central Air Conditioner Rulemaking, who is responsible for the orderly conduct of the proceeding and who shall have all powers necessary to that end, including the authority to rule on all motions or petitions filed. Applications for review of a ruling will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

Section F. Instruction to Witnesses

1. *Advance notice.* The Commission invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest, to make an oral presentation. Such a request should be directed to the Presiding Officer identified above an must be received no later than September 10, 1980. Witnesses are required to submit a written statement that can be entered into the record as submitted no later than September 10, 1980.

It will not be necessary to repeat this statement at the hearing. Submission of a written statement enables the witness to appear at the hearing, to answer questions posed by only the staff with regard to the written statement, and to deliver a short summary of the most important aspects of that statement within time limits that are established by the Presiding Officer. As a general rule, oral summaries should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses.

2. *Use of exhibits.* Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the general comment period, but no later than [30 days from publication date], 1980. Mark each of the documents with your name, and number them in sequence, *e.g.*, Jones Exhibit 1. The

Presiding Officer has the power to refuse to accept for the public record any hearing exhibits that are not furnished by the deadline.

3. *Expert witneses.* If you are going to testify as an expert witness, you must attach to your statement your *curriculum vitate,* biographical sketch, resume or summary of your professional background and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements or in separate exhibits. If your testimony is based or chiefly concerned with one or two major scientific works, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. *Results of surveys and other research studies.* If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present, as an exhibit or exhibits in compliance with paragraph 2 above, the following:

a. A complete report of the survey or other research study and the information and documents listed in (b) through (e) below if they are not included in that report.

b. A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

c. Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in words of their choice rather than to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

d. A description of the methodology used in conducting the survey or other research study including the selection of instructions to interviewers, introductory remarks by interviewers to respondents and a sample questionnaire or other data collection instrument.

e. A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information along with punch cards or computer tapes which were used to conduct analyses should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. *Identification, number of copies and inspection.* To assure prompt consideration, all materials, including written statements, filed by prospective witnesses pursuant to the instructions contained in paragraphs 1–4 of this section should be identified both on the document and on the envelope as "Central Air Conditioner Statement" ("and Exhibits," if appropriate), and submitted in five copies when feasible and not burdensome not later than [30 days from publication date], 1980.

Copies of all materials filed by witnesses will be made available for examination in Room 130, Public Reference Room Federal Trade Commission, Pennsylvania Avenue at Sixth Street, N.W., Washington, D.C. Binder number 209–18–13 should be requested to examine all materials submitted in this rulemaking.

6. *Reason for requirements.* The foregoing requirements are necessary to permit us to schedule the time for your appearances and that of other witnesses in an orderly manner. The Commission staff must have your expected testimony and supporting documents available for study before the hearing to prepare appropriate questions. Also, such data should be of assistance to interested persons in the preparation of the filing of contradictory statements (rebuttal).

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless hardship to participate can be demonstrated.

Section G. Post-Hearing Procedures

Interested persons will be afforded 20 days after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions that are essentially additional written comments, rather than rebuttal. The 20-day rebuttal period will commence when the final transcript of the hearings is placed on the public record by the Presiding Officer.

After the close of the rebuttal period, staff shall analyze the evidence on the record and shall prepare and submit a recommendation for the final rule which will be placed on the public record for 30 days, during which time interested persons will be afforded the opportunity to submit comments for consideration by the Commission in reaching a decision on this rule. Comments will be submitted to James Mills, or Lucerne D. Winfrey, Attorneys, Federal Trade Commission, 414 11th Street NW., Washington, D.C. 20580. To assure prompt consideration, each comment should be identified both on the document and the envelope as "Central Air Conditioner Rulemaking Comment" and furnished when possible, in five copies.

Section H. Compensation for Representation in Rulemaking Proceedings

Funds may be available for reimbursement of public participation costs incurred in this proceeding to those who satisfy the requirements of § 1.17 of the Commission's rules. For further information, contact Bonnie Naradzay, Special Assistant for Public Participation Office of the General Counsel, Federal Trade Commission, Pennsylvania Avenue at Sixth Street NW., Washington, D.C. 20580, 202–357–0258.

Issued: By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-23901 Filed 8-8-80; 8:45 am]

BILLING CODE 3510-18-M

federal register

Monday
August 11, 1980

Part V

Civil Aeronautics Board

Removal of Limitations on Off-Route and Cargo Charters and Elimination of Schedule T-41

CIVIL AERONAUTICS BOARD

14 CFR Part 207

[Economic Regulations Dockets 31788 and 36113; Amdt. No. 26 of Part 207; Regulation ER-1190]

Charter Trips and Special Services; Removal of Limitations on Off-Route and Cargo Charters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB removes all limitations on cargo charters, and permitting charters of cargo on scheduled flights. It also removes restrictions on off-route flights, which were the subject of a separate notice of proposed rulemaking. The Board makes these amendments under its procompetitive policy to permit maximum competition in charter services.

DATES: Adopted: August 1, 1980. Effective: September 6, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5088.

SUPPLEMENTARY INFORMATION: In EDR-351B/SPDR-73, 44 FR 50607, August 29, 1979, and in EDR-383, 44 FR 41828, July 18, 1979, the Board proposed to eliminate a variety of restrictions on air carriers providing charter transportation. The proposals involved both certificated route carriers and charter-only carriers, since both may provide charter service. EDR-351B proposed to eliminate virtually all remaining restrictions on cargo charters for both U.S. and foreign carriers. It proposed to: (1) allow cargo to be carried on the main deck along with passengers on charter flights, (2) eliminate the requirement that all the available cargo space be engaged before a charter flight is operated, (3) allow scheduled route carriers to carry charter cargo on scheduled flights ("part charters" of cargo) and (4) permit foreign charter-only carriers to operate split charters (flights shared by more than one charterer) to the same extent as other carriers. In addition, it proposed a consumer protection provision for passenger charter participants, under which baggage limitations and excess baggage charges would be printed in boldface type in the operator-participant contract.

EDR-383 proposed to eliminate the few remaining volume and frequency limitations on charters by scheduled route carriers. Under current regulations, passenger charters by all-cargo carriers with § 401(d)(1) certificates (Airlift, Seaboard, Flying Tiger, Federal Express, and Rich) are limited to 10 percent of the carrier's scheduled route operations for the preceding year; total passenger and cargo off-route charters by combination carriers are limited to 10 percent of the preceding year's scheduled operations; and all charters to countries to which the carrier has no scheduled route authority are limited to roughly eight flights per month. EDR-383 proposed to allow all carriers certificated under section 401 to operate charters without limit as to number or frequency.

As discussed in the notices of proposed rulemaking, these changes were suggested to permit maximum competition in charter services. Restrictions on charter operations were initially designed to protect two more or less separate classes of carriers—those that operated only charter flights and those that concentrated on scheduled service—from diverting traffic from each other's operations. Now, under the Board's procompetitive policies, carriers have been permitted to engage in both types of operations and to vie with each other for whatever mix of services the public desires. We no longer consider it necessary to protect either type of operation, or to assure the economic viability of any carrier.

Nine persons filed comments on EDR-351B/SPDR-73.[1] No one opposed the proposal to permit operation of less-than-fully-engaged charter aircraft, and this change was specifically supported by Polaroid and IAS. The proposal to allow cargo to be carried on the main deck along with charter passengers was supported by Polaroid and TIA/World, and the proposal to grant foreign charter-only carriers the same flexibility as other carriers was supported by IAS and Wardair. The Department of State argued that foreign air carriers should be required to apply for permission to operate each "combination charter" flight (presumably, a charter flight carrying both passengers and cargo) that they seek to offer in foreign air transportation, and that the Board should not grant such permission unless it finds that a foreign carrier's home government provides substantially equivalent authority to U.S. air carriers. Thus, State did not oppose in substance the latter two changes mentioned above, but suggested requiring prior Board approval for flights by foreign carriers whose governments do not grant reciprocal privileges to U.S. carriers. There were no objections in principle to a requirement that some notice as to baggage limitation be provided in charter contracts, although Sunflight argued against the boldface type requirement and warned against requiring overly-detailed baggage limitation information. Seaboard and IAAA supported the idea to allow charter cargo on scheduled flights, while TIA/World opposed it.

Four persons filed comments on EDR-383.[2] All suppported eliminating the off-route restrictions. AFFA asked the Board to go further and amend its regulations to allow section 418 all-cargo carriers to perform passenger charters.

We are adopting the proposals in EDR-383 to eliminate restrictions on off-route charters by scheduled air carriers. These proposals were unopposed and, as discussed in the notice of proposed rulemaking, the restrictions serve no purpose in the present regulatory scheme. The restrictions are therefore being eliminated as unnecessary restraints on carrier operations.

The removal of limits on off-route authority creates the potential for many carriers to substantially change the nature of their operations. We have no objection in principle to such developments, but we note that all carriers are subject to a continuing fitness requirement under section 401(r) of the Act. Any carrier planning to use off-route charter authority to substantially change its operations should comply with recently-adopted 14 CFR Part 204 (Data to Support Fitness Determinations)[3] and consult the Board to be sure that it meets appropriate fitness standards for continued operations.

We cannot, however, extend passenger charter authority to section 418 carriers as AFFA suggested, since section 418 certificates are restricted by statute to all-cargo operations. Also, the fitness evaluation leading to a section 418 certificate is limited to cargo operations, and any passenger authority sought by section 418 carriers would require a new and more extensive finding of fitness.

We are adopting the proposals in EDR-351B to permit cargo on the main deck of passenger charters, to permit

[1] International Airforwarder and Agents Assocation (IAAA), International Aviation Services (U.K.) (IAS), Polaroid, Seaboard World Airlines, Sunflight Holidays, Transamerica Airlines (TIA) and World Airways (jointly), United States Department of State (State) and Wardair Ltd.

[2] Air Freight Forwarders Association of America (AFFA), Flying Tiger Line, Hughes Airwest, and United Air Lines.

[3] ER-1180, 45 FR 42593, June 25, 1980.

operation of less-than-fully-engaged aircraft, and to allow foreign charter-only carriers the same flexibility as other carriers, on the grounds that these changes would enhance competition and reduce government interference in business decisions. We have found that competition in air transportation brings about more efficient and better service, often at lower prices, than government regulation. And these changes received no opposition in the comments, except to the extent that U.S. carriers might not receive equal treatment at the hands of foreign governments.

We will use existing charter flight prior approval procedures to assure that foreign carriers do not employ these changes to gain undue competitive advantage over U.S. carriers. The Board now requires most foreign route carriers to obtain prior authorization for each of their off-route charter flights. 14 CFR 212.4(a). Blanket prior approval of off-route charter flights has been granted to some carriers whose countries grant substantially reciprocal rights to U.S. carriers; however, the blanket approval is subject to withdrawal at the Board's discretion if circumstances change. Order 79-12-205, p. 4, ¶ 5. The Board also has power to require approval for on-route charters on an *ad hoc* basis. 14 CFR 212.4(b). Thus, any charter flight by a foreign route carrier is now or can quickly be made subject to the Board's prior approval review procedures. For any flight subject to prior approval, the Board may deny operating authority if the carrier's home government does not grant a similar privilege to U.S. carriers. 14 CFR 212.6. So if a country did not grant U.S. carriers authority to operate combination passenger/cargo charters, the Board could require prior approval for and deny authority to operate similar flights by that country's route carriers.

For foreign carriers with authority to operate only charter flights, the prior approval situation is somewhat different. Most of these carriers have a provision in their section 402 permits allowing the Board to impose prior approval requirements. Part 214, which governs operations by these carriers, contains no prior approval requirement. We are amending Part 214 in this proceeding to allow the Board to require prior approval for all flights newly permitted by this rule. Thus, Part 214 will permit the Board to require prior approval for such operations by those carriers whose permits do not now contain prior approval provisions.

The Board has issued a proposal to amend some of its prior approval regulations in another proceeding (EDR-394, 45 FR 2331, January 11, 1980), but those amendments, if adopted, will not prevent use of prior approval powers for the purposes discussed here. Also, the changes made here can easily be incorporated into EDR-394 if that proposal is adopted.

We conclude that existing Board procedures are adequate to handle problems of unequal treatment of U.S. carriers that State is concerned about. Existing prior approval procedures can be tailored to fit the needs of particular situations. They are therefore a more flexible and less burdensome means of assuring equal treatment of U.S. carriers than the routine approval requirement suggested by State, as they will be invoked only in those situations where U.S. carriers are denied commensurate authority by foreign governments. We see no reason at present to impose a blanket prior approval requirement for combination passenger/cargo charters by foreign carriers, but we will not hesitate to impose one in the future if circumstances require it.

We are not adopting the proposal to require notice of baggage limitations in charter operator-participant contracts, because it does not seem necessary at present, and might serve only to clutter the documents and inconvenience charter operators in conforming their contracts. The proposal was made out of a concern the passenger charter participants might have their baggage limitations constricted by air carriers who hoped to charter other cargo in the belly of the plane. However, the regulations permitting such belly cargo charters have been in effect since September 1979, and we have encountered no serious problems with baggage allowances. Some charter operators already include a baggage limitation notice in their charter materials, and most restrictions fall within a standard range, and have not caused undue inconvenience. It is likely that many charter passengers are already attentive to the possibility of baggage restrictions, and do not need a mandatory notice to protect their interests. In some cases, too, the charter operator may not know at the time of contracting for a flight the exact baggage limits that the air carrier will allow, so a uniform baggage notice may not be feasible. Thus, a required notice may create more problems than it would solve. Unreasonable or unexpected baggage limitations without adequate notice to participants may, of course, be considered unfair or deceptive practices by the Board, but we see no need at this time for the mandatory notice proposed in SPDR-73.

The most controversial issue in EDR-351B was whether cargo should be permitted to be chartered on scheduled flights. TIA and World strenuously opposed the idea with several arguments. They alleged that the Board did not state its reasons for proposing the change clearly enough to permit the public to file meaningful comments, especially since it did not cross-reference a pending hearing case in which a legal issue relevant to such charters had been argued. They claimed that the pendency of that case, the *Cargo Charter Transfer Rate Investigation*, Docket 27557, precluded rulemaking on the instant proposal until the hearing case was finally decided. They also asserted that such charters would allow carriers to charge different rates for like goods receiving the same service, resulting in unfair discrimination against some shippers. TIA and World said that chartering cargo on scheduled service should not be allowed without express Congressional approval, and that it would be wiser to grant such authority, if at all, in exchange for liberalized charter rights for U.S. carriers in international negotiations. If such charters were permitted, they saw charter carriers being put at an unfair competitive disadvantage by not being able to compete with scheduled service while the scheduled carriers drew away charter traffic.

Seaboard supported the concept, saying that it would increase operating efficiency by allowing increased load factors on scheduled flights. IAAA, an association of air freight forwarders and air cargo agents, welcomed the change as a new source of competitive pressure on air carriers, which it expected to result in lower rates. Also, IAAA saw the proposal as consistent with deregulation policy to leave business decisions to the discretion of management as much as possible.

We have decided to adopt the proposal to allow charter cargo to travel on scheduled flights. We are convinced that it would allow more efficient aircraft operations and induce more competition in the charter market. These results are consistent with our procompetitive policies and would benefit consumers of cargo services.

We first note that varying prices for shipment of like goods is not necessarily undesirable. Shippers have long taken advantage of charter arrangements to ship relatively large amounts of cargo at prices below scheduled rates. Charters allow a shipper and a carrier to form an individualized contract for carriage, without pre-existing requirements as to

price, obligation to serve, or other typical scheduled service requirements. By this means, shippers can negotiate lower prices and specially-tailored service, while carriers can attract and plan for efficient large-volume freight movements. To date, charter arrangements have been restricted to unscheduled charter-only flights, not held out to the public as available without special arrangements. Some carriers, however, have expressed a desire to offer charter capacity on their regularly scheduled flights, which may also be held out for routine service to the general public. Permission to charter cargo on scheduled flights will allow carriers to make arrangements to fill scheduled capacity that would otherwise fly empty. By making more charter capacity available, it will increase rivalry for charter traffic. By permitting more efficient operations, it will save fuel. Thus, such arrangments will promote energy efficiency and stimulate competition.

We reject TIA/World's allegation that the discussion in the proposal was inadequate to provide a basis for meaningful comments. They complained that the Board did not provide "the underlying data and legal and policy considerations that motivated the change." We disagree. The type of change contemplated, and the type of operations it would permit, were stated clearly, along with the Board's expectation that it "would allow even greater flexibility in offering reduced rates and service alternatives in international cargo transportation." The notice also discussed the similarities and differences between part charter service and high-weightbreak scheduled service. The change proposed was not a complicated or technical one, requiring a detailed explication to make the reader aware of the issues involved. The Administrative Procedure Act, 5 U.S.C. 553(b)(3), requires that notices of proposed rulemaking "shall include . . . either the terms or substance of the proposed rule or a description of the subjects and issues involved." This standard has been interpreted to require notice that is "sufficiently descriptive of the 'subjects and issues involved' so that interested parties may offer informed criticism and comments." *Ethyl Corp. v. EPA*, 541 F.2d 1, 48 (D.C. Cir. 1976), cited in *National Small Shipments Traffic Conference, Inc. v. CAB*, No. 78-2163 (D.C. Cir., Feb. 11, 1980), p. 29. This proposal stated the terms and substance of the proposed change, and its purpose was clear, especially when read in the context of other cargo charter changes proposed and adopted in the same docket. We conclude that our notice fully satisfied APA requirements.

We also conclude that it was proper for the Board to have initiated this proceeding before the *Cargo Charter Transfer Rate Investigation* was finally decided, and that it is proper, and desirable, to adopt a final rule now. In the hearing case, the administrative law judge found that the cargo charter transfer concept—a concept similar to unrestricted charter carriage on scheduled flights—was inherently discriminatory under section 404 of the Act. But there is nothing improper about deciding in this legislative-type proceeding the legal question of whether charters on scheduled service are inherently discriminatory, even if that issue is also involved in the pending proceeding on cargo charter transfers. Just as Congress may change the law in the midst of court litigation, so the Board may separately decide a legal issue that may be applicable to a parallel proceeding. This is in no sense a "prejudgment," because prejudgment occurs only when the decisionmaker "has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." *Gilligan, Will & Co. v. SEC*, 267 F. 2d 461, 469 (2d Cir.), *cert. denied*, 361 U.S. 896 (1959). Accord, *Association of National Advertisers, Inc. v. FTC*, No. 79-1117 (D.C. Cir. Dec. 29, 1979).

There are no longer any facts at issue in the *Cargo Charter Transfer* proceeding. The case began in 1975 with an investigation of the lawfulness of high-weightbreak scheduled tariffs. It was expanded to include the issue of whether the carriage of charter cargo on scheduled service was lawful, in response to a petition for rulemaking to allow such service. Later, Seaboard filed a tariff to allow charter shipments that had already been contracted for to be transferred to scheduled flights on a space-available basis. This was the charter transfer concept. The investigation into high-weightbreak scheduled tariffs was mooted and removed from the case as a result of subsequent agreements between the carriers. Also, Seaboard's charter transfer tariff was found unlawful and rejected by Order 78-6-165 as a violation of Board regulations. Thus, the only issue still alive in the case at the time of the ALJ's initial decision was the lawfulness of cargo charters on scheduled service. The ALJ found such operations to be unjustly discriminatory under section 404 of the Act, and the Board took discretionary review of that issue in Order 79-4-33. In taking review, the Board stated:

> We note that finding of the ALJ that the cargo charter transfer concept does, in theory, have merit, "in that it would reduce direct operating expenses for chartered services, improved scheduled service load factors, result in substantial fuel savings, and provide benefits with respect to the quality of the environment and airport congestion." [Initial Decision at p. 11] Because of these potential benefits we are not disposed to equate the discrimination which the judge found inherent in this concept with the "unjust discrimination" prohibited by Section 404(b) without some reason to believe that the discrimination may result in harm to a protected interest which requires our intervention.
>
> We are, however, concerned about the lack of attention paid to demonstrating the nature and extent of harm which would flow from the discrimination found to inhere in this concept and on whom the harm would fall. As the air transportation industry becomes more competitive we are rethinking our traditional approach to the question of what makes discrimination "unjust" under Section 404(b) of the Act. (Order 79-4-33, p. 2).

The Board later proposed in EDR-351B to amend its regulations to permit such operations. We see no reason why we should not dispose of the discrimination question in this proceeding. The issue is purely legal, since no tariff proposals or other adjudicatory matters remain to be decided in the hearing case. In their comments on EDR-351B, TIA and World incorporated by reference their brief to the Board on discretionary review in the hearing case, and we have considered that brief, Trans World Airlines' brief, and the ALJ's initial decision in reaching our decision here. No other parties opposed the cargo charter transfer concept on discretionary review.

TIA and World alleged that charters of cargo on scheduled flights were contrary to Congressional intent. However, they cite no statutory authority or legislative history to support this claim. The language of the statute is quite plain: "[N]o air carrier * * * shall commingle, on the same flight, *passengers* being transported in interstate, overseas, or foreign charter air transportation with *passengers* being transported in scheduled interstate, overseas, or foreign air transportation. * * *" [emphasis added]. Section 401(n)(1). That provision has been limited to passenger charters since its adoption in Pub. L. 95-504 (the Airline Deregulation Act of 1978). The recent International Air Transportation Competition Act of 1979, Pub. L. 96-192, enacted after this rule was proposed, left the passenger limitation intact, even though Congress specifically amended section 401(n)(1) to apply to foreign air transportation. However, Congress did not take that

opportunity to expand the prohibition to include cargo charters. The fact that Congress effectively permitted any combination of charter and scheduled cargo service in the United States by deregulating domestic cargo transportation in Pub. L. 95-163 further convinces us that its attitude with respect to cargo charters on scheduled flights is different from that with respect to passenger charters on scheduled flights.

We also reject TIA/World's suggestion that we should hold authority to carry charter cargo on scheduled flights in reserve, to trade for more liberal charter operating rights. We will continue to press for liberalized charter flights with other countries, but in our view, the shipping public and the industry would be better served by permitting the additional operating efficiencies of allowing cargo charters on scheduled service than by using them exclusively as a bargaining tool. The Board can still control authority to operate cargo charters on scheduled flights by the prior approval mechanism, should it become necessary to do so from a foreign aviation relations point of view.

TIA and World complained that "for the time being [they] must depend on charter capacity as the primary means of providing cargo services in international markets," and that "access of Transamerica and World to the transoceanic cargo markets as scheduled all-cargo carriers will be strictly circumscribed by foreign policy constraints." We are not convinced that cargo charters on scheduled service would be as devastating to TIA and World's business as they imply, even under the worst circumstances. In 1979, international civilian cargo charters accounted for less than 10 percent of TIA's total operating revenues, and World did not operate even a single civilian cargo charter flight. Clearly, cargo traffic is not the lifeblood of these two carriers. Nevertheless, we recognize that various foreign governments impose restrictions on TIA and World that would limit their opportunities to compete with cargo charters on scheduled flights. But those disadvantages are not so substantial as to outweigh the significant cost savings and competitive benefits that cargo charters on scheduled flights would make possible. In a number of important markets, TIA and World have substantial competitive opportunities. For example, Belgium, the Netherlands, Finland, Israel, Jordan, Syria, Korea, and Singapore have been liberal in issuing scheduled authority, which would enable TIA and World to offer cargo charters on scheduled service of their own in direct competition with other scheduled carriers. In other markets where scheduled authority is not so easily obtainable, TIA and World can compete using the extremely flexible passenger-cargo charter operations permitted by this rule. To be sure, in Japan TIA and World have disadvantages in competing for cargo traffic. We have decided, however, that it is more consistent with the public interest to permit the substantial consumer benefits of cargo charters on scheduled service now than to defer those benefits until foreign governments adopt more procompetitive policies.

TIA and World argued that allowing cargo charters on scheduled flights would effectively destroy the statutory system of regulated international cargo rates by allowing carriers to deviate from tariff rates by merely calling a shipment "chartered." We are not persuaded that charters on scheduled service present any threat to the tariff system. The likelihood that in the future more traffic will travel as chartered rather than as individually-waybilled shipments does not undermine the tariff system. If the public prefers charter service, we will not preclude that choice simply because tariffs do not govern that service. We believe that the public should be allowed to choose whatever mix of charter and scheduled service it desires. Tariffs are designed to enable the Board to regulate the prices that carriers hold out to the general public for routine, scheduled service, and there is no indication that they will cease to serve that function.

TIA and World's remaining argument, which relies in part on the analysis of the judge in the *Cargo Charter Transfer* case, hinges on the alleged discriminatory consequences of allowing charter cargo to be carried on scheduled service. TIA and World assert that such operations could permit scheduled carriers to give preference to some customers, who would get charter space at low rates, at the expense of other shippers, who would have to pay higher scheduled rates and would not receive any loading priority over charter shipments. They said that these practices violate the "rule of equality"—that like shipments receiving the same service may not be charged different rates—and that such practices cannot be adequately policed by the Board without a flat prohibition against charters on scheduled service. They also contended that charters on scheduled flights could be discriminatory if they resulted in shipments tendered under scheduled rates being refused for lack of space.

We have recently been reviewing our traditional restrictive attitude toward carriers that appear to offer like service for similar traffic at different rates.[4] It has become apparent that in some cases we have unnecessarily restricted practices that may have a sound economic basis and do not have significant destructive potential. We have also found that apparently similar services may in fact differ significantly as to the costs they impose on the aviation system, and particular, the carriers that offer the services.

In PS-93 the Board adopted a policy for domestic air transportation of not considering a rate to constitute unjust discrimination or unreasonable preference or prejudice (referred to there and hereafter as "unreasonable discrimination") unless several factors can be shown. Not only must the rate be out of proportion to the cost of service, when compared to other rates (the traditional definition of economic discrimination), but it must involve a reasonable probability of significant long-run economic injury to consumers that cannot be eliminated by competitive forces within a reasonable time. Even then, it will be held unjustly dicriminatory only if it lacks compensating benefits. Thus the "rule of equality" is not a decisive test of unjust discrimination.

We now decide that these criteria are appropriate for evaluating whether cargo charter shipments on international scheduled service are unreasonably discriminatory. As we said in issuing the domestic policy statement, many of these fundamental policy considerations are applicable to foreign air transportation. And the International Air Transportation Competition Act of 1979, P.L. 96-192, is a mandate from Congress to extend procompetitive policies to the international scene. TIA and World commented that the lack of open entry in international cargo markets will prevent competition from policing discrimination. We disagree. Under current conditions, we are confident that market forces will continue to restrain carriers' pricing policies. There are many carriers already authorized to offer cargo service in international markets, and the United States has established liberal cargo entry arrangements with a number of important countries, including Belgium, the Netherlands, Finland, Israel, Jordan, Syria, Korea, and Singapore. All-cargo flights by more than one carrier are now offered in most major international

[4] PS-93, 45 36058, May 29, 1980.

cargo markets. Further, directly-competitive cargo capacity is available on main deck "combi" aircraft and in the bellies of passenger aircraft, which are operated by a large number of carriers. Thus, competing carriers will be available to move in on profitable business opportunities. And at points where direct air service is not available, opportunities for intermodal (air/land) transportation provide a competitive stimulus.

TIA and World have not made a convincing showing of any of the factors that would lead us to find unreasonable discrimination. First, we disagree with their claim that charter rates will be out of proportion to the cost of service, exemplified by their statement that charter shipments would receive the same service as scheduled shipments at lower prices. Charter shipments do not receive the same service as scheduled shipments, because the acceptance of a charter shipment is discretionary with the carrier, while the scheduled shipment cannot be unreasonably refused. Therefore, higher capacity costs are incurred for scheduled shipments, because the volume of cargo cannot be as closely regulated to suit available capacity. Also, the carrier has far less control over the type of cargo it must carry on scheduled service, since it has a duty to carry whatever is tendered to it. On charter service the carrier can limit its costs by giving preference to those shipments that it can most efficiently handle. Thus, charter rates are not necessarily disproportionate to costs. Furthermore, shippers can opt for whichever form of service—charter or waybilled—meets their cargo needs.

Second, TIA and World have not made the necessary showing of likelihood of long-run economic injury to consumers that cannot be eliminated by competitive forces. They claimed that carriers would discriminate between charter shippers by preferring their most important customers first if charter space were limited. But the fact that carriers have some discretion in accepting charter shipments does not mean that they will act unfairly. The existence of competing carriers is a strong incentive to allocate cargo space fairly. Commercial shippers tend to be well informed about market conditions and alternatives and able to protect their own interests. Notably, no shippers or consumers opposed our proposal, and the IAAA, an association of air freight forwarders and cargo agents, supported it. We are not ready to assume that carriers will discriminate unjustly in allocating scarce space, and the energy and competitive benefits of cargo charters on scheduled flights are too important to be prohibited without much more persuasive evidence of harm to shippers.

TIA and World also warned that shippers wishing to use regular scheduled rates might not be able to obtain space on a flight if capacity had already been engaged for charter shipments. They argue that it would be discrimination to refuse service to shippers under scheduled tariffs if space would have been available but for prior charter contracts. We disagree. It is not in the business interest of a carrier to provide inadequate capacity for any of its customers, especially when it would mean losing a higher-rated shipment than what otherwise is carried. Carrier managements are clearly in the best position to allocate space in the most efficient manner, and we will leave them free to do so. If charter shipments might sometimes take up space that could have been used for scheduled shipments tendered later, that is not on its face a matter of discrimination. Even under the existing system, there is no guarantee that there will always be available space for every shipment tendered before flight time. We see no evidence that consumers will suffer serious long-run injury.

Neither the ALJ nor TWA raised any points in Docket 27557 that were not presented by TIA/World. We conclude that there is no basis for finding that cargo charters on scheduled service will lead to unreasonable discrimination. We will reverse the ALJ's holding on discrimination in Docket 27557 and terminate that proceeding.

Technical Changes

We take this opportunity to simplify and make technical changes to affected portions of our regulations. The language of the final rule will therefore differ from that of the proposal, although the substance of the changes is the same. The sections governing charter flight limitations, § 207.11, 208.6, 212.8, and 214.7, are being revised to deal separately with passenger and cargo charters. Thus, paragraphs (a) and (b) will govern passenger charters, following the language and restrictions that have heretofore applied to both passengers and cargo. Split and planeload passenger charters are dealt with in a single paragraph, instead of separately as under the existing regulations. A new paragraph (c) is being added to each of the sections. It applies to cargo charters, making clear that there are no limitations on cargo charters, and that part charters of cargo are permitted. Cross-references to § 207.11, 208.6, 212.8, and 214.7 in § 207.10, 208.5, 212.14, and 214.5, respectively, have been changed to conform to the new amendments.

U.S. carriers have been required in the past to file reports on their off-route charter operations, primarily to enable the Board to police off-route charter restrictions. This information is contained in Schedule T-41, described in Section 25 of 14 CFR Part 241. Since we are removing all restrictions on off-route charter operations, Schedule T-41 is no longer necessary, and we are eliminating it. The revocation of this provision is a technical change that flows from the decision to remove off-route charter restrictions. We therefore find for good cause that noticed and public procedure on this change are unnecessary.

We note that the permits of some foreign charter-only carriers do not specifically incorporate the provisions of Part 214 by reference. However, all such permits are by their terms subject to such reasonable terms, conditions, and limitations as the Board may impose. Since the provisions of Part 214 are terms, conditions, and limitations, these amendments apply to all foreign charter-only carriers regardless of whether their permits are specifically conditioned on compliance with Part 214.

In voluntary compliance with Executive Order 12044 on improving government regulations, the Board has adopted a policy of stating its plans for evaluating all final rules that it issues.[5] The Board will evaluate this rule if complaints from U.S. and foreign air carriers, air freight forwarders, shippers, and other persons affected by it indicate need to do so.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 207, *Charter Trips and Special Services*, as follows:

1. The table of contents is amended to read:

Sec.

* * * * *

207.5 [Reserved]
207.6 [Reserved]

* * * * *

§ 207.1 [Amended]

2. The definitions of "Off-route" and "On-route" in § 207.1 are revoked.

3. Section 207.3 is amended by eliminating the references to off-route and on-route charters, so that it reads:

§ 207.3 Scope of authorization.

Charter trips and other special services may be performed by air carriers, subject to the limitations and regulations set forth in this part. The

[5] PS-88, 44 FR 65052, November 9, 1979.

limitations and regulations herein specified as applicable to charter trips shall be applicable to all charter trips regardless of whether the authority to conduct such trips derives from section 401(e)(6) of the Act or the carrier's certificate of public convenience and necessity or from a special or general exemption issued by the Board.

4. Sections 207.5, 207.6, and 207.7a are revoked and reserved.

5. The introductory paragraph in § 207.10 is revised to read:

§ 207.10 Reports of emergency commercial charters for other direct carriers.

Each air carrier that performs an emergency charter transporting commercial traffic for another direct carrier shall file a report with the Bureau of Domestic Aviation within 30 days following each charter trip, containing the following information:

* * * * *

6. Section 207.11 is amended by revising paragraphs (a) and (b)(1), revoking and reserving paragraph (b)(2), amending paragraph (b)(3), and adding new paragraphs (b)(4) and (c), to read:

§ 207.11 Charter flight limitations.

(a) Passenger charter flights (trips) in air transportation shall be limited to the following:

(1) Air transportation pursuant to contracts with the Department of Defense where all of that portion of the capacity configured for passengers of an aircraft has been engaged by the Department;

(2) Air transportation performed on a time, mileage, or trip basis where all or part of the capacity of an aircraft has been engaged by any of the following persons, except that the passenger charterers must together engage all of that portion of the capacity of the aircraft configured for passengers other than any portion intended by the carrier for direct sales to the general public under paragraph (a)(3) of this section;

(i) By a person for his own use (including a direct air carrier or a direct foreign air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or in cases of emergency, of commercial traffic: *Provided,* That emergency charters for commercial traffic shall be reported in accordance with § 207.10);

(ii) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(iii) By an overseas military personnel charter operator as defined in Part 372 of this chapter.

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter.

(3) Air transportation performed on a time, mileage, or trip basis by a direct air carrier in accordance with Subpart E. Any person may engage all or any portion of an aircraft from a direct carrier. However, the direct carrier must specify in its charter prospectus (§ 380.28) the number of seats available for sale directly to the general public, and if that number is less than the entire capacity of the aircraft configured for passengers, the remaining seats must be engaged as provided in paragraph (a)(2) of this section.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(2) of this section shall contract and pay for 20 or more seats.

(2) [Reserved]

(3) This section permits the carriage of charter cargo on the main deck or in the belly of a passenger charter flight.

(4) Charter passengers shall not be transported on flights carrying individually-waybilled or individually-ticketed traffic.

(c) Cargo charter flights in air transportation are permitted without limitation, except that emergency charters of commercial traffic by a direct air carrier or a direct foreign air carrier shall be reported in accordance with § 207.10. Charter cargo may be transported both on schedule flights carrying individually-ticketed and/or individually-waybilled traffic and on flights carrying charter traffic only.

7. Section 207.20 is amended by deleting the phrase "both on-route and off-route," to read:

§ 207.20 Applicability of subpart.

This subpart sets forth the special rules applicable to pro rata charters.

(Sec. 102, 204, 401 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 92 Stat. 1710, 49 U.S.C. 1302, 1324, 1371)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-24041 Filed 8-8-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 208

[Economic Regulations Dockets 31788 and 36113; Amdt. No. 26 of Part 208; Regulation ER-1191]

Terms, Conditions, and Limitations of Certificates To Engage in Charter Air Transportation; Removal of Limitations on Cargo Charters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is removing all limitations on cargo charters, includng the requirements that the entire capacity of the aircraft be engaged and that cargo not be carried on the main deck with passengers. The Board makes these amendments under it procompetitive policy to permit maximum competition in charter services. The reasons for the changes are explained in ER-1190 (FR Doc. 80-24041), dated August 1, 1980, issued simultaneously in Part V of this issue of the Federal Register.

DATES: Adopted: August 1, 1980. Effective: September 6, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5088.

The Civil Aeronautics Board amends 14 CFR Part 208, *Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation,* as follows;

1. The introductory paragraph in § 208.5 is revised as follows:

§ 208.5 Reports of emergency commercial charters for other direct carriers.

Each charter air carrier that performs an emergency charter transporting commercial traffic for another direct carrier shall file a report with the Bureau of Domestic Aviation within 30 days following each charter flight, containing the following information:

* * * * *

2. Section 208.6 is amended by revising paragraphs (a) and (b)(1), revoking and reserving paragraph (b)(2), amending paragraph (b)(3), and adding a new paragraph (c), to read:

§ 208.6 Charter flight limitations.

(a) Passenger charter flights in air transportation performed by charter air carriers shall be limited to the following:

(1) Air transportation pursuant to contracts with the Department of Defense where all of that portion of the capacity configured for passengers of an aircraft has been engaged by the Department;

(2) Air transportation performed on a time, mileage, or trip basis where all or

part of the capacity of an aircraft has been engaged by any of the following persons, except that the passenger charterers must together engage all of that portion of the capacity of the aircraft configured for passengers other than any portion intended by the carrier for direct sales to the general public under paragraph (a)(3) of this section.

(i) By a person for his own use (including a direct air carrier or a direct foreign air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or in cases of emergency, of commercial traffic: *Provided,* That emergency charters for commercial traffic shall be reported in accordance with § 208.5);

(ii) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(iii) By an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter.

(3) Air transportation performed on a time, mileage or trip basis by a direct air carrier in accordance with Subpart F. Any person may engage all or any portion of an aircraft from a direct carrier. However, the direct carrier must specifiy in its charter prospectus (§ 380.28) the number of seats available for sale directly to the general public, and if that number is less than the entire capacity of the aircraft configured for passengers, the remaining seats must be engaged as provided in paragraph (a)(2) of this section.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(2) of this section shall contract and pay for 20 or more seats.

(2) [Reserved]

(3) This section permits the carriage of charter cargo on the main desk or in the belly of a passenger charter flight.

(c) Cargo charter flights in air transportation are permitted without limitation, except that emergency charters of commercial traffic by a direct air carrier or a direct foreign air carrier shall be reported in accordance with § 208.5.

(Sec. 102, 204, 401 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 92 Stat. 1710, 49 U.S.C. 1302, 1324, 1371)

By the Civil Aeronautics Board:
Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-24042 Filed 8-8-80; 8:45 am]
BILLING CODE 6320-01-M

14 CFR Part 212

[Economic Regulations Dockets 31788 and 36113; Amdt. No. 36 of Part 212; Regulation ER-1192]

Charter Trips by Foreign Air Carriers; Removal of Limitations on Cargo Charters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is removing all limitations on cargo charters, including the requirements that the entire capacity of the aircraft be engaged and that cargo not be carried on the main deck with passengers. Transportation of charter cargo on scheduled flights is also permitted. The Board makes these amendments under its procompetitive policy to permit maximum competition in charter services. The reasons for these changes are explained in ER-1190 (FR Doc. 80-24041), dated August 1, 1980, issued simultaneously in Part V of this issue of the Federal Register.

DATES: Adopted: August 1, 1980. Effective: September 6, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia Lofts DePuy, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5878.

The Civil Aeronautics Board amends 14 CFR Part 212, *Charter Trips by Foreign Air Carriers,* as follows:

1. Section 212.8 is amended by revising paragraph (a) and (b)(1), revoking and reserving paragraph (b)(2), amending paragraph (b)(3), and adding new paragraphs (b)(4) and (c) to read:

§ 212.8 Charter flights limitations.

(a) Passenger charter flights (trips) shall be limited to foreign air transportation performed by a foreign air carrier holding a foreign air carrier permit issued pursuant to section 402 of the Act authorizing such carrier to engage in foreign air transportation on an individually-ticketed or individually-waybilled basis—

(1) Where all or part of the capacity of an aircraft has been engaged on a time, mileage, or trip basis by any of the following persons, except that the passenger charterers must together engage all of that portion of the capacity of the aircraft configured for passengers other than any portion intended by the carrier for direct sales to the general public under paragraph (a)(2) of this section:

(i) By a person for his own use (including a direct air carrier or direct foreign air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or for the transportation of commercial traffic, except that emergency charters of commercial traffic shall be reported in accordance with § 212.14.);

(ii) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(iii) By an oversea military personnel charter operator as defined in Part 372 of this chapter.

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter.

(2) Where transportation is performed on a time, mileage, or trip basis in accordance with Subpart E. Any person may engage all or any portion of an aircraft from a direct foreign air carrier. However, the direct carrier must specify in its charter prospectus (§ 380.28) the number of seats available for sale directly to the general public, and if that number is less than the entire capacity of the aircraft configured for passengers, the remaining seats must be engaged as provided in paragraph (a)(1) of this section.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(1) of this section shall contract and pay for 20 or more seats.

(2) [Reserved]

(3) This section permits the carriage of charter cargo on the main deck or in the belly of a passenger charter flight.

(4) Charter passengers shall not be transported on flights carrying individually-waybilled or individually-ticketed traffic.

(c) Cargo charter flights in foreign air transportation by a foreign air carrier holding a permit issued under section 402 of the Act authorizing such carrier to engage in foreign air transportation on an individually-ticketed or individually-waybilled basis are permitted without limitation, except that emergency charters of commercial traffic by a direct air carrier or a direct foreign air carrier shall be reported in accordance with § 212.14. Charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or

individually-waybilled traffic and on flights carrying charter traffic only.

2. The introductory paragraph in § 212.14 is revised to read:

§ 212.14 Reports of emergency charters for other carriers.

Each foreign air carrier that performs an emergency charter transporting commercial traffic for another direct carrier shall file a report with the Bureau of International Aviation within 30 days following each charter flight, containing the following information:

* * * * *

(Sec. 102, 204, 402 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 757, 49 U.S.C. 1302, 1324, 1372)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-24043 Filed 8-8-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 214

[Economic Regulations Dockets 31788 and 36113; Amdt. No. 32 to Part 214; Regulation ER-1193]

Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only; Removal of Limitations on Cargo Charters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is permitting foreign charter-only carriers to operate cargo charter flights without restriction within the scope of their permits, except that the Board is retaining the right to require prior approval for such flights where a carrier's home government does not provide similar opportunities to U.S. air carriers. The Board makes these amendments under its procompetitive policy to permit maximum competition in charter services. The reasons for the changes are explained in ER-1190, (FR Doc. 80-24041) dated August 1, 1980, issued simultaneously in Part V of this issue of the Federal Register.

DATES: Adopted: August 1, 1980. Effective: September 6, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia Lofts DePuy, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5878.

The Civil Aeronautics Board amends 14 CFR Part 214, *Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only,* as follows:

1. Section 214.1 is amended to encompass both passenger and cargo transportation, to read:

§ 214.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter foreign air transportation pursuant to foreign air carrier permits authorizing the holder to engage in charter transportation only.

2. The definition in § 212.2(a) is amended to eliminate the limitation to passengers, as follows:

§ 214.2 Definitions.

(a) "Charter foreign air transportation" means charter flights of persons and/or property in air transportation * * *

3. The introductory paragraph in § 214.5 and paragraph (d) are revised to read:

§ 214.5 Reports of emergency commercial charters for other direct carriers.

Each foreign charter air carrier that performs an emergency charter transporting commercial traffic for another direct carrier shall file a report with the Bureau of International Aviation within 30 days following each charter flight, containing the following information:

* * * * *

(4) Number of passengers and/or tons of cargo transported;

* * * * *

4. Section 214.7 is revised to read:

§ 214.7 Charter flight limitations.

(a) Passenger charter flights shall be limited to foreign air transportation performed by a direct foreign air carrier—

(1) Where all or part of the capacity of an aircraft has been engaged on a time, mileage, or trip basis by any of the following persons, except that the passenger charterers must together engage all of that portion of the capacity of the aircraft configured for passengers other than any portion intended by the carrier for direct sales to the general public under paragraph (a)(2) of this section:

(i) By a person for his own use (including a direct air carrier or direct foreign air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or for the transportation of commercial traffic; except that emergency charters of commercial traffic shall be reported in accordance with § 214.5);

(ii) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(iii) By an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter;

(2) Where transportation is performed on a time, mileage, or trip basis in accordance with Subpart D. Any person may engage all or any portion of an aircraft from a direct foreign carrier. However, the direct carrier must specify in its charter prospectus (§ 380.28) the number of seats available for sale directly to the general public, and if that number is less than the entire capacity of the aircraft configured for passengers, the remaining seats must be engaged as provided in paragraph (a)(1) of this section.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(1) of this section shall contract and pay for 20 or more seats.

(2) This section permits the carriage of charter cargo on the main deck and in the belly of a passenger charter flight.

(c) Cargo charter flights in foreign air transportation by foreign air carriers holding permits to engage in charter transportation only are permitted without limitation, except that emergency charters of commercial traffic by a direct air carrier or a direct foreign air carrier shall be reported in accordance with § 214.5.

5. Paragraph (a), (b) and (c) of § 214.9a are revised to delete the word "passenger" wherever it appears and to add further provisions for prior approval, to read:

§ 214.9a Statement of Authorization; application.

(a)(1) A foreign air carrier shall not perform any charter for the transportation of commercial traffic for another direct air carrier or direct foreign air carrier (as provided in § 214.7(a)(1)) unless specific authority in the form of a Statement of Authorization to conduct such charter flights has been granted by the Board, except that no Statement of Authorization shall be required for the performance of such charter flights in cases of emergency. Emergency charters shall be reported in accordance with § 214.5. An emergency charter within the meaning of this section shall not include such circumstances as cancellation of flights due to periodic overhaul of aircraft or delay in the delivery of newly acquired

aircraft, and a foreign air carrier may not provide emergency charter trips on any day in each of three or more successive calendar weeks for any single direct carrier without a Statement of Authorization.

(2) The Board, if it finds that the public interest so requires, may at any time, with or without hearing, notify a foreign air carrier subject to this part that it shall not perform charter trips transporting cargo traffic (which may include trips that also transport passengers) in the absence of prior Board authorization. The Board's notification shall be effective for such periods and with respect to such operations as the Board may specify in the notice. Beginning not earlier than 30 days after the date of the notice, the foreign air carrier shall obtain prior authorization as provided in paragraph (b) of this section before operating flights described in the notice. Whenever the Board fails to approve the whole or part of an application for prior approval required under this paragraph, and the application was timely and properly filed, it will notify the President of the United States of its decision at least 10 days before the date of the proposed flight, and the decision shall be subject to stay or disapproval by the President within 10 days after the date of the notification.

(b) Application for a Statement of Authorization shall be submitted on CAB Form 433 to the Civil Aeronautics Board, addressed to the attention of the Director, Bureau of International Aviation. Upon a showing of good cause, such application may be transmitted by cablegram or telegram or may be made by telephone; *Provided, however,* That an application for the performance of a charter transporting commercial traffic for another direct air carrier or direct foreign air carrier, as provided in § 214.7(a)(1), must be submitted on CAB Form 433 and a copy thereof shall be served upon the Federal Aviation Administration, marked for the attention of Director, Flight Standards Service, and each U.S. certificated air carrier which is authorized to serve the same general area in which the proposed charter trips are to be performed. Each applicant shall keep on file with the Director, Bureau of International Aviation, a copy of its current standard form of charter agreement. Each application shall contain an abstract of the charter agreement setting forth the names and addresses of the operator, the charterer, and their agents, if any; a description of the proposed operations; type aircraft to be flown; and, if reciprocity has not previously been established or if any changes have occurred since the previous Board finding thereon, documentation to establish the extent to which the nation which is the domicile of the applicant grants a similar privilege with respect to U.S. air carriers. A true copy of the charter agreement actually consummated shall be transmitted to the Director, Bureau of International Aviation, as soon as practicable but in no event later than 15 days after consummation.

(c)(1) Applications pertaining to charters of commercial traffic for another direct air carrier or direct foreign air carrier shall be filed with the Board at least 45 days in advance of the date of the commencement of the proposed flights.

(2) Applications under paragraph (a)(2) of this section shall be filed with the Board at least 30 days in advance of the date of the commencement of the proposed flights.

(3) Upon a showing that good cause exists for failure to adhere to the requirements of this paragraph and that waiver of these requriements is in the public interest, applications later submitted may be considered by the Board.

* * * * *

(Sec. 102, 204, 402 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 757, 49 U.S.C. 1302, 1324, 1372)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-24044 Filed 8-8-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 241

[Economic Regulations Dockets 31788 and 36113; Amendment No. 40 to Part 241; Regulation ER-1194]

Uniform System of Accounts and Reports for Certificated Air Carriers; Elimination of Schedule T-41

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is eliminating Schedule T-41, in which certificated carriers reported their off-route charter operations. This report is no longer necessary, because it was designed mainly to allow the Board to police limitations on off-route charter operations, and those limitations are being removed. The reasons for this change are discussed in ER-1190 (FR Doc. 80-24041), dated August 1, 1980, issued simultaneously in Part V of this issue of the Federal Register.

DATES: Adopted: August 1, 1980. Effective: October 2, 1980.

FOR FURTHER INFORMATION CONTACT: Bernard Davis, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-6042.

The Civil Aeronautics Board amends 14 CFR Part 241, *Uniform System of Accounts and Reports for Certificated Air Carriers,* as follows:

1. Section 22(a) is amended by (A) Removing the entry for Schedule No. T-41 from the table entitled "List of Schedules in CAB Form 41 Report" and by (B) revising the entries for due dates January 30 and October 30 in the table entitled "Due Dates of Schedules in CAB Form 41 Report" to read as follows:

Section 22—General Reporting Instructions

(a) * * *

Due Dates of Schedules in CAB Form 41 Report

Due date	Schedule No.
* * *	
Jan. 30	P-1(a), T-1, T-2, T-3, T-3.1, T-6, T-7, T-9.
* * *	
Oct. 30	P-1(a), T-1, T-2, T-3, T-3.1, T-6, T-7, T-9.
* * *	

2. Section 25 is amended by revoking the *Charter and Special Service Revenue Aircraft Miles Flown; Calculation of Limitation of Charter Trips* title and reporting instructions for Schedule T-41.

(Sec. 204, 401, 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1710, 72 Stat. 766, 49 U.S.C. 1324, 1371, 1377)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-24045 Filed 8-8-80; 8:45 am]

BILLING CODE 6320-01-M

federal register

Monday
August 11, 1980

Part VI

Department of Energy

Economic Regulatory Administration

Powerplant and Industrial Fuel Use Act of 1978; Cogeneration Exemption

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 500, 503, 504, 505 and 506

[Docket No. ERA-R-80-24]

Powerplant and Industrial Fuel Use Act of 1978; Cogeneration Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy is proposing this rule to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C.A. 8301 *et seq.* (FUA or the Act) regarding cogeneration. FUA establishes certain prohibitions on the use of petroleum and natural gs by powerplants and major fuel burning installations (MFBI's). This proposed rule would amend the interim rule published at 10 CFR 503.37, 504.35, 505.27 and 506.35 which implements FUA Sections 212(c) and 312(c) of the Act authorizing permanent exemptions from the prohibitions of FUA for eligible cogeneration facilities. The proposed amendment would establish a statewide energy limit as a means of encouraging cogeneration in those regions of the country where there is a potential for oil and gas savings while insuring that new alternate fuel-fired capacity would not be deferred. This notice also seeks comments on a proposed amendment to the definitions of "electric generating unit" and "cogeneration facility" now contained in ERA regulations (10 CFR 500.2).

Dates: Written comments are due by November 7, 1980.

Hearing dates:

1. September 25, 1980 (and, if required, September 26, 1980), San Francisco, California, 9:30 a.m.
2. October 6, 1980 (and, if required, October 7, 1980), Boston, Massachusetts,9:30 a.m.
3. October 9, 1980 (and, if required, October 10, 1980), Houston, Texas, 9:30 a.m.

Requests to speak are due by:

1. September 18, 1980, 4:30 p.m., San Francisco.
2. September 29, 1980, 4:30 p.m., Boston.
3. October 2, 1980, 4:30 p.m., Houston.

Hearing locations will be published in the Federal Register.

ADDRESSES: All comments should be addressed to Public Hearing Management, Docket No. ERA-R-80-24, Department of Energy, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONATACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, 202-653-4055

Dorothy M. Hamid (Public Hearings Division), Economic Regulatory Administration, Department of Energy, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461, 202-653-3974.

Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 7002, 2000 M Street, N.W., Washington, D.C. 20461, 202-653-3217.

Robert L. Davies (Office of Fuels Conversion), Economic Regulatory Administration, Department of Energy, Room 3002, 2000 M Street, N.W., Washington, D.C. 20461, 202-653-3649.

Alan W. Starr (Office of Utility Systems), Economic Regulatory Administration, Department of Energy, Room 4103D, 2000 M Street, N.W., Washington, D.C. 20461, 202-653-3903.

G. Randolph Comstock (Office of General Counsel), Department of Energy, Room 6-G-087, 1000 Independence Avenue, S.W., Washington, D.C. 20461, 202-252-2967.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments on Interim Rule
III. Discussion of Proposed Rule
A. Electrical Generating Unit
B. Cogeneration Exemption
1. Statewide Energy Limit
2. Individual Exemptions Based on Oil/Gas Savings
3. Public Interest Cogeneration Exemptions
IV. Specific Comments Requested
V. Comment Procedures
VI. Proposed Rule

I. Background

FUA prohibits the use of oil and natural gas in certain new and existing major fuel burning installations consisting of a boiler (MFBI's) and powerplants including cogenerators unless ERA grants an exemption for such use. Sections 212(c) and 312(c) of the Act specifically provide for exemptions for oil and natural gas use in eligible new and existing cogenerators.

ERA has published final rules which (1) define MFBI, electric powerplant, and cogeneration facility; (2) describe the prohibitions applicable to new powerplants and MFBI's as well as exemptions available; and (3) provide administrative procedures for applying for exemptions at 45 FR 38276, *et seq.* (June 6, 1980). ERA has also published interim rules relating to the prohibitions against oil and gas use in existing facilities and exemptions available at 44 FR 43190 (July 23, 1979) and 44 FR 28594 (May 15, 1979).

Interim rules relating to exemptions for cogeneration facilities were published at 44 FR 28950, 28994, 29014 (May 17, 1979), and 44 FR 43176, 43204, 43219 (July 23, 1979).

After reviewing the comments on the interim rules, ERA determined that before final rule on cogeneration was adopted, it would be appropriate to propose and solicit public comment on other methods of implementing the cogeneration exemption sections of FUA. These proposed rules contain new provisions which may replace or be added to pertinent parts of the interim rule when the final rule is published. Pending the issuance of a final rule, ERA will continue to function under the interim regulations §§ 503.37 (new powerplants), 504.35 (existing powerplants), 505.27 (new MFBI's), and 506.35 (existing MFBI's).

We propose in this rule to combine § 505.27 with § 503.37 so that one section covers both new MFBI and powerplant cogeneration facilities. We also propose combining § 506.35 with § 504.35 so that both existing MFBI and powerplant cogeneration facilities are treated in one section of the regulation.

II. Comments on Interim Rule

Under the interim rule, a petitioner could qualify for a cogeneration exemption by demonstrating that the oil or gas to be consumed by the cogeneration facility would be less than that which would otherwise be consumed in the absence of the cogeneration facility. Generally, the petitioner would have to demonstrate that the industrial facilities which the proposed cogenerators would replace would be eligible for another exemption under FUA. In addition, the interim rules provided for a cogeneration exemption where the petitioner could demonstrate that granting the exemption would be in the public interest because of special circumstances, such as technical innovation or maintaining industry in urban areas.

A number of commenters said that ERA incorrectly interpreted the cogeneration exemption by basing it on a test of oil or gas savings rather than on overall fuel efficiency. ERA disagrees and believes its interpretation is correct. FUA permits the granting of a permanent exemption for cogeneration if the petitioner demonstrates that the economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in the facility. Under these proposed rules, as in the interim rules, ERA interprets the phrase "economic

and other benefits" in the Act to mean that in granting an exemption, oil or gas will be saved without deferring the development of alternate fuel-fired capacity or that the exemption would be in the public interest.

ERA received many comments regarding the 10-year forecast pertaining to the calculation of oil and gas savings. Some commenters suggested that the 10-year forecast was too far into the future and that five to seven years would be more appropriate. Other commenters suggested that the 10-year forecast was inadequate and that the life of the plant should be used as a basis for this calculation. Further, with regard to the 10-year forecast, some commenters pointed out that the regulations failed to state whether the savings were to be calculated and displayed for the full 10-year period or only for the final year. Finally, commenters noted that the regulation did not indicate the point at which the forecast was to begin. The 10-year calculation has been removed from this proposal.

In place of the 10-year calculation in the interim rules, ERA is proposing regional utility oil/gas consumption estimates based on projections for the year 1988 to aid petitioners in calculating potential oil/gas savings. The year 1988 was chosen as it is the last year for which fuel consumption projections are available from the National Electric Reliability Council (NERC). These estimates based on NERC data reflect ERA's judgment of the additional amount of oil/gas required to generate a kilowatt hour of electricity in each geographic region. They will be updated as new data become available. ERA proposes to use these estimates for purposes of the cogeneration oil/gas savings calculation. However, the petitioner may propose other estimates which may better reflect a specific situation.

One commenter pointed out that in calculating oil savings accruing from cogeneration, ERA should give additional consideration to the types of oil to be saved and recognize the differences between No. 2 oil (middle distillates) and No. 6 oil (residual fuel).

While ERA distinguishes between distillate and residual fuel oil use in the special rule for temporary public interest exemptions to burn natural gas (10 CFR Part 508), the duration of those exemption does not exceed 5 years. Permanent cogeneration exemptions are for the life of the facility. Because ERA does not have the data to predict supplies of various types of petroleum fuels over the long term, the proposed rule does not differentiate between distillate and residual fuel oil savings. However, petitioners who have data or evidence which differentiate among petroleum products may submit such evidence to support their petition for an exemption.

Another commenter suggested that the calculation of oil or gas savings could be simplified by assuming that the purchased power displaced by the addition of a new cogeneration unit to an exisiting facility would displace oil consumption at the rate of 10,000 Btu/kWh of purchased power. ERA has rejected this approach as it does not account for whether alternate fuels or oil and gas were used to generate the displaced electricity.

ERA received one comment seeking clarification of the evidentiary requirement contained in §§ 503.37(d)(5), 504.35(d)(5), 505.27(d)(5), and 506.35(d)(5) of the interim rules (concerning new and existing MFBI and powerplant cogenerators) that a petitioner submit all evidence required by the regulations with respect to any applicable exemptions to which the units would be entitled. The units referred to in these sections of the interim rules, and in the corresponding section of the proposed rule, are the units which will be replaced by the cogeneration facility, and not the cogeneration unit itself. ERA has also revised this part of the proposed regulation to clarify this point. (See Section III of this preamble.)

One commenter questioned the necessity for the evidentiary requirement that peitioners submit information identifying all persons and their roles in the proposed cogeneration facility. ERA has reviewed this requirement and agrees that such detailed identification is not necessary. Accordingly, the proposed regulation only requires information identifying owners and operators of the project.

III. Proposed Rule.

ERA is proposing a new approach that encourages cogeneration in those regions of the country where there is a potential for oil and gas savings while insuring that new alternate fuel fired capacity would not be deferred. This approach proposes three methods for qualifying for a cogeneration exemption. Two of these three methods, one of which is based on a showing of oil/gas savings and the other in the public interest, are contained in similar form in the interim rule. The third method is for use by petitioners in states in which oil and gas are likely to be used for the foreseeable future. It is explained in detail below.

In addition, ERA is seeking public comments on a proposal to amend the current definition of electric generating unit to avoid the unintended treatment of certain cogenerating MFBI's as powerplants and, thus, perhaps inhibit cogeneration which would otherwise be economically efficient.

A. Electric generating unit (Section 500.2).

Section 103(a)(7)(A) of FUA defines "powerplant" to mean "any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange * * *." One of the exceptions from the definition of electric generating unit is for any cogeneration facility, less than half of the annual electric power of which is sold or exchanged for resale.

A case may arise where a cogenerator is defined as a powerplant on the basis of the amount of its electrical output which is sold or exchanged. For example, under the current definition contained in the Interim Rule, a cogenerator performing an industrial function would be designated as a powerplant if more than 50% of the electrical output were sold or exchanged, even though the electricity produced constituted a small fraction of the total energy output of the cogenerator.

A new cogeneration facility which is a "powerplant", would be subject to the statutory provisions applicable to new powerplants. These provisions prohibit the use of oil and gas in new boilers, gas turbines, and combined cycle units as well as the construction of a powerplant without the capability of using an alernate fuel as its primary energy source. There is no corresponding statutory prohibition on construction applicable to new MFBI's and the statutory prohibition on oil and gas use by new MFBI's applies only to boilers. While prohibitions by rule on the use of oil and gas in MFBI's which consist of combustion turbines, combined cycle units and internal combustion engines may be issued by ERA, such rules have not been promulgated.

An existing cogenerating facility which is classified as a "powerplant" would be subject to several statutory prohibitions on the use of natural gas. There is no such prohibition applicable to existing MFBI's. The possibility that an existing MFBI might be reclassified as a powerplant should it be used to cogenerate electricity may discourage such cogeneration.

ERA believes that the current definition of "electric generating unit" in the rule may be overly conservative and might result in the designation of most new industrial cogenerators as powerplants and discourage persons planning new facilities from including cogeneration capacity due to the regulatory requirements of obtaining an exemption.

ERA seeks common on whether a more liberal definition of "electric generating unit" which would treat most

cogenerators as MFBI's is appropriate. However, we realize that such a definition might encourage the use of oil/gas fired cogeneration in cases where oil/gas use might otherwise have been prohibited. The definition proposed below would remove certain restrictions on the development of cogeneration in the industrial sector and could allow use of cogeneration based on economic considerations. Furthermore, combined cycle, gas turbine and diesel cogenerators which would be classified as MFBI's are not presently covered under FUA prohibitions and would not need to petition ERA for an exemption under these proposed rules.

In consideration of these factors, ERA is seeking public comment on a more liberal definition of the term "electric generating unit" to mean "a facility, over half the useful energy output of which is in the form of electricity."

In addition, the following exclusions to the definition of "electric generating unit," specified by the statute, would be retained in this amended definition:

(1) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(2) Any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale.

ERA seeks comment on this proposal and on whether the dividing line between MFBI and powerplant cogenerators should be "half the useful energy output" or some other percentage.

ERA is also proposing an alternative definition of an electric generating unit:

"Electric generating unit" does not include: (1) Any "electric generating unit" subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and (2) Any cogeneration facility, less than half of the annual electric power generation of which is sold to or exchanged with an electric utility for resale by the utility to consumers other than the cogenerating supplier.

This definition would only refer to *net* electrical power sold or exchanged for resale, and does not include amounts sold to the grid but repurchased by the cogenerator firm for its own use. This concept could also be adopted in the primary proposal by adding the word "net" before "annual electrical power generation" in the second exception.

ERA has reservations about whether this definition is permitted under FUA and, as noted above, we are not yet persuaded that it is appropriate, since it could result in a large increase in oil and gas prices which are currently held below market clearing prices. Moreover, it could result in the deferment of baseload alternate fuel-fired electrical generating capacity. We solicit comments whether either of the alternative definitions are appropriate, as well as the impact they may have with respect to the development of energy efficient cogeneration and on future alternate fuel use for electrical generation.

ERA also solicits other appropriate methods of distinguishing MFBI and powerplant cogenerators and their impact on cogeneration and future oil and gas use.

B. Cogeneration Exemption [Sections 503.37 (new MFBI and powerplant cogenerators) and 504.35 (existing MFBI and powerplant cogenerators)]

FUA provides exemptions from its prohibitions on oil and gas use upon a finding that a petitioner has demonstrated that "economic and other benefits of cogeneration" are unobtainable unless petroleum or natural gas are used in the facility.

A congeneration facility may be either a new or existing electric powerplant, or an MFBI which produces electric power and any other form of useful energy. Exemption provisions for new and existing MFBI's and powerplants are alike under the proposed rule.

In this proposed rule ERA sets forth eligibility requirements for the cogeneration exemption. ERA proposes to interpret the statutory phrase "economic and other benefits of cogeneration," to mean that oil/gas savings will be achieved by the petitioner without deterring the development of alternate fuel-fired capacity. However, if it can be shown that the exemption would be in the public interest, ERA will not require the above oil/gas savings demonstration.

The oil/gas savings would generally result from the displacement of oil/gas-fired powerplants and industrial boilers by more efficient cogeneration units. Such industrial and powerplant cogeneration units could supply electric power to the grid and produce steam using less oil or gas than would be needed for an ordinary powerplant or industrial boiler to supply the same amounts of electricity and steam.

ERA is proposing this rule based on three primary considerations:

(1) Inherent efficiency of congeneration;

(2) Simplification of the cogeneration exemption petition where oil and gas savings are likely; and

(3) Avoidance of the deferral of alternate fuel fired electrical generating capacity.

In recognition of the above, ERA has proposed three methods of qualifying for a cogeneration exemption. They are:

(1) Statewide Energy Limit;

(2) Individual oil/gas savings; and

(3) Public interest provisions.

The statewide energy limit is the mechanism by which ERA proposes to recognize the potential for cogeneration to realize oil and gas savings in those geographic areas where oil and gas are now, and will continue to be, the primary fuel in the industrial and utility sectors. The exemption provisions based on a showing of either individual oil/gas savings or public interest considerations are similar to provisions of the interim rules.

1. *Statewide Energy Limit*

This rule proposes to identify those geographic regions in which oil/gas savings would be achieved by cogeneration, insure that new alternate fuel fired capacity would not be deferred and provide an expeditious process to grant exemptions.

A. The Process

Under the proposed rule, ERA would establish an initial "Statewide Energy Limit" in certain states for use by oil/gas fired cogenerators covered by the FUA prohibitions.

This energy limit would be the annual energy input allotted among all of those cogenerators in that state which are seeking exemptions under this provision of the proposed rule. Thus, for example, the energy input to a new oil or gas burning combined cycle cogenerating MFBI would not be counted against this limit because in the absence of a rule or order for such purpose, no prohibitions on oil and gas use under FUA are applicable, and therefore no exemptions necessary. This limit, which is discussed below, would be based upon the amount of oil/gas electric generating capacity which could be displaced in a state before there was a risk of displacing new alternate fuel-fired powerplants.

ERA is proposing a certification process whereby cogeneration capacity is allocated to qualified facilities up to the established statewide limit. ERA is also proposing that in those oil/gas dependent states, where capacity limits have been set, the governor of those states, or the governor's designee, certify to ERA whether petitioners are eligible cogenerators. This certification takes the place of demonstrating oil/gas savings.

ERA is proposing that the states provide this certification in the belief that states are better able than ERA to determine which cogeneration projects would best meet the long term energy needs of the jurisdiction. ERA solicits comments on standards, if any, which a state could use in certifying eligible cogenerators.

ERA proposes that any state could negotiate with ERA to raise the "Statewide Energy Limit." This negotiation would result in an

agreement that ERA would grant additional specified increments to the "Statewide Energy Limit" on a quid-pro-quo basis as certain agreed upon milestones were achieved. These milestones could, for example, be in the form of specified reductions in oil and gas use and/or bringing into service certain specified new alternate fuel-fired electrical generating facilities.

B. Specification of "Statewide Energy Limit"

ERA believes that the greatest potential for oil and gas savings from cogeneration exists in those states where oil and gas currently is and is expected to continue to be a primary energy source for baseload electrical generation. In such States oil and gas savings could be realized by new energy efficient cogenerators displacing the electrical production from existing, less efficient oil and gas fired powerplants.

ERA has identified states in which oil and gas are currently used as a primary energy source in baseload powerplants and will continue to be needed in large amounts for baseloading in the immediate future. Those states initially identified by ERA are California, Florida, Louisiana, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, Texas and New York.

The process used to identify these states and establish an initial "Statewide Energy Limit" is summarized below: [1]

1. ERA has estimated for each state the potential oil/gas that can be "backed-out" of electrical generation by the use of oil/gas fired cogeneration. These estimates [2] provide a potential market for cogeneration based solely on backing out oil/gas fired baseload powerplants in 1988, the last year in which NERC projections are available. These state estimates are shown in Table 1.

Additionally, estimates were made of the potential market development for oil- and gas-fired cogeneration in those oil/gas dependent states. The estimates of the market for oil- and gas-fired cogeneration were prepared by DOE based upon a number of cogeneration studies and included, to the extent feasible, consideration of various technical, economic and institutional constraints, many of which are difficult to assess accurately. The projections assume no FUA restrictions on cogeneration development.[3] These two sets of estimated data provide a basis for setting the initial "Cogeneration Electrical Capacity Limit."

2. ERA proposes to set the initial "Cogeneration Electrical Capacity Limit" for each state at ⅓ of the lesser of the two estimates described in (1) above: (i) the current oil- gas-fired electric generating capacity that cogeneration could ultimately displace, or (ii) the amount of oil- gas-fired cogeneration electric generating capacity that would be expected to be developed in the state during the 1980's if such development were unrestricted by FUA.

The initial limit of ⅓ of the lesser of the two estimates was used because it appears large enough to accommodate exemption petitions likely to be received in the immediate future but should not provide an incentive for the states to defer alternate fuel-fired capacity. We solicit comment on the appropriate level to be set in the final rule.

3. ERA then proposes that this "Cogeneration Electrical Capacity Limit" be converted to total energy input on the basis that the "typical" cogenerator is a topping-cycle cogenerator, meeting the efficiency standards promulgated by the Federal Energy Regulatory Commission (FERC) under the Public Utility Regulatory Policies Act (see 18 CFR 292.205). ERA believes that the topping-cycle cogenerator would be the most prevalent cogenerator and that the FERC efficiency standard provides a reasonably conservative estimate of the relationship of energy input to cogenerator electrical capacity. On this basis every megawatt of cogeneration electrical capacity would be equivalent to 1.5×10^{11} BTU/yr (or 24,700 BBL of oil equivalent per year) of fuel input to cogenerators in that state. ERA requests comment on this proposed procedure for establishing initial Statewide Energy Limits for cogenerators.

Alternative Proposal for States Using Oil and Gas for Baseload Electrical Generation

ERA seeks comment on an alternative proposal for determining eligibility for cogeneration exemptions in those states in which there are a significant number of existing oil/gas fired baseload powerplants.

In this proposal ERA has assigned to each of the oil/gas dependent states an initial "Cogeneration Electric Capacity Limit" [4] consisting of a total megawatt *output* instead of a total energy input as described in the primary proposal. Under this approach, the limit is focused solely on the electrical generation by the cogenerator and does not include the nonelectrical output (e.g., industrial steam, heat, etc.).

[1] For a full description of the analysis see the *Draft Regulatory Analysis* on file in Room B-110, 2000 M St., N.W., Washington, D.C. 20461.

[2] For a full description of the analysis of oil/gas displacement by oil/gas-fired cogeneration, see the following document *Potential in States and Regions for Displacing Oil or Gas via Oil- or Gas-Fired Cogeneration*, May 1980, on file in Room B-110, 2000 M St., N.W., Washington, D.C. 20461.

[3] For a full description of the cogeneration market development estimates see the document *Market Development of Oil- and Gas-Fired Cogeneration Installations in Selected States Between 1980 and 1990*, May 1980, on file in Room B-110, 2000 M St., N.W., Washington, D.C. 20461.

[4] Derivation of Cogeneration Electrical Capacity Limit was discussed previously as part of the primary proposal.

Table 1.—Proposed Statwide Energy Limit

State	(1) Maximum oil/gas electrical capacity potentially displaced by cogeneration (MW)[6]	(2) Cogeneration capacity likely to be developed in this decade if unrestricted by FUA (MW)	(3) Initial cogeneration electrical capacity (MW) (⅓ of the lesser of column (1) or (2))	(4) Initial statewide energy limit[7] 10^{12} Btu per year
Alaska	462	(3)	(4)	(4)
Texas	15,903	1,115	372	55.8
Florida	7,143	140	47	7.1
Louisiana	4,072	660	220	33
California	9,223	1,435	478	71.7
New England[1]	3,126	220	78	11.7
Maine			15	2.3
New Hampshire			5	0.8
Vermont			5	0.8
Massachusetts			28	4.2
Connecticut			19	2.9
Rhode Island			6	0.9
New York	5,723	350	117	17.6
Kansas	223	(3)	(5)	(5)
Oklahoma	191	(3)	(5)	(5)
All others	0	(3)	0	0

[1] Cogeneration potential for New England was apportioned to states based on population and on population density with a minimum of 5 MW for each state.

[2] One-third of (1) or (2), whichever is lower.

[3] Not estimated.

[4] Due to non-interconnected operation of utilities in Alaska, case-by-case treatment is required.

[5] Due to the small ultimate potential, case-by-case treatment is proposed.

[6] These projections make no assumptions on the development of cogneration project themselves.

[7] Based upon 1 MW of electric cogeneration capacity equivalent to 1.5×10^{11} Btu/yr.

Under this alternative, the process would be similar to the primary proposal, but the petitioner would be required to submit additional data as part of a petition for an exemption.

The proposed process would be as follows:

- ERA assigns an initial "Cogeneration Electrical Capacity Limit" for all states consisting of a total number of megawatts;
- The governor or the governor's designee would certify to ERA that a proposed cogenerator was within the "Cogeneration Electrical Capacity Limit" for the state;
- Once so certified, a petitioner would be required to submit evidence on additional qualifications for an FUA exemption (discussed below);
- As with the primary approach, ERA and the state could negotiate a higher "Cogeneration Electrical Capacity Limit" (the process for this would be identical to that discussed in the primary proposal).

The state certification in this alternate proposal attests that the electrical output of the cogenerator is within limits established by ERA to preclude displacement of new alternate fuel-fired capacity. However, under this proposal, oil and gas savings would only be demonstrated if the petitioner shows that the industrial unit replaced by the cogenerator would have used oil or gas.

Thus, cogeneration facilities which would qualify under this alternate proposal are those which are certified by the state and will generate steam in place of either (a) a nonjurisdictional unit; (b) an existing unit which is not capable of using an alternate fuel; or (c) a new jurisdictional unit or an existing unit capable of using an alternate fuel for which a reasonable demonstration is made that the facility would be eligible for an exemption.

The primary proposal—State Energy Limit—has three distinct advantages over this alternate proposal.

- Once certified by the state, the petitioner has met the requirement to demonstrate an oil or gas savings with minimal regulatory burden.
- A state may allocate the energy limit according to its needs.
- The State Energy Limit correctly focuses on a primary concern—the total oil/gas energy used by cogenerators.

The alternate proposal, Cogeneration Electrical Capacity Limit, has the advantage of focusing on the capacity of electrical generation which could be displaced by cogeneration.

ERA seeks comment on this alternate proposal and the comparative merits of the primary and alternate proposal.

B. Individual Exemptions Based on Oil/Gas Savings.

There are likely to be situations where a petitioner who intends to build an oil- or gas-fired cogenerator can demonstrate oil/gas savings but where the State Energy Limit option is not available, such as when:

(1) The petitioner's unit is located in a state with a zero State Limit, or

(2) The petitioner's unit is located in a state where a state certification cannot be obtained because the State Limit has been met, or

(3) The petitioner does not opt to use the State certification process.

In these situations, ERA will accept petitions for exemptions based on a demonstration of oil/gas savings.

The oil or gas savings assessment will generally consist of two parts: a calculation of oil/gas savings and an assessment of the likely impact on the relevant electric utilities' schedules for adding alternate fuel-fired generating facilities. The petitioner would calculate the difference between the amount of oil or gas to be used with and without the exemptions. If the amount of oil or gas used would be less if the cogeneration facility were built and it would not result in deferment of alternate fuel-fired electrical generation capacity, the petitioner would be granted an exemption.

A petitioner would make two sets of computations:

(1) The amount of oil or gas used if petitioner did *not* build the cogenerator, including energy used for industrial purposes and energy used in providing the amount of electricity which would have been generated by the cogenerator; and

(2) The amount of oil and gas used by the proposed cogenerator to produce both energy for industrial purposes and electricity.

If (2) is less than (1), a petitioner could be granted an exemption if it could also be demonstrated that the cogenerator would not result in utilities deferring schedules for adding alternate fuel-fired generating facilities.

ERA has proposed estimates to aid petitioners in computing the amount of existing oil/gas use for production of electricity which would be displaced by electricity generated by the proposed cogeneration. The estimates are calculated for all regions of the United States (see § 503.37(e) and 504.35(e)). These estimates are based on projected regional fuel use for electric generation and are based upon National Electric Reliability Council (NERC) regions, except where lack of system interties justified further regional subdivision.[5]

In determining the amount of oil or gas used to produce energy for industrial purposes in the absence of a cogeneration exemption, ERA proposes that oil use be assumed if the industrial unit replaced by the cogenerator would have been:

1. Non-jurisdictional to FUA;
2. An existing facility to be retired early which is not alternate fuel capable;
3. A new facility or an existing alternate fuel capable facility which would reasonably qualify for a permanent exemption under FUA.

ERA will evaluate petitions on a case by case basis. In certain instances ERA recognizes that it would be difficult for a petitioner to demonstrate that the proposed cogenerator would not result in deferral of alternate fuel-fired powerplant capacity expansion plans. However, in such cases, ERA may still grant the exemption if the petitioner agrees to undertake conservation measures, replacement of other existing oil/gas fired units, or other measures designed to reduce oil/gas use which would result in long-term oil/gas savings.

Since exemptions under the proposed approach would be granted on a case by case basis and petitioners would be permitted to provide any additional information to ERA in support of its request, we solicit comments on the methodology proposed in this section and any other criteria which should be included in the rule.

We note that other avenues may be available other than the cogeneration exemption proposed in this Notice. For example, a temporary exemption based on a commitment to the future use of synthetic fuels (see § 503.24) may be utilized. Many cogeneration projects will employ as part of the system combustion turbines that can operate on synthetic liquid and gaseous fuels in addition to petroleum or natural gas. Under the synthetic fuels temporary exemption, a petitioner certifies that it will be able to comply with the applicable prohibition imposed by the Act through use of a synthetic fuel derived from coal or another alternate fuel, but not until the end of the proposed period. Information required in support of such a petition is limited to a description of the synthetic fuel proposed to be used; such synthetic fuel temporary exemptions may be granted on the basis of a certification.

3. *Public Interest Cogeneration Exemptions.*

Finally, as in the interim rules, a cogeneration exemption is available regardless of cogeneration capacity limits or oil/gas savings if it can be

[5] A full description of the regions and the projects are documented in *Potential in States and Regions for Displacing Oil or Gas via Oil-or-Gas Fired Cogeneration*, May, 1980, on file in Room B-110, 2000 M Street, N.W., Washington, D.C.

demonstrated that such an exemption would be in the public interest. Such a demonstration of special circumstances might, for example, include a showing that the facility would be technically innovative, or that it would help to maintain employment in an urban area. We solicit comments on specific criteria which might be included in the final rule.

IV. Other Comments Requested.

A. One commenter suggested that ERA should accept certification issued by the Federal Energy Regulatory Commission (FERC), of a "qualified cogenerator" pursuant to rules promulgated under the Public Utility Regulatory Policies Act of 1978 (PURPA) [see 18 CFR 292.203] as adequate qualification for a cogeneration exemption.

The FERC rules set certain operating and efficiency standards and ownership criteria for qualifying cogeneration facilities. ERA has in this rulemaking requested comment on whether FERC operating and efficiency standards should be adopted as terms and conditions of an exemption.

ERA realizes that there are several definitions of cogeneration under various statutes serving various purposes. While ERA does not believe the ownership criteria for qulaifying cogeneration facilities under PURPA is applicable to the determination of eligibility for an exemption under FUA, comments are requested on the applicability of the PURPA definition of cogeneration exeption under FUA.

B. In ERA's final FUA rules published June 6, 1980, at 45 FR 38276, "cogeneration facility" was defined as "an electric powerplant" or a major fuel burning installation that produces:

(1) Electric power; and

(2) any other form of useful energy * * * electricity generated by the cogeneration facility must constitute more than ten (10) percent and less than ninety (90) percent of the useful energy output of the facility.

ERA seeks comment on this definition and in particular whether the ten (10) percent figure should be increased (perhaps to 20%) to reflect a more realistic commitment to cogeneration. Further, ERA seeks comment on whether it would be more appropriate to make this an eligibility requirement for the cogeneration exemption rather than a part of the definition of "cogeneration facility."

C. ERA is concerned that the regulatory burden imposed by the requirement under FUA to demonstrate the infeasibility of using mixtures and by the data required on the environmental impacts of the facility may disxourage cogeneration. In particular, the burden may ber excessive for small users who lack the technical expertise to make these findings. ERA requests comments on mechanisms for alleviating these burdens.

D. Terms and conditions may be imposed upon the receipient of a cogneration exemption. ERA seeks comment on whether it should delete the general reporting requirement contained in the interim rule relating to conservation and to oil and gas use and impose the following standard terms and conditions on recipients of a cogeneration exemption under the aproposals pertaining to the State Energy Limit:

Standard terms and conditions. By petitioning for an exemption under the subsection dealing with states using oil and gas for baseload electrical generation, the petitioner accepts, upon grant of the exemption, the following terms and conditions:

(i) The quality of any petroleum to be burned in the unit will be the lowest grade available, technically feasible, and capable of being burned consistent with applicable environmental requirements;

(ii) Petitioner shall report annually the hours of use and the fuel consumption in the previous calendar year for the unit;

(iii) The petitioner, after due public notice from DOE and an opportunity to comment, agrees to terminate the use of oil and natural gas in the unit receiving the exemption when DOE finds that there is an available supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source.

(iv) Operating and efficiency standards developed under PURPA by FERC (see 18 CFR 292.205).

(A) *Topping-cycle facilities.* For any new topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, the useful power output of the facility plus one-half the useful thermal energy output, during any calendar year period, must:

(1) Subject to subparagraph (2) of this paragraph be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; or

(2) If the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility.

For any other topping-cycle cogeneration facility no efficiency standard will be applied as a standard term or condition.

(B) *Bottoming-cycle facilities.* For any new bottoming-cycle facility for which any of the energy input is supplementary firing using natural gas or oil, the useful power output of the facility must, during any calendar year period, be no less than 45 percent of the energy input of natural gas and oil used for supplementary firing.

For any other bottoming-cycle cogeneration facility no efficiency standard will be applied as a standard term or condition.

Note: ERA recognizes that term and condition (iii) would promote the manufacture and use of synthetic fuel by providing a readily available market. However, cogenerators are likely to use synthetic fuels when economic, regardless of the term and condition, and in cases where synthetic fuel use is not economic, its required use could impair the financial viability of cogeneration. ERA invites comment on this matter.

V. Comments and Public Hearing Procedures

A. *Written comments. ERA invites praticipation in this rulemaking by the submission of data, views or arguments with respect to the issues set forth above and otherwise concerning this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation, Docket No. ERA-R-80-24. Submit fifteen copies. All comments received will be available for public inspection in the DOE Reading Room 5B-180, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. ERA will consider all comments received by November 7, 1980.*

Identify separately any information or data considered to be confidential and submit them in writing, one copy only. ERA reserves the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public hearings: (1) Request procedure. The time and place for the hearings is indicated in the "DATES" section of this preamble.

You may make a written request for an apportunity to speak at the hearings, providing a phone number where you may be contacted through the day before the hearing.

ERA will notify each person selected to be heard before 4:30 p.m. on the last working day before each hearing date.

In the event that a hearing is cancelled, every effort will be made to publish advance notice in the Federal Register. Moreover, actual notice will be given to all persons scheduled to testify

at the hearing. As it is not possible to give actual notice of cancellation or changes in the date or time of a hearing, persons planning to attend any hearing are advised to contact the public hearings division of the DOE office on the working day immediately preceding the date of the hearing to confirm that it will be held as scheduled.

(2) Conduct of the hearings. ERA reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. We may limit the time alloted each speaker, based on the number of persons who ask to be heard.

A DOE official will preside at the hearings, which will not be judicial or evidentiary in nature. Only those conducting the hearings may ask questions. At the conclusion of all initial oral statements, each speaker will be given an opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations. Questions may be submitted to be asked of any speaker. Such questions should be submitted three days before the hearing or, if necessary, submitted in writing to the presiding officer. We will determine whether the question is relevant, and whether the time limitations permit it to be presented for asnwer. The presiding officer will announce any further proceudral rules needed for the proper conduct of the hearing. We will have a transcript of the hearing made and will retain the entire record of the hearing, including the transcript, and make it available for inspection at the DOE Freedom of Information Office, Room 5B-180, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

The draft regulatory analysis of the proposed regulations, as contemplated by Executive Order No. 12044, is appended to this Notice. DOE is currently reviewing its responsibilites under the National Environmental Policy Act of 1969 for this rulemaking. At this time it is not anticipated that an environemtnal assessment or impact statement will be required.

(Department of Energy Organization Act, 42 U.S.C.A. 7101 *et seq.;* Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C.A. 8301 *et seq.;* E. O. 12009, 42 FR 42 4267).

In consideration of the foregoing, § 500.2 of ERA final regulations and §§ 503.37, 504.35, 505.27 and 506.35 of ERA Interim Regulations, implementing the Powerplant and Industrial Fuel Use Act of 1978, are proposed to be amended as set forth below.

Issued in Washington, D.C., on August 1, 1980.

Hacel R. Rollins,

Economic Regulatory Administration.

PART 500—DEFINITIONS

Section 500.2 is amended by revising the definitions of "cogeneration facility" and "election generating unit" as follows:

§ 500.2 Definitions.

* * * * *

"Cogeneration facility" means an electric powerplant or a major fuel burning installation which producres:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) which is, or will be, used for industrial, commercial or space heating purposes.

* * * * * *

"Electric generating unit" means a facility, over half the useful energy output of which is in the form of electircitiy. The term "electric generating unit" does not include—

(1) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(2) Any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale. [See Appendix A for alternative language defining "electric generating unit"].

PART 503—NEW FACILITIES

PART 504—EXISTING ELECTRIC POWERPLANTS

Sections 503.37 and 504.35, *Cogeneration,* are revised to read as follows:

§§ 503.37 and 504.35 Cogeneration.

(a) *Eligibility.* ERA may grant permanent exemption for cogeneration if the petitioner demonstrates that the economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used, by demonstrating to the satisfaction of ERA at least the following criteria:

(1) The State limit on the total amount of energy to be consumed by cogenerators receiving exemptions under this paragraph, (as listed in paragraph (f) of this section) will not be exceeded by the addition of the facility; or

(2) The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with paragraph (c) of this section; or

(3) It would be in the public interest to grant an exemption to the cogeneration facility because of special circumstances such as technical innovation or maintaining industry in urban areas.

[See Appendix A for alternative eligibility criteria]

(b) *Specifications of the cogeneration facility.* (1) The equipment to produce electric energy and another form of useful energy, which is or will be used for industrial, commercial, or space heating purposes, does so through the sequential use of energy.

(2) Electricity generated by the proposed cogeneration facility must constitute more than 10 [20] percent of the useful energy output of the facility and less than 90 [80] percent of the useful energy output.

(c) *Calculation of oil and gas savings.* There is an oil and gas savings if the oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility. The calculation of the oil and gas which would otherwise be consumed must be in accordance with paragraphs (c) (1) and (2) of this section.

(1) Except for the case described in paragraph (c)(2) of this section, the oil or gas which would otherwise be consumed must be calculated as follows:

(i) Include the oil or gas that would be consumed by facilities that are or would be too small to be covered by the FUA regulations. In the case of new small industrial units, demonstrate that it would be reasonable to construct units of that size.

(ii) Include the oil or gas that would be consumed by units in place (existing or exempt) and covered by FUA, if they are less than 40 years old in the case of a field-erected unit or less than 20 years old in the case of a package unit. In the case of existing units, do not include units that have burned an alternate fuel or which are capable of burning an alternate fuel, and, only include units described in this subparagraph if they will be retired or shut down if this exemption is granted.

(iii) Include the oil or gas that would be consumed by units not yet constructed that would be covered by the FUA regulations only if the petition includes a demonstration that each unit would be entitled to an exemption.

(iv) Include the oil or gas that would be consumed by powerplants to generate electricity supplied to the grid to the extent that such electricity will not longer be supplied by the grid. This figure may be based on the guidelines provided in paragraph (g) of this section.

(2) In the case of a cogeneration facility that would consist of an existing unit or an exempted unit and a new unit, calculate the amount of oil or gas that would otherwise be consumed as the sum of:

(i) The five-year annual average oil or gas consumption of the existing or exempted unit; and

(ii) The amount that would be consumed in units described in paragraph (c)(1)(i)–(iv) of this section that would now be satisfied by the new cogeneration facility.

(d) *Evidence required in support of a petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) In the case of paragraph (a)(1) of this section, a certification from the appropriate State agency, as designated by the State Governor, that the State limit on the total amount of energy to be consumed by cogenerators receiving exemptions under this paragraph will not be exceeded by the operation of the facility.

(2) In the case of paragraph (a)(2) of this section:

(i) An engineering description of the cogeneration system, including proposed output and uses thereof, with sufficient detail to ensure that the facility meets the specifications for cogeneration facilities in paragraph (b) of this section.

(ii) A detailed oil and natural gas savings calculation identifying the projected oil or natual gas consumption of the cogeneration facility and the oil or natural gas that would otherwise be used;

(iii) Where a demonstration is required that the units would be entitled to an exemption, submission of reasonable evidence with respect to the applicable exemptions; and

(3) In the case of paragraph (a)(3) of this section an explanation of the public interest factors you believe should be considered by ERA.

(e) *General requirements.* (1) The following must be included, as applicable:

(i) Use of mixtures is infeasible as required under § 503.9;

(ii) Use of fluidized bed combustion is not feasible as required under § 503.10;

(iii) Conservation measures as required under § 503.13;

(iv) Petroleum and natural gas consumption as required under § 503.14; and

(v) Environmental impact analysis as required under § 503.15.

(f) *Designated capacity limits.* (1) Subject to the provisions of paragraph (f)(2) of this section, the following initial limits of energy to be consumed by cogenerators for the granting of exemptions for cogeneration units within each of the designated jurisdictions have been established.

Jurisdiction	Initial statewide energy limit (10^{12} Btu's/yr.)
Texas	55.8
Florida	7.1
Louisiana	33.0
California	71.7
New York	17.6
Maine	2.3
New Hampshire	0.8
Vermont	0.8
Massachusetts	4.2
Connecticut	2.9
Rhode Island	0.9
All Others	0

(2) The limits established under paragraph (f)(1) of this section may be increased upon petition by States or by ERA on its own motion. In such cases, a plan may be negotiated by ERA and the States with the aim of reducing oil and gas use as well as minimizing the displacement of alternate-fuel capacity with oil or gas fired cogeneration.

(g) *Incremental Utility Oil/Gas Consumption Estimates.* The following table provides regional estimates of the number of Btu's of oil/gas which may be expected to be saved per kilowatt hour (kWh) of electricity displaced by cognerated electricity. These estimates may be used by a petitioner in calculating oil/gas savings.

Table—*Regional Estimates of Oil Gas Savings Attributable to Electricity Backed Off the Grid by Cogeneration**

Region name		Oil/gas savings Btu/kWh
NPCC	New England, New York	7200
MAAC	Pennsylvania, New Jersey, Maryland, Delaware, D.C.	4700
SERC (except Florida).	Virginia, N. Carolina, S. Carolina, George, Alabama, Tennessee, Eastern Mississippi, Florida panhandle.	300
Florida	Florida (except panhandle)	8900
ECAR	Ohio, W. Virginia, Kentucky, Indiana, Southern Michigan.	100
MAIN	Illinois, Eastern Wisconsin, Eastern Missouri, Northern Michigan.	200
SPP	Western Mississippi, Arkansas, Northern Louisiana, Southern and Western Missouri, Kansas, Northern and Eastern Texas, Oklahoma, Eastern New Mexico.	7000
ERCOT	Texas (except SPP areas)	9900
MARCA	Eastern Montana, N. Dakota, S. Dakota, Minnesota, Iowa, Nebraska, Western Wisconsin.	800
WSCC/East	Southern Idaho, Central Montana, Utah, Wyoming, Colorado, Western New Mexico, Arizona.	1000
WSCC/West	California, Oregon, Washington, Nevada, Areas served by Bonneville Power Administration.	7000

*Data are based upon expected utility capacity and oil/gas use in 1986; see the document *Preliminary Data on Incremental Utility Oil and Gas Consumption*; May, 1980; on file in Room B-110; 2000 M St., N.W., Washington, D.C.

Example: The proposed cogeneration project is located in Eastern Mississsippi, and would displace one million kilowatt hours (kWh) from the grid each year. To determine oil/gas savings associated with electricity backed off the grid:

1. The above table identifies your region as "SERC (except Florida)."
2. The oil/gas savings for your region according to the table are 300 Btu/kWh.
3. The annual oil/gas savings attributable to electricity backed off the grid by your cogenerator is:
   1,000,000 kWh × 300 Btu/kWh = 300,000,000 Btu.

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

PART 506—EXISTING MAJOR FUEL BURNING INSTALLATIONS

§§ 505.27 and 506.35 Cogeneration [Deleted]

§ 505.27 and § 506.35 are deleted, effective 60 days from the date of publication of this rule.

Appendix A—Alternative Regulatory Language

ERA requests comments on the following alternative regulatory language.

1. *Electric Generating Unit (§ 500.2).* "Electric generating unit" does not include: (1) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and (2) Any cogeneration facility, less than half of the annual electric power generation of which is sold to or exchanged with an electric utility for

resale by the utility to consumers other than the cogenerating supplier.

2. *Eligibility criteria for cogeneration exemption (§§ 503.37 and 504.35(a)(2)).* (a)(2) The cogeneration capacity limit for the state listed in paragraph (f) of this section, will not be exceeded by the addition of the facility and the facility will be generating steam in place of

(i) A non-jurisdictional unit. In the case of proposed units which would be non-jurisdictional because of size, it must be demonstrated that it is reasonable to construct units of the size proposed; or

(ii) An existing or an exempted unit which is less than 40 years old in the case of a field erected unit or less than 20 years old in the case of a package unit, which will be shut down if this exemption is granted. Units deemed by ERA to be capable of burning alternate fuels may not be included for purposes of this subparagraph; or

(iii) The facility is generating steam which would otherwise require the construction of a new jurisdictional unit or an existing unit capable of burning alternate fuels if a reasonable demonstration is made that the facility would be eligible for a permanent exemption * * *

Draft Regulatory Analysis for Powerplant and Industrial Fuel Use Act Cogeneration Exemption

August 1980.

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I. Introduction

ERA believes that cogeneration must be examined in light of the following attributes.

- Cogeneration performs both the functions of an industrial facility and a powerplant.
- Cogeneration offers the potential for efficient energy use.
- Many institutional barriers currently exist to widespread use of cogeneration.

To take advantage of the attributes of cogeration and to address the concern that cogeration development might deter the planning and development of new alternate fuel-fired baseload electrical generating capacity, ERA is propsing an approach under the Fuel Use Act (FUA) that encourages cogeneration in a context of oil and gas savings without deferring new alternate fuel fired capacity.

The more efficient use of oil and gas through cogeneration is consistent with a goal of FUA "to * * * minimize the use of natural gas and petroleum as a pimary energy source * * * "

In addition this rule proposes to clarify an ambiguity in the definition of electric generating unit which may present a bar to development of cogeneration.

As discussed below, ERA has several broad generic options for treating the permanent exemption for oil and natural gas use by cogenerators.

II. Fuel Use Act Cogeneration Alternatives

A. No Specific Cogeneration Exemption

ERA could conceivably not implement the discretionary cogeneration exemption; arguing that other remedies are available under FUA. ERA rejects this approach as the Act specifically provides an exemption based on the "economic and other benefits" of cogeneration. ERA believes that such an exemption must be provided.

B. Public Interest

Cogeneration is subject to many institutional barriers. ERA believes that demonstrations of oil/gas cogeneration that would eventually lead to widespread efficient use of alternate fuels to satisfy energy needs would be in the public interest. ERA believes other examples of public interest would be restoration of inner cities and other key national goals.

C. Energy Efficiency

One possible of cogeneration could be granting exemptions solely on the basis of efficient energy use. Thus the regulation would set some threshold, say "sixty percent Btu efficiency"—granting cogeneration solely on those grounds.

ERA believes that energy efficiency is only one aspect that should be considered in granting exemptions. Other aspects include the type of fuel which is being consumed and whether the fuel is oil and natural gas, coal and other renewable and non-renewable fuels.

D. Inability To Use Alternative Fuel

Two possible criteria for granting cogeneration exemptions are demonstrations that:

- Alternate fuel cannot be used in a candidate cogenerator.
- Alternate fuel cannot be used to replace the industrial and powerplant fuctions of the candidate cogenerator.

ERA believes that FUA specifically provides for a cogeneration exemption and that this approach could negate an independent meaning for the cogeneration exemption since applicants would first be required to demonstrate the non-applicability of alternate fuels for the cogenerator on the basis of cost, environment, lack of alternate site, etc.

E. Oil and Gas Savings

A possible criterion for granting the cogeneration exemption is a demonstration that oil and gas would be saved by the proposed cogenerator. This efficient use of oil and gas is constrained by the requirement that it not displace alternate fuel use.

Determination of net oil and gas savings requires examination of both the industrial and powerplant function of the cogenerator. The industrial examination can be comparatively straightforward. If the proposed oil/gas fired cogenerator replaces units not subject to FUA—such as a small industrial unit or an existing unit not capable of using an available alternate fuel—oil/gas savings can be directly attributable to the cogenerator. However, if the proposed cogenerator would replace a new jurisdictional unit or alternate fuel capable existing unit, qualification for another exemption for the industrial unit which would be replaced by the cogenerator would be required in order for any oil/gas savings to be attributed to the industrial side.

Oil/gas savings from the powerplant function of the cogenerator would be very unlikely in areas where oil/gas provide only peaking electrical generation. In certain geographic regions using oil/gas for baseload electrical generation, the oil/gas savings impact of cogenerators is far more complex and involves the impact of the cogenerators themselves on long term capacity development plans by utilities. In addition, cogeneration may achieve oil/gas savings as part of an integrated system which are not readily apparent on a unit by unit basis.

ERA has two serious problems with the oil/gas displacement approach: (1)

As discussed above it fails to provide an easily administered mechanism adapted to all georgraphic regions and (2) it fails to recognize adeuately that often oil/gas savings must be examined in terms of system-wide use of facilities and not simply on a unit by unit basis.

F. Regional Specific Treatment

Another approach can be constructed which accounts for specific regional differences in energy use yet maintains the overall framework of oil/gas savings. This approach involves the following steps:

(1) A specific oil/gas cogeneration limit is established within each state using oil/gas intensively for electrical generation.

(2) State officials designate qualified cogeneration units within the limit;

(3) Individual firms outside the state limit could apply if they demonstrate net oil savings.

ERA believes that allocating quantities of cogeneration exemption as part of a pragmatic, workable oil/gas reduction plan would be workable and effective. To this end this mechanism allows the state and its industries flexibility as part of an achievable oil/gas reduction effort. This approach recognizes regional differences by setting cogeneration limits subject to adjustment. In addition, the approach is flexible. It allows an individual firm to apply for an exemption if the cogeneration limit has been reached and negotiations have not sufficiently progressed to expand that limit.

G. Proposed Approach

ERA proposes in this rule to grant cogeneration exemptions on either a public interest grounds as discussed in section B above or as part of the Regional Specific Treatment discussed in section F.

H. Electric Generating Unit

ERA is concerned that an ambiguity in the definition of cogenerating unit may impede the development of cogeneration for both new units and as an energy efficient modification to existing industrial units.

Under the FUA rules currently in effect, an existing gas-fired industrial unit which elects to cogenerate could be classified as a powerplant. Since existing powerplants are subject to prohibition on increased gas use and must be off gas by 1990, this ambiguity could effectively discourage an energy efficient investment in cogeneration.

Furthermore, under the present rules new industrial facilities may be classified as powerplants if they happen to sell or exchange more than 50% of their electrical output—irrespective of whether the electrical output, itself, is a large or small fraction of the units total useful energy output.

To remedy this situation, ERA is proposing alternatives to clarify the definition of electric generating unit.

If ERA adopts a standard which classifies additional cogenerators as MFBIs, those new units which are combined cycle, turbine or internal combustion engines are not presently subject to prohibitions by rule. ERA believes the economics of cogeneration will then determine whether these cogenerators would be built, although ERA could prohibit individual cogenerators from using oil or gas on a case-by-case basis or by future rulemaking.

III. Impact of Statewide Cogeneration Capacity Limit

A. National and Regional Impact

In order to determine what initial limits should be placed on the development of cogeneration capacity in states consider two factors:

- The amount of oil/gas that can be displaced by the cogeneration.
- The amount of cogeneration that might potentially be put in operation.

One these figures are established by the state, it is possible to establish an initial limit that will allow gas/oil saving cogeneration to proceed while minimizing the risk that alternate fuel-fired electrical generating capacity will be deferred because of the availability of the cogeneration capacity. These initial limits will define the initial geographic impact of the oil/gas savings.

Below is a brief description of the analysis and results of oil/gas savings potential of oil- and gas-fired cogeneration. Following that is the estimate of the potential market for cogeneration in the states using oil/gas intensively for baseload generation.

1. *Potential in States and Regions for Displacing Oil or Gas via Oil- or Gas-Fired Cogeneration.* ERA has performed calculations to estimate the maximum number of megawatts of oil- or gas-fired cogeneration that could be added in each state (or interconnected region) subject to the requirement that each additional megawatt result in a net lifetime savings of oil and gas. The analysis is based on the following key assumptions:

1. Adequate measures have been taken to assure that the addition of cogeneration does not cause new utility powerplants burning alternate fuels to be delayed or cancelled.

2. A typical cogenerator operates at full capacity during all hours of the year, except for occasional outages.

3. A typical cogenerator's incremental heat rate (i.e., the additional fuel used to produce electricity, beyond the amount that would have been required to meet the non-electric energy requirement) is about half the heat rate of an oil- gas-fired powerplant (that is, 5,000 to 5,500 Btu/kWh as compared to 10,000 to 11,000 Btu/kWh). Therefore, there is a net annual savings of oil or gas if the utility system's marginal (or incremental) fuel is oil or gas at least half the time.

Generally, as more cogeneration is added, the fraction of the hours when a utility's incremental generating unit will be oil- or gas-fired will decrease. The number of megawatts of cogeneration that could be added before oil/gas savings disappear was estimated for each state based on projected 1988 utility capacity and oil/gas use (using National Electric Reliability Council (NERC) projections).

In effect, the analysis simply estimated the amount of utility oil- or gas-fired capacity that would still be operating more than 50 percent of the time in 1988. Only by replacing this oil or gas fired capacity can the typical baseload cogenerator, with twice the incremental efficiency of a conventional powerplant, produce a net savings of oil or gas.

Based on the analysis, only six states and the New England states are expected to still have enough oil/gas generating capacity by 1988 so that oil/gas savings can be achieved by adding oil/gas cogeneration. In order of megawatts of displacement oil/gas capacity, the states are Texas, Florida, California, Louisiana, New York, New England states and Alaska. A few other states are borderline cases (Kansas, Oklahoma, Arkansas, Mississippi and the PJM pool (Pennsylvania, New Jersey, Maryland, Delaware and Washington, D.C.)) and all other states have oil/gas capacity so low that there will be little likelihood that a baseload oil/gas cogenerator could cause net savings of oil and gas (See Table 1, Statewide Energy Limit, for the cogeneration capacity displacement figures).[1]

2. *Estimated Market Development for Cogeneration.* The second factor needed to determine an appropriate initial limit for cogeneration development was the estimate of total cogeneration capacity that might be developed. Estimates were made (see Table 1, Column 2) for each of the states mentioned above where potential existed for oil/gas savings through displacement of oil/gas generated electricity. The estimates of potential cogeneration development take into account the various technical, economic and institutional constraints on cogeneration development. Three steps were taken to derive the estimates:

(a) The technically suitable market was determined,

(b) The economically attractive market was determined, i.e., where return-on-investment is high enough to warrant investment, and

(c) The fraction of economically attractive market for oil- and gas-fired cogeneration was determined.[2]

3. *Initial Cogeneration Electric Capacity Limits.* ERA proposes to establish the initial pre-negotiation Congeneration Electric Capacity Limits to be one-third of the lesser of (i) the oil- or gas-fired electric generating capacity which cogeneration could ultimately displace (Table 1, Column 1), or (ii) the amount of oil- or gas-fired congeneration electric generating capacity that would be expected to be developed in the states during the 1980's, if such development were unrestricted by FUA (Table 1, Column 2). One third (Table 1, Column 3) appears large enough to accommodate exemption petitions likely to be received in the immediate future, but would not provide an incentive for the states to defer alternate fuel-fired capacity.

4. *State Energy Limits.* The Cogeneration Electric Capacity Limit described above (and given in Table 1, Column 3) presents the existing oil/gas electric utility system capacity which could be replaced by oil- or gas-fired cogeneration without displacing new alternate fuel-fired electric generating capacity.

An overall State Energy Limit for cogenerators can be developed based upon the Cogeneration Electric Capacity Limit (see Table 1, Column 4). Assuming the typical cogenerator is 42.5% efficient. (FERC efficiency standard for topping cycle) and the cogenerator produces 45% electric output compared with useful thermal output, one megawatt of cogeneration electrical capacity is equivalent to 16.9 million Btu/hr. of energy input. On a full year this is equivalent to 1.48×10^{11} Btu/yr. or about 24,700 barrels of oil equivalent to 1 year.

[1] For a full description of the analysis of oil/gas displacement by oil/gas-fired cogeneration, see the following document *Potential in States and Regions for Displacing Oil or Gas via Oil- or Gas-Fired Cogeneration* May, 1980, on file in Room B-110, 2000 M Street, N.W., Washington, D.C.

[2] For a full description of the cogeneration market development estimates see the document *Market Development of Oil- and Gas-Fired Cogeneration Installations in Selected States Between 1980 and 1990* May, 1980, on file in Room B-110, 2000 M Street, N.W., Washington, D.C.

B. Impact on Individual Industries and Competition

The impact upon individual industries will depend to an extent on the method of allocation of cogeneration capacity by the states. There is no basis at this point to assume that any particular industry will be favored or disadvantaged by the granting of cogeneration exemptions.

With the allocation of any scarce resource (in this case limited cogeneration capacity) it is possible that the recipients may receive some marginal competitive advantage. For example, if a state were to favor new or expanding industry versus replacement investment in its allocation of cogeneration capacity, it is possible that some marginal cost advantage could be obtained by the new facilities.

C. Impact on Levels of Government

There should be no particular impact on any level of government beyond the administrative effort required of states that receive a cogeneration capacity allocation.

D. Impact on Demographic Groups

There should be no particular impact on any demographic group. As described previously, the impact of cogeneration will be geographic because of the potential to save oil and gas in states with substantial oil- and gas-fired baseload electrical generation.

E. Other Costs and Benefits

The primary benefit achieved through cogeneration is the increased efficiency in oil use, i.e., the same amount of electricity and steam generation is obtained with less oil use. Below is an estimate of initial oil savings if cogeneration systems were installed in those states and regions specified as heavy oil and gas users. The following is assumed:

- Cogeneration accounts for the equivalent of 1312 Megawatts (the initial cogeneration allocated to the states).
- Baseload oil- and gas- burning powerplants have a heat input rate of about 10,500 Btu's/kWh and cogeneration systems a marginal heat rate of 5,250 Btu's/kWh; this yields an efficiency factor of 5,250 Btu/kWh for cogeneration.
- The baseload system capacity factor is assumed to be .7 and operation occurs 8760 hours/year.
- 6.5 million Btu's in a barrel of oil.

Estimated Oil Savings in Btu's = (MW Capacity × Capacity factor × Hours/Year) × 5250 Btu's/kWh × 1000 = (1312 × .7 × 8760) × 5250 × 10^3 = 42,237 × 10^9 Btu's/year

Estimated barrels/year saved = 6,500,000 bbls

Estimated barrels/day saved = 17,800 bbls

To the extent that inefficient oil use can be displaced, there will be a lessening of demand for oil although not as great as if the inefficient oil use were displaced by alternate fuel use other than oil or gas.

Another benefit of the cogeneration strategy described in the Notice of Proposed Rulemaking is that states that receive a cogeneration capacity limit will have some control over implementation of their state policy on cogeneration.

Another benefit is the reduced administrative burden on facilities. Facilities that seek an exemption to use cogeneration in those states with a cogeneration capacity limit will not be required to submit a demonstration of oil and gas savings.

A cost incurred if the cogeneration strategy is implemented is the additional administrative effort required by states with cogeneration capacity limits.

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federal register

Monday
August 11, 1980

Part VII

Environmental Protection Agency

Municipal Wastewater Treatment Works; Construction Grants Limitations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL 1524-7]

Municipal Wastewater Treatment Works; Construction Grants Limitations Provided by Section 316 of the Clean Air Act; Policy and Procedures

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy and procedures memorandum.

SUMMARY: The purpose of the following memorandum is to set forth policy and procedures for implementing the municipal wastewater treatment works construction grants limitations provided in section 316 of the Clean Air Act, as amended (Pub. L. No. 95-95). Section 316 of the Clean Air Act allows the Administrator of the Environmental Protection Agency (EPA) to withhold, condition or restrict municipal wastewater treatment works construction grants funded under section 201 of the Clean Water Act (Pub. L. No. 95-217) in areas where the state implementation plan (SIP) has not been approved or conditionally approved, is not being implemented, or does not provide for the increased air pollution emissions resulting directly or indirectly from the proposed treatment works.

DATE: The section 316 policy is effective August 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Cary B. Hinton, Office of Transportation and Land Use Policy (ANR-445) Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-0570; or

Roger Rihm, Office of Water Program Operations (WH-595), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-8056.

SUPPLEMENTARY INFORMATION:

Background

This notice announces final EPA policy and procedures for determining whether any limitations on federal assistance for the construction of sewage treatment works under the Clean Water Act [33 U.S.C. et seq.] are necessary to implement section 316 of the Clean Air Act [42 U.S.C. 7616].

EPA published its intent to develop policy and procedures under section 316 in the Federal Register on July 2, 1979 (44 FR 38575). Public comments were requested within 30 days of this notice. All comments that were received, including those received after this deadline, have been reviewed and considered in the development of the final policy and procedures.

The basic elements of the section 316 policy include:

- Assuring compliance of new sewage treatment works with the new source performance standards (NSPS) and the national emission standards for hazardous air pollutants (NESHAPS).
- Withholding construction grants in areas where states have not made good faith efforts to submit or carry out a SIP revision.
- Reconciling population projections used for air and water quality planning to ensure that SIPs provide an accurate accounting of the increased indirect emissions associated with new sewage treatment capacity.
- Withholding portions of construction grants for major growth-related projects in attainment areas, based upon case-by-case determinations by the EPA Regional Administrators in the following situations:

—Where the emissions associated with the project will contribute to the violation of any national ambient air quality standard (NAAQS).

—Where the SIP and water quality planning population projections are inconsistent.

Portions of the grants that fund increased capacity will be withheld until the governor is notified of the need to accommodate any unaccounted emissions in a SIP revision or the grant applicant adopts a mitigation program.

- Consulting with adjacent states to prevent the increased emissions associated with new sewage treatment capacity from interfering or being inconsistent with any other SIP.

The policy and procedures will provide EPA and the states with a mechanism for insuring that the provisions of section 316 are applied consistently nationwide in areas that are not attaining all NAAQSs or that are subject to the requirements for the prevention of significant deterioration (PSD) of air quality. EPA announces elsewhere in this Federal Register that it is considering revising the municipal wastewater treatment works construction grants regulations and/or the regulations to implement the National Environmental Policy Act (NEPA) to include provision for the requirements of section 316.

Response to Comments on Proposed Policy

On July 2, 1979 EPA published in the Federal Register and advance notice of interim policy and procedures to implement section 316. The notice included a copy of the June 8, 1979 memorandum to the Regional Administrators from David G. Hawkins, EPA Assistant Administrator for Air, Noise, and Radiation and Thomas C. Jorling, former Assistant Administrator for Water and Waste Management. The memorandum announced EPA's intent to implement section 316 by developing policy and procedures and initiating revisions to the construction grants regulations. The notice requested public comment on a recommended approach that would serve as a basis for both of these actions. EPA received 23 comment letters and 30 comments from the toll free telephone "hotline" in response to this notice. As a result of the comments, numerous changes were made to improve the section 316 policy and procedures. The following is the response to the substantive comments made on the recommended approach for implementing section 316:

1. Request for expanded comment procedures.

Several commenters requested an extension of the comment period beyond the August 1, 1979 (or 30-day) limit. No formal extension of the comment period was made, but because the final policy did take several additional months to complete, comments that were received as late as May 7, 1980 were considered. One commenter recommended that EPA establish a national advisory task force to assist in the development of the section 316 policy. Although EPA did not establish such a task force, at the request of several private and public interest groups EPA did provide briefing meetings during the course of the development of this policy.

2. Revised regulations needed before issuance of section 316 policy.

The advance notice indicated that EPA was considering the development of both regulatory revisions and policy and procedures to implement section 316. One commenter questioned why EPA would issue policy and procedures before it had promulgated regulations. EPA believes that it has already promulgated the necessary regulatory framework for the review of the air quality impact of sewage treatment works. Existing requirements in both EPA's municipal wastewater treatment works construction grants regulations (40 CFR 35.925-14) and EPA's regulations to implement NEPA (40 CFR 6.506)require a review of the air quality impact of proposed sewage treatment works. This policy provides guidance to implement these existing regulatory requirements. In addition, as indicated elsewhere in this Federal Register, EPA is initiating rulemaking to revise its

construction grants regulations and/or its regulations implementing NEPA. Such revisions would both better inform grant applicants of their responsibilities and facilitate EPA's implementation of this policy.

3. Allow state policy to supersede EPA section 316 policy.

One respondent requested EPA to allow a functionally equivalent (but different) state policy on section 316 to supersede EPA's policy. Although EPA believes that the cooperation of the states is essential to the effective long-term implementation of section 316, it finds that the delegation of its authority to individual states is inadvisable. Implementation of section 316 is a part of the Administrator's responsibilities to approve, conditionally approve, disapprove and promulgate SIPs. The revised policy notes that there are significant state responsibilities to ensure the effective implementation of section 316 requirements.

4. Provide general exemptions to the policy and procedures.

A few commenters requested that EPA provide more general exemptions for construction grant applicants to the section 316 policy and procedures. Two commenters suggested that applicants for facility design (step 2) and facility construction (step 3) grants should be exempted to avoid seriously impeding the water pollution clean-up efforts of the construction grants program. Although some construction grants in a limited number of areas may be delayed, EPA believes that the efforts to clean the nation's waters will not be imperiled. The clear intent of Congress through the enactment of section 316 is that EPA should not fund the construction of sewage treatment works that will induce increased air pollution until the new emissions are provided for in an adequate SIP or are otherwise mitigated. One commenter requested that since facility planning (step 1) grants were for planning purposes and would not contribute to increased air pollution they should be exempted from the provisions of this policy. EPA believes that it is most appropriate for grantees to consider the provisions of the section 316 policy during the facility planning phase, rather than increasing the potential for step 2 or step 3 grant approval delays. In addition, EPA finds that the section 316 compliance requirements for step 1 grantees are consistent with the existing air pollution assessment and mitigation requirements of the construction grants program. (The basic elements of these requirements are outlined in Attachment A to the section 316 policy.)

To avoid conflict with the purposes of the construction grants program, some commenters suggested that EPA exempt proposed sewage treatment works from the provisions of the section 316 policy in areas where water pollution problems are more serious than air pollution problems. Although it is unnecessary to provide this exemption in all areas, EPA does believe that a case-by-case exemption should be allowed in certain nonattainment areas even if the 1979 SIP revisions required by Part D of the Clean Air Act have not been approved or conditionally approved and the state is not making reasonable efforts to submit the SIP. Therefore, the section 316 policy has been revised to allow the Regional Administrator to exempt municipal wastewater treatment works construction grants from the grant withholding provisions of this policy when the project is needed for immediate public health needs and would not expand capacity by more than one million gallons per day (mgd). Another revision to the section 316 policy provides that construction grants will not be withheld for those projects which are designed to improve treatment capability without expanding treatment capacity to provide for future growth.

5. Section 316 policy and procedures should not apply to attainment areas.

One commenter believed that in attainment areas section 316 only requires the control of increased emissions resulting directly from sewage treatment works which are classified as major pollution sources. According to the commenter, the policy should not require the control of increased indirect emissions in attainment areas. EPA finds that this is an incorrect reading and interpretation of section 316(b). States are explicitly required by section 316(b)(2) to have and carry out an EPA approved SIP that provides for the increased emissions of each air pollutant from stationary and mobile sources which may be reasonably anticipated to increase because of new sewage treatment capacity in both attainment or nonattainment areas.

6. Demonstration of facility compliance with NSPS and NESHAPS requirements.

One commenter noted that it is not possible for a construction grant applicant to demonstrate compliance with all federal (NSPS and NESHAPS) and state emissions standards prior to the award of a step 2 grant. The demonstration of standards compliance requires facility design work which must be done in the step 2 design phase. EPA has modified this requirement in the revised policy to clarify that EPA's intent is that the step 2 grantee will include appropriate design criteria to comply with NESHAPS, PSD and state emission requirements before the step 3 grant award and the NSPS requirements prior to facility operation. Another commenter suggested that EPA should require the states to define an allowable amount of direct emissions from new sewage treatment works as a percentage of the SIP's total areawide stationary source emissions projection. EPA currently requires all SIPs for nonattainment areas to either accommodate or offset the increased emissions from all new or modified major and nonmajor stationary sources. However, EPA believes that the allocation of the growth of emissions within a nonattainment areas is clearly a state responsibility and is not a matter to be prescribed by EPA.

It was suggested by one respondent that EPA should mention in the policy that sludge incinerators which are designed to recover energy are exempted from the nonattainment requirements under EPA's emission offset interpretive ruling (44 FR 3276). EPA has not highlighted this exemption in the section 316 policy because the offset ruling applies in only limited circumstances after July 1, 1979. Some states have adopted that provision of EPA's offset ruling in their SIPs and in these instances there is a narrow exemption provided for resource recovery facilities which burn municipal sludge. New resource recovery facilities that burn sludge are exempted from EPA's offset policy only under the following conditions: (1) the applicant makes the best efforts to obtain sufficient offsets to comply with the conditions of the policy and is unsuccessful, (2) the applicant has secured all available emissions offsets, and (3) the applicant will continue to seek the necessary emission offsets and apply them when they become available. This exemption does not affect the requirements for compliance with NSPS or NESHAPS.

7. Revise threshold criteria for determining section 316 policy compliance of construction grant applications.

Several commenters found that the total flow capacity threshold of one mgd was too low. Others said it was too high. Several claimed that the use of an interceptor diameter threshold was irrelevant. Other commenters found the population growth ratio to be either too low or too high. To provide greater administrative flexibility EPA has modified these threshold criteria for the section 316 policy to allow for greater

discretion by the Regional Administrators in the review of new construction grant applications. In areas with approved, conditionally approved or promulgated SIPs the Regional Administrator will conduct a mandatory review of all grant applications for the construction of sewage treatment works which will increase capacity in excess of ten mgd. At the discretion of the Regional Administrator, any grant application for a facility that will increase capacity in excess of one mgd may also be reviewed, if there is a possibilty that the increased indirect emissions associated with the facility may not conform to the SIP's provision for demonstrating reasonable further progress (RFP) towards attainment of all NAAOSs by the required date.

8. Oppose withholding construction grants under any circumstances.

There were six comments that opposed the withholding of construction grants under any circumstances. A few commenters believed that the withholding of construction grants would unfairly emphasize air pollution considerations over water pollution problems. Others simply believed that the withholding of grants would seriously imperil the national housing industry. As previously noted, EPA has revised the section 316 policy to allow some exemptions to the provisions for withholding grants when the sewage treatment works are needed to take care of an existing water pollution problem which endangers public health and would not expand capacity by more than one mgd. In addition, the policy would exempt from the grant withholding provisions those projects which improve treatment capability but would not expand treatment capacity for future growth. EPA recognizes that, as a by-product of this policy, in a limited number of nonattainment areas there may be a delay of some new housing construction due to the lack of sufficient excess sewage treatment capacity. Based upon the progress that the States are making to submit and implement approvable SIPs, EPA does not believe that the grant withholding provisions of this policy will seriously impact the national housing industry.

A few commenters believed that EPA misinterpreted the basic intent of Congress in section 316. They believed that section 316 created a mechanism to impose a sanction against states to assure the submittal and implementation of adequate SIPs. Because it is the responsibility of the states to develop, submit and implement the SIPs, these commenters believed that Congress did not intend that individual construction grant applicants should be penalized by the withholding of funds or the imposition of new review and mitigation requirements. The simple construction of section 316 only allows the Administrator to withhold, condition or restrict construction grants for sewage treatment works "which the Administrator is authorized to make to any applicant." Section 316 specifically refers to "any applicant" and "any grant." Therefore, the provisions apply to all eligible grant applicants under the construction grants program including municipal, intermunicipal, state, and interstate agencies (40 CFR 35.920-1). EPA does not believe that the intent of Congress was to limit the application of the section 316 provisions only to those construction grant applications submitted by state agencies. To the contrary, EPA believes Congress intended that the increased emissions resulting directly or indirectly from all EPA funded sewage treatment works would be mitigated and provided for in an EPA approved, conditionally approved or promulgated SIP.

EPA also believes that the provisions of section 316 apply to all steps of the construction grants program, established pursuant to section 201 of the Clean Water Act. Section 212(1) of the Clean Water Act defines the construction process, as used in Title II of the Clean Water Act, Grants for Construction of Treatment Works, in a manner which clearly includes activities which are funded by step 1, and step 2, as well as step 3 grants. EPA's construction grants regulations (40 CFR 35.900 et. seq.) also refer to construction as all three steps of the sewage treatment works development process.

9. Request for public hearings when construction grants withheld.

One commenter requested that EPA hold public hearings whenever it decides to withhold a construction grant award pursuant to the provisions of the section 316 policy. Although public comments on construction grant withholding actions may be useful, EPA believes that individual public hearings would be an excessive administrative requirement. EPA has decided that the best opportunity for public comment would be provided in conjunction with the public notification and review procedures, established pursuant to section 176(a) of the Clean Air Act, for limiting federal assistance for air quality and transportation related activities. The section 176(a) procedures (45 FR 24692) provide a 30-day public comment period after EPA has published in the Federal Register its finding that a state has failed to submit, or is not making reasonable efforts toward submitting, a revised SIP as required by Part D of the Clean Air Act. After considering the public comments, EPA will publish the final section 176(a) finding in the Federal Register. In accordance with the provisions of the Section 316 policy, EPA will begin withholding the approval of construction grant applications for those areas included in the proposed notice when the final section 176(a) finding is published. Removal of this limitation from an area will be after EPA proposes the action in a Federal Register notice, provides a 30-day public comment period and publishes final action. Normally, this can be done at the same time EPA proposes and finalizes approval of the SIP revision. Although it can also be done when reasonable efforts have been demonstrated, absent an approvable SIP, removal of funding limitations on this basis will be done only in rare cases.

10. Construction grant reviews to determine if increased indirect emissions provided for in the SIP are unreasonable.

Three commenters believed that assessment of the amount of increased emissions that are indirectly induced by new sewage treatment capacity is not technically feasible. The air pollution impact of new growth has routinely been assessed by state, regional and local air quality management agencies for several years. The assessments of increased indirect emissions from new sewage treatment works which have occurred in recent years demonstrate that there are existing techniques that are feasible for undertaking this task. In 1978, EPA's Office of Air Quality Planning and Standards published two reports: *Growth Effects of Major Land Use Projects (Wastewater Facilities) Volume I: Model Specification and Causal Analysis* (EPA Report No. 450/3-78-014a, March 1978) and *Volume II: Summary, Predictive Equations and Worksheets* (EPA Report No. 450/3-78-014b, May 1978) which document a modeling technique for conducting this assessment. In addition, EPA's Office of Transportation and Land Use Policy will soon publish "Air Quality Reviews for Wastewater Management Facilities: A Guidebook on Procedures and Methods." This publication will present a review of alternative modeling and impact assessment techniques and alternative mitigation measures.

Another respondent believed that the air pollution impact review at each step of the construction grant process would duplicate the step 1 environmental assessment requirements included in EPA's regulations to implement NEPA.

The policy has been revised to emphasize that the assessment of increased indirect emissions should occur during the step 1 facility planning phase. EPA believes that a step 1 grantee should be able to complete this assessment as a part of the environmental information document, prepared pursuant to EPA's NEPA regulations, which must be submitted along with the facility plan.

One commenter felt that it is not the responsibility of a grant applicant to assure that the increased indirect emissions associated with a facility are included in a SIP. Four others believed that the grantee does not have the responsibility to offset or mitigate the increased indirect emissions associated with a sewage treatment works. Section 316 is clear in its requirement that the increased indirect emissions from a new sewage treatment works must not be greater than those provided for in the SIP. EPA concurs with the commenters that believe it would be unreasonable to delay the approval of a construction grant until a SIP revision has been approved which accommodates the increased emissions. Therefore, EPA has revised the policy to provide an opportunity to approve construction grants when either the governor is notified by EPA to revise the SIP to accommodate the increased emissions, or the grantee commits to implement an adequate emissions mitigation program.

EPA believes that the increased indirect emissions will usually be accommodated in a SIP revision. The notification to the governor that a SIP revision is necessary to accommodate the increased indirect emissions should generally ensure that corrective actions will be taken. EPA may invoke the funding limitations pursuant to section 176(a) and section 316 if the SIP revision is not submitted or is found inadequate. In a limited number of cases, however, it may be preferable to require the grant applicant to submit an emissions mitigation program. The use of a mitigation program will effectively mean that the increased indirect emissions should be reduced to the point where they will not endanger the SIP's provisions for demonstrating RFP towards attainment of all NAAQSs by the required date.

Another commenter suggested that EPA should require the states to include project lists in the SIP to indicate that the increased indirect emissions have been provided for in the SIP. Although the states may include lists of planned sewage treatment works, which have increased indirect emissions that are provided for in the SIP, there are no provisions in section 316, or anywhere else in the Clean Air Act, which authorize EPA to make this a mandatory SIP requirement. In those cases when a state includes a project list in the SIP, EPA will still have to verify that the projected increased indirect emissions associated with the facility at the time of grant application are consistent with the amount of emissions that were assumed to be provided for in the SIP.

11. Use of consistent population projections places an unfair burden on the grantee.

One commenter questioned the significance of the relationship between population projections and increased air pollution induced by new sewage treatment capacity. EPA believes that there is an implicit accommodation of new growth, and mitigation of increased emissions, when the population projections on which the SIP, 208 state and areawide water quality management plans and 201 facility plans are based can be determined to be consistent. This consistency implies that the air pollution associated with the residential, commercial and minor industrial growth resulting from the new treatment capacity will not exceed the SIP's projection of areawide stationary and mobile source emissions which must be reduced to attain the NAAQS.

Several commenters found that if the population projections are inconsistent then it would be in appropriate for the grant applicant to seek their reconciliation. EPA has concurred with this viewpoint, and on January 15, 1980 directed the Regional Administrators to carry out this responsibility. Several commenters also believed that when the population projections are inconsistent EPA should not place a hook-up restriction in the grant award and the national pollutant discharge elimination system permit. One commenter suggested that use of a mitigation program would be fairer and more effective. The section 316 policy has been revised to provide the opportunity for this recommended approach. Three commenters recommended that when EPA finds the population projections to be consistent grantees should not have to commit to support the implementation of all SIP measures because this may exceed their authority. EPA concurs with this recommendation and has deleted this requirement from the section 316 policy. However, EPA cautions those grantees that also have specific SIP implementation responsibilities to carry them out in order to avoid any future withholding or delays in the award of construction grants in their area.

12. Emissions mitigation program requirements are excessive.

Four commenters believed that the emissions mitigation program requirements outlined in the recommended approach were excessive because many grant applicants lack the authority to implement the mitigation measures. EPA has modified the mitigation program requirements in the section 316 policy to respond to these concerns. The mitigation measures may now be adopted through an intra-municipal or inter-municipal agreement. This allows single purpose wastewater management agencies to work with multi-purpose units of government that service the same areas to develop and implement the mitigation program.

EPA also modified the emissions mitigation program requirement that the appropriate mitigation measures would have to be incorporated within the SIP. The program requirements now provide that the grantee will request a SIP revision to incorporate the adopted mitigation program. And, as previously noted, EPA has deleted the requirement for a commitment to implement the SIP measures over which the grant applicant has no control.

One commenter requested that EPA delete the required commitment to monitor and report on the implementation of all mitigation measures because this is actually the reponsibility of the state and EPA, and not the grantee. EPA has not deleted this requirement because we believe it to be consistent with a provision of our NEPA regulations (40 CFR 6.509(a)) and necessary to judge the eligibility of the grantee for future construction grant awards.

13. Provide guidance on cost-eligible items.

Two commenters requested that EPA provide guidance in the policy on whether the correction of SIP deficiencies or the development and implementation of the emissions mitigation program are cost-eligible items. Section IV of the policy provides a description of the allowable project costs associated with the implementation of the section 316 policy. This description is consistent with the existing construction grants program regulations (40 CFR 35.940).

The Administrator has determined that the section 316 policy is nationally applicable and is based on determinations of nationwide scope and effect. EPA intends that, for purposes of judicial review, the interpretations made by this notice be treated as severable.

Issued on: July 23, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

On July 23, 1980, the EPA Administrator sent the following memorandum:

Memorandum

To: Regional Administrators, Regions I–X.

Subject: Policy and Procedures to Implement Section 316 of the Clean Air Act, as Amended.

I. Purpose

This memorandum establishes policy and procedures for the implementation of the sewage treatment works construction grants limitations provided under section 316 of the Clean Air Act, as amended (Pub. L. No. 95–95).[1] To further ensure the consistent nationwide implementation of the section 316 provisions, EPA has also initiated the development of revisions to the construction grants regulations. Section 316 allows the Administrator of the Environmental Protection Agency (EPA) to withhold, condition or restrict grants for the construction of sewage treatment works under the following situations:

- Where the treatment works will not comply with new source performance standards (NSPS) established under section 111 of the Clean Air Act or with national emission standards for hazardous air pollutants (NESHAPS) established under section 112 of the Act [316(b)(1)].
- Where, in a nonattainment area or an area subject to the requirements for the prevention of significant deterioration (PSD) of air quality, the state is not carrying out the state implementation plan (SIP) or there is not an EPA approved SIP that provides for the increase of each air pollutant that is reasonably anticipated to result either directly or indirectly from proposed new sewage treatment capacity [316(b)(2)].
- Where construction of the proposed treatment works will create new sewage treatment capacity that may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any pollutant in excess of the increase provided for under the SIP [316(b)(3)(A)].
- Where the proposed new sewage treatment capacity will otherwise not be in conformity with the SIP [316(b)(3)(B)].
- Where the increased emissions associated with the proposed new sewage treatment capacity will interfere with, or be inconsistent with, the applicable implementation plan for any other state [316(b)(4)].

The implementation of this policy continues many existing efforts to reduce the direct and indirect air quality impacts of new sewage treatment works. The policy supplements existing guidance and provides procedures for the implementation of new EPA regulations. It provides guidance in fulfilling EPA's sewage treatment works construction grants regulatory requirement (40 CFR 35.925–14) that "the treatment works will comply with all pertinent requirements of the Clean Air Act." Background on other existing requirements of the construction grants program related to air quality impacts is included in Attachment A.

On November 6, 1979 EPA published in the Federal Register (44 FR 64174), the final rule to implement the procedural provisions of the National Environmental Policy Act (NEPA). Section 6.303 of these regulations establishes new procedures by which the Agency will incorporate into the environmental review process the determination of conformity of certain types of EPA actions with a SIP. This policy is designed to ensure that the emissions quantification, control and mitigation requirements for step 1 construction grants are implemented in consonance with EPA's procedures to implement NEPA.

II. General Provisions

Each Regional Administrator shall administer the construction grants program to ensure that the emissions that result directly or indirectly from the construction of new sewage treatment capacity conform to the requirements of the applicable SIP.[2] These requirements include the attainment and maintenance of the national primary and secondary ambient air quality standards (NAAQS) established for each air pollutant pursuant to section 109 of the Clean Air Act. The requirements also include those for the protection of air quality cleaner than the NAAQS. In addition, sewage treatment works must meet the emission limitations established under section 111 and section 112 of the Act.

The increased emissions associated with the location of a sewage treatment works or the expansion of treatment service in an attainment area must be provided for in the SIP as a component of the areawide and minor source growth rates that are applied to the annual increment for the pollutants (sulfur dioxide and particulates) regulated under current PSD regulations, pursuant to Part C of the Clean Air Act. The increased emissions associated with the expanded treatment capacity for an attainment area will also be subject to any future limitations established for PSD Set II pollutants (hydrocarbons, carbon monoxide, nitrogen oxides and lead). Development of regulations dealing with these pollutants has been initiated by EPA.

When the administration of the construction grants program has been delegated to the state, it will continue to be the responsibility of the Regional Administrator to ensure compliance with the provisions of this policy prior to the final EPA approval of any grant award.[3] To the greatest extent practicable, the Regional Administrator shall utilize EPA's environmental review procedures for the construction grants program to carry out the provisions of this policy. Nothing in these procedures amends or alters EPA's regulations (40 CFR 6.500) to implement the procedural requirements of NEPA as they apply to the sewage treatment works construction grants program. Any additional joint review procedures should be included as a component of the annual State-EPA Agreement. The responsibilities of EPA regional offices, states and construction grants applicants are summarized in Attachment B.

III. Construction Grants Award Limitations

A. Control of Direct Emissions

The Regional Administrator shall condition step 1 and step 2 grants for the construction of sewage treatment works that will have direct emissions (e.g., sludge incineration) to incorporate into the facility plan and design sufficient control techniques to meet the federal NSPS, NESHAPS and PSD requirements and other state emission standards contained in the SIP. Failure to comply with this condition will result in the grantee being ineligible for subsequent construction grant awards for these sewage treatment works.

The applicant for a step 3 grant for the construction of a sewage treatment works that will be a direct source of emissions shall obtain, prior to grant approval, all air pollution control permits from the EPA and state or local air pollution control agencies with regulatory jurisdiction over NESHAPS, PSD and the SIP. Failure to obtain permits will result in the withholding of the award of grant funds until the applicant can demonstrate or assure compliance.

B. Control of Indirect Emissions

1. In Areas Without Approved or Conditionally Approved SIPs

The Regional Administrator shall withhold all sewage treatment works construction grants in nonattainment areas where the 1979 SIP revision is not approved or conditionally approved *and* the state is not making reasonable efforts to submit the SIP.

In addition, if the Regional Administrator finds in the annual determination of reasonable further progress (RFP) that implementation of the SIP in a nonattainment area where the sewage treatment works would be located is not proceeding towards the attainment of all NAAQS, then all step 2 and step 3 construction grant awards in that nonattainment area will be withheld.[4]

The public notification and review for the withholding of any construction grants will be done using the procedures for making determinations pursuant to section 176(a) of the Clean Air Act, for withholding transportation and air quality funding.[5] Any determination made pursuant to these procedures is binding in EPA Board of Assistance Appeals dispute proceedings under 40 CFR Part 30, Subpart J.

Those grants for sewage treatment works which the Regional Administrator finds are needed for immediate public health needs and will not expand usable capacity by more than one million gallons per day (mgd) will not be withheld. In addition, construction grants will not be withheld for those projects which improve treatment capability, but would not expand treatment capacity for future growth.

2. In Areas With Approved, Conditionally Approved or Promulgated SIP's

The Regional Administrator shall condition step 1 construction grants in nonattainment, attainment, or unclassified areas to quantify the increase of indirect emissions associated with the proposed facility in the environmental information document and

include provisions for the control and mitigation of impacts in conformity with the requirements of the SIP. Failure of the grantee to comply with this condition will result in the grantee being ineligible for subsequent grant awards for that sewage treatment works.

The population projections for nonattainment areas on which the 1979 SIP revision is based are required to be consistent with those submitted by the state and approved by EPA in accordance with EPA's cost-effectiveness guidelines.[6] When the population projections from the 201/208 plan exceed the state or areawide projections in the SIP by more than five percent, the Regional Administrator shall choose one of the following actions when considering step 2 and step 3 construction grant awards for increased capacity where the increases will exceed ten mgd:

a. Notify the governor to revise the SIP to include reconciled population projections and adequate control measures to attain the NAAQS by the projected deadline and define the specific steps needed to be accomplished and the time by which they shall be completed; or

b. Withhold those portions of step 2 and step 3 construction grant awards for increased capacity until the grant applicant has adopted an adequate emissions mitigation program, as outlined in section 3.

When the state or areawide population projections are inconsistent by more than five percent and it is determined that the increased indirect emissions associated with the facility will not conform to the SIP's provisions for demonstrating RFP towards attainment of all NAAQS by the required date, the Regional Administrator may withhold step 2 and step 3 construction grant awards for increased capacity in excess of one mgd until the governor is notified to revise the SIP or the grant applicant adopts an adequate mitigation program.[7]

Prior to the award of the aforementioned step 2 and step 3 construction awards, the Regional Administrator shall verify through consultation with the appropriate state air pollution control or designated local lead agency or agencies for nonattainment planning that the increased indirect emissions will not interfere with, or be inconsistent with, the applicable SIP for any other state. When the Regional Administrator finds that the increased indirect emissions associated with the construction of a sewage treatment works will interfere with, or be inconsistent with, the applicable SIP for any other state, those portions of the grant award for increased capacity will be withheld until the governor of the state in which the facility will be located is notified to revise the SIP or the applicant adopts an adequate mitigation program.

Using data from the environmental information document, environmental impact statement or supplementary information provided by the grant applicant, the Regional Administrator shall determine whether the increased emissions associated with a sewage treatment works that will increase capacity in excess of ten mgd in an attainment or unclassified area will cause a violation of any NAAQS. When the Regional Administrator finds that the increased emissions will cause a standard violation, those portions of the grant award for increased capacity shall be withheld until:

a. The area that will be adversely impacted by the increased indirect emissions has been redesignated as a nonattainment area, pursuant to section 107(d)(1) of the Clean Air Act, and the Regional Administrator has notified the governor to revise the SIP for that area, in accordance with the requirements of Part D of the Clean Air Act; or

b. The grant applicant has adopted an adequate emissions mitigation program, as outlined in section 3.

3. Emissions Mitigation Program Requirements

As provided by this policy, the award of step 2 and step 3 construction grants may be conditioned on the implementation of an adequate emissions mitigation program. The demonstration by the grant applicant that it has adopted an adequate emissions mitigation program shall be based upon the following requirements:

a. Grantee commits to locally adopted measures for emissions reduction through an intra-municipal or inter-municipal agreement. These emissions mitigation measures may previously have been included in the facility plan's environmental assessment or environmental impact statement.

b. Agreement identifies agencies responsible for implementation of the emissions mitigation program.

c. Agreement provides performance time schedule for adopted mitigation measures

d. Agreement provides for continued reporting by the grantee to EPA or the state on the implementation of the adopted mitigation measures.

e. Grantee has submitted the adopted mitigation program to the state air pollution control agency or designated local lead agency and has requested revisions to the SIP to incorporate the mitigation program.[8]

IV. Allowable Construction Grants Program Costs

Costs incurred by the grantee to perform air quality analyses, facility planning and design changes, and the planning for mitigation measures, as required by the provisions of this policy, are allowable project costs and are reimbursable pursuant to the regulations of the EPA construction grants program. The control of direct emissions from a sewage treatment works will be an allowable cost provided it is within the scope of the project. Implementation costs for a program to mitigate the increased indirect emissions associated with the facility will not be allowable costs.

V. Effective Date

In areas without approved or conditionally approved SIPs all step 1, step 2 and step 3 construction grant awards issued after the date of publication of this memorandum in the Federal Register shall be subject to the provisions of this policy.

In areas with approved, conditionally approved or promulgated SIPs all step 1 construction grant awards issued after the date of publication of this memorandum in the Federal Register shall be subject to the provisions of this policy. All step 2 and step 3 construction grant awards that are issued for those areas shall be subject to the provisions of this policy September 10, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Memorandum Footnotes

[1] Sewage treatment works include treatment plants, interceptor sewers, collection systems and other devices and systems as defined in section 212 of the Clean Water Act, as amended (Pub. L. 95-217).

[2] Indirect emissions result from areawide mobile and minor stationary source growth that will potentially be induced by the expanded sewage treatment capacity.

[3] Grants for the construction of sewage treatment works are authorized in section 201 of the Clean Water Act. Under section 205(g) of the Clean Water Act the EPA Administrator may delegate to each state the administration of the sewage treatment works construction grants program.

[4] The requirements for the annual demonstration of RFP are pursuant to section 171 of the Clean Air Act. The February 24, 1978 policy memorandum on the criteria for approval of the 1979 SIP revisions (43 FR 21675) provides guidance on the RFP requirement. In addition, the general preamble for proposed rulemaking on approval of SIP revisions for nonattainment areas (44 FR 20375) provides further guidance on the use of schedules for the demonstration of RFP.

[5] The policy and procedures for applying federal assistance limitations in section 176(a) of the Clean Air Act appear in a March 19, 1980 memorandum from the EPA Assistant Administrator for Air, Noise, and Radiation and the Deputy Federal Highway Administrator to the EPA Regional Administrators and the Federal Highway Regional Administrators (45 FR 24692). The imposition of any funding limitations, pursuant to the provisions of this policy, will not require coordination with the Federal Highway Administration.

[6] Earlier guidance on the use of uniform population projections was provided in the February 24, 1978 policy memorandum on the criteria for approval of the 1979 SIP revisions (43 FR 21674), the October 18, 1978 and January 10, 1980 memorandums from the Assistant Administrators for Air, Noise, and Radiation and for Water and Waste Management and the January 15, 1980 memorandum from the Assistant Administrator for Air, Noise, and Radiation.

[7] Modeling studies indicate that treatment and/or collection capacity greater than one mgd is the approximate minimum for creation of significantly increased direct and indirect emissions of critical air pollutants associated with induced growth. This criteria is equivalent to the proconstruction review threshold for any facility which emits or has the potential to emit 100 tons per year or more of any pollutant (44 FR 51924).

[8] Local lead agencies are certified by the governor pursuant to section 174 of the Clean Air Act and are reponsible for air quality planning in areas where ozone and carbon monoxide standards have not been attained.

Attachment A

Section 316 Policy Background

On June 6, 1975 former EPA Administrator Russell E. Train issued a policy statement requiring the consideration of secondary environmental effects in the construction grants process.[1] This policy requires that the environmehtal review process for sewage treatment works include analyses of secondary as well as primary environmental effects and indicate whether such effects may contravene any federal, state, or local environmental laws, regulations, plans, or standards. Where contravention can reasonably be anticipated, the policy provides that the Regional Administrator shall withhold approval of a step 2 or step 3 construction grant until the applicant revises the facility plan, initiates steps to mitigate the adverse effects, or agrees to conditions in the grant document requiring actions to minimize the effects.

EPA policy established in 1978 provides that new sewage collection systems are eligible for federal financial assistance only in a community with substantial human habitation on October 18, 1972.[2] The bulk of the flow design capacity (generally two-thirds) through the collection system is to be for wastewaters originating from that eligible community. This policy places further restriction on funding the construction of collection systems that would induce new population growth and indirect growth of emissions by requiring that the grant should only be approved when the systems currently in use for disposal of wastes from the existing population are creating a public health problem, contaminating groundwater, or violating the point source discharge standards.

In September 1978 EPA established guidelines (43 FR 44087) for determining the most cost-effective waste treatment management systems or component parts. The cost-effectiveness analysis guidelines require each state, working with 208 water quality planning agencies, local lead air quality planning agencies, and other regional planning agencies to disaggregate the state-Bureau of Economic Analysis (BEA) population projections among its designated 208 areas, Standard Metropolitan Statistical Areas (SMSAs) not included in the 208 area, and non-SMSA counties. Each state was required to submit its projection total and disaggregations for the Regional Administrator's approval before October 1, 1979. After the state disaggregations are approved, 208 areawide agencies, in consultation with the state, are required to disaggregate the 208 area projections among the SMSA and non-SMSA areas. The 208 areawide agencies must then disaggregate these SMSA and non-SMSA projections among facility areas and remaining areas. These disaggregations must be used in the individual facility plans.

The cost-effectiveness guidelines discourage the over-sizing of treatment facilities by lowering the planning estimate for per capita flow by 20–30 percent. A grantee with a high flow growth factor in exccess of 1.8:1 for the 20-year planning period must stage the construction for 10 years.[3] Future industrial flows are to be accommodated only if the industry is included in the land use element of the 208 plan and may not exceed five percent of the total design flow or 25 percent of the total industrial flow. Grant applicants that propose to include additional treatment capacity beyond that amount determined to be cost-effective in accordance with these guidelines may receive federal financial assistance if, among other requirements, the project can ensure that air quality standards will not be violated.

Interceptors are now limited by the cost-effectiveness guidelines to a construction staging period of 20 years. A larger pipe size corresponding to a longer staging period, not to exceed 40 years, may be allowed if the grantee can demonstrate compliance with all pertinent requirements of the Clean Air Act. The grantee must also demonstrate that the larger pipe size will reduce overall environmental impacts, including the secondary effects on air quality. Interceptors may not be extended into undeveloped areas unless there are exceptional circumstances.

The EPA regulations implementing the NEPA procedures require that the environmental information document prepared during the facility planning phase (step 1), and any subsequent environmental impact statement (EIS), will document the treatment works' effect upon local ambient air quality caused by direct emissions or induced development.[4] These regulations also provide that the environmental information document and the EIS will describe the steps that have been taken to mitigate or eliminate any significant adverse air quality effects from the construction and operation of the treatment works. Section 6.509(a) of the revised regulations provides that a facility design (step 2) or a facility construction (step 3) grant shall not be awarded if the grantee has not made, or agreed to make, pertinent changes in the project to mitigate or eliminate the significant adverse air quality effects. Moreover, this regulation provides that step 2 or 3 grants will be conditioned to ensure that the grantee will comply, or seek to obtain compliance with the mitigation requirements.

Attachment A Foonotes

[1] EPA Construction Grants Program Requirements Memorandum 75–26.

[2] EPA Construction Grants Program Requirements Memorandum 78–9.

[3] The growth factor is defined as the ratio of wastewater flow expected at the end of the 20-year planning period to the initial flow at the time the treatment works is expected to become operational.

[4] Originally promulgated as 40 CFR 6.510(f) on April 14, 1975; revised as 40 CFR 6.506(a)(6) on November 6, 1979.

Attachment B

Section 316 Policy Implementation Responsibilities

I. EPA Regional Administrators' Responsibilities:

A. Condition step 1 and step 2 grant awards to ensure the use of sufficient air pollution emissions control techniques.

B. Withhold step 3 grants for facilities with incinerators until NESHAPS, PSD and state air pollution permits are obtained.

C. Withhold all construction grants in nonattainment areas where:

1. The SIP is not approved or conditionally approved *and* the state is not making a good faith effort to submit the SIP, or

2. The state is not making reasonable further progress (RFP) towards attainment of all NAAQS.

The withholding of any construction grants would be done consistent with the Clean Air Act (CAA) § 176(a) procedures for withholding transportation and air quality funding. Those grants for projects which the Regional Administrator (RA) finds are needed for immediate public health needs and would not expand capacity by more than one mgd will not be withheld. Grants will not be withheld for projects which improve treatment capability without expanding capacity for future growth.

D. Condition the step 1 grant award to include provisions in the facility plan that quantify the increase of indirect emissions associated with the proposed facility and approaches to control and mitigate their impacts. Withhold approval of the step 2 grant award until this condition has been met.

E. Review SIPs and 201/208 plans to determine the consistency of population projections.

F. Notify states that the 1982 SIP revision is to be based upon population projections consistent with those prepared for 201/208 plans, in accordance with the cost-effectiveness guidelines.

G. Use CAA § 105 and § 175 grants and state-EPA agreements to assure revised SIP and 201/208 population projections are consistent within five percent by January 15, 1981.

H. Notify the governor to revise the SIP when the RA finds that the emissions control measures in the 1979 SIP revision are inadequate to attain the NAAQS in 1982, due to SIP population projections which have been reconciled upward.

I. In nonattainment areas, when SIP and 201/208 population projections are inconsistent, withhold portions of step 2 and step 3 grant awards for increased capacity where the increase would exceed 10 mgd, or 1 mgd when the RA also finds that the increased emissions may endanger RFP, until:

1. The governor is notified to revise the SIP; or

2. The grant applicant adopts an adequate mitigation program.

J. Prior to the approval of step 2 and step 3 grant awards identified pursuant to the preceding requirement, consult with appropriates tate and local air pollution control agencies to verify that the increased emissions associated with the facility will not interfere with, or be inconsistent with, the applicable SIP for any other state. Where the increased emissions will violate the SIP of another state withhold portions of the grant award for increased capacity until:

1. The governor is notified to revise the SIP; or

2. The applicant adopts an adequate mitigation program.

K. In attainment or unclassified areas, determine whether the increased indirect emissions associated with a facility that would expand capacity in excess of 10 mgd will cause a violation of the NAAQS. Where the increased emissions will cause a violation of the NAAQS, withhold portions of the grant award for increased capacity until:

1. EPA completes rulemaking to redesignate the area as nonattainment and notifies the governor to submit a Part D SIP revision; or

2. The applicant adopts an adequate mitigation program.

II. States' Responsibilities:

A. Submit approval SIP and 208 plans.

B. Submit disaggregated population projections in accordance with the cost-effectiveness guidelines.

C. Reconcile SIP and 201/208 population projections by January 15, 1981.

D. Use population projections approved in accordance with the cost-effectiveness guidelines as the basis for 1982 SIP revision.

E. When reconciliation of SIP and 201/208 population projections invalidates projected attainment of a NAAQS in 1982, revise SIP to provide additional emissions control measures.

F. Within nine months of a request by the RA to accommodate the increased indirect emissions associated with new sewage treatment capacity, submit a SIP revision to the Administrator.

G. When grantee submits adopted project mitigation program, revise the SIP to incorporate additional emissions control measures.

H. Administer EPA delegated construction grant program, consistent with the requirements of the policy.

III. Grant Applicants' Responsibilities:

A. During step 1, quantify the increase of direct and indirect emissions associated with the proposed facility and include approaches to control their impacts in the environmental information document and facility plan.

B. When the 208 plan's population projections have been revised downward to reconcile with lower SIP population projections, make subsequent changes to the facility plan's population projections and to the facility design.

C. During step 2, incorporate in the design of a facility with an incinerator sufficient control techniques to meet the federal NSPS, NESHAPS, and PSD requirements, and state emission standards contained in the SIP.

D. Prior to step 2 and step 3, if required by the RA or the state, adopt a program to mitigate the increased emissions from the proposed facility.

E. Submit the project mitigation program to the state air pollution control agency or the designated local lead agency for inclusion in a SIP revision.

F. Prior to step 3, obtain NESHAPS, PSD and state air pollution permits, for facilities with incinerators.

G. Provide continued reporting to EPA or the state on the implementation of the adopted project mitigation program.

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federal register

Monday
August 11, 1980

Part VIII

Department of the Treasury

Fiscal Service, Bureau of the Public Debt

U.S. Retirement Plan Bonds

Department Circular, Public Debt Series No. 1-63, 5th Amendment

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 341

Regulations Governing U.S. Retirement Plan Bonds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of this fifth amendment to the Regulations Governing United States Retirement Plan Bonds is to provide for an interest rate of 6.5 percent per annum, compounded semiannually, on bonds issued on or after August 1, 1979.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. A. E. Martin, Office of the Chief Counsel, Bureau of the Public Debt (202) 376-0636.

SUPPLEMENTARY INFORMATION: United States Retirement Plan Bonds have been issued since 1963 as an investment option for self-employed individuals eligible to contribute to a "Keogh" (H.R. 10) retirement plan. This amendment to the offering of these bonds implements an earlier announcement made by the Secretary of the Treasury that bonds issued on or after August 1, 1979, will accrue interest at the rate of 6.5 percent per annum, compounded semiannually. Section 341.1 of the offering is being amended accordingly, and a new table of redemption values, based on the 6.5 percent rate, is being added to the Appendix.

Since this amendment involves the fiscal policy of the United States and does not meet the Department's criteria for significant regulations, it has been determined that notice and public procedures are unnecessary. Accordingly, under authority of Sections 1 and 20 of the Second Liberty Bond Act, as amended (40 Stat. 288, 48 Stat 343, both as amended; 31 U.S.C. 752, 754b), and 5 U.S.C. 301, Department of the Treasury Circular, Public Debt Series No. 1-63, as amended, is hereby further amended as follows, effective August 1, 1979.

Dated: July 8, 1980.

Paul H. Taylor,

Fiscal Assistant Secretary.

1. In § 341.1(a), paragraph (4) is revised and paragraph (5) is added, to read as follows:

§ 341.1 [Amended]

* * * * *

(a) * * *

(4) Bonds with the issue dates of February 1, 1974, through July 1, 1979—6 percent per annum compounded semiannually. (See Table C, appended to the third amendment of this Circular).

(5) Bonds with the issue date of August 1, 1979, or thereafter—6.5 percent per annum, compounded semiannually. (See Table D, appended to this amendment).

* * * * *

2. In the Appendix, Table D is added as follows:

Table D.—*Table of Redemption Values Providing an Investment Yield of 6.50 Percent Per Annum for Bonds Bearing Issue Dates Beginning Aug. 1, 1979*

Table shows the increase in redemption value for each successive half-year term of holding following the date of issue on Retirement Plan Bonds bearing issue dates beginning August 1, 1979. The redemption values have been determined to provide an investment yield of approximately 6.50 percent [1] per annum, compounded semi-annually, on the purchase price from issue date to the beginning of each half-year period. The period to maturity is indeterminate in accordance with the provisions of Sec. 341.1(b) of this circular.[2]

Issue price	$50	$100	$500	$1,000
Period after issue date	Redemption values during each half-year period (values increase on first day of period shown)			
First ½ year	$50.00	$100.00	$500.00	$1,000.00
½ to 1 year	51.62	103.24	516.20	1,032.40
1 to 1½ years	53.30	106.60	533.00	1,066.00
1½ to 2 years	55.04	110.08	550.40	1,100.80
2 to 2½ years	56.82	113.64	568.20	1,136.40
2½ to 3 years	58.66	117.36	586.80	1,173.60
3 to 3½ years	60.58	121.16	605.80	1,211.60
3½ to 4 years	62.54	125.08	625.40	1,250.80
4 to 4½ years	64.58	129.16	645.80	1,291.60
4½ to 5 years	66.68	133.36	666.80	1,333.60
5 to 5½ years	68.84	137.68	688.40	1,376.80
5½ to 6 years	71.08	142.16	710.80	1,421.60
6 to 6½ years	73.40	146.80	734.00	1,468.00
6½ to 7 years	75.78	151.56	757.80	1,515.60
7 to 7½ years	78.24	156.48	782.40	1,564.80
7½ to 8 years	80.78	161.56	807.80	1,615.60
8 to 8½ years	83.40	166.80	834.00	1,668.00
8½ to 9 years	86.12	172.24	861.20	1,722.40
9 to 9½ years	88.92	177.84	889.20	1,778.40
9½ to 10 years	91.80	183.60	918.00	1,836.00
10 to 10½ years	94.80	189.60	948.00	1,896.00
10½ to 11 years	97.88	195.76	978.80	1,957.60
11 to 11½ years	101.06	202.12	1,010.60	2,021.20
11½ to 12 years	104.34	208.68	1,043.40	2,086.80
12 to 12½ years	107.72	215.44	1,077.20	2,154.40
12½ to 13 years	111.22	222.44	1,112.20	2,224.40
13 to 13½ years	114.84	229.68	1,148.40	2,296.80
13½ to 14 years	118.58	237.16	1,185.80	2,371.60
14 to 14½ years	122.44	244.88	1,224.40	2,448.80
14½ to 15 years	126.42	252.84	1,264.20	2,528.40
15 to 15½ years	130.52	261.04	1,305.20	2,610.40
15½ to 16 years	134.76	269.52	1,347.60	2,695.20
16 to 16½ years	139.14	278.28	1,391.40	2,782.80
16½ to 17 years	143.66	287.32	1,436.60	2,873.20
17 to 17½ years	148.34	296.68	1,483.40	2,966.80
17½ to 18 years	153.16	306.32	1,531.60	3,063.20
18 to 18½ years	158.12	316.24	1,581.20	3,162.40
18½ to 19 years	163.26	326.52	1,632.60	3,265.20
19 to 19½ years	168.58	337.16	1,685.80	3,371.60
19½ to 20 years	174.06	348.12	1,740.60	3,481.20
20 to 20½ years	179.72	359.44	1,797.20	3,594.40

[1] Based on redemption values of $1,000 bond.

[2] At a future date prior to Aug. 1, 1999 (20 years after issue date of the first bonds) this table will be extended to show redemption values for periods of holding of 20½ years and beyond.

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Federal Register

Monday
August 11, 1980

Part IX

Department of the Treasury

Fiscal Service, Bureau of the Public Debt

U.S. Individual Retirement Bonds

Department Circular, Public Debt Series No. 1-75, 2d Amendment

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 346

Regulations Governing U.S. Individual Retirement Bonds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of this second amendment to the Regulations Governing United States Individual Retirement Bonds is to provide for an interest rate of 6.5 percent per annum, compounded semiannually, to be paid on bonds issued on or after August 1, 1979.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. A. E. Martin, Office of the Chief Counsel, Bureau of the Public Debt (202) 376-0636.

SUPPLEMENTARY INFORMATION: United States Individual Retirement Bonds have been issued since 1975 as an investment option for individuals eligible to contribute to an Individual Retirement Account ("IRA"). This amendment to the offering of these bonds implements an earlier announcement made by the Secretary of the Treasury that bonds issued on or after August 1, 1979, will accrue interest at the rate of 6.5 percent per annum, compounded semiannually. Section 346.1 of the offering is being amended accordingly, and a new table of redemption values, based on the 6.5 percent rate, is being added to the Appendix.

Since this amendment involves the fiscal policy of the United States and does not meet the Department's criteria for significant regulations, it has been determined that notice and public procedures are unnecessary.

Accordingly, under authority of Sections 1 and 20 of the Second Liberty Bond Act, as amended (40 Stat. 288, 48 Stat 343, both as amended; 31 U.S.C. 752, 754b), and 5 U.S.C. 301, Department of the Treasury Circular, Public Debt Series No. 1-75, as amended, is hereby further amended as follows, effective August 1, 1979.

Dated: July 8, 1980.

Paul H. Taylor,

Fiscal Assistant Secretary.

1. In § 346.1, paragraph (a) is revised to read as follows:

§ 346.1 [Amended]

* * * * *

(a) *Investment yield (interest).* United States Individual Retirement Bonds, hereinafter sometimes referred to as Individual Retirement Bonds, will be issued at par. The investment yields (interest) are as follows:

(1) Bonds with the issue dates of January 1, 1975, through July 1, 1979—6 percent per annum compounded semiannually. (See Table of Redemption Values appended to the Circular.)

(2) Bonds with the issue date of August 1, 1979, or thereafter—6.5 percent per annum, compounded semiannually. (See Table A appended to this amendment.)

Interest will be paid only upon redemption of the bonds. The accrual of interest will continue until the bonds have been redeemed or have reached maturity, whichever is earlier, in accordance with these regulations.

* * * * *

2. In the Appendix, Table A is added as follows:

Table A.—*Table of Redemption Values Providing an Investment Yield of 6.50 Percent Per Annum for Bonds Bearing Issue Dates Beginning Aug. 1, 1979*

Note.—This table shows how Individual Retirement Bonds bearing issue dates on or after August 1, 1979, by denomination, increase in redemption value during the successive half-year periods following issue. The redemption values provide an investment yield of approximately 6.50 percent per annum, compounded semiannually, on the purchase price from issue date to the beginning of each half-year period. No increase in redemption value is shown, however, until 1 year after issue date since no interest may be paid on bonds redeemed before that time. The period to maturity is fixed in accordance with the provisions of Sec. 346.1(b) of this circular.

Issue price	$50	$100	$500	$1,000
Period after issue date	Redemption values during each half-year period (values increase on first day of period shown)			
1st year	$50.00	$75.00	$100.00	$500.00
1 to 1½ years	53.30	79.95	106.60	533.00
1½ to 2 years	55.04	82.56	110.08	550.40
2 to 2½ years	56.82	85.23	113.64	568.20
2½ to 3 years	58.68	88.02	117.36	586.80
3 to 3½ years	60.58	90.87	121.16	605.80
3½ to 4 years	62.54	93.81	125.08	625.40
4 to 4½ years	64.58	96.87	129.16	645.80
4½ to 5 years	66.68	100.02	133.36	666.80
5 to 5½ years	68.84	103.26	137.68	688.40
5½ to 6 years	71.08	106.62	142.16	710.80
6 to 6½ years	73.40	110.10	146.80	734.00
6½ to 7 years	75.78	113.67	151.56	757.80
7 to 7½ years	78.24	117.36	156.48	782.40
7½ to 8 years	80.78	121.17	161.56	807.80
8 to 8½ years	83.40	125.10	166.80	834.00
8½ to 9 years	86.12	129.18	172.24	861.20
9 to 9½ years	88.92	133.38	177.84	889.20
9½ to 10 years	91.80	137.70	183.60	918.00
10 to 10½ years	94.80	142.20	189.60	948.00
10½ to 11 years	97.88	146.82	195.76	978.80
11 to 11½ years	101.06	151.59	202.12	1,010.60
11½ to 12 years	104.34	156.51	208.68	1,043.40
12 to 12½ years	107.72	161.58	215.44	1,077.20
12½ to 13 years	111.22	166.83	222.44	1,112.20
13 to 13½ years	114.84	172.26	229.68	1,148.40
13½ to 14 years	118.58	177.87	237.16	1,185.80
14 to 14½ years	122.44	183.66	244.88	1,224.40
14½ to 15 years	126.42	189.63	252.84	1,264.20
15 to 15½ years	130.52	195.78	261.04	1,305.20
15½ to 16 years	134.76	202.14	269.52	1,347.60
16 to 16½ years	139.14	208.71	278.28	1,391.40
16½ to 17 years	143.66	215.49	287.32	1,436.60
17 to 17½ years	148.34	222.51	296.68	1,483.40
17½ to 18 years	153.16	229.74	306.32	1,531.60
18 to 18½ years	158.12	237.18	316.24	1,581.20
18½ to 19 years	163.26	244.89	326.52	1,632.60
19 to 19½ years	168.58	252.87	337.16	1,685.80
19½ to 20 years	174.06	261.09	348.12	1,740.60
20 to 20½ years	179.72	269.58	359.44	1,797.20

[FR Doc. 80-24070 Filed 8-8-80; 8:45 am]

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federal register

Monday
August 11, 1980

Part X

Environmental Protection Agency

1981 Model Year Carbon Monoxide Emission Standard for Light-Duty Motor Vehicles and Applications for Waiver of Effective Date

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL 1557-7]

Revised Motor Vehicle Exhaust Emission Standards for Carbon Monoxide (CO) for 1981 Model Year Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation establishes CO emission standards for 1981 model year light-duty vehicles belonging to certain engine families for which I have granted waivers from the standard otherwise applicable under section 202(b)(5) of the Clean Air Act, 42 U.S.C. § 7521(b)(5).

EFFECTIVE DATE: August 11, 1980.

ADDRESS: Information relevant to this rule is contained in Public Docket EN-80-9 at the Central Docket Section of the Environmental Protection Agency (EPA), Gallery I, 401 M Street, S.W., Washington, D.C. 20460 and is available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Alex Varela, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION: Section 202(b)(1)(A) of the Clean Air Act ("the Act"), 42 U.S.C. 7521(b)(1)(A), requires that regulations applicable to CO emissions from light-duty vehicles or engines manufactured during or after the 1981 model year shall contain, unless waived pursuant to section 202(b)(5), 42 U.S.C. 7521(b)(5), standards which require a reduction of at least 90 percent from CO emission levels allowable under the 1970 model year standards. Regulations implementing this requirement have established a CO standard, often referred to as the statutory standard for CO, of 3.4 grams per vehicle mile (gpm).

Section 202(b)(5) of the Act authorizes the Administrator, on application of any manufacturer, to waive the statutory CO standard for the 1981 and 1982 model years for any light-duty vehicle model for which the Administrator can make certain findings. In these cases, the Act requires that I promulgate substitute CO standards for 1981 and 1982 model year light-duty vehicles as discussed below. The application for a waiver considered here was submitted by Ford Motor Company (Ford). The statutory criteria for the granting of such waivers, my determinations regarding the criteria with respect to the vehicle models covered by Ford's waiver application, and my decision to grant the waiver applications, appear in the consolidated decision issued along with this rule and published elsewhere in this issue of the Federal Register. In that consolidated decision, I granted a waiver covering the following vehicle model (engine family for purposes of that decision) for the 1981 model year only:

Manufacturer	Engine family
Ford Motor Company	2.3 liter turbocharged.

Once I have decided to grant a waiver application for any 1981 model year vehicle model, the Act requires that I simultaneously promulgate regulations adopting emission standards not permitting CO emissions from 1981 model year vehicles of this Ford model to exceed 7.0 gpm. Moreover, the Act further requires that I promulgate regulations establishing these standards not later than 60 days after I receive the waiver application in question. This rule becomes effective immediately upon publication to avoid the possibility of forcing Ford to delay introducing this 1981 model year vehicle model into commerce because it must wait to receive certification of this model until this rule becomes effective.

The public has been afforded an opportunity to comment on the waiver applications at issue, and I have considered those comments in making the consolidated decision which requires the promulgation of this amended rule. For these reasons, I find that providing further notice and opportunity to comment before final promulgation of any of the amendments contained in this rulemaking would be impracticable and unnecessary.

Note.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Orders 11821 and 12044 and OMB Circular A-107.

In addition, because the decision accompanying this rulemaking already is based on a detailed analysis indicating that this rulemaking will have a negligible effect on air quality, the Environmental Protection Agency has not prepared an Environmental Impact Statement to accompany this rulemaking as well.

Dated: July 31, 1980

Douglas M. Costle,

Administrator.

40 CFR 86.081-8(a)(1)(ii) is revised to read as follows:

§ 86.081-8 Emissions standards for 1981 light-duty vehicles.

(a)(1) * * *

(ii) Carbon monoxide—3.4 grams per vehicle mile (2.11 grams per vehicle kilometer), except that carbon monoxide emissions from light-duty vehicles of the following 1981 model year engine families shall not exceed 7.0 grams per vehicle mile (4.35 grams per vehicle kilometer):

Manufacturer	Engine family
American Motors Corporation	151 CID.
	258 CID.
BL Cars, Ltd.	215 CID.
	326 CID.
Chrysler Corporation	1.7 liter
	2.2 liter
	2.6 liter
	3.7 liter
	5.2 liter/2-V.
	5.2 liter/4-V.
Ford Motor Company	1.3 liter.
	1.6 liter/2V overhead camshaft.
	2.3 liter turbocharged
General Motors Corporation	1.6 liter
	2.8 liter/173 CID-2V.
	3.8 liter/231 CID-2V.
	3.8 liter/231 CID-4V. turbocharged
Lotus Cars, Ltd.	2.0 liter.
Toyo Kogyo Co., Ltd.	91 CID.
	120 CID.
Toyota Motor Company, Ltd.	88.6 CID.

* * * * *

(Section 202 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521 and 7501(a))

[FR Doc. 80-24077 Filed 8-8-80; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1557-8]

Applications for Waiver of Effective Date of the 1981 Model Year Carbon Monoxide Emission Standard for Light-Duty Motor Vehicles—Eighth Consolidated Decision of the Administrator.

I. Introduction

This is the eighth consolidated decision I have issued under Section 202(b)(5) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b)(5), regarding applications from automobile manufacturers for waiver of the 3.4 grams per vehicle mile (gpm) carbon monoxide (CO) emission standard scheduled to apply to 1981 and 1982 model year light-duty motor vehicles and engines.[1]

As the introductions to the previous consolidated decisions explain, section 202(b)(1)(A) of the amended Act establishes a schedule for implementing standards applicable to CO emissions for 1977 and later model year light-duty motor vehicles and engines.[2] The 1977 amendments to the Act, however, included a new provision allowing the Administrator of the Environmental Protection Agency (EPA), under certain limited conditions, to delay for up to two model years implementation of the statutory 3.4 gpm CO standard scheduled to take effect for the 1981 model year.[3] However, these amendments require the Administrator to promulgate interim standards in such cases which do not permit CO emissions over 7.0 gpm.[4]

In response to waiver applications received prior to the one under consideration, EPA held five sets of public hearings and issued seven consolidated decisions pursuant to section 202(b)(5)(A).[5] In those decisions, I denied waivers for certain engine families either because I determined that effective control technology[6] was available contrary to the requirement of section 202(b)(5)(C)(iii) of the Act or because the applicants failed to provide sufficient information to establish that effective control technology was not available. Furthermore, the applicants failed to establish that considerations of costs, driveability, or fuel economy gave me a basis for reaching a different conclusion. I granted the waiver applications covering the remaining engine families after determining for each of those families that the requisite technology was not available, considering costs, driveability, and fuel economy, and that each application met all of the remaining statutory criteria for receiving a waiver.

On May 5, 1980, EPA received a waiver application from Ford.[7] EPA held a hearing on this application on May 8, 1980.[8]

This decision will address the waiver request from Ford on the basis of information from Ford and from other sources.[9]

II. Summary of Decision

I am granting Ford's waiver request for its 2.3 liter (L) turbocharged engine family for the 1981 model year. I am denying the waiver request by Ford covering its 2.3L turbocharged engine family for the 1982 model year. I have based my determinations for each of those model years primarily upon whether Ford established that effective emissions control technology, considering costs, driveability, and fuel economy, is not available to enable the engine family in question to meet the 3.4 gpm statutory CO standard in those model years. In reaching those determinations, I have balanced the risks that Ford and the public would face of incurring adverse consequences if I were to deny Ford's waiver request, based on an incorrect projection that effective emissions control technology is available for Ford's engine family, against the benefits achieved from denying the waiver request, on the basis of a correct conclusion that such technology is available.[10]

I have concluded that the waiver application covering the Ford 2.3L turbocharged engine family meets each of the statutory criteria for receiving a waiver for the 1981 model year. I am therefore prescribing an interim CO emission standard of 7.0 gpm for the 1981 model year for this engine family.

Ford failed to establish that effective emissions control technology is unavailable to enable vehicles scheduled to employ this engine family to meet the statutory CO standard by the 1982 model year. Instead, the information in the record at this time indicates that technology capable of meeting the 3.4 gpm CO emission standard may be available for Ford's 2.3L turbocharged engine family for the 1982 model year.

Considerations of costs, driveability, or fuel economy, whether viewed separately or cumulatively, do not give me a basis for altering my determinations regarding the availability of technology for this engine family for the 1982 model year.

While this engine family may meet some, or all, of the remaining statutory criteria for receiving a waiver for the 1982 model year, my determinations regarding available technology, considering costs, driveability, and fuel economy, preclude me from granting

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[1] The preceding decisions were published as follows: 44 FR 53376 (September 13, 1979); 44 FR 69417 (December 3, 1979); 45 FR 7122 (January 31, 1980); 45 FR 17914 (March 19, 1980); 45 FR 37360 (June 2, 1980); 45 FR 40030 (June 12, 1980); — FR —— (signed July 15, 1980).

[2] Regulations were promulgated on August 24, 1978, setting a CO standard of 3.4 gpm for 1981 and later model year vehicles. 40 CFR 86.081-8(a)(1)(ii). This standard represents at least a 90 percent reduction in CO emissions from the CO standard applicable to 1970 model year vehicles.

[3] Section 202(b)(5)(C) of the Act provides, in part:

The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

(i) such waiver is essential to the public interest or the public health and welfare of the United States;

(ii) all good faith efforts have been made to meet the standards established by this subsection;

(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

[4] As noted in previous decisions, Section 202(b)(5) of the Act requires that I make a separate assessment for each vehicle model covered by a waiver request. See, e.g., 44 FR 53376 (September 13, 1979), 44 FR 69416 (December 3, 1979), 45 FR 7122 (January 31, 1980). Thus, these earlier consolidated decisions generally have included separate decisions for individual engine families. As in the previous decisions, I have distinguished among engine families primarily on the basis of engine displacement. See note 17, second consolidated decision, 44 FR 69418 (December 3, 1979).

[5] EPA has included testimony received at these five hearings, as well as all other information considered in deciding these five groups of waiver applications, in EPA Public Dockets EN-79-4, EN-79-17, EN-79-19 (for the first through fourth decisions) and EN-80-1 (for the fifth and sixth decisions).

[6] As was the case in the earlier consolidated decisions, I am using the term "technology" in this decision to encompass the statutory language "technology, processes, operating methods, or other alternatives" included as part of section 202(b)(5)(C)(iii) of the Act.

[7] Ford Motor Company.

[8] The transcript from this hearing is located in EPA Public Docket EN-80-9. This decision uses the following abbreviations:

F. App.—Ford Application for CO Waiver, dated May 5, 1980, for its 2.3L turbocharged engine family.

[9] See the discussion on my considerations of other sources of information in the previous waiver decisions, e.g., section III(B)(1)(C), 44 FR 69416, 69422 (December 3, 1979).

[10] See, e.g., 45 FR 17914 (March 19, 1980).

waivers covering this engine family for the 1982 model year. The 3.4 gmp CO statutory standard will therefore remain in effect for the Ford 2.3L turbocharged engine family for the 1982 model year.

III. Discussion

A. Availability of Technology

The decision I have made here on whether to grant or deny a requested waiver turn primarily on whether technology is available to enable an engine family covered by one of these waiver applications to meet the 3.4 gpm CO standard in the 1981 and 1982 model years. Section 202(b)(5)(C)(iii) of the Act expressly assigns an applicant the task of establishing that effective CO control technology is not available, taking into consideration costs, driveability, and fuel economy. Even if the Administrator determines that an applicant has met this burden, section 202(b)(5)(C)(iv) requires the Administrator to consider whether National Academy of Sciences (NAS) studies or other information indicate that technology is available considering costs, driveability, and fuel economy, before granting a waiver request.

As part of my assessment of available technology here, I have considered the results of NAS studies and investigations [11] conducted under section 202(c) of the Act regarding available technology, processes, or other alternatives. The findings of the available NAS studies do not contradict my assessment regarding the availability of technology for Ford's 2.3L turbocharged engine family discussed below.[12]

To support contentions that effective control technology is not available, Ford has provided both descriptions of the systems it has been considering in trying to attain the 3.4 gpm CO emission standard and the results of emission tests performed on vehicles for the purpose of receiving certification for the 1980 and 1981 model years. I have reviewed this information, as well as other information available to me, in reaching my decisions regarding availability of the requisite technology, considering cost, driveability and fuel economy.[13]

Ford applied for a waiver for its 2.3L turbocharged engine family for the 1981 and 1982 model years. In support of this application, Ford provided some emission test data and other information regarding alternative emissions control systems. Ford contended that (1) effective emission control technology was not available to enable this engine family to meet a 3.4 gpm CO standard for the 1981 and 1982 model year; (2) lead-time problems prevented the introduction of alternative emissions control systems or components until the 1983 model year; [14] and (3) Ford and the public would suffer adverse economic consequences if Ford were unable to market this model.[15] Specifically, Ford claims that unanticipated problems primarily caused by catalyst degradation associated with the higher exhaust gas temperature typical of turbocharged engines [16] prevent this engine family from certifying under the 1981 statutory emission standards for the 50,000-mile statutory period.[17]

1. Emission Control Capability of Ford's Turbocharger Technology

My evaluation of the technological capability of the 2.3L turbocharged Ford engine family used the same modified Monte Carlo statistical simulation employed in evaluating the engine families in my fifth, sixth, and seventh consolidated decisions [18] to project, on the basis of data from partially completed prototype vehicle emission testing over extended mileage for the purpose of receiving a Federal certificate of conformity, the likelihood that this engine family will be capable of meeting Federal emission standards when fully tested. In addition, my evaluation included consideration of certification data from vehicles which employ both the turbocharged and naturally aspirated version of this engine and which entered into the mandatory 50,000-mile certification testing procedure. On the basis of my evaluation of those available emission data, I have concluded that this engine family using the turbocharger technology does not demonstrate the capability of meeting the 3.4 gpm CO emission standard for the 1981 model year.[19]

2. Availability of Alternative Technology

The record indicated that Ford's 2.3L, 3.3L, and 4.2L naturally-aspirated engines can meet the 3.4 CO emission standard and would be available for use in the same vehicle models scheduled to employ Ford's 2.3L turbocharged engine.[20] Ford projected, however, that only about 75 percent of prospective purchasers of its turbocharger vehicles would be likely to switch to purchasing one of these naturally-aspirated alternatives were Ford not able to market the turbocharged family engine.[21] Ford contended that the turbocharged engine achieved the better fuel economy values of a smaller displacement engine while still retaining the better performance capabilities of a larger displacement engine.[22]

In *International Harvester Co. v. Ruckelshaus* [23] the United States Court of Appeals for the District of Columbia Circuit reviewed the decision of EPA's Administrator to deny a set of applications for a one-year suspension of the statutory 1975 model year light-duty motor vehicle emission standards, which included the 3.4 gpm CO standards. The statutory criteria for the decision at that time were substantially similar to the criteria now provided in section 202(b)(5)(C) of the Act.[24]

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[11] Report by the Committee on Motor Vehicle Emissions of the National Academy of Sciences, dated November 1974. See also discussions of the applicability of NAS studies in previous CO waiver decisions, e.g., 44 FR at 53376, 53386 (September 13, 1979) and 44 FR at 69416, 69423, 69428 (December 3, 1979). See also, Report of Motor Vehicles Committee, National Academy of Sciences, June 1980.

[12] See, e.g., 44 FR 53376, 53386 (September 13, 1979), 44 FR 69416, 69428 (December 3, 1979). I have had a limited opportunity to study the latest NAS report issued in June 1980. However, I find that the conclusions reached in this report give me no reason to alter my findings regarding the availability of technology as required under sections 202(b)(5)(C)(iii) and 202(b)(5)(C)(iv) of the Act. The report states that the requisite technology is available for much of the industry's planned production for the 1981 model year, but confirms that this might not be the case for all engine families. This conclusion is consistent with my present and previous waiver determinations regarding available technology and is consistent with the previous NAS report.

[13] Much of this information was gathered for and included in the docket for the previous consolidated CO waiver decisions. See EPA Public Dockets EN-79-4, EN-79-17, EN-79-9 and EN-80-1. Those dockets have been incorporated by reference into the docket for this eighth consolidated decision, EPA Public Docket EN-80-9.

[14] May 8, 1980 Transcript, pp. 128-129. Ford app., section V.

[15] Ford supplemental submission, May 16, 1980, p. 2.

[16] May 8, 1980 Transcript, pp. 127-128, 130. Ford supplemental submission May 16, 1980, p. 2.

[17] 42 U.S.C. § 7521(d)(1)(1975).

[18] 45 FR 37960 (June 2, 1980). 45 FR 40060 (June 12, 1980). —FR— (announced on July 15, 1980).

[19] Ford criticized the use of the modified Monte Carlo technique in this decision. Ford supplemental submission, June 13, 1980. However, even under the modified Monte Carlo analysis the 2.3L turbocharged engine family does not demonstrate the capacity of meeting the 3.4 gpm CO standard. App. A, section V. See also 45 FR 40030, 40033 (June 12, 1980).

[20] May 8, 1980 Transcript, pp. 121-122, 124.

[21] Ford supplemental submission, May 16, 1980, p. 2.

[22] Ford supplemental submission, May 16, 1980, pp. 2-3.

[23] 487 F.2d 615 (D.C. Cir. 1973).

[24] The version of the act in effect at that time did not explicitly require the Administrator to assess the effect of the suspension on public health or to take into consideration costs, driveability and fuel economy in evaluating available technology. Moreover, that version required the Administrator to make a separate suspension decision for each applicant manufacturer, rather than to make decisions on a model-by-model basis as the current section 202(b)(5) requires. See Clean Air Amendments of 1970, Pub. L. 91-604, section 6, 81 Stat. 499 (1970) (42 U.S.C. 7521).

Among other things, the Court stated that in deciding on a suspension request the administrator should balance the risks associated with erroneously granting a suspension request against the risks of erroneously denying a suspension request based on an erroneous conclusion that effective control technology is available. The Court indicated that the risk balance should take into account the economic costs (such as the impacts on jobs and the economy) possibly associated with an erroneous denial [25] versus the possible environmental benefits lost through an erroneous grant.

In addition, the Court indicated that the costs of an erroneous denial which the Administrator should consider should include the costs from a denial which is only partially accurate.[26] Under the current section 202(b)(5) of the Act, the gravity of the economic and other risks which both a waiver applicant and the public face from the possibility of an erroneous denial depends on the following two factors: (1) The likelihood that the denial, in fact, will turn out to be either erroneous or only partially accurate and (2) the severity of the adverse economic consequences which could occur as the result of an erroneous partially accurate or denial.[27]

If I were to determine that the Ford 2.3L, 3.3L, and 4.3L naturally aspirated engines constituted available alternative technology, my decision denying a waiver for the 2.3L turbocharged model might be only partially accurate. Ford has indicated that it would expect to be able to market vehicles with these alternative engines (without the turbocharger model's combined characteristics) to only about 75 percent of its prospective customers.[28]

Moreover there is also a risk that a significant number of potential 2.3L turbocharged engine customers who still purchase Ford vehicles will purchase models using larger displacement engines with significantly lower relative fuel economy levels in order to obtain the other characteristics which the 2.3L turbocharged model exhibits.[29] Section 202(b)(5)(C)(iii) of the Act requires that I take into consideration fuel economy in determining the availability of alternative technology.

I have considered information provided by Ford and other information included in the public record in determining the possible risks to Ford and the public in denying a waiver for the 2.3 turbocharged engine family.

I have determined that the lost sales potentially resulting from denying Ford's waiver request would likely result in additional layoffs and unemployment for Ford employees and others. At this time Ford already has serious unemployment problems [30] and any sales lost as a result of the denial of a waiver for this model would only increase the burdens on Ford, its employees, and on the public, that such unemployment creates.

Ford has now suffered such serious economic problems that the economic situation of its North American operations is approaching a dangerous state.[31] The additional lost sales and profits from even a small volume model under current market conditions would only contribute further to deterioration in Ford's potential ability to market vehicles using the engines in question and, in conjunction with other circumstances, could set in motion a series of adverse events which might affect Ford's viability as a manufacturer.[32] If Ford's viability is ultimately threatened, even greater adverse impacts on employment, Ford's suppliers, and the national economy could result.[33]

Aside from those adverse economic consequences which Ford and the public may experience if Ford has to substitute vehicles with other engines for the 2.3L turbocharged model, there is a risk of some adverse consequences for the public in the area of fuel economy. Specifically, sales of alternative Ford engine models would likely include a substantial number of the larger, less fuel-efficient alternative engines [34] at a time when energy conservation is an important national concern recognized by Congress.[35]

3. *Balancing the Risks of Erroneous or Partially Accurate Denial Against the Benefits of a Correct Denial*

The *International Harvester* decision requires that I balance the risk of adverse consequences posed by an erroneous waiver denial against the potential benefits lost by an erroneous grant.

The adverse effect on air quality from granting a waiver for Ford's 2.3L turbocharged model is insignificant. Ford's projected 1981 sales for this model account for less than 0.3% of total 1981 U.S. automobile sales.[36] In addition, the air quality effect of granting waivers to other engine families, if any, which may incur adverse risks and potential benefits comparable to those of the Ford 2.3L turbocharged model from a waiver denial also are quite likely to be insignificant.

Neither (1) the likelihood of sales losses and sales of less fuel-efficient cars, nor (2) the potentially significant impact of these kinds of sales results on employment, suppliers, or fuel economy, under currently prevailing economic and market conditions, would be sufficient by themselves to justify my granting this Ford waiver request. The presence of both of these factors, however, relative to the limited environmental benefits which a waiver denial under these circumstances [37] would achieve, compels me to determine that Ford has met its burden in establishing that alternative technology is not adequately available for its 2.3L turbocharged model for the 1981 model year, considering costs, driveability, and fuel economy.

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[25] These impacts could arise under a denial based on an erroneous conclusion that effective control technology is available, because a manufacturer in fact would not be able to produce a certain vehicle model to meet Federal emission requirements and therefore could lose a substantial portion of its sales.

[26] 478 F.2d at 641

[27] *Cf. Ethyl Corp. v. Environmental Protection Agency*, 541 F.2d 1, 18 (D.C. Cir. 1976) (stating that the administrator's finding under section 211 of the Act that lead particulates "will endanger the public health and welfare" is composed of reciprocal elements of probability and severity).

[28] Ford supplemental submission, May 16, 1980, p. 2.

[29] Although official EPA fuel economy data are not yet available for the 2.3L turbocharged model and potential substitute engine models, Ford claimed a possible 4% fuel economy benefit for the 2.3L turbocharged engine over the 2.3L naturally-aspirated engine. Ford supplemental submission, May 16, 1980, attachment V. In addition, preliminary EPA certification test data support the presence of a 10% fuel economy improvement that a smaller displacement turbocharged engine would be expected to achieve with respect to a similar performance (larger displacement) naturally-aspirated engine. App. A, section VIII, table VIII-1.

[30] May 8, 1980 Transcript, p. 121. See also "Ford Plans White Collar Layoffs Again," *Washington Post*, June 18, 1980, p. D-10.

[31] See, .eg., "Ford Had Deficit of $163.6 Million For First Quarter," *Wall Street Journal*, April 29, 1980, p. 2. See also Ford Motor Company, First Quarter Report, Spring, 1980.

[32] See "U.S. Study Sees Hard Times for Ford," Jake Kelderman, *Automotive News*, July 14, 1980, pp. 2, 6 (citing unpublished Economic Policy Group paper).

[33] Id.

[34] May 8, 1980 Transcript, pp. 121-122, 124.

[35] Congress directed EPA to take fuel economy into consideration in evaluating the availability of technology. Section 202(b)(5)(B)(iii). See also, e.g., section 502 of the Energy Policy Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (1975).

[36] Ford, opening statement, May 8, 1980 public hearing, p. 1.

[37] I need not determine at this time whether continuing to grant waivers covering any further engine families which have a comparable balance between adverse risks and potential benefits associated with them would or would not eventually result in a significant impact on air quality. Granting a waiver for this Ford model would increase the coverage of waivers granted to less than 30% of all scheduled 1981 U.S. automobile sales.

Ford did not provide sufficient information to establish that effective emissions control technology would not be available for the 1982 model year, considering cost, driveability, and fuel economy, to enable its 2.3L turbocharged engine family to meet the 3.4 gpm CO emission standard. Additional technological features for solving Ford's CO control problems are still available for Ford to evaluate and implement for Ford's turbocharged engine family in the 1982 model year.[38] Ford has not supplied sufficient information on these features to demonstrate their effect on emissions, costs, driveability or fuel economy with respect to the 2.3L turbocharged engine family.

B. *Protection of Public Health*

Section 202(b)(5)(C) of the Act requires that before I grant a waiver covering a given engine family, I must find that protection of the public health does not require attainment of a 3.4 gpm CO standard by the vehicles of the engine family receiving the waiver. Thus, I have examined this issue with respect to Ford's 2.3L turbocharged engine family for which I have determined that effective control technology, considering costs, driveability, and fuel economy, is not available in model year 1981.

I have found as a result of this examination that any adverse health effects resulting from waiving the 3.4 standard for these 1981 model year engine families would be insignificant. The same statement is true regarding the combined health effects resulting from waiving the 3.4 standard for the 1981 model year for these engine families and for all the 1981 and 1982 model year engine families receiving waivers under the previous consolidated CO waiver decisions. As a result, protection of the public health does not require attainment of the 3.4 gpm CO standard by the Ford 2.3L turbocharged engine family, for which I have determined that effective control technology is not available for the 1981 model year.[39]

According to the express terms of the statute, there is no need for me to determine whether waiver applications covering engine families for which the applicant failed to establish the unavailability of effective control technology (considering cost, driveability, and fuel economy) meet any of the remaining statutory criteria in order for me to deny an application.[40] The Act requires me to deny waiver applications where an applicant has failed to meet any one of the criteria regardless of whether such applicant could meet the remaining criteria. Nevertheless, I will address these issues briefly in the course of discussing the remaining criteria regarding this engine family in the 1982 model year as I did in the six previous waiver decisions.

While waiving the 1981 and 1982 statutory CO standards for the engine family here would not significantly affect the public health, noticeable increases in ambient CO levels could result from granting waivers industry-wide.[41] In light of the fact that industry-wide waivers would not be protective of the public health, it is reasonable to grant waivers covering only that portion of the industry consisting of those model year engine families for which I have determined that effective control technology, considering costs, driveability, and fuel economy, is not available (presuming these families also meet the remaining statutory criteria).[42]

C. *Essential to the Public Interest or to the Public Health and Welfare*

Before I may grant a waiver request, section 202(b)(5)(C)(i) of the Act requires that I determine that granting the waiver is essential to the public interest or the public health and welfare.[43]

My assessment of the risks associated with an erroneous or partially-accurate waiver denial indicates the public interest considerations at stake in this waiver decision. I have determined that the adverse economic consequences that could occur due to the real possibility that denying the waiver request for Ford's 2.3L turbocharged engine family might be only partially accurate, in light of the insignificant environmental impact involved, make it essential to the public interest that I grant this waiver request.[44]

I have determined that it is not essential to the public interest or to the public health and welfare to grant a waiver to the Ford 2.3L turbocharged engine family for the 1982 model year, because the applicant has failed to establish that the vehicles in question, using this engine family, are incapable of meeting a 3.4 gpm CO standard or are likely to incur significant costs (or driveability or fuel economy penalties) in meeting that standard for the model year in question. The public's interest in continuously maintaining a diversified and competitive automotive industry for the United States market is not adversely affected by my decision to deny waivers for engine families for which manufacturers have failed to establish the unavailability of adequate lead time to employ effective emissions control technology.[45]

D. *Good Faith*

In order for me to grant a waiver to any applicant, section 202(b)(5)(C)(ii) of the Act requires that I determine that the applicant in question has made all good faith efforts to meet the established emission standards. As a result, I have examined information regarding Ford's previous and projected efforts toward meeting a 3.4 gpm CO emission standard for the engine family in question.

Ford has provided engineering and technical information to support the contention that it has acted in good faith in trying to meet the 3.4 gpm CO standard. In general, information in the record provides support for determining that Ford has met the Act's good faith criterion in developing emission control technology to enable its 2.3L turbocharged engine family to meet the 3.4 gpm CO standard.[46]

[38] Appendix A, section IX. Some of the vehicles on which Ford most recently has begun certification testing also may indicate a capability of meeting the 3.4 gpm CO standard. Ford may also reapply for a waiver for the 1982 model year if it is unable to develop effective technology to meet the 3.4 gpm standard for that model year.

[39] See, e.g., discussion of ambient air quality effects, App. B, 44 FR 53376, 53402, 53407 (September 13, 1979) and 44 FR 69416, 69456–69462 (December 3, 1979). The engine families receiving waivers under my previous CO waiver decisions constitute less than 30% of the total projected 1981 model year light-duty vehicle sales in the United States. Ford projected sales of only about 30,000 units of this model in the 1981 model year. May 8, 1980 Transcript, p. 119.

[40] These remaining criteria are found in section 202(b)(5)(C) of the Act. For discussion regarding these criteria in earlier waiver decisions, see e.g., 44 FR 53378 (September 13, 1979); 44 FR 69416, 69420 (December 3, 1979); and 45 FR 7122, 7126 (January 31, 1980).

[41] See the first decision, 44 FR 53376, 53381 and Appendix B at 44 FR 53402–53407 (September 13, 1979).

[42] See, e.g. 44 FR 53376, 53382, 53386–53387 (September 13, 1980).

[43] See sections in previous decisions discussing public health and welfare effects of engine families denied waivers, 44 FR 53387, 44 FR 69429 (Sept. 13, 1979 and December 3, 1979, respectively).

[44] Although Ford has not completed certification durability testing for the 2.3L turbocharged at either a 3.4 gpm or 7.0 gpm CO emission standard, granting this waiver request will significantly increase the likelihood that Ford will be able to successfully certify and produce this engine family under a 7.0 gpm standard. App. A, section V. May 8, 1980 Transcript, pp. 123, 125–127.

[45] Appendix A, sections V, IX. Ford stated that granting this waiver request would permit the additional accumulation of field experience and continuous market experience with this technology because Ford plans to employ it in vehicles produced in 1983 and following model years. Ford has already gained some field experience with turbocharger technology in previous model years.

[46] Although Ford did not provide information regarding preproduction development vehicles, it did provide information which established that Ford had developed and employed relatively sophisticated emission control technology on certification durability test vehicles of this engine family. App. A, section V. May 8, 1980 Transcript, p. 124.

In the absence of any evidence supporting a contrary conclusion, I am unable to determine other than that Ford has met the good faith criterion with respect to the engine family under consideration in this decision.

IV. Conclusion

The Ford engine family for which I determined that effective CO control technology is not available for the 1981 model year is covered by a waiver application which meets each of the remaining criteria under section 202(b)(5)(C) of the Act. As a result, I am granting a waiver of the effective date of the statutory CO emission standard for the Ford 2.3L turbocharged engine family for the 1981 model year.

I have determined that for Ford's 2.3L turbocharged engine family Ford has failed to establish that effective control technology indeed is available to meet a 3.4 gpm CO standard by the 1982 model year, even after considering costs, driveability and fuel economy. Thus, even though Ford's waiver application may meet one or more of the remaining criteria for receiving waivers, I nevertheless must deny the waiver applications covering the Ford 2.3L turbocharged engine family for the 1982 model year.

V. Interim CO Exhaust Emission Standards

As required by section 202(b)(5)(A) of the Act, I am simultaneously promulgating regulations elsewhere in this issue of the Federal Register prescribing an interim CO emission standard of 7.0 gpm for 1981 model year vehicles for the engine family receiving a waiver. For this engine family, this action continues in effect for one additional year the CO emission standard applicable to all 1980 model year light-duty vehicles.

Dated: July 31, 1980.

Douglas M. Costle,

Administrator.

Appendix A.—Summary of Technological Capability

Contents

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I. Introduction

The exhaust emission standards for 1981 and later model year light-duty vehicles are currently 0.41 gram per mile HC, 3.4 grams per mile CO, and 1.0 gram per mile NO_x. Section 202(b)(5)(A) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(5)(A) provides the opportunity for manufacturers to request a waiver of the 3.4 grams per mile CO standard to 7.0 grams per mile during model years 1981 and 1982.

The applicant being considered in this document is Ford. This is the fifth group of CO waiver applications that have been considered by EPA, and the second time a request has been considered from Ford.

This appendix deals with the technological capability of Ford to meet the 1981 and 1982 CO standard of 3.4 grams per mile. This appendix relies on three previous technical appendixes, particularly for explanation of the basic concepts of the standard Monte Carlo simulation utilized in this analysis. These appendixes are:

1. Appendix B, Technical Appendix, to the Decision of the Administrator on Remand for the United States Court of Appeals for the District of Columbia Circuit, April 11, 1973.
2. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1976 Motor Vehicle Exhaust Emission Standards, July 30, 1973.
3. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1977 Motor Vehicle Exhaust Emission Standards, March 5, 1975.

This appendix relies on reference 11 for discussion of the Modified Monte Carlo simulation used in this appendix. As indicated in Section 202(b)(5)(C)(iii) of the Clean Air Act, the technological feasibility determination is based on the consideration of technological capability, cost, driveability, and fuel economy. This appendix contains discussion of each of the above topics.

II. Summary of Technological Capability

Table II-1 summarizes the capability of the applicant manufacturer to meet the 1981 and 1982 emission standards. The standards considered in these tables are 0.41 HC, 3.4 CO, 1.0 NO_x.

A guide to the summary tables is as follows. The first column lists engine displacement. The "as received" column refers to the emission data submitted by the manufacturer. "Improvements" refer to the projected technological improvements (factors) applied to the data submitted by the manufacturer.

The "no data" category is an abbreviated notation for the lack of acceptable data to perform EPA's established technological analysis as referred to in EPA's published CO waiver guidelines. The applicants have known for about six years what sort of data is necessary for EPA to make a determination under its established methodology whether or not a given vehicle would be projected to pass or fail a set of standards. Unfortunately, in some cases there was a lack of useable data for vehicles using specific engines. This effectively precluded EPA from making a pass/fail determination for those vehicles through the established methodology. In these cases the vehicles using these engines are called "no data" and no pass/fail determination was made.

Table II-1.—*Applicant: Ford*

Engine	Pass as received	Pass with improvement
2.3L-TC-2V	No for Model Year 1981. No data for Model Year 1982.	N/A.*

* N/A means not applicable or that no hardware improvement factors were applied to these vehicles.

III. Statistical Treatment of the Data

The standard Monte Carlo methodology has been used for the analysis of prototype durability vehicles in this appendix. No changes have been made in the standard Monte Carlo methodology since its last use in a technical appendix. This methodology, which is the foundation for the Modified Monte Carlo methodology for certification vehicles has been discussed in three previous technical appendixes:

1. Appendix B, Technical Appendix, to the Decision of the Administrator on Remand for the United States Court of Appeals for the District of Columbia Circuit, April 11, 1973.
2. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1976 Motor Vehicle Exhaust Emission Standards, July 30, 1973.
3. Appendix A, Technical Appendix, to the Decision of the Administrator In re: Applications for Suspension of 1977 Motor Vehicle Exhaust Emission Standards, March 5, 1975.

A Modified Monte Carlo simulation has been developed and also utilized in this appendix for actual 1981 model year certification durability vehicles which have accumulated less than 50,000 miles of durability. The Modified Monte Carlo has been discussed in reference 11 as found in Section X of this document.

IV. Factors

With respect to the vehicle emission data submitted by the manufacturers for EPA analysis, vehicles are often run and tested over durability mileage

accumulation schedules without using the best technology that is available to the manufacturer for certification in the 1981 or 1982 model years. There are many reasons why this occurs. First, such technology may have simply not been available in quantity when fleets of vehicles began mileage accumulation.

Second, all vehicles submitted for EPA staff analysis may not have been specifically designed for the 1981 and 1982 Federal emission standards. Also, the manufacturer may wish to maintain some technologies (with known durability) in reserve if their low mileage testing indicates that such technology may not be needed for compliance with the target emission standards. In addition, technology may not appear on durability vehicles because the manufacturer has made a decision that the technology would be too costly for production vehicles.

Factors which have previously been developed, but generally not used in the following analysis include factors for:

- Warm up catalysts for 3W catalyst or 3W+OC systems
- Deletion of power enrichment
- Use of insulated or dual-walled exhaust pipes
- Use of exhaust port liners
- Use of throttle body fuel injection
- Use of multiple point fuel injection

Although the deletion of power enrichment was considered feasible for 1981, factors for this improvement were not used. Use of the other items was not considered possible for most manufacturers for most engine families before the 1982 model year. Therefore, through these additional techniques, the manufacturers may have some additional cushion for certification.

No factors were used for emission control system improvements for vehicles in this analysis. Developmental data were not provided by Ford; therefore, no data was available for developing hardware improvement factors for 1982.

V. Discussion of Individual Manufacturer's Technical Capability

This section will discuss all vehicles which (1) were submitted by the applicant and (2) also are acceptable for input into either the standard Monte Carlo simulation or the Modified Monte Carlo analysis for certification vehicles.

Details of the pass/fail determinations in section II are presented here. To pass the 1981 and 1982 emission standard of 0.41 HC, 3.4 CO, 1.0 NOx, the probabilities of passing each individual pollutant must be greater than or equal to 80% in either the standard or Modified Monte Carlo. If the probability of passing only HC, for example, is less than or equal to 79%, the vehicle is projected to fail—even if the probabilities of passing the CO and NOx standards greatly exceed the 80% cut point.

Ford Motor Company (Ford).

This is the second group of CO waiver applications received from Ford. In their current application Ford has requested a CO waiver from 3.4 to 7.0 grams/mile for their vehicles using 2.3 liter turbocharged (TC) engines with two barrel (2V) carburetors for 1981 and 1982. In their previous application, they requested waivers for vehicles using their new 1.3 liter and 1.6 liter engines for 1981 and 1982. They were granted CO waivers to 7.0 CO for vehicles using the 1.3 liter and 1.6 liter engines for 1981.

No prototype 1981 durability vehicles using 2.3 liter-TC engines were durability tested by Ford prior to their waiver application. Six vehicles have been run to date in the 1981 certification process by Ford. Five of the vehicles are shown in Table V-1. The sixth vehicle (VIN 1B1-2.3-013) was mentioned by Ford at the CO waiver hearing; however, no emission data were presented for it [1 at 133]*. The vehicle results would not change the pass/fail determination anyway since it was terminated with less than 15,000 miles [3].

Two of the certification vehicles (1B1-2.3-098 and 1B1-2.3-104) were not analyzed in the Modified Monte Carlo because they had not accumulated sufficient mileage.

Three vehicles were analyzed in the Modified Monte Carlo analysis for 1981 model year certification vehicles. As shown in table V-2, all three vehicles failed. Not a single vehicle is projected to pass even an individual pollutant.

In summary, vehicles using the 2.3 liter turbocharged-2V engine are projected to fail in the 1981 model year. All vehicles which have gone into the certification process have been terminated with less than 50,000 miles of durability. So Ford must start some new durability vehicles to certify in 1981, regardless of the outcome of their waiver application. Ford has indicated that the major changes which will be made to their eight future durability vehicles to reduce deterioration of exhaust emissions are reductions in the amount of injected air and reductions in catalyst loading [2 at 3] [3]. The technical staff believes that reductions in catalyst loading may result in cost benefits for Ford with potential increases in emissions deterioration. Data have shown an emissions benefit and improved catalyst efficiency associated with increased precious metals loading [7 at 53391].

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* The Abbreviated notation [W at Y] means reference number W from Section X of this document at page number Y.

Table V-1

Vehicles in the Ford Waiver Application for the 2.3 Liter Turbocharged Engine

Engine	VIN	Emission Control System*	Entered in Modified Monte Carlo?	If Not Entered in Modified Monte Carlo -Why?	Comment	Reference
2.3L-TC-2V	1B1-2.3-096	FBC/AIR/EGR/3W/OC	Yes	—	1981 50-States certification vehicle - now terminated	7 8 at Attachment I
2.3L-TC-2V	1B1-2.3-097	FBC/AIR/EGR/3W/OC	Yes	—	1981 50-States certification vehicle-now terminated	7 8 at Attachment I
2.3L-TC-2V	1B1-2.3-098	FBC/AIR/EGR/3W/OC	No	Less than 20,000 miles of durability	1981 50-States certification vehicle-now terminated	7 8 at Attachment I
2.3-TC-2V	1B1-2.3-104	FBC/AIR/EGR/3W/OC	No	Less than 20,000 miles of durability	1981 50-States certification vehicle-now terminated	7 8 at Attachment I
2.3-TC-2V	1B1-2.3-105	FBC/AIR/EGR/3W/OC	Yes	—	1981 50-States certification vehicle-now terminated	7 8 at Attachment I

* FBC means feedback carburetor.
AIR means switched air injection using an air pump.
EGR means ported exhaust gas recirculation.
3W means 3-way catalyst.
OC means oxidation catalyst.

Table V-2

Modified Monte Carlo Results of 1981 Ford Certification Durability Vehicles Using 2.3 Liter Turbocharged Engines

VIN	IW/ETW	Certification Engine Family	Probability of Pass HC	CO	NOx	Comment
1B1-2.3-096	3000/3250	2.3BE	14	0	0	Terminated
1B1-2.3-097	3000/3250	2.3BD	0	0	63	Terminated
1B1-2.3-105	3000/3250	2.3BC	0	0	63	Terminated

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The 2.3 liter, naturally aspirated engine is a potential replacement engine for the 2.3 liter turbocharged engine. Other engines, such as six cylinder or eight cylinder engines, could also be used. The naturally aspirated version of the 2.3 liter engine was certified at levels below the 1981 emission standards as long ago as model year 1978. The emission results of the 1978 California certification durability vehicle are shown in table V-3.

Table V-3.—*Final Certification Results of a 1978 Model Year Ford Vehicle Using a 2.3 Liter Naturally Aspirated Engine*

[VIN 8E22.314B8060AXR; Family F2.3B1TR80XR80]

Miles	HC	CO	NOX
4917	0.38	2.5	0.70
9840	0.20	1.2	0.95
14954	0.31	1.4	0.81
19794	0.49	2.0	0.62
24802	0.39	2.3	0.68
29803	0.39	2.3	0.88
29823	0.40	1.9	0.75
34809	0.25	2.9	0.46
39804	0.36	2.1	0.86
44809	0.30	1.8	0.82
49887	0.39	2.0	1.00
4k (calc)	0.34	1.87	0.73
50k (calc)	0.36	2.19	0.82
df	1.06	1.17	1.13

VI. Cost Analysis

The costing methodology used here is essentially the same as that used in the six previous CO waiver decisions [5], [6 at 40030], [7 at 53400], [8 at 69450], [9 at 7133], [10 at 17915]. Responses to the EPA subpoena of August 8, 1979 enabled EPA to revise cost estimates of certain emission control devices, notably monolithic three-way and oxidation catalysts. The subpoena requested prices that suppliers charge the automobile manufacturers for emission control devices or systems.

Described below are estimates of cost to the consumer for compliance with 3.4 vs 7.0 CO (due to lead time problems for certain emission control devices, separate estimates are often necessary for 1981 and 1982). The changes in cost were calculated by individual engine size. These changes are based on the differences in emission control hardware between systems targeted to meet 7.0 CO, as described by each manufacturer in their applications and systems judged capable by EPA of meeting 3.4 CO, based on the Monte Carlo analysis results or successful certification of similar vehicles.

Ford 2.3 Liter Turbocharged Engine

Ford described the 2.3 liter turbocharged engine emission control system as "* * * Ford's best effort system available for the 1981–82 time frame" [2 at 2]. Ford will attempt to certify the same or similar system regardless of whether a waiver is granted and thus no cost differential will exist between the 3.4 and 7.0 g/mi CO standards [2 at 2, 3]. Additionally, at the public hearing Ford stated that the cost of emission control hardware is not an issue in this waiver application [1 at 142].

The vehicle types which Ford is planning to equip with turbocharged 2.3 liter engines are also available with naturally aspirated engines. Four, six or eight cylinder naturally aspirated engines could be substituted for the turbocharged 2.3 liter engine. As previously mentioned in this appendix, the 2.3 liter naturally aspirated engine is certified at the 3.4 g/mi CO standard.

Additionally, the EPA technical staff believes that a turbocharging system may significantly increase the cost of an engine. Therefore, a naturally aspirated engine would probably reduce vehicle costs compared to the turbocharged 2.3 liter engine.

Ford stated at the public hearing, "* * * being able to offer the 2.3 liter turbocharged engine gives us an increment of sales that we otherwise wouldn't have for those vehicles" [1 at 120]. Sales of 2.3 liter turbocharged vehicles was projected to be no more than 30,000 vehicles per model year in model years 1981 and 1982 [1 at 119]. If the turbocharged 2.3 liter engine were unavailable, Ford estimated "* * * that no more than 75% of the projected 2.3 L(T) sales volume could be compensated by sale of vehicles equipped with other engines" [3 at 2]. Based on these Ford estimates, a sales loss of about 15,000 vehicles may be incurred if the turbocharged 2.3 liter engine is unavailable in both model years 1981 and 1982.

The EPA concludes the emission control system cost is not a determining issue in the assessment of this engine's ability to meet a 3.4 g/mi CO standard. However, the unavailability of the turbocharged 2.3 liter engine may reduce vehicle sales.

VII. Driveability

The technological feasibility of meeting the 1981–1982 emission standards is, in part, determined by the applicant's ability to maintain acceptable driveability while attaining these standards.

Ford—Ford maintains that the 2.3 liter turbocharged engine is incapable of meeting the 1981–1982 emission standards. Neither Ford's CO waiver application [2] nor Ford's testimony at the CO Waiver Hearing [1] indicated that a waiver would be necessary to maintain acceptable driveability. No driveability data were submitted for this engine. Presently, driveability is not one of the determining factors in assessing the ability of Ford's 2.3 liter turbocharged engine to comply with a 3.4 g/mi CO standard.

VIII. Fuel Economy

Ford 2.3 Liter Turbocharged Engine

Ford's CO waiver request did not address the fuel economy effect of a 3.4 versus a 7.0 g/mi CO standard on the 2.3 liter turbocharged engine. However, Ford's waiver request stated the following about fuel economy:

"There is general agreement that a fuel economy benefit could be obtained by turbocharging for high specific power output while allowing reductions in engine size which in turn permits reduction in engine friction (e.g., pumping losses) and weight for the given power output." [2 at 2]

Society of Automotive Engineers paper number 790312 was written about Ford's 2.3 liter turbocharged engine. Tables VIII-1, 2 and 3 presented in this appendix are from this SAE report [12 at 23, 24]. These tables compare various aspects of the turbocharged 2.3 liter engine to a naturally aspirated 2.3 liter engine and a naturally aspirated 5.0 liter engine. Although the SAE report did not detail the testing techniques or vehicle configurations which were used to generate the data presented in these tables, the data do appear to be appropriate for comparison purposes. Table VIII-2 indicates that the acceleration performance of the turbocharged 2.3 liter engine is much greater than the naturally aspirated 2.3 liter engine and is nearly equal to the 5.0 liter V-8 engine. Table VIII-3 shows the turbocharged 2.3 liter engine fuel economy to be both approximately 8 percent less than the naturally aspirated 2.3 liter engine economy and nearly 16 percent greater than the 5.0 liter engine fuel economy. Since none of these three vehicles represents a 1981 calibration, these data are presented only for the purpose of a rough comparison.

Ford predicted, at the public hearing, that the turbocharged 2.3 liter engine will have better fuel economy than the naturally aspirated 2.3 liter engine [1 at 122]. This fuel economy differential was projected to be approximately one mile per gallon based on the combined city/highway MPG values [1 at 125].

Ford supplied fuel economy data for several 1979 and 1980 model year vehicles equipped with both turbocharged and naturally aspirated 2.3 liter engines. These data indicate a minimum of one mile per gallon fuel economy penalty for turbocharged

vehicles compared to similar naturally aspirated vehicles [3 at Attachment V].

The EPA technical staff includes that for the 2.3 liter turbocharged engine, compliance with a 3.4 CO standard would have not a deleterious effect on fuel economy in comparison to compliance with a 7.0 standard. Fuel economy is not a critical issue in the determination of the technical feasibility for compliance with the statutory emission standards by the 2.3 liter turbocharged engine, . If the turbocharged engine were unavailable, a naturally aspirated 2.3 liter engine could be substituted and provide approximately equal or greater fuel economy; however, maximum acceleration performance would be decreased. Larger displacement six or eight cylinder engines are also possible substitutes for the turbocharged 2.3 liter engine. These larger engines may have comparable acceleration performance; however, a fuel economy penalty may be incurred.

Table VIII-1.—*Engine Performance*

Engine	Peak power (HP at RPM)	Specific power (HP/Cu. In.)	Peak torque (Lb-Ft at RPM)	Weight (Lb)	Peak HP/Lb
Naturally Aspirated 2.3L I-4	101 @ 4800	.72	124 @ 3500	418	.24
Turbocharged 2.3L I-4	138 @ 5500	.98	148 @ 3500	450	.31
Naturally Aspirated 5.0L V-8	155 @ 3800	.51	256 @ 2500	585	.27

Table VIII-2.—*Vehicle Performance*

Mode	Base 2.3L	Turbo 2.3L	5.0L V-8
0-60 mph	13.7 sec.	9.4 sec.	8.9 sec.
25-60 mph	10.3 sec.	6.7 sec.	6.3 sec.
50-80 mph	16.9 sec.	9.8 sec.	9.0 sec.
0-10 sec.	435 ft.	543 ft.	544 ft.

Table VIII-3.—*Fuel Economy*

	Base 2.3L	Turbo 2.3L	5.0L V-8
Combined mpg avg.	24.0 mpg	22.0 mpg	19.0 mpg

IX. Lead Time Considerations

Ford 2.3 Liter Turbocharged Engine

Ford has not yet successfully completed certification durability testing for a CO standard of either 3.4 CO or 7.0 CO. Regardless of whether the CO standard is waived or not, Ford is planning to start eight additional durability vehicles because all their earlier vehicles have been terminated prior to completion of 50,000 miles [1 at 123].

At the public hearing Ford stated that the lead time implication was the same for either a 3.4 o4 7.0 g/mi CO standard [1 at 124). However, Ford would have greater confidence of successfully certifying at a 7.0 g/mi CO standard [1 at 123].

The eight additional certification durability vehicles which Ford is in the process of starting will complete testing not earlier than late August or early September 1980 [3 at 4]. These vehicles represent Ford's earliest opportunity to certify a durability vehicle for either a 7.0 CO or 3.4 CO standard. No emissions data are available on this group of vehicles. The durability vehicles Ford is starting are similar to previous durability vehicles with the following differences [1 at 125]:

(i) Reduced loading of the light-off catalyst,

(ii) Revised air management strategy with less air,

(iii) Four vehicles will have non-feedback fuel systems.

Naturally aspirated 2.3 liter engines could be substituted for turbocharged 2.3 liter engines [1 at 120]. The naturally aspirated 2.3 liter engine has completed certification at the 1981–1982 emission standards. According to Ford, deletion of the turbocharging system would significantly reduce engine performance [2 at 4]. Ford estimates that no more than 75 per cent of the potential turbocharged 2.3 liter sales volume could be retained by offering vehicles equipped with other engines [3 at 2].

The present first choice emission control system for the turbocharged 2.3 liter engine is described by Ford as the most sophisticated and costly system available to them [4 at 11]. However, Ford stated that the addition of electronic fuel injection (EFI) is required to insure a high confidence of meeting the 1981–1982 standards [1 at 134]. EFI is planned for production in model year 1983, which was reported as the earliest possible introduction time [1 at 143, 146].

The EPA technical staff concurs with Ford that EFI could improve this engine's ability to meet a 3.4 g/mi CO standard. However, insufficient lead time is available for model year 1981 to incorporate major changes, such as EFI, to the 2.3 liter turbocharged engine.

Several possibilities exist to improve the emissions performance in the 1982 model year. The feedback carburetor which Ford is using, a Holley model 6500, allows the primary main metering circuit to be modulated by an external vacuum control signal. The magnitude of this vacuum control signal is a function of the electronic control unit (ECU) input to the vacuum solenoid regulator. Ford stated the poor emission performance of two 1981 durability 2.3 liter turbocharged engines, "* * * is believed to be the result of feedback open loop calibration drift resulting from a shift in vacuum solenoid regulator output with mileage accumulation" [2 at 9]. Additionally, the Holley model 6500 carburetor which Ford is using on the 2.3 liter turbocharged engine does not operate closed-loop at idle [1 at 125].

Holley manufactures another carburetor, model 6510, which could be used on the 2.3 liter turbocharged engine. The model 6510 is similar to the model 6500; however, it incorporates an internal solenoid which modulates both the primary main circuit air/fuel ratio and the idle circuit air/fuel ratio as a function of an electrical signal. Elimination of the vacuum interface between the ECU and the carburetor is a possible advantage of the model 510 compared to the model 6500. Ford stated that the solenoid equipped Holley carburetor (model 6510) was considered; however, it was never tested [1 at 131 to 132].

A turbocharger increases the thermal inertia of both the induction and exhaust systems compared to a similar naturally aspirated engine. Heating the air-fuel mixture promotes vaporization of the fuel and is especially beneficial during the cold start portion of vehicle operation. Ford has incorporated an engine coolant passage in the intake manifold for this purpose. A possible emission benefit could be obtained in the 1982 model year by the addition of an electric resistance heating element to heat the intake air-fuel mixture.

Other possible system improvements which could be incorporated by the 1982 model year include a change from ported to backpressure or sonic EGR, increased rhodium content in the 3-way catalyst, and changes in catalyst location.

In summary, present lead time constraints for the turbocharged 2.3 liter engine are equal for either a 3.4 CO or 7.0 CO standard. All data for model year 1981 indicate the 2.3 liter turbocharged engine is incapable of meeting the statutory standards. However, sufficient lead time is available to incorporate changes which may permit compliance to a 3.4 g/mi CO standard in the 1982 model year.

X. References

1. *Transcript of Proceedings, United States Environmental Protection Agency, Public Hearing: CO Emission Standards Waiver Application,* Washington, DC, May 8, 1980, Acme Reporting Company.

2. *Application for Waiver of 1981 and 1982 Carbon Monoxide Emission Standard for the 2.3L Turbocharged Engine,* Ford Motor Company, May, 1980.

3. Letter and attachments to Mr. Charles N. Freed (EPA) from Ms. Helen G. Petrauskas (Ford) dated May 16, 1980.

4. Opening statement of Ms. Helen Petrauskas (Ford), May 8, 1980.

5. Leroy H. Lindgren, *Cost Estimations for Emission Control Related Component-Systems and Cost Methodology Description,* EPA Pub. #460/3-78-002, March 1978.

6. *Federal Register,* Vol. 45, No. 115, June 12, 1980.

7. *Federal Register,* Vol. 44, No. 179, September 13, 1979.

8. *Federal Register,* Vol. 44, No. 223, December 3, 1979.

9. *Federal Register,* Vol. 45, No. 22, January 31, 1980.

10. *Federal Register,* Vol. 45, No. 55, March 19, 1980.

11. *Federal Register,* Vol. 45, No. 107, June 2, 1980.

12. SAE Paper No. 790312, *"Turbocharging Ford's 2.3 Liter Spark Ignition Engine"* by H. H. Dertian, G. W. Holiday & G. W. Sanburn (Ford Motor Company), February 26–March 2, 1979.

[FR Doc. 80-24078 Filed 8-8-80; 8:45 am]

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federal register

Monday
August 11, 1980

Part XI

Department of Education

Institute of Museum Services

Museum Services

DEPARTMENT OF EDUCATION

Institute of Museum Services

34 CFR Part 64

Museum Services Board

AGENCY: Institute of Museum Services, ED.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations to implement the Government in the Sunshine Act as it applies to the Institute of Museum Services. These regulations govern meetings of the National Museum Services Board under the Government in the Sunshine Act. They include provisions regarding public announcements of Board meetings, standards for closing meetings and requirements applicable when meetings are closed.

EFFECTIVE DATE: These regulations take effect August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Lee Kimche, Department of Education, Institute of Museum Services, 330 C Street, S.W. (Room 4008), Switzer Building, Washington, D.C. 20201. Telephone: (202) 245-8817.

SUPPLEMENTARY INFORMATION:

Structure of Institute of Museum Services

The Museum Services Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The National Museum Services Board consists of 15 members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museums and curatorial, educational and cultural resources of the United States.

In addition to the members appointed by the President, the following serve as members of the Board: The Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Secretary of Education.

The Board has responsibility for establishing the general policies of the Institute.

The Director of the Institute is appointed by the President with the advice and consent of the Senate. The Director has responsibility for the general administration of the Institute and is authorized, subject to the policy direction of the Board, to make grants to museums under the Act.

The Department of Education Organization Act (Pub. L. 96-88), transferred IMS to the Department of Education, effective May 4, 1980.

Applicability of the Government in the Sunshine Act

The Government in the Sunshine Act, Pub. L. 94-409 (1976), amended Title 5 of the United States Code by adding a new Section 552b. Section 552b of Title 5 U.S.C. provides in general that collegial bodies which head Federal agencies must, subject to specified exceptions, hold their meetings open to public observation. The Institute of Museum Services is subject to Section 552b.

Section 552b requires that each agency subject to its provisions issue implementing regulations, 5 U.S.C. § 552b(g). These regulations are designed to fulfill this requirement for the Institute of Museum Services.

Regulatory History

Proposed regulations appeared on page 45973 of the Federal Register of August 6, 1979. These regulations proposed to amend Part 64 of Title 45 of the Code of Federal Regulations by adding a new subpart. They were to govern meetings of the national Museum Services Board under the Government in the Sunshine Act. They included provisions regarding public announcements of Board meetings, standards for closing meetings and requirements applicable when meetings are closed.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations. No written objections were received. The following technical changes have been made to the regulations: This subpart will be Subpart G instead of Subpart B. Sections 64.21-64.39 will not be reserved, but will be used for other additions to IMS regulations. Former references to the Department of Health, Education, and Welfare are changed to the Department of Education. The reference in § 64.78 to internal review procedures is deleted. These regulations are codified in Title 34, which contains Education Department regulations.

Summary of Regulations

These regulations do not repeat or paraphrase all the provisions of Section 552b. (These provisions are fully applicable to the meetings of the National Museum Services Board and need not be repeated in regulations in order to be made operational with respect to the Board.) Instead, these regulations are designed to highlight major provisions of Section 552b as they affect the public and to provide guidance to the public as to how the Board proposes to operate in accordance with the provisions of Section 552b. These regulations add a new Subpart G to Part 64 of Title 34 CFR, which contains the regulations of the Institute. The new subpart relates to meetings of the National Museum Services Board.

Provisions of the regulations—General

Section 64.70 of the regulations indicates that the provisions of 5 U.S.C. Section 552b apply to meetings of the National Museum Services Board. Section 64.71 of the regulations states the general rule that, unless properly closed, every portion of every meeting of the Board is open to public observation. Section 64.72 states the applicability of the regulations to meetings of committees of the Board. Since certain decisions under the regulations must be taken by record vote of the National Museum Services Board, § 64.73 describes the nature of a record vote. A majority vote of the entire membership of the Board is required to constitute a record vote.

Announcement of meetings

Sections 64.74-64.77 of the regulations relate to announcement of meetings. Section 64.74 requires a meeting to be publicly announced at least one week before the meeting takes place and specifies the matters which the announcement must cover. Paragraphs (b) and (c) of § 64.74 contain exceptions to this requirement.

Sections 64.75 and 64.76 state procedures to be followed when it is necessary to change the time, place or subject matter of a meeting. Under § 64.77 any public announcement required by the regulations must be published in the Federal Register.

Closing meetings

Sections 64.78-64-81 govern the closing of meetings. Section 64.78 provides that the National Museum Services Board may by record vote close a meeting if the Board determines that the meeting falls within one of the exceptions stated in Section 552b.

Exceptions, as set forth in Section 552b, are listed in Appendix A to the regulations. Under § 64.78(b), the Board must consider whether the public interest merits keeping a meeting open although an exception applies. Section 64.79 deals with requests to close meetings submitted by persons who

believe that their interests may be directly affected by a meeting or a portion of a meeting. Section 64.80 describes the material which must be retained by the Board if it determines to close a meeting or a portion of a meeting. In general a transcript or recording of the meeting must be kept. Where meetings are closed pursuant to exceptions (8), (9)(i), or (10) (as listed in Appendix A), minutes of the meeting are adequate. Section 64.81 deals with the disposition of such recordings, transcripts or minutes and the circumstances under which they may or may not be made available to the public.

The National Museum Services Board and the Director of the Institute of Museum Services have approved these regulations.

(Catalog of Federal Domestic Assistance No. 13.923, Museum Services Program. Part I of OMB Circular A-95 does not apply.)

Dated: August 6, 1980.

Steven A. Minter,

Acting Secretary of Education.

Part 64 of Title 45 of the Code of Federal Regulations is transferred to Title 34 and amended as follows:

1. The table of contents for Part 64 is amended by adding the following:

Subpart A—Program Regulations

Sec.
64.1 Purpose of museum services program.
* * * * *

Subpart G—Meetings of the National Museum Services Board

General

64.70 Scope.
64.71 General rule.
64.72 Application to NMSB committees.
64.73 Record vote.

Announcement of Meetings

64.74 Public announcement of meetings.
64.75 Changes in time or place of meeting.
64.76 Changes in subject matter of meeting.
64.77 Publication of announcements.

Closing Meetings

64.78 Reasons and procedures for closing meetings.
64.79 Requests to close meetings.
64.80 Materials related to closed portions of meetings.
64.81 Opening of transcript or recording of closed meeting.

Authority: Pub. L. 94-462, Sections 201-210, 90 Stat. 1975, (20 U.S.C. 961-68); 5 U.S.C. 552b.

2. A new Subpart heading is added before § 64.1 to read as follows:

Subpart A—Program Regulations

* * * * *

Subpart G—Meetings of the National Museum Services Board

General

§ 64.70 Scope.

5 U.S.C. Section 552b, added to the United States Code by the Government in the Sunshine Act, Pub. L. 94-409 (1976), provides that collegial bodies which head Federal agencies must, with certain exceptions, hold their meetings in public. Section 552b applies to meetings of the National Museum Services Board ("NMSB"). The regulations in this document (Subpart G of Part 64, Title 34 CFR) set forth procedures for the conduct of meetings of the NMSB in accordance with Section 552b.

§ 64.71 General rule.

Unless properly closed under § 64.78, every portion of every meeting of the NMSB is open to public observation. For the purposes of this document a "meeting" means the deliberations of at least the number of members of the NMSB required to take action on behalf of the NMSB, where these deliberations determine, or result in the joint conduct or disposition of, official IMS business. (A "meeting" does not include deliberations required or permitted by subsections (d) or (e) of Section 552b.)

§ 64.72 Application to NMSB committees.

This document applies to committees of the NMSB when they are authorized to make final policy decisions on the NMSB's behalf. This document does not apply to committees or informal working groups of the NMSB which are authorized to make recommendations or reports to the NMSB or to perform technical or ministerial functions on its behalf.

§ 64.73 Record vote.

(a) Certain action of the NMSB with regard to meetings under these regulations may be taken only by "record vote." For purposes of this document, a vote of the NMSB is a "record vote" if—

(1) It carries by a majority of all those holding office as NMSB members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each member voting is recorded.

(b) Within one day of a record vote to close, or withhold information about, a meeting, or any record vote for this purpose that does not achieve the necessary majority, the NMSB makes available to the public a written record showing the vote of each member.

(c) The NMSB may take a vote with respect to matters governed by this part (without convening) by means of circulation of a written ballot, tally sheet, or other notation procedures.

Announcement of Meetings

§ 64.74 Public announcement of meetings.

(a) Except as stated in paragraphs (b) and (c) of this section, the NMSB makes a public announcement of each meeting at least one week before the meeting. The announcement covers:

(1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and phone number of the official designated to respond to requests for information on the meeting.

(b) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the NMSB by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) a public announcement is made at the earliest practicable time.

(c) All or any portion of the announcement of any meeting may be omitted if the NMSB by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 64.78.

§ 64.75 Changes in time or place of meeting.

The time or place of a meeting of the NMSB that has been publicly announced as provided in § 64.74 may subsequently be changed. However, the change must be publicly announced at the earliest practicable time.

§ 64.76 Changes in subject matter of meeting.

The subject matter of any portion of any meeting of the NMSB that has been publicly announced as provided in § 64.74 (or the determination whether any portion of any meeting so publicly announced will be open or closed) may subsequently be changed if—

(a) The NMSB determines by record vote that agency business so requires and that no earlier announcement of change was possible; and

(b) The NMSB publicly announces the change and the vote of each member on the change at the earliest practicable time. (Deletion or postponement of agenda items are not subject to the requirements of this section.)

§ 64.77 Publication of announcements.

Promptly following a public announcement required by these regulations, the NMSB submits, for publication in the Federal Register, a notice containing information regarding the announcement as required by Section 552b.

Closed Meetings

§ 64.78 Reasons and procedures for closing meetings.

(a) The NMSB may, by record vote in accordance with Section 552b, close any portion of a meeting if it determines that the portion falls within one of the exceptions stated in 5 U.S.C. Section 552(c). (These exceptions are listed in Appendix A.)

(b) In making a determination under paragraph (a) of this section, the NMSB considers whether the public interest merits keeping the meeting open although an exception applies.

(c) The Board addresses requests for the certification required by Section 552b to the General Counsel of the Department of Education.

(d) Within one day of a record vote closing a portion of a NMSB meeting, the NMSB makes available a full written explanation of the NMSB's action and a list of all persons it expects to attend the meeting and their affiliations.

§ 64.79 Requests to close meetings.

A person who believes his or her interests may be directly affected by a meeting or a portion of a meeting may request the NMSB to close it to the public for a reason cited in paragraphs (5), (6), or (7) of Appendix A. Such requests are handled under procedures established by the NMSB in accordance with Section 552b.

§ 64.80 Materials related to closed portions of meetings.

If a portion or portions of any meeting of the NMSB are closed to the public—

(a) The presiding officer of the meeting (usually the Chairman of the NMSB) furnishes a statement setting forth the time and place of the meeting and the persons present (including staff).

(b) Except where the Act authorizes minutes to be kept, the NMSB makes a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(c) The NMSB maintains the presiding officer's statement, the General Counsel's certificate as required by Section 552b, and the transcript, recording, or minutes of the meeting for at least two years after the meeting and at least one year after the NMSB completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 64.81 Opening of transcript or recording of closed meeting.

(a) Except as stated in paragraph (b) of this section, the NMSB makes available for inspection the transcript, electronic recording or minutes of every portion of every closed meeting on request to any member of the public. The transcript or recording is made available in an easily accessible place. The NMSB furnishes to any member of the public on request copies of the transcript (or of a transcription of the recording) disclosing the identity of each speaker. The NMSB charges for the copies or transcriptions no more than the actual cost of duplication or transcription.

(b) The NMSB withholds the transcripts or recording of the discussion of any agenda item if the Chairman of the NMSB (or a NMSB member designated by the Chairman) determines that the discussion contains information which should be withheld under the same standards which apply for closing meetings under § 64.78. The NMSB releases the transcript or recording so withheld when the Chairman (or the Chairman's designee) determines that the grounds for withholding no longer apply.

Appendix A

A meeting may be closed if:

(1) It is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) It is likely to relate solely to the internal personnel rules and practices of the IMS or another Federal agency;

(3) It is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That the statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) It is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) It is likely to involve accusing any person of a crime, or formally censuring any person;

(6) It is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) It is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(7);

(8) It is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) It is likely to disclose information, the premature disclosure of which (i) in the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution: or (ii) be likely to significantly frustrate implementation of a proposed IMS action unless the IMS has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the IMS participation in a civil action or proceeding, or action in a foreign court or international tribunal, or an arbitration.

[FR Doc. 80-24135 Filed 8-8-80; 8:45 am]

BILLING CODE 4000-02-M

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34 CFR Part 64

Museum Services Program

AGENCY: Institute of Museum Services, ED.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues regulations governing grants under the Museum Services Program as authorized by the Museum Services Act, which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976. These regulations state eligibility conditions, application requirements and funding criteria and other rules for the administration of the program.

EFFECTIVE DATE: These regulations take effect August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Lee Kimche, Department of Education, Institute of Museum Services 330 C. Street, SW., (Room 4008), Switzer Building, Washington, D.C. 20201. Telephone: (202) 245-8817.

SUPPLEMENTARY INFORMATION: *Nature of program.* The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, was enacted on October 8, 1976.

The purpose of the Act is stated in section 202 as follows:

"It is the purpose of this title to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific

heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public."

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director. IMS is an agency within the Department of Education. A more detailed description of the structure of the Institute and the provisions of the Act may be found in 43 FR 45166 (September 29, 1978).

Current program regulations. Following discussions of the National Museum Services Board meeting in public sessions and a subsequent opportunity for public participation, IMS issued regulations on September 29, 1978, governing the administration of the Museum Services Program under the Act. These regulations for the Museum Services Program were published at 43 FR 45166 and are now codified as part 64 of Title 34 Code of Federal Regulations. The program regulations provide rules regarding the definition of the term "museum" for purposes of the program; the eligibility of museums for assistance; the types of assistance available; the requirements which applicants must meet; and the criteria used to judge applications. The program regulations provide for assistance to museums for general operational support and for project support.

Need for changes. IMS has now applied the program regulations during two funding cycles. While the basic policy decisions reflected in the program regulations remain sound, experience with the regulations has indicated the need for certain substantive, clarifying and technical changes. These changes were made with the advice and consent of the National Museum Services Board meeting in public sessions. A number of these changes respond to specific problems or issues which IMS staff has faced in the administration of the program or to comments or concerns expressed by applicants. Other changes enable the program to be more responsive to the current needs of museums.

A number of conforming changes are necessitated by the development of a set of general administrative regulations for the Department of Education, of which IMS is a part. The administrative regulations are known as the Education Division General Administrative Regulations (EDGAR). They are published in final form at 45 FR 22494, April 3, 1980. The regulations published below invite further attention to EDGAR, make amendments to the museum services program regulations that would conform them to EDGAR, and exclude the Museum Services Program from certain provisions of EDGAR.

Major changes made. On January 23, 1980, IMS published a proposed rule at 45 FR 5648 which proposed changes in the program regulations published on September 29, 1978. These final regulations reflect those changes.

The major changes in the program regulations are summarized in the following paragraphs of this preamble. These changes are applicable to the FY 1980 competition under the Museum Services Program.

1. Related institutions. A provision designed to state factors IMS uses in deciding whether two or more "related institutions" are separate museums is added as a new § 64.6. IMS has frequently confronted this problem in connection with eligibility for funding determinations and believes that the clarifying language will help to inform museums of the factors IMS will use in dealing with this problem.

2. Cooperative education projects. Funding of projects involving cooperation between museums and local educational agencies (school districts) to develop and carry out model museum education programs is given greater emphasis through an addition to § 64.8(a), which is the list of activities eligible for special project assistance (§ 64.8(a)(7)).

3. Planning projects. Museums may seek project assistance to develop in-depth, long range institutional plans as a result of language which is added as § 64.8(a)(9). Priority is given to such project applications in the fiscal year 1980 competition by language in § 64.12(b)(2).

4. Higher ceiling. The current program regulations inform applicants that individual museums should not expect an award in excess of $25,000. IMS increases this ceiling from $25,000 to $35,000. This change reflects higher operating costs which museums face and makes the program more responsive to the current needs of museums.

5. IMS assistance in relation to total museum budget. Section 64.16 of the program regulations, which deals with the IMS share of the cost of a proposal, is revised to provide that IMS *normally* does not make general operational support grants for more than 30 percent of a museum's operating budget. It has been the experience of IMS, given current and anticipated funding levels, that awards in excess of this amount are unlikely and, in any event, would involve a degree of potential dependence on Federal funding which would run counter to the purposes of the Act.

6. Conforming regulations to EDGAR. Various amendments are made to conform these regulations to the Education Division General Administrative Regulations published in final form at 45 FR 22494 on April 3, 1980. In particular, § 100a.500 of EDGAR informs applicants that assistance under the program is subject to the following civil rights requirements—Title VI of the Civil Rights Act of 1964, (prohibiting discrimination on the basis of race, color, or national origin); Title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap); and the Age Discrimination Act (prohibiting discrimination on the basis of age). A summary and explanation of EDGAR is contained in that document.

Public Participation. Interested persons were given sixty days to comment on the notice of proposed rulemaking containing the above changes. During this period, several comments were received. The paragraphs below summarize these comments and the responses to them.

Comment. A commenter noted that Section 202 of the Museum Services Act provides that one of the Act's purposes is to assist museums in their educational role, in conjunction with formal systems of postsecondary education. This commenter felt that the priority in § 64.12(b)(2) of the proposed regulations on coordination with local school systems ignored a mandated responsibility for postsecondary education involvement.

Response. No change is made in the regulations. Section 202 of the Museum Services Act states in part that "[i]t is the purpose of this title to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education. . . ." Coordination with systems of postsecondary education is thus one of several stated purposes of the Act. Section 64.12(b)(2) of the regulations states only that coordination with local school systems is a *priority* for project support funds; it does not in any way preclude consideration of applications involving cooperation with other levels of education, including postsecondary. IMS has not ignored postsecondary institutions in providing assistance. In 1979, of a total of 403 institutions given IMS assistance, 70 were university museums. There were none funded which were affiliated with local educational agencies. The priority is necessary to enable IMS to carry out its

role of encouraging cooperation between museums and local school systems.

Comment. One commenter suggested that § 64.12(b)(2) of the proposed regulation be changed to read: ". . . in-depth long range institutional planning and cooperative education projects between museums and local education agencies, *or other appropriate non-profit groups*" (emphasis supplied). The commenter felt that non-profit research and advocacy groups were a "neglected museum resource."

Response. No change is made in the regulations. Section 202 of the Museum Services Act provides for assistance to museums in their educational activities in conjunction with a number of organizations. Priority for cooperative projects between museums and local educational agencies is consistent with the purposes of the Act and the particular focus on these activities in the regulations is warranted by the experience of IMS in seeking to encourage such activities. Nothing in the regulations precludes a museum from engaging in a cooperative project with other non-profit groups.

Comment. A commenter felt that it appeared to be easier to get funding for new displays and exhibits than to upgrade old ones. This commenter wanted funding specifically enlarged so as to include improvement of old exhibits.

Response. No change is made in the regulations. The term "museum services" is defined in § 64.4 of the regulations as services provided by a museum including but not limited to preserving and maintaining its collections, exhibiting its collections to the public, and providing educational and other programs through the use of its collections and other resources. Sections 64.7 and 64.8 of the proposed regulations outline the types of programs presently provided by IMS. Such assistance is provided to " . . . maintain, increase, or improve museum services. . .," and is intended to help museums upgrade their existing services.

It should also be noted that § 64.10(b) specifically states that the costs of purchasing objects for a museum's collection are not allowed, except for library, literary, or archival material under either project support or general operating support grants.

Comment. A commenter wanted to know whether service organizations are eligible for IMS funding.

Response. Presently, service organizations are not eligible for funding under the Museum Services Act, which provides only for grants to "museums" as defined in that Act.

Comment. A commenter wanted to know whether a museum can apply for and receive funds in more than one category.

Response. An applicant may apply for one or more types of assistance under § 64.7, relating to general operational support, and § 64.8, relating to project support. For fiscal year 1980, a museum may normally receive no more than $35,000.

Comment. A commenter wanted to know why specific reference was not made in the proposed regulations to compliance with the requirements of § 106 of the National Historic Preservation Act.

Response. Section 64.17(a) of the regulations state that Parts 100a and 100c of the Education Division General Administrative Regulations (EDGAR) apply to the award and administration of grants under the Museum Services Act. Section 100a.602 of EDGAR requires an applicant to describe the relationship of a project to, or its probable effect on, structures, objects, or sites which are included in the National Register of Historic Places. Applicants should consult EDGAR itself for the specific language of the section.

A more specific reference to the National Historic Preservation Act in the regulations is not needed in view of the above provision.

These regulations have been approved by the National Museum Services Board and the Director of the Institute of Museum Services.

(Catalog of Federal Domestic Assistance No. 13.923, Museum Services Program. Part I of OMB Circular A-95 does not apply.)

Dated: August 6, 1980.

Steven A. Minter,

Acting Secretary of Education.

Part 64 Subpart A of Title 34 of the Code of Federal Regulations is revised as to read as follows:

PART 64—INSTITUTE OF MUSEUM SERVICES

Subpart A—General

Sec.

64.1 Purpose of museum services program.
64.2 Scope of this document.
64.3 Definition of museum.
64.4 Other definitions.
64.5 Eligibility—Who may apply.
64.6 Related institutions.
64.7 General operational support.
64.8 Other types of assistance—project support.
64.9 Likely size of grants and allocation of funds among activities.
64.10 Allowable costs.
64.11 Basic requirements which a museum must meet to be considered for funding.
64.12 How applications are judged; priorities.
64.13 Criteria for evaluation of applications for general operational support.
64.14 Criteria for evaluation of applications for project support.
64.15 Duration of grant.
64.16 IMS share of the cost of a proposal.
64.17 Applicable grant administration provisions.
64.18 Reports.

Authority: Secs. 201-210, Pub. L. 94-462, 90 Stat. 1975, (20 U.S.C. 961-968); (5 U.S.C. 552b).

Subpart A—General

§ 64.1 Purpose of museum services program.

The purpose of this program of Federal financial assistance is to ease the financial burden borne by museums as a result of their increasing use by the public and to encourage and assist them to carry out their educational and conservation roles as well as other functions and to modernize their methods and facilities.

§ 64.2 Scope of this document.

This document establishes rules for the award of grants to museums from funds appropriated under the Museum Services Act including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in judging applications.

§ 64.3 Definition of museum.

For the purpose of this part:

(a) "Museum" means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff—

(1) Owns or uses tangible objects, whether animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the public on a regular basis.

(b) "Museum" includes (but is not limited to) the following institutions if they satisfy the provisions of this section:

(1) Aquariums and zoological parks;

(2) Botanical gardens and arboretums;

(3) Museums relating to art, history (including historic building museums), natural history, science and technology; and

(4) Planetariums.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution. The Institute encourages museums to use paid professional staff.

(d) An institution does not exhibit objects to the public for the purposes of this section if the display or use of the objects is secondary to its overall purpose.

(e) For the purposes of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

§ 64.4 Other definitions.

The following other definitions apply in this document:

"Act" means the Museum Services Act, Title II of the Arts, Humanities and Cultural Affairs Act of 1976, Pub. L. 94-462. (20 U.S.C. 961-968).

"Applicant" means an institution which is eligible and applies for assistance under the Act and this document.

"Board" means the National Museum Services Board established under Section 204 of the Act.

"Collection" includes objects owned, used or loaned by a museum as well as literary, archival and documentary resources required for the study and interpretation of these objects.

"Conservation" includes, but is not limited to, the following functions, as applied to animate as well as inanimate objects: Technical examination of materials, techniques, and conditions; provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, nurturing and transportation of objects; the physical treatment of objects for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and compensation for losses; the systematizing of collections and development of effective data retrieval processes; research and training in conservation; and establishment of the facilities to do research in or practice conservation.

"Department" means the Department of Education.

"Director" means the Director of the Institute of Museum Services.

"Grantee" means the recipient of a grant under the Act.

"Institute" means the Institute of Museum Services ("IMS") established under Section 203 of the Act.

"Museum services" means services provided by a museum including but not limited to preserving and maintaining its collections, exhibiting its collections to the public, and providing educational and other programs to the public through the use of its collections and other resources.

§ 64.5 Eligibility—Who may apply.

(a)(1) A museum located in the fifty States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may apply for a grant under the Act. (2) A public or private nonprofit agency, such as a State or municipal agency or an institution of higher education, which is responsible for the operation of a museum may apply on behalf of the museum. (3) A museum operated by a department or agency of the Federal Government may apply only to the extent authorized by general priniciples of law applicable to the receipt of Federal assistance by these departments or agencies.

(b) An applicant has the burden of establishing that it is eligible for assistance under this part.

§ 64.6 Related institutions.

(a) If two or more institutions under the common control of one agency or institution or otherwise organizationally related apply for assistance under the Act, the Secretary determines, under all the relevant circumstances, whether they are separate museums for the purposes of establishing eligibility for assistance under this document. See §§ 64.5; 64.9.

(b) IMS regards the following factors as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

§ 64.7 General operational support.

In order to maintain, increase or improve museum services, a museum may apply for a grant under the Act to meet its administrative, staff and operating costs.

§ 64.8 Other types of assistance—project support.

(a) In order to increase or improve museum services through exemplary projects which are additional to its operating program, a museum may apply for a grant to:

(1) Develop training programs for its staff;

(2) Obtain technical assistance to carry out its functions or provide technical assistance to other museums;

(3) Develop or demonstrate methods of conservation;

(4) Develop and carry out museum programs for specific segments of the public, such as persons in urban neighborhoods, rural areas, Indian reservations, penal and other State institutions, senior citizens, handicapped persons and educationally deprived or economically disadvantaged persons;

(5) Develop and carry out educational programs;

(6) Cooperate with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan;

(7) Cooperate with local educational agencies to develop and carry out model museum education programs;

(8) Modernize or preserve its facilities or structures (except in fiscal years 1978, 1979, and 1980); and

(9) Develop in-depth, long range institutional plans.

(b) By notice published in the Federal Register and applicable to a particular fiscal year, IMS may limit the types of activities to be funded under this section.

(c) An applicant may apply for one or more types of assistance under § 64.7 and this section.

§ 64.9 Likely size of grants and allocation of funds among activities.

(a) In view of limited funds, it is anticipated that no museum will receive more than $35,000 under the Act for fiscal year 1980 and that most museums which are funded will receive a smaller amount. For future fiscal years, similar limitations may be specified by notice published in the Federal Register.

(b) Not less than 75 percent of the funds available under the Act for grants in a fiscal year will be reserved for grants under § 64.7 (general operational support).

§ 64.10 Allowable costs.

(a) Determination of costs allowable under a grant are made in accordance with government wide cost principles in Appendix C to 34 CFR Part 74, 45 FR 30876 (May 9, 1980), (in the case of applicants which are State or local government agencies), Appendix D (in the case of applicants which are institutions of postsecondary education), and Appendix F (in the case of applicants which are other nonprofit institutions).

(b) Costs of purchasing objects to be included in the collection of a museum are not allowable (except library, literary, or archival material incident to an activity under §§ 64.7 or 64.8).

§ 64.11 Basic requirements which a museum must meet to be considered for funding.

(a) *Application.* To apply for a grant, a museum must submit the designated

application form containing the information requested in the form. Instructions as to application contents are generally contained in the application notice published in the Federal Register when applications are invited. An application generally requires a museum to demonstrate that it meets the requirements described in this section and other applicable application requirements in the Education Division General Administrative Regulations (EDGAR).

(b) *IRS letter.* A museum applying as a private, nonprofit institution must supply a letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the Internal Revenue Code of 1954.

(c) *Financial statements.* Each applicant museum must supply its financial statement for its most recent completed fiscal year for which information is available. IMS prefers an audited statement. If the applicant has previously received an IMS award, IMS requires that the statement be audited. If the Director finds that a museum cannot meet this requirement because it customarily does not receive audited financial statements separate from those of its parent organization, and if the applicant is periodically audited, the Director may waive or modify the requirement with respect to that museum.

(d) *Long-range plan.* Each applicant museum must include long-range plans for program and financial development.

(e) *Maintenance of effort.* Each applicant museum must assure that it will maintain its fiscal effort for museum services. An applicant complies with this assurance if its aggregate expenditures for museum services (exclusive of Federal assistance) for the grant period are at least equal to those expenditures for the equivalent preceding period.

§ 64.12 How applications are judged; priorities.

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in §§ 64.13 and 64.14. Normally, these applications are first evaluated by readers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b)(1) Priority is given to museums which have been providing museum services for at least 2 years prior to applying to IMS.

(2) In the case of applications under § 64.8 for fiscal year 1980, priority is given to applications for in-depth long range institutional planning and cooperative education projects between museums and local educational agencies.

(c) To achieve diversity in the distribution of assistance, the Institute considers the location, size, and discipline of the applicant in addition to the criteria in §§ 64.13 and 64.14.

(d)(1) When the Director finds the circumstances described in 45 CFR 100a. 219(a) of the Education Division General Administrative Regulations (relating to emergencies and other special circumstances), the Director may make a grant to a museum under the procedures described in 45 CFR 100a.220. The Director intends to invoke this authority only in emergency situations. The selection procedures in paragraph (a) of this section do not apply to the making of such a grant.

(2) A grant to a museum under this paragraph may not exceed $10,000 in a fiscal year.

(3) Grants under this paragraph may not exceed (in the aggregate) $300,000 in a fiscal year.

(4) The Director may not make a grant under this paragraph unless the Board (or a subcommittee of the Board) approves it.

§ 64.13 Criteria for evaluation of applications for general operational support.

The following criteria apply to the evaluation of all applications for general operational support submitted in fiscal year 1979 and succeeding fiscal years. In applying these criteria, the total operation of the applicant museum is assessed, especially the museum's operation as it would be if the general operational support is granted. This assessment is based primarily on the information supplied in the museum's application. A positive answer to the questions below favors the applicant.

(a) *Museum services.* Are the applicant's museum services of high quality? How will their quality be improved or maintained by the general operational support requested?

(b) *Collection and exhibits.* Are the museum's collections and exhibits of high quality and importance? How will the conservation of the collections be enhanced or maintained if the general operational support is granted?

(c) *Accessibility.* How accessible to the public are the museum's services, collections, and exhibits? How accessible will they be if the general operational support is granted?

(d) *Population served.* To what extent does the museum serve persons who otherwise have limited access to the type of services which it provides?

(e) *Financial management.* What is the quality of the financial management of the museum?

(f) *Long range plans.* What is the quality of the museum's long range plans for financial and program development?

(g) *Community commitment.* How committed to the museum are its users and supporters? Does the museum have a substantial base of non-Federal support?

(h) *Use of IMS funds (when applicable).* Has the museum used effectively its IMS funds, if it has received any?

§ 64.14 Criteria for evaluation of applications for project support.

The following criteria apply to the evaluation of all applications for project support. Criteria (a)–(e) of this section are based on EDGAR 45 CFR 100a.202–100a.206.

(a) *Plan of operation.* (Based on EDGAR 45 CFR 100a.202). What is the quality of the plan of operation for the project? In applying this criterion, IMS looks for information that shows:

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (Based on EDGAR 45 CFR 100a.203). What is the quality of the key personnel the applicant plans to use on the project? In applying this criterion, IMS looks for information that shows:

(1) The qualifications of the project director (if any);

(2) The qualifications of each of the other key personnel used in the project;

(3) The time that each person referred to in paragraphs (b)(1)(2) of this section plans to commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) *Budget and cost effectiveness.* (Based on EDGAR 45 CFR 100a.204). Does the project have an adequate budget and is the project cost effective? In applying this criterion, IMS looks for information that shows:

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Based on EDGAR 45 CFR 100a.205). What is the quality of the evaluation plan for the project? In applying this criterion IMS looks for information that shows an objective, quantifiable method of evaluation under 45 CFR 100a.590.

(e) *Adequacy of resources.* (Based on EDGAR 45 CFR 100a.206). Does the applicant plan to devote adequate resources to the project?

In applying this criterion, IMS looks for information that show:

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(f) *General applicability.* To what extent does the application address a problem which is general to a number of museums but has not been adequately addressed?

(g) *Model or exemplary project.* To what extent does the project represent a model or exemplary approach to the problem addressed? To what extent may this approach, if successful, be replicated?

(h) *Other Federal support.* Does the applicant lack alternative sources of Federal support for the project?

(i) *Dissemination.* Has the applicant made satisfactory provision for disseminating the results of the project to other interested persons?

§ 64.15 Duration of grant.

Grants under the Act normally permit the grantee to use the funds for a period of up to 12 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If, in the case of a grant under § 64.8, the grantee needs additional time to complete the grant project, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

§ 64.16 IMS share of the cost of a proposal.

(a) Subject to § 64.9(a) and the applicable requirements in 34 CFR Part 74 relating to allowable costs, a museum may receive a grant for up to 50 percent of its proposed operating or activity budget for museum services in the case of a grant under § 64.7, or up to 50 percent of its approved project costs, in the case of a grant under § 64.8. However, IMS normally does not make grants for more than 30 percent of a museum's operating or activity budget in the case of a grant under § 64.7.

(b) An applicant requesting general operational support under § 64.7 may submit a total operating budget, including volunteer and other contributed services, which shows that the applicant will satisfy the requirements of paragraph (a) of this section, (relating to cost sharing) but which need not identify the particular operating costs for which IMS funds will be used. An applicant which receives general operational support on this basis must be prepared to show that its actual operation conformed to the operating proposal on which its application was judged.

§ 64.17 Applicable grant administration provisions.

(a) Except as stated in paragraph (b) of this section, the provisions of the Education Division General Administrative Regulations (EDGAR), 45 CFR Parts 100a and 100c, apply to the award and administration of grants under the Act. EDGAR contains general administrative and fiscal requirements related to grant programs administered by the Department of Education of which IMS is a part. Part 45 CFR 100a contains regulations covering how to apply for a grant, information that must be included in applications, general criteria for the selection of applications, grant conditions, administrative responsibilities of those who receive a grant, and compliance procedures. Part 45 CFR 100c contains general definitions which apply to all Education Division programs. EDGAR also makes applicable to the Museum Services Program certain other general regulations including 34 CFR Part 74 (Departmental grant administration provisions) and provisions prohibiting discrimination on the basis of race, sex, handicap or age. Applicants should consult EDGAR and other applicable regulations which EDGAR cross references.

(b) The following provisions of EDGAR 45 CFR Part 100a do not apply to general operational support grants under this document:

(1) Sections 100a.201–100a.206 (selection criteria);

(2) Sections 100a.111–100a.116 (application contents); and

(3) Sections 100a.560–100a.568 (indirect cost rates).

§ 64.18 Reports.

In its final report a grantee shall briefly describe how the performance of the grant has satisfied the objectives of the recipient museum as stated in its application and how assistance under the Act has served the purpose of the Act as reflected in the applicable evaluation criteria.

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August 11, 1980

Part XII

Department of Energy

Residential Conservation Service Program and Interpretation of Title V, Subpart B of the Energy Security Act

DEPARTMENT OF ENERGY

10 CFR Part 456

[Docket No. CAS-RM-79-101]

Residential Conservation Service Program Notice of Proposed Rulemaking and Correction to Final Rule

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The following notice proposes changes to the final rule issued as CAS-RM-79-101 in the Wednesday, November 7, 1979 issue of the Federal Register, Vol. 44, No. 217, Part II, pp. 64602-64727. This notice is issued to correct clerical, grammatical and typographical errors in the Final Rule which do not reflect policy changes of the Department, as well as a small number of changes which reflect proposed substantive changes to the Final Rule.

DATE: Written comments on proposed rulemaking must be received by September 10, 1980, 4:30 p.m., e.s.t., in order to ensure their consideration.

ADDRESSES: Comments should be addressed to: Joanne Bakos, Office of Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585. See "Comment Procedures" under Supplementary Information below. Copies of all reports and analyses referred to in this notice are available for review in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

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Residential Conservation Service Program,
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SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Regulatory Analysis and Urban Impact Assessment.
III. Environmental Impact Statement.
IV. Consultation with Other Federal Agencies.
V. Contractor Contributions to the Rulemaking.
VI. Executive Order 12044.
VII. Comment Procedures.
VIII. Amendments.

I. Introduction

On November 7, 1979, the Department of Energy (DOE) published a final rule (44 FR 64602) to establish the Residential Conservation Service (RCS) Program to encourage and facilitate the installation of energy conservation measures and renewable resource measures. Subsequent to that publication, DOE became aware of a number of amendments to the final rule which needed to be made to clarify DOE's position on several matters and to correct clerical errors. These amendments are being proposed by this publication. Written comments will be accepted until September 10, 1980, and will be considered by DOE before issuance of amendments in final form.

Of the changes proposed below, most are either typographical or grammatical. A number of non-clerical amendments are also proposed which would affect no substantive change in the rule, but consist of clarifications or equivalents. However, DOE is proposing a small number of changes which might substantively effect some portions of the final rule or a significant number of people.

As the reasons for most of the proposed changes are self-evident, no accompanying explanation is given. However, for those cases in which the reasons for certain amendments are not readily apparent and where a substantive change is being proposed, explanations are set forth below in the first part of this Introduction. The proposed amendment to the applicability criteria for wind energy devices is set forth in a separate part of the Introduction due to the extensive nature of the discussion.

A. Discussion of Proposed Amendments

2. and 4. These changes are to the preamble of the final rule rather than to the regulatory language itself. Although the preamble is not legally binding, we wish to clarify our intent in these two areas. Amendment No. 2 would amend the preamble to the final rule to clarify DOE's position with respect to redress procedures. No State is *required* by the RCS rule to pass new legislation affecting the State's sovereign immunity. Amendment No. 4 would make the preamble consistent with the final rule.

8. and 16. Ceiling insulation for mobile homes was excluded from the Final Rule because DOE did not believe that any product existed which might pay for its costs within its useful life in this application. Since the publication of the Final Rule, we have learned of at least one product, a flexible insulated roof blanket installed on the exterior of a mobile home, which has the potential for reducing mobile home energy use (particularly for air conditioning) in a cost-effective manner. Because of the limited number of retrofit conservation measures which apply to mobile homes, and because of the severe effects of energy costs on low-income mobile home occupants, we propose to amend section 456.307(b) to require that ceiling insulation be audited in mobile homes. We also propose to amend the definition of ceiling insulation to make it clear that many insulation materials have exterior applications. Section 456.907 contains an installation standard for exterior installation of some insulation products. We seek comment on these changes, particularly with regard to the following questions:

(1) Should DOE prescribe additional standards for either the materials or the installation of products which can be used in mobile home ceiling insulation?

(2) Which products or types of products can be used cost-effectively to insulate mobile home ceilings?

(3) Are these products durable?

(4) Is there adequate manufacturing capacity to handle increases in demand which might result from the inclusion of this application of ceiling insulation?

(5) Some exterior insulations may affect surface temperatures as well as R-values of the roof assembly. Are any special calculation procedures needed to estimate savings of exterior insulations?

10. and 19. Amendment No. 10 would change the measure now listed in § 456.105(v) as "Window Heat Gain Retardants", to "Window Heat Gain and/or Loss Retardant." DOE referenced the full range of benefits associated with several of the individual devices (including those related to heat loss as well as those related to heat gain) in the audit portion of the rule, but inadvertently described the measure in the definitions sections as only those that retard heat gain in the summertime. However, these devices may also save substantial energy by minimizing loss of wintertime heating through windows.

Although the maximum heat gain retardance would occur through southerly windows, substantial sunlight heating could and would normally occur through windows facing other directions. Reduction in wintertime heat loss is relatively insensitive to directional considerations except that maximum loss generally occurs in the direction of prevailing winter winds. In most cases, winter winds are prevalent

in directions other than South ±45°. In such circumstances, where a house is equipped with insulated shades, the owner would achieve maximum savings by lowering shades on all windows other than southerly (i.e., reduce heat loss, maximize southern heat gain). Therefore, DOE is proposing to modify the identification of the measure to reflect the additional savings achievable.

Because one or more of the devices incorporated within this measure should produce energy savings for virtually any home as a heat gain (summer) retardant and/or a heat loss retardant (winter), DOE is further proposing to remove the present applicability criterion. See Amendment No. 17.

Because various other window heat gain/loss measures (such as storm windows) are already required as basic components of the home audit, and because these devices were to have been addressed in nearly all homes under the present definition, DOE concludes that these proposals would have an insignificant effect on aggregate audit time and costs.

12. Reference to the treatment of requests for information submitted to DOE under the RCS program was inadvertently omitted from the final rule. Therefore, DOE is proposing procedures that are consistent with DOE's Freedom of Information Act regulations, 10 CFR Part 1004 (44 FR 1908, January 8, 1979). Although DOE believes that there will be little information of a proprietary nature submitted to DOE under the RCS program, the Department believes that the procedures by which an individual may make a claim of confidentiality should be specifically included in the RCS rule.

13. Under the current § 456.205(e)(2), a State wishing to amend a previously approved State plan would be required to comply with all of the requirements for submission of a State plan (except the time limit) regardless of the nature of the amendment. DOE believes that exceptions to these requirements should be available if the State is able to make a good cause showing that some or any of the submission requirements should be waived (e.g.: where the amendment is not significant and the burden of requiring full-scale State hearings would be substantial).

14. This amendment would correct the regulatory requirements for utilities exempt from the prohibition against supply, installation and financing of energy conservation and renewable resource measures. The statutory requirements in NECPA regarding unfair discrimination among customers, among measures, and among suppliers, contractors and lenders apply only to those activities that are mandated under the RCS State Plan and not to voluntary activities such as the supplying, installing, or financing of measures. Such voluntary activities come under the preview of State and local utility regulations and, unless DOE is given specific authority by Federal legislation to monitor or regulate such utility activities, DOE believes that such regulation is best left with State and local authorities. Therefore, DOE proposes to correct the regulation to conform to the statutory requirement.

15, 24–26. These amendments clarify DOE's intent that only those entities which supply, install or finance in accordance with the RCS listing requirements should be entitled to the benefits of publicizing their services in connection with the RCS program.

17. See discussion in Part B below.

23. Uncertainties have been expressed regarding the definition and use of the term "Nearest Measuring Station" contained in section 456.307(c)(10)(iii). DOE is concerned with the effect of such uncertainties on the usefulness of the procedures described in this section, on the proposed change in the applicability criterion discussed below.

In order to clarify the term "Nearest Measuring Station", DOE proposes to substitute the term "Nearest Qualified "Measuring Station" and to define the requirements for qualification. DOE believes there is a sufficient technical basis at this time to propose minimum data-collection requirements for measured wind data used by utilities or fuel suppliers in the RCS wind energy audit.

The proposed change would provide assurance that wind data used in the audit procedure and, if finalized, in the proposed applicability ciriterion, would be credible and uniform nationwide. The proposed requirements reflect the minimum procedures for data collection necessary for the purposes of the RCS program. DOE concludes that the wind resource data base, as well as the resultant wind atlases (discussed below under "B. Applicability Criterion"), are acceptable as "qualified" within the requirements of the proposal. The proposal amendment would have the additional benefit of providing the basis for States to employ other resource data without sacrificing uniformity or credibility. DOE does not intend that these requirements necessarily be applicable beyond the RCS program.

27. This amendment would prohibit utilities from arranging financing for consumers' do-it-yourself installations of furnace efficiency modifications, devices associated with load management techniques, and wind energy devices. DOE has determined that do-it-yourself installations for these measures should not be encouraged under the RCS program because of their complexity and the potential for safety risks. the installation of these measures should be carried out only by individuals specially trained for such installation.

29. The amendment to § 456.311(a)(1) is proposed to clarify DOE's intent that § 456.311(a)(1) applies only to those charges made by utilities and participating home heating suppliers, and was not meant to apply to bills by other entities engaged in RCS activities.

31. Section 456.312(b)(1)(iv) would be amended to acccommodate any changes which may result from the December 21, 1979 proposal of several new subsections of § 456.314.

32. DOE's intent in including bonding as a listing requirement was to protect consumers from contractors' failure to complete work contracted for. The word "liability" in the Final Rule was intended to refer to liability for nonperformance, not for negligence. Therefore, this change is proposed to more precisely articulate the requirement of a performance bond.

34. The proposed § 456.312(b)(4) would require installers of vent dampers, IIDS, and if DOE issues UF foam insulation standards, of UF foam, to carry liability insurance in order to be included on the RCS lists. DOE believes that improper installation of these measures is most likely to result in some personal injury or property damage. As most installers of these measures already carry liability insurance, DOE believes that it is not unduly burdensome to require that these installers carry liability insurance.

37. DOE proposes to change § 456.314 to prevent the States from shifting to other entities the ultimate responsibility for the training and certification of those individuals required to be trained and certified under RCS. DOE believe that the training and certification requirements are essential to an effective RCS program and therefore wants the State to closely oversee this part of the program.

44. Section 456.507(b) requires a utility which submits a request for determination or waiver to inform certain entities that those entities have ten days within which to submit comments on such request to DOE. The change made here is to clarify at what point those ten days begin to run: from the date the request is filed with the Assistant Secretary.

45. This new § 456.509, inadvertently omitted from the Final Rule, tracks the

language in section 216(f) of NECPA. This does not change any existing legal requirements since the statutory requirement of section 216(f) of NECPA has been effective since the November 9, 1978 enactment date. This amendment merely includes the statutory requirements in the regulation so that all RCS requirements may be found in one document.

53. Section 456.804(b)(6) is amended for consistency with the installation standard § 456.905(c)(1)(v).

55. and 59. These sections are amended to make clear that DOE would accept the CPSC approved label in lieu of the DOE label since the labels are equivalent. This is consistent with DOE's attempt to coordinate RCS standards with pre-existing standards, regulations, or labelling requirements imposed by other Federal agencies.

58. Section 456.805(b)(7) is amended for consistency with the installation standard § 456.906(d)(1)(ix).

66. The new § 456.813(b)(8) is inserted to coordinate the DOE rule with substantially similar regulations by the Department of Housing and Urban Development (HUD).

74., 76–80. These sections are amended with language which is intended to be clearer to installers, but is equivalent to that used in the final rule.

75. Section 456.907(d)(1) is amended to delete the reference to "Type III" since that reference is not commonly used nor is it defined in either the material or the installation standards. It is replaced with an equivalent phrase, so there is no substantive change in this section.

84. The installation standard for storm windows, thermal windows, multi-glazing units, storm doors, and thermal doors is being replaced by an identical ASTM standard. The DOE standard was introduced to ASTM over 2 years ago and was adopted in March 1980. This practice is consistent with DOE's intent to rely upon industry and concensus standards when such standards exist.

B. Applicability Criterion for Wind Energy Devices

1. Public Comment.

Section 456.705(g)(1)(i) of the Proposed Rule issued on December 21, 1979 (44 FR 75956), included proposed standards for wind energy devices, which are also referred to as Small Wind Energy Conversion Systems (SWECS). Several persons and organizations commented on the setback provisions for wind energy devices. Most of these comments also referenced the applicability criterion for wind energy devices contained in § 456.307(b)(2)(iv) of the Final Rule of November 7, 1979.

The commentors argued that the ¾ acre minimum lot size and 50 foot setback components of the applicability criterion would too severely limit the audience for audits. One commentor argued that these requirements lack substantial basis and that they would seriously and unjustifiably limit an emerging market for residential wind energy devices. Another commentor observed that the applicability criterion for wind energy devices is based on safety considerations, while the other applicability criteria of the final rule reflect concerns not related to safety, such as solar resource availability or the feasibility of installation of insulation materials. Other commentors argued, that DOE had not given proper notice and opportunity to comment on the criterion which was contained in the Final Rule of November 7, 1979.

In response to these comments, and others to be identified subsequently, DOE is proposing to modify the applicability criterion for wind energy devices, § 456.307(b)(2)(iv).

2. Discussion of Comments.

In response to comments on the proposed RCS rulemaking of March 19, 1979 (44 FR 75956), DOE established an applicability criterion for each of the designated program measures. As a policy, this action was taken to reduce the number of audits for each program measure which would yield negative cost and savings estimates due to unfavorable local economics, unfavorable local environmental resources, or physical or technical limitations at the site.

In establishing these criteria, DOE also attempted to be responsive to other comments regarding the significant financial burden upon participating utilities and home heating suppliers of training every auditor to audit for each of the somewhat diverse inventory of program measures. To this end, DOE attempted to select criteria which a utility could conceivably utilize prior to a site visit in order to assign a selectively trained auditor to a residence. Although that is not possible for all measures in all situations, the criteria at a minimum should enable an auditor to terminate at an early stage the portion of an audit for measures that are economically or technically inapplicable to the specific residence, thereby reducing (at least in some cases) the amount of time spent at an individual residence. This shortening of average audit length would serve to increase the number of possible audits per auditor per day, and would tend to decrease the manpower associated costs (on the average) to the utility.

With respect to the applicability criterion for wind energy devices, DOE attempted to develop a simple mechanism to enable utilities to perform RCS wind audits only at those residences, within designated climatic zones, for which a wind application would be technically feasible and economically attractive. Because of this need for simplicity, because wind machine perfomance is dependent upon specific site characteristics, and because of the limited amount of specific site resource data available at that time, DOE established a criterion comprised of three components: a minimum setback, a minimum lot size, and access to the wind resource.

The component of the existing criterion related to access to the wind resource was intended to serve as an indicator of the potential for a wind machine to function properly at the site. Within the context of the DOE model audit procedure, a determination could be made at an early stage of the process as to the specific wind resource availability as correlated to data from the nearest wind measuring station.

The remaining components of the existing criterion (i.e., setback, and lot size) were in large measure drawn from the proposed siting criterion expressed in section 456.706 of the proposed rule of March 1979, and were meant to be indirect indicators of possible physical limitations of a SWECS installation.

In order to make the siting related components uniform and simple to apply, DOE applied the original siting requirement (i.e., 1½ tower heights separation from property lines or rights of way) to nominally sized SWECS to derive the specific 50 foot setback. Although this type of machine could be located on many lots smaller than .75 acre (in light of the 50 foot setback), DOE concluded that .75 acre would nearly always accommodate a SWECS sited according to the minimum requirement for machine setback.

Several commentors stated that DOE established a criterion having societal bias since only homes on lots of .75 acre or larger could be audited for wind energy devices. DOE reiterates that the only intent was to develop criteria indicating technical, economic, or physical limitations to a successful application of a wind device within the RCS program.

With respect to the concern expressed by industry members regarding the likelihood of an adverse impact on their ability to compete in general commerce (i.e., outside of the RCS program), DOE wishes to restate that RCS applicability criteria are meant to be utilized only within RCS as a simple tool in

determining the advisability of conducting or completing an audit. DOE recognizes that there will be many occasions in general commerce when an installation outside these generalized estimating techniques will be technically and economically feasible.

With respect to the commentors' argument that siting and/or safety requirements should be a function of program standards and not applicability criteria, DOE agrees that a separation is desirable, but not absolutely necessary where siting provisions could be employed as indicators of potential physical or technical limitations on equipment installation.

With respect to comments regarding the over restrictive nature of the original criterion, further analysis has indicated that the original criterion may eliminate more audits than contemplated at the time of criterion development. This conclusion is based upon an examination of census and FHA/HUD data which suggests that fewer than 5 percent of single family homes nationwide could qualify for a wind audit under the .75 acre component of the criterion. DOE is concerned that many audits that might result in positive indications would be excluded.

In response to arguments that the original requirement for machine setback had been premised upon unlikely problems (i.e., catastrophic tower failure), and in response to new evidence received through the comments on the proposed wind energy device standards, DOE has examined all available evidence, and now concludes that earlier presumptions regarding tower failure reflect an unlikely occurrence in the case of properly strengthened or guyed towers. DOE believes that it now has the capability to propose a significantly improved criterion which is more consistent with those developed for other program measures.

In developing this proposal, DOE considered a number of options concentrating on the six discussed below.

3. Options Considered.

a. *No or Minor Modification to the Existing Criterion.*

The present criterion consists of three requirements: (1) minimum setback, (2) minimum lot size, and (3) access to wind resource. DOE believes that (1) the setback requirement is most properly treated within the context of program standards; (2) that the lot size requirement could remain in an effective applicability criterion but the minimum size requirement would have to be reduced in order to alleviate the problem of excluding wind energy audits where wind energy devices may be cost effective; and (3) that wind access should be included in the criterion but a more effective method of determining wind access is now available. (See discussion below on access to wind resources.) DOE has not selected this alternative for proposal since the capability exists to develop a revised criterion which more fully considers the availability and suitability of the wind resource. In the unlikely event that a substantial number of commentors disagree with this position, DOE does not foreclose the possibility of making minor modifications to the existing criterion or to using one of the other alternatives discussed below. Accordingly, commentors are urged to consider this and the other alternatives.

b. Availability of Sufficient Wind Resource As the Criterion.

Sufficient wind resource must be available for effective operation of commercially available residential wind energy devices. Therefore, the availability of sufficient wind resource would be a reasonable applicability criterion. This option, as a resources related indicator of economic feasibility, is more directly in keeping with the criteria for other program measures. A minimum wind speed criterion would tend to curtail the number of audits for those sites where wind devices would be uneconomical. Moreover, this criterion could be applied early in the audit process to curtail the number of wind audits required.

Over the past few years, a substantial effort to characterize the domestic wind resource has been undertaken by a number of parties, including DOE and its field organizations. DOE now believes that sufficient credible data exists, principally through the DOE wind mapping effort, to support a criterion of this nature. The basic data are now available for general use and can be provided to RCS lead agencies upon request. Wind atlases, which characterize this basic data down to grids of approximately 15 miles, will be available in early 1981. It should be noted, however, that these data sources do not represent the only references acceptable to DOE. As elsewhere discussed, DOE is also proposing a clarification of its intent regarding the wind data requirement of § 456.307(c)(10)(iii). If finalized, this clarification would provide the basis whereby a participating utility or State not desiring to utilize the DOE sources could utilize credible data from the nearest qualified wind measuring station.

Credible wind resource data, could be utilized to determine whether the level of wind energy at the site exceeds the required 10 miles per hour without requiring an actual visit to the residence. (The selection of 10 mph is discussed under "4. Proposed Applicability Criterion"). The chief advantages of this option are the ability to gauge economic feasibility and the ease of application, as compared to the proposed applicability criterion.

Due to physical limitations at an audit site (e.g., obstructions to the wind or insufficient space to locate the wind device), use of this applicability criterion alone would likely result in at least some audits being performed where operation of a wind energy device would not be feasible.

c. Wind Access As The Criterion.

Even if sufficient wind resources are available, an important factor in the effective operation of a wind device is unobstructed access to the wind resource. Upwind physical obstructions reduce the resources reaching the wind device, and obstructions in other directions cause turbulence that reduces efficiency.

A procedure has been developed as part of the RCS Model Audit for the assessment of significant obstructions. This procedure reduces substantially the training and judgment which might be required on the part of the auditor to determine applicability under this criterion. Under this procedure (which can be readily specialized to conform to local land properties) an auditor would be required to look for obstructions over 55 feet high and greater than 30 feet wide within 100 feet of the possible wind energy device location. An obstruction of these dimensions would be considered significant and no further wind audit would be required.

Use of this option would eliminate the time and expense of performing wind audits in areas where, due to obstructions, a wind device would not be feasible. This determination could be made onsite in the early stages of the wind audit but would be difficult to assess prior to a site visit. The primary disadvantage of sole use of this applicability criterion is that audits would be performed in areas that lack an adequate wind resource.

d. Minimum Wind Machine Area as the Criterion.

This criterion would require that an area exist in which a wind machine can be located free of other structures or trees which allows sufficient space to install, operate and maintain the unit. This minimum wind machine area would be a circle, 15 feet in diameter. Applicability could be determined onsite at an early stage of the audit, or through

a pre-audit telephone interview from the utility or fuel supplier's office.

Currently available residential sized wind energy devices normally range in rotor diameter size from 14 to 24 feet. Clear area alternatives considered for this criterion ranged from a minimum of 15 feet (7 foot radius wind energy device) to a maximum of 30 feet (15 foot radius) with provisions for heavy equipment access to the proposed location. While installation and servicing of many residential sized wind devices does not require the use of heavy equipment such as a crane, the installation, operation, and maintenance requirements are clearly machine dependent. DOE believes that an applicability criterion should reflect the minimum requirements for the use of a measure. Therefore, the area called for by this option (15 foot diameter circle) reflects the minimum radius needed around the tower for installation, operation and maintenance of a small residential sized wind energy device.

The advantage of this criterion is its recognition of a possible physical constraint to installation of a wind device. A major disadvantage of this criterion is that it does not address the limitations implied by consideration of specific machines. For example, installation of a 30 foot diameter SWECS within the 15 foot space may not provide an adequate area for installation and maintenance in all cases. Also, it does not by itself address other relevant issues such as the availability and/or suitability of the wind resource.

DOE believes that consideration of physical onsite constraints is most appropriately reflected in the audit itself or in the siting portion of a purchase decision which follows an audit of the RCS type, rather than as a component of a general applicability criterion.

e. Analysis of Prior Data Gathered at the Site as the Criterion.

This option would require the wind resource to have been measured for a minimum of 12 months at the site where the audit has been requested. Due to variations in wind resources from one site to another, the most accurate method to determine economic viability of a wind device is to perform onsite measurements. One year's data would provide an estimate of annual average wind speed, an indication of the seasonal variations in the wind resource at the site, and an indication of the prevailing wind direction which would allow better assessment of the impacts of existing obstructions.

This option would reduce the need for the auditor to correlate the site resource to that existing at the nearest measuring station, could improve the accuracy of the cost and savings estimates, and could support a purchase decision immediately following the audit with little further investigation. Some correlation would still be required in order to properly relate the one year's data to historical data recorded at the nearest measuring station(s).

There are several disadvantages to this option. First, large numbers of resource measuring and recording equipment would be required. Second, States or utilities would need to establish additional administrative networks to assure the commonality and credibility of recorded data. Third, to fully characterize the site specific resource, measurements at multiple heights would be required. Fourth, selection of this alternative would necessitate a one to two year delay in wind audits. In light of the time penalties and administrative difficulties presented by this option, DOE considers it inappropriate for the RCS at this time.

f. No Applicability Criterion.

This option would require that wind audits be performed for all households within categories and climate zones designated by DOE in Appendix I to the Final Rule. Use of this option would be inconsistent with the requirements for other measures and could imply that wind energy devices are universally applicable and can be employed without any limitations.

DOE believes that if no criteria were developed, a significant increase in the number of wind audits would increase program costs without providing assurance of a commensurate increase in program benefits.

A variation of this option would be to require States to develop their own applicability criterion, subject to DOE approval. Such a requirement would be inconsistent with the treatment of other program measures and would tend to promote nonuniform treatment for SWECS throughout the country. The result would be delegation of a tough decision to a different level of Government, and could require an additional administrative system for monitoring and enforcing. It should be noted that States currently have the opportunuity to adjust the Federal applicability criteria, subject to DOE approval.

4. Proposed Applicability Criterion.

Based on its assessment of the several options considered, DOE is proposing a modified wind energy device applicability criterion that combines two of the previously discussed options—wind resource and wind access. The proposed applicability criterion requires that a site have (1) an estimated wind resource greater than 10 miles per hour at 10 meters above ground level, on an annual average basis, and (2) sufficient unrestricted access to the wind. This approach combines the strengths of two of the previously discussed options. Wind resource data are now available to allow for an estimate of a particular area's wind resource without the need for an onsite inspection. Once on site, an auditor could readily determine whether there are local wind obstructions that would reduce the resource to a level where small wind energy conversion systems would not operate satisfactorily.

DOE does not mean to imply that a wind energy device will not be economically viable in all cases where the annual average wind speed is less than 10 mph. Nor does DOE intend for this 10 mph criterion to necessarily have application beyond the RCS Program. There are many situations where a high-wind resource during certain times of year will be offset by a very low wind resource the rest of the year, producing an annual average lower than 10 mph. In such a case, where the competing fuel is particularly expensive or its use is high during a high wind resource period of the year, a wind device could still produce substantial energy and cost savings. This is not, however, the general situation. For the purpose of reducing the number of wind audits that would result in a negative recommendation, DOE believes that a national index of 10 mph is a reasonable minimum for use within the RCS Program. Until the small scale wind atlases are available, this means that in order for any residence to receive a wind audit, the average annual wind speed at the qualified measuring station nearest that site must be at least 10 mph at 10 meters above ground level. It is noted that the DOE Model Audit procedure will provide for a site-specific approximation of wind resource, based on the wind resource at the nearest qualified measuring station and the general topography in the immediate vicinity of the site.

This criterion was developed through application of a generalized (Rayleigh) wind speed distribution and nominal performance characteristics of currently available wind energy systems in the size range appropriate for residential applications. The Rayleigh distribution provides a specific statistical distribution that makes it possible to use the annual average wind speed to estimate the energy potential of wind resources at a site.

Current state of the art wind energy systems for residential applications

have minimum cut-in speeds of 7 mph with most machines having 8 mph or greater cut-in speeds. Rated wind speeds for currently available wind systems are a minimum of 20 mph, with most systems being rated at higher wind speeds.

A combination of a Rayleigh distribution and generalized wind system characteristics was used to obtain the following information for a group of annual average wind speeds of 8 mph to 11 mph:

- Proportion of time that no power could be obtained from the wind energy system (i.e., wind below machine cut-in speed),
- Proportion of time that rated power is obtained from the wind system (i.e., wind speed is at least equal to rated speed), and
- Estimated overall capacity factor (i.e., ratio of annual energy produced by wind system to the energy that would be produced if the wind system operated continously at rated power).

The results are shown below:

Annual average wind speed	Percentage of time that—		Overall capacity factor
	No power is produced	Rated power is produced	
8	55	0	0.12
9	49	1	0.16
10	37	4	0.25
11	30	9	0.32

For average annual wind speeds of 8 and 9 mph, the wind system will produce no power for about half the time (or more). In addition, the system rated power will essentially never be obtained. Overall capacity factors are thus quite low (0.12 to 0.16) indicating that the likelihood of attaining a cost-effective wind system installation is very low.

At the 10 mph average annual wind speed, the proportion of time that no power is produced drops to slightly more than ⅓ and rated power is produced 4 percent of the time, leading to an estimated overall capacity factor of 0.25. This performance level could offer the prospect of a cost effective installation, depending on competing fuel price costs and other factors. In terms of selecting a minimum wind speed value to obtain a wind energy audit under RCS, DOE believes that annual average wind speeds below 10 mph are not attractive enough to routinely warrant the conduct of an RCS audit.

From an operational standpoint, the choice of 10 mph as the threshold value is workable since the DOE wind data base currently has such resource data for 1,200 data points. The detailed wind atlases being prepared by DOE, and soon to be available for general use, will explicitly indicate geographic areas with potential wind resource levels below 10 mph.

5. Impact of Proposed Applicability Criterion.

The proposed modification in wind applicability criterion has implications for RCS program effectiveness, the cumulative amount of auditor time spent on wind audits, and the resources required of States, utilities, and home heating suppliers for program implementation. These, in turn, effect the costs and benefits of the program as a whole. DOE believes that the proposed change will result in a more effective targeting of program resources to those residences likely to act positively on information provided through the audit without imposing unreasonable burdens on participating States, utilities, and fuel suppliers.

The proposed change would eliminate the need for wind audits in specific areas that have marginal or insufficient wind resources but are part of a larger area that has been designated for wind energy audits. The proposal would increase the number of wind audits offered to residences within those general areas which do have sufficient wind resource. Utilities and fuel suppliers in areas with adequate wind resource would be required to perform more wind audits under the proposed change, while utilities in areas having an inadequate resource, and currently required to perform audits, would not have to do so.

To assess the potential impact of the proposed applicability criterion, DOE examined sample wind resource and housing data at the county and State level. Population and single family residence distributions were examined for the areas where wind is a program measure. This data suggests that the 10 mph criterion alone would eliminate approximately one-half of the residences in the designated areas.

Although it is difficult to quantify the number of residences that will have a significant obstruction to the available wind resource, this criterion will considerably reduce the number of residences eligible for a complete wind audit. This reduction will occur primarily in the core portion of urban areas, thereby tending to focus wind audits in more suburban or rural areas.

An analysis of the proposed criterion at the State level indicates that the requirement for wind audits will be reduced substantially in thirteen States and be increased substantially in twelve States. The remaining States will experience some increase in audit activity. In the composite, it appears that the proposed change in applicability criterion for wind energy devices would increase the number of residences that would be eligible for a wind audit nationwide as compared to the current criterion, but not to an unreasonable degree in light of program objectives.

DOE believes the level of audit requirements would more closely approximate those contemplated at the time of development of the existing criterion and will certainly fall within the boundaries discussed in the final Regulatory Analysis.

DOE recognizes that the proposed change would place an increased burden on RCS planning resources, especially in those States where planning activities are already well underway based on existing applicability criteria. The direction and magnitude of the impact would vary among States depending on the nature of existing wind audit requirements. DOE believes the introduction of the proposed applicability criterion would favorably effect the planning process for many States by providing a more definitive representation of where wind auditors would be required in that State.

In those States where the number of wind audits would increase or decrease as a result of the proposed change, the requirement for training activities would be affected. However, the proposed applicability criterion would enable States to better determine the areas of the State where wind related training will be required, whereas the current applicability criteria would require training for wind audits in all areas where wind is a program measure. This targeting of training activities should result in a reduction of training costs.

As a result of recent field trials of the Model Audit, DOE estimates that training for the wind audit would represent approximately 10–15 percent of the auditor training for all renewable resource measures. This is significantly less than original estimates and would result in a reduction in program costs. Additionally, as a result of development of the Model Audit, DOE is now convinced that the skills required to perform a wind audit are consistent with the skills required to perform audits for other RCS measures, and DOE believes that one individual can be trained to perform audits of all RCS measures, including wind. DOE concludes that the increase in the number of wind audits should be offset, on the average, by a decrease in the amount of time required for auditor training and qualification.

DOE does not anticipate any other significant impacts on costs to States.

DOE Model Audit field trials indicate that it takes ten to fifteen minutes on site to perform a wind audit. This is substantially less time than earlier estimates used to assess the program cost. Thus, any increase in the number of audits will be substantially offset by the reduced average time on site. On balance, DOE expects a moderate increase in RCS costs to utilities and home heating suppliers corresponding to an increase in the number of wind audits offered.

II. Regulatory Analysis and Urban Impact Assessment

The President, by Executive Order 12044, has directed agencies of the Executive Branch to conduct a Regulatory Analysis of regulations that they prepare that are likely to have a major economic impact. In accordance with OMB Circular A-116, an Urban and Community Impact Assessment should be prepared when the proposed rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service Program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was a major action and required preparation of a Regulatory Analysis and an Urban and Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the publication of the Proposed Rule for the RCS Program on March 19, 1979 (44 FR 16546). These analyses were finalized for publication in conjunction with the Final Rule which was published November 7, 1979 (44 FR 64602). This proposed rule does not constitute a major action since it does not significantly impact the November 7, 1979 regulation. DOE has analyzed the potential impact of the proposed applicability criteria for wind energy devices and concluded that it would not have a substantial effect on the RCS program. See discussion in I.B of this section.

III. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program. The subject matter of this rulemaking was evaluated in the programmatic Environmental Impact Statement. A notice of availability of the Final Environmental Impact Statement was published in the Federal Register on November 7, 1979 (44 FR 64602). A copy of the final Environmental Impact Statement may be obtained by writing: Mr. James R. Tanck, Director, Residential Conservation Service Program, Office of the Assistant Secretary for Conservation and Solar Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, D.C. 20585.

IV. Consultation With Other Federal Agencies

In preparing this Proposed Rule, DOE consulted with representatives of the National Bureau of Standards and the Consumer Product Safety Commission.

V. Contractor Contributions to the Rulemaking

The following entities have made contributions to this proposed rulemaking:

The Solar Energy Research Institute (SERI); Rocky Flats Plant of North American Rockwell; and Science Applications, Inc. (SAI) assisted in the development of the proposed standard for wind energy systems.

VI. Executive Order 12044

Executive Order 12044 (43 FR 12661, March 23, 1978) generally requires agencies to provide the public at least 60 days to comment on proposed significant regulations. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). DOE feels that for the reasons listed below it is necessary and reasonable to reduce the comment period to 30 days.

First, most of the amendments proposed in this rule are not "significant" inasmuch as they are not expected to effect important policy concerns or to engage public interest.

Secondly, the November 9, 1979 Final Rule required lead agencies to submit State Plans for approval by June 4, 1980. The plans must be approved or disapproved by DOE within 90 days from submission. Utilities must begin the program within 6 months of DOE's approval. Therefore, it is imperative that DOE implement these provisions as expeditiously as possible to provide adequate notice for implementation of the plans.

VII. Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program [Docket No. CAS-RM-101]." Fifteen copies should be submitted. All written comments must be received by September 10, 1980, 4:30 p.m., e.s.t., to ensure consideration.

All written comments received on this Proposed Rule will be available for public inspection in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 of Part 456 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., on August 4, 1980.

Thomas G. Stelson,

Assistant Secretary, Conservation and Solar Energy.

VIII. Amendments

1. On page 64626, third column, fourth full paragraph, delete the word "lender" and insert in lieu thereof the word "biller".

2. On page 64631, first column, at the end of the third full paragraph, add the following sentences:

DOE's intent in including this section was to insure an adequate procedure by which a customer may have recourse against a contractor. DOE believes that new legislation would not be necessary in most jurisdictions where an injured party may rely on pre-existing negligence or contract laws. This section was not intended to require initiation of new laws affecting States' sovereign immunity.

3. On page 64636, third column, amend the sixth full paragraph to read as follows:

Federal Specification HH-I-1030A is referenced for its requirement and test for corrosiveness. Federal Specification HH-I-515D is referenced for its requirements and tests for odor emission and fungi resistance. As with mineral fiber loose fill, requirements for moisture adsorption were deleted from the final rule.

4. On page 64639, amend the last paragraph, second sentence, by adding a

period after the word "requirements". Delete the remainder of that sentence and insert a new sentence which reads as follows: "Only core materials, however, need be tested."

5. On page 64641, first full paragraph, amend the second sentence to read as follows: "The purpose of exterior storm windows is primarily to provide an insulating air space and not to reduce infiltration."

§ 456.105 [Amended]

6. On page 64662, third column, § 456.105(f)(3)(iii), insert following the words "Modification" and "modification" the phrases "(Vent Damper)" and "(vent damper)", respectively.

7. On page 64662, third column, § 456.105(f)(3)(iv), delete the phrases "Electrical or Mechanical Ignition System" and "electrical or mechanical ignition system" and insert in lieu thereof the phrases "Intermittent Pilot Ignition Device (IID)" and "intermittent pilot ignition device (IID)".

8. On page 64663, first column, § 456.105(f)(5), add the following sentence at the end thereof: "The term 'ceiling insulation' also includes such material installed on the exterior of the roof."

9. On page 64663, third column, § 465.105(g)(3), delete the temperature "68°F" and insert in lieu thereof "65°F".

10. On page 64664, third column, § 456.105(v)(4)(iv), delete the phrase "South-facing (+ or 45° of True South)" and wherever the phrase "window heat gain retardant" appears insert the phrase "and/or loss" after the phrase "window heat gain". Following the word "through" insert the phrase "or wintertime heat loss".

§ 456.106 [Amended]

11. On page 64665, first column, § 456.106, line 4, change the phrase "and eligible customer" to read "an eligible customer".

12. On page 64665, first column, insert a new § 456.107 as follows:

§ 456.107 Request for confidential treatment.

(a) *Request.* If you wish to file a document with DOE claiming some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, or is otherwise exempt by law from public disclosure, and if you wish to request that DOE not disclose information, you must comply with the DOE FOIA regulations set forth in 10 CFR 1004 (44 FR 1908, Jan. 8, 1979).

(b) *Disposition of request.* DOE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by DOE to deny such claim, in whole or in part, and an opportunity to respond thereto, will be given to the person claiming confidentiality of the information no less than seven days prior to the public disclosure of such information.

(c) *Document by document identification.* Each request for confidential treatment must be made with respect to each separately identified document and must be made at the time that document is first submitted to DOE.

§ 456.205 [Amended]

13. On page 64666, first column, § 456.205(e)(2), add the following sentence at the end: "Exception: The Assistant Secretary may, for good cause shown, waive any of the submission requirements for proposed amendments."

§ 456.304 [Amended]

14. On page 64667, second column, delete § 456.304 (d)(2) and (d)(3), and insert in lieu thereof: "(2) not have an adverse effect on competition."

§ 456.306 [Amended]

15. On page 64668, first column, § 456.306(a)(10), delete the phrase "finances the sale or installation of such measures" and insert in lieu thereof the phrase "is a lender listed in accordance with § 456.312(b)(3)".

§ 456.307 [Amended]

16. On page 64668, third column, § 456.307(b)(2)(iii), delete the phrase "and the building is not a mobile home;" and change the coma to a semi-colon.

17. On page 64669, first column, § 456.307(b)(2)(iv), delete the existing paragraph (iv) and insert in lieu thereof the following paragraph:

* * * * *

(iv) With respect to wind energy devices: (A) the estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (33 feet) above ground level; and (B) there are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

* * * * *

18. On page 64669, first column, § 456.307(b)(2)(xii), delete the word "part" and insert in lieu thereof the word "pool".

19. On page 64669, first column, delete § 456.307(b)(2)(xvii).

20. On page 64669, second column, § 456.307(b)(6)(i), delete the phrase "has been" and insert in lieu thereof the phrase "will be".

21. On page 64669, second column, § 456.307(b)(6)(iii), delete the phrase "and received".

22. On page 64669, third column, § 456.307(c)(2), following the word "insulation" insert the phrase "and active solar space heating systems and combined active solar space heating and solar domestic hot water systems".

23. On page 64670, second column, § 456.307(c)(10)(iii), delete the existing paragraph (iii) and insert in lieu thereof, the following paragraph (iii):

* * * * *

(iii) The average yearly wind speed at the nearest qualified wind measurement station and the relationship between that data and the likely wind speeds at the residence. A qualified wind measuring station is one which meets the following minimum requirements:

(A) The anemometer is located no less than 10 meters (33 feet) above ground level;

(B) Data used to determine the annual average wind speed has been collected for one year or more and contains at least one month's continuous hourly reading for every four-month period of time; and

(C) Calibration of the data collection and recording instrument(s) had been certified by the instrument manufacturer(s) at the time of purchase; and

* * * * *

24. On page 64670, third column, § 456.307(e)(2), second sentence, delete the phrase "supplies, installs or finances and sale or installation of program or State measures" and insert in lieu thereof the phrase "is a supplier, installer or lender listed in accordance with § 456.312(b),".

§ 456.308 [Amended]

25. On page 64671, second column, § 456.308(d), second sentence, delete the phrase "supply or install program measures" and insert in lieu thereof the phrase "are listed in accordance with § 456.312(b) (1) or (2)".

§ 456.309 [Amended]

26. On page 64671, third column, § 456.309(d), second sentence, delete the phrase "finance program measures" and insert in lieu thereof the phrase "are listed in accordance with § 456.312(b)(3)".

27. On page 64671, third column, § 456.309, insert a new paragraph (h) as follows:

* * * * *

(h) Prohibit each covered utility and participating home heating supplier from arranging financing for the purchase or installation of furnace efficiency modifications, devices associated with load management techniques, and wind energy devices for installation by the eligible customer unless such customer is qualified to perform such installation pursuant to § 456.314.

* * * * *

§ 456.310 [Amended]

28. On page 64672, second column, § 456.310(b)(3)(i), delete the word "random".

§ 456.311 [Amended]

29. On page 64672, second column, § 456.311(a)(1), following the word "charge" insert the phrase "by a covered utility or a participating home heating supplier".

30. On page 64672, third column, § 456.311(b)(1), second sentence, delete the word "monthly" and insert in lieu thereof the word "periodic".

§ 456.312 [Amended]

31. On page 64673, third column, § 456.312(b)(1)(iv), delete the existing paragraph (iv) and insert in lieu thereof the following paragraph:

(iv) Comply with any applicable qualification requirements set forth in the State Plan pursuant to § 456.314.

32. On page 64673, third column, § 456.312(b)(1)(vii), delete the entire sentence and insert in lieu thereof the following sentence: "Have a performance bond sufficient in the judgment of the lead agency to aid in protecting eligible customers."

33. On page 64673, third column, § 456.312(b)(2)(ii), following the word "applicable" insert the word "material".

34. On page 64674, first column, renumber existing § 456.312(b)(4) as § 456.312(b)(5) and insert a new § 456.312(b)(4) as follows:

* * * * *

(4) The State Plan shall require that all installers of vent dampers and IID's included in the Master Record have liability insurance sufficient in the judgment of the Governor to indemnify themselves against possible liability arising from installation when installing such measures under the circumstances described in the State Plan pursuant to § 456.305.

* * * * *

§ 456.313 [Amended]

35. On page 64674, third column, § 456.313(b)(1)(i), insert at the end therof: "(F) Combined active solar space heating and solar domestic hot water systems."

§ 456.314 [Amended]

36. On page 64675, first column, § 456.314(a)(6), delete the phrase "steady state" and insert in lieu thereof the word "seasonal".

37. On page 64675, second column, § 456.314(f), insert the following sentences after the first sentence:

* * * * *

* * * This description shall identify the State entity(ies) responsible for conducting training, testing or any other qualification methods, The State entity(ies) may assign duties to another person for the purpose of aiding in the performance of such duties, but the lead agency or another State entity and no other persons, shall be ultimately responsible for developing the qualification methods and for designating individuals as qualified.

* * * * *

§ 456.503 [Amended]

38. On page 64679, second column, § 456.503, delete the word "Exception" in the title and insert in lieu thereof the word "Exemption".

§ 456.504 [Amended]

39. On page 64679, second column, § 456.504, delete the word "Exception" in the title and insert in lieu therof the word "Exemption".

§ 456.505 [Amended]

40. On page 64679, third column, § 456.505(a)(1), delete the word "covered" and insert in lieu thereof the word "regulated".

41. On page 64679, third column, § 456.505(b), amend the referenced to "paragraph (a)(2)(i)" to read "paragraph (a)(2)(ii)".

§ 456.506 [Amended]

42. On page 64679, third column, § 456.506, delete the word "Exception" in the title and insert in lieu thereof the word "Exemption".

43. On page 64679, third column, § 456.506(a)(1), insert after the word "regulation" the phrase "in effect on November 9, 1978,".

§ 456.507 [Amended]

44. On page 64680, first column, § 456.507(b), delete the first sentence and insert in lieu thereof following sentence:

* * * * *

* * * In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exemption or waiver would be applicable, informing them that they have ten days from the date the application or petition is filed with the Assistant Secretary to submit comments to the Assistant Secretary on the application or petition.

* * * * *

45. On page 64680, first column, insert a new § 456.509 that reads as follows:

§ 456.509 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Any covered utility conducting activities pursuant to the exemptions provided for in § 456.503 or § 456.504(b) or the waiver provisions of § 456.505 shall comply with the requirements of §§ 456.310(a), (b) (2), (3), and (5), and § 456.311 with respect to those activities. Any covered utility carrying out activities pursuant to the exemptions provided for in § 456.504(a) shall, within such reasonable time as the Secretary prescribes, comply with the requirements of §§ 457.310(a), (b)(2), (3), and (5) and § 456.311 with respect to such activities.

§ 456.602 [Amended]

46. On page 64680, second column, § 456.602(a), amend the reference to "§ 456.206" to read "§ 456.205".

§ 456.802 [Amended]

47. On page 64681, third column § 456.802(a)(1), delete the phrase "marked, 'Conforms to DOE Standards,' " and insert in lieu thereof the phrase "identified as conforming to DOE standards."

48. On page 64682, first column, § 456.802(b)(6), amend the reference to "ASTM 576-76" to read "ASTM E 576-76".

49. On page 64682, second column, § 456.802(b)(25), amend the references to "HH-I-0125B" to read "HH-I-1252B".

50. On page 64682, second column, § 456.802(b)(29), correct the word "preassemebled" to read "preassembled".

Table I [Amended]

51. On page 64683, second and third columns, amend the Table I title to read as follows "Coverage Chart for Cellulosic Loose Fill Insulation", and amend Table II title to read "Coverage Chart for Loose-Fill Insulation (other than Cellulosic)".

52. On page 64683, second and third columns, footnote to Table I, delete the phrase "recommended installed" and insert in lieu thereof the word "settled".

§ 456.804 [Amended]

53. On page 64683, first column, § 456.804(b)(6), delete the phrase ", and shall include the following information:" and insert in lieu thereof the following:

If a product is tested and meets the requirements of ASTM E-136 and is labeled as such, it need not be labeled with the specific requirements of CPSC Part 1404 relating to vents and chimneys. Each bag shall also be marked with the following information: * * *.

54. On page 64683, first column, § 456.804(b)(6)(iv), insert the following sentence after the word "different": "Products not intended for sidewall applications shall be labeled with a statement to that effect and need not carry the sidewall portion of the coverage chart."

55. On page 64683, second column, § 456.804(b)(6)(v), insert the phrase "or a CPSC approved label" following the word "statements".

§ 456.805 [Amended]

56. On page 64683, second column, § 456.805(b)(l)(i), delete the phrase "(known as Type I)".

57. On page 64683, third column, § 456.805(b)(l)(i), delete the phrase "(known as Type III)".

58. On page 64684, first column, § 456.805(b)(7), delete the phrase ", and shall include the following information:" and insert in lieu thereof the following:

If a product is tested and meets the requirements of ASTM E-136 and is labeled or marked as such, it need not be labeled with the specific requirements of CPSC Part 104 relating to vents and chimneys. Each bag shall also be marked the following information: * * *

59. On page 64684, first column, § 456.805(b)(7)(ii), insert the phrase "or a CPSC approved label" following the word "statements".

§ 456.806 [Amended]

60. On page 64684, second column, § 456.806(b)(5)(v), amend the fifth line to read "of application if the coverage is".

§ 456.808 [Amended]

61. On page 64684, third column, § 456.808(b)(4), delete the word "and" and capitalize the word "the" in paragraph (iii), and insert thereafter the following new paragraph (iv):

* * * * *

(iv) "Products not intended for interior application shall contain the following statement instead: 'Intended for exterior application only.' "

* * * * *

§ 456.809 [Amended]

62. On page 64684, third column, § 456.809(b)(3)(ii), insert a new paragraph (A) heading as follows: "(A) For products intended for interior application:" before the phrase "Interior Applications * * *". At the end of paragraph (ii), insert the following new paragraph (B):

* * * * *

(B) Products not intended for interior applications shall contain the following statement instead: "Intended for exterior application only "

* * * * *

§ 456.811 [Amended]

63. On page 64684, third column, § 456.811(a), insert the word "foil" following the word "aluminum".

§ 456.812 [Amended]

64. On page 64685, first column, § 456.812(a), delete the word "of" and insert in lieu thereof the word "or".

§ 456.813 [Amended]

65. On page 64685, third column, § 456.813(b)(6), delete the notation "/c" following the number "0.00075 m^3".

66. On page 64685, third column, § 456.813(b), insert the following new paragraph (8):

* * * * *

(8) As an alternative to meeting provisions (b)(1) through (b)(7), HUD Use of Materials Bulletin #39 may be substituted for use with aluminum windows, and HUD Use of Materials Bulletin #59 may be substituted for use with wood windows.

* * * * *

§ 456.814 [Amended]

67. On page 64686, first column, § 456.814(e), amend the reference to "UL 599" to read "UL 559".

68. On page 64686, first column, § 456.814(g)(1)(ii), amend the reference to "ANSI XZ 21.67-978" to read "ANSI Z21.67-1978".

§ 456.903 [Amended]

69. On page 64687, third column, § 456.903(b)(26), Note 1, amend the word "draft" to read "kraft".

70. On page 64687, third column, § 456.903(b)(28), amend the phrase "frame spread" to read "flame spread".

§ 456.905 [Amended]

71. On page 64688, third column, § 456.905(c)(3)(A), amend the reference to "1 ft 2" to read "1 ft^2".

72. On page 64689, first column, § 456.905(c)(3)(B), amend the references to "1 ft 2" and "300 ft" to read "1 ft^2" and "300 ft^2", respectively.

§ 456.906 [Amended]

73. On page 64690, third column, § 456.906(c)(2)(i)(C), amend the reference to "(90^2 mm)" to read "(900 mm)".

§ 456.907 [Amended]

74. On page 64692, first column, § 456.907(c)(2), delete the existing sentence and insert in lieu thereof the following sentence: "For interior applications of rigid board insulation on walls and ceilings, install, on all exposed faces and edges of the insulation material, a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

75. On page 64692, second column, § 456.907(d)(1), delete the last sentence and insert in lieu thereof the following sentence: "Insulation board must be covered on all sides with 6-mil polyethlene or equivalent."

76. On page 64694, second column, § 456.907(f)(3)(v), delete the first sentence and insert in lieu thereof the following sentence: "After all insulation board is applied, install a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

77. On page 64695, first column, § 456.907(i)(3)(iv), delete the existing sentence and insert in lieu thereof the following sentence: "Install a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

78. On page 64694, third column, § 456.907(h)(4)(i), delete the sentence and insert in lieu thereof the following sentence: "Ensure that all surfaces and edges of insulation board are covered with gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

79. On page 64695, second column, § 456.907(j)(3)(iv), delete the existing sentence and insert in lieu thereof the following sentence: "Install a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

80. On page 64695, second column, § 456.907(j)(4)(i), delete the existing sentence and insert in lieu thereof the following sentence: "Ensure that all surfaces and edges of insulation board are covered with gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

§ 456.908 [Amended]

81. On page 64696, third column, § 456.908(b)(1)(iii), Note 2, delete the word "approximate" and insert in lieu thereof the word "appropriate".

§ 456.910 [Amended]

82. On page 64697, third column, § 456.910(a), amend the reference to "Figure 1" to read "Figure 4".

83. On page 64698, the sample "Certification of Insulation" is "Figure 4", not "Figure 1".

§ 456.911 [Amended]

84. On page 64699, § 456.911, delete (a) through the end of (g), column 2 on page 64703. Replace with the following:

The installation of storm windows, thermal windows, multi-glazing units, and storm doors and thermal doors shall be done in accordance with ASTM E-737-80 "Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-glazing, Storm Doors, and Replacement Doors." For purposes of this installation practice thermal windows and doors shall meet the definition contained in § 456.105(f)(11) and be treated as replacement windows and doors.

§ 456.912 [Amended]

85. On page 64703, third column, § 456.912(b)(2), amend the reference to "Figure 7" to read "Figure 8".

86. On page 64703, third column, § 456.912(b)(3)(ii), amend the reference to "Figure 8" to read "Figure 9".

87. On page 64703, third column, § 456.912(b)(3)(iii), amend the reference to "Figure 8" to read "Figure 9".

88. On page 64703, third column, § 456.912(b)(4)(i), amend the reference to "Figure 9" to read "Figure 10".

89. On page 64704, amend the references to "Figures 7", "8", and "9" to read "8", "9", and "10" respectively.

90. On page 64705, first column, § 456.912(b)(4)(ii), amend the reference to "Figure 9" to read "Figure 10".

§ 456.913 [Amended]

91. On page 64705, third column, § 456.913(b)(1)(xviii), amend the reference to "Figures 10 or 11" to read "Figures 11 or 12".

92. On page 64706, amend the reference to "Figure 10" to read "Figure 11".

93. On page 64707, amend the reference to "Figure 11" to read "Figure 12".

94. On page 64708, first column, § 456.913(d)(1), amend the word "handkbook" to read "handbook".

§ 456.914 [Amended]

95. On page 64709, first and second columns, § 456.914, amend Appendix A to Subpart I, which reads as follows:

$$"N_{SS} = 100 - L_{L,A} - L_{S,SS,A}$$

$$R_{T,F} = A + \frac{B}{X_{CO_2,S}}$$

$$L_{S,SS,A} = \frac{100}{HHV_A} \sum_{i=1}^{5} [(i = A/F\ (CF(i) + (A/F)\ (R_{T,F} - 1)(CAc(i))]x$$
$$[(TF,\ SS + 460)^i - (TRA + 460)^i]"$$

to correctly read as follows:

$$"N_{SS} = 1000 - L_{L,A} - L_{S,SS,A}$$

$$R_{T,F} = A + \frac{B}{X_{CO_2,S}}$$

$$L_{S,SS,A} = \frac{100}{HHV_A} \sum_{i=1}^{5} [(1 + A/F)(CF(i) + (A/F)(R_{T,F} - 1)\ (CA(i))]\ x$$
$$[(T_{F,SS} + 460)^i - (T_{RA} + 460)^i]"$$

96. On page 64709, second column, § 456.914, Appendix A to Subpart I, amend the first sentence to read as follows: "The steady state efficiency of the furnace may be determined directly from Figure 11 for furnaces using No. 1

fuel oil or from Figure 12 for furnaces using No. 2 fuel oil."

Appendix I—[Amended]

97. On page 64710, first column, Appendix I, section (d), following the word "displayed" insert the phrase "by inclusion of an 'X'."

98. On pages 64711 to 64725, Appendix I, move all numbers listed next to the "X" in all columns labeled "Solar Domestic Hot Water Systems" to the columns labeled "Active Solar Space Heating Systems".

99. On page 64720, Appendix I, after the first row, which begins "New York (continued)", insert a new row (the same notation as for "South Carolina 2" on page 64722) as follows:

		Electricity	22	X		X	X	X"
	2	Gas	19	X				
"North Carolina		Oil	19	X			X	
		Electric Heat Pump	19	X				

100. On page 64720, Appendix I, after the fifth row, which begins "North Dakota", insert a new row for Ohio (indicating the same program measures as for "Oregon 5" on page 64721) as follows:

		Electricity	30	X	19	X	X	"
"Ohio	5	Gas	30	X	11	X		
		Oil	30	X	11	X		
		Electric Heat Pump	30	X	11	X		

101. On page 64726, second column, amend the address of BOCA to read as follows: "179265 Halsted Street, Chicago, Illinois 60430".

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BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

10 CFR Part 456

Interpretation of Title V, Subtitle B of the Energy Security Act (S. 932)

AGENCY: Department of Energy.

ACTION: Interpretative rule.

SUMMARY: The General Counsel of the Department of Energy (DOE) hereby interprets Title V, Subtitle B, of the Energy Security Act (ESA), June 30, 1980, which amends the National Energy Conservation Policy Act (NECPA), with respect to the Residential Conservation Service (RCS) Program (10 CFR Part 456). The major amendments to NECPA affect (1) the warranty requirements, (2) treatment of utility costs, and (3) the prohibition against utility supplying, installing and financing of residential energy conservation measures. Pursuant to NECPA, DOE is required to review and approve or disapprove RCS plans in accordance with the RCS regulations, within 90 days of submission. In most cases, the approval/disapproval date is September 2, 1980. Since the ESA amendments were made effective upon enactment (June 30, 1980), the NECPA authority for the RCS regulations has been repealed by the ESA in certain areas and new requirements have been mandated. DOE intends to issue regulations within 120 days which will amend the existing regulations to comport with the ESA amendments.

In the meantime, however, the plan review process must continue without delay. Therefore, this notice sets forth DOE's interpretation of the immediate effect of the ESA on the plan review process.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Laura Rockwood, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, S.W., Room 1E-258, Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1980, the Energy Security Act (ESA), Pub. L. 96-294, 94 Stat. 611, was signed into law. Subtitle B of Title V of ESA (reproduced in Appendix I) amends Part I of Title II of the National Energy Conservation Policy Act (NECPA), 42 U.S.C. 8211 *et seq.*, 92 Stat. 3206 *et seq.*, which established the Residential Conservation Service (RCS) Program. DOE issued final RCS regulations on November 7, 1979.

The ESA provides for the following major amendments, among others, to the RCS program: (1) a revised warranty provision for manufacturers of conservation and renewable resource measures which amends the scope of the warranty and reduces the warranty period from 3 years to 1 year; (2) a new one-year contractor's warranty; (3) deletions and additions to the utility cost and accounting provisions; (4) elimination of the prohibition against utility financing of measures; (5) and relaxation of the prohibitions against utilities supplying and installing measures. Pursuant to section 549(a) of ESA, the amendments made by Title V, Subtitle B of ESA were made effective on the date of enactment (June 30, 1980). Section 549(d) states, however, that these amendments shall not cause any delay in the deadlines for submission and approval or disapproval of the RCS plans submitted under NECPA. Because State and nonregulated utility RCS plans were due on June 4, 1980, the plans do not reflect the changes mandated by ESA. Since the amendments are effective immediately, DOE cannot approve an RCS plan which does not meet the minimum requirements of NECPA as amended by ESA. Therefore, DOE issues this interpretive rule to set forth DOE's interpretation of the immediate effect of the ESA on the RCS plan review process. Although DOE will issue proposed rules implementing the ESA amendments to the RCS program within the next few months, and final rules to follow, all RCS plans must comply with existing law as soon as possible in order to begin the RCS program on time.

DOE will therefore require that each State and non-regulated utility agree to incorporate the new requirements of ESA into their plans before DOE approves them. DOE will issue guidance to each State or utility regarding the particular amendments which their plan would require, although information provided in this notice, especially in the two appendices, should enable the States to begin amending their plans at once.

Discussion

I. State and Nonregulated Utility Plans.

The ESA amendments can be divided into three groups. The first group includes those amendments which reduce the requirements for plan approval, and which a State or nonregulated utility has discretion to change or not to change. For example, plans no longer need to include the requirements that utility costs for materials and installation of measures be charged to the customer for whom these costs are incurred, 10 CFR 456.310(b)(2). Plans may either retain or eliminate this requirement. However, as with all plan provisions, this requirement would have to be enforceable under State law or regulation (in the case of a State plan), 10 CFR 456.303(a)(3). The second group includes those amendments which increase the requirements for plan approval. For example, due to the ESA relaxation of the prohibition against utility supply and installation of energy conservation and renewable resource measures, all plans must now include specific requirements to be applied to utilities who supply or install such measures. The third group of ESA amendments includes those which have no effect on plans. For example, the additional requirements for DOE to report to the Congress need not appear in RCS plans.

Appendix II to this notice identifies the effects of the ESA amendments on the State and non-regulated utility plans currently being reviewed by DOE. The appendix lists the required and permissible plan amendments by subject matter, ESA section, NECPA section amended, and RCS regulations affected. The required amendments to RCS plans reflect the premise that each RCS plan satisfied, at the time of submission, the then-existing RCS regulatory requirements. This notice in no way implies approval of a particular plan and is not exclusive of any other changes which may have to be made for approval of any particular plan. At such time that DOE issues regulations amending the existing RCS rules to comply with the requirements of ESA, further amendments to State and nonregulated utility plans may be necessary.

Additionally, as a point of clarification, there is no Federal RCS requirement for an additional comment period and hearing prior to amending an unapproved RCS plan in order to bring it into compliance with ESA requirements.

II. Utility Supply, Installation, and Financing.

Section 546(a)(2) of the ESA amends NECPA to eliminate the general prohibition against a utility offering loans for energy conservation and renewable resource measures. In addition, section 546(a)(4) of ESA provides an exemption from the prohibition against a utility supplying or installing such measures if done through an independent contractor and in a fair and competitive manner. Since these amendments are effective immediately, section 549(a) of ESA, utilities may now finance energy conservation measures and may, subject to the criteria of section 546, supply and install such measures.

However, utilities should be aware as they undertake such activities that, as required by ESA, DOE will soon issue proposed regulations which, when finalized, may require additional procedures or standards to be followed in order to assure that the provisions of section 546 of the ESA are met. Also, section 547 of the ESA requires DOE to monitor these utility activities in consultation with the Federal Trade Commission, and allows DOE to stop any such activities which are determined to be unfair or anticompetitive.

Accordingly, the following interpretation is issued.

Issued in Washington, D.C., on July 28, 1980.

(Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, Subtitle B of Title V of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*)

Theordore Wilson,

Acting Assistant General Counsel for Conservation and Solar Energy.

Subject	ESA section	NECPA section amended	RCS regulations affected	Amendments to RCS plans
1. Definition of "Residential Building".	§ 541	§ 210(9)	§ 456.105(w)	Amendment advisable to incorporate changes in definition. (Amendment will be required in further rules.)
2. State List of Suppliers and Contractors—warranty.	§ 542(a)	§ 210(11)	§ 456.105(j) § 456.105(ee) § 456.312(b)	Amendment required to change manufacturer's warranty from a useful life warranty to, at a minimum, a 1-year replacement of parts and materials warranty.
3. Warranty Provisions	§ 542(b)	§ 212(b)	§ 456.105(j) § 456.105(ee)	Amendment required to include requirements of a 1-year warranty to be offered by manufacturer, suppliers, and installers. The particular requirements for each differ.
4. Warranty Provisions Listing Requirement.	§ 542(c)	§ 213(a)(2)(B)	§ 456.312(b)	Amendment required to require compliance by suppliers and installers with the warranty provisions in order to be listed.
5. Warranties—Other Laws	§ 542(d)	§ 220(d)		No plan amendments required by ESA. Addresses the relation between the ESA warranty provisions and existing State and Federal warranty laws.
6. State List of Financial Institutions.	§ 543	§ 213(a)	§ 456.312(b)(3)	Amendment required to require that lists of lenders contain certain information about Solar Energy and Energy Conservation Bank Act.
7. Treatment of Utility Costs	§ 544(1)	§ 215(c)(1)(C)	§ 456.306(a)(5)(ii) § 456.310(b)(3) § 456.310(c)	Amendment required if direct charge for program costs exceed $15. Amendment permissible to reflect the manner of cost recovery. The amendment (1) eliminates the requirement in NECPA that utility costs be recovered either from all ratepayers or from individual customers receiving service, and (2) allows State regulatory authorities to set any cost-recovery scheme for the utility as long as the customer pays no more than $15 in total direct charges for the program manager activities.
8. do	§ 544(2)	§ 215(c)(1)(D)	§ 456.310(b)(2)	No plan amendments required by ESA. Eliminates the requirement that individual customer pay for purchase and installation of measures by the utility. This amendment thus removes the constraint in NECPA on rate-base treatment on installation costs.
9. do	§ 544(3)	§ 215(c)(c)(2)(A)	§ 456.310(b)(3) § 456.310(b)(5)	No plan amendments required by ESA. Deletes the requirement that State regulatory authority make certain findings with respect to interest costs on utility loans.
10. do	§ 544(4)	§ 215(c)(2)(B)	None	No plan amendments required by ESA. Renumbers certain NECPA sections.
11. do	§ 544(5)	§ 215(c)(2)(C)	None	No plan amendments required. Renumbers certain NECPA sections.
12. do	§ 544(6)	§ 215(f)	§ 456.311(b)(2)	Amendment required to require utilities to allow repayment of loans through utility bills upon request by lender. Amendment permissible to eliminate the 3-year repayment requirement for utility loans.
13. do	§ 545	§ 216(i)		No plan amendments required by ESA. Addresses the Federal tax treatment of any subsidies paid by utilities to customers.
14. Supply Installation, and Financing by Utilities.	§ 546(a)(2)	§ 216(a)	§ 456 501-508.	Amendment permissible to eliminate the prohibition against utility financing of measures.

Subject	ESA section	NECPA section amended	RCS regulations affected	Amendments to RCS plans
15. Exemption from Prohibition on Supply and Installation.	§ 545(a)(4)	§ 216(c)	§ 456.501-508.	Amendment permissible to exempt utilities from the prohibition against supply and installation if the utility meets certain conditions.
16. Plan requirements concerning Supply, Installation, and Financing.	§ 546(b)	§ 213(b)(2) (C) and (D).	§ 456.304 § 456.312(b) § 456.501-508	Amendment required to include provisions to assure that utilities making loans use local financial institutions as the source of funds under certain conditions. Amendment also required to assure compliance with § 216(c) of NECPA, as amended (see above) by utilities which supply or install measures.
17. do	§ 546(c)	§ 213(a)(9)	§ 456.318 § 456.501-508	Amendment required to require utilities engaged in supply, installation, or financing to notify DOE when program becomes effective.
18. DOE Authority to Monitor and Terminate Supply, Installation and Financing.	§ 547	§ 216(g)	§ 456.502(b)	No plan amendments required by ESA at the present time. Addresses DOE monitoring and enforcement of utility supply, installation, and financing activities.
19. Unfair Competitive Practices	§ 548	[not a NECPA amendment]		No plan amendments required by ESA. Clarifies Congressional intent that the ESA amendments not preclude antitrust actions under other laws.
20. Effective Temporary Programs.	§ 549(c)	§ 218	§ 456.208	No plan amendment required by ESA. Addresses the time period within which temporary program requests may be submitted.
21. Relationship to Other Laws	§ 550	§ 220		No plan amendment required by ESA. Addresses relationship between NECPA and the Public Utility Holding Company Act.

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Reader Aids

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INFORMATION AND ASSISTANCE

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

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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

Agricultural Marketing Service—

46783 7-11-80 / Cotton classing, testing, and standards; revisions in sampling regulations

ENVIRONMENTAL PROTECTION AGENCY

46383 7-10-80 / Approval and promulgation of implementation plans; Mississippi; sour gas flares

46382 7-10-80 / Missouri Air Conservation Commission; disapproval of variance

46384 7-10-80 / Nevada State implementation plan; revised statutes and emergency episode plan

FEDERAL COMMUNICATIONS COMMISSION

46404 7-10-80 / Domestic public land mobile radio service; Tallahassee, Fla. included in table of assignments for air-ground stations

46405 7-10-80 / TV broadcast station assigned to Portland, Oreg.

FEDERAL RESERVE SYSTEM

40967 6-17-80 / Credit by brokers and dealers; credit extended to exchange specialists

46337 7-10-80 / Credit restraint; short term financial intermediaries

40968 6-17-80 / Termination of suspension of uniform margin requirements for options specialists

INTERIOR DEPARTMENT

Land Management Bureau—

47104 7-11-80 / Grazing administration and trespass on public lands; amendments to regulations

LABOR DEPARTMENT

Employment and Training Administration—

47108 7-14-80 / Federal-State Unemployment Compensation Program; interstate arrangement for combining employment and wages

NATIONAL CREDIT UNION ADMINISTRATION

47120 7-14-80 / Federal Credit Unions; special share accounts; definitions of gross income; risk assets, and liquid assets

47119 7-14-80 / Return of capital upon withdrawal from membership in Central Liquidity Facility (CLF); interpretative ruling and policy statement

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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