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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

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Documents normally scheduled 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.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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

Rules Going Into Effect Today

DOT/FAA—Airworthiness directives; Hawker Siddeley Aviation, Ltd., models DH–104 and BH–125 airplanes (2 documents) 34866–7; 7–7–77

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

H.R. 6714 ..... Pub. L. 95–88
International Development and Food Assistance Act of 1977. (Aug. 3, 1977; 91 Stat. 533). Price: $.35.

H.R. 692 ..... Pub. L. 95–89
To amend the Small Business Act and the Small Business Investment Act of 1958 to increase loan authorization and surety bond guarantee authority; and to improve the disaster assistance, certificate of competency and Small Business set-aside programs, and for other purposes. (Aug. 4, 1977; 91 Stat. 553). Price: $.35.

S.J. Res. 79 ..... Pub. L. 95–90
To amend the Federal Home Loan Bank Act. (Aug. 4, 1977; 91 Stat. 564). Price: $.35.

S. 826 ..... Pub. L. 95–91
"Department of Energy Organization Act". (Aug. 4, 1977; 91 Stat. 565). Price: $.70.

rules and regulations

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

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

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 406—CALIFORNIA ORANGE CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the regulations governing the insuring of oranges grown in California effective with the 1977 and succeeding crop years, and is a revision of the California Orange Crop Insurance Regulations for the 1963 and Succeeding Crop Years, as amended, as published in the FEDERAL REGISTER (28 FR 6528, June 26, 1963). The revisions made in this document are nonsubstantive and deal with the format in an effort to improve the clarity.

EFFECTIVE DATE: July 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-3197).

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation, in accordance with the provisions of the Administrative Procedures Act (5 U.S.C. 553 (b) and (c)), regarding the procedure for notice and public participation, published the California Orange Crop Insurance Regulations in the FEDERAL REGISTER as a notice of proposed rule making (42 FR 33313, June 30, 1977), allowing the public an opportunity to file written data, views, or comments on the proposed regulations, but none were received. The proposed regulations were considered nonsubstantive in nature and dealt with the restructuring of the document to place the meaning of terms sections at the beginning; elimination of the application section in favor of utilizing the Standard Application Form (FCI-12), authorization for the Manager to extend the closing dates for the taking of applications, and minor editorial changes for clarity.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), 7 CFR Part 406 is revised to read as set forth below and the regulations contained therein are hereby issued to be in force with respect to California Orange Crop Insurance contracts for the 1977 and succeeding crop years until amended or superseded.

Subpart—Regulations for the 1977 and Succeeding Crop Years

Sec.

406.1 Availability of California orange crop insurance.
406.2 Premium rates and amounts of insurance.
406.3 Application for insurance.
406.4 Public notice of indemnities paid.
406.5 Creditors.
406.6 The policy.

AUTHORITY: The provisions of this subpart are issued under secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.

§ 406.1 Availability of California orange crop insurance.

Orange crop insurance shall be offered for the 1977 and succeeding crop years under the provisions of § 406.1 through § 406.6 in counties in California within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from a list of counties approved by the Board of Directors for orange crop insurance. The counties designated by the Manager for orange crop insurance under this subpart for the 1977 and succeeding crop years are as follows: California: Fresno, Kern, and Tulare.

§ 406.2 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and amounts of insurance per acre which shall be shown on the county actuarial table on file in the office for the county. Such premium rates and amounts of insurance may be changed from year to year.

(b) The following shall apply to the transfer of any premium reduction earned under the provisions of section 7 of the Policy set forth in § 406.6 if the insured is a partnership, corporation, or any other joint enterprise and there is no break in the continuity of participation. Upon dissolution of such enterprise, such premium reduction may be credited to the contract of any member or stockholder thereof if the Corporation determines that such person is operating only land formerly operated by the dissolved enterprise. Upon formation of a joint enterprise, the smallest premium reduction (zero if none), which the Corporation determines would have been applicable to any insurable acreage brought into the enterprise if the enterprise had not been formed, may be credited to the joint enterprise contract.

§ 406.3 Application for insurance.

An application for insurance, on a form prescribed by the Corporation, may be submitted at the office for the county for the Corporation. Prior to the closing date for the filing of applications, the Corporation reserves the right to discontinue the taking of applications in any county upon its determination that the insurance risk involved is excessive, or to limit the amount of insurance. Such closing date shall be the September 30 immediately preceding the beginning of the crop year. The Corporation further reserves the right to reject any application or to exclude any definitely identified acreage for any crop year of the contract if upon inspection it deems the risk on such acreage is excessive. If any such acreage is to be excluded, the insured shall be notified of such exclusion before insurance attaches for the crop year for which the acreage is to be excluded. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county by amendment to the regulations upon his determination that no adverse selectivity exists: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

§ 406.4 Public notice of indemnities paid.

The Corporation shall provide for posting annually at each county courthouse a listing of the indemnities paid in the county.

§ 406.5 Creditors.

An interest of a person other than the insured in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract other than as provided in the Policy set forth in § 406.6.

§ 406.6 The policy.

The provisions of the policy for California Orange Crop Insurance for the 1977 and Succeeding Crop Years are as follows:

CALIFORNIA ORANGE CROP INSURANCE POLICY

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person against unavoidable loss of production of the insured's orange crop due to freeze. No

term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For purposes of insurance on oranges the terms:

(a) "Acreage report" means the form prescribed by the Corporation for initially reporting and revising (if necessary) all of the insured's acreage and share therein or oranges in the county.

(b) "Actuarial table" means the forms and related materials approved by the Corporation which are on file for public inspection in the office for the county, and which show the applicable amounts of insurance, premium rates, and related information regarding orange crop insurance in the county.

(c) "Box" or "Boxes" means a standard field box as prescribed in the Agricultural Code of California.

(d) "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way shall be considered contiguous.

(e) "Contract" means the application, this policy, and the actuarial table.

(f) "County" means the county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(g) "Crop year" means the period beginning October 1 and extending through September 30 of the following year and shall be designated by the calendar year in which the insurance period begins.

(h) "Harvest" means any severance of oranges from the tree either by pulling, picking, or severing by mechanical or chemical means, or picking up the marketable oranges from the ground.

(i) "Insurable acreage" means the acres of oranges as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, grown on the following: (1) land classified as insurable by the Corporation and shown as such on the actuarial map or appropriate land identification list or (2) land owned or operated by a person to whom a grove classification is assigned by the Corporation or as otherwise provided on the actuarial table.

(j) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(k) "Person" or "Insured" means an individual, partnership, association, corporation, estate, trust, or other business enterprise, or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(l) "Potential" means the production which would have been produced before freeze damage occurred, and shall include oranges which (1) were picked before the freeze damage occurred; (2) remained on the trees after the freeze damage occurred; (3) were lost from freeze; and (4) were lost from an uninsured cause. The potential shall not be less than 200 boxes per acre and shall not include oranges lost or harvested before insurance attaches for any crop year, or oranges lost by normal dropping.

(m) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured oranges as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share in the orange crop shall be deemed to be insurable.

(n) "Tenant" means a person who rents land from another person for a share of the crop or proceeds therefrom.

(o) "Time of loss" means the earlier of (1) the date harvest is completed on the unit or (2) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(p) "Unit" means all insurable acreage in the county of either Navel or Valencia oranges located on contiguous land, on the date insurance attaches for the crop year, (1) in which the insured has a 100 percent share: (2) which is owned by one person and operated by the insured as a tenant; or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land only shall be considered as owned by the lessee. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Cause of loss.* (a) The insurance provided is against unavoidable freeze loss occurring within the insurance period to oranges which are set from the annual bloom.

(b) The contract shall not cover any loss or damage: (1) to the blossoms or trees; (2) due to neglect or malfeasance of the insured, any member of the insured's household, tenants, or employees; (3) due to failure to follow recognized good grove management practices; or (4) due to any cause other than freeze.

3. *Oranges insured.* (a) The oranges insured shall be either or both Navel or Valencia varieties as designated on the insured's application for insurance, and not excluded by the following provisions of this section, which are located on insurable acreage as shown on the actuarial table, and in which the insured has a share on the date insurance attaches: *Provided,* That (1) the oranges can be expected to mature each crop year in the normal maturity period for the variety and (2) the trees have reached at least the sixth growing season after being set out.

(b) Upon approval of the Corporation, the insured may elect to insure or exclude from insurance for any crop year any reported, described, and designated insurable acreage which has a potential of less than 200 boxes per acre. If the insured elects to insure such acreage, the Corporation will, in determining the amount of loss, increase the potential on such acreage to 200 boxes per acre. If the insured elects to exclude such acreage, the Corporation will disregard such acreage for all purposes of his contract. If the insured does not report, exclude, describe, and designate any such acreage, the Corporation will disregard such acreage if the production is less than 200 boxes per acre; however, if the production from such acreage is 200 or more boxes per acre, the Corporation shall determine the percent of damage on all of the insurable acreage for the unit, but will not permit the percent of damage for the unit to be increased by including such acreage.

(c) The Corporation reserves the right for any crop year to exclude acreage from insurance or limit the amount of insurance on any acreage which was not insured the previous crop year.

4. *Life of contract and contract changes.* (a) The contract shall be in effect for the crop year specified on the application, and may not be canceled for such crop year. Thereafter, either party may cancel insurance on either variety of oranges for any crop year by giving written notice to the other by the July 31 immediately preceding such crop year. In the absence of such notice to cancel, and subject to the provisions of subsections (b), (c), and (d) of this section, the contract shall continue in force for each succeeding crop year.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(c) If the premium for any crop year is not paid by the Septemer 30 following the calendar year in which the insurance period begins, the contract shall terminate for the succeeding crop year: *Provided,* That the date of payment for a premium (1) deducted from a loss claim shall be the date the insured signs such claim or (2) deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(d) The contract shall terminate if no premium is earned for three consecutive years.

(e) The Corporation reserves the right to change the terms and conditions of the contract from year to year. Notice thereof shall be mailed to the insured or placed on file and made available for public inspection at the office for the county by July 15 immediately preceding the crop year for which such changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in subsection (a) of this section.

(f) At the time the application for insurance is made, the applicant shall elect an amount of insurance per acre from among those shown on the county actuarial table. For any crop year, the insured may with the consent of the Corporation change the amount of insurance per acre which was previously elected by notifying the Corporation in writing not later than September 30 immediately preceding such crop year.

5. *Responsibility of the insured to report acreage and share.* (a) The insured at the time of filing the application shall also file on a form prescribed by the Corporation a report of all the acreage of insured oranges in the county in which the insured has a share and show the share therein. Such report shall also include a designation of any acreage which is uninsurable or excluded under the provisions of section 3 above. This report shall be revised by the insured for any crop year before insurance attaches if the acreage to be insured or share therein has changed, and the latest report filed shall be considered as the basis for continuation of insurance from year to year.

(b) If the insured does not submit a report for any crop year in accordance with the provisions of subsection (a) of this section, the Corporation may elect to determine by units the insured acreage and share or

declare the insured acreage for any unit(s) to be "zero."

6. *Insurance period.* Insurance attaches each crop year on October 1, except that for the first crop year if the application is accepted by the Corporation after that date, insurance shall attach on the tenth day after the application is received in the office for the county, and as to any portion of the orange crop, shall cease upon the earlier of harvests or March 31 of the crop year.

7. *Annual premium.* (a) The annual premium for each insurance unit is earned and payable on the date insurance attaches and shall be determined by multiplying the applicable amount of insurance per acre times the applicable premium rate, times the insured's share at the time insurance attaches and, where applicable, applying the premium reduction or adjustment herein provided.

(b) In counties where the actuarial table does not provide for adjustments in premium, the total annual premium on all units shall be reduced as follows after consecutive years of insurance without a loss for which an indemnity was paid on any unit hereunder (eliminating any year in which a premium was not earned): 5 percent after one and two years; 10 percent after three and four years; 15 percent after five years; 20 percent after six years; and 25 percent after seven or more years. However, if the insured has a loss for which an indemnity is paid hereunder, the number of such consecutive years of insurance without a loss shall be reduced by three years, except that where the insured has seven or more such years, a reduction to four shall be made and where the insured has three or less such years, a reduction to zero shall be made: *Provided,* That if at any time, the cumulative indemnities paid hereunder exceed the cumulative premiums earned hereunder from the start of the insuring experience through the previous crop year, the 5, 10, or 15 percent premium reductions in this subsection shall not thereafter apply until such cumulative premiums equal or exceed such cumulative indemnities.

(c) In counties where the actuarial table provides for adjustments in premiums, the provisions of subsection (b) of this section shall not apply.

(d) If there is no break in the continuity of participation, any premium reduction or adjustment applicable under subsection (b) or (c) of this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured; (2) the contract of the person who succeeds the insured as the insured's transferee in operating only the same grove or groves, if the Corporation finds that such transferee had previously actively participated in the grove operations involved; or (3) the contract of the same insured who stops operating a grove in one county and starts operating a grove in another county.

(e) If there is a break in the continuity of participation, subsection (b) of this section or any reduction in premium earned under subsection (c) of this section shall not thereafter apply.

8. *Notice of damage or loss.* (a) The insured shall give notice to the office for the county immediately after freeze damage to the oranges becomes apparent, giving the date(s) of such damage so that an inspection and determination of the extent of damage can be made prior to harvest.

(b) If a loss is to be claimed on any unit, notwithstanding any prior notice of damage, the insured shall notify the office for the county of the intended date of harvest at least seven days prior to the start of harvest.

(c) If a loss is to be claimed on any unit and if damage occurs within the seven-day period prior to the start of harvest or during harvest, notice of damage must be given immediately to the office for the county.

(d) Notwithstanding any other provisions of this section, no insured freeze damage shall be deemed to have occurred on any acreage unless a notice of damage therefor is given to the office for the county within 30 days after the end of the insurance period for Navel oranges and 60 days after the end of the insurance period for Valencia oranges.

(e) The Corporation reserves the right to reject any claim if any of the requirements of this section are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

(f) There shall be no abandonment of the orange crop to the Corporation.

9. *Claim for loss.* (a) Any claim for loss for any unit shall be submitted to the Corporation on a form prescribed by the Corporation within 60 days after the time of loss, but no later than July 31 for Navel oranges and September 30 for Valencia oranges of the crop year. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(b) Losses shall be adjusted separately for each unit. The amount of loss with respect to any unit shall be determined by (1) multiplying the amount of insurance for the unit by the average percent of insured damage in excess of 10 percent (i.e. average damage 45%−10%=35% payable); and (2) multiplying this product by the insured share: *Provided,* That for the purpose of determining the amount of loss, the insured share shall not exceed the insured's share in the orange crop at the time of loss or the beginning of harvest, whichever is earlier.

(c) The average percent of damage to the oranges for any unit shall be the ratio of the number of boxes of oranges lost from freeze to the potential. In determining the number of boxes of oranges lost, the average percent of damage shall be applicable only to fruit which was not or could not be packed as fresh fruit.

(d) Any oranges which (1) are or could be marketed as fresh fruit or (2) are harvested prior to an inspection by the Corporation shall be considered as undamaged.

(e) The determination of serious freeze damage to oranges will be made by the Corporation in accordance with the Agricultural Code of California, and such determination shall be the actual oranges lost as shown by cuts made of representative samples of fruit in the grove, regardless of whether or not damaged fruit can be separated from undamaged fruit without cutting: *Provided,* That for any portion of the Navel orange crop which has 55 percent or less damage, the percent so determined shall be increased one additional percentage point for each full percent of damage in excess of 30 percent; however, the total allowable percent of damage shall not exceed 80 percent. If the actual percent of damage as determined by such cuts is in excess of 80, the percent of damage so determined shall be allowed.

(f) Any oranges on the ground as a result of freeze which are not marketed shall be considered as damaged the greater of 70 percent or the percent of damage determined by cuts made of repersentative samples of oranges in the grove, including any increased percentage in the case of Navels; however, if over 90 percent of the potential production on any acreage is on the ground as a result of freeze, the percent of damage for such oranges shall be considered 90 percent.

(g) A final grove inspection to determine the extent of serious freeze damage to oranges which are unharvested at the end of the insurance period shall be made within 30 days after the end of the insurance period for Navels and 60 days for Valencias, or as soon thereafter as possible.

(h) It shall be a condition precedent to payment of any claim that the insured furnish production records and any other information required by the Corporation regarding the manner and extent of damage, including authorizing the Corporation to examine and obtain any record pertaining to the production and/or marketing of the oranges insured under this contract from the packinghouse and the Naval Orange and Valencia Orange Administrative Committees established under orders issued by the U.S. Department of Agriculture, pursuant to the Agricultural Marketing Agreement Act of 1937, as amended. The Corporation has the right to delay the final determination of the average percent of damage and the settlement of any claim until the insured makes available to it complete records of the marketing of the oranges for the crop year.

(i) If the Corporation determines that frost protection equipment was not properly utilized or properly reported, the indemnity otherwise computed for the unit shall be reduced by the percentage of premium reduction allowed for frost protection equipment. It is the responsibility of the insured to provide the Corporation a record of dates showing each use of frost protection equipment, including the starting and ending times for the period of use.

(j) If any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided,* That the same be brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

10. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for loss is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

11. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right or remedy including the right to collect any unpaid premiums if at any time, either before or after any loss, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

12. *Collateral assignment.* Upon submission and approval of forms prescribed by the Corporation, the insured may assign the right to an indemnity for any crop year and the assignee shall have the right to submit the loss notices and forms as required by the contract.

13. *Transfer of insured share.* If the insured transfers all or any part of the insured share in any crop year, the Corporation will, upon submission and approval of forms prescribed by the Corporation, continue to provide protection according to the provisions of the policy to the transferee for such crop year with respect to the transferred share

and the transferee shall have the same rights and responsibilities under the contract as the transferor for the current crop year.

14. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made and shall execute all papers required and take appropriate action to secure such rights.

15. *Records and access to grove.* The insured shall keep or cause to be kept for two years after the time of loss, separate records of the harvesting, storage, shipments, sale, or other disposition of all insured variety(s) of oranges produced on each unit and on any uninsured acreage of such oranges in the county in which the insured has a share. Any persons designated by the Corporation shall have access to such records and the grove for purposes related to the contract.

16. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

NOTE.—The Federal Crop Insurance Corporation has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

W. OTTO JOHNSON,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc.77-22786 Filed 8-5-77;8:45 am]

PART 409—ARIZONA-DESERT VALLEY CITRUS CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the regulations governing the insuring of citrus grown in the Arizona-Desert Valley region effective with the 1977 crop year and is a revision of the Arizona-Desert Valley Citrus Crop Insurance Regulations for the 1974 and Succeeding Crop Years, as published in the FEDERAL REGISTER of June 26, 1974 (39 FR 23045). The revisions made in this document are nonsubstantive and deal with the format in an effort to improve the clarity.

EFFECTIVE DATE: July 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3197.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation, in accordance with the provisions of the Administrative Procedures Act (5 U.S.C. 553 (b) and (c)), regarding the procedure for notice and public participation, published the Arizona-Desert Valley Citrus Crop Insurance Regulations in the FEDERAL REGISTER on June 30, 1977, as a notice of proposed rule making (42 FR 33310) allowing the public an opportunity to file written data, views, or comments on the proposed regulations, but none were received. The proposed regulations were considered nonsubstantive in nature and dealt with the restructuring of the document to place the meaning of terms section at the beginning; elimination of the application section in favor of utilizing the Standard Application Form (FCI-12), and minor editorial changes for clarity.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), 7 CFR Part 409 is revised to read as set forth below and the regulations contained therein are hereby issued to be in force with respect to Arizona-Desert Valley Citrus Crop Insurance contracts for the 1977 and Succeeding Crop Years until amended or superseded.

Subpart—Regulations for the 1977 and Succeeding Crop Years

Sec.

409.30 Availability of Arizona-Desert Valley Citrus Crop Insurance.
409.31 Premium rates and amounts of insurance.
409.32 Application for insurance.
409.33 Public notice of indemnities paid.
409.34 Creditors.
409.35 The policy.

AUTHORITY: The provisions of this subpart are issued under secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.

§ 409.30 Availability of Arizona-Desert Valley Citrus Crop Insurance.

Citrus crop insurance shall be offered for the 1977 and succeeding crop years under the provisions of §§ 409.30 through 409.35 in counties in Arizona and the Desert Valley within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from a list of counties approved by the Board of Directors of the Corporation for citrus crop insurance. The counties designated by the Manager for citrus crop insurance under this subpart for the 1977 and succeeding crop years are as follows: Arizona, Maricopa.

§ 409.31 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and the amounts of insurance per standard box which shall be shown on the county actuarial table on file in the office for the county. Such premium rates and amounts of insurance may be changed from year to year.

(b) The following shall apply to the transfer of any premium reduction earned under the provisions of section 8 of the Policy set forth in § 409.35 if the insured is a partnership, corporation, or any other joint enterprise and there is no break in the continuity of participation. Upon dissolution of such enterprise, such premium reduction may be credited to the contract of any member or stockholder thereof if the Corporation determines such person is operating only land formerly operated by the dissolved enterprise. Upon formation of a joint enterprise, the smallest premium reduction (zero if none), which the Corporation determines would have been applicable to any insurable acreage brought into the enterprise if the enterprise had not been formed, may be credited to the joint enterprise contract.

§ 409.32 Application for insurance.

An application for insurance on a form prescribed by the Corporation, may be submitted at the office for the county for the Corporation. Prior to the closing date for the filing of applications, the Corporation reserves the right to discontinue the taking of applications in any county upon its determination that the insurance risk involved is excessive or to limit the amount of insurance. Such closing date shall be the September 30 immediately preceding the beginning of the crop year. The Corporation further reserves the right to reject any application or to exclude any definitely identified acreage for any crop year of the contract if upon inspection it deems the risk on such acreage is excessive. If any such acreage is to be excluded, the insured shall be notified of such exclusion before insurance attaches for the crop year for which the acreage is to be excluded. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county by amendment to the regulations, upon his determination that no adverse selectivity exists: *Provided however*, That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

§ 409.33 Public notice of indemnities paid.

The Corporation shall provide for the posting annually at each county courthouse a listing of the indemnities paid in the county.

§ 409.34 Creditors.

An interest of a person other than the insured in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract other than as provided in the Policy set forth in § 409.35.

§ 409.35 The policy.

The provisions of the policy for Arizona-Desert Valley Citrus Crop Insurance for the 1977 and Succeeding Crop Years are as follows:

ARIZONA-DESERT VALLEY CITRUS CROP INSURANCE

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person against unavoidable loss of production of the insured's citrus crop due to freeze. No

term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For purposes of insurance on citrus the terms: (a) "Acreage report" means the form prescribed by the Corporation for initially reporting and revising (if necessary) all of the insured's acreage and share therein of citrus in the county, the location of acreage by types of citrus, the age of trees, and the estimated production by boxes.

(b) "Actuarial table" means the forms and related material approved by the Corporation which are on file for public inspection in the office for the county, and which show the applicable amounts of insurance, premium rates, and related information regarding citrus crop insurance in the county.

(c) "Box" or "Boxes" means a standard field box as prescribed in the Agricultural Code of California.

(d) "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way shall be considered contiguous.

(e) "Contract" means the application, this policy, and the actuarial table.

(f) "County" means the county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(g) "Crop Year" means the period beginning October 1 and extending through September 30 of the following year and shall be designated by the calendar year in which the insurance period begins.

(h) "Harvest" means any severance of citrus fruit from the tree either by pulling, picking, or severing by mechanical or chemical means, or picking up the marketable fruit from the ground.

(i) "Insurable acreage" means the acres of citrus as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, grown on the following: (1) land classified as insurable by the Corporation and shown as such on the actuarial map or appropriate land identification list of (2) land owned or operated by a person to whom a grove classification is assigned by the Corporation or as otherwise provided on the actuarial table.

(j) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(k) "Person" or "Insured" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(l) "Potential" means the production which would have been produced before freeze damage occurred and shall include citrus which (1) was picked before the freeze damage occurred; (2) remained on the trees after the freeze damage occurred; (3) was lost from freeze; and (4) was lost from an uninsured cause. The potential shall not be less than 150 boxes per acre and shall not include citrus lost before insurance attaches for any crop year or citrus lost by normal dropping.

(m) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured citrus as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share in the citrus crop shall be deemed to be insurable.

(n) "Tenant" means a person who rents land from another person for a share of the crop or proceeds therefrom.

(o) "Time of loss" means the earlier of (1) the date harvest is completed on the unit; (2) the calendar date for the end of the insurance period; or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(p) "Types of citrus" means any of the following six types of fruit: Type I, Navel oranges; Type II, Orlando tangeloes and sweet oranges; Type III, Valencia oranges; Type IV, Grapefruit; Type V, Lemons; and Type VI, Kinnow mandarins and Minneola tangelos.

(q) "Unit" means all insurable acreage in the county of any of the six citrus types referred to in subsection (p) of this section located on contiguous land, on the date insurance attaches for the crop year, (1) in which the insured has a 100 percent share; (2) which is owned by one person and operated by the insured as a tenant; or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land only shall be considered as owned by the lessee. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Cause of loss.* (a) The insurance provided is against unavoidable freeze loss occurring within the insurance period to the citrus fruit which is set from the annual bloom.

(b) The contract shall not cover any loss or damage (1) to the blossoms or trees; (2) due to neglect or malfeasance of the insured, any member of the insured's household, tenants, or employees; (3) due to failure to follow recognized good grove management practices; or (4) due to any cause other than freeze.

3. *Citrus insured.* (a) The citrus insured shall be any of the type(s) of citrus as defined in section 1(p), and not excluded by the following provisions of this section, which is located on insurable acreage as shown on the actuarial table, and in which the insured has a share on the date insurance attaches: *Provided*, That (1) the citrus fruit can be expected to mature each crop year in the normal maturity period for the variety and (2) the trees have reached at least the sixth growing season after being set out.

(b) Upon approval of the Corporation, the insured may elect to insure or exclude from insurance for any crop year any reported, described, and designated insurable acreage which has a potential of less than 150 boxes per acre. If the insured elects to insure such acreage, the Corporation will, in determining the amount of loss, increase the per acre potential on such acreage to 150 boxes per acre. If the insured elects to exclude such acreage, the Corporation will disregard such acreage for all purposes of this contract. If the insured does not report, exclude, describe, and designate any such acreage, the Corporation will disregard such acreage if the production is less than 150 boxes; however, if the production from such acreage is 150 or more boxes per acre, the Corporation shall determine the percent of damage on all of the insurable acreage for the unit, but will not permit the percent of damage for the unit to be increased by including the undesignated acreage.

(c) The Corporation reserves the right for any crop year to exclude acreage from insurance or limit the amount of insurance on any acreage which was not insured the previous crop year.

4. *Life of contract and contract changes.* (a) The contract shall be in effect for the crop year specified on the application, and may not be canceled for such crop year. Thereafter, either party may cancel insurance on any type of citrus for any crop year by giving written notice to the other by the July 31 immediately preceding such crop year. In the absence of such notice to cancel, and subject to the provisions of subsections (b), (c), and (d) of this section, the contract shall continue in force for each succeeding crop year.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(c) If the premium for any crop year is not paid by the September 30 following the calendar year in which the insurance period begins, the contract shall terminate for the succeeding crop year: *Provided*, That the date of payment for a premium (1) deducted from a loss claim shall be the date the insured signs such claim, or (2) deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(d) The contract shall terminate if no premium is earned for three consecutive years.

(e) The Corporation reserves the right to change the terms and conditions of the contract from year to year. Notice thereof shall be mailed to the insured or placed on file and made available for public inspection at the office for the county by the July 15 immediately preceding the crop year for which such changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in subsection (a) of this section.

(f) At the time the application for insurance is made, the applicant shall elect an amount of insurance per acre from among those shown on the county actuarial table. For any crop year, the insured may with the consent of the Corporation change the amount of insurance per acre which was previously elected by notifying the Corporation in writing not later than the closing date for filing applications for such crop year.

5 *Responsibility of the insured to report acreage data.* (a) The insured at the time of filing the application shall also file on a form prescribed by the Corporation a report of all the acreage of citrus in the county in which the insured has a share and show the share therein. Such report shall also include a designation of (1) the location of the acreage by types of citrus, (2) age of trees, (3) estimated production by boxes, and (4) any acreage which is uninsurable or excluded under the provisions of section 3 above. This report shall be revised by the insured for any crop year before insurance attaches if

the acreage to be insured or share therein has changed, and the latest report filed shall be considered as the basis for continuation of insurance from year to year.

(b) If the insured does not submit an acreage report for any crop year in accordance with the provisions of subsection (a) of this section, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage for any unit(s) to be "zero."

6. *Insurance period.* Insurance attaches each crop year on October 1, except that for the first crop year if the application is accepted by the Corporation after that date, insurance shall attach on the tenth day after the application is received in the office for the county, and as to any portion of the citrus crop, shall cease upon the earlier of harvest or January 31 for Types I, II, and V and March 31 for Types III, IV, and VI of the crop year.

7. *Amount of insurance.* The amount of insurance for any crop year for any unit shall be determined by multiplying the estimated production in boxes for the unit for that crop year as reported by the insured or as determined by the Corporation, whichever is smaller, by the applicable amount of insurance per box and multiplying the product thereof by the insured's share: *Provided, however,* That the amount of insurance for any crop year for any unit shall not exceed the product of the insured acreage thereon times the maximum amount of insurance per acre shown on the actuarial table times the insured's share; and, the amount of insurance per acre shall be based on not less than 150 standard field boxes per acre.

8. *Annual premium.* (a) The annual premium for each insurance unit is earned and payable on the date insurance attaches and shall be determined by multiplying the higher of (1) the estimated production in boxes reported by the insured for that crop year for the unit or (2) 150 boxes times the number of acres in the unit, times the applicable amount of insurance per box, times the applicable premium rate, times the insured's share at the time insurance attaches, and where applicable, applying the premium reduction or adjustment herein provided. There will be no revision in premium if the actual production differs from the estimated production applicable for the crop year as provided in section 5 above.

(b) In counties where the actuarial table does not provide for adjustments in premium, to total annual premium on all units shall be reduced as follows after consecutive years of insurance without a loss for which an indemnity was paid on any unit hereunder (eliminating any year in which a premium was not earned): 5 percent after one and two years; 10 percent after three and four years; 15 percent after five years; 20 percent after six years; and 25 percent after seven or more years. However, if the insured has a loss for which an indemnity is paid hereunder, the number of such consecutive years of insurance without a loss shall be reduced by three years, except that where the insured has seven or more such years, a reduction to four shall be made and where the insured has three or less such years, a reduction to zero shall be made: *Provided,* That if at any time, the cumulative indemnities paid hereunder exceed the cumulative premiums earned hereunder from the start of the insuring experience through the previous crop year, the 5, 10, or 15 percent premium reductions in this subsection shall not thereafter apply until such cumulative premiums equal or exceed such cumulative indemnities.

(c) In counties where the actuarial table provides for adjustments in premium, the provisions of subsection (b) of this section shall not apply.

(d) If there is no break in the continuity of participation, any premium reduction or adjustment applicable under subsection (b) or (c) of this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured; (2) the contract of the person who succeeds the insured as the insured's transferee in operating only the same grove or groves, if the Corporation finds that such transferee had previously actively participated in the grove operation involved; or (3) the contract of the same insured who stops operating a grove in one county and starts operating a grove in another county.

(e) If there is a break in the continuity of participation, subsection (b) of this section or any reduction in premium earned under subsection (c) of this section shall not thereafter apply.

9. *Notice of damage or loss.* (a) The insured shall give notice to the office for the county immediately after freeze damage to the citrus becomes apparent, giving the date(s) of such damage so that an inspection and determination of the extent of damage can be made prior to harvest.

(b) If a loss is to be claimed on any unit, notwithstanding any prior notice of damage, the insured shall notify the office for the county of the intended date of harvest at least seven days prior to the start of harvest.

(c) If a loss is to be claimed on any unit and if damage occurs within the seven-day period prior to the start of harvest or during harvest, notice of damage must be given immediately to the office for the county.

(d) Notwithstanding any other provision of this section, no insured freeze damage shall be deemed to have occurred on any acreage unless a notice of the damage therefore is given to the office for the county within 30 days after the end of the insurance period.

(e) The Corporation reserves the right to reject any claim if any of the requirements of this section are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

(f) There shall be no abandonment of the citrus crop to the Corporation.

10. *Claim for loss.* (a) Any claim for loss for any unit shall be submitted to the Corporation on a form prescribed by the Corporation within 60 days after the time of loss. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(b) Losses shall be adjusted separately for each unit. The amount of loss with respect to any unit shall be determined by (1) multiplying the amount of insurance for the unit by the average percent of insured damage in excess of 10 percent (i.e. average damage 45% −10% = 35% payable); and (2) multiplying this product by the insured share: *Provided,* That for the purpose of determining the amount of loss, the insured share shall not exceed the insured's share in the citrus crop at the time of loss or the beginning of harvest, whichever is earlier.

(c) The average percent of damage to the citrus for any unit shall be the ratio of the number of boxes of citrus lost from freeze to the potential. In determining the number of boxes of citrus lost, the average percent of damage shall be applicable only to fruit which was not or could not be packed as fresh fruit.

(d) Any citrus which (1) is or could be marketed as fresh fruit or (2) is harvested prior to an inspection by the Corporation shall be considered as undamaged.

(e) The determination of serious freeze damage to citrus will be made by the Corporation in accordance with the state laws for the county, and such determination shall be the actual citrus lost as shown by cuts made of representative samples of fruit in the grove, regardless of whether or not damaged fruit can be separated from undamaged fruit without cutting.

(f) Any fruit on the ground as a result of freeze which is not picked up and marketed shall be considered as damaged the greater of 70 percent or the percent of damage determined from cuts of representative samples of fruit in the grove.

(g) A final grove inspection to determine the extent of serious freeze damage to fruit which is unharvested at the end of the insurance period shall be made within 30 days after the end of the insurance period or as soon thereafter as possible.

(h) It shall be a condition precedent to payment of any claim that the insured furnish production records and any other information required by the Corporation regarding the manner and extent of damage, including authorizing the Corporation to examine and obtain any records pertaining to the production and/or marketing of the citrus insured under this contract from the packinghouse and the Navel Orange, Valencia Orange, Grapefruit and Lemon Administrative Committees established under orders issued by the U.S. Department of Agriculture, pursuant to the Agricultural Marketing Agreement Act of 1937, as amended. The Corporation has the right to delay the final determination of the average percent of damage and the settlement of any claim until the insured makes available to it complete records of the marketing of the citrus for the crop year

(i) If the Corporation determines that frost protection equipment was not properly utilized or properly reported, the indemnity otherwise computed for the unit shall be reduced by the percentage of premium reduction allowed for frost protection equipment. It is the responsibility of the insured to provide the Corporation a record by dates showing each use of frost protection equipment including the starting and ending times for the period of use.

(j) If any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided,* That the same be brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

11. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for loss is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

12. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right or remedy including the right to collect any unpaid premiums if at any time, either before or after any loss, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

13. *Collateral assignment.* Upon submission and approval of forms prescribed by the Corporation, the insured may assign the right

to an indemnity for any crop year and the assignee shall have the right to submit the loss notices and forms as required by the contract.

14. *Transfer of insured share.* If the insured transfers all or any part of the insured share in any crop year, the Corporation will, upon submission and approval of forms prescribed by the Corporation, continue to provide protection according to the provisions of the policy to the transferee for such crop year with respect to the transferred share and the transferee shall have the same rights and responsibilities under the contract as the transferor for the current crop year.

15. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made and shall execute all papers required and take appropriate action to secure such rights.

16. *Records and access to grove.* The insured shall keep or cause to be kept for two years after the time of loss, separate records of the harvesting, storage, shipments, sale, and other disposition of all citrus produced on each unit and on any uninsured acreage of such citrus in the county in which the insured has a share. Any persons designated by the Corporation shall have access to such records and the grove for purposes related to the contract.

17. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

NOTE.—The Federal Crop Insurance Corporation has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

W. O. JOHNSON,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc.77-22785 Filed 8-5-77;8:45 am]

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

[Valencia Orange Reg. 566, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period July 29–August 4, 1977. The amendment recognizes that demand for Valencia oranges has improved, since the regulation was issued. This action will increase the supply of oranges available to consumers.

DATES: Weekly regulation period July 29–August 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202–447–3545).

SUPPLEMENTARY INFORMATION: (a) *Findings.* (1) Pursuant to the amended marketing agreement and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the Valencia Orange Administrative Committee, established under the marketing agreement and order, and other available information, it is found that the limitation of handling of Valencia oranges as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the Valencia orange markets has improved since the regulation was issued. Amendment of the regulation is necessary to permit orange handlers to ship a larger quantity of Valencia oranges to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 200,000 cartons, in the interest of producers and consumers.

(3) It is further found that it is impracticable and is contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because the time intervening between the date when information became available upon which this amendment is based and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Valencia oranges.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), and (ii) of § 908.866 Valencia Orange Regulation 566 (42 F.R. 38379) are hereby amended to read as follows:

§ 908.866 Valencia Orange Regulation 566.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 312,000 cartons;

(ii) District 2: 488,000 cartons.

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

Dated: August 3, 1977.

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

[FR Doc.77-22780 Filed 8-5-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

1977 Price and Allocation Interpretations

AGENCY: Federal Energy Administration.

ACTION: Notice of Interpretations.

SUMMARY: Attached are five Interpretations issued by the General Counsel or Regional Counsels of the Federal Energy Administration (FEA) between June 6 and July 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Laura Holtz, Office of General Counsel, Federal Building, 12th and Pennsylvania Avenue NW., Room 7132, Washington, D.C. 20461 (202–566–2085).

SUPPLEMENTARY INFORMATION: FEA Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER from time to time in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977.

FEA Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, Interpretations are subject to appeal. The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the FEA Notice cited above.

Issued in Washington, D.C., August 2, 1977.

ERIC J. FYGI,
Acting General Counsel, Federal Energy Administration.

APPENDIX

No.	To	Date	Category
1977-17	Francis O. Scarpulla.....	June 6	Allocation.
1977-18	Ball Marketing Enterprise, et al.	June 13	Price.
1977-19	Sterling Stations, Inc.....	June 21	Allocation.
1977-20	John Douglas Hattenhauer.	June 22	Do.
1977-21	Suburban Propane Gas Corp.	July 11	Price.

INTERPRETATION 1977-17

To: Francis O. Scarpulla, Esq.

Date: June 6, 1977.

Rules Interpreted: § 211.51, Ruling 1975-8.

Code: GCR(IX)—AI—Definition of Wholesale Purchaser-Reseller.

This is in response to a request for interpretation dated July 12, 1976 submitted by you on behalf of six named consignees under contract with Union Oil Company of California (Union) concerning whether or not these consignees may be considered wholesale purchaser-resellers under 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations of the Federal Energy Administration (FEA). Since the test for such characterization depends primarily on the facts of each individual case, this Interpretation applies solely to the six persons filing the request.

FACTS

The facts upon which this interpretation is based are as follows:[1] All of the named consignees entered wholesale consignment agreements with Union between 1964 and 1972. At present, each of these agreements is memorialized in a standard form contract prepared by Union ("Commercial Consignment Agreement," Form No. 3-4H06, Rev. April 1973) (hereinafter, Agreement).

The Agreement provides that the consignee will handle, advertise for sale, and sell within defined geographic areas only those products provided by Union as consignor. Title to all products remains in Union until a sale of the products is consummated by the consignee, at which time he is entitled to a commission in accordance with a schedule attached to the Agreement.

The consignee is obligated to: Sell the consigned products at prices established by Union; use his best efforts to promote the sale of the products within his defined territory; hire all necessary employees, and indemnify Union for any liability arising from operation of any workmen's compensation, unemployment, pension, or retirement program; pay all necessary license fees and all business expenses incurred in the handling, storage, and distribution of the consigned products and in providing equipment therefor; and be responsible for loss or damage to the consigned products. The Agreement expressly states that neither the consignee nor his employees are to be considered employees of Union.

Union, as consignor, must deliver whatever quantity of product the consignee requires for sale and pay the scheduled commissions for product sold. Union also retains the right of prior approval of most credit sales proposed by the consignee beyond a minimum amount and may revoke such approval at any time. The Agreement may be terminated by either party upon seven (7) days notice.

The affidavits submitted reveal that each consignee spends a significant amount of time developing his own customer contacts and accounts. The accounts could similarly be terminated by the consignee (prior to adoption of FEA regulations) without the need to notify Union or obtain its concurrence. The accounts provided directly by Union consisted almost exclusively of a minute number of house accounts, and Union representatives rarely, if ever, initiated customer contacts in the consignee's territory or accompanied him on sales calls. The consignee is responsible for all facets of his service, and customers' complaints are handled by him rather than by Union. Union never evaluates the quality of service provided by the consignee. Although the consignees lease their bulk plants from Union at nominal rent, each has invested in his own transportation and other related equipment. Often in soliciting their own customers, the consignees provide storage tanks either free or at low rent.

ISSUE

The issue presented for interpretation is whether consignees operating pursuant to this agreement and in the manner described above qualify as wholesale purchaser-resellers as defined in 10 CFR 211.51.

INTERPRETATION

It is our opinion that consignees which sell and distribute allocated products pursuant to the terms of the contractual agreement set forth above and under the circumstances described qualify as wholesale purchaser-resellers as defined in 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations and clarified by FEA Ruling 1975-8.

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as "any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form" Several situations exist in the industry in which firms take possession of allocated products without taking title. Consignment is one such situation.

FEA Ruling 1975-8 states that the phrase "as by consignment" is included in the definition of wholesale purchaser-reseller to make clear that firms which obtain and resell or otherwise transfer allocated products should not be automatically excluded from the category solely on the ground that they fail to take legal title to the product. This explicitly recognizes that consignment relationships have long existed in the petroleum industry under which consignees perform essentially the same functions as jobbers and, accordingly, should be treated under the allocation regulations in the same manner as jobbers. Therefore, those consignees who have a substantial degree of operational independence in the conduct of their business (as opposed to merely providing a distribution service between a supplier and customers or functioning like a supplier employee) fully qualify as wholesale purchaser-resellers and should be subject to the same benefits and obligations of the allocation program which apply to jobbers.

According to Ruling 1975-8, a consignee who operates in a substantially equivalent manner to an independent jobber will generally have most (but not necessarily all) of the following characteristics: (1) Appropriate facilities and equipment for the conduct of the business of selling and distributing his supplier's products; (b) responsibility, independent of his supplier, for internal financial management and physical and other administrative operations; (c) responsibility for expenses and liabilities arising from and connected with the business of transfer and sale of his supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier. Such consignees should qualify as wholesale purchaser-resellers.

In the factual situation presented herein, the six named consignees possess a full measure of authority in distributing and selling Union's products. They do not simply provide a delivery service, but rather actively solicit customers for consigned products, negotiate terms and conditions for sales, and draft orders and invoices. They are responsible for all aspects of conducting their respective businesses. Indeed, the obligations imposed on the consignees by the Agreement itself satisfy in full the first three elements stated in Ruling 1975-8. The only restrictions imposed by the Agreement are that the consigned products be fully accounted for and sold at authorized prices. There is no limitation expressed regarding sales to particular customers or in specified amounts. Rather, the Agreement exhorts the consignees to develop sales and states that Union will provide product in "such quantity * * * as consignee requires for sale * * *. It is also clear from the information submitted that the consignees retained the power to terminate accounts (subject since 1973 to FEA restrictions), without notice to or approval by Union. The named consignees thus possess all of the characteristics of business independence discussed in Ruling 1975-8.

Thus it is our opinion that the six consignees requesting this Interpretation are wholesale purchaser-resellers as that term is defined in 10 CFR 211.51 and explained in Ruling 1975-8.

INTERPRETATION 1977-18

To: Ball Marketing Enterprise, et al.

Date: June 13, 1977.

Rules Interpreted: §§ 212.31, 212.82.

Code: GCW—PI—Definition of Firm.

This is in response to your letter of August 31, 1976, in which you requested, on behalf of Ball Marketing Enterprise ("BME"), Ball Marketing, Inc. ("BMI"), and Great Southern, that BME, BMI, and Great Southern constitute separate and distinct "firms," under the definition of "firm" in 10 CFR 212.31, for purposes of FEA price controls. This interpretation also concerns the definition of "refiner" in 10 CFR 212.31, the definition of "firm" in 10 CFR 212.82 and related terms.

We understand that your request for interpretation was prompted by a preliminary finding by FEA's area office in New Orleans that Great Southern and BME constitute a single firm for purposes of FEA price regulations.

FACTS

1. Great Southern is a producer of oil and gas, conducting extensive drilling operations in Louisiana for the discovery, production and sale of natural resources. Great Southern is also a "refiner," as defined in § 212.31, by virtue of the fact that it contracts to have crude oil and gas refined and sells the refined covered products. (Section 212.31 states, in part, that " 'Refiner' includes any owner of covered products which contracts to have those covered products refined and then sells the refined covered products to resellers, retailer, reseller-retailers or ultimate consumers.")

2. Fifty percent of the shares of Great Southern are held by Mr. Robert McAdams or members of his family. The remaining 50 percent of the shares of Great Southern are held by Mr. Baker Littlefield or members of his family. Mr. McAdams is not related in any way to Mr. Littlefield.

[1] On July 22 and 27, 1976 Union responded to the initial request for interpretation and supporting data submitted therewith. Subsequently, counsel for the petitioners provided a response to the Union letters and submitted declarations and affidavits from the six consignees in support of the request. The individual wholesale consignment distributors are: J. C. Lansdowne, Visalia; E. L. Mangiaracina, Roseville; J. A. Martin, Mariposa; R. A. Ramsey, Siskiyou; D. M. Seals, Merced; M. J. Soelzl, Fresno. All information submitted by Union and its consignee agents has been considered in postulating the facts upon which this Interpretation is based.

3. BME, a dissolved partnership, was formed on May 15, 1973, for the purpose of "brokering and reselling petroleum products." The partners in this venture were Mr. McAdams, Mr. Littlefield, and Mr. Charles Goss. The latter was the managing partner of BME. During its existence, BME was a "reseller," as defined in § 212.31, and purchased refined petroleum products from Great Southern for resale. Following the incorporation of BMI, the business activities of BME were discontinued and taken over by BMI.

4. BMI was chartered on March 5, 1976. Its outstanding capital stock is owned by Messrs. McAdams, Littlefield, and Goss in portions of one-third each. It continues to purchase refined petroleum products from Great Southern as a "reseller." BMI purchases more than five percent of the covered products it sells from Great Southern, as did BME.

5. BMI pays no more for products purchased from Great Southern than it pays for products purchased from other producers or refiners. Great Southern makes no price concessions to BMI in sales of refined petroleum products to BMI.

6. Great Southern and BMI maintain separate accounts and records under separate management. BME also maintained separate books of account under separate management.

7. Great Southern has filed Form FEO-96 independently, without including BME or BMI as part of the reporting entity.

ISSUE

Are Great Southern and BME/BMI part of a single "firm" for price control purposes under FEA regulations?

INTERPRETATION

The entity consisting of Messrs. McAdams and Littlefield, Great Southern, BME and its successor, BMI, constitutes a single "firm" for price control purposes under FEA regulations.

It is not true, as stated in the interpretation request, that "the definition of firm has obviously substantially changed since Phase II (of the Economic Stabilization Program) and any rulings relating to the Phase II definition cannot and do not apply whether well settled or not under the Phase IV regulations." In an Interpretation issued to the president of Enterprise Products Co. on February 12, 1975 ("Enterprise Interpretation") FEA stated as follows (emphasis added):

In a series of rulings during Phase II of the Economic Stabilization Program the major questions concerning inter-corporate control and control by individuals for purposes of price regulations were fully answered and settled. Under Phase IV Q&A 8-5, CLC Release 367, August 20, 1973, Phase II rulings were deemed not legally binding during Phase IV but were to be used as guidance in the absence of any specific legal interpretation which might be issued. Nothing in the few rulings issued by CLC in Phase IV or by FEA is contrary to the pertinent Phase II rulings discussed in this interpretation. Since these Phase II rulings thus firmly settled this area of the law, and *since the same applicable definitions and concepts to which those rulings relate were continued essentially unchanged in Phase IV and under the FEA regulations*, the FEA believes that it is appropriate to apply the pertinent Phase II rulings in this interpretation.

FEA then quoted in the Enterprise Interpretation the Phase II definition of "firm" and cited related Phase II definitions to show that the concept of "direct or indirect control," which brings within the "firm" all entities "controlled" by the firm, remains essentially the same under FEA regulations. Therefore, because of the definitional similarities considered and explained in the Enterprise Interpretation, Phase II rulings as well as FEA rulings and Interpretations are pertinent to the central question in this Interpretation concerning control.

The starting point for understanding the definition of "firm" is FEA's definition of that term in § 212.31, which reads as follows:

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The FE[A] may, in regulations and forms issued in this part, treat as a firm: (1) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (2) a parent and its consolidated entities, (3) an unconsolidated entity, or (4) any part of a firm.

For general price control purposes, FEA has selected the first of the four definitional options listed above.[2] Under FEA's definition of "firm" applicable to refiners in § 212.82, and under FEA's definition of "seller" applicable to resellers and retailers in § 212.92, this determination is expressed as follows:

"Firm" (or in the case of resellers or retailers, "seller") means a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

It is clear from the general definition of "firm" in § 212.31 and the definition of "parent," "parent and its consolidated entities" and "unconsolidated entity" in § 212.31 that an "individual" can be the "parent"—i.e., the entity or part of the "firm" to which one ultimately looks to determine the extent or degree of intra-firm control. This matter was expressly considered in CLC Ruling 1972-55 (37 FR 11694, June 10, 1972), where the "firm" was determined to consist of an individual person plus the two corporate entities which he controlled.

It is also clear that control by the individual is not diluted or diminished by the vesting of stock ownership or control in members of the individual's family. FEA's definition of "parent and its consolidated entities" and "unconsolidated entity" include a statement that "An individual shall be deemed to control a firm which is directly or indirectly controlled by him or by his father, mother, spouse, children or grandchildren." A similar statement was included in the Phase II definition of "firm."

Based on the foregoing considerations, neither "individual" nor family control preclude inclusion of Great Southern and BME/BMI in the same "firm." The only remaining question to be considered relates to the 50 percent-50 percent division of control of Great Southern between Messrs. McAdams and Littlefield and the 33⅓ percent-33⅓ percent-33⅓ percent division of control of BMI between Messrs. McAdams, Littlefield, and Goss—i.e., whether a division of control in equal shares, in which no one individual appears to have a predominate position, constitutes an effective means by which the consequences of control can be avoided for purposes of FEA price regulations.

Rulings and Interpretations issued under Phase II and the current price control program affirm that—

* * * the division of ownership or control into exactly equal shares or interests (e.g., 50%-50%, 33⅓%-33⅓%-33⅓%) w(ill) not serve to defeat the purpose of the regulations and rulings concerning control.[3]

For example, under CLC Ruling 1972-77 (37 FR 13652, July 12, 1972), companies A and B each owned a one-half interest in company C which they operated as a joint-venture. Control of C on the part of both A and B (whether deemed direct or indirect) was presumed. The result was that A plus C was considered a single entity and B plus C was considered a single entity, for the purpose of determining the size of the annual sales or revenues of the firm (price category determination), while for other purposes under the Economic Stabilization Program A and B were required to decide which of them would consider C as belonging to it in its entirety.

In the Enterprise Interpretation, a situation even more closely analogous to the present one was presented. There, two individuals each owned 50 percent of an incorporated propane resale business. These two individuals, not acting on a joint-venture basis in any formal sense, together acquired control of two propane retailers. FEA ruled that the "firm" for purposes of price regulations consisted of the two individuals concerned, the resale company, the two retail entities, and any other firm directly or indirectly controlled by the two individuals or their resale company.

In the present case, Messrs. McAdams and Littlefield control Great Southern since they each own 50 percent of the capital stock of that corporation. They also control BMI (and controlled its predecessor, BME) on the basis of their combined two-thirds ownership or interest. BME/BMI did not constitute a subsequent acquisition, as in the Enterprise case, but was created by the two individuals concerned for the express purpose of reselling petroleum products. As in the Enterprise case, BME/BMI has purchased a substantial portion of its products for resale from its affiliate, Great Southern.

CLC Ruling 1972-77 and FEA's Enterprise Interpretation have as a shared element the commonality of interest between the two individuals or venturors in the business or businesses they jointly controlled. It is of little significance whether this finds expression in formal agreement or formal organization, such as under a written joint-venture or partnership agreement, or through less formal but not less purposeful design. The definition of "firm" includes "*any* * * * individual, joint-venture, partnership * * * *or any other entity however organized* * * *." [Emphasis added.] Thus, whether the controlling parent is viewed as two individual "entities" or a single joint "entity" the result is the same: all entities controlled directly or indirectly by the parent are part of the "firm" for price control purposes.

In CLC Ruling 1972-81 (37 FR 15009, July 27, 1972), individual A owned 50 percent of corporation L and 50 percent of corporation M. The two corporations were described as "interdependent" and as performing "complementary functions" because L sold raw materials to M for processing. CLC held that the "firm" included the entities A, L, and M. Although the fact portion of the ruling stated that the remaining stock in L and M was held by relatives of A, the ruling did not turn on the question of family control. The ruling was based on the fact that A held 50 percent of the shares of both L and M and on the complementarity of functions performed by L and M.

[2] The second and third options under the general definition of "firm" in § 212.31 were used by CLC and FEA primarily in connection with profit margin regulations no longer effective. The fourth option has been used only in special circumstances, such as in connection with the granting of exceptions.

[3] Enterprise Interpretation, February 12, 1975.

The factor of corporate interdependence or complementarity was also present in the Enterprise case, where propane was channelled through the resale business to the retail outlets for ultimate sale and where control of the retail outlets was apparently obtained for the sole purpose (and under an erroneous view of applicable regulations) of obtaining the benefits of markups at both the wholesale and retail level with respect to the sale of the same propane.

It appears that similar interdependence is present in the case of Great Southern and BME/BMI. BME and BMI were formed by the owners of Great Southern for the purpose of reselling the same products which Great Southern contracts to have refined. BMI does in fact purchase a substantial portion of its products from Great Southern. The fact of common ownership or control of Great Southern and BME/BMI, plus the business relationship between the two companies involving the purchase and sale of refined petroleum products, is sufficient to show interdependence of the kind present in CLC Ruling 1972-81 and FEA's Enterprise Interpretation.

In our view, the interdependence or complementarity present in this case merely serves to confirm the appropriateness of the conclusion already reached concerning control of Great Southern and BME/BMI by the same parent. Because of the often unusual or complex interrelationships between corporate or other business entities, it cannot be expected that any single concept of "firm" would provide a basis for application of price controls which every company would consider most appropriate. However, the "control" basis for identfying business amalgamations is well understood in the industry and is generally easy to apply. Moreover, the "control" basis usually results in a "firm" which consists of or includes business entities which perform interdependent or complementary functions in addition to being under common control.

Furthermore, as previously explained by FEA,[4] the broad "control" basis for the definition of "firm" is appropriate for general pricing purposes because FEA's regulations generally permit prices to be increased to reflect increased costs incurred. Unless "costs" were restricted to the "outside" costs of the "firm"—i.e., costs incurred in trading with persons not under the direct or indirect control of the parent—a "firm" could improperly magnify "costs" through a series of intracorporate sales or transfers of petroleum products at prices reflecting a margin of profit added at each sale or transfer within the firm. Thus, for cost pass-through purposes, the costs which may be passed through are the costs to the "firm" as broadly defined in § 212.82 (or the costs to the "seller" under the same definition in § 212.92), unless otherwise specifically provided. This concept of "firm" serves to assure only a dollar-for-dollar pass-through of actual costs incurred by the "firm" concerned.

That Great Southern may have not in fact treated BMI differently from other purchases similarly situated, through discounted prices or otherwise, is not controlling. The fact that the spirit or purpose of an FEA regulation of general applicability may not have been actually violated or contravened in a specific case does not normally provide a valid basis in the context of a legal interpretation for nonapplication of that regulation to the firm concerned.

Since the basis for FEA's definition of "firm" is control rather than corporate organization, the fact that BMI and Great Southern are separately incorporated and independently organized is not significant. Lack of "managerial" supervision is also not controlling.[5]

INTERPRETATION 1977-19

To: Sterling Stations, Inc.

Date: June 21, 1977.

Rules Interpreted: §§ 211.9, 211.106, 210.62.

Code: GCR(X)—AI—Base Period Supply Obligations, Normal Business Practices.

This is in response to your request for an interpretation of the Mandatory Petroleum Allocation Regulations on behalf of your client, Sterling Stations, Inc.

FACTS

Until approximately May 15, 1976, Sterling Stations, Inc. ("Sterling"), operated branded independent retail gasoline stations at four locations in the Seattle area. Texaco, Inc. ("Texaco"), is the base period supplier of gasoline for each of these stations and delivered gasoline to each of them during the base period and thereafter until the stations were closed by Sterling in May, 1976.

During 1975 Sterling began to experience heavy operating losses at the four stations. In December 1975, it offered to sell the stations to Gull Oil Company ("Gull"), which owns a number of retail service stations in western Washington which sell unbranded motor gasoline supplied to Gull by Texaco.

Gull inquired of Texaco as to whether the motor gasoline allocations for the four stations could be transferred to Gull as a successor to Sterling with the understanding that Gull would receive the total allocation (approximately four million gallons per year) as a jobber, rather than as the operator of the individual stations. Texaco refused to agree to this proposal.

In late April 1976 Sterling again offered to sell the stations to Gull if Gull would take over separately each station's base period use and convert the outlets from branded to non-branded outlets. Gull accepted this proposal from Sterling and requested Texaco to agree to transfer the individual Sterling allocations to Gull after the sale. It is unclear as to whether Texaco refused to agree to the transfer of the allocations at the four Sterling stations to Gull on a nonbranded basis. In its comments dated August 6, 1976, Texaco states that when first approached by Gull Texaco responded that it would honor its obligations under FEA regulations and would continue to supply and deliver gasoline to the four retail outlets, but that it would not agree to transfer the allocations for the four stations to Gull as a jobber. Texaco states that at no time did it indicate to either Gull or Sterling that it was unwilling to continue to deliver gasoline to the stations as mandated by FEA regulations. Texaco does not address the second proposal which Sterling asserts was made to Texaco, that Texaco supply the stations individually on a non-branded basis after the sale to Gull. For purposes of this interpretation, however, it is assumed that Gull proposed that Texaco continue to deliver motor gasoline to the four stations individually in accordance with applicable FEA regulations after the sale to Gull, except that Texaco would deliver the product on a non-branded basis. It is also assumed that Texaco refused this request and that, solely because of Texaco's refusal, the sale to Gull was not consummated. All four stations were closed during the week of May 10, 1976.

ISSUE

The issue presented for interpretation is whether and to what extent Texaco has a supply obligation to the successor on the site of Sterling's motor gasoline retail sales outlets.

INTERPRETATION

It is our opinion that pursuant to § 211.106 (c) the allocation of a motor gasoline retail sales outlet is transferred to the successor on the site, and therefore Texaco would have a supply obligation to Gull if the sale of the stations by Sterling had been consummated. The base period practices to be applied to Texaco's supplier/purchaser relationship with Gull would be those formerly in effect between Texaco and Sterling, except to the extent that Gull failed to qualify for such treatment under the objective criteria applied by Texaco to its customers.

10 CFR 211.106(c)(1) provides in part that:

A wholesale purchaser-reseller which operates a retail sales outlet shall be deemed to have gone out of business with respect to that outlet for purposes of § 211.11 if it vacates the site on which it conducts such business.

Accordingly, Sterling would be considered to have gone out of business at the four outlets as of May 1976, assuming that Sterling vacated the premises. If Gull had subsequently purchased the stations from Sterling and reopened them, Gull would have been entitled to receive the allocation at each station from Texaco under 10 CFR 211.106 (c) which provides that:

The right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to the former operator's successor on the site: *Provided,* Such successor established the same on-going business on the site within a reasonable period of time, as determined by FEO, after its predecessor vacates the premises.

In your request, you indicated that instead of asking to be supplied by Texaco on terms identical to those under which Texaco supplied Sterling, Gull requested first that it be supplied as a jobber and, second, that Texaco sell non-branded product to Gull. FEA regulations do not require Texaco to agree to such requests. 10 CFR 210.62 provides in part that:

Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product, and no supplier may modify any normal business practice so as to result in the circumvention of any provision of this chapter.

The transfer of the allocation at the four stations from Sterling to Gull under 10 CFR 211.106(c) does not obligate Texaco to alter its normal business practices with respect to sales to those four stations. On the contrary, 10 CFR 210.62 requires in general the continuation of base period normal business practices. Such practices may be altered by mutual agreement between the supplier and customer under certain circumstances, and in some instances may be altered unilaterally by the supplier if the supplier provides an adequate downward price adjustment or other compensation to the customer.

You have also argued in your request that 10 CFR 211.9(c) which provides that "the supplier/purchaser relationships required by this part shall not be altered by . . . changes in the brand or franchise under which a wholesale purchaser-reseller maintains its ongoing business" means that Texaco is required to agree to the request by Gull to purchase nonbranded product. In fact, 10 CFR 211.9(c) means that if there is a change in brands the purchaser will still be entitled

[4] See Enterprise Interpretation, Interpretation 1976-8 (May 28, 1976), and Interpretation 1976-8 (October 18, 1976).

[5] See "Tesoro" Interpretation issued August 21, 1975.

to receive an allocation from its base period supplier. This section of FEA regulations would apply to situations in which a retail gasoline station which obtained product from a supplier in 1972 (the base period) under the particular brand had changed to another supplier using a different brand in the period between 1972 and 1974. Under 10 CFR 211.9(c) the customer would nevertheless be entitled to return to its 1972 b.se period supplier after FEA regulations became effective in 1974. 10 CFR 211.9 does not confer on a purchaser the right to require that its supplier supply non-branded gasoline when the purchaser takes over operation of a branded retail station. Accordingly, Texaco's refusal to agree to sell gasoline to Gull on a non-branded basis at the four stations is not inconsistent with FEA regulations.

Consideration of the second issue raised in your request for interpretation, i.e., whether Sterling has any recourse against Texaco in a civil action for damages under the Federal Energy Administration Act of 1974 or any other federal legislation, is unnecessary in light of our conclusion that the actions alleged to have been taken by Texaco are consistent with FEA regulations.

INTERPRETATION 1977-20

To: John Douglas Hattenhauer.

Date: June 22, 1977.

Rules Interpreted: §§ 211.9(c), 211.25(a).

Code: GCR(X)—AI—Base Period Supply Obligations, Supplier/Purchaser Relationship.

You have requested an interpretation of the Mandatory Petroleum Allocation Regulations of the Federal Energy Administration ("FEA"), 10 CFR Part 211, concerning your rights as a Texaco consigneee distributor. Copies of your request letters were forwarded to Texaco, Inc. ("Texaco") for comment. Comments were received from Texaco.

FACTS

According to your submissions, you are a Texaco consignee located in The Dalles, Oregon. Your contractual relationship with Texaco consists of a Consignment Agreement (Form S-82) dated January 1, 1975, as modified by a Consignment Agreement to Cover Direct Deliveries (Form S-368B) dated January 1, 1975, and by an agreement relating to commissions on emergency deliveries (Form S-368) also dated January 1, 1975. The Form S-368B Agreement provides that Texaco may make deliveries or cause deliveries of product to be made at any time to four retail gasoline outlets located in Hood River, Mosier, Highway 80 N. and Highway 197, The Dalles, and 3902 W. 6th, The Dalles. The Form S-368B Agreement also provides that you will receive a smaller commission when direct deliveries are made by Texaco. At issue in your request are deliveries to three of the four outlets which are the subject of the agreements, the Hood River outlet and the two outlets in The Dalles.

You indicated in your request that you purchased the business on January 1, 1975 from Walter N. Nester, who was a Texaco consignee from 1960 until his retirement on December 31, 1974. Nester supplied the Hood River outlet during the base period from January through August, 1972. Texaco began supplying the outlet in September 1972. Nester supplied the two outlets in The Dallas through all of 1972, and thereafter until August 1974 when Texaco began direct deliveries to those stations. At the time FEA regulations became effective Texaco assigned Nester a base period volume for the two stations in The Dallas, but did not assign him an allocation for the station at Hood River. In 1974 when Texaco began direct deliveries the allocation for the two stations in The Dalles was shifted to the Texaco terminal in Portland. This represented a decrease in Nester's total base period volume of 1,004,494 gallons.

QUESTIONS PRESENTED

The following questions are presented for interpretation:

1. Whether your firm or Texaco is the base period supplier of the retail sales outlets in Hood River and The Dalles;

2. Whether your entering into the Form S-368B Agreement caused a termination of the supplier/purchaser relationship between your firm and the three retail sales outlets.

INTERPRETATION

It is our opinion that your firm is a wholesale purchaser-reseller and thus the base period supplier of the retail sales outlets in Hood River and The Dallas. As such, you are entitled to receive an allocation from the consignee's supplier based on the amount of product distributed by the consignee during the base period. In an interpretation issued April 24, 1975 to the National Association of Texaco Consignees, Inc., FEA determined that Texaco consignees are wholesale purchaser-resellers as that term is defined in 10 CFR 211.51 and thus subject to the provisions of 10 CFR Part 211. See also FEA Ruling 1975-8, Qualification of Certain Consignees as Wholesale Purchaser-Resellers (June 11, 1975).

10 CFR 211.9 provides generally that supplier/purchaser relationships which existed during the base period are to be maintained for the duration of the Mandatory Allocation Program. Since Mr. Nester supplied the two retail sales outlets in The Dalles during the base period 1972 and the outlet in Hood River for the period January through August, 1972, supplier/purchaser relationships existed between Nester and these outlets.

With respect to your purchase of Nester's business, 10 CFR 211.9(c) provides that "The supplier/purchaser relationships required by this Part shall not be altered by (1) changes in the ownership or right of possession of the real property on which a wholesale purchaser or end-user maintains its ongoing business or end use * * *." Therefore, Nesters' supply obligation to the three outlets was transferred to you upon your acquisition of the business from Nester.

As Nester's successor, you are a wholesale purchaser-reseller and are thus entitled to receive from the base period supplier, Texaco, an amount of product equal to Nester's base period purchases from Texaco, with certain adjustments as provided in 10 CFR 211.10 and 211.13. This volume would include amounts purchased during the base period that were supplied to the three retail sales outlets in question.

As the supplier to the three outlets, you retain the obligation to supply them unless the supplier/purchaser relationships involved are terminated with the express written approval of FEA. In this regard, the Mandatory Petroleum Allocation Regulations provide that supplier/purchaser relationships existing in the base period shall be maintained or restored despite alternative arrangements that may have been made since the base period. Accordingly, it is our opinion that the Form S-368B agreement with Texaco did not terminate your base period supply obligations to the three retail outlets.

Under FEA operating procedures, the Regional Offices may, in their discretion, grant approval to the termination of a base period relationship and reassign the supply obligation if the wholesale purchaser-reseller (in this case, the motor gasoline retail sales outlets) and its base period supplier agree in writing to the termination, and the prospective new supplier agrees in writing to assume a permanent supply obligation with the wholesale purchaser-reseller. Otherwise, an exception from the regulations is required to terminate a base period relationship and reassign a wholesale purchaser-reseller to a new supplier. Neither an application for assignment nor an exception request with respect to these motor gasoline outlets has been received by FEA.

It is our opinion, therefore, that Texaco may not unilaterally or by virtue of the Form S-368B Agreement assume the obligation to supply the Hood River or The Dalles outlets, or reduce the amount of your base period volume by an amount which represents the base period volume of the outlets involved.

INTERPRETATION 1977-21

To: Suburban Propane Gas Corp.

Date: July 11, 1977.

Rules Interpreted: § 212.53(a).

Code: GCW—PI—Export Sales Exemption.

This is in response to a letter of June 29, 1976, supplemented by letters of May 12, 1977 and May 16, 1977 on behalf of Suburban Propane Gas Corporation (Suburban) requesting an interpretation of 10 CFR 212.53(a) which deals with the prices which may be charged for covered products sold for export under the Mandatory Petroleum Price Regulations of the Federal Energy Administration ("FEA").

FEA is aware that Suburban is a defendant in a civil action brought by El Dorado Marketing Co. of Laredo, Gas Del Oro, Inc. and Gas Del Oro International, Inc., (collectively designated hereinafter as "Companies"), in the United States District Court for the Southern District of Texas, Laredo Division, in which the Court stayed further proceedings pending final determination by FEA of certain complaints filed by El Dorado Marketing Co. of Laredo and Gas Del Oro, Inc. with FEA. The complaints concern Suburban's prices in certain sales of propane, butane and butane-propane mixes which the Companies assert to be in excess of maximum lawful prices permitted by FEA regulations.

This interpretation relates only to the general application of 10 CFR 212.53(a) and is not to be interpreted as a determination of either the validity of the Companies' complaints or whether prices charged in specific transactions between the parties are otherwise lawful or unlawful.

In formulating this interpretation, FEA took into account third party comments by the Companies dated August 30, 1976, December 18, 1976 and May 13, 1977 submitted with reference to the interpretation request. In accordance with 10 CFR 205.84, Suburban was afforded an opportunity to respond to the third party submissions and written replies by Suburban dated September 2, 1976, January 3, 1977 and June 8, 1977 were received. These submissions were also taken into account by FEA in formulating this interpretation.

FACTS

Suburban results butane, propane and butane-propane mixes and the prices it charges in sales of covered products are subject to Subpart F of Part 212 of FEA regulations.

Suburban resells covered products to various third parties among which are the Companies. Since Suburban sold such products during the applicable base periods found in Part 211 of FEA's allocation regulations, Suburban is a base period supplier of both Gas del Oro, Inc. and Gas del Oro International, Inc.

The Companies resell all or part of their purchases from Suburban to Mexican customers either directly or through sales to other exporting companies. However, they have refused to formally certify to Subur-

ban that any of the covered products purchased are for export, although in many of the transactions between the parties it is apparent that shipping documents accompanying the transfer of the product from Suburban's control to the Companies reflect that the product is destined for export. Since February 1, 1974, when its latest contract with the Companies terminated, Suburban has been charging the Companies free market prices in sales of butane, propane and butane-propane mixes except when informed by the Companies that the shipment of purchased product is not for ultimate export. In its complaint to FEA, the Companies allege that Suburban's charging of such free market prices constitutes a violation of FEA price regulations.

ISSUE

Are prices charged by a supplier of covered products in sales to a domestic purchaser exempt from FEA price regulations, pursuant to 10 CFR 212.53(a), if the domestic purchaser fails to expressly certify that the products are for export?

INTERPRETATION

Covered products sold for export are exempt from FEA price regulations (10 CFR 212.53(a)):

The prices charged for export sales [of covered products], including sales to a domestic purchaser which certifies the product is for export, are exempt. (Bracketed portion deleted on July 23, 1976.)

As FEA has pointed out in the past, the policy underlying the export exemption is quite clear and has been given effect since the wage and price control programs of the Cost of Living Council:

Price controls were implemented to benefit United States consumers and the domestic economy. Export sales are exempt from such regulations, not only because there is no intention to benefit foreign buyers through price controls, but also to encourage that the best possible prices be obtained in such sales and thereby to assist in maintaining a favorable trade balance. FEA Ruling 1975-7 (40 FR 30037, July 17, 1975)

Thus, it is the act of exportation which confers upon the sale an exemption from FEA price controls. Clearly this exemption applies to the exporter of record. In addition, 10 CFR 212.53(a) expressly extends the export sales exemption to cases where a supplier sells product to a domestic purchaser who "certifies" to the supplier that the product is for export.

The purpose of the certification is to enable the supplier to ascertain with certainty that the product to be sold is, in fact, destined for export and to provide FEA with a means of verifying that the sale to the domestic purchaser was intended as a sale for export. The export sales regulation does not specify what constitutes certification, but it may be assumed that appropriate language reflecting the purchasers' intent to export the product in bills of lading, invoices or other customary business records transmitted between the supplier and purchaser and associated with the sale will suffice as a certification in the absence of a separate document so designated.

In a case where the domestic purchaser refuses, for whatever reason, to execute a certification that the product is being purchased for export, the export sales exemption will nonetheless apply if certification can be constructively established by a showing that at the time of the sale to the domestic purchaser, the sale was understood by the parties to be intended for export. Such a showing may be made by a supplier claiming the exemption if documentation or other evidence associated with the sale including but not limited to contracts, invoices and other business records clearly shows that the domestic purchaser intended to export the product at the time of the sale and that the supplier was aware of the purchaser's intent at the time of the sale.

A means is therefore available if a domestic purchaser should arbitrarily refuse to provide a supplier with an express certification in order that the scope of the export sales regulation (i.e., to exempt sales to domestic purchasers of products which are destined for export) will not be circumscribed by the unilateral action of the purchaser.

In short, the certification required by 10 CFR 212.53(a) may be constructively shown by a supplier claiming the export sales exemption by the facts and circumstances surrounding the sale in question as discussed hereinabove.

[FR Doc.77-22725 Filed 8-4-77;8:45 am]

PART 430—ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Test Procedures for Dishwashers

AGENCY: Federal Energy Administration.

ACTION: Final rule.

SUMMARY: This rule prescribes final test procedures for dishwashers. Appliance test procedures are one element of the appliance energy efficiency program required by the Energy Policy and Conservation Act.

EFFECTIVE DATE: September 10, 1977.

FOR FURTHER INFORMATION CONTACT:

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Michael Skinker, (Office of General Counsel), Room 5116 Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461 (202-566-9750) or (202-566-9380).

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

The Federal Energy Administration (FEA) hereby amends Part 430, Chapter II of Title 10, Code of Federal Regulations, in order to prescribe test procedures for dishwashers pursuant to section 323 (42 U.S.C. 6293) of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163). Dishwasher test procedures were proposed by notice issued March 17, 1977 (42 FR 15423, March 22, 1977), and a public hearing on the proposed test procedures was held on May 9, 1977. The definition of "dishwasher" was proposed at 41 FR 19980, May 14, 1976.

By notice issued May 24, 1977 (42 FR 27896, June 1, 1977), FEA established Subparts A and B of Part 430, Chapter II of Title 10, Code of Federal Regulations. Certain definitions and general provisions applicable to the energy conservation program for appliances have been promulgated in Subpart A. Final test procedures for room air conditioners have been prescribed in Subpart B and several other test procedures have been proposed for inclusion in Subpart B. FEA has also proposed a Subpart C for appliance energy efficiency improvement targets. An outline of the provisions of Part 430 which have so far been established, including provisions in today's notice, is as follows:

Subpart A—General Provisions

Sec.
430.1 Purpose and Scope
430.2 Definitions.

Subpart B—Test Procedures

430.21 Purpose and Scope.
430.22 Test Procedures for Measures of Energy Consumption.

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(c) Dishwashers.

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(f) Room Air Conditioners.
430.23 Units To Be Tested (Reserved).
430.24 Representations Regarding Measures of Energy Consumption.

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(c) Dishwashers.

* * * * *

(f) Room Air Conditioners.

Appendices to Subpart B

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Appendix C—Uniform Test Method for Measuring the Energy Consumption of Dishwashers.

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Appendix F—Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners.

B. DISCUSSION OF COMMENTS

Comments were received from industry, consumers, and both federal and state agencies. Comments from industry accounted for a majority of the comments received. Most of the comments were directed toward technical areas of the proposed test procedures, although some of them were specifically directed toward the information that was to be placed on the label, such as the comment that requested that the label recommend that only "full loads" be used by the consumer in the dishwasher. Since the comments which were directly concerned with the content of the label were applicable to the labeling program under section 324 of the Act, rather than to the prescription of final test procedures, they were forwarded to the Federal Trade Commission for consideration in developing labeling rules applicable to dishwashers. The major issues raised by the comments on the proposed test procedures are discussed below.

1. TEST LOAD

Several comments addressed the size and the use of the proposed test load. One manufacturer stated that its four-place setting countertop dishwasher was excluded from the proposed test procedures, and recommended that the test procedures provide for a four-place setting test load for smaller load capacity

dishwashers. Other comments questioned whether or not dishwashers that are too small to handle the proposed eight-place setting test load would have to be tested at all. One comment suggested that it would be better to use a test load equivalent to the place setting for which the dishwasher was designed. It was also suggested that a washing index or performance rating be provided which would reflect how effective the dishwasher under test is at washing dishes.

After the comments were received, FEA, in conjunction with NBS, re-evaluated the need for a standard test load in the test procedures. FEA was interested in what effect the use or size of a test load would have on the energy consumption of the different load capacity dishwashers when operated on the normal cycle or the truncated normal cycle.

Based on over 30 tests on six different models of dishwashers, NBS concluded that there was an insignificant variation in the energy consumed by the internal boost heater between tests conducted with a load and those conducted without a load for dishwashers when operated on the normal cycle. Since none of the models tested had boost heaters that were thermostatically controlled for the normal cycle, the boost heater operated continuously during the wash and rinse cycles, whether or not a load was present. The test results showed that the boost heater consumed nearly a constant amount of energy independent of the number of dishes being washed or the temperature of the water.

In light of the NBS test results, and based on NBS' recommendation, FEA has determined that the use of a standard test load for the testing of any size dishwasher model when operated on the normal cycle or the truncated normal cycle is unnecessarily burdensome on industry and should not be required. Accordingly, 2.6 of Appendix C has been changed to delete the requirement of a test load. Should these test procedures be modified at a later date to require the testing of dishwashers when operated on any other specified cycle type, the need for a test load for other cycle types will be re-evaluated at that time.

The only remaining issue concerning the use of a test load is the suggestion that FEA develop test procedures that provide a means of rating the cleaning performance of a dishwasher. With respect to dishwashers, a performance rating is not necessary to derive the measures of energy consumption required by the Act and specified in the test procedures. Therefore, it is not included in the final test procedures for dishwashers. In the view of both agencies, the final test procedures can be used to provide information which is likely to assist consumers in making purchasing decisions.

2. "BASIC MODEL" DEFINITION

A number of comments were received on the proposed definition for the "basic model" of dishwashers in § 430.2. Some were uncertain whether physical differences which did not affect energy consumption—such as many styling differences and convenience features—would serve to constitute a variety of basic models for purposes of the test procedures. FEA has modified this definition to clarify that a single basic model includes units with any variety of different physical characteristics if these characteristics do not affect energy consumption differently than the physical characteristics of other units within the basic model. For example, the existence of an adjustable rack in one dishwasher should not of itself cause that dishwasher to be in a different basic model than other dishwashers with fixed racks. Further, different tub geometries should result in different basic models where the geometries affect energy consumption. As in the proposed definition, the final definition requires all units in a given basic model to have essentially identical electrical characteristics.

3. "NORMAL CYCLE" DEFINITION

Some of the comments focused on the proposed definition of "normal cycle" which contained the statement "and typically characterized by six water changes." The industry pointed out that the use of six water changes was not always typical nor required to clean a load of dishes under the "normal cycle." Concern was expressed that this portion of the definition might restrict future design innovations toward using fewer water changes while maintaining acceptable performance levels. FEA concurs with these comments and has, therefore, changed the definition of "normal cycle" in section 1.3 of Appendix C by deleting the requirement of six water changes.

4. ENERGY SAVING FEATURES

In the proposed test procedures for dishwashers only the normal cycle (the cycle recommended by the manufacturer for washing a full load of normally soiled dishes) and the truncated normal cycle (the normal cycle interrupted to eliminate the power dry feature) were dealt with. Some of the comments requested that the definition of the truncated normal cycle be modified to include other energy savings features, in addition to the power dry interrupt. Although the suggested comments identified some further energy saving features and cycle types, they did not provide—and FEA does not have available at this time—sufficient consumer usage data for these features or cycles to allow FEA to prescribe test procedures which would accurately reflect the estimated annual operating cost or energy factor of dishwashers containing these particular features or cycles. FEA agrees with the NBS recommendation that until such time as complete and reliable consumer usage data are available for further cycle types than the normal cycle and the truncated normal cycle, the final dishwasher test procedures not make allowance for other energy savings features than the power dry interrupt.

The industry and other interested persons are encouraged to provide any reliable data to FEA as it becomes available concerning usage by the consumer of dishwashers with any energy saving features beyond the power dry interrupt or cycles beyond the normal or truncated normal cycles. This data would be considered by FEA in deciding whether or not to expand the final test procedures to take account of other energy savings features than the power dry interrupt and to include further cycle types than the normal and truncated normal cycles.

FEA agrees with NBS that testing of the normal cycle is representative of actual average consumer usage of dishwashers.

5. ANNUAL OPERATING COST

The estimated annual operating cost is one method to assist the consumer in making a purchasing decision when this information is provided on an appliance label. One manufacturer commented that since the proposed energy factor calculation permitted the 50 percent usage credit for the truncated normal cycle but the proposed estimated annual operating cost calculation did not reflect this credit, the estimated annual operating cost calculation should permit this credit for the truncated normal cycle. FEA concurs and has adopted this change in § 430.22(c)(2) by allowing for a 50 percent usage credit when determining the estimated annual operation cost for dishwashers having a truncated normal cycle.

As discussed above, FEA has determined that it is inappropriate at this time to use a modified definition of the truncated normal cycle to account for other energy saving features than the power dry interrupt in the calculation of the estimated operating cost for dishwashers. FEA has accordingly determined not to promulgate § 430.22(c)(2) as proposed, until such time as complete and reliable usage data are available on cycle types other than the normal cycle and the truncated normal cycle. Proposed § 430.22(c)(2) provided for the estimated annual operating cost of any other cycle types, to be specified, than the normal cycle and the truncated normal cycle. When further usage data is available, FEA will consider modifying the calculations for determining the estimated annual operating cost to include other cycles in addition to the normal and truncated normal cycles.

6. ANNUAL USE CYCLES VS. LOAD SIZE

One consumer comment alleged that the representative average use cycle of 416 cycles per year was too high for large size dishwashers. This comment suggested an approach to vary the average annual use cycle depending upon load capacity. However, no data was presented to support the claim that 416 cycles per year is too high for large size dishwashers, and NBS has recommended this figure for all dishwashers.

The proposed change has not been adopted in the final rule because of the absence of annual usage data to support the claim that large capacity dishwashers

are used less frequently than smaller capacity dishwashers. If statistically valid survey data becomes available which reveals that purchasers of 12 or more place setting dishwashers use their dishwashers less frequently than purchasers of eight or less place setting dishwashers, then FEA and NBS will review the determination that 416 cycles is the representative average usage of dishwashers, regardless of size. It is likely, however, that large dishwashers generally are used no less frequently but are used with about the same frequency to wash more dishes than their smaller counterparts.

7. NUMBER OF UNITS TO BE TESTED

Proposed § 430.23(c) provided for sampling of each basic model to be tested when testing of dishwashers is required by the Act or by program regulations of agencies responsible for administering the Act. This provision was intended both to provide an acceptable level of assurance that test results are applicable to any entire basic model for which testing is required and to minimize the testing burden on manufacturers.

The comments expressed objections to the sampling provision for dishwashers similar in substance to the objections raised to the sampling plan proposed for room air conditioners by notices issued July 22, 1976 (41 FR 31237, July 27, 1976) and March 24, 1977 (42 FR 16811, March 30, 1977). It was pointed out by the comments, however, that there was no large burden on the industry to test dishwashers because there are fewer basic dishwasher models compared to the number of room air conditioner models and that the test procedures for dishwashers are much easier to conduct. One manufacturer specifically stated that the intent of the sampling plan for dishwashers appeared to be acceptable primarily because of the relative simplicity of dishwasher energy testing, although he recommended minor technical changes in the wording of the sampling plan for statistical correctness and clarity.

Test procedures prescribed under section 323 of the Act are intended ultimately to be used, for example, for labeling under section 324, in monitoring the progress of manufacturers toward accomplishing the energy efficiency improvement targets under section 325, and in enforcement testing under section 326. These aspects of the appliance program have not, however, been implemented. It is quite possible that the objectives of appliance testing under each of these parts of the program, as well as the instructions on how a test procedure should be applied (e.g., sampling of production units), may differ. FEA, NBS, and FTC are continuing to evaluate the appropriate method or methods for sampling the units to be tested in order to comply with the statute and satisfy all of the different elements of the appliance program.

While the various parts of the appliance program identified above are not in effect at this time, section 323(c) of the Act provides:

> Effective 90 days after a test procedure rule applicable to a covered product is prescribed under this section, no manufacturer, distributor, retailer or private labeler may make any representation—
>
> (1) In writing (including a representation on a label), or
>
> (2) In any broadcast advertisement, respecting the energy consumption of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

In order to eliminate the problems discussed above associated with a general sampling provision, proposed § 430.23(c) has been limited in the final test procedures to testing which section 323(c) of the Act requires regarding the advertising of dishwashers. The sampling requirements which apply only for purposes of advertising have been reorganized into § 430.24(c) of the final test procedures. Section 430.24(c) is similar to proposed § 430.23(c), but contains several revisions. Most notably, the units tested are required to be representative of production units or actual production units. This change is intended to reduce the burden which might be caused by requiring post-production rating of basic models in every instance of testing pursuant to section 323(c) of the Act.

Manufacturers are not required test unless they choose to make representations regarding a measure of energy consumption identified in or based upon § 430.22(c). It should also be emphasized that the test procedures prescribed today apply only to the initial rating of a basic model.

In response to comments from the industry, certain technical changes have also been made in the sampling language. Specifically, the mean of the sample is required to be within ±5 percent of the estimate of the true mean of the basic model population.

8. TEST VOLTAGE

One of the comments recommended the use of 115 volts as the standard test voltage rather than the 120 volts required by 2.2 of Appendix C since most dishwashers are nameplate rated at 115 volts and are actually operated at that voltage. FEA agrees with the NBS recommendation that this change be adopted and has amended 2.2 of Appendix C accordingly.

9. TEST WATER TEMPERATURE

One manufacturer felt that the requirement of 2.3 of Appendix C that the test water temperature be maintained between 138°F to 142°F was unduly and unnecessarily restrictive and therefore recommended that the range be increased to 135°F to 145°F.

NBS conducted tests on solenoid valves which control the flow of hot water into the dishwasher to determine if the recommended change in the test water temperature would affect the volume of water consumption per cycle and therefore have an impact on the amount of energy consumption. The test results showed less than a 1 percent variation in the flow rate when the water temperature was permitted to vary from 135°F to 145°F. Therefore, NBS recommended that the requested change be adopted and FEA concurs. Accordingly, 2.3 of Appendix C has been changed to permit the temperature of the test water to range from 135°F to 145°F.

With respect to water temperature, the Consumer Product Safety Commission (CPSC) suggested that the test method for measuring the energy consumption of dishwashers include a method to measure the difference in the annual energy consumption between a water heater set at 145°F and one set at 130°F. The principal interest of the CPSC is to encourage consumers voluntarily to set back the thermostatic control on their water heaters to 130°F in order to reduce or eliminate the hazard of scald injuries around the home from hot water.

The dishwasher is presently the only household appliance which requires water at temperatures greater than 130° F to operate effectively. CPSC believes that many, if not most, homes with dishwashers would consume less energy if the thermostat on their water heater was set at 130° F and these consumers had dishwashers with internal boost heaters capable of raising the water temperature coming into the dishwasher high enough to clean dishes adequately. This suggestion assumes that homeowners would turn down water heater thermostats if they bought dishwashers with internal boost heaters.

FEA appreciates the data provided by CPSC and is sympathetic to the goals CPSC seeks to achieve. However, the test procedures for dishwashers are designed to be representative of typical consumer usage. Under present technology no dishwasher detergent exists that is effective at a temperature of 130° F. Also, most dishwashers are not designed to delay the washing and rinsing process until an internal boost heater sufficiently elevates the water temperature adequately to clean dishes using existing detergents. It is also unclear whether the use of an internal boost heater to elevate the temperature of the water coming into the dishwasher would actually save energy, since NBS has determined that the efficiency of heating water within the dishwasher is less than the efficiency of heating water in the central home water heater, whether it is a gas, oil, or electric water heater. For these reasons, FEA is at this time unable to include provisions in the dishwasher test procedures to account for voluntarily lower thermostatic water heater settings. FEA will consider this comment with respect to the prescription of test procedures for other household products that use hot water, and with respect to test procedures for water heaters themselves. FEA will also review the applicability of this suggestion to the dishwasher test procedures should the state of detergent or dishwasher technology change to accommodate lower water heater temperatures.

10. MISCELLANEOUS

After careful consideration of all of the comments and further consultation with NBS and FTC, FEA has incorporated some minor editorial and substantive changes in the proposed test procedures in the final rule that were not discussed above.

C. REGULATIONS PRESCRIBED

1. TEST PROCEDURES

The test procedures for dishwashers prescribed today are included in Subpart B and are substantially the same as those proposed, with the addition of the changes discussed above. As with the proposed procedures, test methods and conditions incorporate the approach contained in the Association of Home Appliance Manufacturers (AHAM) draft supplement (DW-2EC) for measuring energy consumption for a normal dishwasher cycle to the AHAM dishwasher standard DW-1. The test procedures also used the definition of the term "oil" contained in the American Society for Testing and Materials (ASTM) D396-71. For purposes of FEA's program, the incorporated approach remains applicable as presently written, regardless of any subsequent amendment by AHAM of either the standard or supplement, until further amendment by FEA.

Under the requirements of section 32 (c) of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.) as amended by section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95-70), the Administrator is to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact on competition of any rules prescribed by FEA which utilize or incorporate any commercial standards.

The Administrator has transmitted copies of the test procedures for dishwashers, which incorporate the above mentioned commercial standards, to the Attorney General and the Chairman of the Federal Trade Commission for their comments concerning the impact of such standards on competition in accordance with section 32(c). Neither official has any comments nor do they recommend against the incorporation or use of these commercial standards in the final test procedures for dishwashers.

2. GENERAL PROVISIONS

Also prescribed today are certain program definitions, including definitions for "dishwasher," "gas," "natural gas," "oil," and "propane." The definition of the term "basic model" for dishwashers has been added. These definitions were previously proposed in Subpart A (41 FR 19977, May 14, 1976; 42 FR 15423, March 22, 1977). Comments which were received regarding these definitions and the issues which they raised have been discussed earlier in this notice.

It should be noted that some of the definitions prescribed today may be applicable to test procedures for other appliances. While these definitions are final, comments to the effect that any of these definitions are inapplicable to a particular appliance will be evaluated to determine whether amendment or modification is appropriate.

3. APPLICATION OF TEST PROCEDURES

As discussed previously, the final dishwasher test procedures prescribed today must be applied before representations regarding a measure of energy consumption can be made. Because the purposes and needs of the different elements of the appliance program (e.g., labeling, targets) vary, application of the standard test methodology prescribed today may differ in some respects for each program element. It is expected that instructions on how to apply the standard test methodology to these other elements of the appliance program will be proposed for comment in the near future.

The requirements of § 430.24(c) of the final regulations apply until such time as final labeling requirements for a particular measure of energy consumption and the associated test procedure application provision are prescribed. After that time, all representations regarding a measure of energy consumption covered by a labeling rule must be the same as represented on the label.

D. UNIT COSTS OF ENERGY

Under section 323(b)(2) of the Act, FEA is to provide manufacturers information as to the representative average unit costs of energy. This information was provided by notice issued July 11, 1977 (42 FR 36549, July 15, 1977).

E. PREEMPTION

Today's rulemaking prescribing final test procedures for dishwashers supersedes any State regulation to the extent required by section 327 of the Act. Pursuant to section 327, all State regulations which provide for the disclosure of information with respect to any measure of energy consumption of dishwashers or which provide for any energy efficiency standard or similar requirement with respect to energy efficiency or energy use of dishwashers must now employ test procedures identical to those specified in today's final rule.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94-384; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective September 10, 1977.

Issued in Washington, D.C. August 3, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. Section 430.2 is amended by adding paragraph (3) as part of the definition of "basic model," and by adding in appropriate alphabetical order definitions of "dishwasher," "gas," "natural gas," "oil" and "propane" to read as follows:

§ 430.2 Definitions.

* * * * *

"Basic model" means all units of a given type of covered product manufactured by one manufacturer and:

* * * * *

(3) With respect to dishwashers, which have electrical characteristics which are essentially identical and which do not have any differing physical or functional characteristics which affect energy consumption.

* * * * *

"Dishwasher" means a cabinet-like 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.

* * * * *

"Gas" means either natural gas or propane.

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"Natural gas" means natural gas as defined by the Federal Power Commission.

* * * * *

"Oil" means heating oil grade No. 2 as defined in American Society for Testing and Materials (ASTM) D396-71.

* * * * *

"Propane" means a hydrocarbon whose chemical composition is predominantly C^3H^8, whether recovered from natural gas or crude oil.

* * * * *

2. Section 430.22 is amended by adding a paragraph (c), to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(c) *Dishwashers.* (1) The estimated annual operating cost for dishwashers not having a truncated normal cycle as defined in 1.5 of Appendix C to this subpart shall be—

(i) When electrically-heated water is used, the product of the following three factors: (A) The representative average-use cycle of 416 cycles per year, (B) the total per-cycle energy consumption for the normal cycle as defined in 1.3 of Appendix C to this subpart in kilowatt-hours per cycle, determined according to 4.4 of Appendix C to this subpart, and (C) the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year, and

(ii) When gas-heated or oil-heated water is used, the product of: The representative average use cycle of 416 cycles per year times the sum of (A) the product of the per-cycle machine electrical energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.3 of Appendix C to this subpart, times the representative average unit cost in dollars per kilowatt-hours as

provided by the Administrator plus (B) the product of the per-cycle water energy consumption for gas-heated or oil-heated water for the normal cycle, in Btu's per cycle, determined according to 4.2 of Appendix C to this subpart, times the representative average unit cost in dollars per Btu for gas or oil, as appropriate, as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for dishwashers having a truncated normal cycle as defined in 1.5 of Appendix C to this subpart shall be—

(i) When electrically-heated water is used, the product of the following three factors: (A) The representative average use cycle of 416 cycles per year, (B) one-half the sum of (i) the total per-cycle energy consumption for the normal cycle as defined in 1.3 of Appendix C to this subpart plus (ii) the total per-cycle energy consumption for the truncated normal cycle as defined in 1.5 of Appendix C to this subpart, each in kilowatt-hours and determined according to 4.4 of Appendix C to this subpart, and (C) the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year, and

(ii) When gas-heated or oil-heated water is used, the product of: The representative average use cycle of 416 cycles per year times the sum of (A) one-half the product of the per-cycle machine electrical energy consumption for the normal cycle as defined in 1.3 of Appendix C to this subpart, determined according to 4.3 of Appendix C to this subpart, times the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator, plus one-half the product of the per-cycle machine electrical energy consumption for the truncated normal cycle as defined in 1.5 of Appendix C to this subpart, determined according to 4.3 of Appendix C to this subpart, times the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator plus (B) one-half the product of the per-cycle water energy consumption for gas-heated or oil-heated water for the normal cycle as defined in 1.3 of Appendix C to this subpart, in Btu's per cycle, determined according to 4.2 of Appendix C to this subpart, times the representative average unit cost in dollars per Btu for gas or oil, as appropriate, as provided by the Administrator, plus one-half the product of the per-cycle water energy consumption for gas-heated or oil-heated water for the truncated normal cycle as defined in 1.5 of Appendix C to this subpart, in Btu's per cycle, determined according to 4.2 of Appendix C to this subpart, times the representative average unit cost in dollars per Btu for gas or oil, as appropriate, as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(3) The energy factor for dishwashers, expressed in cycles per kilowatt-hour shall be—

(i) For dishwashers not having a truncated normal cycle, as defined in 1.5 of Appendix C to this subpart, capable of being preset, the reciprocal of the total per cycle energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.4 of Appendix C to this subpart, and

(ii) For dishwashers having a truncated normal cycle, as defined in 1.5 of Appendix C to this subpart, capable of being preset, the reciprocal of one-half the sum of (A) the total per-cycle energy consumption for the normal cycle plus (B) the total per-cycle energy consumption for the truncated normal cycle, each in kilowatt-hours per cycle and determined according to 4.4 of Appendix C to this subpart.

(4) Other useful measures of energy consumption for dishwashers shall be those measures of energy consumption for dishwashers which the Administrator determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix C to this subpart.

* * * * *

3. Section 430.24 is amended by adding a paragraph (c), to read as follows:

§ 430.24 Representations regarding measures of energy consumption.

* * * * *

(c) *Dishwashers.* (1) Except as provided in paragraph (c)(4) of this section, no manufacturer, distributor, retailer, or private labeler of dishwashers may make any representation with respect to or based upon a measure or measures of energy consumption described in § 430.22 (c) unless a sample of sufficient size of each basic model for which such representation is made has been tested in accordance with applicable provisions of this subpart such that, for each such measure of energy consumption there is a probability of not less than 0.95 that the mean of the sample is within ±5 percent of the estimate of the true mean of such measures of the basic model.

(2) The sample selected for paragraph (c)(1) of this section shall be comprised of units which are production units, or are representative of production units, of the basic model being tested.

(3) A basic model having dual voltage ratings shall be separately tested at each design voltage such that the requirements of paragraph (c)(1) of this section are satisfied at each rating.

(4) Whenever a rule applicable to dishwashers is prescribed under section 324 of the Act, this paragraph shall not apply to any label covered by such rule, and all representations of any measure of energy consumption covered by such rule shall be identical to the measure of energy consumption on the label.

* * * * *

4. Subpart B of Part 430 is amended to add an Appendix C, to read as follows:

* * * * *

APPENDIX C—UNIFORM TEST METHOD FOR MEASURING THE ENERGY CONSUMPTION OF DISHWASHERS

1. *Definitions.*—1.1 "Cycle" means a sequence of operations of a dishwasher which performs a complete dishwashing operation, and may include variations or combinations of the functions of washing, rinsing and drying.

1.2 "Cycle type" means either any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.3 "Normal cycle" means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes, including the power-dry feature.

1.4 "Power-dry feasure" means that function in a cycle in which electrically-generated heat is introduced into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.5 "Truncated normal cycle" means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

2. *Testing conditions.*—2.1 *Installation.* Install the dishwasher in accordance with the manufacturer's instruction, except that undercounter dishwashers need not be installed under a counter.

2.2 *Electrical supply.* Maintain the electrical supply to the dishwasher within two percent of 115 volts and within one percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.* Maintain the water supply temperature between 135°F and 145°F.

2.4 *Water pressure.* Maintain the pressure of the water supply between 32.5 and 37.5 pounds per square inch.

2.5 *Ambient and machine temperature.* Maintain the room ambient air temperature between 70°F and 85°F, and assure that the dishwasher is at room ambient temperature at the start of each test cycle.

2.6 *Load.* The dishwasher shall be tested on the normal cycle and the truncated normal cycle without a test load.

3. *Test cycle and measurements.*—3.1 *Test cycle.* Perform a test cycle by establishing the testing conditions set forth in 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle and allowing the cycle to proceed to completion.

3.2 *Machine electrical energy consumption.* Measure the machine electrical energy consumption, Me, specified as the number of kilowatthours of electrical energy consumed during the entire test cycle, using a kilowatthour meter having a resolution no larger than 0.001 kilowatthours and a maximum error no greater than one percent.

3.3 *Water consumption.* Measure the water consumption, specified as the number of gallons delivered to the dishwasher during the entire test cycle, using a water meter having a resolution no larger than 0.1 gallon and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons per minute and for all water temperatures encountered in the test cycle.

3.4 *Reported values.* State the reported values of machine electrical energy consumption and water consumption as measured.

4. *Calculation of derived results from test measurements.*—4.1 *Per-cycle water energy consumption using electrically heated water.* Calculate for the cycle type under test the per-cycle water energy consumption using

electrically heated water, W_e, expressed in kilowatt-hours per cycle and defined as:

$$W_e = V \times T \times K,$$

where
V=reported water consumption in gallons per cycle for the cycle type under test.
T=nominal water heater temperature rise=90°F.
K=specific heat of water in kilowatt-hours per gallon per degree fahrenheit=.0240.

4.2 *Per-cycle water energy consumption using gas-heated or oil-heated water.* Calculate for the cycle type under test the per-cycle water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$$W_g = \frac{V \times T \times C}{e},$$

where
V and T are defined in 4.1 of this Appendix, and
C=specific heat of water in Btu's per gallon per degree fahrenheit=8.1966.
e=nominal gas or oil water heater efficiency=0.75.

4.3 *Per-cycle machine electrical energy consumption.* Use the measured value recorded in 3.2 as the per cycle machine electrical energy consumption, M_e, expressed in kilowatt-hours per cycle.

4.4 *Total per-cycle energy consumption.* Calculate for the cycle type under test the total per-cycle energy consumption, E_t, expressed in kilowatt-hours per cycle, and defined as the sum of the per-cycle machine electrical energy consumption, M_e, plus the per-cycle water energy consumption of electrically-heated water, W_e, calculated for the cycle type, determined according to 4.3 and 4.1, respectively.

[FR Doc.77-22783 Filed 8-5-77;8:45 am]

Title 12—Banks and Banking

CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 7—INTERPRETIVE RULINGS

Payment of Dividends; Bad Debts

AGENCY: Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: 12 CFR 7.6125 interprets the statutory requirement of 12 U.S.C. 56 that national banks deduct bad debts (frequently referred to as "statutory bad debts") from net profits then on hand in order to compute funds available for the payment of dividends. The revised ruling is intended to clarify further the meaning of the term "bad debts" as that term is used in the statute. Confusion over what constitutes a bad debt became evident when certain overdue real estate loans were being classified as statutory bad debts even though appropriate long-term workout schedules had been arranged which were reasonably expected to result in little or no loss to the bank.

EFFECTIVE DATE: August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard H. Neiman, Staff Attorney, Office of the Comptroller of the Currency, Washington, D.C. 20219. Tel. No. (202-447-1884).

SUPPLEMENTARY INFORMATION: On December 14, 1976, the Comptroller of the Currency published in the FEDERAL REGISTER (41 FR 54600) for comment a proposed revision of 12 CFR 7.6125, an interpretive ruling relating to the payment of dividends and bad debts. The primary purpose of the proposed revision was to clarify the meaning of the term "bad debt" as that term is used in 12 U.S.C. 56.

In response to the proposed revision, ten comments were received. Those commenting included national banks, bank holding companies, law firms, trade associations, and national bank examiners.

DISCUSSION OF MAJOR COMMENTS

Virtually all of the comments received were favorable and agreed that the proposed revision had met its stated purpose of clarifying the meaning of the term "bad debt", as that term is used in 12 U.S.C. 56. One commenter remarked that it was a positive step that should bring clarity and understanding to an area which was previously subject to individual interpretation and varying contention over definitions.

1. *Installment Loans.* Paragraph (b) of the proposed ruling provided in part that "installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt may not have occurred." The former ruling provided that "installment obligations on which interest is past due for six months are statutory bad debts subject to other conditions of the statute, to the extent that payments of principal are in default."

One commenter suggested a clarification of the term "installment loans." The definition which the commenter suggested, would limit such loans to those loans payable in four or more installments, the proceeds of which are used primarily for personal, family or household purposes. According to the commenter, loans which do not fall within this definition, but are payable in installments, would be subject to the general rule that such loans are statutory bad debts (assuming interest is six months past due) only to the extent that payments of principal are in default. In response to this comment it should be pointed out that one of the purposes of revising the paragraph on installment loans was to delete the provision that such loans could be classified as statutory bad debts only to the extent that payments of principal were in default. Under the revised ruling, any installment loan on which any payment is six months past due and is not well secured or in the process of collection will be considered a statutory bad debt for the full amount of the loan. As stated in the proposed ruling, this change is in part a result of the complexity of computing interest on installment loans and is also intended to establish a more definite standard with regard to such loans. After careful consideration, the Comptroller believes there should not be a distinction between consumer-type installment loans and those for business or commercial purposes with regard to the payment of dividends and hence has adopted the language of the proposed ruling.

2. *Net Profits Then On Hand.* Four commenters suggested a clarification of the phrase "net profits then on hand" as that term is used in 12 U.S.C. 56. Two of these commenters apparently have based their suggestion on the inaccurate assumption that "net profits then on hand" is limited to net profits of the current year. However, in fact, the phrase "net profits then on hand" as used in 12 U.S.C. 56 represents a cumulative figure and is not limited to net profits of the current year. Nonetheless, the comments suggest that enough confusion may exist concerning the phrase "net profits then on hand" that an interpretive ruling further defining this phrase may be appropriate. However, the Comptroller has concluded that a separate ruling, rather than an addition to the presently proposed ruling, would be preferable. Accordingly, the modification to 12 CFR 7.6125 is being adopted without reference to a separate definition for the phrase "net profits then on hand."

3. *Documentation.* Paragraph (e)(2) of the proposed ruling required a bank to maintain, at a minimum, monthly progress reports on its collection efforts. One commenter suggested that the documentation provision should instead provide that progress reports be prepared on a basis which bears a reasonable relationship to the collection plan and, at a minimum, as often as a payment is required under the collection plan. The Comptroller believes that in most if not all situations an effective collection plan requires monthly monitoring at a minimum. Some situations will require more frequent monitoring and these will be dealt with on an individual basis. Therefore, the Comptroller has left the documentation requirement unchanged from the proposed ruling.

DRAFTING INFORMATION

The principal drafters of this document were Mr. John M. Miller, Acting Deputy Chief Counsel and Mr. Richard H. Neiman, Staff Attorney.

ADOPTION OF AMENDMENT

12 CFR Part 7 is amended by revising § 7.6125 to read as follows:

§ 7.6125 Payment of dividends; bad debts.

(a) *General.* Pursuant to the provisions of 12 U.S.C. 56, bad debts must be deducted from net profits then on hand in computing funds available for payment of dividends. Bad debts, as that term is used in the statute, means matured obligations due a national bank on which interest is past due and unpaid for six months unless the debts are well secured and in the process of collection. Every type of overdue indebtedness owing to the bank must be considered, including loans and investment securities. The six month period of default on interest may begin at any time, regardless of when the debt matures.

(b) *Matured debt.* Whether a debt has matured for purposes of the statute usually will be determined by applicable contract law. Generally, a debt is matured when all or part of the principal

is due and payable as the result of demand, arrival of the stated maturity date, acceleration by contract or by operation of law. Nevertheless, any demand debt on which the payment of interest is six months past due will be considered matured even though payment of the debt has not been demanded. Installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt may not have occurred.

(c) *Well secured debt.* A debt is well secured within the meaning of the statute if it is secured by collateral in the form of liens on, or pledges of, real or personal property, including securities, having a realizable value sufficient to discharge the debt in full, or by the guaranty of a financially responsible party. In the event that the loan is partially secured, only that portion not properly secured will be considered a statutory bad debt.

(d) *Debt in the process of collection.* A debt is in the process of collection if collection of the debt is proceeding in due course, either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to current status. In any case, the bank should have a plan of collection setting forth the reason for the selected method of collection, the responsibilities of the bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.

(e) *Miscellaneous.* (1) *Debts of bankrupt or deceased debtors.* A claim duly filed against the estate of a bankrupt or deceased debtor is considered as being in the process of collection. The obligation will be considered well secured if it meets the criteria set forth above; or the claim of the bank against the estate has been duly filed, the statutory period for filing claims has expired and the assets of the estate are adequate to discharge all obligations in full.

(2) *Documentation.* The bank must maintain in its files documentation to support its evaluation of the security. In addition, the bank must retain, at a minimum, monthly progress reports on its collection efforts, noting and explaining any deviation from the collection plan.

Dated: August 2, 1977.

JOHN G. HEIMANN,
Comptroller of the Currency.

[FR Doc.77-22706 Filed 8-5-77;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 9, Amdt. 10]

PART 123—DISASTER LOANS

New Physical Disaster Policy for Farmers Having a Partial Crop Loss

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule prescribes the criteria SBA will use to establish the physical damage when a farmer suffers a partial production loss. This rule results from farmer's being defined in Pub. L. 94-305 as small businesses eligible for SBA assistance.

EFFECTIVE DATE: August 8, 1977.

ADDRESSES: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Richard L. Wray, Financial Analyst, (202-653-6470).

SUPPLEMENTARY INFORMATION: Section 123.0(a) advises that disaster policy may be changed without advance notice due to the emergency nature of disasters. In this instance SBA has indications that there is an immediate need for this rule in the agricultural portions of the country. Therefore, a delay in the effective date of this policy could cause additional suffering. Any interested person is, however, invited to send written comments, in duplicate, to the Associate Administrator for Finance and Investment. The complete address appears under the "Addresses" hearing.

Pursuant to the authority of Section 5(b)(6) of the Small Business Act (15 U.S.C. 634) Part 123, Chapter I, Title 13 of the Code of Federal Regulations, is amended by redesignating the paragraph after § 123.2(a)(3) "Evidence of Loss" as subparagraph (i) and inserting a new subparagraph (ii) to read as follows:

§ 123.2 Eligibility.

(a) * * *

(1) * * *

(2) * * *

(3) *Evidence of loss.* * * * (i) * * *

(ii) Assistance may be extended for full or partial farm production losses upon presentation of evidence supporting the physical loss. The applicant must present evidence of the expected production after the effects of the disaster compared to a normal year's production. The amount of a partial loss will be established by an estimate of the damage by a Farmers Home Administration or other U.S. Department of Agriculture employee or other knowledgeable person, not the applicant, acceptable to SBA. A normal year's total production is the applicant's average production per animal (number X production) or per acre (acres X yield) for the four (4) years immediately proceeding the disaster. The applicant's own records will be used to establish the average production. When the applicant has no records or has been operating the farm for less than four years, the records for the county maintained by the Crop Reporting Service, Agricultural Stabilization and Conservation Service, Agricultural Extension Service of the State College or other reliable and complete record may be used to establish the past four years' production.

* * * * *

Dated: July 21, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-22633 Filed 8-5-77;8:45 am]

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 301—ESTABLISHMENT AND ORGANIZATION

Office of Special Projects

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This regulation describes the functions and responsibilities of a newly created office within the Economic Development Administration, the Office of Special Projects.

DATES: Effective date: August 8, 1977. Comments by: September 7, 1977.

ADDRESSES: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230 (202-377-5441).

SUPPLEMENTARY INFORMATION: The Office of Special Projects was created by an amendment to Department of Commerce Organization Order 45-1.

Because this regulation relates to the EDA grant and loan program, it is exempted from the procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, in the spirit of public policy set forth in that Act, interested persons may submit written suggestions regarding this regulation to the above address.

NOTE.—EDA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Accordingly, 13 CFR Part 301 is amended by the addition of a new § 301.42 and by renumbering the present § 301.42 as § 301.43. New § 301.42 reads as follows:

§ 301.42 Office of Special Projects.

The Office of Special Projects serves as the principal staff office of the Assistant Secretary. It provides advice, direction and coordination for the development and implementation of selected innovative economic development programs and projects to assist selected urban areas, special areas such as the Mexican-American border and Puerto Rico, and special groups identified by the Assistant Secretary. In accomplishing these functions, the Office develops

necessary implementation plans, strategies and procedures, and it coordinates, as appropriate, with other Federal, State, and local organizations.

§ 301.43 [Redesignated from § 301.42]

(Department of Commerce Organization Order 45-1 as amended (40 FR 5549, as amended); sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended, (40 FR 56702, as amended).)

ROBERT T. HALL,
Assistant Secretary for Economic Development.

AUGUST 1, 1977.

[FR Doc.77-22634 Filed 8-5-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-SO-25; Amdt. 39-3003]

PART 39—AIRWORTHINESS DIRECTIVES

Grumman American Aviation Corp. Models G-159 and G-1159

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises AD 77-13-01 to allow for a grant of extension for the structural modification of Grumman G-159 and G-1159 nose landing gear drag struts on an individual aircraft basis. This change is permitted because of unavailability of parts for the modification.

DATES: Effective date: August 8, 1977. Compliance required within 10 hours time in service after June 21, 1977 (original effective date of the AD).

ADDRESSES: Grumann American Aviation Corporation Aircraft Service Change No. 226 may be obtained from Grumman American Aviation Corporation, P.O. Box 2206, Savannah, Georgia 31402, telephone 912-964-3000. A copy of the Service Change is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Curtis Jackson, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320. Telephone 404-763-7407.

SUPPLEMENTARY INFORMATION: When AD 77-13-01 was issued, modification kits were to be made available by Grumman American Aviation Corporation in sufficient numbers so that those operators desiring to install the structural modification in lieu of the placard could do so in a reasonable time. It has since been learned that kits cannot be produced in sufficient quantity to permit compliance within a reasonable period of time. Since the danger of the drag strut penetration of the cockpit floor occurs during a very severe landing or following a crash and does not occur during normal operations, the FAA feels that an extension of the compliance time for the structural modification may be given to operators on an individual basis, provided they submit adequate justification for their need to utilize the jumpseat.

Operators desiring an extension of the compliance time for the structural modification should send documentation with justification for the need for an extension to the Federal Aviation Administration, Chief, Engineering and Manufacturing Branch, P.O. Box 20636, Atlanta, Georgia 30320. Also required is evidence of a firm commitment from Grumman American Aviation Corporation or any other approved source on the available date for the modification kit for that serial number aircraft. Each request for an extension will be handled on an individual aircraft basis.

Since this amendment imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

DRAFTING INFORMATION

The principal authors of this document are Curtis Jackson, Engineering and Manufacturing Branch, Flight Standards Division, and Ronald R. Hagadone, Office of the Regional Counsel, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320.

ADOPTION OF 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), Amendment 39-2919, AD 77-13-01 is amended to read as follows:

GRUMMAN AMERICAN AVIATION CORPORATION (GAAC). Applies to Grumman American Aviation Corporation, Model G-159, all serial numbers, and Model G-1159, serial numbers 1 through 208 and 775, airplanes certificated in all categories.

Compliance required within 10 hours time in service after June 21, 1977, unless already accomplished.

To prevent injury to an occupant of any jumpseat located between fuselage stations 119 and 169 on Grumman American Aviation Corporation Models G-159 and G-1159 airplanes, accomplish one of the following:

(a) Install a placard either on the bulkhead adjacent to the jumpseat or at any equivalent location approved by the Federal Aviation Administration utilizing a minimum of 3/16 inch high letters with the wording: "Jumpseat Occupancy During Taxi, Takeoff, or Landing Prohibited." or

(b) Modify in the following manner:

1. The Model G-159 nose landing gear drag strut fused or bulkhead modification in accordance with GAAC Aircraft Service Change No. 226, Part I or II, or later FAA approved revision, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

2. The Model G-1159 nose landing gear wheel well bulkhead is modified to eliminate drag strut penetration in accordance with GAAC Aircraft Service Change No. 226, Part II, or later FAA approved revision, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region, or

(c) Upon a grant of extension of compliance time by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region, the required placard may be removed for the length of the extension. Interested operators must furnish documentation with justification for the need of an extension to the Federal Aviation Administration, Chief, Engineering and Manufacturing Branch, P.O. Box 20636, Atlanta, Georgia 30320. Also required in this documentation is evidence of a firm commitment from Grumman American Aviation Corporation on the available date for the modification kit for that serial number aircraft. Each request for an extension will be handled on an individual aircraft basis.

When either of the modifications described in paragraph b(1) or b(2) are accomplished, or the individual grant of extension is issued in accordance with paragraph (c), the required placard of paragraph (a) may be removed.

This amendment becomes effective August 8, 1977.

(Secs. 313(a), 601, 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 does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in East Point, Ga., on July 29, 1977.

PHILLIP M. SWATEK,
Director.

[FR Doc.77-22496 Filed 8-5-77;8:45 am]

[Docket No. 17066, Amdt. 39-3005]

PART 39—AIRWORTHINESS DIRECTIVES

Eiriavion OY Model PIK-20D Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the FEDERAL REGISTER and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to known operators of certain Eiriavion OY Model PIK-20D sailplanes by individual telegrams dated July 7, 1977. The AD requires replacement or repair of the wing to prevent wing structural failure.

DATES: Effective August 8, 1977, except with respect to certain persons specified in the body of the AD. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Smitty's Soaring Service, Deansboro Road, Route 12B, Clinton, New York 13323, or from Sailplane Repair Service, Inc., 216 Commerce Drive, P.O. Box 1462, Fort Collins, Colorado 80522. A copy of the service bulletin is contained in the Rules Docket, Rm. 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by the Administrator, an AD was adopted on June 24, 1977, and made effective immediately by telegram as to all known operators of Eiriavion OY Model PIK-20D sailplanes having certain serial numbers because of possible insufficient bonding of the wing main spar shear web to the wing upper panel spar cap. That AD required either replacement of wing panels or wing repair in accordance with a method to be approved by the FAA, Europe, Africa, and Middle East Region to prevent failure. Subsequently, the FAA determined that a specific repair procedure developed by the manufacturer provides an acceptable corrective action.

An AD superseding the AD adopted on June 24, 1977, was adopted on July 6, 1977, and issued by individual telegrams dated July 7, 1977. The superseding AD requires, in the alternative, replacement of wing panels, repair in accordance with the aircraft manufacturer's service bulletin, or repair in accordance with some other FAA-approved means of compliance.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known operators of Eiriavion OY Model PIK-20D sailplanes by individual telegrams. These conditions still exist and the AD is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The principal authors of this document are P. Cormacci, Europe, Africa, and Middle East Region, E. Newberger, Flight Standards Service, and J. Jeffrey, Office of the Chief Counsel.

ADOPTION OF 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 airworthiness directive:

EIRIAVION OY (formerly MOLINO OY). Applies to Model PIK-20D sailplanes with serial numbers 20510 through 20532, 20534 through 20540, 20542 through 20544, 20546, 20548, 20552, 20555, and 20556.

To prevent separation of wing upper panel spar cap and wing main spar shear web, before further flight, unless already accomplished, comply with paragraph (a), (b), or (c).

(a) Replace wing panels with new wing panels identified by the manufacturer as serviceable replacements.

(b) Repair existing wing panels in accordance with appendix 1 of Eiriavion Service Bulletin No. M 17, dated June 17, 1977, at an FAA certificated repair station that is a manufacturer's authorized repair facility. Following rebonding, visually inspect the affected area to ensure that the new resin forms a continuous bond on both sides of the wing shear web for its full length.

(c) Repair in accordance with an alternate means of compliance which must be approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, Brussels, Belgium.

NOTE.—Copies of the applicable scervice bulletin are available at the following manufacturer's authorized repair facilities:

Smitty's Soaring Service, Deansboro Road Route 12B, Clinton, New York 13323.
Sailplane Repair Service, Inc., Rich Roberts, 216 Commerce Drive, P.O. Box 1462, Fort Collins, Colorado 80522.

This amendment is effective August 8, 1977, as to all persons except those persons to whom it was made immediately effective by the telegram dated July 7, 1977, which contained this amendment.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 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 does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on July 28, 1977.

JAMES M. VINES,
Acting Director,
Flight Standards Service.

[FR Doc.77-22497 Filed 8-5-77;8:45 am]

[Docket No. 74-WE-42-AD; Amdt. 39-2999]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas DC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment of an existing airworthiness directive (AD) clarifies the type of main tank pump which is to be operated during certain phases of flight in McDonnell Douglas DC-8 series airplanes, which incorporate Pratt & Whitney JT3D engines.

EFFECTIVE DATE: August 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Kyle L. Olsen, Executive Secretary, Airworthiness Directive Review Board Federal Aviation Administration, Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles California 90009, telephone 213-536-6351.

SUPPLEMENTARY INFORMATION: After issuing AD 74-23-06 experience reveals that a lack of clarity exists as to which type of pump must be used during the regimes of flight specified in the AD.

After thorough review and study the FAA has determined that all fuel tank boost pumps must be operative and that the fuel tank reservoir feed pump has no effect on engine acceleration. Therefore, the FAA is amending AD 74-23-06 to clarify that only the fuel tank boost pumps must be operated during those regimes of flight specified in the AD.

Since this amendment provides a clarification and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

DRAFTING INFORMATION

The principal authors of this document are Marvin F. Rammelsberg, Aircraft Engineering Division, and Richard G. Wittry, Office of the Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13), Amendment 39-2005 (39 FR 39717), AD 74-23-06 is amended as follows:

Add a new paragraph to read:

(4) One reservoir feed pump may be inoperative provided:

(a) The affected reservoir feed pump switch position is placarded inoperative.

(b) Established maintenance procedures for this item are followed.

(c) Sufficient fuel is carried in the associated tank to provide a minimum of 2000 pounds of additional fuel in excess of the fuel (including reserves) needed for the flight.

(d) Fuel Loading and Management is in accordance with the FAA approved Airplane Flight Manual.

This amendment becomes effective August 10, 1977.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 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 does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, Calif. on July 26, 1977.

ROBERT H. STANTON,
Director, Federal Aviation Administration, Western Region.

[FR Doc.77-22495 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-SW-16]

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

Designation of Transition Area, Bogalusa, La.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a transition area at Bogalusa, La., to provide controlled airspace for aircraft executing a VOR/DME instrument approach procedure established for the George R. Carr Memorial Air Field.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

John A. Jarrell, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to designate a transition area at Bogalusa, La.

On May 16, 1977, a notice of proposed rule making was published in the FEDERAL REGISTER (42 FR 24752) stating that the Federal Aviation Administration proposed to designate a transition area at Bogalusa, La., to provide controlled airspace for aircraft executing an instrument approach procedure established for the George R. Carr Memorial Air Field and coincident with this action, the airport would be changed from VFR to IFR.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

DRAFTING INFORMATION

The principal authors of this document are John A. Jarrell, Airspace and Procedures Branch, and Robert C. Nelson, Office of the Regional Counsel.

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) as republished (42 FR 440) is amended effective 0901 GMT, October 6, 1977, as hereinafter set forth.

In Subpart G, § 71.181 (42 FR 440), the following transition area is added.

BOGALUSA, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the George R. Carr Memorial Air Field (Latitude 30°48'41.6" N., Longitude 89°51' 53.9" W.), and within 2.5 miles either side of the Picayune VOR 335 radial extending 1 mile from the 5-mile radius.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Fort Worth, Tex., on July 26, 1977.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc.77-22491 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-SW-30]

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

Alteration of Control Zone, Hobbs, New Mexico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the effective hours of operation of the Hobbs, N.M. (Lea County Airport), control zone to coincide with the hours of operation of the Hobbs Air Traffic Control Tower (ATCT) which were reduced from continuous to 0600 to 2200 local time daily. This reduces the availability of special weather observations accordingly and necessitates the change in the control zone hours of operation to conform to the air traffic control tower hours of operation.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

John A. Jarrell, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: In Subpart F, § 71.171 (42 FR 355) of FAR Part 71, the Hobbs, N.M., control zone is designated as continuous (through the omission of any reference to specific dates and times of operation). This conforms with the air traffic control tower hours of operation. Special weather observations are provided on a 24-hour basis which is one of the requirements for a continuous control zone operation.

A traffic survey was completed on March 31, 1977, which indicated insufficient activity to retain the continuous control tower operation. On October 6, 1977, the air traffic control tower hours of operation will be reduced to 0600 to 2200 local time daily. This will necessitate a similar reduction in the control zone hours of operation.

The aforementioned action will reduce the constraints and, in effect, the impact on the user imposed by the control zone operation. Consequently, we have elected to omit circularization of the change for comment.

DRAFTING INFORMATION

The principal authors of this document are John A. Jarrell, Airspace and Procedures Branch, and Robert C. Nelson, Office of the Regional Counsel.

ADOPTION OF 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) as republished (42 FR 355) is amended, effective 0901 GMT, October 6, 1977, as hereinafter set forth.

In Subpart F, § 71.171 (42 FR 355), the Hobbs, N.M., control zone is amended by adding the following sentence:

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 Airman's Information Manual.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Fort Worth, Tex., on July 26, 1977.

PAUL J. BAKER,
Director,
Southwest Region.

[FR Doc.77-22492 Filed 8-5-77;8:45 am]

[Airspace Docket No. 76-RM-27]

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

Alteration of Delta, Utah, 700 Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Delta, Utah, 700 foot transition area to provide controlled airspace for aircraft executing VOR approaches at the Delta Municipal Airport.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Clyde A. Powers, Airspace Specialist, Operations, Procedures and Airspace Branch, ARM-538, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010, telephone 303-837-3937.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER on Thursday, June 16, 1977, (42 FR 30638) which proposed to alter the Delta, Utah, 700 foot transition area to provide airspace for aircraft executing a new VOR instrument approach procedure to runway 16 and an amended VOR instrument approach procedure (amendment 1) to runway 34 for the Delta, Utah, Municipal Airport. No objections were received in response to this notice.

DRAFTING INFORMATION

The principal authors of this document are Clyde A. Powers, Air Traffic Division, and Daniel J. Peterson, Office of Regional Counsel, Rocky Mountain Region.

Accordingly, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is amended, effective October 6, 1977, as follows:

Amend § 71.181 (42 FR 440) so as to alter the following 700 foot transition area to read:

DELTA, UTAH

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Delta Municipal Airport (latitude 39°23'00" N., longitude 112°30'35" W.); and within 10.5 miles northwest and 5 miles southeast of the Delta VORTAC 203° radial, extending from the 9-mile radius area to 18.5 miles southwest of the VORTAC; within 5 miles east of the Delta VORTAC 186° radial, extending from the 9-mile radius area to 13 miles south of the VORTAC; within 8 miles west and 6.5 miles east of the Delta VORTAC 360° radial, extending from the 9-mile radius area to 30 miles north of the VORTAC * * *

(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)).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Aurora, Colo., on July 27, 1977.

M. M. MARTIN,
Director,
Rocky Mountain Region.

[FR Doc.77-22493 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-CE-19]

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

Alteration of Control Zone, Emporia, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the designation of the Emporia, Kansas, control zone from a continuous to a part-time control zone. This action is necessary because the Emporia Flight Service Station is reducing its hours of operation and will make additional airspace available without undue restriction.

EFFECTIVE DATE: August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the designation of the Emporia, Kansas, control zone from a continuous to a part-time control zone. The Emporia, Kansas, Flight Service Station will reduce its hours of operation effective August 1, 1977. This action removes the availability of weather and communications which are mandatory requirements for the operation of a control zone. Therefore, this action is necessary in order to have the control zone effective only during the hours of operation of the Emporia Flight Service Station. The control zone will be effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airman's Information Manual. Since there is no present alternative to this action, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest and good cause exists for making this amendment effective in less than thirty (30) days after its publication.

DRAFTING INFORMATION

The principal authors of this document are Gary W. Tucker, Air Traffic Division, Central Region, and John L. Fitzgerald, Jr., Office of the Regional Counsel, Central Region.

Accordingly, the Federal Aviation Administration revises § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR 71.171), by amending the following Control Zone:

EMPORIA, KANSAS

Within a 5 mile radius of the Emporia, Kansas, Municipal Airport (Latitude 38°20'-00" N, Longitude 096°11'15" W) and 1.5 miles either side of the 010° bearing from the airport extending from the 5 mile radius to 6 miles north. This Control Zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(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)); § 11.69 Federal Aviation Regulations (14 CFR 11.69).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Kansas City, Missouri, on July 29, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-22494 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-GL-04]

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

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to provide additional controlled airspace in proximity to Lada Airport, Petersburg, Michigan, to accommodate a proposed instrument procedure into the Lada Airport.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Doyle Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone 312-694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions, and other aircraft operating under visual conditions. The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The circumstance which created this action was a request from the Lada Airport officials to provide that facility with instrument approach capability. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the 700-foot floor of controlled airspace. In addition aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order the comply with applicable visual flight rule requirements.

DRAFTING INFORMATION

The principal authors of this document are Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, and Joseph T. Brennan, Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On page 29515 of the FEDERAL REGISTER dated June 9, 1977, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Petersburg, Michigan. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective October 6, 1977, as follows:

In § 71.181 (42 FR 440), the following transition area is added:

PETERSBURG, MICHIGAN

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Lada Airport (latitude 41°53'15" N, longitude 83°40'45" W) and within 2 miles each side of the Carleton, Michigan VORTAC 226° radial extending from the 5-mile radius area to 9.5 miles southwest of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department

of Transportation Act (49 U.S.C. 1655(c)); § 11.81, Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Des Plaines, Ill., on July 27, 1977.

JOHN M. CYROCKI,
Director, Great Lakes Region

[FR Doc.77-22698 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-GL-05]

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

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the Federal action is to designate additional controlled airspace near Pulaski, Wis., to accommodate a new VOR/DME instrument approach procedure into the Carter Airport.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Doyle Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Ill. 60018, telephone 312-694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions, and other aircraft operating under visual conditions. The floor of the controlled airspace in this area will be lowered from 1,200' above ground to 700' above ground. The circumstance which created this action was a request from Carter Airport officials to provide that facility with instrument approach capability. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

DRAFTING INFORMATION

The principal authors of this document are Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, and Joseph T. Brennan, Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On page 29516 of the FEDERAL REGISTER, dated June 9, 1977, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Pulaski, Wis. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective October 6, 1977, as follows:

In § 71.181 (42 FR 440) the following transition area is added:

PULASKI, WIS.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Austin-Straubel Airport, Green Bay Wis. (latitude 44°29'16" N., longitude 88°07'-49" W.); within 2½ miles each side of the Green Bay ILS southwest localizer course extending from the 9-mile radius to 8 miles southwest of the OM; within 5 miles to the southwest side and 8 miles to the northeast side of the Green Bay 326° radial, extending from the 9-mile radius area to 10 miles northwest of the VORTAC; and within 5 miles each side of the Green Bay ILS localizer northeast course extending from the 9-mile radius to 14 miles northeast of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.81, Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Des Plaines, Ill., on July 27, 1977.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc.77-22699 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-GL-06]

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

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate additional controlled airspace near Camp McCoy Army Airfield, Fort McCoy, Wis., to accommodate a new NDB Runway 29 instrument approach procedure into the Camp McCoy Airfield .

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Doyle Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Ill. 60018, telephone 312-694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions, and other aircraft operating under visual conditions. The floor of the controlled airspace in this area will be lowered from 1,200' above ground to 700' above ground. The circumstance which created this action was a request from the Department of the Army to provide Camp McCoy Airfield with this instrument approach. This development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

DRAFTING INFORMATION

The principal authors of this document are Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, and Joseph T. Brennan, Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On page 29514 of the FEDERAL REGISTER, dated June 9, 1977, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Fort McCoy, Wis. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective October 6, 1977, as follows:

In § 71.181 (42 FR 440), the following transition area is added:

FORT MCCOY, WIS.

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Camp McCoy Army Airfield (latitude 43°57'15" N., longitude 90°44'15" W.), and within 3.5 miles each side of the 109° bearing from the Camp McCoy RBN, extending from the 11-mile radius to 7.8 miles east of the Camp McCoy RBN, excluding that portion that overlies the LaCrosse, Wis., transition area.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.81, Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Des Plaines, Ill., on July 27, 1977.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc.77-22700 Filed 8-5-77;8:45 am]

[Airspace Docket No. 77-GL-07]

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

Designation of Transition Area and Alteration of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to expand the existing control zone serving Delta County Airport, Escanaba, Mich., and to designate additional controlled airspace to encompass revisions to existing approach procedures.

EFFECTIVE DATE: October 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Doyle Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Ill. 60018, telephone 312-694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of aircraft utilizing various instrument approach procedures in instrument weather conditions and other aircraft operating under visual conditions. The expansion and slight alteration to the control zone boundary is mainly a redefinition of the boundary. The additional airspace required for the transition area would lower the floor of controlled airspace in this area from 1,200' above ground to 700' above ground. The circumstance which created this action was the need to update existing procedures and the addition of a new procedure (LOC Rwy 9) serving this airport. A review of the terminal airspace requirements necessitates the FAA to add the additional airspace to insure that all procedures will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

DRAFTING INFORMATION

The principal authors of this document are Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, and Joseph T. Brennan, Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On page 29513 of the FEDERAL REGISTER, dated June 9, 1977, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the control zone at Escanaba, Mich. It was further proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Escanaba, Mich. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective October 6, 1977, as follows:

In § 71.171 (42 FR 355), the following control zone is amended to read:

ESCANABA, MICH.

Within a 5 statute mile radius of Escanaba VORTAC (latitude 45°43'19" N., longitude 87°05'31" W.); within 3 statute miles each side of the Escanaba VORTAC 007° and 101° radials, extending from the 5-mile radius zone to 8.5 statute miles north and east of the VORTAC; within 3 statute miles each side of the Escanaba VORTAC 266° radial extending from the 5-mile radius zone to 8 statute miles west of the VORTAC.

In § 71.181 (42 FR 440), the following transition area is added:

ESCANABA, MICH.

That airspace extending upward from 700 feet above the surface within a 6.5 statute mile radius of the Escanaba VORTAC; within 3 statute miles each side of the Escanaba VORTAC 007° radial from the 6.5-mile radius zone to 8.5 statute miles north of the VORTAC; within 3 statute miles each side of the Escanaba VORTAC 101° radial from the 6.5-mile radius zone to 9 statute miles east of the VORTAC; within 3 statute miles north and 4 statute miles south of the Escanaba VORTAC 270° radial from the 6.5-mile radius zone to 13.5 statute miles west of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.81, Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Des Plaines, Ill., on July 27, 1977.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc.77-22701 Filed 8-5-77;8:45 am]

Title 15—Department of Commerce

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE

PART 4b—PRIVACY ACT

Changes in Appendices to Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending Appendix A to Part 4b of title 15, "Officials to Receive Inquiries, Requests for Access and Requests for Correction or Amendment", to the Privacy Act regulations to reflect organizational changes. Appendix C to Part 4b of title 15 is also being amended to delete references to a General Services Administration government-wide system of records which applied to Commerce but is no longer maintained by GSA.

EFFECTIVE DATE: August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph O. Smiroldo, Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3707).

SUPPLEMENTARY INFORMATION: The appendices were originally published as part of the 1976 Compilation—Volume IV, pages 691-701—and in the daily edition of the FEDERAL REGISTER—October 2, 1975, pages 45619-45632; October 30, 1975, page 50662; and November 3, 1975, page 51168.

The Department has made four changes in the appendices to the regulations. These changes, which are of a technical rather than substantive nature, are described below for the benefit of the public.

In Appendix A, "Officials to Receive Inquiries, Requests for Access and Requests for Correction or Amendment:"

1. Delete "Office of Energy Programs" and the corresponding address.

This Office (now renamed Office of Enery & Strategy Resource Policy) is not an Operating Unit of the Department as defined in Department regulations and should not be listed separately. The appropriate official to contact for records within the jurisdiction of this unit is the individual designated for records of the Office of the Secretary and all Departmental Staff Offices, the Director, Office of Organization and Management Systems.

2. Change the designated Privacy Officer for the Office of Minority Business Enterprise from "Assistant Director, Field Operations and Administration," to "Privacy Officer, Office of Chief Counsel." This change reflects actual delegation of responsibility.

3. Change the designated Privacy Officer for the United States Travel Service from "Executive Director" to "Director, Office of Administration." The position of Executive Director no longer exists.

In Appendix C, "Systems of Records Noticed by Other Agencies and Applicable to Records of the Department and Applicability of this part thereto:"

4. Delete "Federal motor vehicle accidents" from the column entitled "Category of records"; delete "General Services Administration" from the column entitled "Other Federal Agency"; delete the related footnote 3; and both above and below, change footnote 4 to 3. This deletion is made because the General Services Administration noticed in the FEDERAL REGISTER on June 9, 1977 at page 29561 that these records no longer meet the criteria for a Privacy Act system of records.

Because these changes pertain solely to agency organization and management, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are unnecessary.

Dated: July 1, 1977.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc.77-19898 Filed 8-5-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES, AND RULES OF PRACTICE

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Amicus Curiae Briefs

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This rule describes procedures for interested persons who wish to file an amicus curiae brief with the Commission.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

John T. Irick, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202–523–3731.

SUPPLEMENTARY INFORMATION: Amicus curiae briefs may be filed only with the approval of the Commission, except those of Federal and state governmental agencies. Motions requesting permission to file or supporting papers must identify the interest of the applicant(s) and state how such interest would be affected by a Commission decision of the issue(s) appealed. The motion should also contain information which demonstrates why an amicus curiae brief would be desirable.

Parties to the proceeding will be given notice of motions requesting to file amicus curiae briefs or of the Commission's request and will be given a reasonable opportunity, time permitting, to comment on the desirability of an amicus curiae brief.

Except for those instances in which the Commission grants extensions for good cause shown, an amicus curiae must file its brief within the period allowed parties in subsection (b) of Rule 3.52, 16 CFR 3.52(b). Although a person requesting amicus curiae treatment may file a brief with the motion, the brief will only be considered if the motion is granted. While no specific time limit is placed on when a motion seeking leave may be filed, such motions should be filed within a reasonable time after the filing of notices of appeal as specified in subsection (a) of Rule 3.52, 16 CFR 3.52(a).

Accordingly, 16 CFR § 3.52 is amended by adding a new subsection (h) to read as follows:

§ 3.52 Appeal from initial decisions.

* * * * *

(h) *Briefs of Amicus Curiae.*—A brief of an amicus curiae may be filed by leave of the Commission granted on motion with notice to the parties or at the request of the Commission, except that such leave shall not be required when the brief is presented by an agency or officer of the United States; or by a State, territory, commonwealth, or the District of Columbia, or by an agency or officer of any of them. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and state how a Commission decision in the matter would affect the applicant or persons it represents. The motion shall also state the reasons why a brief of an amicus curiae is desirable. Except as otherwise permitted by the Commission, an amicus curiae shall file its brief within the time allowed the parties whose position as to affirmance or reversal the amicus brief will support. The Commission shall grant leave for a later filing only for cause shown, in which event it shall specify within what period such brief must be filed. A motion for an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

AUTHORITY: 15 U.S.C. § 46(g).

By direction of the Commission dated July 25, 1977.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-22773 Filed 8-5-77;8:45 am]

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Appeal From Initial Decision

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This amendment will permit each party at least five days to file a notice of appeal from an initial decision in response to another party's timely notice of appeal. Patterned after a similar provision in Rule 4(a) of the Federal Rules of Appellate Procedure, it is intended to add flexibility to the filing deadline now in the rule.

EFFECTIVE DATE: August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Jack Schwartz, Assistant to the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202–523–3615.

Accordingly, pursuant to the authority of 15 U.S.C. 46(g), 16 CFR Part 3 is amended by revising § 3.52(a) to read as follows:

§ 3.52 Appeal from initial decision.

(a) *Who may file; notice of intention.*—Any party to a proceeding may appeal an initial decision to the Commission: *Provided*, That within ten (10) days after completion of service of the initial decision such party files a notice of intention to appeal. *Provided further*, That if a timely notice of intention to appeal is filed by a party, any other party may file a notice of intention to appeal within five (5) days after service of the first notice, or within the time otherwise prescribed by this subsection, whichever period last expires.

By direction of the Commission dated May 19, 1977.

JOHN A. DUGAN,
Acting Secretary.

[FR Doc.77-22772 Filed 8-5-77;8:45 am]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 765-1]

SUBCHAPTER D—WATER PROGRAMS

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

Amendment; Correction

Correction

In FR Doc. 77-20768 appearing on page 37205 in the issue of Wednesday, July 20, 1977, the signature at the end of the document should read as follows:

STEPHEN J. GAGE,
Acting Assistant Administrator for Research and Development.

[FRL 772-5; PP 7F1889/R133]

SUBCHAPTER E—PESTICIDE PROGRAMS

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

Bentazon

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

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide bentazon. The amendment was requested by BASF Wyandotte. This rule establishes a maximum permissible level for residues of bentazon on lima beans.

EFFECTIVE DATE: Effective on August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460, 202-426-2632.

SUPPLEMENTARY INFORMATION: On May 23, 1977, notice was given (42 FR 26240) that BASF Wyandotte Corp., 100 Cherry Hill Road, PO Box 181, Parsippany NJ 07054, had filed a pesticide petition (PP 7F1889) with the EPA.

This petition proposed that 40 CFR 180.355 be amended to establish a tolerance for combined residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin - 4(3*H*) - one - 2.2-dioxide) and its 6- and 8-hydroxy metabolites in or on the raw agricultural commodity lima beans (succulent) at 0.05 part per million (ppm). No comments were received in response to this notice of filing.

The data submitted in the petition have previously been evaluated in connection with a tolerance established on May 26, 1977 (42 FR 26978) for combined residues of bentazon and its 6- and 8-hydroxy metabolites in or on the raw agricultural commodity group seed and pod vegetables (dry) at 0.05 ppm. The 0.05 ppm tolerance on lima beans (succulent) should have been established along with this tolerance but was not because it had been inadvertently omitted from the original notice of filing (41 FR 3191). Thus, the pertinent data and conclusions of the rulemaking document of May 26, 1977, are included in this document by reference. It has been determined that this tolerance will protect the public health.

Any person adversely affected by this regulation may, on or before September 7, 1977, file written objections with the Hearing Clerk, EPA, East Tower, Rm. 1019, 401 M St. SW, Washington DC 20460. Such objections should be submitted in quintuplicate and should specifiy both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on August 8, 1977, Part 180 is amended as set forth below.

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

Dated: August 1, 1977.

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

Part 180, Subpart C, § 180.355 is amended in paragraph (a) by alphabetically inserting a tolerance of 0.05 ppm on lima beans to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodity:	*Parts per million*
* * * * *	
Beans, lima (succulent)	0.05
* * * * *	

[FR Doc.77-22626 Filed 8-5-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 114—DEPARTMENT OF THE INTERIOR

PART 114-25—GENERAL

Utilization of Service Station Self-Service Pumps

AGENCY: Office of the Secretary, Interior.

ACTION: Final regulations.

SUMMARY: This document establishes a policy that Interior employees driving Government-owned or leased vehicles shall utilize service station self-service pumps when such use is feasible and economically advantageous.

DATE: This amendment is effective immediately.

FOR FURTHER INFORMATION CONTACT:

James O. Wyatt, Chief, Division of Property Management, Office of Administrative and Management Policy, Department of the Interior, Washington, D.C. 20240, telephone 202-343-3185.

SUPPLEMENTARY INFORMATION: Because this amendment relates only to internal Departmental procedures, the proposed rulemaking procedures are inapplicable. The primary author of this document is Charles H. Young, Property Management Officer, Office of Administrative and Management Policy, telephone 202-343-3185.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

JULY 29, 1977.

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and 40 U.S.C. 486(c), Chapter 114, Title 41 of the Code of Federal Regulations is amended as set forth below.

Subpart 114-25.3 is amended by adding 114-25.303 to read as follows:

§ 114-25.303 Gasoline for use in motor vehicles.

In addition to using unleaded gasoline as required by FPMR 101-25.303, Interior employees shall use self-service pumps when such use will result in the purchase of gasoline at the lowest available price.

[FR Doc.77-22777 Filed 8-5-77;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-116]

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

Use of Birth Registration for Officer Licenses

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the regulations governing the issuance of an original license to allow a birth registration to be used to establish proof of citizenship. Present regulations do not provide for acceptance of a birth registration. In some cases, an applicant for a license does not have a birth certificate and must use a birth registration. The use of a birth registration is an acceptable alternative to a birth certificate.

EFFECTIVE DATE: This amendment is effective on August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1477).

SUPPLEMENTARY INFORMATION: Since this amendment provides for an alternative to an existing requirement, under 5 U.S.C. 553(b), notice of proposed rulemaking and public procedure are unnecessary, and the amendment may be made effective in less than 30 days after publication in the FEDERAL REGISTER, because 5 U.S.C. 553(d) does not apply.

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: Commander Lloyd Burger, Project Manager, Office of Merchant Marine Safety and Lieutenant Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

Accordingly, Part 10 of Title 46 of the Code of Federal Regulations is amended by revising § 10.02-5(c) to read as follows:

§ 10.02-5 Requirements for original licenses.

* * * * *

(c) * * *

(1) An original or certified copy of—

(i) A birth certificate; or

(ii) A birth registration.

* * * * *

(R.S. 4405, as amended (46 U.S.C. 375); R.S. 4462, as amended (46 U.S.C. 416); sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

Dated: July 29, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.77-22797 Filed 8-5-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20620; RM-2426; FCC 77-537]

PART 15—RADIO FREQUENCY DEVICES

Operation of Wide-Band Swept RF Equipment Used as Anti-Pilferage Devices

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: Report and Order in Docket No. 20620, adopting new provisions under Subpart F of Part 15 of the rules for operation of wide-band swept RF equipment. The existing rules have been updated to meet requirements of manufacturers and commercial establishments, such as stores, libraries, etc., in the development and use of anti-theft, anti-pilferage devices.

EFFECTIVE DATE: September 12, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Don Olmstead, RF Devices and Experimental Branch, Office of Chief Engineer, 202-632-7095.

SUPPLEMENTARY INFORMATION:

Adopted: July 27, 1977.

Released: August 5, 1977.

In the matter of the amendment of Part 15 to provide for the operation of wideband swept RF equipment used as anti-pilferage devices, Docket No. 20620, RM-2426.

1. This proceeding was initiated in response to a petition for rulemaking filed by Checkpoint Systems, Inc. (Checkpoint) on July 30, 1974,[1] along with related pleadings,[2] to provide for the operation of swept frequency anti-pilferage devices. The petition for rulemaking was placed on public notice and in response comments were received from the 3-M Company (3-M) and Knogo Corporation (Knogo) questioning the necessity for additional provisions for anti-pilferage equipment. Both 3-M and Knogo produce anti-pilferage devices which operate within the existing Part 15 Rules. In view of these contentions, the Commission issued a Notice of Inquiry [3] seeking information as to the need for additional rules; and if so, the form these rules should take. After considering the comments the Commission concluded that reasonable grounds existed for the issuance of a notice of proposed rulemaking.[4]

2. Only three parties submitted comments: Checkpoint, Knogo and Schlage Electronics (Schlage). Checkpoint and Knogo also submitted reply comments.[5] The Schlage comments were filed late with a motion to accept late filed comments stating that they had just become aware of the Commission's proposal in this docket. To the extent possible the Schlage comments will be considered; however, many aspects of their filing, while relevant, go beyond the scope of this proceeding and would require extensive study and coordination before they could be adopted. To avoid further delay (such as a further notice of proposed rulemaking) in finalizing this docket, the Schlage comments are being treated as a separate petition for rulemaking (RM-2831) with their concurrence.

3. Checkpoint manufactures electronic detection systems used as anti-pilferage devices in retail and department stores, libraries, and other commercial establishments. An RF generator that sweeps over the frequency range of operation is used to detect a tag that is concealed in, or attached to, the protected article. When the frequency sweep detects one of the tags, each of which contains a resonant printed circuit, the operator is alerted to the presence of a protected item. Normally the tag is deactivated or removed at the cashier's desk before the protected item is carried through the gate housing the anti-pilferage equipment. In the case of library books the circuit labels are permanently affixed under the book pockets or under the bindings and the anti-pilferage equipment is deactivated or circumvented to permit removal after the books have been properly checked out.

4. In general, all of those commenting agreed with the proposal to provide additional regulations for the operation of wide band swept RF equipment for use as anti-pilferage devices. Even Knogo which had originally opposed any rule changes, has changed its position and now supports this proceeding. All agree that pilferage is a serious and expensive problem to libraries, government agencies, retail outlets, etc., and the consumer is the one who must ultimately pay the cost; that anti-pilferage devices are an effective deterrent; and, that more liberal rules will provide greater flexibility in the design and operation of these devices, thus permitting wider use, without materially increasing the risk of interference to other users of the radio spectrum.

5. The Commission proposed a field strength of 50 μV/m at 30 meters on the emissions within the bands of operation specified, with the requirement that all emissions falling outside these bands to be kept below 5 μV/m at 3 meters. All the comments agreed that the field strength proposed by the Commission was too low for efficient operation of swept-radio frequency equipment; that it would impair the operating efficiency of such equipment without a countervailing benefit to the public interest; and, that operation with higher field strengths (6 dB above the field strength proposed by the Commission) does not cause harmful interference or adverse environmental effects while at the same time providing a greater potential for development of existing uses and also new applications. New applications in the health care field are currently under study by Knogo to provide patient monitoring systems which would replace physical and chemical restraints used in many institutions.

6. Checkpoint has requested a field strength of 100 μV/m at 30 meters, and Knogo has requested 300 μV/m at 30 meters. Schlage supports a field strength of 100 μV/m at 30 meters. In support of the higher field strengths it is pointed out that daily use of hundreds of Checkpoint systems operating at 100 μV/m at 30 meters over the period of several years has not resulted in a single complaint of interference. It is also claimed that the higher power is necessary to insure reliable operation of security systems since there is normally high ambient radio frequency noise in retail stores caused by fluorescent lighting, air conditioning, elevators, cash registers, etc., which would overwhelm a system with less power. In addition, anti-pilferage devices are installed inside buildings which can be expected to attenuate the signals radiated from these devices and further reduce the chance of interference.

7. Because of the factors mentioned above, the Commission believes that a field strength of 100 μV/m at 30 meters can be considered to be acceptable and is not likely to cause interference.[6] In addition, these devices operate on a non-interference basis to licensed services, and in the unlikely event that a situation should arise involving harmful interference, it would be local to the interfered service and thus easily identified and corrected.

8. With respect to the Commission's proposal that spurious emissions be kept to less than 5 μV/m at 3 meters, or "approximately 40 dB down," the comments agreed that it is desirable to suppress

[1] RM-2426.

[2] With the rulemaking request, Checkpoint filed a petition for waiver of the present Part 15 requirements to permit it to market the proposed system during the pendency of the rulemaking. This waiver was granted by the Commission on December 13, 1974. The Knogo Corporation requested a stay of the waiver which was denied by the Commission on February 26, 1975.

[3] Docket No. 20620, released October 16, 1975 (40 FR 48942).

[4] Notice of Proposed Rulemaking and Order Denying Petition For Reconsideration, released July 7, 1976 (41 FR 28537).

[5] Additional comments were filed by Checkpoint objecting to any further delay as a result of new issues raised by the Schlage comments. Also, an informal comment was filed by Gettysburg College, Gettysburg, Pennsylvania, on August 3, 1976, requesting that the final decision in this docket should not require them to modify their recently installed Checkpoint system in the school library. A letter was also received from Sentronic International which is discussed in paragraph 15 of this Order.

[6] The original Checkpoint waiver for operation pending the outcome of this rulemaking permitted an emission level of 100 μV/m at 30 meters. This was modified to 50 μV/m at 30 meters when the NPRM was adopted on June 24, 1976. Systems already installed were permitted to continue operating at the higher strength pending outcome of this proceeding.

all emissions a minimum of 40 dB relative to the maximum field strength at a distance of 30 meters. But it was argued by Checkpoint that the Commission's proposal assumes that the field strength varies inversely with the square of the distance, when in fact it is more nearly the cube of the distance in this case, and that the desired result would be obtained by using the standard 1 μV/m at 30 meters. The Commission agrees that the original proposal may have been too stringent. Accordingly, the limits for out of band emissions are revised, and the rules will provide that out of band emissions shall be suppressed at least 40 dB below the fundamental.

9. The Commission's original waiver for Checkpoint permitted them to use the frequencies 5±0.5 MHz and 8.2±0.8 MHz. In the NPRM the Commission proposed three frequencies for anti-pilferage equipment using swept frequency techniques, namely 2±0.3 MHz, 4.5±0.45 MHz and 8±0.6 MHz. The waiver was also modified to confine the frequency bands Checkpoint could use to 4.05 to 4.95 MHz and 7.4 to 8.6 MHz.[1] Checkpoint does not object to changing the center frequency from 5.0 to 4.5 MHz for future installations, but contends that to make this relatively minor change on equipment presently located in the field would result in serious disruption of service and severe economic hardship without countervailing benefits. Checkpoint states that approximately 20 million circuit labels have been permanently affixed to books in 400 libraries. These labels are located under or in book pockets and bindings. It would be necessary to remove the old labels before new ones could be installed in order to make the system work. This would be very time consuming and result in the libraries being without the security system for a substantial period of time, as well as costing Checkpoint at least 3 million dollars.

10. The center frequency was changed from 5.0 to 4.5 MHz to avoid any potential interference with the standard frequency/time signal at 5.0 MHz. Future systems will be required to use a center frequency of 4.5 MHz. However, since no complaints of interference have been received from the limited number of systems already installed, and because of the problems mentioned above, the Commission will permit the presently installed systems operating on 5.0 MHz to continue operation indefinitely (including expansion to update systems), subject to the condition that any interference complained of be immediately eliminated.

11. Though the Commission's proposal to change the band from 8.2±0.8 MHz to 8.0±0.6 MHz appears relatively minor, Checkpoint states that this would significantly affect the use of this frequency, since operation of wide-band swept-radio frequency devices depend on a fixed deviation from the center frequency, and not on the absolute bandwidth swept by the system. The minimum fixed deviation required is plus or minus ten percent (10 percent) of the center frequency. Under the present state of the art it is not economically feasible because of technical reasons, according to Checkpoint, to develop and market a system requiring a lesser deviation due to the costs involved. Resonant circuits (tags) cannot be mass-produced with a frequency tolerance better than plus or minus 7.5 percent. The transmitter must sweep entirely through the center frequency of the tag to be detected, thus the deviation must be at least plus or minus 10 percent if the frequency tolerance of the tag is only 7.5 percent. Since at least a few thousand tags are required for each installation, significant increases in cost of the tags would quickly price any anti-pilferage system out of many markets. Checkpoint states that present cost per tag is very low "* * * because all processing is done in continuous rolls of material two feet wide and 10,000 feet long. Each roll contains 300,000 double-sided printed circuits attached together." To improve the tag to operate with a tolerance of less than plus/minus 7.5 percent would require each circuit to be individually measured and adjusted in the manufacturing process which could substantially increase the price of each tag.

12. It appears that requiring the frequency sweep to be confined to 7.4–8.6 MHz, (8.0±0.6 MHz) rather than 7.4–9.0 MHz, (8.2±0.8 MHz) would place a substantial economic hardship on the manufacturers and users. It is also noted that none of the systems presently in operation using 7.4–9.0 MHz have caused interference nor does it appear likely that they will. In view of the above, we are accepting Checkpoint's argument and have expanded the band at 8 MHz to 7.4–9.0 MHz (8.2±0.8 MHz) instead of 7.4–8.6 MHz (8.0±0.6 MHz) as proposed in our notice. In the unlikely event that operation of such an anti-pilferage device were to cause harmful interference, it becomes subject to the general requirement in sections 15.3 and 15.311 and the operator will be required to stop operating the device until such time as the harmful interference is eliminated.

13. The proposed rules evaluated the interference effect of the anti-pilferage signal on the basis that this signal would move across the band and not remain at a fixed point in the band for any length of time. However, in the absence of a specific requirement that the signal sweep through the authorized band, there is a danger that some person may elect to operate at a fixed frequency, and thereby increase the interference potential to licensed equipment operating on such fixed frequency. To minimize this possibility, we have added a requirement that the signal sweep through not less than half the authorized band at a minimum rate of forty sweeps per second (40 hertz).

14. No objections were raised to the provision that swept frequency anti-pilferage devices require certification. As stated in the proposal, measurements shall be made with the frequency sweep stopped using an average reading field strength meter. Out of band emissions shall be checked over the frequency range 300 kHz to 300 MHz. Also, the measurement report shall include spectrum analyzer photographs of the broadband signal emitted by such equipment during normal operation.

15. By letter, dated February 14, 1977, from Sentronic International, a division of General Nucleonics, Inc. (Sentronic), the Commission was asked to hold in abeyance final action in this docket pending further study of the possible effects of low level radiation on people. In general Sentronic maintains that more information is needed on the genetic, clinical, physiological, biological, and behavioral effects of long-term, low level radiofrequency exposures; and, that standards, based on that information, should be developed which are more strict than those presently in use. While we agree that health considerations are an important factor, it would appear that studies of such a complex nature would take many years. If action in this docket were to be held in abeyance, then it would be incumbent on the Commission to stay the grant of almost any new telecommunications facility, since the radiated power density of a Checkpoint system is over one million times less than that generated by a citizens-band transmitter. The problem of personal hazard was discussed in both the Notice of Inquiry and at some length in the Notice of Proposed Rulemaking particularly with respect to pacemakers. Tests have been conducted by both manufacturers of pacemakers and anti-pilferage equipment. The Food and Drug Administration has sponsored an open public meeting on this subject. While final definitive information is not available, the results to date indicate little or no adverse effects. In the absence of strong reasons for the present standards to be changed, postponement of this docket is unwarranted. As stated in the Notice, our regulations are designed to eliminate interference while those of the FDA are intended to minimize personal hazard. Accordingly, at this time the Commission is adopting regulations dealing only with the radio interference potential of anti-pilferage devices. If the studies now underway to evaluate the effect of low level RF radiation on people should find that the present technical specifications constitute a hazard to the people, the Commission will at that time review the technical specifications adopted herein.

16. In writing rules for new devices to operate under Part 15, consideration must be given to the possible electromagnetic pollution that may be created by the new device—in this instance, the swept frequency anti-pilferage device. We are aware that anti-pilferage systems exist which use magnetic tapes and do not require access to the RF spectrum. The comments received herein show that the RF operated systems are

[1] Equipment marketed prior to August 1, 1976, could continue to use the original waiver frequencies.

in general less costly and have a greater degree of flexibility in their use. We consider these advantages of the RF operated systems to outweigh the disadvantages of possible spectrum pollution.

17. In consideration of the foregoing, the Commission finds that amendment of the rules as contained below is in the public interest. Authority for these rule amendments is contained in sections 4(i), 302, 303(g), and 303(r) of the Communications Act of 1934, as amended.

18. Accordingly, *it is ordered*, That effective September 12, 1977, Part 15 of the Commission's rules is amended as set forth below. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; sec. 302, 82 Stat. 290; (47 U.S.C. 154, 302, 303).)

FEDERAL COMMUNICATIONS COMMISSION,*
VINCENT J. MULLINS,
Secretary.

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 15.305 paragraph (c) is added to read as follows:

§ 15.305 General technical specification.

* * * * *

(c) Alternative to paragraphs (a) and (b) of this section, a wide-band swept field disturbance sensor may be operated on any frequency listed below subject to the technical requirements set out in §§ 15.321 and 15.323.

Center frequency (MHz):		*Band limits (MHz)*
2	±0.3	(1.7–2.3)
4.5	±0.45	(4.05–4.95)
8.2	±0.8	(7.4–9.0)

2. Two new §§ 15.321 and 15.323 are added to read as follows:

§ 15.321 Emission limitations for operation under § 15.305(c).

(a) The field strength shall not exceed 100 μV/m at 30 meters on emissions within the bands specified.

(b) Out of band emissions shall be suppressed at least 40 dB below the level of the fundamental. The measurement procedure involved will be discussed in an OCE bulletin.

(c) A minimum frequency deviation of one-half the authorized maximum deviation is required on all specified frequencies.

(d) A minimum frequency modulation rate of 40 hertz is required for all operations.

§ 15.323 Measurement requirements for operation under § 15.305(c).

Measurements shall be made with the frequency sweep stopped using an average reading field strength meter. Measurements on all frequencies shall be made using a loop antenna. Out of band emissions shall be checked over the frequency range 300 kHz to 300 MHz. In addition, the measurement report shall include spectrum analyzer photographs of the broadband signal emitted.

[FR Doc.77-22732 Filed 8-5-77;8:45 am]

[Docket No. 20708; RM-2551; RM-2693]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Versailles, Indiana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action herein assigns a first Class A FM channel to Versailles, Indiana. Petitioner, James Robert Albritton, states that this action will provide Versailles with an opportunity to acquire its first local aural broadcast service.

EFFECTIVE DATE: September 12, 1977

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202–632–7792).

SUPPLEMENTARY INFORMATION:

Adopted: July 29, 1977.

Released: August 5, 1977.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Versailles, Indiana), Docket No. 20708, RM–2551, RM–2693.

1. The Commission has under consideration the Notice of Proposed Rulemaking in the above-entitled proceeding, adopted February 4, 1976, 41 FR 7120, proposing the assignment of FM Channel 276A to Versailles, Indiana. James Robert Albritton ("petitioner") originally proposed Channel 280A for Versailles, but in Docket No. 21121, Second Report and Order,[1] the Commission assigned Channel 280A to Versailles. However, a Commission staff study revealed that Channel 276A could be assigned to Versailles in conformance with the minimum mileage separation requirements, if the transmitter site were to be located approximately 10 kilometers (6 miles) north of Versailles. Supporting comments were filed by the petitioner in which he reaffirmed his intent to apply for the channel, if assigned, and to promptly build the station, if authorized.

2. On April 30, 1976, Mid America Radio, Inc. ("Mid America"), licensee of FM Station WXTZ, Indianapolis, Indiana, filed a counterproposal (RM–2693) in which it proposed the assignment of Channel 237A to Versailles in lieu of Channel 276A. Mid America states that it does not take issue with the ostensible desirability of assigning a first Class A channel to Versailles, but because of the existence of certain special and unique circumstances, it believes the public interest would better be served by the substitution of Channel 237A for 276A. Mid America argues that substitution of Channel 237A for 276A would prevent irreparable injury from being caused to the public that WXTZ serves, without materially altering Mr. Albritton's basic proposal. Mid America further states that on April 7, 1972, WXTZ filed a "major change" application with a view toward changing, inter alia, its transmitter location (BPH–7867, granted May 22, 1972), and at that time it was thought that WXTZ's proposed 70 dBu contour would cover the entire city limits of Indianapolis. Mid America notes that, around that time, the Indianapolis city limits were expanded so as to be virtually coincident with those of Marion County, and that it was not until the Commission was considering the allocation to Batesville that WXTZ discovered that its 70 dBu contour did not fully cover the revised Indianapolis city limits. Mid America contends that, if the Versailles proposal were to be adopted, WXTZ would be substantially impaired in its ability to move closer to Indianapolis to permit it to serve its city of license in a manner contemplated by the Commission. It adds that the existing WXTZ transmitter location has created a situation of only a marginally sufficient signal existing over the center of the city of Indianapolis where there is an area of interference. Mid America asserts that computer analyses have been undertaken and no feasible solution short of moving the transmitter location has been found and, therefore, the only realistic option is to move its transmitter. It contends that large areas would be made unavailable to WXTZ if Channel 276A were to be assigned to Versailles, but that would not be true if the Commission were to allocate Channel 237A to Versailles. Mid America claims that efforts are already underway and have been underway for some time to secure a new transmitter location for WXTZ.

3. Mid America states that substitution of Channel 237A for Channel 276A would have no adverse effect on Mr. Albritton's proposal, and that the channel may be used in the center of Versailles with concomitant savings in terms of STL's, telephone lines, etc., which would be necessary were Mr. Albritton required to maintain separate transmitter/studio facilities. However, it acknowledges that the availability of Channel 237A to Versailles, Indiana, is contingent upon a favorable resolution in a rule making to move Channel 237A from Falmouth, Kentucky, to Versailles, Kentucky, in Docket No. 20877.

4. Since the Commission, on May 9, 1977, adopted a Report and Order in Docket No. 20877 (42 FR 25505) which, among other things, retained the assignment of Channel 237A at Falmouth, Kentucky, Mid America's counterproposal to assign Channel 237A to Versailles is no longer workable and must be denied. However, the counterproposal is also being treated as an objection to the proposed assignment of Channel 276A to Versailles, but the Commission believes

* Commissioner Washburn absent.

[1] 40 FR 19644, 41 FR 13378, March 30, 1976.

that this objection is not well taken, as will be shown below.

5. Station WXTZ is located in the northern portion of the expanded city of Indianapolis and operates with 13 kW (11.2 dBk) and 850 feet a.a.t. from a tower which extends 312 meters (1,022 feet) above ground. It is noted that the 70 dBu contour encompasses most of the expanded city with the exception of small portions of the southern part of the city, about three percent of the city area.

6. The distance between Station WXTZ and the required Versailles transmitter site, about 10 kilometers (6 miles) north of that community, is approximately 116 kilometers (72.3 miles) which allows about 11.7 kilometers (7.3 miles) leeway in the southeasterly direction. This leaves about fifty percent of the city area in which WXTZ could move its transmitter site if it desires. Assuming that WXTZ were to operate with maximum facilities as it now operates, a site 8 kilometers (5 miles) in the southeasterly direction, or 8.5 kilometers (5.3 miles) in the southerly direction, would allow it to completely encompass the city limit with a 70 dBu signal. There is a leeway of about 16 kilometers (10 miles) in the southerly direction in which the transmitter site may be relocated.

7. Mid America has asserted that its station places only a marginally sufficient signal over the center of the city of Indianapolis where it encounters an area of interference. However, it does not indicate the signal level there or the type of interference it alleges it suffers. Without a proper showing, we are unable to conclude that a signal level of 80 dBu (10 mV/m) which is expected in the area would be only "marginally sufficient." There is also question of whether a change in the transmitter site or an increase in the signal level would alleviate any such interference problem or would just move it to another area. The Commission believes that, although the assignment of Channel 276A to Versailles, Indiana, would somewhat limit the flexibility in the choice of an alternate transmitter site for Station WXTZ, a provision for a first local aural broadcast station to a community without such a facility presents a more important public interest consideration. Such a conclusion is consistent with the stated objective of the Commission's allocation priorities. The channel is the only one available for assignment to this area.

8. The Canadian Government has given its concurrence to the proposed assignment of Channel 276A to Versailles, Indiana.

9. Authority for the adoption of the amendment contained herein appears in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

10. In view of the foregoing: *It is ordered*, That effective September 12, 1977, § 73.202(b) of the Commission's rules, the FM Table of Assignments, as regards Versailles, Indiana, is amended as follows:

City and Channel No.
Versailles, Indiana, 276A.

11. *It is further ordered*, That, the counterproposal filed by Mid America Radio, Inc. (RM-2693) is denied.

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

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303).)

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

[FR Doc.77-22730 Filed 8-5-77;8:45 am]

[Docket No. 21174; RM-2790]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Palm Springs, Calif., Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a third FM channel (Class B) to Palm Springs, California, at the request of Joe F. Mackey. The Commission's FM criteria ordinarily would limit the number of assignments to a community the size of Palm Springs to one or two channels. However, since Palm Springs' population exceeds 50,000 during certain portions of the year due to the influx of tourists and visitors, and because it is located in an area isolated from major markets by mountainous terrain, the Commission believes that a third channel for Palm Springs would be consistent.

EFFECTIVE DATE: September 12, 1977.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: July 29, 1977.

Released: August 5, 1977.

In the matter of Amendment of § 73.-202(b), Table of Assignments, FM Broadcast Stations (Palm Springs, California), Docket No. 21174, RM-2790.

1. On March 18, 1977, at the request of Joe F. Mackey ("petitioner"), the Commission adopted a Notice of Proposed Rulemaking, 42 FR 16450, proposing the assignment of Class B Channel 291 to Palm Springs, California, as its third FM assignment. Supporting comments and reply comments were filed by petitioner. Comments in opposition were filed by Tourtelot Broadcasting Company ("Tourtelot"), licensee of Stations KDES and KDES-FM, Palm Springs, California, and Glen Barnett ("Barnett"), licensee of Stations KWXY and KWXY-FM, at nearby Cathedral City, California.

2. Palm Springs, (pop. 20,936) in Riverside County (pop. 459,074),[1] is located in south central California, approximately 173 kilometers (108 miles) east of Los Angeles. Local service is provided by three full-time AM stations—KCMJ (Class III); KDES (Class III); KPSI (Class IV) and one FM station—KDES-FM (Channel 284). In addition to the educational FM channel (202D) which is assigned to Station KPSH-FM at Palm Springs, commercial FM Channel 265A is also assigned. There are three applications pending on Channel 265A.

3. Petitioner states that Palm Springs has long been noted as one of the nation's leading resort areas. It is said to be the retail and financial center of Coachella Valley with 34 percent of its employed citizens engaged in services and 22 percent in retail trade. Petitioner claims that the population of Palm Springs has increased from 20,936 to 29,-132 persons between 1970 and 1975. Petitioner reaffirms his intention to apply for the channel, if assigned, and to construct and operate a station if granted.

4. In supporting comments petitioner emphasizes the influx of population to Palm Springs during the months of January through May and October through December. According to petitioner, estimates of the Riverside County Planning Department puts the additional tourist population at 50,000 to 60,000 for the area and the Coachella Valley Association of Governments places the total population of Palm Springs for eight of the twelve months of the year at approximately 64,410, with a weighted average throughout a year of 52,507. Petitioner contends that the Commission's population criteria (limiting a city under 50,000 population to one or two FM channels) are only guidelines and under the circumstances here there are no impediments to the assignment. Petitioner also asserts that, since Palm Springs is already intermixed with a Class B and Class A channel, the addition of a second Class B channel would not contravene the Commission's policy on intermixture.

5. In opposing comments, Tourtelot argues that petitioner has failed to demonstrate the basis for his population estimates. It states that, while the Coachella Valley Association of Governments substantiates the peak population for the city currently at 64,410, the Association notes that this figure refers to the maximum number of people present within the city at a specific time only. Tourtelot points out that in a 1976 study conducted for the Community Redevelopment Agency of the City of Palm Springs, the average monthly population of Palm Springs was 38,583 during 1976. Tourtelot acknowledges that the total population of Palm Springs may reach the level of 50,000 during the months of February and March, however. Tourtelot contends that there are a sufficient number of aural services available to Palm Springs and the sur-

[1] Population figures are taken from the 1970 U.S. Census unless otherwise indicated.

rounding Coachella Valley. In this connection it states that there are three FM stations which place city grade contours over Palm Springs. Moreover, Tourtelot asserts that, since petitioner must locate his station 15 miles east of Palm Springs, Station KWXY-FM, Cathedral City, would place a far superior signal over the city than petitioner's proposed facility.

6. Barnett, in opposition to the proposal, argues that the existence of Station KWXY-FM at Cathedral City should have been taken into account in proposing a third channel for Palm Springs. He contends that the number of AM and FM channels already assigned to Palm Springs, plus available outside service from Station KWXY-FM, provide a sufficient choice of program fare and that the proposed channel could better serve the public interest if assigned elsewhere. Barnett questions whether a transmitter located in the area proposed could serve the entire city due to multipath reflections and shadow effects of the surrounding mountains.

7. In response, petitioner points out that Tourtelot and Barnett both serve Palm Springs, and thus it argues that it is obvious that their opposition to assignment of another channel to that city is solely on economic grounds. Petitioner states that Barnett's questions about the adequacy of coverage are unsupported by engineering opinion and contends that they also are misplaced. Petitioner asserts that they should be deferred until an application is tendered. On the question of the need for the assignment, petitioner argues that Tourtelot's submission of an excerpt from a 1976 study conducted for the Community Redevelopment Agency of the City of Palm Springs is not otherwise identified and that its worth has not been demonstrated. Moreover, petitioner asserts that, even if Palm Springs' present and projected population is slightly smaller than as previously shown, the opponents do concede that it is a burgeoning community in a growing area.

8. We have carefully considered the record in this proceeding and find that it would be in the public interest to assign Channel 291 to Palm Springs, California. Under normal circumstances, the Commission's FM assignment criteria would limit the number of assignments to a community of the size of Palm Springs to one or two channels. However, on occasion this limit in the number of assignments has been relaxed where special considerations have been found.[2] Palm Springs is a growing resort community, with the officially recognized 1970 population of 20,936 inhabitants, and is located in an area which is isolated from large major markets by mountainous terrain. The petitioner has alleged that during the tourist seasons, the population of the community reaches as much as 64,410 persons, with the weighted average of 52,507 for the year. Tourtelot in opposition acknowledges that the population of the community could exceed 50,000 persons for at least two months. Thus, it is reasonable to conclude that, during certain portions of the year, the population of Palm Springs exceeds 50,000 persons. With these points in mind it is clear that a third channel for Palm Springs would be consistent with the spirit of the population criteria even if it is not consistent with its literal terms. Another consideration in favor of the proposed assignment is that the use of the channel here would not result in significant preclusion because the communitie located in the two precluded areas each has at least one FM assignment or station and at least one AM station. As to the assertion that stations located in other communities provide service to Palm Springs, we must point out that such stations are not called upon to provide programs directed to meeting the special needs, interests and problems of the community as are local stations.

9. Although intermixture is involved, it presents no problem in this instance as Palm Springs is already intermixed with a Class A and a Class B assignment and there are three mutually exclusive applications[3] pending for the Class A channel. None of these applicants has opposed the proposed Class B channel assignment. Moreover, any qualified party may apply for the new Class B channel, including, if they so desire, the applicants for Channel 265A at Palm Springs, which could relinquish any interest in that channel and seek instead to use the Class B channel which we are assigning in this Report and Order.

10. Mexican concurrence has been obtained for the assignment of Channel 291 to Palm Springs, California.

11. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules: *It is ordered*, That, effective September 12, 1977, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended for the city listed below, to read as follows:

City and Channel No.
Palm Springs, California, 265A, 284, 291.

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

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).)

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

[FR Doc.77-22731 Filed 8-5-77;8:45 am]

[2] See, for example, Fresno, Calif., 38 F.C.C. 2d 525 (1972); Colorado Springs, Colo., 44 F.C.C. 2d 1047 (1974).

[3] Applications filed by Gray-Schwartz Broadcasting (BPH-9903); KPSI Radio Corporation (BPH-10069); and Westminster Broadcasting Corp. (BPH-10266).

Title 49—Transportation

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

[Docket No. FE 77-02; Notice 2]

PART 529—MANUFACTURERS OF MULTISTAGE AUTOMOBILES

Correction

In FR Doc. 77-21507 appearing on page 38369, in the issue for Thursday, July 28, 1977. On page 38372, § 529.3(b)(2), (7) and (8) should read:

§ 529.3 Definitions.

* * * * *

(b) * * *

(2) "Completed automobile" means an automobile that requires no further manufacturing operations to perform its intended function, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting.

* * * * *

(7) "Incomplete automobile manufacturer" means a person who manufactures an incomplete automobile by assembling components none of which, taken separately, constitute a complete automobile.

(8) "Intermediate manufacturer" means a person, other than the incomplete automobile manufacturer or the final-stage manufacturer, who performs manufacturing operations on an incomplete automobile.

[Docket No. 77-02; Notice 04]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires for Passenger Cars

AGENCY: National Highway Traffic Safety Administration.

ACTION: Final rule.

SUMMARY STATEMENT: This amendment adds certain tire size designations to Standard No. 109, New Pneumatic Tires—Passenger Cars. This addition is made pursuant to a request from the Rubber Manufacturers Association to permit the production of tires with the specified designations.

EFFECTIVE DATE: September 7, 1977, if objections are not received.

FOR FURTHER INFORMATION CONTACT:

John A. Diehl, Office of Crash Avoidance, Motor Vehicle Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1715.

SUPPLEMENTARY INFORMATION: According to agency practice, regular amendments are published modifying the

Appendix of Standard No. 109. Guidelines were published in the FEDERAL REGISTER on October 5, 1968 (33 FR 14964), and amended August 31, 1974 (39 FR 28980), specifying procedures by which routine additions could be made effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

The principal authors of this document are John A. Diehl, Office of Crash Avoidance, and Roger Tilton, Office of Chief Counsel.

Accordingly, Appendix A of 49 CFR 571.109 is amended subject to the 30 day provision indicated above, as specified below.

§ 571.109 [Appendix Amended]

Amendment requested by Rubber Manufacturers Association:

In Table I–HH, the following new tire size designation and corresponding values are added.

(Secs. 103, 119, 201, and 202, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1421, and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on August 1, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

TABLE I—HH.—*Tire load rating, test rims, minimum size factors, and section widths for 'P/75' series ISO-type tires*

Tire size[1] designation	Maximum tire loads (kilograms) at various cold inflation pressures									Test rim width (inches)	Minimum size factor (millimeter)	Section[2] width (millimeter)
	120	140	160	180	200	220	240	260	280			
P185/75R13	390	420	450	480	505	530	555	575	595	5	778	184
P215/75R14	535	575	615	650	690	720	755	785	815	6	878	216
P225/75R14	575	620	665	705	745	780	815	850	880	6	900	223
P205/75R15	515	555	595	630	665	695	725	755	785	5½	877	203
P215/75R15	555	600	645	685	720	755	790	820	850	6	903	216
P225/75R15	605	650	695	740	780	815	850	885	920	6	925	223
P235/75R15	650	700	750	795	840	880	920	955	990	6½	950	235

[1] The letters D for diagonal and B for bias belted may be used in place of the R.

[2] Actual section width and overall width shall not exceed the specified width by more than the amount specified in § 4.2.2.2.

[FR Doc.77–22606 Filed 8–5–77;8:45 am]

[Docket No. 77–02; Notice 3]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires for Passenger Cars

AGENCY: National Highway Traffic Safety Administration.

ACTION: Final rule.

SUMMARY STATEMENT: This amendment adds certain tire size designations to Standard No. 109, *New Pneumatic Tires—Passenger Cars*. This addition is made pursuant to a request from the European Tyre and Rim Technical Organisation to permit the production of tires with the specified designations.

EFFECTIVE DATE: September 7, 1977, if objections are not received.

FOR FURTHER INFORMATION CONTACT:

John A. Diehl, Office of Crash Avoidance, Motor Vehicle Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202–426–1715).

SUPPLEMENTARY INFORMATION: According to agency practice, regular amendments are published modifying the Appendix of Standard No. 109. Guidelines were published in the FEDERAL REGISTER on October 5, 1968 (33 FR 14964), and amended August 31, 1974 (39 FR 28980), specifying procedures by which routine additions could be made effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

The principal authors of this document are John A. Diehl, Office of Crash Avoidance, and Roger Tilton, Office of Chief Counsel.

Accordingly, Appendix A of 49 CFR 571.109 is amended subject to the 30 day provision indicated above, as specified below.

§ 571.109 [Appendix Amended]

Amendment requested by European Tyre and Rim Technical Organisation:

In Table I–S and Table I–DD, the following new tire size designations and corresponding values are added.

(Secs. 103, 119, 201, and 202, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1421, and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on August 1, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

TABLE I—DD.—*Tire load ratings, test rims, minimum size factors, and section widths for "55 series" radial ply tires*

Tire size[1] designation	Maximum tire loads (pounds), at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width[2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
[2] 205/55R14	720	770	810	860	900	940	980	1,020	1,060	1,090	1,130	1,160	1,200	6	30.59	8.19
225/55R14	845	905	960	1,015	1,070	1,120	1,170	1,220	1,265	1,310	1,355	1,400	1,440	6½	32.19	8.98

[1] The letter H, S, or V may be included in any specified tire size designation adjacent to the R.

[2] Actual section width and overall width shall not exceed the specified section width by more than 7 pct.

TABLE I—S.—*Tire load ratings, test rims, minimum size factors, and section widths for "60 series" radial ply tires*

Tire size[1] designation	Maximum tire loads (pounds), at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width[2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
185/60R14	715	760	810	850	895	935	975	1,015	1,050	1,085	1,120	1,155	1,190	5½	29.50	7.40
195/60R14	770	825	875	920	965	1,010	1,055	1,095	1,135	1,175	1,210	1,250	1,285	6	30.50	7.80
195/60R15	795	850	900	950	995	1,040	1,085	1,130	1,170	1,210	1,250	1,290	1,325	6	31.54	7.80
205/60R15	870	930	985	1,040	1,090	1,140	1,190	1,235	1,280	1,325	1,365	1,410	1,450	6	32.45	8.19

[1] The letters H, S, or V may be included in any specified tire size designation adjacent to the R.

[2] Actual section width and overall width shall not exceed the specified section width by more than 7 pct.

[FR Doc.77–22607 Filed 8–5–77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1271]

PART 1033—CAR SERVICE

Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Service Order No. 1271).

SUMMARY: There is a shortage of high capacity cars for transporting bulk shipments of fertilizer, grain, grain products, soybeans or soybeans products at stations on the Union Pacific Railroad. Simultaneously there is a surplus of smaller capacity cars suitable, except for size, for transporting such freight. Service Order No. 1771 authorizes the Union Pacific to substitute sufficient smaller cars for larger cars ordered to transport the shipment offered regardless of tariff requirements, requiring the use of the larger cars. Consent of the shipper is required before any substitution is made.

DATES: Effective August 3, 1977. Expires October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTAL INFORMATION: The order is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 2nd day of August, 1977.

It appearing, That there is an acute shortage of freight cars on the Union Pacific Railroad Company for transporting shipments of fertilizer, grain, grain products, soybeans or soybean products; that certain tariff provisions require the use of cars of specified cubic or weight carrying capacities; that the carrier is unable to furnish sufficient such cars to transport shipments of such weights; that cars of lesser capacity are available; that such cars cannot be used because of certain tariff provisions; that there is immediate need to use every available car for transportation of these products; that the inability of the carrier to furnish sufficient large-capacity cars results in great economic loss; and that present regulations and practices with respect to the use, supply, control, movement, and distribution of freight cars are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1271 Distribution of freight cars.

(a) Subject to the concurrence of the shipper, the Union Pacific Railroad Company may substitute a sufficient number of smaller cars for larger cars ordered to transport shipments of fertilizer, grain, grain products, soybeans or soybean products regardless of tariff requirements specifying minimum cubic or weight carrying capacity. (See exceptions (b) and (c).)

(b) *Exception.* This order shall not apply to shipments subject to tariff provisions requiring the use of twenty-five or more cars per shipment.

(c) *Exception.* This order shall not apply to shipments subject to tariff provisions which require that cars be furnished by the shipper.

(d) *Rates and Minimum Weights Applicable.* The rates to be applied and the minimum weights applicable to shipments for which cars smaller than those ordered have been furnished and loaded as authorized by section (a) of this order shall be the rates and minimum weights applicable to the larger cars ordered.

(e) *Billing to be Endorsed.* The carrier substituting smaller cars for larger cars as authorized by section (a) of this order shall place the following endorsement on the bill of lading and on the waybills authorizing movement of the car:

Car of (------) cu. ft. and of (------) lbs. or greater capacity ordered. Smaller cars furnished authority ICC Service Order No. 1271.

(f) *Concurrence of Shipper Required.* Smaller cars shall not be furnished in lieu of cars of greater capacity without the consent of the shipper.

(g) *Exceptions.* Exceptions to this order may be authorized to railroads by the Railroad Service Board, Washington, D.C. 20423. Requests for such exception must be submitted in writing, or confirmed in writing, and must clearly state the points at which such exceptions are requested and the reason therefor.

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

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

(j) *Effective date.* This order shall become effective at 12:01 a.m., August 3, 1977.

(k) *Expiration date.* This order shall expire at 11:59 p.m., October 31, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That, a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order 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 it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Robert S. Turkington not participating.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-22768 Filed 8-5-77;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURES

[Ex Parte No. 327]

PART 1109—REQUIREMENTS AND PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Rate Incentives for Capital Investment

AGENCY: Interstate Commerce Commission.

ACTION: Correction.

SUMMARY: In the above captioned proceeding published at 42 FR, June 22, 1977, page 31602, the authority citation was inadvertently omitted. This correction is to show the proper authority citation.

FOR FURTHER INFORMATION CONTACT:

Mrs. Janice M. Rosenak, Deputy Director, Section of Rates, Interstate Commerce Commission, Washington, D.C. 20423. Phone No. 202-275-7428.

SUPPLEMENTARY INFORMATION: The above captioned document was issued under: Section 206 of the Railroad Revitalization and Regulatory Reform Act; Section 15(19) of the Interstate Commerce Act—49 U.S.C. 15(19), Public Law 94-210 and 5 U.S.C. 553 and 559, Administrative Procedure Act.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-22770 Filed 8-5-77;8:45 am]

Title 50—Wildlife and Fisheries

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

Subchapter B—Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation and Importation of Wildlife

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Critical Habitat for Mississippi Sandhill Crane

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Final rulemaking.

SUMMARY: The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a rulemaking which determines Critical Habitat for the Mississippi sandhill crane (*Grus canadensis*

pulla). This rulemaking is issued pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 884; hereinafter the Act). In accordance with Section 7, all Federal agencies will be required to insure that actions authorized, funded, or carried out by them do not adversely affect this Critical Habitat.

EFFECTIVE DATE: September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202–343–4646).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In the FEDERAL REGISTER of September 3, 1975 (40 FR 40521–40522), the Fish and Wildlife Service published a proposed determination of Critical Habitat for the Mississippi sandhill crane (*Grus canadensis pulla*). This Critical Habitat was described as being a five-sided area of land, water, and airspace in Jackson County, Mississippi, between the West Pascagoula River and the Jackson-Harrison County line, and bounded by the following coordinates: 30°33′ N 88°37′ W, 30°25′ N 88°37′ W, 30°22′ N 88°44′ W, 30°29′ N 88°51′ W, 30°33′ N 88°51′ W.

SUMMARY OF COMMENTS

The Governor of Mississippi expressed opposition to the designation of the entire proposed area as Critical Habitat, though he indicated that a smaller area might be acceptable. Also opposing the designation as proposed were 15 local governmental and commercial organizations, and approximately 477 private citizens, most of whom had signed petitions on the matter.

The Mississippi Game and Fish Commission responded favorably to a determination of Critical Habitat which would assist in the preservation of the Mississippi sandhill crane, but did not comment on the necessity of including the entire proposed area. Also favoring the proposal in general were eight major National and local conservation organizations, including Monitor, Inc., which expressed the views of 14 additional organizations; and 26 private citizens. The U.S. Forest Service concurred that the approximately 150 acres of land administered by it within the designated area should be included as Critical Habitat. The Mississippi Wildlife Federation favored the designation of a smaller area as Critical Habitat. Approximately ten other parties wrote to provide or request information, without indicating a position on the matter.

BASIS FOR DETERMINATION

The proposal of September 3, 1975, involved a relatively large area which corresponded roughly to the overall range of the Mississippi sandhill crane. The same area had been determined to be Critical Habitat in an emergency rulemaking published on June 30, 1975 (40 FR 27501–27502). The area delineated below in the final determination of Critical Habitat represents a considerable reduction. The decision to make this reduction was based on a more thorough assessment of available biological data, particularly that provided by the Mississippi Sandhill Crane Recovery Team. After reviewing this information, it became apparent that much of the land area in the original proposal is of little or no known use to the crane. There are winter feeding sites in farmland to the north of the Critical Habitat zones delineated below, but these sites are scattered over a large area, and their use by the cranes varies with the crops and other factors. Nonetheless, all Federal agencies should be aware of the presence of the feeding sites and other areas of sporadic, but possibly important use within the overall zone originally proposed in the FEDERAL REGISTER of September 3, 1975, as described above and bounded by the following coordinates: 30°33′ N 88°37′ W, 30°25′ N 88°37′ W, 30°22′ N 88°44′ W, 30°29′ N 88°51′ W, 30°33′ N 88°51′ W. Federal agencies are required by Section 7 of the Endangered Species Act of 1973 to insure that their actions do not jeopardize the continued existence of Endangered species, and this requirement should be considered with respect to any actions within or near the area delineated above.

The Critical Habitat areas delineated below include all known breeding, summer feeding, and roosting sites of the Mississippi sandhill crane. Also included are the flight paths connecting the more important sites. At present these areas are the only ones that can be said with certainty to be necessary for the survival and recovery of the crane, and that can be specifically delineated as Critical Habitat. Should more precise information become available regarding other sites within the originally proposed zone, or should range expansions or reintroductions of the crane occur, the recognized Critical Habitat could be increased.

EFFECTS OF THE RULEMAKING

Most of the persons who commented on the proposal apparently were confused regarding the meaning and implications of a Critical Habitat designation. For example, many persons expressed concern that the designation would automatically halt or greatly restrict all human activities and development within the entire designated area. Many

seemed to think that Section 7 provisions would apply to the actions of all parties, not just Federal agencies. Perhaps most unfortunately, many persons apparently thought that the Fish and Wildlife Service could arbitrarily determine or not determine, enlarge or reduce a Critical Habitat area based on non-biological factors.

It should be realized that Critical Habitat is not created by a government agency; it already exists in nature, and in most cases has existed for countless centuries. All species of wildlife have their own Critical Habitat, a term which has been interpreted (40 FR 17764 as meaning habitat necessary to the normal needs or survival of a species. Although such habitat does exist, its precise location and perimeters are not generally known to the public and government agencies. The function of the Fish and Wildlife Service is to biologically delineate such habitat, with easily identified boundaries, so that other Federal agencies may conveniently refer to this information in following their responsibilities under Section 7. Although disagreements may arise regarding what habitat is actually necessary for a species, or how to most accurately delineate an area, the final determination must express a consensus of the best biological information that is available.

A Critical Habitat designation points out specific areas within the United States where Federal agencies may have to assess their actions relative to possible effects on Endangered species. This requirement itself is the only direct meaning of a Critical Habitat determination. No specific kinds of actions would be affected, regardless of the extent of the Critical Habitat, unless such actions actually could be considered detrimental to the species involved. For more information, please contact the "Proposed Provisions for Interagency Cooperation" in the FEDERAL REGISTER of January 26, 1977.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Office of Endangered Species in Washington, D.C. The assessment is the basis for a decision that the determinations of this rulemaking are not major Federal actions that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

FINAL RULEMAKING

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the Mississippi sandhill crane. The Director also has considered other information received by the Service, both prior to and subsequent to the publication of the proposed Critical Habitat determination in the FEDERAL REGISTER of September 3, 1975. Based on this review, the areas delineated below are determined to be Critical Habitat for the Mississippi sandhill crane.

This rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 884), and was prepared by Dr. Ronald M. Nowak, Office of Endangered Species.

NOTE.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 29, 1977.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, § 17.95(b), Part 17, Subpart I, Title 50 of the Code of Federal Regulations is amended by adding the following Critical Habitat description after the Critical Habitat description for the American peregrine falcon.

Subpart I—Interagency Cooperation

§ 17.95 Critical Habitat—Fish and Wildlife.

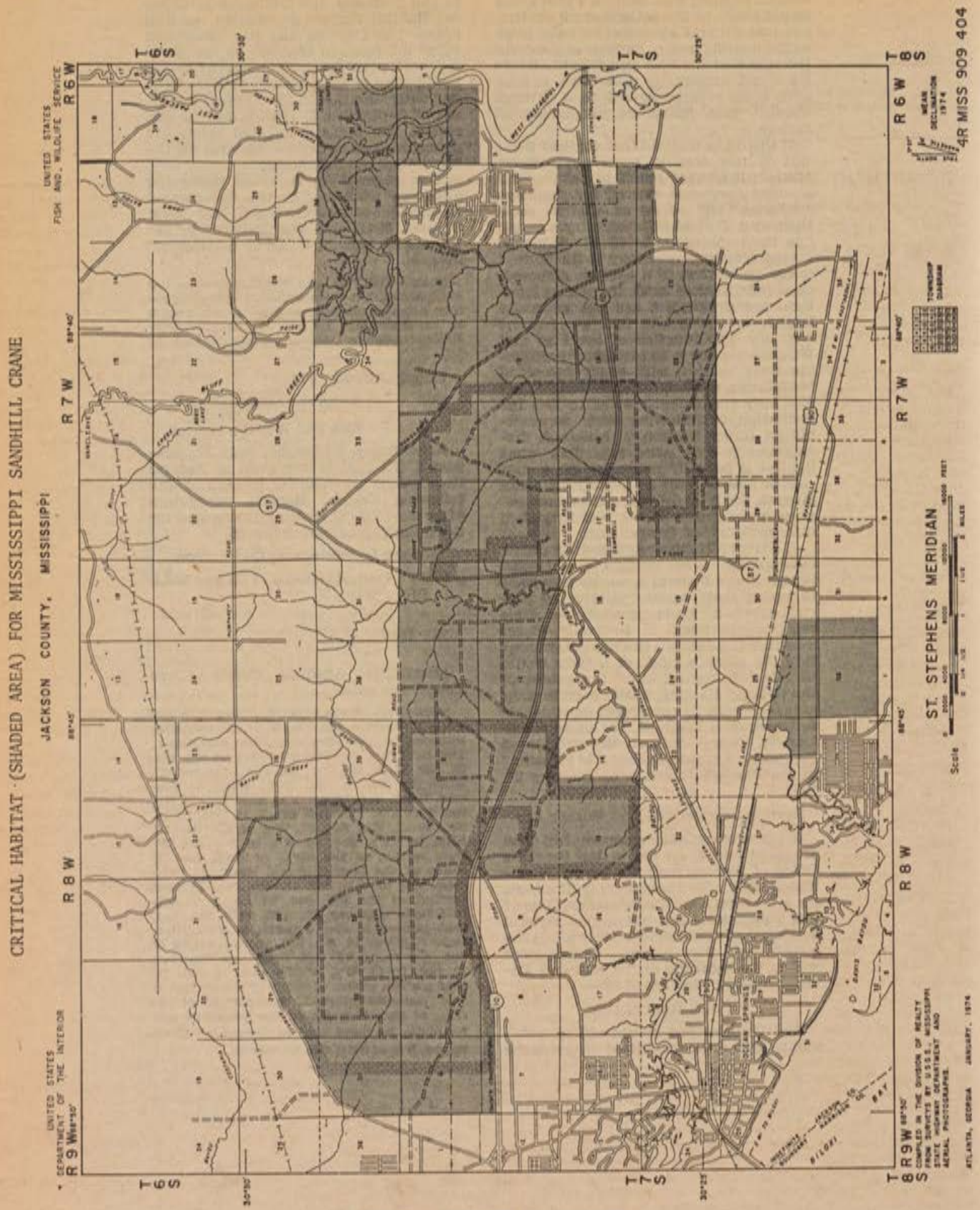
* * * * *

(b) Birds.

* * * * *

Mississippi Sandhill Crane (*Grus canadensis pulla*).

MISSISSIPPI. Areas of land, water, and airspace in Jackson County, with the following components (St. Stephens Base Meridian): T6S R6W Sec. 31; T6S R7W E½ of E½ Sec. 34, Sec. 35–36, S½ Sec. 38; T6S R8W Sec. 27, those portions of Sec. 28–31 south of Seaman Road, Sec. 32–34; T7S R6W N½ of N½ Sec. 3, Sec. 6; T7S R7W Sec. 2–11, Sec. 13–16, Sec. 20–22, W½ Sec. 23, W½ of E½ Sec. 23, NE¼ of NE¼ Sec. 23, N½ of N½ Sec. 24, that portion of the SW¼ of SW¼ Sec. 30 south of the Louisville and Nashville Railroad, W½ of W½ Sec. 31, W½ Sec. 37, that portion of the E½ Sec. 37 north of U.S. Interstate Highway 10; T7S R8W Sec. 1–3, that portion of Sec. 4 north of U.S. Interstate Highway 10, Sec. 5–6, those portions of Sec. 7–8 north of U.S. Interstate Highway 10, Sec. 10–12, W½ of W½ Sec. 14, Sec. 15, that portion of Sec. 25 south of the Louisville and Nashville Railroad, that portion of the SE¼ of Sec. 26 south of the Louisville and Nashville Railroad and southeast of Davis Bayou, N½ of NE¼ Sec. 35, Sec. 36.



[FR Doc.77-22722 Filed 8-5-77;8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Proposed Extension of Grade, Size, and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes an amendment which would extend the current minimum grade, size, and container requirements for shipments of fresh California Bartlett, Max-Red Bartlett, and Red Bartlett variety pears through July 31, 1978. These requirements are needed to provide for orderly marketing in the interest of producers and consumers.

DATES: Comments must be received on or before August 23, 1977. Proposed effective dates: September 1, 1977, through July 31, 1978.

ADDRESSES: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3545.

SUPPLEMENTARY INFORMATION: Pear Regulation 7 (42 FR 35973) currently in effect requires that shipments of fresh pears meet certain grade, size, and container requirements through August 31, 1977. This proposed amendment would continue these requirements for the period September 1, 1977, through July 31, 1978, as recommended by the Pear Commodity Committee, established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917). This marketing agreement and order regulates the handling of fresh pears, plums, and peaches grown in California, and is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Fresh shipments of California Bartlett pears from the 1977 crop have been estimated at 4,210 carlots by the Pear Commodity Committee, as compared with 4,159 carlots shipped in 1976, and 3,819 carlots shipped in 1975. Shipments of pears from the production area are currently underway.

The grade and size requirements are designed to permit shipment of ample supplies of fruit of acceptable grades and sizes in the interest of both growers and consumers. The container requirements are necessary to assure that the fruit contained therein is protected during transit, and that containers are properly marked as to variety. The proposed amendment is consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

The proposal is that § 917.445 Pear Regulation 7 (42 FR 35937) be amended to read as follows:

§ 917.445 Pear Regulation 7.

(a) During the period September 1, 1977, through July 31, 1978, no handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 85 percent by count, of the pears grading at least U.S. No. 1;

(2) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 150: *Provided*, That a handler may ship, during any day from any shipping point, a quantity of such pears which are smaller then the size known commercially as size 150 if (i) such smaller pears are not smaller than the size known commercially as size 165, and (ii) the quantity of such smaller pears shipped from such shipping point does not, at the end of any day during the aforesaid period, exceed 5.263 percent of such handler's total shipments of such pears, shipped from the same shipping point, which are not smaller than the size known commercially as size 150;

(3) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety; and

(4) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears in volume fill cartons (not packed in rows and not wrap packed) unless (i) such cartons are well filled with pears fairly uniform in size; (ii) there is an approved top pad in each carton that will cover the fruit with no more than ¼ inch between the pad and any side or end of the carton; and (iv) the top of the carton shall be securely fastened to the bottom: *Provided*, That 10 percent of the cartons in any lot may fail to meet the requirements of this paragraph.

(b) *Definitions.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(2) "Size known commercially as size 150" means a size of pear that will pack a standard pear box, packed in accordance with the specifications of a standard pack, with 150 pears and that a 12-pound random sample, representative of the size of the pears in the box or container, contains not more than 39 pears.

(3) "Size known commercially as size 165" means a size of pear that will pack a standard pear box, packed in accordance with the specifications of a standard pack, with 165 pears and that a 12-pound random sample, representative of the size of the pears in the box or container, contains not more than 43 pears.

(4) "Standard pear box" means the container so designated in Section 1380.9 of the Regulations of the California Department of Food and Agriculture.

(5) "U.S. No. 1", "U.S. Combination" and "standard pack" shall have the same meaning as when used in the U.S. Standards for Pears (Summer and Fall) 7 CFR 51.1260–51.1280.

(6) "Approved top pad" shall mean a pad of wood-type excelsior construction, fairly uniform in thickness, weighing at least 160 pounds per 1,000 square feet (e.g., an 11 inch by 17 inch pad will weigh at least 21 pounds per 100 pads) or an equivalent made of material other than wood excelsior approved by the committee.

Dated: August 3, 1977.

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

[FR Doc.77-22781 Filed 8-5-77;8:45 am]

[7 CFR Part 929]

HANDLING OF CRANBERRIES GROWN IN CERTAIN STATES

Allotment Transfers and Disposition of Growers Annual Allotment Certificate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would establish procedures governing the transfer of

unused allotment and cranberries among growers and the disposition of each grower's annual allotment certificate. The proposal is designed to keep the Cranberry Marketing Committee informed of transfers in connection with filing deficiencies in allotment or cranberries and to enable the committee to check compliance with regulations applicable to handlers of cranberries.

DATE: Comments must be received on or before August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3545.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 929.101 et seq.) currently in effect pursuant to the applicable provisions of the amended marketing agreement and Order No. 929, as amended (7 CFR Part 929). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposal to amend said rules and regulations was recommended by the Cranberry Marketing Committee established under the order as the agency to administer the terms and provisions thereof.

Section 929.49(c) of the order specifies, in part, that as a condition to a transfer of allotment or cranberries each grower or handler shall furnish a full report to the committee, including the names of the parties, the quantity involved in the transaction and other necessary information. This proposal would establish the procedure by which such information shall be furnished to the committee. The proposal is designed to keep the committee informed of transfers in connection with filling deficits in allotment or cranberries and to enable the committee to ascertain that no handler has handled cranberries in excess of a grower's annual allotment and any transferred allotment.

The proposal is to add a new section reading as follows:

§ 929.151 Allotment transfers and disposition of the Growers Annual Allotment Certificate.

(a) Growers who transfer or receive the transfer of cranberries or allotment to fill deficiencies pursuant to § 929.49(c) shall report the details of such transfer to the committee on CMC forms T3 through T6, as applicable, within 10 days of the effective date of such transfer.

(b) Growers may enter into an agreement with a handler or handlers as to the disposition of the grower's annual allotment. The terms of the agreement shall be contained on CMC form T7 or a similarly executed agreement acceptable to the committee, and shall include the following:

(i) The quantity of allotment available to the handler for transfer;

(ii) The effective date of the agreement; and

(iii) The signature of the grower and the handler or their authorized representatives.

Any transfer effected by the handler pursuant to this agreement shall be documented on committee forms and submitted to the committee within 10 days of the effective date of such transfer.

(c) Each grower shall submit to the committee his annual allotment certificate within 10 days following the completion of his harvest: *Provided*, That each grower may authorize a handler to submit the annual allotment certificate to the committee. Notification that the handler agrees to perform this service shall be provided to the committee and the terms of the agreement shall be contained on CMC for T7 or similarly executed agreement acceptable to the committee. Each handler shall submit the allotment certificate to the committee by January 15 of each year. Each allotment certificate submitted by the grower or his authorized handler shall show quantities of cranberries purchased by handlers and the dates on which such purchases were made. Each certificate shall be signed by the handler and indicate the date on which any transfers were submitted to the committee.

All persons who desire to submit written data, views, or arguments in connection with this proposal should file the same, in duplicate, with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than August 23, 1977. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: August 3, 1977.

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

[FR Doc.77-22782 Filed 8-5-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 211]

MANDATORY PETROLEUM ALLOCATION REGULATIONS

Proposed Amendments Clarifying Entitlements Treatment of Exchanges for the Strategic Petroleum Reserve

AGENCY: Federal Energy Administration.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Federal Energy Administration (FEA) proposes to adopt amendments to the domestic crude oil allocation (entitlements) program to clarify the entitlements treatment of exchanges or matching purchase and sales transactions which the Federal Government enters into in connection with the acquisition of crude oil for storage in the Strategic Petroleum Reserve (SPR). The proposed amendments would provide that refiners or firms other than refiners which enter into exchanges or matching purchase and sales transactions with the Federal Government for the delivery of crude oil for storage in the SPR would not earn entitlements for the delivery of that crude oil. In such cases, the entitlements would be earned by the refiner or other firm from which the Federal Government purchases crude oil for purposes of satisfying its obligation pursuant to the exchange or matching purchase and sale transaction.

DATES: Comments by August 18, 1977, 4:30 p.m.; Requests to speak by August 11, 1977, 4:30 p.m.; Hearing date: August 18, 1977, 9:30 a.m.

ADDRESSES: Comments and requests to speak to: Executive Communications, Room 3317, Federal Energy Administration, Box OL, Washington, D.C. 20461; Hearing Location: 12th and Pennsylvania Avenue, NW., Room 3000B, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Deanna Williams (FEA Reading Room), 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9161.

Allen Hoffard (Media Relations), 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833.

Michael E. Carosella (SPR Program Office), 1726 M Street NW., Room 330, Washington, D.C. 20461, 202-634-5500.

Douglas McIver (Entitlements Program Office), 2000 M Street NW., Room 6128I, Washington, D.C. 20461, 202-254-8660.

Michael Paige or Fred Wolgel (Office of General Counsel), 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9565 (Paige); 202-566-2454 (Wolgel).

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On April 25, 1977, FEA adopted amendments to the entitlements program which provide that any refiner or firm other than a refiner that sells imported crude oil to the United States Government for storage in the SPR shall receive entitlement issuances for those volumes delivered and accepted by the United States Government for storage in the SPR (42 FR 21761, April 29, 1977). The value of the entitlement benefits received by refiners or other firms for SPR sales serves to reduce the Government's payment obligation for the imported

crude oil purchased by the amount of the benefits earned. Refiners obtain entitlement issuances for SPR sales by adjusting the volume of their crude oil runs to stills to include the actual volumes of imported crude oil delivered to and accepted for delivery by the United States Government for storage in the SPR in the month following the month in which delivery was made to the Government. Firms other than refiners receive entitlement issuances for sales of imported crude oil to the Federal Government on the same basis as is provided for refiners.

Concurrently with the April 25, 1977, final rule, FEA issued a notice of proposed rulemaking setting forth conforming amendments to the Mandatory Petroleum Price Regulations, 10 CFR Part 212, for sales of crude oil to the SPR, and solicited further comments on the issues pertaining to the modification to the entitlements program for sales of domestic crude oil for the SPR (42 FR 21789, April 29, 1977). On May 27, 1977, FEA issued the conforming amendments to the price regulations to provide for sales of both domestic and imported crude oil to the SPR (42 FR 27908, June 1, 1977). FEA is currently evaluating the comments received with respect to modification of the entitlements program to permit purchases of domestic crude oil for the SPR.

Title I, Part B of the Energy Policy and Conservation Act, Pub. L. 94–163 (EPCA) requires FEA to acquire up to one billion barrels of crude oil and refined petroleum products for storage in the SPR. The first amendment to the SPR Plan, effective June 20, 1977, requires FEA to store 250 million barrels of crude oil in the SPR by December 22, 1978. To meet this goal, FEA has already commenced crude oil acquisition activities.

Section 160 of the EPCA permits the Administrator of FEA to acquire crude oil for the SPR by "purchase, *exchange* or otherwise" (emphasis added). In order to obtain deliveries of imported crude oil for the SPR as efficiently and inexpensively as possible, it has become necessary to enter into exchange agreements or matching purchase and sales transactions with refiners or other firms. For example, because the Federal Government will make use of commercial terminals to receive shipments of imported crude oil for the SPR, if a SPR shipment should arrive at the terminal earlier than scheduled, it may be less expensive for the Government to enter into an exchange agreement with regard to the shipment rather than to incur demurrage charges. In such a situation, the Federal Government may prefer to enter into an agreement to exchange the early arriving shipment, purchased from one firm, for a later arriving shipment, title to which is in a second firm. Similarly, if unanticipated opportunities for SPR site fill should develop, crude oil exchanges may offer the best and possibly the only means of taking advantage of such opportunities. In such instances, the Government may find it advisable to accept a shipment of crude oil and agree to subsequently reimburse the supplier in kind. Beacuse of scheduling and delivery difficulties such as those described above, such exchanges are necessary in order to facilitate the acquisition of crude oil for the SPR.

When the Federal Government enters into an exchange agreement with a refiner or other firm, the Government must purchase an approximately equal volume of crude oil from another firm for delivery to the first firm pursuant to its obligation under the exchange. Because the first firm actually delivers crude oil to the Government, there has been uncertainty among refiners and other firms as to which firm would receive entitlement issuances for sales of crude oil to the SPR.

II. Proposed Amendments

To clarify the entitlements treatment of exchanges associated with SPR acquisitions, FEA is proposing for public comment in this notice an amendment to § 211.67(d)(6) to provide that a refiner would not earn entitlements for delivery of crude oil to the Federal Government for storage in the SPR, where that delivery is part of an exchange or part of a matching purchase and sale transaction which has the same effect as such an exchange. In such cases, the entitlements would be earned by the refiner or other firm from which the Government purchases crude oil for purposes of satisfying its obligation pursuant to the exchange or matching purchase and sale transaction. The entitlement issuances to such refiner or other firm would be on the same basis as those with respect to refiners or other firms from which imported crude oil is acquired for storage in the SPR. Section 211.67(d)(7) also would be amended to provide the same entitlements treatment for firms other than refiners that enter into exchange agreements or matching purchase and sales transactions with the Federal Government. The proposed amendments would not affect the treatment of crude oil exchanges or matching purchase and sales transactions under § 211.67(g).

An example of the application of the proposed amendments is as follows: The Government will contract to receive barrels of crude oil delivered to the SPR in the month of July from firm A, in exchange for which the Government will deliver 100 barrels of crude oil to firm A in September. In September, the Federal Government purchases 100 barrels of crude oil from firm B to be delivered to firm A and thus fulfill the Government's obligation under the exchange agreement. Under the amendments proposed today, firm B would earn entitlements for delivering 100 barrels of crude oil to the Government for redelivery to firm A on the same basis as if the imported crude oil were delivered to the Federal Government for storage in the SPR. Thus, firm B's September sale to the Government would be reported in October as an adjustment to firm B's August crude oil runs to stills.

III. Written Comment and Public Hearing Procedure

A. Written Comments

Interested persons are invited to submit data, views or arguments with respect to these proposed amendments to Executive Communications, FEA, Box OL, Washington, D.C. 20461. Comments should be identified on the outside envelope and on the document with the designation "Clarifying Amendmens on Entitlements Treatment of Exchanges for the Strategic Petroleum Reserve." Fifteen copies should be submitted. All comments received by 4:30 p.m., e.s.t., August 18, 1977, and all relevant information, will be considered by FEA.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing in accordance with the procedures stated in 10 CFR 205.9(f). The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. Public Hearing

1. *Request Procedure.* A public hearing on the subject matter of this notice will be held at the time and place indicated in the dates section of this preamble. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the next business day following the first day of the hearing.

Any person who has an interest in the proposed amendments, or who is a representative of a group or class of persons that has an interest in the proposed amendments, may make a written request for an opportunity to make oral presentation. Requests to testify at the public hearing should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., August 11, 1977. Such requests may be hand delivered to Room 3317, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why he or she is a proper representative of a group or class of persons that has such an interest, and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through the day before the hearing.

Each person selected to be heard will be so notified by the FEA before 4:30 p.m., e.s.t., August 15, 1977 and must submit 50 copies of his or her statement to Executive Communications Room 3317, 12th and Pennsylvania Avenue NW., Washington, D.C., before 4:30 p.m., e.s.t., on August 17, 1977.

2. *Conduct of the Hearing.* The FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of

each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearing will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be the subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing, to Executive Communications, FEA, Box OL before 4:30 p.m., e.s.t., August 16, 1977. Any person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

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

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this proposal has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-163, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., August 3, 1977.

ERIC J. FYGI,
Acting General Counsel.

Section 211.67 is amended by adding the following at the ends of the first sentences of subparagraphs (6) and (7) of paragraph (d):

§ 211.67 Allocation of domestic crude oil.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(6) * * *; and, *Provided further*, That, in any case where the United States Government acquires imported crude oil for storage in the Strategic Petroleum Reserve pursuant to an exchange or pursuant to a matching purchase and sale transaction which has the same effect as such an exchange, the refiner from which that imported crude oil is acquired for storage in the Strategic Petroleum Reserve shall not be eligible for any entitlement issuances under this subparagraph (6), but a refiner or firm other than a refiner from which the United States Government acquires imported crude oil for purposes of satisfying its obligation pursuant to the aforementioned exchange or matching purchase and sale shall be eligible for entitlement issuances on the same basis as refiners from which imported crude oil is acquired for storage in the Strategic Petroleum Reserve.

(7) * * *; and, *Provided further*, That, in any case where the United States Government acquires imported crude oil for storage in the Strategic Petroleum Reserve pursuant to an exchange or pursuant to a matching purchase and sale transaction which has the same effect as such an exchange, the firm from which that imported crude oil is acquired for storage in the Strategic Petroleum Reserve shall not be eligible for any entitlement issuances under this subparagraph (7), but a refiner or firm other than a refiner from which the United States Government acquires imported crude oil for purposes of satisfying its obligation pursuant to the aforementioned exchange or matching purchase and sale shall be eligible for entitlement issuances on the same basis as refiners from which imported crude oil is acquired for storage in the Strategic Petroleum Reserve.

[FR Doc.77-22771 Filed 8-5-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 107]

SMALL BUSINESS INVESTMENT COMPANIES

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The proposed amendment (1) authorizes a Licensee to incur reasonably necessary expenditures which, together with its total investment attributable to such assets, may not exceed 20 percent of its Private Capital ("overline limit"), to maintain, preserve, or (subject to prior SBA approval) make improvements designed to render assets in liquidation saleable, pending disposition, and (2) in addition to the foregoing, permits require expenditures to be made for prior mortgage interest and principal payments, taxes, and necessary insurance coverage allocable to such assets in an aggregate amount which, together with Licensee's total investment attributable thereto, does not exceed 35 percent of its Private Capital.

Where additional Financing is provided to a Portfolio concern over which temporary Control has been taken to protect a Licensee's original investment, the proposed amendment would require the plan of divestiture already approved by SBA to be resubmitted only where it requires significant changes.

It is further proposed that the existing requirement that Licensees maintain fidelity insurance in the minimum amount of $25,000 be rescinded.

DATES: Comments must be received on on before September 7, 1977, in triplicate, by the Associate Administrator for Finance and Investment, Small Business Administration, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Peter F. McNeish, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, telephone 202-653-6584.

Notice is hereby given that pursuant to the authority contained in section 308 of the Small Business Investment Act of 1958, as amended, it is proposed to amend, as set forth below, §§ 107.810, 107.901(f), and 107.1104 of Part 107, Chapter I, Title 13 of the Code of Federal Regulations.

1. Section 107.810 would be amended to read as follows:

§ 107.810 Assets in liquidation.

(a) A Licensee shall dispose of assets acquired in total or partial liquidation of a Portfolio asset, within a reasonable period of time.

(b) (1) A Licensee may incur reasonably necessary expenditures for maintenance and preservation of such assets, and

(2) A Licensee may, subject to prior written SBA approval, incur reasonably necessary expenditures for improvements to render such assets saleable: *Provided, however*, That aggregate expenditures made pursuant to paragraphs (a) and (b) of this section plus Licensee's total investment attributable to such assets, shall not exceed its overline limit under § 107.301(d), except as specifically approved in writing by SBA.

(3) In addition to the amounts authorized by paragraphs (a) and (b) of this section, a Licensee may make the

following required expenditures allocable to such assets in an aggregate amount which, together with its total investment attributable thereto, and its expenditures pursuant to paragraphs (a) and (b) of this section do not exceed 35 percent of its Private Capital, except as specifically approved by writing by SBA: (i) Prior mortgage interest and principal payments, (ii) taxes and (iii) necessary insurance coverage.

(c) Application for SBA approval under paragraphs (b)(2) and (b)(3) of this section shall specify all expenses estimated to be necessary pending disposal of the assets.

2. Section 107.901(f) would be amended to read as follows:

§ 107.901 Control of small concern.

* * * * *

(f) A Licensee which has assumed Control of a Small Concern may later provide additional Financing, without an exemption under § 107.1004(b)(1), and shall within 30 days resubmit its divestiture plan for SBA approval only where the additional Financing requires significant changes in such SBA-approved plan on file in order to effect divestiture of Control.

3. Section 107.1104 (Fidelity insurance) would be repealed:

§ 107.1104 [Reserved]

APPENDIX—[AMENDED]

4. Subdivision X of Appendix A—Audit Guide for Small Business Investment Companies, dealing with fidelity bonds, would be rescinded.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 1, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-22790 Filed 8-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 77-NE-13]

CONTROL ZONE AND TRANSITION AREA [1]

Alteration of Control Zone and 700-Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to alter the description of the control zone and 700-foot transition area at Burlington International Airport, Burlington, Vermont. This alteration is needed to provide controlled airspace for aircraft executing revised VOR and radar standard instrument approach procedures to Runway 1 at the airport. This action will enlarge the control zone and transition area.

DATE: Comments must be received on or before September 2, 1977.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 77-NE-13, 12 New England Executive Park, Burlington, Massachusetts 01803.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:

Richard G. Carlson, Operations Procedures and Airspace Branch, ANE-536, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone 617-273-7285.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking process 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 Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 77-NE-13, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received on or before September 2, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this Notice of Proposed Rule Making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering amending Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR PART 71) to alter the description of the Burlington, Vermont, control zone and 700-foot transition area serving the Burlington International Airport, Burlington, Vermont. This alteration will provide controlled airspace for aircraft executing revised VOR and radar standard instrument approach procedures to Runway 1 at the Burlington International Airport, Burlington, Vermont. The intended effect of this action is to insure separation of aircraft using these approach procedures in instrument weather conditions, and other aircraft operating under visual conditions. The alteration would be reflected on appropriate aeronautical charts and maps.

DRAFTING INFORMATION

The principal authors of this document are Richard G. Carlson, Air Traffic Division, New England Region, and George L. Thompson, Associate Regional Counsel, New England Region.

THE PROPOSED AMENDMENT

Accordingly, the FAA proposes to amend Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations as follows:

1. In § 71.171 of Part 71 (42 FR 440), the following control zone is amended to read as follows:

§ 71.171 [Amended]

BURLINGTON, VERMONT, CONTROL ZONE

"Within a 7-mile radius of the center, (lat. 44°28'17" N., long. 73°19'13" W), of Burlington International Airport, Burlington, Vermont; within 2.5 miles each side of Runway 33, extending from the 7-mile radius zone to 8 miles southeast of the runway end; within 3 miles each side of the Burlington, Vermont VORTAC 201° radial, extending from the 7-mile radius zone to 8.5 miles southwest of the VORTAC."

2. In § 71.181 of Part 71 (42 FR 440), the following 700-foot transition area is amended to read as follows:

§ 71.181 [Amended]

BURLINGTON, VERMONT, 700-FOOT TRANSITION AREA

"That airspace extending upward from 700 feet above the surface within a 14-mile radius of the center, (lat. 44°28'17" N., long. 73°19'13" W), of Burlington International Airport, Burlington, Vermont; within 9.5 miles northeast and 4.5 miles southwest of the Burlington ILS northwest localizer course, extending from the 14-mile radius area to 18.5 miles northwest of the Burlington LOM; within 3.5 miles each side of the Burlington, Vermont VORTAC 201° radial, extending from the 14-mile radius area to 12 miles southwest of the VORTAC; excluding that airspace that coincides with Plattsburgh, New York and Highgate, Vermont transition areas."

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

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

[1] Map filed as part of original.

Issued in Burlington, Massachusetts, on July 22, 1977.

WILLIAM E. CROSBY,
Acting Director,
New England Region.

[FR Doc.77-22697 Filed 8-5-77;8:45 am]

[14 CFR Part 71]

[Docket No. 77-SO-32]

TRANSITION AREA, COLUMBIA, MISSISSIPPI

Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: A public use instrument approach procedure is being developed for the Columbia-Marion County, Mississippi, Airport, and additional controlled airspace is required for containment of IFR operations. This proposed rule will designate the Columbia, Mississippi, transition area and will lower the base of controlled airspace in the vicinity of the airport from 1200 to 700 feet to accommodate the anticipated IFR operations.

DATES: Comments must be received on or before: September 6, 1977.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT:

William F. Herring, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320. Telephone 404-763-7947.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before September 6, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the public, regulatory docket.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the 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 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 the Columbia, Mississippi, 700-foot transition area. This action will provide additional controlled airspace to accommodate aircraft performing IFR operations at Columbia-Marion County Airport. If the proposed designation is acceptable, the airport operating status will be changed from VFR to IFR.

DRAFTING INFORMATION

The principal authors of this document are William F. Herring, Airspace and Procedures Branch, Air Traffic Division, and Eddie L. Thomas, Office of Regional Counsel, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

COLUMBIA, MISSISSIPPI

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Columbia-Marion County Airport (Lat. 31°17'45" N., Long. 89°48'50" W.)

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

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in East Point, Ga., on July 28, 1977.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.77-22489 Filed 8-5-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 77-WE-19]

TRANSITION AREA, FORT HUACHUCA, ARIZONA

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Fort Huachuca, Arizona, 700 foot transition area. This proposal is necessary in order to provide controlled airspace for radar vector procedures north of Fort Huachuca, Arizona.

DATES: Comments must be received on or before August 31, 1977.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Airspace and Procedures Branch, AWE-530, 15000 Aviation Boulevard, Lawndale, California 90261.

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:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the Airspace Docket Number and be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. All communications received on or before August 31, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments 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 notice of proposed rulemaking (NPRM) by submitting a request to Federal Aviation Administration, Chief, Airspace and Aviation Boulevard, Lawndale, Califor- Procedures Branch, AWE-530, 1500 nia 90261, or by calling 213-536-6180. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSALS

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 700 foot transition area at Fort Hauchuca, Arizona. The present 700 foot transition area was found to be inadequate to provide controlled airspace for radar vector procedures north of Fort Hauchuca.

DRAFTING INFORMATION

The principal authors of this document are Thomas W. Binczak, Air Traffic Division and DeWitte T. Lawson, Jr., Esquire, Regional Counsel, Western Region.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.181 [Amended]

FORT HAUCHUCA, ARIZONA

Following "* * * extending clockwise from a line 5 miles * * *"; delete "* * * northwest of and parallel to the 033° radial * * *" and substitute therein: * * * "west of and parallel to the 357° radial" * * *

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, Calif., on July 20, 1977.

FRANK HAPPY,
Acting Deputy Director,
Western Region.

[FR Doc.77-22490 Filed 8-5-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 441]

MOBILE HOME SALES AND SERVICE

Modification of Designated Issues Concerning Proposed Trade Regulation Rules; Extension of Time for Comments; Deadline for Notifications of Interest

Correction

In FR Doc. 77-21727, appearing at page 38390, in the issue of Thursday, July 28, 1977, make the following changes:

On page 39391, in the second column: (1) In the second paragraph, which begins with the number "22", in the fourth line, the word "arisoing" should read "arising"; (2) in the third paragraph, which begins with the number "23", in the fourth line, the word "or" should read "of"; (3) in the sixth paragraph, which begins with the number "18", in the last line, the word "two" should read "tow".

On page 38392, in the first column, in the fifth paragraph which begins with the number "10", the sentence should end with a question mark. On the same page, in the second column, the second paragraph, number "13(b)", in the fourth line, the word "mantain" should read "maintain".

[16 CFR Parts 801, 802 and 803]

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

Premerger Notification; Reporting and Waiting Period Requirements

Correction

In FR Doc. 77-21767 appearing on page 39040 in the issue for Monday, August 1, 1977, on page 39041 in the 3rd column, the 17th and the last entries in the table should be corrected to read as follows:

As originally proposed, Section:	*As revised, section*
* * * * *	
802.25	802.32
* * * * *	
803.35	803.11

On page 39043, in the first column, the 18th line should read, "* * * such acquisitions may, if consumated, * * *".

On page 39046, in the 2nd column, the 3rd paragraph, the 15th line should read, "* * * exemptions do not apply. These broad * * *".

On page 39048, in paragraph (2), the 5th line "* * * (foun-) dation, fund, institution, society, union, * * *".

On page 39051, the "Example" which appears in § 801.21 should be deleted and included in § 801.20.

On page 39053, § 802.22 (b) (1) should read:

§ 802.22 Acquisitions of voting securities recrossing same notification threshold.

* * * * *

(b) * * *

(1) The acquiring person and all other persons required by this section and these rules to file notification previously filed notification with respect to an earlier acquisition of voting securities of the same issuer;

Also, on page 39053 in the "Example" appearing after § 802.22 (b)(3), that portion beginning with the 6th line should read:

"* * * level. Thus, if in example No. 1 to § 802.21, A had disposed of some voting securities so that it held less than 15% and $15 million of the voting securities of B, * * *"

On page 39054, § 802.51 (a) (1) should read:

§ 802.51 Acquisitions involving only foreign persons.

(a) * * *

(1) The aggregate annual sales of the acquiring and acquired persons in or into the United States or the aggregate total assets of the acquiring and acquired persons located in the United States (other than assets held solely for investment purposes) exceeded $100 million; and

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[20 CFR Part 405]

[Reg. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Payment Under Medicare for Items and Services Rendered by Indian Health Service Hospitals and Skilled Nursing Facilities and by Certain Veterans' Administration Hospitals

AGENCY: Health Care Financing Administration, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed amendments would revise the Medicare regulations to permit payment for items and services rendered Medicare patients by hospitals and skilled nursing facilities of the Indian Health Service (IHS) and by certain Veterans' Administration (VA) hospitals. With certain exceptions, IHS hospitals and skilled nursing facilities and VA hospitals were previously excluded from receiving Medicare payments under the general prohibition against Medicare payments to Federal providers.

The amendments incorporate the provisions of section 401 of the Indian Health Care Improvement Act (Pub. L. 94-437) and section 115(a) of the Veterans Omnibus Health Care Act (Pub. L. 94-581) into the regulations. For IHS facilities the change will permit them to receive Medicare reimbursement for services to Medicare beneficiaries and use that reimbursement to improve their facilities. For VA hospitals and the non-VA hospitals with which VA hospitals have agreements to treat certain types of patients, the change will permit extension by the Medicare program of coverage to a wider range of those services furnished in VA hospitals than previously permitted.

DATES: Consideration will be given to written comments or suggestions received on or before September 22, 1977.

When commenting please refer to BHI-1-P.

Agencies and organizations are requested to submit their comments in duplicate.

Comments will be available for public inspection, beginning approximately 2 weeks after publication, in room 5225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-245-0950).

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Mr. John B. Russell, Bureau of Health Insurance, Health Care Financing Administration, Telephone 301-594-8260.

SUPPLEMENTARY INFORMATION: The proposed amendments incorporate into the Medicare regulations provisions of section 401 of Pub. L. 94-437 (the Indian Health Care Improvement Act) and section 115(a) of Pub. L. 94-581 (the Veterans Omnibus Health Care Act).

The Medicare law (title XVIII of the Social Security Act (42 U.S.C. 1395)) generally prohibits payment (other than for emergency services) (1) to any Federal provider of services except providers which have been determined to be providing services to the general public as community institutions or agencies, (2) to any provider of services for items or

services which the provider is obligated under a law of the United States or contract with the United States to render at public expense, and (3) for items or services which are paid for directly or indirectly by a governmental entity. Therefore, prior to enactment of Pub. L. 94-437, payment could not be made under Medicare for services (other than for emergency services) rendered by Indian Health Service (IHS) hospitals and skilled nursing facilities (SNF's) except in the case of certain hospitals in Alaska that had been determined to be serving the general public as community institutions. Likewise, prior to the enactment of Pub. L. 94-581, payment could not be made under Medicare for services (other than for emergency services) rendered by Veterans' Administration (VA) hospitals except for the treatment of end-stage renal disease by certain VA hospitals that were determined to be serving the general public as community institutions for purposes of end-stage renal disease treatment only. The exception for end-stage renal disease treatment was pursuant to a Memorandum of Understanding between the Admnistrator of Veterans' Affairs and the Secretary of Health, Education, and Welfare.

Section 401 of Pub. L. 94-437 (which amended 42 U.S.C. 1395f and 1395n and added 1395qq), by permitting payment to be made for services rendered Indians by IHS hospitals and SNF's, notwithstanding their status as Federal providers, eliminates a technical impediment to participation in Medicare by IHS facilities. Medicare payments would be made to IHS hospitals and SNF's under this amendment, whether or not the Medicare beneficiary who receives the services would otherwise be entitled to free care from the IHS.

Section 115(a) of Pub. L. 94-581 (which amended 38 U.S.C. 5053(d)), by permitting Medicare payment to certain VA hospitals and non-VA hospitals with which they have agreements to share facilities, makes it possible to extend Medicare coverage of services rendered in VA hospitals to services other than end-stage renal disease services. At the same time this will encourage the sharing of scarce medical resources between VA and non-VA health care facilities. The amendments would require that the non-VA hospital be participating in the Medicare program and that the Medicare beneficiary treated in the VA hospital not be a veteran eligible for care from the VA.

The proposed amendments are to be issued under the authority contained in sections 1102, 1814 (c) and (d), 1835(d), 1862(a)(3), 1871, and 1880 of the Social Security Act; 49 Stat. 647, as amended, 79 Stat. 294, as amended, 79 Stat. 303, as amended, 79 Stat. 325, as amended, 79 Stat. 331; 90 Stat. 1408, 42 U.S.C. 1302, 1395f (c) and (d), 1395n(d), 1395y (a)(3), 1395hh, 1395qq; Pub. L. 94-581, 90 Stat. 2842.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

NOTE.—The Health Care Financing Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: June 6, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: July 30, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. Section 405.101 is amended by revising the material in paragraph (a) which precedes paragraph (a)(1) to read as follows:

§ 405.101 Hospital insurance benefits; general.

(a) An individual who meets the conditions for entitlement to hospital insurance benefits provided under Part A of title XVIII of the Act is eligible to have payment made on his behalf, or to him (for certain hospital services), subject to the conditions, limitations, and exclusions set out in this part and in the Act, for:

* * * * *

2. Sections 405.154 and 405.155 are revoked and reserved.

§ 405.154 [Reserved]

§ 405.155 [Reserved]

3. Section 405.252 is amended by revising the material preceding paragraph (a) and by revoking and reserving paragraphs (b) and (c) to read as follows:

§ 405.252 Conditions prohibiting payment of benefits.

In addition to any other limitation, condition, or exclusion set out in this part or in the Act, payment of supplementary medical insurance benefits may not be made under the following circumstances:

* * * * *

(b) [Reserved]

(c) [Reserved]

* * * * *

4. Sections 405.311a and 405.311b are added to read as follows:

§ 405.311a Nonreimbursable expenses; items or services furnished by a Federal provider of services or other Federal agency.

(a) Payment may not be made under title XVIII of the Act for expenses incurred for any items or services that are furnished by a Federal provider of services or other Federal agency, except that:

(1) Payment may be made for emer-

gency hospital services where the conditions in § 405.152 or § 405.249 are met;

(2) Payment may be made to a participating Federal provider which has been determined to be providing services to the public generally as a community institution or agency; and

(3) Payment may be made to participating hospitals and skilled nursing facilities of the Indian Health Service, notwithstanding § 405.311.

(b) For purpose of paragraph (a)(2) of this section, Veterans' Administration (VA) hospitals which have contracts or agreements with participating non-VA hospitals pursuant to 38 U.S.C. 5053(d) are considered community institutions with respect to items and services furnished pursuant to those contracts or agreements. Payment may be made, in accordance with such contracts or agreements either to the VA hospital or to the non-VA hospital, for items and services furnished to individuals who are not veterans eligible for care from the Veterans' Administration.

§ 405.311b Nonreimbursable expenses; items or services which a provider or other person is obligated to furnish at public expense under a law of, or contract with, the United States.

Payment may not be made to any provider of services or other person (except a hospital or skilled nursing facility of the Indian Health Service) for items or services which such provider or person is obligated by a law of, or contract with, the United States to furnish at public expense.

5. Section 405.312 is amended by revising paragraph (e) to read as follows:

§ 405.312 Nonreimbursable expenses; items or services paid for by governmental entity.

* * * * *

(e) Payment may be made to participating hospitals and skilled nursing facilities of the Indian Health Service in accordance with §§ 405.311a and 405.311b.

* * * * *

[FR Doc.77-22788 Filed 8-5-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 301, 404]

[LR-295-76]

INCOME TAX RETURN PREPARERS

Public Hearing on Proposed Regulations

On page iii of the issue of Wednesday, August 3, 1977, under Highlights, in the last line of the eighth entry, the date was incorrect. For the convenience of the reader, the Highlight entry is being reprinted in its entirety:

INCOME TAX

Treasury/IRS proposes regulations relating to persons who prepare for compensation income tax returns and claims for refunds and announces public hearing on proposed regulations (2 documents); comments by 9-2-77; public hearing on 9-19-77..... **39227, 39233**

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 70a]

PROTECTION OF INDIVIDUAL PRIVACY RECORDS

Proposed Amendment of Rules

AGENCY: Office of the Secretary, Labor Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to Department of Labor regulations on privacy to correct or clarify systems of records which are exempted under section 3 (j) and (k) of the Privacy Act and to add exemptions for three new systems of records.

DATE: Comments may be submitted until September 7, 1977.

ADDRESS: Send comments to Mr. Seth Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, Room N2428, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Sofia P. Petters (202-523-8065).

SUPPLEMENTARY INFORMATION: In FR Doc. 77-2873, published in the FEDERAL REGISTER (42 FR 6105) of February 1, 1977, the Department of Labor published a notice of adopted rulemaking. Notice is hereby given that the Secretary of Labor proposes to amend 29 CFR Part 70a by amending the exemption rule for systems of records identified as:

DOL-LMSA-1: LMSA index cards and case files.
LMSA-4: PWBP—Division of Enforcement and Special Investigation Staff: Case files.
LMSA-16: Investigatory files—Special Investigation Staff.
OASAM-3: General investigation file.

In the published notice for the exemption of DOL/LMSA-1, certain lines were omitted as were the notices for exemptions for DOL/LMSA-4 and 16. Further, in order to avoid possible confusion, the Secretary proposes to amend the rules by publishing the systems notice for the general exemptions under sec. 3(j) separately from those of the specific exemptions under sec. (k). The Secretary also proposes to amend the exemption rule to include three new systems identified as DOL/ETA-18: Analysis of Delayed and Never Filers for Unemployment Insurance, DOL/ETA-19: Impact of Disqualification Provisions of State Unemployment Insurance Laws, and DOL/LMSA-17: Investigatory Files—PWBP, Division of Enforcement. DOL/ETA-18 and 19 are statistical records maintained by contractors, ABT Associates, Inc., Cambridge, Mass., and Stanford Research Institute, Menlo Park, Calif., under a research study contract with the Employment and Training Administration. The purpose of the study is to collect data from state agencies and individuals for the preparation of reports under section 906 of the Social Security Act, to determine the extent of and the reasons for delayed filing or never filing for unemployment benefits, and to determine the impact of the disqualification provisions of state unemployment insurance laws. The records will be used solely for statistical purposes and no information from the system of records will be used in making determinations about identifiable individuals. Personal identifying information will be destroyed after all necessary cross references have been accomplished. The contractors will furnish the Federal agency with statistical information without personal identifiers.

DOL/LMSA-17 is comprised of investigatory files formerly associated with and published as a part of DOL/LMSA-16: Special Investigations File. These records have been segregated and are maintained in two locations under different systems managers. These records have not changed their character as investigatory files and continue to be exempted under subsections (j)(2) and (k)(2) of the Act.

This amendment is proposed under the authority of the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a.

Signed at Washington, D.C., this 28th day of July 1977.

RAY MARSHALL,
Secretary of Labor.

Section 70a.13 of Title 29 of the Code of Federal Regulations is amended as follows:

§ 70a.13 Exemptions.

(a) * * *

* * * * *

(5) The Department of Labor has published notice of intention to exempt the following record systems under the general exemption:

(i) DOL/LMSA-1: LMSE Index Cards and Case Files, Division of Enforcement.

(A) *Purpose.* The information contained in the system of records primarily relates to activities carried out under the Labor-Management Reporting and Disclosure Act of 1959 and related statutes and executive orders. Disclosure of information would substantially compromise the effectiveness of the Division's

investigations. Knowledge of such investigations would enable subjects to take action to prevent detection, conceal evidence or escape prosecution. Disclosure of information could lead to the intimidation of, or harm to, informants, witnesses and their families; and could jeopardize the well-being of investigative personnel or their families.

(B) *Exemption.* Under the authority of subsection (j)(2) of 5 U.S.C. 552a, DOL/LMSA-1 is exempted from the provisions of 5 U.S.C. 552a, except for the requirements of subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the Act.

(ii) DOL/LMSA-4: PWBP, Division of Enforcement and Special Investigations Staff Case Files. Criminal Law Enforcement.

(A) *Purpose.* The information contained in the system of records relates to activities under the Welfare and Pension Plan Disclosure Act, Title I of the Employee Retirement Income Security Act of 1974 and related statutes and executive orders. The reasons for the exemption are the same as those set forth in paragraph (a)(5)(i)(A) of this section which are hereby incorporated by reference.

(B) *Exemption.* Under the authority of subsection (j)(2) of 5 U.S.C. 552a, DOL/LMSA-4 is exempted from the provisions (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the Act.

(iii) DOL/LFSA-16: Investigatory Files—Special Investigation Staff; Criminal Law Enforcement.

(A) *Purpose.* The information contained in the system of records relates to activities under the Welfare & Pension Plan Disclosure Act, Title I of the Employee Retirement Income Security Act of 174 and related statutes and executive orders. The reasons for the exemption are the same as those set forth in paragraph (a)(5)(i)(A) of this section which are hereby incorporated by reference.

(B) *Exemption.* Under the authority of subsection (j)(2) of 5 U.S.C. 552a, DOL/LMSA-16 is exempted from the provisions of 5 U.S.C. 552a, except for the requirements of subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the Act.

(iv) DOL/LMSA-17: Investigatory Files—PWBP, Division of Enforcement; Criminal Law Enforcement.

(A) *Purpose.* The information contained in the system of records relates to activities under the Welfare and Pension Plan Disclosure Act and the Employee Retirement Income Security Act of 1974. The reasons for the exemption are the same as those set forth in paragraph (a)(5)(i)(A) of the section which are hereby incorporated by reference.

(B) *Exemption.* Under the authority of subsection (j)(2) of 5 U.S.C. 552a, DOL/LMSA-17 is exempted from the provisions of 5 U.S.C. 552a, except for the requirements of subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the Act.

(v) DOL/OASAM-3: General Investigations File.

(A) *Purpose.* Information contained in the system of records relates to the enforcement of various criminal laws. The reasons for the exemption are the same as those set forth in paragraph (a)(5)(i)(A) of this subsection which are hereby incorporated by reference.

(B) *Exemption.* Under the authority of subsection (j)(2) of 5 U.S.C. 552a, DOL/OASAM-3 is exempted from the provisions of 5 U.S.C. 552a, except for the requirements of subsection (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the Act.

(b) *Special exemptions.*

* * * * *

(2) * * *

* * * * *

(iii) * * *

(A) *Purpose.* DOL/ETA-18, Analysis of Delayed and Never Filers for Unemployment Insurance; and DOL/ETA-19, Impact of Disqualification Provisions of State Unemployment Insurance Laws. These systems of records contain personal information furnished by individuals and state unemployment compensation agencies for the purpose of a study required by section 906 of the Social Security Act. The records are maintained by the contractors only until all pertinent cross-references have been completed. Data will be transmitted to the Employment and Training Administration in statistical form only without personal identifiers. The agency will not use the data to make any determinations about individuals. Imposing the procedural requirements of the Privacy Act for access to the records will only impede the progress of the study and will be of no benefit to the individuals involved.

(B) *Exemption.* Under the authority of subsection (k)(4), DOL/ETA-18 and DOL/ETA-10 are exempted from the provisions of subsections (e)(3), (d), (e) (1), (e)(4) (G), (H), and (I), and (f) of the Act.

* * * * *

(d) * * *

* * * * *

(2) OASAM-3, General Investigation File, is exempt under subsections (k) (2), (3), and (5) as material relating to civil law enforcement investigations, including shared information, files maintained in connection with assisting the U.S. Secret Service to provide protective services to government officials, and investigative material compiled to determine the suitability, eligibility and qualifications of DOL contractors. In the first two instances, the material is exempted from the requirements of paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and (f) of the Act. Contract investigations are exempt from the provisions of (c)(3), (d), and (f). Civil Law enforcement material is exempted until such time as a determination is made based upon the information except that information which would reveal the identity of a confidential source will continue to be exempted. Contract information is exempt to the extent that disclosure would reveal the identity of a source when an express pledge of confidentiality has been given or the circumstances indicate that confidentiality has been implied. These exemptions are necessary to preserve the integrity of the investigations and to prevent the intimidation or harassment of informants, witnesses or their families.

(3) LMSA-1, Index Cards, Division of Enforcement, relates to investigations under the Labor-Management Reporting and Disclosure Act and E.O. 11441. In accordance with subsection (k)(2) of the Act, this system is exempted from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). Disclosure of information related to civil law enforcement would enable the subject of the investigation to take action to prevent detection of illegal activities and could lead to the harassment or intimidation of witnesses, informants, or their families or could do harm to the well-being of investigative personnel or their families.

(4) DOL/LMSA-4: PWBP-Division of Enforcement and Special Investigations Staff Case Files, relates to the card index and case files of the Special Investigations Staff of the Division of Enforcement of Pension and Welfare Benefits Programs. In accordance with subsection (k)(2) of the Act, this system is exempted from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). Disclosure of information contained in the civil investigative file would enable subjects of the investigations to take action to prevent detection of illegal activities, conceal evidence or otherwise escape detection or avoid the consequences of violation of the law. Disclosure of information could lead to the harassment or intimidation of witnesses, informants or their families or could do harm to the well-being of investigative personnel or their families.

(5) DOL/LMSA-16: Investigatory Files—Special Investigations Staff, relates to criminal and civil law enforcement investigations under the Welfare & Pension Plans Disclosure Act, E.O. 11441, and title I of the Employee Retirement Income Security Act of 1974. In accordance with the provisions of subsection (k)(2) of the Act, this system is exempted from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (F). Disclosure of information contained in the files could jeopardize the effectiveness of the investigation and enable the subject of the investigation to take action to prevent detection or otherwise avoid the consequences of violation of the law. Further, disclosure could lead to the intimidation or harassment of witnesses, informants, or their families or could do harm to investigative personnel or their families.

(6) DOL/LMSA-17: Investigatory Files—PWBP, Division of Enforcement, relates to criminal and civil law enforcement investigations under the Welfare and Pension Plans Disclosure Act, E.O. 11441, and title I of the Employee Retirement Income Security Act of 1974. In accordance with the provisions of subsection (k)(2) of the Act, this system is exempted from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Discosure of information contained in the files could jeopardize the effectiveness of the investigation and enable the subject of the investigation to take action to prevent detection or otherwise avoid the consequences of violation of the law. Further, disclosure could lead to the intimidation or harassment of witnesses, informants, or their families or could do harm to investigative personnel or their families.

* * * * *

[FR Doc.77-22598 Filed 8-5-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

[32 CFR Part 865]

PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is considering amendment to the rule covering the Air Force Board for Correction of Military Records. A review by the Board of its procedures revealed an apparent need for elaboration in certain paragraphs of this rule. The amendments are intended to result in clearer understanding by persons desiring correction of their military records.

DATES: Comments must be received by September 12, 1977.

ADDRESSES: Comments should be submitted to: Frank S. Dispenza, Deputy Executive Secretary, Air Force Board for the Correction of Military Records, Office of the Assistant Secretary of the Air Force, Washington, D.C. 20330.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank S. Dispenza, Deputy Executive Secretary, Air Force Board for the Correction of Military Records, Office of the Assistant Secretary of the Air Force, Washington, D.C. 20330 (202-697-2391).

SUPPLEMENTARY INFORMATION: On March 29, 1977, the Department of the Air Force, DOD, published a final rule (42 FR 16623) to revise 32 CFR 865, Subpart A, Air Force Board for Correction of Military Records. Since that time, further review by the Board of its procedures has revealed an apparent need for clarification by addition of further information to the sections on Actions by the Secretary of the Air Force, Release of Records of Proceedings to the Applicant, counsel, and the public. Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments.

These proposed amendments are issued under the authority of Sections 1552, 8012, 70A Stat. 116, 488; 10 USC 1552, 8012.

The amendments are proposed to read as follows:

§ 865.7 [Amended]

1. In Section 865.7, a new subparagraph (d) is added to read as follows:

§ 865.7 Review of application.

* * * * *

(d) *Written proceedings.* When the Board determines that the record should be corrected or that the application be denied, the determination of the Board will be made in writing. The writings (proceedings) will include, but not be limited to, all facts of record, and statement of ground(s) upon which the Board's determination is based. Where the Board concludes complete relief should not be granted, written proceedings will address applicant's claim(s) of constitutional, statutory, and/or regulatory violation rejected by the Board and/or reviewing authority. In those cases involving the characterization of an individual's discharge or dismissal from the military service, the factors required by Air Force regulations to be considered for determination of the character of and reason for the discharge or dismissal in question shall be included.

2. Section 865.13 is revised to read as follows:

§ 865.13 Action by the Secretary of the Air Force.

All records of proceedings, except those finalized by the Board under the authority contained in § 865.12(a)(5) or denied by the Board without a hearing, will be forwarded to the Secretary of the Air Force who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. Those cases returned for further consideration will be accompanied by a brief statement setting out the reasons for such action and any specific instructions. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he expressly adopts in whole or in part the findings, conclusions and recommendations of the Board, he shall include a brief statement of the ground(s) for denial. All Secretarial decisional documents shall be furnished to the applicant and counsel.

3. Section 865.14 is amended by revising subparagraphs (f) and (g) to read as follows:

§ 865.14 Staff action.

* * * * *

(f) *Release of record of proceedings to the applicant and counsel.* After action on the record by the Secretary of the Air Force, his designee, by the Board acting under the authority in § 865.12(a)(5), or when the Board denies an application without a hearing, the Board will furnish applicant and counsel a copy of the record of proceedings and all decisional documents. Privileged or classified material may be deleted only if a written statement of the bases for deletion is provided. The statement will not reveal the nature of the withheld material.

(g) *Release of record of proceedings to the public.* After action on the record by the Secretary of the Air Force, his designee, by the Board acting under the authority contained in § 865.12(a)(5), or when the Board denies an application without a hearing, the Board will release for public inspection and copying, at a designated reading room within the Washington, D. C. Metropolitan Area, a sanitized and indexed copy of the record of proceedings and all decisional documents. To the extent required and to prevent a clearly unwarranted invasion of personal privacy, identifying details of applicant and other persons will be deleted from all documents. Privileged or clasified material may be deleted only if a written statement of the bases for deletion is provided. The statement will not reveal the nature of the withheld material. An index of record of proceedings shall be formulated so as to enable those who represent applicants to isolate from all those decisions that are indexed those cases that may be similar to an applicant's case and which indicate the grounds for which the Board and/or the Secretary granted or denied relief. The index will be published quarterly and available for public inspection and sale at the reading room. Inquiries concerning the index or reading room should be addressed to Air Force Board for Correction of Military Records, Department of the Air Force, Washington, D.C. 20330.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison, Directorate of Administration.

[FR Doc.77-22776 Filed 8-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 157]

[CGD 76-088b]

TANK VESSELS CARRYING OIL IN BULK

Miscellaneous Rules Providing for Protection of Marine Environment

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: On June 27, 1977, the Coast Guard published proposed requirements in the FEDERAL REGISTER (42 FR 32684) concerning installation and use of approved cargo monitors on board tank vessels carrying oil in bulk. This notice extends the comment period to September 2, 1977. The original closing date was August 11, 1977. Two requests have been

received to extend the comment period in order to allow additional time for a thorough review of the proposal.

DATES: As explained above, comments must be received on or before September 2, 1977.

ADDRESSES: As explained in the notice of proposed rulemaking published on June 27, 1977, comments should be submitted to the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

DRAFTING INFORMATION

The principal persons involved in drafting this notice are: Lowell F. Martin, Project Manager, Office of Merchant Marine Safety, and William R. Register, Project Attorney, Office of the Chief Counsel.

(46 U.S.C. 391a; 49 U.S.C. 1655(b); 49 CFR 1.46.)

Dated: August 3, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.77-22798 Filed 8-5-77;8:45 am]

[46 CFR Part 162]

[CGD 76-088a]

OIL POLLUTION PREVENTION EQUIPMENT

Approval Requirements; Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: In the FEDERAL REGISTER of June 27, 1977 (42 FR 32686) the Coast Guard proposed amendments that would add approval procedures and specifications for oil-water separators, cargo monitors, bilge monitors, and bilge alarms to the existing approval requirements for engineering equipment used on merchant vessels. This notice extends the comment period to September 2, 1977. The original closing date was August 11, 1977. Two requests have been received to extend the comment period in order to allow additional time for a thorough review of the proposal.

DATES: As explained above, comments must be received on or before September 2, 1977.

ADDRESSES: As explained in the notice of proposed rulemaking published on June 27, 1977, comments should be submitted to the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

DRAFTING INFORMATION

The principal persons involved in drafting this notice are: Lowell F. Martin, Project Manager, Office of Merchant Marine Safety, and William R. Register, Project Attorney, Office of the Chief Counsel.

(33 U.S.C. 1321(j), 46 U.S.C. 391a, 49 U.S.C. 1655(b)(1), and 49 CFR 146.)

Dated: August 3, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.77-22799 Filed 8-5-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 1880]

PUBLIC ADMINISTRATIVE PROCEDURES; FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Payments in Lieu of Taxes

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: Rulemaking is proposed to implement the Act of October 20, 1976 (31 U.S.C. 1601). The Act provides for Payments in Lieu of Taxes to units of local government to ameliorate the fiscal burden of tax exempt Federal land within their boundaries. This proposed rulemaking defines the unit of local government entitled to receive payments in lieu of taxes, and sets forth procedures to establish the amount of payments.

DATES: Comment by September 7, 1977.

ADDRESS: Send comments to the Director (210), Bureau of Land Management, 1800 C St. NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Edward P. Greenberg, 202-343-3624

SUPPLEMENTARY INFORMATION: The principal author of this document is Billy R. Templeton of the Bureau of Land Management, Division of Legislation and Regulatory Management, assisted by Lyle Rising of the Office of Solicitor, Department of the Interior.

The Act of October 20, 1976 (31 U.S.C. 1601 et seq.) provides for payments in lieu of lieu of taxes to qualified units of local government to offset the tax burden of certain tax exempt Federal lands within their boundaries.

Section 6(c) of the Act, authorizes the Secretary of the Interior to determine which units of local government are units of general government which are eligible for payments authorized by Section 1 of the Act. Section 6(c) further provides that this determination is to be made on the same principles as are used by the Bureau of the Census for general statistical purposes.

A unit of general government is a unit of that type of government which, within its state, is the principal provider of governmental services affecting the use of entitlement lands. Generally, units of local government will be eligible for payment to the extent that they have been identified by the Bureau of the Census or county-type areas. Listed below is a preliminary list of units of local government eligible for payment under Section 1 of the Act to the extent that such units of government contain entitlement lands within their boundaries.

Alabama	Counties.
Alaska	Boroughs, and the cities of Juneau and Sitka (City/Boroughs).
Arizona	Counties.
Arkansas	Counties.
California	Counties, and the city of San Francisco (City/County).
Colorado	Counties, and the city of Denver (City/County).
Connecticut	Towns.[1]
Delaware	Counties.
District of Columbia.	City of Washington.
Florida	Counties, and the County of Duval (City of Jacksonville).
Georgia	Counties, and the independent city of Columbus.
Guam	Counties, and the city of Honolulu (City/County).
Hawaii	Counties.
Idaho	Counties.
Illinois	Counties, and the County of
Indiana	Marion (City of Indianapolis).
Iowa	Counties.
Kansas	Counties.
Kentucky	Counties.
Louisiana	Parishes, and the Parish of Orleans (City of New Orleans) and Parish of East Baton Rouge (City of Baton Rouge).
Maine	Towns.[1]
Maryland	Counties, and the independent city of Baltimore.
Massachusetts	Towns [1] and County of Nantucket (Township of Nantucket), and County of Suffolk (City of Boston).
Michigan	Counties.
Minnesota	Counties.
Mississippi	Counties.
Missouri	Counties, and the independent city of St. Louis.
Montana	Counties.
Nebraska	Counties.
Nevada	Counties, and the independent city of Carson City.
New Hampshire.	Towns.[1]
New Jersey	Counties.
New Mexico	Counties.
New York	Counties (counties of Bronx, Kings, New York, Queens, and Richmond are all New York City).
North Carolina.	Counties.

North Dakota	Counties.
Ohio	Counties.
Oklahoma	Counties.
Oregon	Counties.
Pennsylvania	Counties, and the County of Philadelphia (City of Philadelphia).
Puerto Rico	Municipios.
Rhode Island	Towns.[1]
South Carolina.	Counties.
South Dakota	Counties, except Shannon, Todd, and Washabough, which are attached to other counties for government purposes.
Tennessee	Counties, and the metropolitan government of Nashville and Davidson county.
Texas	Counties.
Utah	Counties.
Vermont	Towns.[1]
Virginia	Counties, and the 38 independent cities.
Virgin Islands	Virgin Islands.
Washington	Counties.
West Virginia	Counties.
Wisconsin	Counties.
Wyoming	Counties.

[1] Where organized town governments exist. If towns are unincorporated or the town governments are inactive, payments shall be made to counties.

State governments have been asked to help implement the Act by providing information needed to compute payments this year. These requests were made because, without adequate information to make all payments, equitable payments could not be made to any of the qualified units of local government.

Payments will not be made for exchanged lands or for lands which, at the time they were acquired from the states were receiving payments in lieu of taxes from the states but were not subject to the payment of real estate taxes.

State, local, and Federal agencies will be consulted as appropriate in resolving any conflicts arising from computation of payments and establishment of eligibility for payments.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Order 11821 and OMB Circular A-107.

It is hereby determined that publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

Under the authority of the Act of October 20, 1976 (31 U.S.C. 1601 et seq.), it is proposed to amend Group 1800, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations by adding Part 1880 to read as follows:

Group 1800—Public Administrative Procedures

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Subpart 1881—Payments in Lieu of Taxes

Sec.

1881.0-1 Purpose.
1881.0-3 Authority
1881.0-5 Definitions.
1881.1 Procedures.
1881.1-1 Procedures, Section 1 payments.
1881.1-2 Procedures, Section 3 payments.
1881.1-3 Procedures, Absence of information.
1881.2 Use of payments.
1881.3 Protests.
1881.4 Appeals.

§ 1881.0-1 Purpose.

The regulations establish procedures for making payments in lieu of taxes to units of local government for certain federal lands within their boundaries.

§ 1881.0-3 Authority.

The authority for these regulations is the Act of October 20, 1976, Pub. L. 94-565, 90 Stat. 2662, 31 U.S.C. §§ 1601-1607, hereinafter referred to as "the Act."

§ 1881.0-5 Definitions.

(a) A "government," as that term is used by the Bureau of the Census for general statistical purposes, is an organized entity having substantial autonomy and whose officers are either popularly elected or appointed by publicly elected officials. Other indicia of governmental character include (1) a high degree of responsibility to the public for performance of duties of a governmental nature, (2) power to levy taxes, and (3) power to issue debt paying interest exempt from Federal taxation.

(b)(1) "Unit of general government" means a unit of that type of government which, within its state, is the principal provider of governmental services affecting the use of entitlement lands. Those services of government include (but are not limited to) maintenance of land records, police protection, fire protection, taxation, land use planning, search and rescue and road construction. Ordinarily, a unit of general government will be a county. However, where a smaller unit of government is the principal provider of governmental services affecting the use of public lands within a state, the smaller unit, even though within a larger unit of government, will be considered a general unit of government and will receive payments under the Act. These units of general government will ordinarily be "towns" or townships within states having nonexistent or nearly nonexistent county governments. The term "unit of general government" also includes:

(i) Governments with the functions of a unit of general government in that state combined with another type of government such as city, township, parish, borough or county, e.g., a city and county as in the City and County of Denver.

(ii) Cities located outside of any of the units of general government for that state and administering functions commonly performed by those units of general government.

(iii) Alaskan boroughs in existence on October 20, 1976.

(iv) The Governments of the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(b)(2) The term "unit of general government" excludes single purpose or special purpose units of local government such as school districts or water districts.

(c)(1) "Entitlement lands" are lands owned by the United States which are:

(i) Within the National Park System including wilderness areas;

(ii) Within the National Forest System including wilderness areas and also including those areas of Superior National Forest, Minnesota, set forth in 16 U.S.C. §§ 577d and 577d-1 (1970);

(iii) Administered by the Secretary of the Interior through the Bureau of Land Management;

(iv) Water resource projects administered by the Bureau of Reclamation or Corps of Engineers; or

(v) Dredge disposal areas administered by the Corps of Engineers.

(2) "Entitlement lands" do not include:

(i) Lands which were owned or administered by State and local governments which at time of acquisition by the Federal government were not subject to State and local taxes.

(ii) Any land for which any money was paid to a unit of local government pursuant to the Act of August 28, 1937 (50 Stat. 875) or the Act of May 24, 1939 (53 Stat. 753) in that fiscal year.

(d) "Money transfers" means those money or cash payments made by or through the State government to entitled units of local government pursuant to the laws set forth in section 4 of the Act.

(e) "Authorized officer" means that official within the Bureau of Land Management delegated the authority to carry out the provisions of the Act.

§ 1881.1 Procedures.

§ 1881.1 Procedures, Section 1 payments.

(a) The authorized officer shall determine which governments are units of general government eligible to receive payments under section 1 of the Act in accordance with section 6(c) of the Act and the definitions in § 1881.0-5 of these regulations. In resolving questions about the eligibility of any unit of general government and the status of entitlement lands, the authorized officer may consult with the Bureau of the Census, officials of the appropriate State and local government, and officials of the agency administering the entitlement lands.

(b) In order to determine which units of local government are entitled to receive payments under the Act (the minimum payment is $100), the authorized officer shall obtain the data necessary for making computations pursuant to the formula in section 2 of the Act as follows:

(1) The amount of entitlement lands within the boundaries of each unit of local government and the amount of payments made directly to those governments pursuant to the laws listed in section 4 of the Act shall be obtained from the administering Federal agencies;

(2) The amount of money transfers made by the State to eligible units of local government pursuant to the laws listed in section 4 of the Act shall be obtained from the Governor or his designated officials;

(3) The population of each unit of local government shall be obtained from current Bureau of the Census statistics.

(c) The authorized officer shall compute and certify the amount of payment to be made each unit of local government based on (1) the formula and limitations set forth in section 2 of the Act and (2) the amount of actual appropriations.

(d) If money actually appropriated by Congress for distribution during any fiscal year is insufficient to provide full payment to each unit of local government, all payments made to eligible recipients in that fiscal year shall be reduced proportionally, to the extent determined necessary by the authorized officer.

(e) No computation will be certified by the authorized officer for payment until the Governor of the State in which the unit of local government is located or his delegate has provided the authorized officer with:

(1) a statement of the amount of all money transfers received during the previous fiscal year[2] by each entitled unit of local government from the State from revenues derived under those laws listed in Section 4 of the Act; and

(2) to the extent practicable, a determination that those lands formerly owned or administered by a State or local government and acquired by the Federal Government were subject to State and local real property taxes at the time of conveyance to the Federal Government.

§ 1881.1–2 Procedures, Section 3 payments.

(a) The authorized officer shall make payments to qualified units of local government under section 3 of the Act, provided that the administering agencies supply information as follows:

(1) Acreage of entitlement land within the boundaries of each qualified unit of local government; and

(2) Such other information as may be required to certify payments to qualified units of local government.

(b) Payments received by counties shall be distributed by those counties to affected units of local government and affected school districts, as defined in section 3 of the Act, within 30 days of the receipt of such payment. Distribution shall be in proportion to the tax revenues collected by the affected units of local government and school districts in the year prior to acquisition of the entitlement lands by the Federal Government.

§ 1881.1–3 Procedures, Absence of information.

The authorized officer shall certify payments under the Act only to the extent sufficient data is available to determine the amount due the qualified units of local government.

[2] For Fiscal Year 1977, the transition quarter, July 1, 1976 to September 30, 1976, shall be excluded.

§ 1881.2 Use of Payments.

The monies paid to entitled units of local government may be used for any governmental purpose.

§ 1881.3 Protests.

(a) Computation of payments shall be based upon Federal land records.

(b) Any affected unit of local government may protest the results of the computations of its payment to the authorized officer.

(c) Any protesting unit of local government shall submit sufficient evidence to show error in the computations or the data on which the computations are based.

(d) All protests to the authorized officer shall be filed by the first business day of the calendar year following the end of the fiscal year for which the payments were made.

(e) The authorized officer shall consult with the affected unit of local government and the administering agency to resolve conflicts in land records.

§ 1881.4 Appeals.

Any affected unit of local government whose protest has been rejected by the authorized officer may appeal to the Interior Board of Land Appeals pursuant to the provisions of 43 CFR, Part 4.

GARY J. WICKS,
Secretary of the Interior.

AUGUST 3, 1977.

[FR Doc.77-22769 Filed 8-5-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 61]

[Docket No. 21005]

INTERFACE OF THE INTERNATIONAL TELEX SERVICE WITH DOMESTIC TELEX AND TWX SERVICES

Order Extending Time for Filing Comments and for Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time.

SUMMARY: This order extends, at the request of RCA Global Communications, Inc., the time for filing responsive comments in Docket No. 21005.

DATES: Responsive Comments must be received on or before August 8, 1977, and Replies on or before August 22, 1977.

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

FOR FURTHER INFORMATION CONTACT:

John F. Copes, International Programs Staff, Common Carrier Bureau (202–632–3214).

Order. In the matter of Interface of the International Telex Service with the Domestic Telex and TWX Services, Docket No. 21005.[1]

Adopted: August 1, 1977.

Released: August 3, 1977.

1. We have before us for consideration a request filed by RCA Global Communications, Inc. (RCA) on July 21, 1977 seeking extension of the time in which to file responsive comments in the above-referenced proceeding from August 1 until September 15, 1977. In support of its request, RCA cites the press of regulatory matters—in particular, Docket No. 18875 and 20778—and the absence of key personnel due to the vacation period. RCA asserts that the requested extension is needed to permit it to provide the Commission with more meaningful data on the issues under consideration in this proceeding.

2. We find that RCA has not shown good cause for an extension of six weeks. By Order adopted June 10, 1977, we have already granted one extension of six weeks for the filing of responsive comments in this proceeding. Noting that we were there granting the fifth extension of time, we stated that any further extension should be granted only on a showing of specific hardship. We find that RCA has not demonstrated such hardship. RCA does not cite any specific scheduling conflicts within the proceedings it cites but only the general allegation that it will be required to prepare for the proceedings. Indeed, in Docket No. 20778, we recently extended the date for filing cost studies until November 15, 1977. Therefore, the August 1 date cannot be said to conflict any more with that deadline than does the September 15 date RCA seeks. Further, with respect to Docket No. 18875, RCA notes a tight schedule extending until November 1, 1977. Again, the August 1 date conflicts no more than would the date sought.

3. However, we do recognize the need for some additional time because of conflicts caused by the recent Congressional hearings and the disruption occasioned by the power blackout in New York City. Therefore, although we do not find that RCA has justified a six-week extension, we do find that an extension of one week is warranted.

4. Accordingly, pursuant to § 0.303(c) of the Commission's Rules and Regulations, 47 CFR 303(c) (1977), *It is ordered*, That the above-referenced Motion for Extension of Time of RCA Global Communications, Inc. is granted to the extent that the date for filing responsive comments in this proceeding is extended until August 8, 1977, and that the date for filing replies is extended until August

[1] See 42 FR 23615, May 10, 1977 and 42 FR 32556, June 27, 1977.

22, 1977; and that the RCA Motion is otherwise denied in all respects.

FEDERAL COMMUNICATIONS COMMISSION,
PHILIP V. PERMUT,
Acting Deputy Chief,
Common Carrier Bureau.

[FR Doc.77-22733 Filed 8-5-77;8:45 am]

[47 CFR Part 73]

[Docket No. 20418; RM-2346; RM-2727]

ADDING NEW VHF STATIONS IN THE TOP 100 MARKETS

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time.

SUMMARY: Action taken herein extends by about 5 weeks the time for filing comments and reply comments to a Notice of Proposed Rule Making in Docket 20418 (VHF Drop-Ins) at the request of Holston Valley Broadcasting Corporation, licensee of UHF Television Station WKPT-TV, Channel 19, Kingsport, Tennessee. WKPT-TV was granted the extension to obtain assistance from an expert on television audience ratings.

DATES: Comments are due on or before October 1, 1977, and reply comments on or before November 1, 1977.

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

FOR FURTHER INFORMATION CONTACT:

James J. Gross, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

Adopted: July 25, 1977.

Released: August 4, 1977.

In the matter of petition for rulemaking to amend television table of assignments to add new VHF stations in the top 100 markets and to assure that the new stations maximize diversity of ownership, control and programming.

1. Holston Valley Broadcasting Corporation, licensee of UHF Television Station WKPT-TV, Channel 19, Kingsport, Tennessee ("WKPT"), requests a three month extension of time for filing comments in this proceeding from August 22, 1977, to November 22, 1977, and for filing reply comments from September 22, 1977, to December 22, 1977. Alternatively, WKPT asks for an extension of time to October 1, 1977, for comments, and November 1, 1977, for reply comments. The request is opposed by the Group for the Advancement of Television Service ("GATS"), proponent of the Johnstown drop-in proposal, and partially opposed by South Central Broadcasting Corporation ("South Central"), licensee of Television Station WTVK, Knoxville, Tennessee.

2. WKPT states as reasons for granting the extension the length of the Memorandum Opinion and Order and Notice of Proposed Rulemaking in this proceeding and its attendant documents and studies included in the record. WKPT further notes that the study entitled "Impact on WKPT-TV (Channel 19, ABC) by the Knoxville Channel 8 Drop-In" was not added to the docket until May 13, 1977, when called to the Commission's attention by WKPT. Furthermore, WKPT argues that the due date for comments falls within a traditional summer vacation period for both members of the Commission and parties interested in this proceeding.

3. We are unconvinced that these reasons are cause for extending the filing deadlines. The deadlines have been extended once already based upon the unexpected delay in making certain studies and documents, including the one mentioned by WKPT, available to the parties. As GATS states in its opposition, all of the above factors were already considered in establishing the present filing dates.

4. However, WKPT asserts one more ground for extension which we find merits consideration. WKPT has employed Dr. C. A. Kellner of Marshall University to assist it in preparing comments in response to reliance upon ARB television audience survey data in the Commission's Notice. Dr. Kellner was formerly employed by ARB, and WKPT considers him to be an expert regarding television audience reporting data and related matters. WKPT states that Dr. Kellner's educational background and professional experience would be of importance to the Commission in properly evaluating the impact upon WKPT-TV from the proposed Channel 8 drop-in at Knoxville. Unfortunately, we are told, Dr. Kellner has just undergone surgery and is now convalescing, but hopes to be able to complete his work on the project. For this reason, WKPT asks that we grant it an extension of time for comments.

5. GATS opposes an extension of comment dates because it believes the public and parties to the proceeding should receive a prompt disposition of other drop-in proposals. It says that WKPT should attempt to find a qualified expert to replace Dr. Kellner, or that separate comment dates should be established for the Knoxville drop-in only so as not to delay other proposals. South Central objects to a three month extension but states that an extension to October 1, would be equitable to all concerned.

6. We find insufficient reason to extend the comment deadline for three months, but we think a shorter extension would allow all parties time to perfect their comments and would not unduly delay the proceeding as GATS fears. We shall not establish a separate deadline for Knoxville as proposed by GATS, because we think it would be administratively more efficient to receive comments on all drop-ins at the same time. The Commission has stated that opportunity will be given for comment on the Johnstown/Altoona drop-in proposals after the ITS terrain study of that area is completed, but progress on that study indicates that it should be completed in time for comment within the extended dates of the general proceeding.

7. We conclude that it would be in the public interest to receive the information WKPT seeks from Dr. Kellner regarding the audience impact a Knoxville drop-in would have on this neighboring UHF station. UHF impact is a difficult area for precise prediction, and the advice of experts outside the Commission could be of great value. The statements attached to the Notice by the Commissioners indicate that a full record is desired for consideration at the time of final decision in this rule making proceeding. Therefore, we shall grant a two month extension, but deny the request for a three month extension for filing comments and reply comments in this proceeding.

8. Accordingly, *it is ordered*, That the subject request is granted to the extent that the time for filing comments to the Notice of Proposed Rulemaking in Docket 20418 IS EXTENDED to October 1, 1977, and the time for filing reply comments IS EXTENDED to November 1, 1977.

9. *It is further ordered*, That the subject request is denied in all other respects.

10. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

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

[FR Doc.77-22787 Filed 8-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 173, 174, 178, 179]

[Docket No. HM-139 Notice No. 77-7]

INDIVIDUAL EXEMPTIONS, CONVERSION TO REGULATION OF GENERAL APPLICABILITY

Transportation of Hazardous Materials

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau is considering amending the regulations governing the transportation of hazardous materials in incorporate a number of changes based on existing exemptions whch have been granted to individual applicants allowing them to perform particular functions in a manner that varies from that specified by the regulations. Adoption of these exemptions as rules of general applicability would provide wider access to the benefits of transportation innovations recognized as effective and safe.

DATES: Comments by September 6, 1977.

ADDRESS COMMENTS TO: Section of Dockets, Office of Hazardous Materials Operations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT:

Dr. C. Hugh Thompson, Chief Regulations Division, Office of Hazardous Materials Operations, 2100 Second Street SW., Washington, D.C. 20590 (202-426-2075).

SUPPLEMENTARY INFORMATION: Each of the proposed amendments described in the table below is founded upon either: (1) Actual shipping experience gained under an exemption, or (2) the data and analysis supplied in the application. In each case the resulting level of safety being afforded the public is considered at least equal to the level of safety provided by the current regulations. Primary drafters of this proposal are Darrell L. Raines, and John C. Allen, Office of Hazardous Materials Operations, and George W. Tenley, Jr., Office of the Assistant General Counsel for Materials Transportation Law.

These proposals would not significantly affect the costs of regulatory enforcement, nor would additional costs be imposed on the private sector, consumers, or Federal, State or local governments, since these proposals would merely authorize the general use of shipping alternatives previously available to only a few users under exemptions. The safety record of shipments under the identified exemptions demonstrates that significant environmental impacts would not result from the proposals.

Adoption of an amendment derived from an existing exemption would obviate the need for that exemption and effectively terminate it. Upon such termination, the holder of the exemption and parties thereto would be individually notified. Adoption of an amendment derived from an application for exemption should provide the relief sought, in which event the exemption request would be denied and the applicant so notified. In the event the Bureau decides not to adopt any of these proposals each pertinent application would be evaluated and acted upon in accordance with the applicable provisions of the exemption procedures in 49 CFR Part 107, Subpart B. Consequently, persons commenting on proposed amendments may wish to address both the proposed amendment and the exemption application. Consideration of comments of the merits of including within an amendment modes of transportation other than those for which the exemption application requested is anticipated. Each mode of transportation for which a particular exemption is authorized or requested is indicated in the "Nature of Exemption or Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. The status of the exemption action is indicated in the column titled Identification Number where prefix "E" means an exemption has been issued and prefix "SP" means a special permit exists under previous authorities. The suffix "No" means no applications for exemptions are pending, but the Bureau is taking action by this proposal; the suffix "X" means a renewal application is pending; the suffix "P" means one or more party status applications are pending; and the suffix "N" means a new application for exemption is pending.

Proposed amendments of hazardous materials regulations to terminate special permits and exemptions

Application No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
E 4041-No	U.S. Department of Defense; United Technologies; Hercules Inc.	173.65(a)	Authorizes shipments of ammonium perchlorate, particle size of 5 to 15 μm as high explosives in DOT specification 17H or 37A steel drums each having a minimum of 0.003 in thick polyethlene liner. Maximum capacity 30 gal. (Modes 1 and 2)	To revise paragraph (a)(3) to read: (3) Specification 17H or 37A (secs. 178.118 and 178.131 of this subchapter). Metal drums (single-trip). Authorized only for ammonium perchlorate in the 5 to 15 μm range. Maximum capacity 30 gal.
E 5208-No	U.S. Department of Defense.	172.101, 173.54 (b), 173.89 (a), (b).	Authorizes shipments of ammunition for cannon with tear gas projectiles, class A and ammunition for cannon with tear gas projectiles, class B in accordance with 49 CFR 173.54(a). (Modes 1 and 2).	To amend sec. 172.101 to add ammunition for cannon with tear gas projectiles, class A and ammunition for cannon with tear gas projectiles, class B read as in footnote below.[1] To revise sec. 173.54 to read: sec. 173.54 Ammunition for cannon. (a) Ammunition for cannon. (a) Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, or shell must be packed and properly secured in strong wooden or metal containers, or in plastic containers of approved military specifications complying with sec. 173.7(a). (b) Each outside package must be plainly marked "AMMUNITION FOR CANNON WITH EXPLOSIVE PROJECTILES," "AMMUNITION FOR CANNON WITH SMOKE PROJECTILES," "AMMUNITION FOR CANNON WITH INCENDIARY PROJECTILES," "AMMUNITION FOR CANNON WITH ILLUMINATING PROJECTILES," OR "AMMUNITION FOR CANNON WITH TEAR GAS PROJECTILES," as appropriate. To revise sec. 173.89 to read: Sec. 173.89 Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles, or without projectiles or shell. (a) Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles, or without projectiles or shell, must be well packed and properly secured in strong wooden or metal containers. (b) Each outside package must be plainly marked "AMMUNITION FOR CANNON WITH EMPTY PROJECTILES," "AMMUNITION FOR CANNON WITH INERT-LOADED PROJECTILES," "AMMUNITION FOR CANNON WITH SOLID PROJECTILES," "AMMUNITION FOR CANNON WITHOUT PROJECTILES," OR "AMMUNITION FOR CANNON WITH TEAR GAS PROJECTILES" as appropriate.
E 5573-No	Austin Powder Co.	173.182(c)(4)	Authorizes shipment of nitro carbo nitrate in DOT 23G specification cylindrical fiberboard boxes as prescribed by sec. 173.182(c)(4) except maximum net weight is 65 lb instead of 50 lb. (Modes 1 and 2.)	To revise paragraph (c)(4) to read: (4) Specification 23G (sec. 178.218 o this subchapter). Cylindrical fiberboard box. Maximum net weight not over 65 lb.
E 6145-No	Kerr-McGee Chemical Corp.; Union Carbide Corp.	173.154(a)	Authorizes shipments of sodium perchlorate or magnesium perchlorate, wet with 10 pct or more of water, equally distributed within the cargo tank in DOT specification MC 303, MC 304, MC 306, MC 311, or MC 312 cargo tank with additional requirements. (Mode 1.)	To add paragraph (a)(4) to read: (4) Specification MC 303, MC 304, MC 306, MC 311, or MC 312 (secs. 178.341, 178.342, and 178.343 of this subchapter). Tank motor vehicles. Tanks must comply with sec. 178.340-8. Discharge valves must be located inside the tank or at a point outside the tank where the line enters or leaves the tank. Valve seat must be located inside the tank or within the welded flange, its companion flange, nozzle, or coupling. Each product discharge opening shall have a secondary closing means, remote from tank filling or discharge openings, for operation in event of fire or other accident. Tanks may have heating coils if an inorganic heating medium is used. Authorized only for sodium perchlorate or magnesium perchlorate, wet, with 10 pct or more or water, equally distributed within the cargo tank.

Application No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendemtn
E 6628-No	E. I. du Pont de Nemours & Co., Inc.	173.2 (i)(22)	Authorizes shipments of sulfuric acid in DOT specification 111A100W6 tank cars constructed of type 304-L stainless steel. NOTE.—This change is to prohibit the use of a car having bottom outlets and was inadvertently omitted in Docket No. HM-139 dated June 2, 1977. (Mode 2.)	To add a sentence at the end of par. (i)(22) to read: Bottom outlets prohibited.
E 6662-No	Hercules Inc., Pennwalt Corp.	173.154(a)	Authorizes shipment of dicumyl peroxide and an organic peroxide, solid, n.o.s. in DOT specification 57 metal portable tanks. Tanks must have a fusible plug having a fusing temperature between 70° C., and 90° C. (Modes 1 and 2.)	To add par. (a)(3) to read: (3) Specification 57 (sec. 178.253 of this subchapter). Portable tanks. Tanks must have a fusible plug having a fusing temperature between 70° C. and 90° C. Authorized only for dicumyl peroxide, dry and a,a'-bis(t-butylperoxy) diisopropylbenzene, solid.
E 6682-No	Foote Mineral Co	173.308(a)	Authorizes shipment of lithium metal foil wound on nonsparking spools, packed in hermetically sealed, tin-coated steel cans, and overpacked in DOT specification 21C fiber drums. (Modes 1 and 2.)	To add par. (a)(3) to read: (3) Specification 21C (sec. 178.224 of this subchapter). Fiber drums with inside hermetically sealed tin-coated steel cans with a miminum wall thickness of 0.015 in. Not more than 4 spools made of nonsparking material may be packed in each inside container with not more than 2½ lb net weight of product in each inside container. Each metal can shall be individually separated with double-faced corrugated partitions and noncombustible packing material. Authorized only for lithium metal in ribbons.
E 6941-No	Mobay Chemical Corp.; Allied Chemical Corp.; BASF Wyandotte Corp.	173.346(a)(12)	Authorizes shipments of toluene diisocyanate in tank motor vehicles that comply with DOT specifications MC 304, and MC 307 except bottom discharge outlets are equipped with external ball valves of the Hill-McCanna type or equivalent. (Mode 1.)	To amend par. (a)(12) to read: (12) Specifications MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 (secs. 178.341, 178.342, and 178.343 of this subchapter). Tank motor vehicles. Tank motor vehicles designed and constructed to specification MC-304 or MC-307 except for bottom outlets equipped with external ball valves may be used only for toluene diisocyanate.
E 6943-No	Mason & Hanger-Silas Mason Co., Inc.; Rockwell International Corp.; ERDA; Lawrence Livermore Lab	173.65(d)	Authorizes shipment of triaminotrinitrobenzene (TATB), trichlortrinitrobenzene (TCTNB), and hexanitrostilbene (HNS) as reagents in accordance with 49 CFR 173.65(d). (Modes 1, 2, and 4.)	To revise par. (d) to read: (d) The following materials may be shipped dry, in quantities not exceeding 4 oz in 1 outside package, by rail freight, or highway, as drugs, n.o.s., or medicines, n.o.s., without any other requirements when in securely closed bottles or jars cushioned to prevent breakage: (1) Ammonium picrate. (2) Dipicrylamine. (3) Dipicryl sulfide. (4) Dinitrophenylhydrazine. (5) Nitroguanidine. (6) Picramide. (7) Picric acid. (8) Picryl chloride. (9) Trinitroanisole. (10) Trinitrobenzene. (11) Trinitrobenzoic acid. (12) Trinitro-m-cresol. (13) Trinitronaphthalene. (14) Trinitroresorcinol. (15) Trinitrotoluene. (16) Urea nitrate. (17) Triaminotrinitrobenzene. (18) Trichlortrinitrobenzene. (19) Hexanitrostilbene. Not authorized for transportation by air.
E 7507-No	Witco Chemical Corp	173.119(m)(8)	Authorizes shipment of certain flammable liquids which are also corrosive, and organic peroxide solutions in 12P/2U composite packaging as prescribed in the regulations except capacity may be 6 gal instead of 5. (Modes 1 and 3.)	To revise paragraph (m)(8) to read: (8) Specification 12P (sec. 178.211 of this subchapter). Fiberboard boxes with inside specification 2U (sec. 178.24 of this subchapter) polyethylene containers not over 6 gal capacity each. Authorized only for material which will not react dangerously with or cause decomposition of polyethylene. Not authorized for transportation by air.
		173.221(a)(9)		To revise paragraph (a)(9) to read: (9) Specification 12P (sec. 178.211 of this subchapter). Fiberboard boxes with inside specification 2U (sec. 178.24 of this subchapter) polyethylene containers not over 6 gal capacity each. Wire staples are not authorized for assembly or closure of boxes, except when polyethylene container is completely enclosed in inside boxes free of wire staples or other projections that could cause failures.
E 7514-No	Olin Corp	173.217(a)	Authorizes shipment of certain oxidizing materials in a DOT specification 12B fiberboard box with 2 inside polyethylene bottles each with a net weight not over 16 lb. (Modes 1, 2 and 3.)	To add paragraph (a)(7) to read: (7) Specification 12B (sec. 178.205 of this subchapter). Fiberboard boxes with inside polyethylene bottles with a minimum wall thickness of 0.015 in. Not more than 2 polyethylene bottles may be packed in 1 box and each bottle shall contain not more than 16 lb net weight of commodity. Container must be such that it will not react dangerously with or be decomposed by the commodity.
E 7525-No	Connecticut Valley Arms, Inc.	173.107(d)	Authorizes percussion caps in DOT specification 12B fiberboard box with inside plastic cans packed tightly inside chipboard boxes. (Modes 1 and 2.)	To add paragraph (d)(2) to read: (2) Specification 12B (sec. 178.205 of this subchapter). Fiberboard box. Caps must be packed in inside plastic cans containing not more than 100 caps each. Cans must then be packed in a chipboard box with not more than 8 such chipboard boxes tightly packed in the 12B fiberboard box. The completed package must be such that the explosion of part of the caps will not cause the explosion of all the caps.
E 7537-No	Pennwalt Corp	173.157(b)(3)	Authorizes shipments of benzoyl peroxide wet with at least 20 pct water by weight in accordance with 49 CFR 173.157(b)(3) except the net weight (dry weight) in each outside box may not exceed 50 lb. (Mode 1.)	To revise par. (b)(3) to read: (3) Specification 12B (sec. 178.205 of this subchapter). Fiberboard box with securely closed inside plastic containers made of polyethylene film at least 0.004 in thick. Net weight (dry weight) in each inside container may not exceed 10 lb. Each inside container must be surrounded by asbestos or an equivalent fire-resistant cushioning material. Net weight (dry weight) in each outside box may not exceed 50 lb.
E 7602-No	Gaspro, Inc	173.850	Authorizes shipment of calcium oxide, an ORM-B material, in non-DOT specification dry bulk containers not over 40,000 lb net weight by cargo vessel. (Mode 3.)	To add par. (a)(7) to read: (7) Sift-proof bulk freight container with net weight not over 40,000 lb.
E 7626-No	Commercial Metals Co.; Johnson Scan Star.	173.1025	Authorizes shipments of nonferrous metal borings, shavings, turnings, or cuttings in plastic lined freight containers. Freight containers with open tops must have lading protected from weather and water. Lading must be at or below 150° F. when loaded. (Mode 3.)	To amend sec. 173.1025 to read: Metal borings, shavings, turnings or cuttings, when offered for transportation by water, must be prepared for shipment in compliance with sec. 173.510 and must be packaged in a metal barrel or drum, or, for nonferrous material only, in compressed bales wrapped in burlap provided the burlap shows no sign of oil, or, in plastic lined freight containers. Freight containers with open tops must have lading protected from weather and water and the lading must be at or below 150° F when loaded.

Application No.	Applicatn or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
E 7649-N	Ford Motor Co.	173.306(d)	Requests authority to ship a nonflammable, compressed gas in authorized DOT specification cylinders in the trunks of passenger automobiles when the container is part of a tire inflator system.	To add paragraph (d)(4) to read: (4) A cylinder which is part of a tire inflator system in a motor vehicle, charged with a nonliquefied, nonflammable compressed gas is excepted from the requirements of pts. 170-189 of this subch. except: (i) Unless otherwise authorized by the Department, each cylinder must be in compliance with 1 of the cylinder specifications in pt. 178 and authorized for use in Sec. 173.302 for the gas it contains. (ii) Each cylinder must be in compliance with the filling requirements of Sec. 173.301. (iii) Each cylinder must be securely installed in the trunk of the motor vehicle and the valve must be protected against accidental discharge.
E 7655-No.	Tennessee Eastman Co.	173.119(m)	Authorizes shipment of a flammable liquid which is also corrosive in a DOT specification 19A wooden box with an inside 1-gal polyethylene jug. (Mode 1.)	To revise par. (m)(2) to read: (2) Specifications 15A, 15B, 15C, 16A, or 19A (sec. 178.168, 178.169, 178.170, 178.185, and 178.190 of this subchapter). Wooden boxes with inside containers which must be glass, earthenware, or polyethylene, not over 1-gal capacity each, cushioned with noncombustible packing material in sufficient quantity to absorb the contents of the inner container.
E 7782-N	Eastman Kodak Co.	176.800(a)	Waives the general stowage requirements specified in 49 CFR 176.800(a) for hazardous materials in limited quantities when loaded in transport vehicles and freight containers. (Mode 3.)	To revise paragraph (a) to read: (a) Each package of a corrosive material being transported on a vessel must be stowed well away from living quarters, foodstuffs, and cargo of an organic nature except when in limited quantities and loaded in transport vehicles and freight containers.
7797-N	Food Materials Corp.	172.100(g)	Requests an exemption to ship certain flammable liquids with a flash point greater than 73° F in 1-gal and 55-gal quantities per package aboard passenger and cargo-only aircraft respectively, as now generally authorized for flammable liquids, n.o.s. (Modes 4 and 5.)	To revise par. (g)(3) to read: (3) For flammable liquids the net quantity limitation for carriage aboard a passenger-carrying aircraft or railcar is 1 gal per package, and for cargo-only aircraft is 55 gal per package if: (i) The material has a flash point of 73° F or higher; (ii) The material does not meet the definition of any other hazard class as defined in this part, and (iii) The flash point, or an indication that the flash point is 73° F or higher, is marked on the outside package.

[1] See the following table:

Sec. 172.101 Hazardous materials table—(continued)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quality 1 package		Water shipments		
*W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
(Add)	Ammunition for cannon with tear gas projectile.	Class A explosive.	Explosives A.	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with tear gas projectile.	Class B explosives.	Explosive B	do	173.89	do	do	1, 2	5	

NOTE: The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., August 1, 1977.

ALAN I. ROBERTS,
Director, Office of Hazardous Materials Operations.

[FR Doc.77-22603 Filed 8-5-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

EXPERT PANEL ON NITRITES AND NITROSAMINES

Correction in the Room Number for the Nitrites and Nitrosamines Meeting

The room number for the Expert Panel on Nitrites and Nitrosamines meeting was incorrectly stated in the August 2, 1977, FEDERAL REGISTER (Vol. 42, No. 148), 39123.

The meeting will be held in the Jefferson Auditorium, South Building, Department of Agriculture, 18th and Independence Avenue SW., Washington, D.C., August 17, 1977, at 9:30 a.m.

Done at Washington, D.C., on August 4, 1977.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc.77-22831 Filed 8-5-77;8:45 am]

Forest Service

LAND MANAGEMENT PLAN, MOHAWK UNIT, PLUMAS AND TAHOE NATIONAL FORESTS

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the land management plan, Mohawk Unit, Plumas and Tahoe National Forests, Calif. USDA-FS-R5-FES(Adm)76-06.

The environmental statement concerns a proposed land management plan for the 120,000 acres of National Forest lands known as the Mohawk Unit of the Plumas and Tahoe National Forests, in Plumas and Sierra Counties, Calif. Twenty-six thousand acres within this Unit have been inventoried as "roadless."

This final environmental statement was transmitted to the Council on Environmental Quality (CEQ) on August 1, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3210, 12th Street and Independence Avenue SW., Washington, D.C. 20013.

Regional Forester, USDA, Forest Service, 630 Sansome Street, Room 529, San Francisco, Calif. 94111.

Forest Supervisor, USDA, Forest Service, Plumas National Forest, 159 Lawrence Street, Quincy, Calif. 95971.

Forest Supervisor, USDA, Forest Service, Tahoe National Forest, Highway 49 and Coyote Streets, Nevada City, Calif. 95959.

A limited number of copies are available, upon request, from Forest Supervisor Lloyd Britton, Plumas National Forest, Box 1500, Quincy, Calif. 95971.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

EINAR L. ROGET,
Acting Deputy Chief.

JULY 29, 1977.

[FR Doc.77-22767 Filed 8-5-77;8:45 am]

GREAT BEAR WILDERNESS STUDY AREA REPORT

Public Hearing

Notice is hereby given that a public hearing will be held, beginning at 10 a.m. on September 6, 1977, at the Outlaw Inn, Kalispell, Montana, and 10 a.m. on September 8, 1977, at the Rainbow Hotel, Great Falls, Montana, on a proposal for the future management of the Great Bead Wilderness Study Area comprised of approximately 386,560 acres within the Flathead and Lewis & Clark National Forests in the Counties of Flathead, Teton and Pondera in the State of Montana.

A brochure containing a map and information about the proposal may be obtained from the Forest Supervisor, Flathead National Forest, 290 North Main Street, P.O. Box 147, Kalispell, Montana 59901.

Individuals and organizations may express their views by appearing at this hearing, or may submit written comments for inclusion in the official record to the Great Bear Wilderness Study, P.O. Box 147, Kalispell, Montana 59901. Comments must be received by October 8, 1977, in order to be considered in the preparation of the final proposal. Those persons wishing to present oral testimony at the hearing should notify the Regional Forester, Northern Region, Missoula, Montana 59801, prior to August 26, 1977.

JOHN R. MCGUIRE,
Chief, Forest Service.

[FR Doc.77-22950 Filed 8-5-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 28178]

WORLD JET INC., d.b.a. SILVAS AIR LINES

Hearing

Notice is hereby given that a public hearing in the above-entitled proceeding is assigned to be held on September 13, 1977, at 10 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned Administrative Law Judge.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the various documents filed in the official docket of this case which is available in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., August 1, 1977.

THOMAS P. SHEEHAN,
Administrative Law Judge.

[FR Doc.77-22763 Filed 8-5-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

PRIVACY ACT OF 1974

System of Records

The Department of the Army, for administrative purposes, is reidentifying certain systems of records under the Privacy Act of 1974, which were published in the FEDERAL REGISTER of August 18, 1975; September 9, 1975; and July 25, 1977. Systems of records affected are identified below along with the new identification assigned. The system name and contents remain unchanged.

Former identification	*New identification*
A0302.06DAIG (40 FR 35177)	A0302.06aDAIG
A0509.18DAAG (40 FR 35212)	A0509.18aDAAG
A0702.04DAAR (40 FR 35219)	A0702.04aDAAR
A0708.02DAPC (40 FR 35225)	A0708.02aDAPC
A0708.21DACA (42 FR 27836)	A0708.21bDACA
A0727.050SA (40 FR 35241)	A0727.05aOSA
A0915.01DASG (40 FR 35254)	A0915.01aDASG
A1010.07TRADOC (40 FR 35265)	A1010.07aTRADOC
A1011.04DAPE (40 FR 41980)	A1011.04aDAPE
A1207.08DAIG (40 FR 35275)	A1207.08aDAIG

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

AUGUST 1, 1977.

[FR Doc.77-22721 Filed 8-5-77;8:45 am]

Department of the Navy

RAMP INDUSTRIES, INC.

Intent To Grant Limited Exclusive Patent License

Pursuant to the provisions of Part 746 of title 32, Code of Federal Regulations (41 FR 55711–55714, December 22, 1976), the Department of the Navy announces it intention to grant to RAMP Industries, Inc., a corporation of the State of New York, a revocable, nonassignable, limited exclusive license for a period of five years under Government-owned U.S. Patent Number 3,868,572 issued February 25, 1975, entitled "Audio Transmission and Reception Assembly," inventors Rubin P. Kaufman, Jack B. Rosenfeld, and Elaine Schiller.

This license will be granted unless by October 7, 1977, an application for a nonexclusive license from a responsible applicant is received by the Office of Naval Research (Code 302), Arlington, Va. 22217 and the Chief of Naval Research or his designee determines that such applicant has established that he has already brought or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or the Chief of Naval Research or his designee determines that a third party has presented to the Office of Naval Research (Code 302) evidence and argument which has established that it would not be in the public interest to grant the limited exclusive license.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed to the Office of Naval Research (Code 302), Arlington, Va. 22217 within 60 days from the publication of this notice. Also, copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, contact:

Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, Va. 22217; Telephone No. 202–692–4005.

Dated: August 2, 1977.

K. D. Lawrence,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc.77-22778 Filed 8-5-77;8:45 am]

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group D (Mainly Laser Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, N.Y., on September 27–28, 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in Section 552b(c) of Title 5 of the United States Code, specifically, subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Maurice W. Roche,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

August 3, 1977.

[FR Doc.77-22690 Filed 8-5-77;8:45 am]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, N.Y., on September 7, 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as Infrared and Night Vision Sensors. The review will include classified program details throughout.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in Section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Maurice W. Roche,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

August 3, 1977.

[FR Doc.77-22691 Filed 8-5-77;8:45 am]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at Naval Air Systems Command, 1421 Jefferson Davis Highway, Room 110, Arlington, Virginia on August 23-24, 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with tactical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include details of classified program details throughout.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in Section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Maurice W. Roche,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

August 3, 1977.

[FR Doc.77-22692 Filed 8-5-77;8:45 am]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group A (Mainly Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, N.Y. 10014, on August 29–30, 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of

economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The mircrowave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout. In accordance with section 10(d) of Appendix I, Title 5, United States Code, it is hereby determined that this meeting of the Advisory Group on Electron Devices concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

AUGUST 3, 1977.

[FR Doc.77-22693 Filed 8-5-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 772-4]

MOTOR VEHICLE POLLUTION CONTROL; RECALL ORDER, CHRYSLER CORP.

Public Hearing

On February 8, 1977, a notice was published in the FEDERAL REGISTER (42 FR 7983) setting forth the details of a recall order issued by the Environmental Protection Agency (EPA), to the Chrysler Corp. on December 8, 1976. The order required Chrysler to recall 208,000 of its 1975 model year cars with the 360 and 400 cubic inch displacement engines due to EPA findings that a substantial number of these vehicles are not meeting the Federal carbon monoxide standard. The notice also described Chrysler's response of January 19, 1977, which requested a public adjudicatory hearing to contest the findings of the Administrator. No date or location of the hearing was announced in the notice, pending prehearing discovery and decisions on possible petitions for intervention.

Since the publication of the notice, the time for the filing of petitions for intervention has elapsed without any such petitions being filed. The date for the commencement of the hearing has been established as September 19, 1977. The hearing will begin at 10 am. and is to be held in Room 2126 of the Mall area of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Interested parties may inspect the hearing docket at the Office of the Hearing Clerk (A-110), Room 1019E, at the above address between the hours of 8 a.m. and 4:30 p.m. The Hearing Clerk may be contacted at 202-755-7733.

Dated: August 1, 1977.

NORMAN D. SHUTLER,
Acting Assistant Administrator for Enforcement (EN-329).

[FR Doc.77-22625 Filed 8-5-77;8:45 am]

[FRL 772-6; OPP-210007A]

OFFICE OF PESTICIDE PROGRAMS

Response to Petition To Suspend Certain Products Containing Nitrosamines

On February 3, 1977, the U.S. Environmental Protection Agency (EPA) received from Congressman Andrew Maguire and Henry Waxman, the Migrant Legal Action Program, Inc., the Maricopa County Legal Aid Society, and several migrant farmworkers a petition to suspend the registrations of certain pesticide products containing nitrosamines, in accordance with section 6(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.). Specifically, the petition referred to the following: Treflan E.C. (EPA Reg. No. 1471-35), Trysben 200 (EPA Reg. No. 352-250), and Benzac 1281 (EPA Reg. No. 264-92). The full text of the petition was published in the FEDERAL REGISTER on February 24, 1977 (42 FR 10886).

This document serves as EPA's response to the petition. The attachments referred to are available for public scrutiny in Room 447, East Tower, ATTN: Ms. Suzanne Harker, Office of Special Pesticide Review (WH-566), EPA, 401 M St. SW., Washington, D.C. 20460 (telephone 202-755-5687).

Dated: July 29, 1977.

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

NITROSAMINE PETITION DECISION DOCUMENT

A. BACKGROUND

On February 3, 1977 the Agency received from Congressmen Andrew Maguire and Henry Waxman, the Migrant Legal Action Program, the Maricopa County Legal Aid Society, and migrant farmworkers a petition to suspend the registration of Treflan (EPA Reg. No. 1471-35), Trysben 200 (EPA Reg. No. 352-250), and Benzac 1281 (EPA Reg. No. 264-92), pursuant to section 6(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The petitioners claimed:

The continued use of nitrosamine-containing herbicides will have an unreasonable adverse effect on the environment and constitutes an imminent hazard to man during the time required for cancellation. The risks involved in the case of Trysben 200, Benzac and Treflan far outweigh their benefits when viewed in light of the fact that: (a) These three herbicides have been found to contain significant quantities of nitrosamines; (b) nitrosamines are known to be potent carcinogens; and (c) there is a high risk of human exposure to these herbicides in both agricultural and garden use.

The Office of Special Pesticide Reviews (OSPR) in the Office of Pesticide Programs was assigned the responsibility for gathering information necessary to respond to the petition and recommending a response. In accordance with OSPR procedures, a Working Group was established consisting of the OSPR Project Manager and representatives of other concerned offices within the Agency.

In order to compile information necessary to respond to the petition in an informed way, a number of sources of information and advice were utilized.

To evaluate the potential risks associated with use of the subject products, it was necessary to identify use practices and to determine the amount of exposure to the nitrosamines contained in each product. Information on these issues was sought through FIFRA section 21(b) hearings, which were held in Phoenix, Arizona on March 7, 1977 and in Washington, D.C. on March 9, 1977, and through public comment. Notice of these hearings and opportunity for comment was published in the FEDERAL REGISTER on February 24, 1977. Information on use practices also was sought from the registrant of each product. Evidence of benefits associated with the use of these products, including the feasibility of using alternative products, was provided by the registrants, users, the U.S. Department of Agriculture, and this Agency. The comment period ended April 5, 1977.

This document summarizes and discusses the information which the Working Group has compiled and relates the recommendations of the Working Group concerning the disposition of the petition.

B. DISCUSSION AND SUMMARY OF RECOMMENDATIONS

The petition asks the Administrator to suspend the registrations of three pesticide products on the basis that they contain carcinogenic contaminants. Under the statute, suspension is an interim remedy which may be utilized to halt the distribution, sale and use of a product during the lengthy period of time required to complete cancellation proceedings, wherein the ultimate fate of a registration is determined. Accordingly, in order to suspend, a cancellation proceeding must be in progress or be initiated at the same time as the suspension proceeding. In both suspension and cancellation proceedings, the basic statutory test under FIFRA applies, i.e., whether the pesticide causes an "unreasonable adverse effect on the environment." This term is defined (FIFRA section 2(bb)) so as to require the Administrator to balance the risks associated with the use of a pesticide against its benefits.

The key distinctions between cancellation and suspension, for present purposes, are the period of time to be con-

sidered in balancing risks and benefits, and the intensity and thoroughness of the review. Essentially, cancellation decisions involve intensive analyses and weighing of the risks and benefits associated with indefinite future use, while suspension decisions involve preliminary assessments of the likelihood that risks will exceed benefits during the period of time (usually two years) necessary for cancellation proceedings.

Accordingly, the aim of the Working Group has been to determine in as sound a manner as possible in the limited period of time available whether the risks associated with the use of these products during the period of time necessary for cancellation proceedings exceed the benefits which would result from their use during this period. For purposes of this analysis the Working Group assumed that two years would be required for cancellation proceedings.

For the reasons developed fully below, the Working Group has concluded that, based on the available data, the risks associated with the use of Treflan for a two-year period are substantially exceeded by the benefits which would result from its use during the period, and accordingly recommends against the suspension of Treflan. With respect to Trysben and Benzac the Working Group has concluded that, based on available data, the risks and the benefits are both essentially zero and the extremely low risks that have been identified do not justify the extraordinary commitment of Agency time and resources which a suspension proceeding would entail. Therefore the Working Group recommends against suspension of these pesticides. At the same time it recommends that the Agency require certain labeling changes in order to keep individual exposure to a minimum.

With respect to all three pesticides, however, the Working Group has concluded that the oncogenic risk criterion of 40 CFR 162.11(a)(3) has been met or exceeded; and, therefore, that a rebuttable presumption against registration (RPAR) should be issued against these pesticides. The Working Group recommends that the resource efficient OSPR policy of proceeding against all pesticides in a generic group be followed by not issuing an RPAR against these three nitrosamine-containing pesticides until the Agency has determined what other pesticides contain these nitrosamines, so that a common RPAR proceeding may be conducted. The Working Group further recommends that the Agency assign a priority ranking to these pesticides for RPAR attention in accordance with its usual procedures for prioritization of OSPR chemicals (see OSPR Project Manager Manual, 1976), and that in the course of pre-RPAR review it determine whether other risk criteria (in addition to the oncogenic criterion) have been met or exceeded. In the Working Group's view, these RPAR recommendations are consistent with a deadline for issuance of an RPAR of October 1, 1977, and recommends that this deadline be established.

The findings of the analyses conducted to reach these conclusions are summarized below.

C. TREFLAN

Treflan (common name trifluralin) is registered by Elanco Products Division, Eli Lilly Co.; it is a pre-emergent soil-incorporated herbicide used primarily on soybeans and cotton, and, to a lesser extent, on other field crops and fruits and vegetables to control broadleaf weeds and annual grasses. Between 24–30 million acres of these crops are treated annually with Treflan. Treflan is not registered for use around the home.

Although the petition limited its discussion on Treflan to its use on cotton, we have estimated the exposure to and risks associated with all registered uses of Treflan. This approach was taken because the petitioners called for suspension of the registration of the product, not just its use on cotton.

1. *Analysis of nitrosamines in Treflan.* In the tests cited in the petition Fine found 154 ppm nitrosodipropylamine (NDPA) in Treflan.

After Fine's report had been presented (September 1976), Elanco changed its manufacturing process specifically to reduce the formation of NDPA in trifluralin. Tests conducted by Fine and by the OPP Technical Services Division Chemical and Biological Investigation Branch (CBIB) showed average levels of NDPA of 19 ppm and 12 ppm,[1] respectively, in Treflan produced by this improved process.[1] The analyses discussed below are based on Treflan containing 16 ppm NDPA because this level represents an upper limit of NDPA in the Treflan currently being produced.

Elanco expects to be able to reduce NDPA levels by yet an additional order of magnitude by August, 1978.

2. *Exposure to nitrosamines in Treflan.* The two primary routes of human exposure to Treflan are inhalation and skin absorption during application and subsequent field work such as chopping, thinning, and weeding. The field monitoring data used to assess inhalation exposure were supplied by Elanco. No other data were available.

(a) *Inhalation exposure.* Elanco had collected air samples using a personal air monitoring device consisting of a pump and a charcoal adsorber tube. Agency personnel who reviewed this method concluded that it would probably give a reliable measure of vapor concentration of NDPA but would neglect any NDPA present on particulates in the air. However, Elanco's results have been used as the basis for calculating exposure to NDPA because of a lack of any alternative air measurements. It is recognized that additional but unquantifiable exposure of applicators could result from inhalation under dusty conditions.

(i) *Applicator inhalation exposure.* Applicator exposure to NDPA in Treflan was estimated on the basis of the results of field studies conducted by Elanco and submitted to EPA on February 14, 1977. These studies involved the use of both Treflan containing NDPA at ca. 160 ppm and Treflan containing NDPA at ca. 6 ppm; both Treflan and NDPA were measured in the air surrounding the applicators and application equipment.

The total number of applicators to which these calculations apply is estimated to be 470,000. It was concluded that the average annual work time for the majority of Treflan applicators was approximately 15 hours apiece; from the testimony at the Phoenix hearing, it was concluded that a small but undetermined number of applicators could spend up to 450 hours per year apiece applying Treflan.

Inhalation exposure to NDPA during the two years required for cancellation proceedings was calculated as follows: Air concentration × volume of air inhaled (1.8 m^3/hr × hours of exposure per year (15 for applicators; 100 for fieldworkers) × 2 years ÷ (70 × 365). The last two numbers convert the total two year exposure to a daily average over the lifetime of an individual. The air concentration of NDPA in the breathing zone of the applicators was estimated to be 0.0024 $\mu g/m^3$, based on (1) conversion of the Elanco air monitoring data to a median value (as discussed in detail in the Appendix of Attachment 1), and (2) the assumption that the air concentration of NDPA resulting from the use of Treflan containing 16 ppm NDPA would be tenfold lower than the air concentration of NDPA measured by Elanco when using Treflan containing 160 ppm NDPA.

The lifetime daily average exposure to NDPA from Treflan containing 16 ppm NDPA is thus computed to be 0.005 μg/day for applicators.

The significance of the air concentration of NDPA used in these calculations—0.0024 $\mu g/m^3$—can be illustrated by comparing this level with the maximum air concentration assuming total volatilization of NDPA immediately into the first two meters of air over the treated area. Using this theoretical approach, we calculated that applicators would be continuously exposed to a maximum air concentration of 1.8 $\mu g/m^3$ NDPA. Such a concentration could never be attained, however, since wind and diffusion processes would continuously disperse the NDPA.

(ii) *Fieldworker inhalation exposure.* Fieldworker exposure was evaluated on the basis of data submitted by Elanco on March 28, 1977. Elanco had collected air samples above four fields which had been treated with Treflan four to six weeks earlier. Levels of NDPA in the Treflan used in these tests ranged from 77.7 to 458 ppm.

Fieldworker inhalation exposure was calculated in the same manner as for applicators. The highest level of NDPA detected—0.032 $\mu g/m^3$ (disregarding an

[1] Treflan samples were collected by Agency inspectors at the Lilly Tippecanoe labs on February 10, 1977, and were sent half to Thermo Electron Research Center. Thus, CBIB's and the contractor's tests were conducted on the same sample.

arguably aberrant value of 1.80 $\mu g/m^3$)—was found at the breathing zone of one of the workers. However, 70 to 77 air samples had no detectable NDPA, as shown in Table III of Attachment 1. The median air concentration of NDPA in air over these fields was estimated to be 0.0013 $\mu g/m^3$, based on (1) conversion of the Elanco air monitoring data to a median value (as discussed in detail in the Appendix of Attachments (1) and (2) the assumption that air concentration of NDPA resulting from the use of Treflan containing 16 ppm NDPA would be tenfold lower than the air concentration of NDPA measured by Elanco over fields treated with Treflan containing NDPA at levels ranking from 77.7–458 ppm. The lifetime daily average exposure to NDPA from two years use of Treflan containing 16 ppm NDPA is computed to be 0.0018 ng/day for fieldworkers.

The total number of fieldworkers exposed to trifluralin and NDPA was estimated to be in the neighborhood of 38,000. On the basis of testimony given at the FIFRA section 21(b) hearings, it was concluded that fieldworker exposure to Treflan is limited to cotton production.

On April 26, 1977, the Agency received from Elanco a second study of NDPA concentrations in air and soil over and in Treflan-treated cotton fields in Arizona. This information was not received in time to permit full consideration in the exposure analysis. However, a cursory review of these new data shows that they would have little impact on exposure estimates.

(b) *Dermal exposure.* From testimony given at the FIFRA section 21(b) hearing in Phoenix, the Working Group concluded that Treflan applicators and fieldworkers may experience dermal exposure to NDPA. Dermal exposure of applicators may occur during mixing, loading, and spraying operations, and during equipment cleaning; dermal exposure of fieldworkers may occur during chopping, weeding, and thinning in cotton fields.

Since there are no published studies of residues on surfaces resulting from either vapor or particulate levels of NDPA, it was necessary to estimate potential dermal exposure to NDPA using the average ratio of dermal and inhalation exposures measured in other pesticide spray application situations. It was assumed that these other applications would provide a reasonable model for estimating dermal exposure to Treflan applicators and fieldworkers. The daily average lifetime dermal exposure to NDPA is calculated to be 0.16 ng/day for applicators and 0.059 ng/day for fieldworkers, assuming ten percent absorption of the NDPA that reaches the skin.

(c) *Unquantifiable exposures.* Several unquantifiable aspects of actual field use of the pesticides are not accounted for in these calculations and, taken together, would increase the inhalation, dermal, and/or oral exposure to an unknown extent. The factors are sporadic in occurrence for most individuals, but could be continuous for others.

The sporadic exposures include accidental spillage of the compound on the skin or clothing during mixing and loading it into spray equipment and cleaning out plugged spray nozzles by blowing into the spray rigs. The unquantifiable routine exposures for some individuals include such factors as wearing clothing contaminated with the pesticide for several days and eating food with unwashed hands. Families of workers could also be exposed in their dwellings, perhaps ultimately through contaminated clothing of the worker.

The aggregate of these unquantifiable exposures, averaged over the entire population at risk, will increase the average total exposure to an unknown extent. Another potential factor that would cause the exposure estimates to be higher than the calculated values is the failure of the air sampling method to measure airborne particulates. The magnitude of these over-estimates is not likely to be large if averaged over the entire population at risk. However for the individuals accidentally exposed or careless in routine handling of the pesticide, these exposures could be large.

For a comprehensive discussion of exposure, see Attachment 1.[2]

3. *Risk associated with use of Treflan.* In order to assess the carcinogenic risk to man resulting from exposure to a chemical, it is necessary to extrapolate data from animal experiments conducted at high levels of exposure. Virtually all competent scientists, however, recognize that this type of extrapolation is at best highly speculative and based on many unverifiable assumptions. Thus, the estimate of the resulting number of cases of cancer produced in man should be viewed as a rough measure of hazard that incorporates as well as possible both the degree of carcinogenic activity of a chemical and the exposure levels to which man is suspected to be subjected.

The carcinogenic risks associated with use of Treflan were evaluated using the estimates of average lifetime daily inhalation exposure summarized above in part 2 and carcinogenic data from animal experiments. Because the only animal inhalation experiment available used nitrosodimethylamine (DMN), it was necessary in evaluating the risk from inhaling NDPA to assume that the ratio of carcinogenic potencies of NDPA to DMN via inhalation is the same as the potency ratio via drinking water (=1.65).

Using the one-hit model for low dose extrapolation, the number of cases of cancer expected to be induced in 470,000 spray applicators during the two years required in the event of cancellation would be about 0.0029 from inhalation plus about 0.093 from dermal exposure for a total of about 0.096 from both exposure routes combined. This implies that the chances are about 1 out of 10 that there may be at least one person among the 470,000 applicators who will get cancer as a result of two years inhalation and dermal exposure to Treflan containing 16 ppm NDPA. Stated another way, each of these applicators has about one chance in 5,000,000 of getting cancer.

Using the one-hit model for the estimated 38,000 field workers, the number of cases of cancer induced by 2-year exposures would be about 0.00008 due to inhalation plus about 0.0026 due to dermal exposure for a total of about 0.0027 cases for both exposure routes combined. This implies that the chances are about 3 out of 1,000 that there may be at least one person among the 38,000 field workers who will get cancer as a result of two years inhalation exposure to Treflan containing 16 ppm of NDPA. Stated another way, each of these field workers has about one chance in 14,000,000 of getting cancer.

If the same exposure and animal response data are used for a log-probit extrapolation the total number of cases for both exposure routes would be about 2×10^{-4} cases in spray applicators and 3×10^{-11} cases in fieldworkers. All of these calculations assume the use of Treflan containing ca. 16 ppm NDPA during the two-year period, not the use of either Treflan manufactured prior to 1977 or Treflan containing further reduced levels of NDPA.[3]

There are also risks associated with the unquantifiable exposures mentioned in part C–2–c which have not been explicitly considered in the calculation. It is estimated that the additional number of cases of cancer in the population due to these exposures is small, since the exposures will occur in only a small fraction of the population at risk. However, for the individuals experiencing these unquantifiable exposures, the associated risk could be larger than the risks to these individuals which we have been able to quantify. Our concern for these individuals and for this risk is not trivial. But to the extent that it results from use or application practices which are at odds with label warnings or common

[2] Inhalation and dermal exposure of field workers to NDPA has been quantified only for treated cotton fields. As soon as information on exposure is available for tractor drivers and field workers in other treated crops, the Agency will determine the associated risks and consider such in the risk/benefit analysis.

[3] If the number of cases of cancer were calculated for the purpose of suspension from the date this petition was submitted to the Agency, about half of the two year exposure would be to Treflan containing 160 ppm NDPA (the concentration cited in the petition) and about half to Treflan containing 16 ppm NDPA. This would result in the number of cases of cancer expected to be induced to be 5.5 times higher than noted in the body of this document using the one-hit linear model. The Agency has determined, however, that almost all Treflan containing the higher level cited in the petition has been used and that Treflan now contains 16 ppm NDPA as an upper limit. Accordingly, estimates based on 16 ppm NDPA were utilized by the Working Group.

sense, or from preventable accidents, our concern for this group of individuals is tempered by the realization that the remedy of a more careful practice of one's trade seems more appropriate than administrative remedies.

It is recognized that the risk estimates are very inexact due to the uncertainty in air concentration of NDPA in particulate form, the lack of dermal penetration data on NDPA, the uncertainties in the exposure estimates under field conditions, the applicability of animal carcinogenesis data to man, the carcinogenic response in man at very low doses and other factors discussed in the exposure and risk background documents. Therefore, the calculations should only be regarded as a rough indication that the risks of NDPA exposure from use of Treflan appear very small.[4]

For a detailed discussion of risk, see Attachment 2.

4. *Benefits associated with use of Treflan.* The FIFRA requires that the Administrator take into account not only the economic, social, and environmental costs, but also the benefits of the use of any pesticide when determining whether its continued use during the time required for cancellation proceedings would be likely to result in an unreasonable risk to man or the environment.

In conducting the benefit analysis the Agency must first look at available alternatives. If it is found that another pesticide is as effective at the same or lower cost as the product in question, no benefit derives from the use of the subject product. If, however, no other pesticide is as effective at the same or lower cost as the subject product, a benefit is derived from the use of the subject product. In this case, the Agency must analyze the impact of prohibiting use of this product. Those areas of impact which must be examined include the impact on production and prices of agricultural commodities, retail food prices, and other elements of the agricultural economy. The remainder of this part summarizes the Treflan benefits analysis.

(a) *Alternatives to Treflan.* The feasibility of using alternative weed control methods was examined by the National Herbicides Assessment Team, consisting of representatives of the USDA Agricultural Research Service, the USDA Economic Research Service, and state land grant universities; this group's full report may be found in Attachment 3.

The feasibility of alternative weed control methods was analyzed in terms of per acre yield (efficacy) and cost relative to Treflan. Other dinitroanilines were not considered as alternatives as they are also likely to contain nitrosamines. Following is a summary of the conclusions reached by the Team. It should be noted that although the members of the Team represent many years of experience in assessing the efficacy of various pesticides, their conclusions should be viewed as preliminary because of the time constraints imposed on their study. Those pesticides in parentheses were later identified as ones which could potentially contain nitrosamines.

Alternatives to Treflan for use on soybeans: Lasso, Dynap, Sencor, Lorox, Amiben, (Vernam), and cultivation

Alternatives to Treflan for use on cotton: Karmex, Caparol, Lasso, Cotoran, Dacthal, Prefar and (Zorial), followed by cultivation

Alternatives to Treflan for use on fruits and vegetables: Prefar, Alanap, Devrinol, Amiben, Furloe, Sinbar, Dalapon, TOK, Lorox, (Tillam, Enide[5]-and Eptam), mechanical cultivation, and hand weeding

Alternatives to Treflan for use on other field crops: Lasso, Amiben, (Vernam and Eptam), mechanical cultivation, and hand weeding

The Team concluded for all of these use sites that the efficacy of these alternative weed control methods is less than that associated with use of Treflan and/or that these alternatives are more costly than Treflan.

The petition submitted to the Agency listed eight products which might serve as alternatives to Treflan. Of these, two (nitralin and fluoridifen) are not presently on the market, and three (dinitramine, vernolate, and diphenamid) potentially contain nitrosamine contaminants. Of the remaining three pesticides, chlorobromuron and chloramben are not registered for use on cotton and, together with linuron, were found to be less efficacious and/or more costly on the use sites for which they are registered.

(b) *Economic Impact of Suspending Treflan.* Because the alternatives to Treflan were found to be less effective and/or more costly than Treflan, it was necessary to analyze the economic impact of a possible suspension. This task was performed by EPA and USDA economists. In their analyses they used information provided by the National Herbicides Assessment Team which included information on acreage treated by trifluralin, weed control input requirements and yield differences for the alternatives most likely to be used in place of trifluralin. Any error in these field estimates would, of course, result in corresponding errors in the economic predictions. It should also be noted that the economic analysis was based on use of all the pesticides listed above in part C–4–a although, as has been noted, some of those pesticides may also contain nitrosamines. The full report of the economists may be found in Attachment 3.

It should be noted that the following analyses are based on the same assumptions which underlie most economic analyses, i.e., that those market forces not specifically included in the models remain constant. Examples of these forces include consumer tastes and preferences, the state of technology (in this case, with respect to agricultural practices and changes in the efficacy of alternative pesticides), etc. Because these forces are not fully taken into consideration in the economic analysis and because the assumptions utilized in the analysis may or may not adequately represent the considered sectors of the economy, the resulting conclusions should be viewed as a general indication of the possible effects of a suspension.

(i) *Short-Run Impact.* These impacts were estimated separately for each agricultural sector which would be affected. Partial budgeting techniques, combined with various assumptions regarding demand elasticity, were used to reach the following conclusions:

Production costs for soybeans would increase by $36.0 million. Due to the widespread use of Treflan for soybeans (38% of the U.S. acreage), the substantial cost increase, and the expected yield declines, 4.5 million acres might shift to corn production. The price of soybeans would increase by 24% over current prices.

Cotton production costs would increase by $5.9 million on the 8.3 million acres currently treated. Also, yield declines on this acreage might be as high as 12 percent. The resultant impact on cotton producers who use Treflan would be a reduction in income of $77 million.

Income losses for other agricultural sectors using Treflan would be $25.8 million for peanut, sugar beet and sunflower producers and $38.2 million for fruit and vegetable growers.

The income of all agricultural producers would decline by $521 million as a result of increased cost and reduced yields.

Due primarily to the increased corn production, which would significantly lower corn prices, the consumers of agricultural products in aggregate would be relatively better off in the short run. The monetary cost of a suspension would be borne primarily by the agricultural sectors during the first year following suspension.

(ii) *Long-Run Impact.* As the economic impact of a suspension must be evaluated in terms of the time required for cancellation proceedings, approximately two years, we must look beyond the short run (one year) estimates described above in part C–4–b–i. The USDA and EPA economists used the EPA Linear Programming Model to evaluate these long run impacts. This model assumes market adjustment in 1–3 growing seasons although it could take up to five years for the market fully to adjust. Thus, the long run impacts discussed below represent the movement that the market would begin to take during the second year of suspension.

The linear programming model used in this analysis was designed to evaluate the impact of pesticide regulatory policy on major sectors of U.S. agriculture. As such, the model addresses such issues as the ability to meet food, feed and fiber

[4] A comparison of these exposures to Treflan with other common nitrosamine exposures may be useful to set the problem in context. The total annual exposure of a spray applicator is about 2,160 ng/year, but Fine has estimated the nitrosamine content of 16 slices of bacon is about 2,000 ng and the DMN intake from 20 cigarettes is about 1,600 ng.

[5] Diphenamid (Enide) has been tested for nitrosamines; none were found at a sensitivity of 1 ppm. Although this product is registered for use on cotton and soybeans, it was not included in the Team's recommendations for alternatives for cotton and soybeans.

demands, cost of production, land allocation, monetary returns to the agricultural sector and the impact of alternative policy on these parameters. The model was not designed to assess consumer level impacts directly, but has been utilized to draw inferences concerning such impacts. For a number of reasons, principal of which is an extremely inelastic demand component of the model, such inferences may tend to overestimate actual results. Therefore, the conclusions which were drawn from the analysis are expressed at the farm level.

The most critical assumptions in the modelling effort relate to yield and cost changes following a pesticide restriction. In the case of Treflan for soybean and cotton production, these estimates were derived by biological scientists who were considered expert in the area of herbicide use. The estimates were not necessarily directly supportable by field research and are therefore considered to be tentative at this time. However, due to the assumption that the biologists worked under, namely that alternative herbicides would not be available in sufficient supply to satisfy a void created by suspension, the biological data should be considered as extreme upper bound estimates of yield losses in the long run. The assumption of supply availability has more merit for the short run impact estimation previously discussed.

Conclusions reached in this analysis were:

Increases in the cost of production plus yield effects, if passed on to the consumer in their entirety, would increase the price of soybeans by $1.17 per bushel, or approximately a 20 percent increase over recent prices.

Coincident with a price increase for soybeans, production would decline by 66 million bushels (4.5 percent) even after a substantial increase in planted acres of 4.4 million acres (an increase of 8.3 percent).

The impact on soybeans would transmit through the entire feedgrain economy, raising corn production costs by as much as $0.14 per bushel and corn prices by 5 percent.

Production and yield impacts associated with cotton could result in an added cost of $29.00 per bale for raw cotton, or a 19 percent increase. Translated to price impacts, this could result in an increase of 13.4 percent over the recent price of $216.30 per bale. The impact on final prices for finished cotton products was not estimated. To meet current cotton demand from domestic and international sectors following suspension, an increase in planting of 1.2 million acres (12.3 percent) would be required.

Overall Impact: Due to the inelastic nature of demand for agricultural products, the gross effect of the impact on the agricultural sector would be borne by consumers. Under the assumed changes in yield and cost the increase in consumer expenditures could be as high as $3.8 billion. Of this, $0.35 billion would be accounted for by increases in production cost and $3.45 would be in the form of windfall gains to the agricultural sector. However, these windfall gains would not be distributed equally between those farmers directly affected by the suspension and the rest of agriculture. The majority of the gain would go to the latter.

5. *Risk/Benefit Analysis.* The risk estimates in part C–3 indicate that the use of Treflan containing NDPA impurities would probably result in a very small number of cancer cases: Each of the 470,000 applicators has about one chance in 5,000,000 of getting cancer as a result of two years exposure to Treflan; and each of the 38,000 fieldworkers has about one chance in 14,000,000 of getting cancer from such exposure. Unquantifiable exposures might raise these averages but probably not by much, considering all the uncertainties. For certain individuals, the sporadic exposure resulting from accidental spillage and mis-handling of the pesticide will be very hazardous.

In the short run (one growing season), the economic impact of suspending Treflan would be a $521 million decrease in income to growers due to an increase in production costs and a decrease in per acre yield. In the long run, prices of agricultural commodities would rise. When compared with alternatives, the benefits of Treflan are that it does not require rain activation and that, with one annual application, it controls a wide variety of weeds and broadleaf grasses.

The Working Group finds that the small risks of Treflan use considering both the quantifiable and unquantifiable factors, do not outweigh the benefits derived from its use.

6. *Conclusions and Recommendations.* Nitrosodipropylamine (NDPA) is a suspected human carcinogen present as a contaminant in Treflan. Between 24–30 million acres of soybeans, cotton, fruits and vegetables, and other field crops are treated annually with Treflan.

Because risk associated with the use of Treflan during the two years required in the event of cancellation are exceeded by the benefits derived from its use, an imminent hazard does not exist, and the Working Group recommends against the suspension of Treflan.

Failure to find imminent hazard, however, does not mean that the Working Group has determined that the risk associated with the continued use of Treflan is acceptable. Rather, it means that during the two years required in the event of cancellation proceedings, which is the time period relevant to the decision of whether or not to issue a suspension order, the risks do not appear to outweigh the benefits.

40 CFR 162.11(a)(3)(ii)(A) provides that if any pesticides ingredient has been found to induce oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation, or dermal exposure, a rebuttable presumption against registration (RPAR) shall be issued. Since Treflan is known to contain a carcinogenic contaminant, a rebuttable presumption against the reregistration of this product must be issued.

Evidence gathered by the Agency indicates that NDPA is present in a number of pesticides. Thus the Agency is requiring all pesticide registrants and applicants to test their products for NDPA and other potential nitrosamine contaminants. Since it is the practice of the Office of Special Pesticide Reviews to examine all pesticides containing a given ingredient as a class rather than to examine each one individually as it is called to our attention, the Agency should initiate an RPAR action against all products containing NDPA. This RPAR should be based not only on the presence in the pesticides of the carcinogenic nitrosamine, but also on all other RPAR risk criteria.

The timing of the examination of given pesticide ingredients and the issuance of an RPAR should follow the published prioritization criteria of the Agency (Office of Special Pesticide Reviews Project Manager Procedures Manual, 1976) rather than the timing of petitions or referrals sent to the Agency. These weighted prioritization criteria include: amount of production, oncogenicity, and other chronic toxicity, acute toxicity, persistence, biomagnification, and bioaccumulation, and environmental mobility. In the Working Group's view, this RPAR recommendation is consistent with a deadline for issuance of an RPAR of October 1, 1977 and recommends that this deadline be established.

If the information on other pesticides containing NDPA is not available to the Agency by October 1, 1977, the Agency should proceed with the issuance of an RPAR against Treflan on that date.

Finally, as indicated above, there are significant deficiencies in exposure data which should be rectified. The Working Group therefore recommends that the Agency require the registrant (under 40 CFR 162.8(d)) to conduct further studies on exposure questions and particularly on the questions of respiratory exposure due to particulates and dermal exposure. The Working Group recommends that exposure studies be designed jointly by Agency scientists and registrants.

Protocols should be finalized within 30 days and data should be developed and submitted as soon as possible. Deadlines for completion of studies should be imposed which are designed to produce as much data as possible before the next growing season. Of course, if these or any other data reflect that exposure concerns are more serious than currently anticipated, the Agency can reconsider the suspension question at that time. In any event, any exposure data submitted would be utilized in the RPAR process.[4]

D. TRYSBEN AND BENZAC

Trysben 200 and Benzac 1281, registered by E. I. Du Pont de Nemours and Amchem Products, Inc., respectively, are trade names for trichlorobenzoic acid

[4] The Working Group also considered label changes to provide protecting against exposure because of careless handling, wearing contaminated clothing, and other similar problems. However, the Working Group concluded that current labels contain strong warnings against these hazards which could not be significantly strengthened. Accordingly, the Working Group decided not to

dimethylamine salt. These products are recommend label alterations in this area. used to control broadleaf weeds on utility pipelines, rights-of-way, and other industrial sites, on ditchbanks and fencerows, and around farm buildings. A total of approximately 10,000 acres are treated annually with these products.

1. *Analyses of Nitrosamines in Trysben and Benzac.*—(a) *Trysben.* In the tests cited in the petition Fine found 187 ppm nitrosodimethylamine (DMN) in Trysben. These results were based on samples taken from one gallon containers. Du Pont informed the Administrator by letter on September 14, 1976 that DMN was formed by a chemical reaction of a pesticidal ingredient with sodium nitrite, which was used as a corrosion inhibitor in the one gallon containers but not in the 5 and 30 gallon drums. Du Pont further stated that production and sale of the one gallon container had been discontinued. Tests conducted by Fine and by the OPP CBIB showed levels of 1.3 and 2.0 ppm DMN in Trysben samples taken from a five gallon container.[7]

(b) *Benzac.* In the tests cited in the petition Fine found 640 ppm DMN in Benzac. These results were based on samples from one gallon containers, a size which also utilized sodium nitrite as a corrosion inhibitor. In a February 23, 1977 letter to the Director of the Office of Special Pesticide Reviews, Amchem stated that the other two size containers, 5 and 30 gallon drums, do not use this corrosion inhibitor. Nevertheless, tests conducted by Fine and by CBIB on Benzac samples taken from a five gallon drum showed DMN at average levels of 277 and 355 ppm.[7]

2. *Exposure to Nitrosamine in Trichlorobenzoic Acid.* Based on estimates from Du Pont and Amchem, it is believed that there may be 45 Benzac and 450 Trysben applicators using automated equipment such as railroad tank cars or trucks. Benzac users may spend as many as 200 hours per year applying the pesticide; Trysben users, 320 hours. In addition, there may be 5 Benzac and 60 Trysben back-pack operators using hand-gun sprayers; Benzac handgun operators apparently apply the pesticides for only one hour apiece per year; Trysben hand-gun operators, 24 hours/year.

(a) *Inhalation Exposure.* No information was available concerning the air concentration of DMN resulting from use of these products. However, the air concentration of DMN was estimated by analogy with other spray application situations in which air concentrations could be related to application rates. The range of this relationship is about 5–100 $\mu g/m^3$ per pound per acre. As a conservative estimate, the factor 100 $\mu g/m^3$ was used in the following formula to calculate the air concentration of DMN: 15 pounds per acre $\times$ 100 $\mu g/m^3$ $\times$ concentration of DMN in the pesticide (3 ppm in Trysben; 300 ppm in Benzac). The calculated air concentration of DMN is 0.0045 $\mu g/m^3$ for Trysben and 0.45 $\mu g/m^3$ for Benzac. Inhalation exposure to DMN during the two years required for cancellation proceedings was then calculated as follows: Air concentration $\times$ volume of air inhaled (1.8 m^3/hr) $\times$ hours of exposure per year (24 for Trysben; 1 for Benzac) $\times$ 2 years $\div$ (70 $\times$ 365). The last two numbers convert the total two year exposure to a daily average over the lifetime of an individual. The daily lifetime average inhalation exposure of the applicator to DMN in Benzac would be 0.063 ng/day. From the data furnished by the registrant, about five people would have this exposure to DMN from the use of Benzac. From use of Trysben, which currently contains less than 3 ppm DMN, the daily lifetime average inhalation exposure for the 60 hand-gun users is calculated to be 0.015 ng DMN per day. Professional applicators who wear adequate clothing and respirators would have even less exposure.

The inhalation exposure of operators of automated equipment to DMN is expected to be much lower than that of hand-gun operators given the greater distance of the operator from the spraying apparatus and the protection afforded by the cab on automated equipment.

(b) *Dermal Exposure.* Since there are no published studies of residues on surfaces resulting from either vapor or particulate levels of DMN, it was necessary to calculate potential dermal exposure to DMN using the same model and assumptions discussed in part C–2–b above. Using this model and the inhalation exposures estimated above, the value for daily lifetime average dermal exposure to DMN from two years use of Trysben is calculated to be 0.49 ng/day; and of Benzac, 2.1 ng/day.

Exposure to DMN is more thoroughly discussed in Attachment 1.

3. *Risk Associated with Use of Trichlorbenzoic Acid.* In order to assess the carcinogenic risk to man of exposure to a chemical, it is necessary to extrapolate data from animal experiments conducted at high levels of exposure. Virtually all competent scientists, however, recognize that this type of extrapolation is at best highly speculative and based on many unverifiable assumptions. Thus, the estimate of the resulting number of cases of cancer produced in man should be viewed as a rough measure of hazard that incorporates as well as possible both the degree of carcinogenic activity of a chemical and the exposure levels to which man is suspected to be subjected.

Using the one-hit model, the number of cancer cases for back-pack operators due to two years inhalation and dermal exposure to Trysben containing 3 ppm of DMN would be about 2.2×10^{-5} cancer cases in the population of approximately 60 people. This implies that the chances are about 2 out of 100,000 that there may be at least one person among the 60 Trysben handgun applicators who will get cancer as a result of two years exposure to Trysben containing 3 ppm DMN. Stated another way, any one of these users would have about one chance in 2,700,000 of getting cancer from Trysben use.

Using the one-hit model for the approximately five back-pack users of Benzac the number of cancer cases due to two years inhalation and dermal exposure would be about 7.9×10^{-4}. This implies that the chances are about 1 out of 130,000 that there may be at least one person among the 5 Benzac users who will get cancer as a result of two years exposure. Stated another way, any one of these users has about one chance in 630,000 of getting cancer.

In addition to these calculated risks, there are also the same types of unquantifiable exposures as discussed in section C–2–c. The same uncertainties in the risk estimates apply for the Trysben and Benzac users as for the Treflan users. The calculations should be regarded as indicating roughly that the risks of exposure appear very small.

If the log-probit model with a slope of one were used to calculate the number of cases for these people, the result would be about 10^{-11} cancer cases in Trysben hand-gun users and about 10^{-10} cancer cases in Benzac hand-gun users.

4. *Benefits Associated With Use of Trysben and Benzac.* Picloram/2,4–D is registered for essentially the same uses as Trysben and Benzac and currently is the most commonly used pesticide for controlling broadleaf weeds along fencerows, utility rights-of-way, and pipelines. However, at least one sample of 2,4–D has been found to contain nitrosodiethanolamine. If picloram/2,4–D remains on the market, there would be minimal economic impact from the suspension of Trysben and Benzac because there is apparently only negligible difference in efficacy and cost between picloram/2,4–D and the trichlorobenzoic acids and thus users of the suspended products would likely shift to picloram/2,4–D.

Another alternative herbicide not suspected of containing nitrosamines is Pramito 25E (common name prometone). However, prometone costs approximately $67.50 per acre more than Trysben or Benzac and may not be as effective as the products in question. With approximately 10,000 acres currently being treated with Trysben or Benzac, the minimum total cost of shifting to prometone would be $675,000.

5. *Risk/Benefit Analysis.* Approximately 500 persons apply Trysben and/or Benzac annually using automated equipment. The risk associated with such use is expected to be minimal due to the protection afforded by the cab and the positioning of the spray nozzles relative to the cab.

The risk associated with hand-gun application of the two products is potentially greater. The risk estimates in section 3 indicate that a very small number of cancer cases would be caused by this use of these two products. The average estimates are that each of the 60 Trysben hand gun users has about one chance in

[7] Both the Benzac and Trysben samples were collected at the Dupont Biochemicals Department in Philadelphia, PA on February 11, 1977.

2,700,000 of getting cancer from two years exposure and that each of the 5 Benzac hand gun users has about one chance in 630,000 of getting cancer.

If these products were suspended, it is likely that current users of such products would shift to picloram/2,4-D, which is approximately equal to the trichlorobenzoic acids in efficacy and cost. Because picloram/2,4-D is an equivalent alternative to Trysben and Benzac, benefits are valued at zero.

6. *Conclusions and Recommendations.* Nitrosodimethylamine (DMN) is a suspected human carcinogen present in Trysben and Benzac. Approximately 10,000 acres of non-crop land are treated annually with Trysben and Benzac.

The problem presented to the Agency is what action is appropriate when the risks posed by a pesticide are small and not appreciable and the advantages are zero. While an RPAR action against pesticides containing oncogenic ingredients is mandatory upon the Agency, the extraordinary action of suspension is discretionary. The Working Group recommends against the suspension of Trysben and Benzac (1) because it finds that there will be no appreciable difference in hazard to the individuals coming in contact with these pesticides and no significant threat of danger to their health whether their registrations are immediately suspended or whether these registrations are canceled in the near future, if warranted; and (2) because it finds that a disruptive, resource intensive effort in this discretionary, small hazard situation will delay other, mandatory efforts by the Agency on pesticides posing potentially greater hazards to man and the environment.

A recommendation by the Working Group not to suspend Trysben and Benzac does not mean that the Agency will not take action to reduce the risks these pesticides pose to applicators during the next two years. A statement of Agency policy on N-nitroso compounds (of which nitrosamines are a subclass) will require labeling changes on all products containing carcinogenic nitrosamines. In addition, the Working Group recommends that Trysben and Benzac labels provide that application of these herbicides be made by either automated equipment or individuals completely protected with clothing, goggles, and respirators.

Further, failure to find imminent hazard does not mean that the Working Group has determined that the risks associated with the continued use of Trysben or Benzac are acceptable. 40 CFR 162.11(a)(3)(ii)(A) provides that if any pesticide ingredient has been found to induce oncogenic effects due to oral, inhalation, or dermal exposure, a rebuttable presumption against registration (RPAR) shall be issued. Since Trysben and Benzac are known to contain a carcinogenic contaminant, rebuttable presumptions against the reregistrations of these products must be issued.

Evidence gathered by the Agency indicates that DMN is present in a number of pesticides. Thus the Agency is requiring all pesticide registrants and applicants to test their products for DMN and other potential nitrosamine contaminants. Since it is the practice of the Office of Special Pesticide Reviews to examine all pesticides containing a given ingredient as a class rather than to examine each one individually as it is called to our attention, the Agency should initiate an RPAR action against all pesticides containing DMN. This RPAR should be based not only on the presence in the pesticides of the carcinogenic nitrosamine, but also on all other RPAR risk criteria.

The timing of the examination of given pesticide ingredients and the issuance of an RPAR should follow the published prioritization criteria of the Agency (Office of Special Pesticide Reviews Project Manager Procedures Manual, 1976) rather than the timing of petitions or referrals sent to the Agency. These weighted prioritization criteria include: amount of production, oncogenicity, and other chronic toxicity, acute toxicity, persistence, biomagnification, and bioaccumulation, and environmental mobility. In the Working Group's view, this RPAR recommendation is consistent with a deadline for issuance of an RPAR of October 1, 1977 and recommends that this deadline be established.

If the information on other pesticides containing DMN is not available to the Agency by October 1, 1977, the Agency should proceed with the issuance of an RPAR against Trysben and Benzac on that date.

Finally, as indicated above, there are significant deficiencies in exposure data which should be rectified. The Working Group therefore recommends that the Agency require the registrant (under 40 CFR 162.8(d)) to conduct further studies on exposure questions and particularly on the questions of respiratory exposure due to particulates and dermal exposure. The Working Group recommends that exposure studies be designed jointly by Agency scientists and registrants. Protocols should be finalized within thirty days and data should be developed and submitted as soon as possible. Of course, if these or any other data reflect that exposure concerns are more serious than currently anticipated, the Agency can reconsider the suspension question at that time. In any event, any exposure data submitted would be utilized in the RPAR process.

[FR Doc.77-22627 Filed 8-5-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 869]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's rules and regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See § 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's Rules.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21782-CW-TC-77 Marianas Telephone Co. Consent to Transfer of Control from Air Guam Inc., Transferor to Guam International Motors Inc., Transferee. Station: WWA347, Alutom, Island of Guam.

21783-CD-P-77 Pacific Northwest Bell Telephone Company. (KOE520), C.P. to relocate facilities, change antenna system and replace transmitter operating on 35.26 MHz, located at Lookout Mountain, 4.7 Miles SE of Bellingham, Washington.

21784-CD-P-77 Platteville Telephone Company. (KSJ626), C.P. for additional facilities to operate on 454.625 MHz located 0.5 mile south of Platteville, Wisconsin.

21785-CD-P-77 Alan H. Rosenson Trust d/b/a All Florida Communications Co. (KIN645), CP. to relocate facilities and change antenna system operating on 43.22 MHz at Loc. No. 4: 7150 West 32nd Ave., Hialeah, Florida.

21786-CD-P-(2)-77 Waco Communications, Inc. (KLB498), C.P. to relocate facilities and change antenna system operating on 152.06 MHz from Loc. No. 1 to Loc. No. 3: 817 South First Street, Temple, Texas; and for additional facilities to operate on 152.06 MHz at Loc. No. 5: 1200 Block of North 46th Street, Waco, Texas.

21787-CD-P-77 Philadelphia Mobile Telephone Company (KGI775), C.P. to relocate facilities operating on 454.300 MHz to a new Loc. No. 2: Lewis Tower Bldg., 225 S. 15th Street, Philadelphia, Pennsylvania.

21788-CD-P-(2)-77 Sully Buttes Telephone Cooperative, Inc. (new), C.P. for a new station to operate on 152.06 and 152.66 MHz to be located 4 miles East 0.50 mile South of Onida, South Dakota.

21789-CD-P-77 Advance Business Communications, Inc. (new), C.P. for a new 1-way signaling station to operate on 158.70 MHz to be located at 202-204 South Main Street, Aberdeen, South Dakota.

21790-CD-P-77 Telpage of Tennessee, Inc. (new), C.P. for a new 1-way signaling station to operate on 152.24 MHz to be located at Dug Gap Mtn., approximately 4 miles SW. of Dalton, Georgia.

21791-CD-P-77 Pueblo Telephone Secretarial Service, Inc. (new), C.P. for a new 1-way signaling station to operate on 152.24 MHz to be located at 2226 TV Lane, Pueblo, Colorado.

21792-CD-P-(2)-77 Electropage, Inc. (KMD 986), C.P. for additional facilities to operate on 72.58 and 72.88 MHz. Control at a new Loc. No. 4: 4799 24th Street, Sacramento, California.

21793-CD-P-(2)-77 General Communications Service, Inc. (KOE254), C.P. to change antenna system and replace transmitter operating on 152.03 and 152.06 MHz at Loc. No. 6: Atop Mt. Eden—4 miles NE. of Flagstaff, Arizona.

21794-CD-P-77 General Communications Service, Inc. (KUO575), C.P. to change antenna system and replace transmitter operating on 152.24 MHz located Atop Mt. Eiden, 4 miles NE. of Flagstaff, Arizona.

21795-CD-P-77 Empire Paging Corporation (KAA209), C.P. for additional facilities to operate on 152.24 MHz at a new Loc. No. 3: 5 Horizon Road, Fort Lee, New Jersey.

CORRECTION

21492-CD-MP-(2)-77 Airsignal of Colorado, Inc. (KWU523), Correct File Number to read: 21492-CD-MP-77. All other particulars are to remain as reported on PN No. 868, dated July 25, 1977.

MAJOR AMENDMENT

21172-CD-77, ARCH, A Joint Venture (KDS 495), Amend to change frequencies to 870.000-870.960 MHz at Loc. No. 1; and to 880.000-880.960 MHz at Loc. No. 2; and to change the antenna systems and effective radiated powers. All other particulars of operation remain as reported in PN No. 856, dated May 2, 1977.

21237-CD-P-77, James D. & Lawrence Garvey d.b.a. RADIOFONE (KUS290), Amend to lower and side mount antenna with tip at 295' AGL with maximum lobes at 135 and 315 degrees. All other particulars of operation remain as reported in PN No. 857, dated May 9, 1977.

RURAL RADIO

60350-CR-P/L-77 Robert H. Jones Ranch (new), C.P. and license for a new Rural Subscriber station to operate on 158.49, 152.03, 158.52 and 152.06 MHz to be located 5 miles N.E. of Cedar Grove on Hwy. 344, 2 miles E. of Hwy. 344 on dirt road, Cedar Grove, N. Mex.

60351-CR-P/L-77 Puerto Rico Communications Authority (new), C.P. and license for a new Rural Subscriber station to operate on 459.375, 459.400, 459.425, 459.450, 459.475, 459.500, 459.525 and 459.550 MHz to be located at Bo. Guanajibo, Carr. 344 Km. 2.1, Hormigueros, P.R.

60352-CR-P/L-77 Same as above except located at Bo. Lajas Arriba, Carr. 117, Km. 5.4, Lajas, P.R.

60353-CR-P/L-77 Same as above except located at Bo. Guanajibo, Carr. 343, Km. 2.4, Hormigueros, P.R.

60354-CR-P/L-77 Same as above except located at Bo. Lavadero, Carr. 343, Km. 4.0, Hormigueros, P.R.

60355-CR-P/L-77 Same as above except located at Bo. Maria, Carr. 417, Km. 7.0, Aguada, P.R.

60356-CR-P/L-77 Same as above except located at Bo. Cerro Gordo, Carr. 417, Km. 9.4, Aguada, P.R.

60357-CR-P/L-77 Same as above except located at Bo. Lavadero, Parcela No. 95, Hormigueros, P.R.

60358-CR-P/L-77 Same as above except located at Bo. Sabana Alta, Carr. 3311, Km. 1.8, Cabo Rojo, P.R.

60359-CR-P/L-77 Same as above except located at Bo. Llanos Tuna Sector La Capilla, Cabo Rojo, P.R.

60360-CR-P/L-77 Same as above except located at Bo. Llanos Tuna, Carr. 312, Km. 2.9, Cabo Rojo, P.R.

60361-CR-P/L-77 Same as above except located at Bo. Playa El Combate, Carr. 3301, Km. 3.0, Cabo Rojo, P.R.

60362-CR-P/L-77 Same as above except located at Barrio Llanos Costa, Carr. 301, Km. 8.1, Cabo Rojo, P.R.

60363-CR-P/L-77 Same as above except located at Barrio Pedernales, Carr. 307, Km. 3.2, Cabo Rojo, P.R.

60364-CR-P/L-77 Same as above except located at Bo. Plan Bonito, Carr. 102, Km. 10.8, Cabo Rojo, P.R.

60365-CR-P/L-77 Same as above except located at Bo. Cerro Gordo, Carr. 405, Km. 4.4, Anasco, P.R.

60366-CR-P/L-77 Same as above except located at Bo. Tres Hermanos, Carr. 401, Km. 0.6, Anasco, P.R.

60367-CR-P/L-77 Same as above except located at Bo. La Plata, Carr. 327, Km. 1.1, Lajas, P.R.

60368-CR-P/L-77 Same as above except located at Bo. Atalaya, Carr. 411, Km. 9.8, Aguada, P.R.

60369-CR-P/L-77 Same as above except located at Bo. Cerro Gordo, Aguada, P.R.

60370-CR-P/L-77 Same as above except located at Bo. Papayo, Carr. 324, Km. 2.3, Lajas, P.R.

60371-CR-P/L-77 Same as above except located at Bo. Olivares, Carr. 303, Km. 3.3, Lajas, P.R.

60372-CR-P/L-77 Same as above except located at Bo. Candelaria, Carr. 101, Km. 21.6, Lajas, P.R.

60373-CR-P/L-77 Same as above except located at Bo. Paris, Carr. 306, Km. 3.6, Lajas, P.R.

60374-CR-P/L-77 Same as above except located at Bo. Maguayo, Carr. 305, Lajas, P.R.

POINT TO POINT MICROWAVE RADIO SERVICE

3204-CF-ML-77 American Telephone and Telegraph Company (KKN30), 333 N Sixth St., Baton Rouge, Louisiana. Lat. 30°36'59" N., Long. 91°11'06" W. Mod. of lic. to delete frequencies 3770V, 3850V, 3930V, 4010V, 4070V, MHz toward Livonia and add to KLT46 South Central Bell Telephone Company. (Partial transfer.)

3205-CF-ML-77 South Central Bell Telephone Company (KLT46), 333 North 6th Street, Baton Rouge, Louisiana. Lat. 30°-26'59" N., Long. 91°11'06" W. Mod. of lic. to add frequencies 3770V, 3850V, 3930V, 4010V, 4170V MHz toward Livonia from AT&T Co. (Partial transfer.)

3206-CF-ML-77 Same, (KLT45) 1.1 miles WSW. of Livonia, Louisiana. Lt. 30°33'23" N., Long. 91°34'18" W. Mod. of Lic. to add frequencies 3730V, 3810V MHz toward Baton Rouge and 3710H, 3790H, 3870H, 3950H, 4110H MHz toward Cecelia from AT&T Co. (Partial transfer.)

3207-CF-ML-77 Same, (KLT44) 1.4 mile ENE. of Cecelia, Louisiana. Lat. 30°20'37" N., Long. 91°49'40" W. Mod. of lic. to add frequencies 3750H, 3830H, 3910H, 3990H, 4150H MHz toward Lafayette and 3750H, 3830 MHz from AT&T Co. (Partial transfer.)

3208-CF-ML-77 Same, (KLK84) 530 South Buchanan Street, Lafayette, Louisiana. Lat. 30°13'32" N., Long. 92°01'10" W. Mod. of lic. to add frequencies 3710H, 3790H MHz toward Cecelia and 3710H, 3790H, 3870H, 3950H MHz toward Maxie from AT&T Co. (Partial transfer.)

3209-CF-ML-77 Same, (KTF66) 1.5 miles SE. of Maxie, Louisiana. Lat. 30°18'27" N., Long. 92°22'52" W. Mod. of lic. to add frequencies 3750H, 3830H, 3910H, 3990 MHz toward Fenton and 3750H, 3830H, 3910H MHz toward Lafayette from AT&T Co. (Partial transfer.)

3210-CF-ML-77 Same, (KTF67) 3.4 miles SE. of Fenton, Louisiana. Lat. 30°20'10" N., Long. 92°52'39" W. Mod. of lic. to add frequencies 3710H, 3790H, 3970H, 3950H MHz toward Lake Charles and 3710H, 3790H, 3870H MHz toward Maxie from AT&T Co. (Partial transfer.)

3211-CF-ML-77 Same, (KVU60) 315 Division Street Lake Charles, Louisiana. Lat. 30°13'51" N., Long. 93°12'57" W. Mod. of lic. to add frequencies 3850H, 3750V, 3830V MHz toward Edgerly and 3750H, 3830H MHz toward Febtib from AT&T Co. (Partial transfer.)

3212-CF-ML-77 Same, (KVU61) 2 miles North Edgerly, Louisiana. Lat. 30°15'31" N., Long. 93°30'09" W. Mod. of lic. to add frequencies 3810H, 3710V, 3790V MHz toward Peveto and 4030V MHz toward Lake Charles from AT&T Co. (Partial transfer.)

3213-CF-AL-(7)-77 American Telephone and Telegraph Co. Application for consent to assignment of radio station license American Telephone and Telegraph Company assignor to South Central Bell Telephone Company; Assignee for station KKP83 Livonia, Louisiana; KKP89 Cecelia, Louisiana; KKP90 Lafayette, Louisiana; KKP91 Maxie, Louisiana; KKP92 Fenton, Louisiana; KKY47 Lake Charles, Louisiana and KLR97 Edgerly, Louisiana.

3294-CF-P-77 Satellite Business Systems (new), IBM Plant, South Road, Poughkeepsie, New York. (Lat. 41°39'18" N., Long. 75°56'24" W.) C.P. for a new station on frequencies 2121.6V and 2128.0V toward Lloyd Hill on azimuth 13.8°.

3295-CF-P-77 Same, (new), Lloyd Hill, Fallkill Rd., (Hyde Park) New York. (Lat. 41°49'21" N., Long. 75°53'06" W.) C.P. for a new station on frequencies 21171.6V and 2178.0V toward Poughkeepsie on azimuth 193.8° and 2168.4V and 2174.8V toward Kingston on azimuth 331.0°.

3256-CF-P-77 Same, (new) IBM Plant, Neighborhood Road, Kingston, New York. (Lat. 41°58'14" N., Long. 73°59'42" W.) C.P. for a new station on frequencies 2118.4V and 2124.8V toward Poughkeepsie on azimuth 150.9°.

3226-CF-R-77 Matanuska Telephone Association, Inc. (WHB64), Eagle River, Alaska. Application for Renewal of developmental radio station license.

3227-CF-P-77 Same, (WHB63), Anchorage, Alaska. Application for Renewal of developmental radio station license.

3232-CF-MP-77 General Telephone Company of the Northwest, Inc. (WCG238), Lakeside Corner of 9 Street and N. Lake Ave., Lakeside, Oregon. Lat. 43°34'34" N., Long. 124°10'17" W. C.P. to increase output, correct coordinates of receive-only station on frequency 2162.4H MHz toward Lakeside PR. from passive reflector to HUSR, Oregon.

3233-CF-MP-77 Same, (KON76), Husr 3 miles South of Lakeside, Oregon. Lat. 43°-31'59" N., Long. 124°10'32" W. C.P. to correct coordinates of receive-only station and increase output power on frequency 2112.4H MHz toward Lakeside PR, Oregon.

CORRECTION

3163-CF-P-77 RCA Alaska Communications, Inc., (WBA87) corrected to read Renewal of radio station license. All other particular remain as reported on PN 868 date 7-25-77.

3147-CF-P-77 Hargray Telephone Company, Inc., (WQQ44) U.S. Highway 278, Hilton Head Island, South Carolina corrected file number. All other particular remain as reported on PN 868 dated 7-25-77.

2952-CF-P-77 Big Bend Telephone Company, (WBB258) corrected file number. All other particular remain as reported on PN 865 dated 7-5-77.

3057-CF-P-77 Illinois Bell Telephone Company, (KSO95) corrected frequency to read 5989.7V MHz Weldon. All other particular remain as reported on PN 866 dated 7-11-77.

[FR Doc.77-22728 Filed 8-5-77;8:45 am]

[FCC 77-515; RM-2756]

FM BROADCAST STATIONS; CERTAIN CITIES IN MISSOURI

Table of Assignments; Memorandum Opinion and Order—Proceeding Terminated

In the matter of amendment of §73.-202(b), Table of Assignments, FM Broadcast Stations (Caruthersville, Dexter, Malden and Portageville, Missouri), RM-2756.

Adopted: July 14, 1977.

Released: July 27, 1977.

1. The Commission has before it a petition for reconsideration filed by Communications Systems, Inc. ("CSI"), license of Station KFMP(FM), Cape Girardeau, Missouri, of the Broadcast Bureau's action, adopted February 3, 1977, by Memorandum Opinion and Order (Mimeo 77851), which denied certain changes in the FM Table of Assignments which were designed to permit changing the designation of petitioner's channel from Class B to Class C.[1] An opposition has been submitted by Jim Southard, Cecil Poff, and Solan Lott, petitioners for an FM channel at Blytheville, Arkansas. A motion to strike was filed by Tri-County Broadcasting Co., Inc., licensee of Station KTCB(AM), Malden, Missouri, and applicant for an FM station at Malden (BPH-10018).

2. The Memorandum Opinion and Order denied petitioner's request to have its facility upgraded because, in order to do so, an applied for FM channel at Malden would have to be deleted and substitutions of Class A channels at three Missouri communities would have to be made. After weighing the public interest benefits and detriments of petitioner's request, the Commission, by delegated authority, denied the petition. Note was made of the fact that petitioner had not provided the data to support its allegation that a first aural service could be provided to any area by the increased facilities. Without such service, the provision for a first local service at Malden was thought to have a higher priority than an extension of service to already served areas.[2]

3. In its petition for reconsideration, CSI in effect deals with five areas in which it says the Commission erred. First, it argues that the Bureau lacked the delegated authority to take the action. Second, it contends that its station has been discriminatorily placed in a "degraded" status as the only Class B station in Zone II. Third, CSI claims that assignment of the Malden FM channel was premised upon early "activation" of the channel, which did not occur. Fourth, CSI avers that the *Anamosa, Iowa*, case[3] provides precedent for a grant of petitioner's request for Class C status here. Fifth, it alleges that the Commission's rejection of petitioner's claims of first aural service is based on erroneous assumptions. Each of these points is discussed below.

4. In their opposition, Jim Southard, et al., complain that this petition for reconsideration is repetitive and identical to previous requests that have been denied by the Commission. They also contend that it has no substantive merit. They urge the Commission to dispose of this proceeding promptly so we can consider forthwith their conflicting petition for an FM channel at Blytheville, Arkansas. We agree that this matter should be resolved and we turn to the points raised by CSI.

5. Petitioner's first contention is that the Bureau did not have delegated authority to issue its Memorandum Opinion and Order. Petitioner argues that this matter should have been referred to the Commission because there was no precedent dispositive of the issues presented. Further, it asserts that if any delegated authority existed for the dismissal of its petition for reconsideration, then it was vested in the General Counsel under § 0.251 (c) and (d).

6. We find that the Bureau's action was properly taken pursuant to delegated authority found in § 0.281(b)(6) of the Commission's rules. There was no need to refer the matter to the Commission since no novel question was presented. Contrary to petitioner's assertions, the issues presented by the petition were of a routine nature,[4] namely weighing the comparative factors used in choosing between communities and in evaluating the importance of the service each proposal could provide. The General Counsel's authority, under § 0.251(c) of the Commission's rules, to dismiss repetitious petitions for reconsideration applies only to rulemaking proceedings of general applicability and not to those subject areas already in the exclusive jurisdiction of a particular Bureau.[5] In any event, by virtue of the present consideration of this case by the Commission, petitioner's argument on the point of action by delegated authority in effect becomes moot.[6]

7. The remaining issues deal with the substantial matter of the Commission's assignment policies in choosing between

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[1] The Memorandum Opinion and Order also dismissed an alternative petition for reconsideration of two previous actions which had denied the identical relief. See Cape Girardeau, Mo., et al., 51 F.C.C. 2d 492 and 54 F.C.C. 2d 896 (1975). An appeal of these actions is presently pending before the D.C. Circuit Court of Appeals, sub. nom, *Communications Systems, Inc.* v. *F.C.C.*, No. 75-1992, filed October 8, 1975.

[2] Petitioner's allegations that a first aural service could be provided were found insufficient for two reasons. First, it failed to provide the measurement data that would show that the proposed area of first aural service was not already served at least in part by AM Station KMOX, St. Louis, Missouri, as appeared to be the case. Second, petitioner assumed that it could utilize facilities of 275 meters (900 ft) and 100 kW power in order to provide the alleged first aural service, but the Federal Aviation Administration had previously announced an objection to this proposal, and the Commission had not been notified up to that time that this position had changed as petitioner had asserted. We have been informed by a recent letter that the FAA had no objection to facilities of 100 kW power at 282 meters (923 ft.) HAAT.

[3] *Anamosa and Iowa City, Iowa*, 46 F.C.C. 2d 520 (1974); 60 F.C.C. 2d 1041 (1976).

[4] Moreover, we do not believe, as petitioner implies, that a question arises because there was no specific statement that the case was a routine one.

[5] By virtue of § 1.429(i) of the Commission's rules, the Bureau has authority to dismiss as repetitious a second petition for reconsideration in the Bureau's area of responsibility. See §§ 1.429(a) (Note); 1.420 and 0.281(b)(6) of the Commission's rules. See also § 1.106(k)(3). If at that point a petitioner wishes to offer any new information or arguments not previously before the acting authority it may do so in a new petition for rule making. This was done here, and full consideration was given to the merits of petitioner's filing in the Memorandum Opinion and Order.

[6] The Motion to Strike CSI's petition, submitted by Tri-County Broadcasting, cites § 1.106 of the Commission's rules for its argument that CSI has violated the Commission's procedural requirements by directing its petition for reconsideration to the Commission. In addition the Motion asserts that under § 1.43(c) of the Commission's rules, separate pleadings should have been submitted for reconsideration of the Memorandum Opinion and Order of February 3, 1977, and of the Commission's action of February 26, 1975, and August 13, 1975. As to these contentions, CSI responds that §§ 1.104(c) and 1.115(a) apply and that § 1.43(c) was misstated. However, we find that both parties are incorrect as to the applicable provision because § 1.429(a) governs rulemaking proceedings and permits referral of petitions for reconsideration to the Commission. Thus, CSI is not barred from requesting Commission action. Regarding the requirement of filing separate pleadings, CSI is correct about § 1.43. The applicable provision is § 1.44 which does not require separate pleadings in the instant situation.

Malden and Cape Girardeau. The Commission is chiefly concerned in the assignment of FM channels that a distribution be made on a fair and equitable basis and be in accordance with well established priorities. Although we would favor the upgrading of an existing Class B station to Class C status, a different result might be necessary if the effect would be a net loss to the public. Here our concern focussed on the loss of Malden's only FM channel. CSI, pursuant to the principle announced in the Anamosa, Iowa, case of 1974, sought to overcome this concern by demonstrating that some area would receive a first aural service. However, a proper showing had not been submitted by February 3, 1977, the date of the Bureau action although CSI's petition in this proceeding originally was filed on June 17, 1976. The measurement data was not received until March 15, 1977, along with the petition for reconsideration, and FAA approval was not received until April 18, 1977. Without this data the Bureau properly found no basis for concluding that an upgrading of CSI's facilities would serve the public interest when the consequence would be to deny a first fulltime local aural service to Malden, Missouri.

8. Petitioner contends that its station has somehow been placed in a "degraded" status by having to operate with Class B facilities in a zone designated for higher powered Class C facilities and in competition with these stations. Further, it argues that the station should be restored to the Class C status it originally had when assigned to Cape Girardeau. However, it was the voluntary choice of CSI's predecessor to locate in Zone I thereby making it a Class B station. Then, pursuant to §§ 73.206(b)(2), 73.208 and 73.211(c) of the Commission's rules, the Commission gave the station the protection afforded a Class B assignment. When CSI purchased this facility, it had notice of the class of station and the location of the transmitter as well as the extent of the power and height then in use. With this in mind, there is no basis for considering the proposal as representing a restoration of Class C status, as this particular station never had such status. It was not the Commission that decided how this station was to compete with a Class C station at Cape Girardeau: that was a voluntary choice of the applicant. Nor, in any event, has it been demonstrated that the station cannot survive in competition with Station KGMO-FM, which we note is itself operating at Cape Girardeau with facilities equivalent to those of Class B stations—28.5 kW at 52 meters (170 ft.) HAAT.[7]

9. We do not believe, as petitioner argues, that having a Class C and a Class B station licensed to the same community can be viewed as being in conflict with our intermixture policy. That policy is designed to distribute certain classes of channels on an equitable basis, taking into account various factors in chosing between a Class A or a Class B/C channel. Petitioner claims that the relief it seeks is similar to that provided in the Anamosa, Iowa, case where the Commission avoided intermixture of a Class A assignment and a Class C assignment, at Iowa City, Iowa, by returning its second Class C channel and by deleting the Class A assignment which had been assigned as a substitute for the second Class C channel. This was done even though the result was that Anamosa could not have a first local FM service. Contrary to its assertions, petitioner's situation is not like the one involved in that case.[8] There is no policy against the kind of intermixture that allegedly affects petitioner. In fact, there is little reason to refer to it as intermixture at all since the frequency is referred to in the Commission's Rules as a Class B/C channel. See § 73.206. The Commission's intermixture policy is designed to avoid the combination in a community of a Class A channel with either a Class B or a Class C assignment. It was not intended to cover intermixture in the technical sense of a Class B and a Class C operation. It is only by choice of a transmitter site by the applicant that the actual class of station is established. The economic consequences of the allegedly unwise choice here must be assumed by the applicant and its successors in interest. Necessarily, the Commission needs to rely on this choice in taking other actions regarding that channel or adjacent channels.

10. Petitioner also argues that the Malden assignment was conditioned upon early activation of the channel, but no such condition was specified. Nor is there a policy requiring us to delete an assigned channel if not activated within a certain stated period. Moreover, the June 29, 1976, submission of an application for the Malden channel was not unreasonably late, and it did not prejudice the use of the channel elsewhere in the interim. In any event, no harm is involved since we are considering this petition seeking deletion of the Malden channel on its merits.

11. Although reconsideration of the previous action would have been repetitious, this did not preclude consideration of petitioner's proposal in terms of a new petition for a rule making where we could consider CSI's assertion of significant first aural service. Petitioner argues that the Bureau relied on erroneous assumptions as to the coverage of Station KMOX(AM), St. Louis, in its Memorandum Opinion and Order. In this regard, CSI asserts that Station KMOX(AM) does not provide 0.5mV/m service to the area in question that would purportedly be served for the first time by petitioner's upgraded facilities[9] and that this first service area would be of the following dimensions, depending on the height of petitioner's antenna, as follows (all are approximate figures and all assume 100 kW power):

Height above average terrain	Area	Population
207 m (680 ft)	346 km² (133 mi²)	700
275 m (900 ft)	572 km² (220 mi²)	1,750
336 m (1,110 ft)	770 km² (296 mi²)	2,100

12. After reviewing petitioner's engineering study, it appears that petitioner is substantially correct that the coverage of Station KMOX(AM) in the purportedly unserved area is less than 1 percent asuming facilities of 275 meters (900 ft.) HAAT with 100 kW power.[10] Its first aural service showing is defective nonetheless because it fails to depict Station KMMX(FM) at Poplar Bluff, Missouri (Channel 238) and Station KTJJ(FM) at Farmington, Missouri (Channel 253). The extent of coverage of the alleged first aural service area is approximately 35 percent from the Poplar Bluff station and 100 percent from the Farmington station assuming petitioner's proposed facilities of 100 kW power at 275 meters (900 ft.) HAAT. Thus, contrary to CSI's assertions, there would be no first aural or FM service to any area.[11] A second aural service could be provided to an area of 377 sq. km. (145 sq. mi.) and a population of 1,150 also assuming facilities of 100 kW and 275 meters (900 ft.) HAAT. However, the Commission does not believe that the provision of this service outweighs the first local aural nighttime service to be provided to Malden. The result is consistent with the Commission's announced priorities of service in the Anamosa, Iowa, case, supra at 524–525. (See and compare prioritites (2), (3) and (4).) Therefore, the Bureau's Memorandum Opinion and Order must be affirmed.

12. *Accordingly, it is ordered,* That the "Petition to Set Aside Broadcast Bureau's Memorandum Opinion and Order and For Commission Reconsideration of the Commission's Orders released February 26, and August 13, 1975" filed by Com-

[7] Station KGMO-FM has submitted an application (BPH-10024) to operate with 100 kW at approximately 105 meters (345 ft.) HAAT. With these proposed facilities its 60 dBu contour should extend 32 miles. Petitioner's present facility's 60 dBu contour extends 32 miles.

[8] Furthermore, there were other reasons for our action in Anamosa, Iowa. The Iowa City proponent of the second Class C channel was able to demonstrate that it would serve a susbtantial first FM service area and population. As will be discussed later, no such first FM service exists in petitioner's proposed coverage area. Thus, its reliance on Anamosa is misplaced.

[9] Petitioner has tendered an application for an increase in facilities to 100 kW power at approximately 275 meters (900 ft.) HAAT.

[10] The engineering study reveals a depiction of the 0.5 mV/m contour of Station KMOX(AM) as extending 75 miles. However, its measurement data indicate that the contour should reach 82 miles. At point 15 of measurements, the signal reads 0.51 mV/m at 81.3 miles. We also note that its data regarding Station KMOX was not offered in time to take into account earlier.

[11] There would be no first aural or FM service to any area even if petitioner's facilities were increased to 336 meters (1,100 ft.) HAAT.

munications Systems, Inc., on March 15, 1977, is denied.

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

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-22735 Filed 8-5-77;8:45 am]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 71, "VHF Automated Radiotelephone Systems". Notice of 2nd meeting, Wednesday, August 24, 1977, 9:30 a.m. (Full-day meeting). Conference Room A-110, 1229-20th Street NW., Washington, D.C.

AGENDA

1. Call to order; Chairman's report.
2. Introduction of attendees; adoption of agenda.
3. Acceptance of SC-71 Summary Record.
4. Morning session (9:45 a.m.-11:45 a.m.). Presentation and discussion of automated VHF radio system characteristics.
5. Afternoon Session (1.45 p.m.-4 p.m.). Presentation and discussion of digital selective calling techniques as applicable to VHF automated systems.
6. Other business.
7. Establishment of next meeting date.

John J. Renner, Chairman, Advanced Technology Systems, Inc., 2425 Wilson Blvd., Arlington, VA 22201. Phone: 703-525-2664.

To comply with the advance notice requirements of Pub. L. 92-463, a comparatively long interval of time occurs between publication of this notice and the actual meeting. Consequently, there is no absolute certainty that the listed meeting room will be available on the day of the meeting. Those planning to attend the meeting should report to the room listed in the notice. If a room substitution has been made, the new meeting room location will be posted at the room listed in this notice.

Agendas, working papers, and other appropriate documentation for the meeting is available at that meeting. Those desiring more specific information may contact either the designated Chairman or the RTCM Secretariat. (Phone 202-632-6490).

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. Problems are studied by Special Committees and the final report is approved by the RTCM Executive Committee. All RTCM meetings are open to the public. Written statements are preferred but by previous arrangement, oral presentations will be permitted within time and space limitations.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-22727 Filed 8-5-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

STATE ENERGY CONSERVATION PLANS

Negative Determination of Environmental Impact Re Rhode Island, Maine, Iowa, Oregon, Georgia, Michigan, Louisiana and Idaho Energy Conservation Plans

Pursuant to 10 CFR 208.4, the Federal Energy Administration hereby gives notice that it has performed an analysis and review of the environmental impacts associated with the provision of Federal financial assistance for the implementation by the States of Rhode Island, Maine, Iowa, Oregon, Georgia, Michigan, Louisiana and Idaho of their State Energy Conservation Plans. Federal funding is authorized by Part C of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6321, et seq.

Based upon assessment of environmental impacts that are expected to result from implementation of these plans, the FEA has determined that Federal financial assistance will not be a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). Therefore, pursuant to 10 CFR 208.4(c), the Federal Energy Administration has determined that an environmental impact statement is not required for these plans.

Single copies of the environmental assesments of the State Plans for Rhode Island, Maine, Iowa, Oregon, Georgia, Michigan, Louisiana and Idaho are available upon request from the FEA National Energy Information Center, Room 1406, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies of the environmental assessments will also be available for public review in the Federal Energy Administration Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies of the State Plans are available for public review in the Office of State Energy Conservation Programs, Room 6437, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Interested persons are invited to submit data, views or arguments with respect to the environmental assessments to Executive Communications, Box OM, Room 3317, Federal Energy Administration, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation, "Environmental Assessment—(Name of State) Energy Conservation Plan." Fifteen copies should be submitted. All comments should be received by FEA by 4:30 p.m. e.d.s.t., August 18, 1977, in order to receive full consideration.

Any information or data considered by the person submitting it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., August 3, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-22791 Filed 8-5-77;8:45 am]

SYNTHETIC NATURAL GAS

Availability of a Supplement to Indiana Gas Company Draft Environmental Impact Statement

AGENCY: Federal Energy Administration.

ACTION: Notice of availability.

SUMMARY: On December 23, 1976, the Federal Energy Administration (FEA) made available to the Counsel on Environmental Quality and the Public a draft environmental impact statement concerning the assignment of synthetic natural gas feedstocks to an Indiana Gas Company Synthetic Natural Gas plant (41 FR 56842). A public hearing was held on January 25, 1977, to receive comments from interested parties. The written comment period closed on April 8, 1977. As a result of comments received FEA determined that the draft environmental impact statement should be supplemented by inclusion of a conservation section.

DATE: Comments by September 19, 1977.

ADDRESS: Written comments to: Mr. Finn K. Neilsen, Acting Directors, Speciality Fuels, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Ed Vilade (Media Relations), 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833; Finn K. Neilsen (Regulatory Programs), 2000 M Street NW., Room 6318, Washington, D.C. 20461, 202-254-9730; Joel Yudson (Office of the General Counsel), 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

The draft conservation section addresses energy conservation in two steps. First, it estimates the amount of gas which can be saved through conservation programs and the costs associated with the installation of energy conservation devices; second, it lists various possible means of implementing the identified conservation programs and discusses the practicality, effectiveness, and timeliness of such programs.

Single copies of the draft conservation section may be obtained from the National Energy Information Center, Room 1404, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Copies of the draft conservation section will also be available for public review in the FEA Freedom of Information Reading Room, Room 2107, Federal Building, 12th and

Pennsylvania Avenue NW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

B. COMMENT PROCEDURE

Interested parties are invited to submit written comments with respect to the draft conservation supplement to the Indiana Gas Company draft environmental impact statement to Mr. Finn K. Neilsen, FEA, Room 6318, 2000 M Street, NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to FEA with the designation "Draft EIS, Indiana Gas Company SNG Plant". Five (5) copies should be submitted. All comments and related information should be received by FEA by September 19, 1977, in order to ensure consideration.

Any information or data, submitted in response to the Indiana Gas Company draft EIS, considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only, in accordance with the procedures set forth in 10 CFR 205.9(f). Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., August 3, 1977.

J. PETER LUEDTKE,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-22719 Filed 8-5-77;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. AC-43]

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF FRESNO

Post Approval Amendment of Conversion Application Final Action

AUGUST 3, 1977.

Notice is hereby given that on July 29, 1977, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation by Resolution No. 77-488, approved the amendment to the application of First Federal Savings and Loan Association of Fresno, Fresno, California, for permission to convert to the stock form of organization. The application to convert was approved on July 13, 1977, by Resolution No. 77-436. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 320 First Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary,
Federal Home Loan Bank Board.

[FR Doc.77-22775 Filed 8-5-77;8:45 am]

[No. AC-42]

OLYMPIC FEDERAL SAVINGS AND LOAN ASSOCIATION

Post Approval Amendment of Conversion Application; Final Action

AUGUST 3, 1977.

Notice is hereby given that on July 29, 1977, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 77-487, approved the amendment to the application of Olympic Federal Savings and Loan Association, San Francisco, California, for permission to convert to the stock form of organization. The application to convert was approved on July 13, 1977, by Resolution No. 77-435. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 320 First Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary,
Federal Home Loan Bank Board.

[FR Doc.77-22774 Filed 8-5-77;8:45 am]

FEDERAL MARITIME COMMISSION

PACIFIC WESTBOUND CONFERENCE AND THE FAR EAST CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement, accompanied by a statement of justification, has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 29, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Erkan Turk, Jr., Esq., Burlingham Underwood & Lord, One Battery Park Plaza, New York, N.Y. 10004.

Essentially, Agreement 8200, as amended, permits the Pacific Westbound Conference and the Far East Conference, both of whom are engaged in our trades from the United States to the Far East, to discuss and agree upon the rates and rules applicable to the transportation of cargoes in vessels of their member lines from ports of the United States to various Far Eastern ports (overland common point cargoes excluded).

Agreement 8200-5, the subject of this notice, would amend that arrangement to permit discussion and agreement as well on the rates and rules applicable to the transportation of cargo from points in the United States (including overland common point and mini-landbridge cargoes) to points overseas in the Far East.

By order of the Federal Maritime Commission.

Dated: August 3, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-22762 Filed 8-5-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ER77-518]

ALABAMA POWER CO.

Notice of Filing of Initial Rate Schedule

AUGUST 2, 1977.

Take notice that Alabama Power Company (Alabama) on July 18, 1977, tendered for filing an Agreement with Dixie Electric Cooperative, Inc., intended as an initial rate schedule. Alabama indicates that the filing is for the proposed Cecil delivery point of the Dixie Electric Cooperative, Inc. Alabama further indicates that the delivery point will be served at the Company's applicable revision to Rate Schedule REA-1 incorporated in FPC Electric Tariff Original Volume No. 1 of Alabama Power Company as allowed to become effective, subject to refund, by Commission order in FPC Docket No. ER76-659.

According to Alabama, copies of the filing were served upon Dixie Electric Cooperative, Inc., and its Agent, Alabama Electric Cooperative.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not

serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22662 Filed 8-5-77;8:45 am]

[Docket Nos. ER77-493 and ER77-480]

BLACKSTONE VALLEY ELECTRIC CO. AND MONTAUP ELECTRIC POWER CO.

Order Accepting for Filing, Suspending Proposed Increased Rates and Consolidating Proceedings

JULY 29, 1977.

On July 1, 1977, Blackstone Valley Electric Company (Company) tendered for filing cost of capital computations for use in determining transmission rentals to Montaup Electric Company.[1] The filing would increase the Company's revenues by $21,612, or 4.45 percent, based on the 12-month period ending December 31, 1977.

The Company proposes an effective date of August 1, 1977, with a five month suspension until January 1, 1978 in order to comply with a prior settlement agreement. It also requests consolidation of this docket with docket No. ER77-480.

A preliminary review of Company's filing indicates that the proposed increase in rates and charges has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: Good cause exists to accept for filing and suspend the proposed increased rates and charges tendered by the Company on July 1, 1977, as hereinafter ordered.

The Commission orders: (A) The proposed increased rates and charge tendered by the Company on July 1, 1977, are hereby accepted for filing.

(B) The proceeding in Docket No. ER77-493 is hereby consolidated with the proceeding in Docket No. ER77-480 for purposes of hearing and decision.

(C) Pending hearing and decision thereon, the increased rates and charges tendered by the Company are hereby suspended and the use thereof deferred until January 1, 1978, when they shall become effective subject to refund.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22674 Filed 8-5-77;8:45 am]

[1] Rate Schedule Designation to be provided to the Company by future letter.

[Docket No. ER77-525]

BOSTON EDISON CO.

Notice of Tariff Filing

AUGUST 1, 1977.

Take notice that Boston Edison Company (Edison) on July 25, 1977, tendered for filing a letter agreement between itself and Montaup Electric Company (Montaup) providing for the use of certain transmission facilities. Edison and Montaup, which has filed a certificate of concurrence, have requested that the agreement be allowed to become effective as of December 1, 1975, and therefore request waiver of the Commission's notice requirements.

Edison indicates that the purpose of the agreement is to provide an independent contractual basis for the use of the facilities for the purposes described in subsections (a) through (e) of Section 13.2 of the New England Power Pool Agreement and for the movement of power from Montaup's Canal Unit No. 2 to the Montaup system and to provide an alternative path for the movement of power from Edison's Pilgrim Unit No. 1 to the Edison system. Edison states that it has served copies of the filing upon Montaup and upon the Secretary of the New England Power Pool Management Committee.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to ake protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22668 Filed 8-5-77;8:45 am]

[Docket Nos. ER77-494 and ER77-480]

BROCKTON EDISON CO. AND MONTAUP ELECTRIC POWER CO.

Order Accepting for Filing, Suspending Proposed Increased Rates and Consolidating Proceedings

JULY 29, 1977.

On July 1, 1977, Brockton Edison Company (Company) tendered for filing cost of capital computations for use in determining transmission rentals to Montaup Electric Company.[1] The filing would increase the Company's revenues by $53,220, or 6.4 percent, based on the 12-month period ending.

The Company proposes an effective date of August 1, 1977, with a five month suspension until January 1, 1978, in order to comply with a prior settlement agreement. It also requests consolidation of this docket with Docket No. ER77-480.

A preliminary review of Company's filing indicates that the proposed increase in rates and charges has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.

The Commission finds: Good cause exists to accept for filing and suspend the proposed increased rates and charges tendered by the Company on July 1, 1977, as hereinafter ordered.

The Commission orders: (A) The proposed increased rates and charges tendered by the Company on July 1, 1977, are hereby accepted for filing.

(B) The proceeding in Docket No. ER77-494 is hereby consolidated with the proceeding in Docket No. ER77-480 for purposes of hearing and decision.

(C) Pending hearing and decision thereon, the increased rates and charges tendered by the Company are hereby suspended and the use thereof deferred until January 1, 1978, when they shall become effective subject to refund.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22673 Filed 8-5-77;8:45 am]

[1] Rate Schedule Designation to be provided to the Company by future letter.

[Docket No. ER77-514]

CENTRAL POWER AND LIGHT CO.

Tariff Change Application

AUGUST 1, 1977.

Take notice that Central Power and Light Company (Company), on July 12, 1977, tendered for filing proposed FPC Electric Tariff, Original Volume No. 1. The Company indicates that the proposed tariff would increase revenues from jurisdictional sales and service by $1,012,302 based upon the twelve (12) month period ending June 30, 1978.

The Company estimates its rate of return on its jurisdictional rate base, for sales for resale for the calendar year year ending December 31, 1976, to be 4.21%. The Company further states that such return is substantially belpw its weighted cost of capital, imbedded cost of debt and preferred stock, and therefore will not attract the capital for planned construction and expansion programs. According to the Company, the proposed rates are based upon a 10.89% overall rate of return.

The Company indicates that copies of the filing have been served upon the Company's jurisdictonal customers and upon the Public Utilities Commission of the State of Texas. The proposed effective date of the tariff is August 7, 1977, and the Company therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest the application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22656 Filed 8-5-77;8:45 am]

[Docket No. CI77-119]

CITIES SERVICE OIL CO.

Order Setting Matter of Hearing

JULY 29, 1977.

On November 19, 1976, Cities Service Oil Company (Cities) filed in Docket No. CI77-119 an application for Commission authorization to abandon a sale of casinghead gas made under a percentage sales contract. Such sale was made to Phillips Petroleum Company, the plant operator, pursuant to a contract dated April 30, 1959. Cities terminated said contract on February 10, 1976, pursuant to Section 15 of the contract; such termination was effective on April 30, 1976.

Cities' application was published in the FEDERAL REGISTER on December 16, 1976 at 41 FR 54991. Timely petitions to intervene were filed on January 3, 1977, by Phillips and by American Liberty Oil Company (American Liberty).

Phillips processes the subject gas at the Artesia Plant in Eddy County, New Mexico. American Liberty owns the plant and is the actual buyer of the gas. American Liberty then sells the gas to Transwestern Pipeline Company (Transwestern) under a contract dated January 29, 1960, as amended. American Liberty operates under a small producer certificate issued in Docket No. CS73-276.

In its application Cities asserts that abandonment should be permitted on the grounds that the contract between Cities and Phillips had expired, that Cities is desirous of processing the gas in its own plant, and that it is making "contractual arrangements" to sell and deliver its gas directly to Transwestern. By additional information filed April 29, 1977, Cities states that in the event its application for abandonment is allowed, Transwestern will receive more gas over the reservoir life than under the present arrangement.

In their petitions to intervene, Phillips and American Liberty request that Cities' application for abandonment be denied, or in the alternative, that it be set for formal hearing. They allege that allowance of the abandonment application will result in processing costs, increased costs for Transwestern, earlier abandonment of Cities' gas sales, and higher consumer costs. In addition, Phillips states that Cities' application should be denied since Cities has not negotiated a replacement contract covering the subject gas.

We find that a hearing is desirable to determine, on the record, whether the present or future public convenience or necessity will be served by permitting the abandonment proposed herein.

The Commission finds: Cities' application for abandonment filed in Docket No. CI77-119 should be set for hearing.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 7, 14, 15, and 16 thereof, and the Commission's Rules of Practice and Procedure, a public hearing under Section 7(b) of the Act shall be held in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, to determine whether the present or future public convenience or necessity permit the proposed abandonment.

(B) A Presiding Administrative Law Judge shall be designated by the Chief Administrative Law Judge for that purpose. Such Presiding Administrative Law Judge shall preside at the hearing in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the exception of motions to intervene, motions to consolidate and sever, and motions to dismiss, as provided in the Rules of Practice and Procedure).

(C) Cities and any party supporting Cities shall file their direct testimony and evidence on or before August 16, 1977. Phillips and American Liberty, and any party supporting Phillips and American Liberty, shall file their testimony and evidence on or before August 30, 1977. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all parties to this proceeding.

(D) The Presiding Administrative Law Judge shall preside at a hearing to be held on September 15, 1977, at 9:30 A.M., E.D.T. in a hearing room at the address noted in Ordering Paragraph (A).

(E) Phillips and American Liberty are permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22671 Filed 8-5-77;8:45 am]

[Docket No. CP77-299]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Petition To Amend

AUGUST 1, 1977.

Take notice that on July 20, 1977, Columbia Gas Transmission Corporation (Petitioner), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP77-299 a petition to amend the Commission's order of May 3, 1977 issued in the instant docket (57 FPC ——), pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to permit the deleting of the second sentence from ordering paragraph (D)(2) and all of (D)(3) and permit the total volumes delivered to Stearns-Roger, Incorporated (Stearns-Roger) to be governed by the first sentence of ordering paragraph (D)(2), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner indicates that pursuant to the Commission's order of May 3, 1977, issued in the instant docket, it was granted authorization to transport up to 1,000 Mcf of natural gas per day for Stearns-Roger for use in the operation of Pilot Plant located near Homer City, Pennsylvania, which is being operated to conduct research on the experimental Bi-Gas process for producing pipeline quality gas from coal.

Stearns-Roger's only supplier of natural gas is Columbia Gas of Pennsylvania, Inc., (Columbia Pa.), it is indicated.

Petitioner states that construction of the Bi-Gas Pilot Plant was delayed and was not completed until May, 1976. Petitioner further states that in anticipation of its needs, Stearns-Roger gave Columbia Pa. an estimate of its natural gas requirements for the Pilot Plant in January of 1974, and that in April, 1975, Columbia Pa. allocated volumes averaging 405 Mcf per day to Stearns-Roger for Pilot Plant. It is stated that upon completion of the Pilot Plant, it was determined that substantially higher volumes than those previously allocated where needed for its operation, and that Stearns-Roger indicated that at least 667 Mcf per day on a noncurtailed basis was needed to operate properly the Pilot Plant. Applicant states that as a result of its needs, Stearns-Roger contracted to purchase not less than 7,000 Mcf nor more than 25,000 Mcf per month of natural gas from ONG Exploration, Inc., for a two-year period and Petitioner and

Panhandle Eastern Pipe Line Company applied for authorization to transport up to 1,000 Mcf per day for Stearns-Roger. It is asserted that the difference between Stearns-Roger's contract demand from Columbia Pa. of an average of 405 Mcf per day and Stearns-Roger's estimated of the need for at least 667 Mcf per day could determine the success of the research and experimentation to be conducted in the production of pipeline quality gas from coal.

Petitioner states that the second sentence of ordering paragraph (D)(2) of the subject order contains the restriction that in no event should the total volumes delivered to Stearns-Roger exceed its contract demand with its suppliers, and that ordering paragraph (D)(3) of the subject order limits the volumes of gas transported hereunder to curtailment experienced by Stearns-Roger in the eligible Priority 2 or 3 categories. Consequently Petitioner requests that the Commission amend its order of May 3, 1977 and permit the total volumes delivered to Stearns-Roger to be governed by the first sentence of ordering paragraph (D)(2) which states as follows:

> The volumes of gas transported shall be utilized only for Priority 2 uses and Priority 3 uses which would be Priority 2 uses but for an interruptible contract as defined in Section 2.78 of the Commission's General Policy and Interpretations (18 CFR 2.78).

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 23, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22657 Filed 8-5-77;8:45 am]

[Docket No. RP76-159]

COLUMBIA GAS TRANSMISSION CORP.

Order Granting Petition for Continued Rate Base Treatment

JULY 29, 1977.

On September 30, 1976, Columbia Gas Transmission Corporation (Columbia) filed in Docket No. RP76-159 a petition requesting continued rate base treatment of a $60 million Alaskan advance payment made to BP Oil Corporation (BP Oil). Rate base treatment of the subject advance payment began, pursuant to Opinion No. 674 (50 FPC 1514), on November 14, 1971. Since BP Oil did not begin to repay the advance on or before November 14, 1976, the advance was excluded from rate base on that date in accordance with Opinion No. 674 which required that repayment begin within 5 years of initial rate base inclusion. Columbia's instant petition seeks rate base treatment to recommence on November 14, 1976, and to continue until the advance is fully recovered. For the reasons set out below, the Commission grants Columbia's request and allows continued rate base treatment. The rate base treatment authorized herein is subject to the Commission's final determination in Docket No. RP76-49 (the show cause proceeding instituted to investigate Alaskan advance payments made under agreements executed prior to December 26, 1973) and subject to all remaining conditions for continued rate base treatment as specified in Opinion No. 674 including the condition that all interest received on the advance be flowed through to Columbia's customers.

In Opinion No. 674, the Commission found Columbia's advance to BP Oil to be in the public interest and allowed Columbia to include the amount of the payment, $60 million, in rate base. The advance represents the first of three advance payments totaling $175 million made by Columbia to BP Oil in consideration of the right to call on BP Oil's Prudhoe Bay, Alaska, natural gas reserves. BP Oil, pursuant to the terms of the advance payment agreement, dated August 3, 1971, to repay the principal amount of the advances, plus interest, out of the revenues produced by the sale of oil from its Prudhoe Bay reserves. The interest on the amounts advanced is set at a rate equal to First National City Bank's best rate charged for 90 day loans to substantial and responsible commercial borrowers plus 0.5 percent. Columbia is currently accruing the interest due and is obligated to flow through all accrued interest to its jurisdictional customers upon payment thereof by BP Oil.

The rate base treatment of the initial BP Oil advance was allowed in Opinion No. 674 subject to three conditions: (a) Treatment would cease if repayment did not begin within five years from the date the amount of the payment was first included in rate base; (b) treatment would terminate, and Columbia would be required to refund any revenues collected as a result of such treatment, if the advance payment did not result in gas production for the benefit of Columbia's customers; and (c) any portion of the advance not recovered within five years of the commencement of repayment, either through gas deliveries or other economic consideration, would be removed from rate base. The first condition together with BP Oil's failure to begin repayment within the specified period operated to terminate rate base treatment as of November 14, 1976. Columbia's present petition ensued.

In adopting the condition that repayment must commence within five years of initial rate base inclusion the Commission stated:

> In Order No. 465, in Docket No. R-411 (mimeo p. 8), we found that it was appropriate for the pipeline to remove an advance from Account 166 and rate base 5 years after its initial inclusion in Account 166 unless recoupment of the advance has commenced by gas deliveries or other economic consideration 'unless otherwise directed by the Commission'. We find that it would be appropriate to attach such a condition to this advance because it requires Columbia, should it desire continued rate treatment of the advance under these circumstances, to present the Commission with evidence to show: (1) Why recoupment of the advance has not commenced and (2) whether the project warrants continued rate base treatment of the advance with the attendant costs to Columbia's customers within the 48 States. (50 FPC at 1517.)

Accordingly, Columbia explains in its petition why the recoupment of the payment has been delayed and argues that substantial justification exists for continued rate base treatment.

Columbia states that delay in the construction of the Alyeska pipeline is primarily responsible for BP Oil's failure to begin repayment. Columbia states that it originally estimated that BP Oil would begin to repay the advance when operation of the pipeline began in early 1976. It is now anticipated that the Alyeska pipeline will commence operation in late July 1977. Columbia also notes that late initial payments will not necessarily delay the original schedule for recoupment of the total amount of the advance. Since BP Oil is to make payments equal to 50 percent of the revenues received on the sale of oil produced in Prudhoe Bay, and, since the price of this oil has risen substantially subsequent to the time of the original estimate, full recoupment still is expected in mid-1979.

Columbia states that continued rate base treatment is justified for three reasons: First, the payment to BP Oil will result in increased gas supplies which will benefit Columbia's customers. These new supplies will help to alleviate the severe gas shortage now experienced on Columbia's system. Second, the rights to BP Oil's Prudhoe Bay reserves, acquired as consideration for the advance payment, were obtained at a relatively low cost. These cost savings were realized because of a unique provision in the advance payment agreement between Columbia and BP Oil which requires BP Oil to pay interest on all monies advanced. Thus, Columbia estimates that in 1976 its customers paid $26.5 million in rates attributable to rate base treatment for the total amount of advance payments made to BP Oil ($175 million) but that this amount is offset by $16.5 million of interest accrued during 1976. The interest accrued eventually will be passed through to Columbia's customers. Third, Columbia asserts that termination of rate base treatment would have an adverse effect upon Columbia's ability to finance other new gas supply projects. It is alleged that Columbia Gas System, Inc., Columbia's parent company, will require $4 billion over the next 10 years for supply-related projects. Columbia argues that termination of

rate base treatment would require additional financing and add to an already serious financial burden.

Based on a review of the instant petition, the Commission finds that Columbia has justified continued rate base treatment of the BP Oil advance payment pursuant to the requirements set out in Opinion No. 674 (50 FPC at 1517). Continued rate base treatment shall therefore be authorized. The Commission's action however, is limited to the facts of the subject advance and should not be construed as determining any of the issues raised by the show cause order issued on December 31, 1975, in Docket No. RP76-49. The December 31, 1975, order required four pipelines, including Columbia, to show cause why rate base treatment should not be terminated for Alaskan advances made pursuant to contracts executed prior to December 28, 1973, the effective date of Order No. 499, and why appropriate refunds should not be ordered. Since the show cause order encompasses the subject advance payment to BP Oil and since the Commission has not taken final action in Docket No. RP76-49, the authorization granted by this order shall be subject to the Commission's final determination in Docket No. RP76-49. The carrying charges received by Columbia pursuant to this order shall be subject to disallowance and refund in the event required by final Commission order in Docket No. RP76-49.

Moreover, the Commission in its review of the instant petition, has had occasion to reexamine Opinion No. 674, the order authorizing initial rate base treatment of the $60 million advance, and has determined that that order requires clarification insofar as it pertains to the proper accounting treatment of the BP Oil advances. As explained above, the BP Oil advance payment agreement, dated August 3, 1971, controlling the instant advance and subsequent advance payments made by Columbia to BP Oil for a call on Alaskan reserves, requires that interest be paid by BP Oil on the outstanding principal of the advance. Opinion No. 674 could be interpreted to require Columbia to credit Account No. 166 with the interest accrued on the advance as well as principal repayments. However, account No. 166 is a rate base account and should only reflect the principal amount of the advance payments. Accordingly, the Commission shall clarify Opinion No. 674 to require Columbia to record all interest receivable by Columbia from BP Oil in Account No. 186 and to credit Account No. 242 with all interest applicable to periods during which the advances were included in Columbia's rate base. This latter Account, 242, represents the amount to be flowed through to Columbia's customers.[1] Further, the Commission requires, as a condition of the rate base treatment allowed herein, that the interest on the $175,000,000 total amount of the advances to BP Oil be flowed through to Columbia's customers as soon as possible after receipt of such interest payments by Columbia.

Columbia may, as a means of flowing through the interest to its customers, apply the interest received to Account No. 191, unrecovered purchased gas costs, or may utilize some other, equivalent method of flow through. Columbia shall be required to submit a proposed plan for the flow through of interest subject to Commission review and approval.

Public notice of Columbia's petition, issued on October 12, 1976, provided for protests or petitions to intervene to be filed on or before October 28, 1976. No petitions to intervene, notices of intervention or protests to the granting of the petition have been filed.

The Commission finds: It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Columbia be allowed to continue rate base treatment of the subject $60 million advance to BP Oil subject to the conditions specified herein.

The Commission orders: (A) Columbia is authorized to receive continued rate base treatment for its $60 million advance payment made to BP Oil. Rate base treatment shall recommence on November 14, 1976, and shall continue until the advance is repayed or until the conditions specified in Paragraphs (B) and (C) below operate to terminate rate base treatment, whichever is earlier.

(B) Opinion No. 674 issued November 6, 1973 (50 FPC 1514) shall remain in full force and effect except insofar as it requires, as a condition for continued rate base treatment, repayment of the advance to begin five years from the start of rate base inclusion. Specifically, rate base treatment remains subject to the conditions specified in Opinion No. 674 that gas be made available to Columbia's customers and that recoupment be completed within five years after commencement of repayment.

(C) The carrying charges authorized by this order are subject to disallowance and refund in the event required by final order of the Commission in Docket No. RP76-49.

(D) Within 30 days from the issuance of this order Columbia shall submit a plan, to be approved by the Commission, to ensure that all interest payments received from BP Oil will be promptly flowed through for the benefit of Columbia's customers.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.[2]

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22672 Filed 8-5-77;8:45 am]

[1] The Commission's review of Columbia's 1976 annual report, Form 2, indicates that Columbia has been using this method of accounting.

[2] Commissioner Smith, dissenting, will have a separate statement to be issued later.

[Docket No. ER77-510]

COMMONWEALTH EDISON CO.

Filing First Amendment to Interconnection Agreement

AUGUST 2, 1977.

Take notice that Commonwealth Edison Company (Edison) on July 11, 1977, tendered for filing proposed First Amendment to the Interconnection Agreement dated June 21, 1967 between Iowa-Illinois Gas and Electric Company (Iowa) and Edison.

Edison states that the parties propose to modify the charges and make other revisions in Service Schedules A, B and D of the Interconnection Agreement.

Edison proposes an effective date of August 12, 1977.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22659 Filed 8-5-77;8:45 am]

[Docket No. ER77-367]

DUKE POWER CO.

Supplement to Electric Power Contract

AUGUST 1, 1977.

Take notice that Duke Power Company (Duke) tendered for filing on July 14, 1977, a supplement to the Company's Electric Power Contract with South Carolina Electric Gas Company which is proposed to become effective on June 20, 1977. Duke indicates that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FPC No. 262.

Duke indicates that its contract supplement was made at the request of the customer and with agreement obtained from the customer, and provides for an increase in capacity at Delivery Point No. 1 and Delivery Point No. Temp. No. 1. Duke further indicates that the supplement also includes an estimate of sales and revenue for the twelve months immediately preceding and for the twelve months immediately succeeding the effective date.

Duke requests waiver of the Commission's notice requirements to allow for an effective date of June 20, 1977.

Duke states that a copy of this filing was mailed to the South Carolina Electric and Gas Company and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22655 Filed 8-5-77;8:45 am]

[Docket No. ER77-488]

EL PASO ELECTRIC CO.

Order Granting Interventions, Denying Petition for Reconsideration, Denying Motion for Summary Disposition, Establishing Price-Squeeze Procedures, and Setting Prehearing Conference Date

AUGUST 1, 1977.

On July 1, 1977, El Paso Electric Company (El Paso) submitted for filing proposed increased rates and charges for jurisdictional sales to Rio Grande Electric Cooperative, Inc. (the Co-op), at the Dell City and Van Horn delivery points, and to Community Public Service Company (CPS).

On July 19, 1977, the Commission issued an order in this docket accepting for filing and suspending the effectiveness of the proposed rates and charges for four months, requiring the filing of revised rate schedules to exclude CWIP from its rate proposal, and calling for a public hearing.

Public Notice of El Paso's filing was issued on July 11, 1977, with all protests or petitions due on or before July 20, 1977. On July 19, 1977 CPS filed a petition to intervene in this proceeding. On July 20, 1977, the Co-op filed a Protest, Petition to Intervene, Petition for Reconsideration And Motion For Summary Disposition.

In its filing, the Co-op requests that the maximum five-month suspension period be granted in place of the four-month period called for in the July 19 order. In addition, the Co-op moves to have both CWIP and deferred fuel expenses summarily eliminated. It also protests the magnitude of El Paso's rate of return on common equity as well as El Paso's functionalization methods relating to Administrative and General Expenses (A&G) and to General Plant. The Co-op, additionally, raises a "price-squeeze" allegation and requests the opportunity to submit data requests on this issue pursuant to Commission Order No. 563. Finally, the Co-op requests that it be given notice and an opportunity to respond to El Paso's submission of revised rates, pursuant to the July 19 order, prior to their acceptance.

Since the Commission has already required El Paso to remove CWIP from its rate proposal in the July 19 order, we need not consider this allegation by the Co-op. The allegations involving deferred fuel expenses and the functionalization methods for A&G and General Plant are appropriate subjects for a public hearing which has already been established.

We will direct the Administrative Law Judge to convene a prehearing conference within 15 days from the date of this order for the purpose of hearing the petitioner's request for data necessary to present its prima-facie showing on the price-squeeze issue. In addition, we shall require the Secretary to issue a public notice when El Paso submits its revised filing.

Review of the Co-op's allegations reveals no contention which would support an increase in suspension period from four months to five months.

The Commission finds: (1) Good cause exists to accept the Petitions to Intervene of Community Public Service Company and Rio Grande Electric Cooperative, Inc.

(2) Good cause exists to establish "price-squeeze" procedures to effectuate the Commission's policy announced in Order No. 563.

(3) Good cause exists to establish dates for Staff to serve "top sheets" on all parties and to set a date for a prehearing conference.

The Commission orders: (A) The petions to intervene of Community Public Service Company and Rio Grande Electric Cooperatives, Inc. are hereby granted; *Provided, however,* That participation of such intervenors shall be limited to matters set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The Petition of Rio Grande Electric Cooperative, Inc. to reconsider the length of suspension period is hereby denied.

(C) Staff shall prepare and serve "top sheets" on all parties for settlement purposes on or before November 15, 1977. (See Administrative Order No. 157).

(D) A presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall preside at a prehearing conference in this proceeding to be held on November 23, 1977, at 10 a.m. in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Law Judge is authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever and motions to dismiss) as provided in the Rules of Practice and Procedure.

(E) The Administrative Law Judge shall convene a prehearing conference within 15 days from the date of this order for the purpose of hearing the Co-op's request for data required to present its case, including a prima facie showing, on the price-squeeze issue. El Paso shall also be required to respond to the discovery requests authorized by the Administrative Law Judge within 30 days, and the Co-op shall file its case-in-chief on the price-squeeze issue within 30 days after El Paso's response.

(F) The Secretary shall issue a public notice of El Paso's filing of revised rate schedules to permit any comments, protests, or petitions by the intervenors in this proceeding.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22676 Filed 8-5-77;8:45 am]

[Docket No. RP77-18]

EL PASO NATURAL GAS CO.

Order Approving Pipeline Rate Settlement

AUGUST 1, 1977.

On May 27, 1977, the Presiding Administrative Law Judge certified to the Commission for consideration and disposition a proposed Stipulation and Agreement which, if approved, would resolve all issues in the captioned proceeding. For the reasons stated below, the Commission finds that the proposed settlement agreement is reasonable and should be approved and adopted.

This proceeding originated on November 30, 1976, when El Paso Natural Gas Company (El Paso) tendered for filing proposed tariff sheets reflecting a general rate increase of approximately $146 million based upon a cost of service for twelve months ended August 31, 1976. By order issued December 29, 1976, the Commission accepted the filing and suspended its use for five months until June 1, 1977, upon condition that El Paso file revised tariff sheets prior to June 1, 1977. In compliance with that order El Paso, on May 2, 1977, tendered substitute tariff sheets which were accepted to become effective on June 1, 1977, by letter order issued May 26, 1977.

Pursuant to the Commission's order of December 29, 1977 in this docket, "top sheets" were served by the Commission Staff on April 1, 1977. Formal and informal conferences were then held by the parties. At the final conference held on May 26, 1977, El Paso submitted to the Presiding Administrative Law Judge a proposed stipulation and agreement

and a motion requesting Commission approval thereof.

Public notice of certification of the proposed agreement was issued on May 31, 1977, providing for comments to be filed on or before June 17, 1977. Comments in support of the settlement agreement have been filed by Arizona Public Service Company, The People of the State of California and the Public Utilities Commission of the State of California, Southern Union Company, the Southern California Gas Company, San Diego Gas and Electric Company, and the Commission Staff. No adverse comments were received.

The proposed agreement provides for a $57,650,717 reduction in El Paso's originally proposed cost of service resulting in unit rate reductions of 2.83 cents per Mcf in the production area sales rates and 6.08 cents per Mcf in the rates for sales from its transmission system. The proposed settlement cost of service, set forth in Appendix A, reflects an overall rate of return of 9.17 percent including a return on common equity of 14.75 percent. The proposed settlement capitalization is set forth in Appendix B.

The agreement provides that settlement rates shall be effective as of June 1, 1977 and that refunds of excess amounts collected by El Paso shall be made with interest calculated at 9 percent per annum. Article V of the agreement provides for future, additional refunds in the event that the amounts included in the settlement cost of service for four cost items are greater than the cost actually incurred by El Paso. These four cost items involve: (1) Increased royalty and production tax expenses; (2) a severance tax enacted by the Jicarilla Apache Tribe; (3) special overriding royalty payments; and (4) additional royalty and production tax expense occasioned by Opinion No. 770–A.

These additional refunds shall be made within 60 days after the settlement rates, as adjusted for purchase gas adjustments and other surcharges placed into effect pursuant to El Paso's FPC Gas Tariff, are superseded by a change in rates effected pursuant to Section 4 or Section 5 of the Natural Gas Act. If the total amount of such refunds, inclusive of interest, is less than $10 million the amount of such refunds shall be credited to El Paso's unrecovered purchased gas cost account (Account 191). If the amount of such refunds equals or exceeds $10 million, El Paso shall make a cash refund of such amount to its jurisdictional customers.

Article VI of the proposed agreement provides for rate adjustments to track eth jurisdictional portion of increases or decreases in El Paso's net amount of advance payments if that net amount rises above or falls below $16,826,608.

Based upon a review of the record in this proceeding including the settlement agreement itself and the pleadings, evidence, and comments submitted in support thereof, the Commission finds that the proposed settlement agreement represents a reasonable resolution of the issues in this proceeding in the public interest, and that the agreement should be accordingly approved and adopted, as hereinafter ordered.

The Commission orders: (A) The Stipulation and Agreement certified on May 27, 1977, is incorporated herein by reference and is approved and adopted.

(B) Within 10 days after the date this order becomes final and nonappealable, El Paso shall file revised tariff sheets in accordance with the settlement agreement and this order.

(C) As soon as practicable but not later than 30 days after the date this order becomes final and nonappealable, El Paso shall refund all amounts collected in excess of the settlement rates, together with interest at the rate of 9 percent per annum. Within 60 days after the date this order becomes final and nonappealable El Paso shall submit a report of the refunds and interest to the Commission.

(D) Any additional refunds for which provision is made in Article V of the settlement agreement shall be made in the manner prescribed in the agreement within 60 days after the date on which the settlement rates (as adjusted for purchase gas adjustments and other surcharges placed into effect pursuant to El Paso's FPC Gas Tariff) are superseded by a change in rates effected pursuant to Section 4 or Section 5 of the Natural Gas Act. Within 10 days after such date El Paso shall submit a report of the refunds and interest to the Commission.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims of contentions which may be made by the Commission, the staff or any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against El Paso or any other person or party.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

APPENDIX A.—*El Paso Natural Gas Co., Docket No. RP77–18*

[Settlement cost of service (excludes Rhodes Storage Project)]

Line No.	Description	Amount	Line No.
	(a)	(b)	
	Cost of Service [1]		
1	Total operation and maintenance.	$730,875,658	1
2	Donations	337,202	2
3	Depreciation and amortization.	79,030,773	3
4	Depletion	1,631,886	4
5	Taxes other than income taxes.	38,787,913	5
6	State income taxes	3,251,715	6
7	Federal income tax	56,909,055	7
8	Return at 9.71 pct	91,280,607	8
9	Exploration and development (cost of service treatment.	189,815	9
10	Subtotal	1,002,354,624	10
11	Revenues deducted	(102,782,242)	11
12	Total cost of service	899,572,382	12
13	Jurisdictional cost of service (sheet 2).	864,853,217	

[1] Cost of service amounts shown are inclusive of adjustments for additional sales volumes.

APPENDIX B.—*El Paso Natural Gas Co., Docket No. RP77–18*

[Capitalization and rate of return]

Line No.	Description	Percent	Cost or allowance, percent	Return, percent	Line No.
	(a)	(b)	(c)	(d)	
1	Debt	69.58	7.97	5.55	1
2	Preferred	4.41	7.32	.32	2
3	Common	26.01	14.75	3.84	3
4	Total	100.00		9.71	4

[FR Doc.77–22683 Filed 8–5–77;8:45 am]

[Docket No. RP72–6]

EL PASO NATURAL GAS CO.

Order Denying Motion for Stay, Granting Rehearing, Modifying Curtailment Plan, Establishing Further Hearings, Consolidating Hearings, and Requiring Action To Obtain Remand of Record

JULY 29, 1977.

On June 1, 1977, we ordered the curtailment plan formulated in Opinion Nos. 697 and 697–A and clarified in orders issued December 24, 1975, October 15, 1976, and June 1, 1977, to be implemented July 1, 1977.

On June 30, 1977, the United States Court of Appeals for the District of Columbia Circuit issued its opinion on petitions for review of Opinion Nos. 697 and 697–A in *City of Willcox and Arizona*

Electric Power Cooperative Inc. v. *FPC*, _____ F. 2d _____ (No. 74-2123, et al.). The decision requires modification of our holdings in Opinion Nos. 697 and 697-A in five specified areas:

(1) Fuel devoted to ignition and flame stabilization must receive Priority 2 status (Part II);

(2) Electricity generating turbines must not be classified with boilers, in Priorities 4 and 5, but are entitled to a higher priority (Part III);

(3) Attachments of new users up to December 19, 1974, must be incorporated in measuring uses by priority classification during the base period (Part IV);

(4) Pre-existing shortages of natural gas in California during the base period must be considered in determining California's volumetric entitlement (Part IV); and

(5) Gas used from storage facilities must be taken into account (i) to the extent its source has been from El Paso, (ii) in proportion to the actual end use of such storage gas, (iii) and with safeguards against according priority to gas both as it is pumped into storage and as it is withdrawn therefrom (Part V).[1]

On June 29, 1977, a motion for stay of the order issued June 1, 1977, was filed by the City of Willcox and Arizona Electric Power Cooperaive, Inc., ("AEPCO"), and on July 1, 1977, a telegram motion for postponement of the effective date of the tariff sheets implementing the plan was filed by Arizona Public Service Company ("APS"). Tucson Gas and Electric Company ("TG&E") filed a motion on July 8, 1977, to vacate the June 1, 1977, order insofar as it would result in placement of electric generating turbine fuel in Priority 5. On July 15, 1977, APS filed a document joining in TG&E's motion and modifying its earlier motion by indicating that it now only seeks reclassification of gas turbine fuel requirements.[2]

Objections to any stay of the June 1, 1977, order were filed on July 5, 1977, by Pacific Gas and Electric Company and Southern California Gas Company. General Motors Corporation filed objections to a stay of implementation on July 14, 1977.

On July 1, 1977, AEPCO and APS also filed separate applications for rehearing of the June 1, 1977, order. AEPCO argues that rehearing must be granted and the effectiveness of the Opinion Nos. 697 and 697-A plan stayed because of the Court's determinations concerning the classification of fuel for gas turbines used to generate electricity and of storage injection volumes. APS suggests that the effect of the June 1, 1977, order on distributor load upgrading should be reconsidered.

The Effective Plan

The motions and applications for rehearing do not raise matters compelling a postponement of implementation of the Opinion Nos. 697 and 697-A plans as an interim plan. The Court's decision, however, requires us to make modifications, some of which will be accomplished herein. Others will require the development of a more complete record before appropriate modifications can be directed.

The Court's decision does not prevent the Opinion Nos. 697 and 697-A plan from being implemented pursuant to the June 1, 1977, order. The Court has not vacated Opinion Nos. 697 and 697-A, and, in its discussion on the procedures for reviewing the environmental impact of the plan, the Court has recognized that this plan may be implemented as an interim plan. The Court specifically refrained from interfering with the effectiveness of the Opinion Nos. 697 and 697-A plan at this time:

> * * * [T]his plan is officially an interim one. . .[3]
>
> * * * * *
>
> * * * [W]e refrain from staying the applicability of the interim plan until the environmental statement has issued. . .[4]
>
> * * * * *
>
> The issuance of Order No. 697 (as modified by 697-A) should not be held up pending an environmental impact statement.[5]

The Court clearly intended to permit the Opinion Nos. 697 and 697-A plan to be effective with modifications. There is no indication that the defects noted by the Court are a bar to the plan's implementation as an interim plan, nor is there any indication of a time limit within which defects must be cured. We are herein making immediate changes in the plan and establishing proceedings and the other such steps in order to affect complete remedies of all the defects in the interim plan as quickly as possible. But, in the absence of a vacation of Opinion Nos. 697 and 697-A, and, in light of the overall approach of the Court, it is appropriate to conclude that the Court envisioned that the plan contained in these Opinions would be effective as an interim plan with its required modifications to follow post haste, or, in any event, before utilization as a permanent plan.[6]

Since we are prohibited by Section 19 (a) of the Natural Gas Act from modifying Opinion Nos 697 and 697-A as long as the record in this proceeding remains with the Court, we will direct the Solicitor to seek remand of the record for the purpose of implementing the modifications set forth below.

Modifications

Implementation of some of the modifications required by the Court's decision cannot be accomplished without further hearings. As to the first required modification, we have already required flame stabilization and ignition fuel to be placed in Priority 2 until a Commission decision is issued in the ongoing hearings (Phase) in this docket concerning the appropriate classification of such use.[7]

The second modification, reclassification of electricity generating turbine fuel from Priorities 4 and 5, we will implement by hereby directing that such requirements be maintained in Priority 3, as requested by AEPCO, until further order of the Commission. We will direct that further hearings be held to develop a record in this proceeding to determine whether such requirements should be reclassified from Priority 3.

The third modification, incorporation of the requirements of new residential and commercial users attached up to December 19, 1974, in the base period requirements, shall be accomplished by requiring El Paso to amend its base period requirements and the end-use profiles by incorporating such additional requirements. We are limiting our order to the incorporation of only new high priority requirements, rather than all requirements, since it is apparent from the Court's discussion that its decision regarding changing the base period requirements was in response to the arguments of TG&E and APS that they had added 3,000 residential and commercial users between October 31 and December 19, 1974.[8]

In accordance with the Court's directive,[9] there will be further hearings to determine whether APS and Tucson Gas and Electric ("TG&E") were dilatory in obtaining state permission to reject new customers after December 1974, and whether an additional base period adjustment should be permitted these customers for attachments occurring between December 19, 1974, and the date of state action.

The fourth modification, consideration of pre-existing shortages of natural gas in California during the base period, cannot be implemented without obtaining additional information concerning the cause and extent of the pre-existing shortages. We, therefore, will require this matter also to be explored in further hearings in this docket. These hearings should develop a record on the following questions:

(1) What was the level of natural gas service by California distributors served by El Paso during the two years prior to initial curtailments by El Paso and the level of service during the period subsequent to the commencement of curtailments;

(2) What new requirements by customers were attached (new customers or expanded service to existing customers) during the two years immediately preceding the commencement of El Paso's curtailments;

(3) To the extent that there were unserved requirements attached during the two year

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[1] Slip op., p. 56.

[2] "Joinder of Arizona Public Service Company in Motion of Tucson Gas & Electric Company to Vacate, in Part, the Approval of the Curtailment Provisions of El Paso Natural Gas Company".

[3] Slip op., p. 39.

[4] Id. 42.

[5] Id. 47.

[6] Id. 55.

[7] "Order Denying Rehearing, Further Clarifying Opinions, and Requiring Modification of Proposed Tariff Sheets", issued October 15, 1976, Paragraph (E).

[8] Slip op., p. 27, footnote 10.

[9] Id., p. 29.

period preceding the commencement of El Paso curtailments, were such attachments the result of an attachment policy of the individual El Paso customers and/or state authorities, and were such attachments predicated upon the receipt of any new or increased gas supplies;

(4) What was the level of natural gas deliveries from all sources other than El Paso (separately identified by source) to California customers of El Paso during the two years prior to the commencement of curtailment by El Paso;

(5) Were there any reductions in deliveries of natural gas to California customers of El Paso from California intrastate natural gas production sources during the two years prior to El Paso's curtailment; if there were such reductions, what was the amount of such reductions and were such reductions the result of cut-backs to gas producer gas contract minimum delivery amounts by customers of El Paso or their suppliers or the result of declining gas reserves? [10]

The foregoing questions, however, do not establish the bounds of inquiry into pre-existing California shortages. The Administrative Law Judge presiding in the hearing on the preexisting California shortages may require and/or receive other evidence relevant to the inquiry.

The last modification, the treatment of customer storage injection volumes, is particularly troublesome since we have taken substantial pains in clarifying orders to establish a prioritization arrangement which we believed was most equitable. Our method is based on allocating storage injection volumes received from El Paso on the basis of the proportional end-use of all gas by the receiving customer during the winter base period. This method does not permit double accounting of storage volumes (counting it in the base volumes as in a priority both on injection and withdrawal).[11] The Court, however, has required that prioritization of storage volumes must be "in proportion to the actual end-use of such storage gas". (Emphasis added). The Court has also required that there must be "safeguards" against double accounting of the gas.

In order to satisfy this last Court-required modification, it is apparent that we will have to attempt that which we have previously believed well-nigh impossible: tracing storage gas from El Paso into its customers' storage then back out to an ultimate end-use. Further hearings to devise a methodology for allocating customer storage injection gas deliveries by El Paso which meet the Court's requirements, therefore are necessary.

In the proceeding in Docket No. RP76-38, we have required an inquiry to be conducted to determine the end-use of storage injection volumes improperly delivered by El Paso to its California customers during the effective period of the Opinion Nos. 634 and 634-A interim plan, December 15, 1972, until terminated by Commission order issued on June 21, 1977.[12] While the purpose of this inquiry differs from our object in the remanded storage portion of the proceedings in Docket No. RP72-6, a consolidation of the hearings nevertheless is appropriate. Since both inquiries involve tracing of the use of storage volumes delivered by El Paso and since the base period for the permanent plan as now expanded by the Court (October 31, 1971, to December 19, 1974) and the period in question in the proceedings in Docket No. RP76-38 overlap for the period December 15, 1972, to December 19, 1974, there exists a common question of fact: what end-use was made of the storage injection volumes delivered by El Paso during the period December 15, 1972, to December 19, 1974? The consolidated hearings, however, should be expanded beyond the confines of the common factual question to include an investigation of the use of storage injection volumes by El Paso's California customers back to the commencement of the Opinion Nos. 697 and 697-A plan base period and a determination of the best method of allocating storage injection volumes under the Opinion Nos. 697 and 697-A plan which also conforms to the Court's requirements.[13]

El Paso-delivered storage injection volumes play an important part in the service of natural gas to California markets. Since the previously effective Opinion Nos. 634 and 634-A plan contains no provision for storage injection volumes, we cannot temporarily revert to the storage feature in that plan while awaiting the results of the consolidated hearings on storage. We see no feasible alternative but to continue the treatment of storage volumes developed in the orders clarifying Opinion No. 697 and 697-A until a determination is made on the remanded storage question. Parties receiving storage injection volumes under the presently effective plan are warned that receipt of such volumes will be subject to possible future adjustment in storage injection volume authorized for delivery and to a payback obligation for amounts in excess of the volumes authorized under the storage injection allocation methodology to be developed.

APS's arguments in its application for rehearing concerning load upgrading are, in essence, a recasting of assertions contained in AEPCO's application for rehearing of the October 15, 1976, order and in El Paso's tariff filing made in compliance with the October 15, 1976, order which we found meritless in the June 1, 1977, order at p. 14-15. As such, APS is seeking a rehearing of a denial of rehearing which is not permitted by our Rules of Practice and Procedure.

The Commission finds: (1) Good cause has not been shown for staying the effective date of the tariff sheets accepted and placed in effect July 1, 1977, by our order issued June 1, 1977.

(2) The curtailment plan developed in Opinion Nos. 697 and 697-A and clarified in orders issued December 24, 1975, October 1976, and June 1, 1977, should be modified pursuant to the decision in *City of Willcox and Arizona Power Cooperative, Inc.* v. *F.P.C., supra*, in the manner indicated above.

(3) The decision in *City of Willcox and Arizona Power Cooperative, Inc.* v. *F.P.C., supra*, requires that further evidentiary hearings be held in this docket as set forth hereinafter.

The Commission orders: (A) The motion for stay filed by AEPCO and application for rehearing filed by APS are denied.

(B) The applications for rehearing filed by AEPCO, and the motion of TG&E are granted insofar as matters raised therein shall be the subject of further hearings ordered in Paragraphs (C) and (D) or are the subject of the modifications in the Opinion No. 697 and 697-A plan directed in Paragraph (E).

(C) As soon as may be practicable, hearings shall be convened before an Administrative Law Judge designated by the Chief Administrative Law Judge to determine the following matters:

(1) Whether requirements of gas turbine used to generate electric energy be reclassified from Priority 3;

(2) Whether APS and TG&E were dilatory in obtaining a moratorium on new attachments after the issuance of Opinion No. 697-A or whether the actions of APS and TG&E were excusable and reasonable justifying the inclusion in the base period volumes of requirements of customers attached during the period between December 19, 1974, and the imposition of a new attachment moratorium by state authorities;

(3) What was the source and extent of natural gas shortages in California which pre-existed curtailments on the El Paso System and to what extent should base period requirements (or other elements of the Opinion Nos. 697 and 697-A plan) be modified to take into consideration such pre-existing California gas shortages in order to assure a just and reasonable and not unduly preferential or discriminatory curtailment plan?

(D) Hearings shall also be held to investigate the end-use of storage injection volumes delivered by El Paso during the base period and to develop a method of allocating storage injection volumes received by customers from El Paso which will be consistent with the requirement of the Court that such gas be allocated on the basis of the actual end-use of the storage gas withdrawals originally supplied by El Paso and "with safeguards against according priority to gas both as it is pumped into storage and as it is withdrawn therefrom". Such hearings are hereby consolidated for hearing and decision with the proceedings in Docket No. RP76-38.

[10] If declining reserves are the cause, data as to reserves and production for the four years prior to commencement of curtailment by El Paso, by area, should be introduced in evidence.

[11] "Order Denying Rehearing and Accepting Tariff Sheets", Docket No. RP72-6, issued June 1, 1977, p. 6-9.

[12] "Declaratory Order on Complaint and Order Instituting Investigation", Docket No. RP76-38, issued June 21, 1977, p. 12-13.

[13] It should be noted that the assumption that storage withdrawals on a given day, contribute proportionately to every customer served that day suggested at p. 13 of the order issued June 21, 1977, in Docket No. RP76-38, may require reconsideration in light of the Court's discussion of the function of storage gas at slip op., p. 37.

(E) Until further Commission order, the curtailment plan developed in Opinion Nos. 697 and 697–A and clarified in orders issued December 24, 1975, October 31, 1976, and June 1, 1977, shall remain in effect as prescribed therein; provided, however, that requirements of gas turbines used to generate electric energy shall be placed in Priority 3, ignition fuel and flame stabilization requirements shall remain in Priority 2, and requirements of new residential and commercial customers attached between October 31, 1974, and December 19, 1974, shall be included in base period requirements the foregoing modifications in the Opinion No. 697 and 697–A plan shall be effective as of the date of remand of the record by the Court. The Solicitor is hereby directed to seek remand of the record in this proceeding for the purpose of implementing these modifications.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22684 Filed 8-5-77;8:45 am]

[Dockets Nos. CP74-314, CP76-327, and CI77-526]

EL PASO NATURAL GAS CO., ET AL.

Order on Rehearing, Ruling on Motions for Deferral of Proceedings, Granting Motion To Designate Additional Parties, Granting Late Interventions and Granting Motion To Delete Respondent

JULY 29, 1977.

In the matter of El Paso Natural Gas Co., Docket No. CP74–314; Northwest Pipeline Corp., Docket No. CP76–327; and Sun Oil Co., et al., Docket No. CI77–526.

On June 3, 1977, the Commission issued an "Order Instituting Show Cause Proceeding, Ordering Filing of Evidence and Ordering Hearing." Applications for rehearing were filed on July 1, 1977, by Amoco Production Co. and William G. Webb, et al.[1] Three other applications for rehearing or reconsideration were filed on July 5, 1977, by Phillips Petroleum Co., W. Watson LaForce, Jr., et al.[2] and "Designated Respondents."[3]

The "Designated Respondents" also moved this Commission on July 5, 1977, for deferral of these proceedings (1) pending a final decision by the courts on motions for reference to the Commission of the issue of whether the Oil and Gas Lease Sale Agreements are subject to the jurisdiction of the Commission now pending in the Court of Appeals for the Fifth Circuit, and (2) pending a decision on the rehearing of the June 3, 1977, order. Amoco Production Co. filed on July 8, 1977, a joinder in the motion for deferral of proceedings. El Paso and Northwest replied in opposition on July 13, 1977, and July 15, 1977, respectively.

We will deny the motion to defer these proceedings. This order rules on the applications for rehearing and there is no advantage to be gained by awaiting a referral of the issues to the Commission. While in the Commission's view the issues in the court litigation should be referred to the Commission, failure to do so will not be cause for terminating these proceedings. This proceeding is conducted under the Commission's own jurisdiction. On the other hand, if any issues are eventually referred by the Court of Appeals there is benefit in moving along with this proceeding so the Commission will be sooner able to determine its position on any questions referred.

The Designated Respondents also contend the remedy issue should not be heard immediately with the jurisdictional issue. They also state they will be unable to prepare evidence on the remedy issue by August 19, 1977, in any event. The remedy issue should be tried together with the jurisdictional issue to save time in the long run should jurisdiction be determined so that appropriate refunds, if required, may be ordered significantly sooner. Also, records involved are already old. Further delay in collecting and submitting them for evidence would increase the possibility that at a later time they would be unavailable or unsupportable for any number of reasons due to the passage of time.

El Paso on July 15, 1977, moved for an extension of time to file evidence directed to the remedy issue. It notes certain other parties joined in the motion. Northwest also moved on July 15, 1977, for extension of time to file evidence. It proposed the same dates as El Paso, but seeks an extension of time for the filing of all of complainants' evidence. In order to assure sufficient time to the parties to discover necessary data and to prepare this evidence we will grant the motions to extend the time for filing evidence. Any further requests for alterations to the procedural schedule set forth herein shall be directed to the Administrative Law Judge designated to preside in this matter.

A motion for designation of additional respondents was filed on June 13, 1977, by Northwest Pipeline Corp. Northwest, successor in interest to twelve Oil and Gas Lease Agreements (PLA's) as a result of El Paso's divestiture of its Northwest Division, states it is now subject to demand from all PLA owners and moves that they be designated additional respondents, herein, in addition to the four interest owners designated in Appendix B of the June 3, 1977, order.[4] We will grant Northwest's motion and designate as Additional Respondents those persons set forth in Appendix B of this order.

We have also received untimely notices of intervention filed June 10, 1977, by the People of the State of California and the Public Utilities Commission of the State of California and June 22, 1977, by the State of Louisiana. Inasmuch as their untimely filings will not prejudice any party nor serve to delay these proceedings we will permit their untimely notices of intervention.

Late petitions to intervene were filed on June 22, 1977, jointly by Public Service Co. of Colorado, Western Slope Gas Co., and Cheyenne Light, Fuel & Power Co.; on July 18, 1977, by Colorado Interstate Gas Co.; and on July 21, 1977, by Cascade Natural Gas Corp. They are direct or indirect customers of Northwest and indicate a substantial interest in these proceedings not adequately represented by any other party, and a willingness to accept the record as it now stands. We will therefore permit their intervention.

Union Oil Co. filed a motion on June 21, 1977, to delete Alvin C. Johnson, Trustee, as a Respondent under GLA's 76, 78, and 349 because his production payment is now paid off and Union Oil Co. is solely responsible for any refunds that may be ordered. We will grant the motion.

We now turn to the applications for rehearing or reconsideration. The applications for rehearing raise several issues. The primary objection is that the Commission is barred by res judicata, collateral estoppel, and equitable estop-

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[1] The application states it is submitted on behalf of all the producer applicants involved in the consolidated proceedings in William G. Webb, et al., Docket Nos. G–6887, et al., except Ralph E. Davis, Docket No. CI62–1175, and C. J. Brannan, Jr., Docket No. CI67–628. A list of those remaining producers are attached hereto as Appendix A, for convenience.

[2] The additional Respondents joining with the petition are, Henry P. Isham, Jr., Robert T. Isham, Josephine C. Jacobson, J. Robert Jones, Nancy Laforce Keyes, Frederic P. G. Lattner, Trustee, Suzanne LaForce Baber, James C. Bard, Douglas N. Bard, Ralph A. Bard, Jr., Roy E. Bard, Jr., G. R. Brainard, Jr., Continental Illinois National Bank & Trust Co. of Chicago (Tr. No. 23949 and Tr. No. 23935 Oil and Min. Div.), Eleanor Isham Dunne, Charles W. Farnham, Elizabeth B. Farrington, Minnie A. Fitting, Robert D. Fitting, Nancy H. Gerson, Jay C. Halls, and Ruth N. Halls, Trustees, Cortland T. Hill, Elsie F. Hill, Louis W. Hill, Jr., Albert L. Hopkins, Jr., George S. Isham, R. S. MacDonald, A. MacDonald, and Northern Trust Co., Trustees U/W of N. S. MacDonald, Deceased, Nora R. Ranney, Catherine H. Puml, Edward L. Ryerson, Jr., Sabine Royalty Corp., Shaw, Isham & Co., John I. Shaw, et al, Trustee, Elizabeth B. Simpson Trust, William Simpson Revocable Trust, Sydney Stein, Jr., Northern Trust Co., Trustee, U/W of John Stuart, R. Douglas Stuart, William P. Sutter, Ralph U. Fitting III, Executor of Estate of R. U. Fitting, Jr., Deceased, J. Robert Jones, Executor of Estate of R. U. Fitting, Jr., Deceased, Kay B. Towle, Frederick F. Webster, F. F. Webster Revocable Trust, Mary. S. Zick, and David Waller Dangler (present interest owners, GLA No. 66).

[3] The "Designated Respondents" are those respondents that were defendants in *El Paso Natural Gas Co.* v. *Sun Oil Co.*, 426 F. Supp. 963 (W.D. Tex. 1977), appeal pending, No. 77–1462 (5th Cir.). These include Tenneco Oil Co., Continental Oil Co., American Petrofina Co. of Texas, Crown Central Petroleum Corp., Delta Drilling Co., Mr. and Mrs. Morris Mizel, W. Watson LaForce, Jr., Atlantic Richfield Co., Sun Oil Co., Mobil Oil Corp., and Union Oil Co. of California.

[4] On July 15, 1977, Northwest filed a motion seeking Commission expedition in determining the designation of additional respondents to assist in its data request of all PLA interest owners.

pel from initiating an investigation at this time. Further, it is contended the order improperly shifts the burden of proof to respondents; that the doctrine of res judicata bars the Commission from reopening issues decided in the *Webb* proceeding;[5] that the Commission has prejudged the jurisdictional issue; and that the order erroneously assumes facts unsupported by evidence.

The Commission finds the doctrine of res judicata does not preclude the Commission from instituting this proceeding at this time. The Commission has the primary responsibility under the Natural Gas Act to determine its jurisdiction under that Act in the course of administering the provisions of the Act.[6] Also, the Commission has specific authority under section 14 of the Act to undertake investigations as it deems necessary for the purposes set forth in that section. The cases cited by petitioners, *Lee* v. *F.T.C.*, 113 F. 2d 583 (8th Cir. 1940), pg. 7, n. 19, did not involve, as here, jurisdictional questions. The Commission has the authority to determine the reach of its own jurisdiction as a primary responsibility. Indeed, to the extent a court fails to defer to an agency on the grounds of primary jurisdiction it may be subject to reversal. *J. M. Huber Corp.* v. *Denman*, 367 F. 2d 104 (5th Cir. 1966); *Weymouth* v. *Colorado Interstate Gas Co.*, 367 F. 2d 84 (5th Cir. 1966). On the other hand, we know of no case in which an agency has been held precluded from determining the breadth of its own jurisdiction in the face of a pending Court proceeding.[7] To the contrary, the Commission has been affirmed in such a situation.[8]

Moreover, the judicial proceedings are not final but are pending appeal. Not only is the proceeding not yet final, the questions raised therein may yet be referred to this Commission for consideration. A decision which is not final is not res judicata in effect. *ITT* v. *Electrical Workers*, 419 U.S. 428, 445–447 (1975). *NLRB* v. *Plasterers Local Union*, 404 U.S. 116, 122 (1971).

Nor is the settlement agreed to by parties in the court proceedings in the Colorado state court dispositive of this Commission's jurisdiction in the matter. While the settlement reached was allegedly satisfactory to all parties to the proceeding, and the complaint initiating the proceeding was withdrawn, (apparently without judicial ruling on the issue involved here), that procedure does not serve to satisfy the Commission's responsibilities under the Natural Gas Act.

The Commission also finds the doctrines of collateral estoppel and equitable estoppel do not bind the Commission to the Districts Court's finding of jurisdiction. The Commission was not a party to the court proceedings at the District Court. There is therefore no judicial estoppel. Nor is there any showing that any Respondent had relied to its detriment upon the Commission's actions. The District Court proceedings were continuing in any event. District Court had before it a motion to refer the issue to the Commission under the doctrine of primary jurisdiction. The parties to that proceeding were well aware of that motion and of El Paso's complaint before this Commission and the Commission's possible jurisdiction in this matter. Moreover, the Commission's order of April 8, 1976, did not state the Commission would not undertake proceedings in this matter, only that it would not be orderly for the Commission to commence a separate proceeding concurrently without benefit of the District Court's decision. At no time did this Commission state it would defer to the final judgment of the District Court in determining the complaint pending before the Commission. Temporary deferral worked to the convenience of the parties. They were thus not required to try similar issues at the same time. It also worked to the convenience of both the parties and the Commission by permitting utilization of much of the record before the Court in the Commission's proceedings. As Northwest points out, the evidentiary record of the judicial action will be filed with the Commission to avoid duplication of effort. While the District Court record is useful for the Commission, the record will not be enlarged on appeal as to evidentiary facts and it is therefore more appropriate for the Commission to move forward now rather than await the outcome of the appeal. Thus, the extensive expenditures in the Court litigation need not be duplicated by the Commission procedures.

Moreover, the public will not be harmed by Commission consideration of this matter. It appears the consuming public would benefit from the exercise of jurisdiction and the ordering of refunds. We do not in any prejudge this matter but recognize the diversity of interests in this proceeding and point out the royalty owners are not the only members of the public to be considered in this matter.

Respondents also suggest the Commission procedures make a mockery of the District Court decision. We do not agree. El Paso in that proceeding sought injunctive relief for alleged violations of the Natural Gas Act. The Commission proceeding goes further. While jurisdictionality is an initial issue raised, the relief, if granted, will not be injunctive relief but, pursuant to the appropriate provisions of the Natural Gas Act, certificates would be obtained, and rate schedules would be filed with the Commission. These are all responsibilities of the Commission under the Natural Gas Act and this proceeding is to determine whether such steps are required. The Distraict Court dismissed the suit for its own lack of jurisdiction because it could not find the necessary violation under the Natural Gas Act required under Section 22 of that Act before its jurisdiction vests. We do not believe our jurisdiction and authority to undertake investigations pursuant to our responsibilities under the Natural Gas Act should be limited by the forums in which third parties choose to seek injunctive relief for alleged violations of the Natural Gas Act. We think it more appropriate, and we have so notified the Court hearing the appeal of the District Court's decision that the more appropriate course is for the court to impose the doctrine of primary jurisdiction, grant the motions pending before it, and defer the pertinent issues to this Commission because the issues, under the regulatory scheme of the Natural Gas Act, have been placed within the special competence of the administrative body. See, *U.S.* v. *Western Pacific R. Co.*, 352 U.S. 59, 63–64 (1956).

We turn to the objection that the order improperly shifts the burden of proof from complainants to respondents. These proceedings arise upon complaint filed by El Paso seeking remedial Commisison action upon its allegations that the Respondents' actions are jurisdictional in nature. The Administrative Procedure Act provides that the proponent of a rule or order has the burden of proof. 5 U.S.C. § 556(d). El Paso should therefore bear the burden of proof in this proceeding. We will therefore modify ordering paragraph (D) of the June 3, 1977, order to delete the language placing the burden of proof on the Respondents. The existing procedural schedule for the filing of evidence is consistent with this revision on the burden of proof.

Respondents' bases for their contentions that the Commission has prejudged the jurisdictional issue and that certain factual and legal statements may be final are no set forth. To the extent the burden of proof language is removed, those concerns may be alleviated. We can state that the questions have not been prejudged and the order makes no final binding determinations except to the extent that the Commission would not, of course, undertake a lengthy and costly proceeding such as this had the pleadings not, in the first instance, raised and left unanswered significant questions about the jurisdiction of the Respondents herein. Moreover, any facts deemed erroneously assumed by the Respondents are not final and binding on the parties but may be refuted during the hearing on the record upon which the Commission's decision must be based.

Finally, we turn to the objections that the *Webb* proceeding[5] is improperly re-

[5] *William G. Webb*, Opinion No. 640, 49 FPC 17 (1973).

[6] *California* v. *F.P.C.*, 369 U.S. 482 (1962), cited by "Designated Respondents" is inapposite. There the Court had primary authority to determine antitrust violations and the harm of unscrambling which the court foresaw by concurrent Commission action is absent here.

[7] See also, K. Davis, Administrative Law Treatise, § 18.11 (1958), "* * * a judicial decision is not likely to be res judicata for purposes of a later administrative decision." Vol. 2, p. 623.

[8] *Ashland Oil & Refining Co.* v. *F.P.C.*, 421 F. 2d 17 (CA6, 1970).

[5] *William G. Webb*, 49 FPC 17 (1973).

opened. Respondents correctly point out the issue as to the jurisdiction of the *Webb* respondents was considered and rejected by the Commission in Opinion No. 642. Nevertheless, more significantly, another reason for this proceeding was stated in our order. As we stated:

> More particularly, (the Commission) did not view the overriding royalty interest payments in light of the changed circumstances of today such as the demands by the overriding royalty owners for increased payments to market value levels.

Although the Commission at that time rejected the contention that the Commission should regulate the sales in accordance with the *Rayne Field* case,[10] the Commission did not have before it the changed circumstances of today. The doctrine of res judicata does not apply where changed circumstances appear.[11] As noted in footnote below there are any number of reasons that may well dictate a change in result upon review of the position of the *Webb* Respondents in light of the greater context of all the Respondents obtaining overriding royalties under today's circumstances alleged by El Paso. See, *The Connecticut Light and Power Co.* v. *F.P.C.*, No. 76-4212 (2nd Cir., decided June 27, 1977).

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing of the Commission's order of June 3, 1977, present no facts or legal principles which would warrant any change in or modification of such order, except as provided below.

(2) The notices of intervention of the People of the State of California and the Public Utilities Commission of the State of California, jointly, the State of Louisiana and the petitions to intervene of Public Service Co. of Colorado, Western Slope Gas Co. and Cheyenne Light, Fuel & Power Co., Colorado Interstate Gas Co. and Cascade Natural Gas Corps. have demonstrated an interest in the capitioned dockets which are not represented by any other party, their participation will not delay the proceeding and their participation may be in the public interest; therefore good cause exists for permitting the filing of the late petitions to intervene and notices of intervention.

(3) The June 13, 1977, motion of Northwest Pipeline Corp. for designation of additional respondents should be granted.

(4) The motions of El Paso Natural Gas Co., filed July 15, 1977, and Northwest Pipeline Co., filed July 15, 1977, for modification of the procedural schedule should be granted.

(5) The motion of "Designated Respondents" for deferral of proceedings, filed July 5, 1977, and joined by Amoco Production Co. on July 8, 1977, should be denied.

(6) The Commission's ordering paragraph (D) of the June 3, 1977, order should be modified.

(7) The motion filed July 21, 1977, by Union Oil of California for deletion of Alvin C. Johnson, Trustee, as a party Respondent should be granted.

The Commission orders:

(A) The People of the State of California and the Public Utilities Commission of the State of California, jointly, and the State of Louisiana, and Public Service Co. of Colorado, Western Slope Gas Co., and Cheyenne Light, Fuel & Power Co., jointly, Colorado Interstate Gas Co., and Cascade Natural Gas Corp. are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however*, That the participation of such intervenors shall be limited to such matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and *Provided, however*, That the admission of said intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The applications for rehearing and reconsideration filed herein are denied, except as provided below.

(C) Ordering Paragraph (D) of the Commission's order of June 3, 1977, in this proceeding, is modified to delete the reference to burden of proof and the burden of proof herein shall be upon the complainants, El Paso Natural Gas Co. and Northwest Pipeline Corp.

(D) Northwest Pipeline Corp.'s motion for designation of additional Respondents is granted and the additional Respondents designated are listed in Appendix B, attached hereto, to the extent not already designated as Respondents.

(E) The motions of El Paso Natural Gas Co. and Northwest Pipeline Corp. for deferral of the procedural schedule are granted as follows:

Complainants' evidence to be filed	Sept. 6, 1977
Respondents' and staff's evidence to be filed	Oct. 6, 1977
All parties' rebuttal evidence to be filed	Oct. 21, 1977
Pretrial conference	Nov. 1, 1977

(F) The motion of "Designated Respondents" for deferral of proceedings, filed July 5, 1977, and joined by Amoco Production Co., on July 8, 1977, is denied.

(G) Alvin C. Johnson, Trustee, is deleted as a party Respondent to these proceedings as his interest may appear with respect to GLAs 78, 348, and 349.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

APPENDIX A

	Webb proceeding docket Nos.
William G. Webb	G-6887
J. Glen Turner	G-6907
Frank A. Schultz	G-10037
William G. Webb	G-15692
J. Glenn Turner	G-15693
William G. Webb	G-19109
Benson-Montin-Greer Drilling Corp.	G-19110
J. Glenn Turner	G-19145
Frank A. Schultz, et al	G-20018
Benson-Montin-Greer Drilling Corp.	CI61-156
La Plata Gathering System, Inc.	CI61-812
Frank A. Schultz	CI61-817
Jack London, Jr	CI62-1147
J. Glenn Turner and William G. Webb.	CI62-1177
Do	CI62-1211
C. W. Murchison	CI63-65
Frank A. Schultz, et al	CI63-318
El Paso Natural Gas Co	CP70-146
Mike Abraham, Jr., J. Glenn Turner, and William G. Webb.	CI70-688
Kent Elliott (Operator), et al. (Nancy Lee Qualls)	CI70-518
K. E. McAfee	CI70-689
Earl A. Benson, et al	CI63-302
B. & M. Construction Corp	CI68-1079

PLA No.:	*Interest owner*
PLA-2	Atlantic Richfield Co.,[1] CC No. 1053, P.O. Box 354, Dallas, Tex.
PLA-3	Getty Oil Co., CC No. 1054, P.O. Box 3000, Tulsa, Okla. 74102.
PLA-4	Grace M. Brown, CC No. 1051, 2400 Savannah St., El Paso, Tex. 79930.
	Catherine B. McElvain, Inc. and as executrix of estate of T. H. McElvain, deceased, CC No. 1051, P.O. Box 2148, Santa Fe, N. Mex. 87501.
	T. H. McElvain Oil and Gas Properties, P.O. Box 2148, Santa Fe, New Mex. 87501.
	James E. McElvain, executor of estate of Carl R. McElvain, CC No. 1051, Route 6-47, Box 63, Morris, Ill. 60450.
	J. Wm. McElvain, CC No. 1051, 310 Jefferson St., Morris, Ill. 60450.
	Estate of F. B. Mill[2], CC No. 1051, P.O. Box 1445, Kerrville Tex. 78028.
	Mabelle McElvain Miller, CC No. 1051 73-74 P.O. Box 1445, 1224 Lois St., Kerrville, Tex. 78028.
	Mrs. Ruth M. Vaughn, CC No. 1051 73-74, 300 Caversham Rd., Bryn Mawr, Pa. 19010.
PLA-5	Phillips Petroleum Co.,[1] CC No. 1052, P.O. Box 2026, Houston, Tex. 77001.

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[10] *Texas Eastern Transmission Corp.*, 29 FPC 249 (1963).

[11] See K. Davis, Administrative Law Treatise, § 18.12(1958). "* * * (res judicata) is relaxed as applied to issues of law or policy involving continuing practices * * * reasons for relaxing the doctrine include * * * changing policy, changing facts, strong public interest in avoiding perpetuation of error or undesirable policy in some concrete contexts, need for equal treatment of parties whose circumstances are the same, and other subtle or complex factors in various combinations." Each of these reasons are possibly applicable here and may, after hearing, be a basis in this case for a ruling contrary to the *Webb* decision.

PLA No.:	Interest owner
PLA-6	J. Ralph Ellis, Jr., CC No. 1050, 3819 Cabeza De Vaca, Irving, Tex. 75060.
	Jones Felvey II, CC No. 1050, 3605 Princeton, Dallas, Tex. 75205.
	First National Bank in Dallas, For the account of J. Ralph Ellis, Jr., CC No. 1050, P.O. Box 6031, Dallas, Tex. 75222.
	McCulloch Oil Corp., suite 1200, CC No. 1050, 6151 West Century Blvd., Los Angeles, Calif. 90045.
	Mountain States Natural Gas Corp., CC No. 1050, P.O. Box 35426, Tulsa, Okla. 74135.
	John D. Mugg, Jr., CC No. 1050, 4910 Cherry Hill Dr., Corpus Christi, Tex. 78413.
	Amoco Production Co.,[1] CC No. 1050, P.O. 1953, El Paso, Tex. 79950.
	Jack B. Ryan, CC No. 1050, 1776 Lincoln St., suite 908, Denver, Colo. 80202.
	Texas Oil & Gas Corp., CC No. 1050, P.O. Box 22622, Dallas, Tex. 75284.
	U. V. Industries, 19th floor, University Club Bldg., 136 East South Temple, Salt Lake City, Utah 84111.
PLA-7	Amoco Production Co.,[1] CC No. 1048, P.O. Box 1953, El Paso, Tex. 79950.
PLA-8	J. Ralph Ellis, Jr., CC No. 1046, 3819 Cabeza De Vaca, Irving, Tex. 75060.
	Jones Felvey II, CC No. 1046, 3605 Princeton, Dallas, Tex. 75205.
	First National Bank in Dallas, for the account of Ralph Ellis, Jr., CC No. 1046, P.O. Box 6031, Dallas, Tex. 75222.
	H. M. Meredith, trustee and First National Bank in Dallas, for the account of J. Ralph Ellis, Jr., CC No. 1046, P.O. Box 6031, Dallas, Tex. 75222.
	Mountain States Natural Gas Corp., CC No. 1046, P.O. Box 35426, Tulsa, Okla. 74135.
	John D. Mugg, Jr., CC No. 1046, 4910 Cherry Hill Dr., Corpus Christi, Tex. 78413.
	Amoco Production Co.,[1] CC No. 1046, P.O. Box 1953, El Paso, Tex. 79950.
	Jack B. Ryan, CC No. 1046, 1776 Lincoln St., suite 908, Denver, Colo. 80202.
	Texas Oil & Gas Corp., P.O. Box 22622, Dallas, Tex. 75284.
PLA-9	Amoco Production Co.,[1] CC No. 1049, P.O. Box 591, Tulsa, Okla. 74102.
PLA-10	Amoco Production Co.,[1] CC No. 1047, P.O. Box 1953, El Paso, Tex. 79950.
PLA-11	Amoco Production Co.,[1] CC No. 1045, P.O. Box 1953, El Paso, Tex. 79950.
PLA-13	Mobil Oil Corp.,[1] CC No. 1044, gas accounting, P.O. Box 3359, Dallas, Tex. 75221.
PLA-14	Champlin Petroleum Co., CC No. 1055, P.O. Box 552, Enid, Okla. 73701.

[1] Denotes interest holders who are currently party respondents in these proceedings.

[FR Doc.77-22685 Filed 8-5-77;8:45 am]

[Docket No. ER77-516]

FLORIDA POWER CORP.

Order Accepting for Filing and Suspending Proposed Increased Rates

AUGUST 1, 1977.

On July 14, 1977, Florida Power Corp. (Company) tendered for filing a proposed interchange service agreement with Florida Power & Light Co. (FP&L).[1] The filing is intended to supersede an existing Letter of Operating Agreements and provides for: (1) Emergency Interchange Service, (2) Scheduled Interchange Service, and (3) Economy Interchange Service. The amount of rate increase (to FP&L) cannot be determined at this time since it depends on the interchange operations themselves. The Company proposes an effective date of August 14, 1977.

A preliminary review of Company's filing indicates that the proposed increase in rates and charges in the agreement have not been shown to be justified and may be unjust, unreasonable, unduly preferential or discriminatory, or otherwise unlawful.

The Commission finds: Good cause exists to accept for filing and suspend the proposed increased rates and charges in the agreement tendered by the Company on July 14, 1977, as hereinafter ordered.

The Commission orders: (A) The proposed increased rates and charges in the agreement tendered by the Company on July 14, 1977, are hereby accepted for filing.

(B) Pursuant to the authority contained in and subject to the provisions of the Federal Power Act, particularly Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a public hearing will be held at a time and place to be specified in a subsequent Commission order concerning the lawfulness of the proposed increased rates and charges tendered by the Company.

(C) Pending such hearing and decision thereon, the increased rates and charges in the agreement tendered by the Company are hereby suspended and the use thereof deferred until August 15, 1977, when they shall become effective subject to refund.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22679 Filed 8-5-77;8:45 am]

[1] Rate Schedule Designation to be provided to the Company by future letter.

GULF OIL CORP.

[Docket No. CI77-635]

Order Granting Temporary Transportation Authorization and Requiring the Filing of an Application for a Permanent Certificate of Public Convenience and Necessity

JULY 29, 1977.

By letter dated March 18, 1977, the Commission Staff requested Gulf Oil Corp. (Gulf) to respond to certain inquiries concerning the facilities in which Gulf has an interest and which can be utilized to bring Federal Domain gas reserves to an onshore point. One of the questions submitted to Gulf was whether it has ever used any gas produced in the Federal Domain and brought onshore through these facilities for its own use or the use of a subsidiary. In its April 7, 1977, response, Gulf states, inter alia, that it gathers gas produced from both State and Federal Domain leases in its Venice Plant gathering system for processing in its Venice Gas Plant prior to the delivery of the residue gas to interstate pipeline purchasers at the onshore location of the plant. Gulf notes that gas is utilized from this system for shrinkage and for fuel in compressing, processing, and dehydration prior to delivery of the residue gas. Furthermore, Gulf states that gas is utilized from this system for fuel in the Gulf Venice Refinery which is located within the eVnice Plant Complex. Gulf claims, however, that the volumes of gas produced and gathered in this system from leases in the State Domain have always been in excess of the volumes of gas used in the refinery.

Gulf transports Federal Domain gas onshore to its Venice Gas Plant for processing.[2] Along the way Gulf also picks up in the same line some of its State Domain gas. The Federal Domain gas and the State Domain gas are thus commingled for the remainder of the transportation to the Venice Gas Plant. After processing, some of the gas processed at the plant is sold subject to this Commission's jurisdiction.[3] However, a portion of the processed gas is used by Gulf for non-jurisdictional purposes in its refinery operations at Venice.[3] The question

[1] A map showing the facilities in question is contained in Appendix A hereto.

[2] In addition to the gas under discussion here, Gulf has other facilities which bring onshore gas and State offshore gas to its plant.

[3] Gulf states that the amount of gas used as fuel in its refinery does not exceed the amount of gas produced and transported from the offshore State Domain.

presented is whether Gulf is required under the Natural Gas Act in the above factual situation to obtain certificate authorization for the transportation of those volumes of gas utilized by it in its refinery operations.[4]

Where a producer is dependent upon an interstate pipeline for the transportation of gas reserved for the producer's own use, the Commission has the opportunity to review the use of such gas when the pipeline files for the authorization to transport the gas. The Commission has no such opportunity for review when the producer's facilities are used for the transportation. Therefore, the Commission has determined that where a producer brings Federal Domain gas onshore for its own use, it is necessary to require the producers to file for and receive certificate authorization for the transportation of any such gas.[5]

In the instant proceeding Gulf has alleged that Federal Domain gas is not utilized in the Gulf Venice Refinery in that the amount of State Domain gas collected in its Venice system always exceeds the amount delivered to the refinery. However, it is clear from the map designated as Appendix A that some of the State Domain gas transported to the Venice plant is commingled with the stream of gas originating in the Federal Domain. It is thus necessary to examine the jurisdictional consequence of this commingling.

The lead case on commingling theory is *California, et al.* v. *Lo-Vaca Gathering Co., et al.*, 379 U.S. 366 (1965). The Supreme Court held that where a pipeline has a contract with a producer providing that all gas purchased will be used solely as fuel in the pipeline's facilities (whether located within or outside the state where the gas was produced), such gas is in interstate commerce within the meaning of Section 1(b) of the Act. The court noted that Federal jurisdiction follows the flow of energy and that an engineering and scientific test should be used rather than a legalistic or governmental test when determining whether natural gas is in interstate commerce. Finally, the court held that a sale of gas which crosses a state line at any stage of its movement from wellhead to ultimate consumption is in interstate commerce.[6] Also on point is the *Florida Parishes* case. *Louisiana Public Service Commission* v. *FPC*, 359 F.2d 525 (1966). In that case gas to be sold intrastate was intermixed during transportation with gas to be sold interstate, and both types of sales were made from the commingled stream. The court held that the mixing of intrastate gas with a substantial portion of interstate gas for pipeline transportation in one commingled stream gave the Commission jurisdiction at the outset over the entire transaction.[7]

The facts presented in the Gulf situation clearly fall within the ambit of the holdings of these landmark decisions. Following the scientific test announced in the *Lo-Vaca* decision, the State Domain gas is commingled with the Federal Domain gas at some point before it reaches the Venice Plant. This is all that is required for Federal jurisdiction to attach. Just as in the *Florida Parishes* case the gas in the Gulf situation is produced and sold (or used in the producer's refinery) within the same state but is commingled with a stream of gas, some of which is destined for transportation to other states. It follows that the State Domain gas in the Venice Plant system is in interstate commerce.

It should be noted that this position is consistent with the recently decided Opinion No. 777[8] in which certain intrastate sales of gas which had been commingled with interstate gas were held to be non-jurisdictional. The crucial fact which distinguishes that case is that all of the commingled gas there was sold within the state of origin of the intrastate gas. The Commission noted that it is necessary for the gas to move across a state line before it becomes subject to the Commission's jurisdiction. Since none of the commingled gas left the state in which the intrastate purchases were made, such transactions were not subject to the regulation of the Commission. In the Gulf situation, however, it is clear that the commingled stream of gas will cross a state line because most of the gas is sold to interstate pipelines at the tailgate of the Venice Plant. Therefore, the rule set forth in Opinion No. 777 is inapplicable to these facts.

As noted above, the Commission requires that certificate authorization be granted for the transportation through producer-owned facilities of Federal Domain gas to an onshore point. It follows that the same requirement should apply to the State Domain gas in Gulf's Venice system which is, by virtue of commingling, in interstate commerce. Therefore, we will require Gulf to file for certificate authorization to transport any gas to its Venice Plant which is utilized in the Gulf Venice Refinery where the transportation of such gas involves the commingling of Offshore Federal Domain and State Domain gas. However, in order to avoid any disruption in the refinery's operations, we will grant Gulf temporary authorization to transport such gas in its Venice system for use in the refinery provided that Gulf files for a permanent certificate pursuant to Section 7 of the Natural Gas Act within 60 days from the date of this order.

Finally, we note that one of the lines involved herein is jointly owned by Gulf, Mobil Oil Corp. (Mobil), Pennzoil Offshore Gas Operators, Inc. (POGO), and Pennzoil Louisiana & Texas Offshore, Inc. (PLATO). POGO and PLATO have been advised that they must receive certificate authorization to transport any gas for their own use through such line. *Pennzoil Offshore Gas Operators, Inc., supra.* Accordingly, Mobil would also need certificate authorization to perform the same act.

The Commission finds: It is necessary for Gulf to apply for and obtain a certificate of public convenience and necessity under Section 7 of the Natural Gas Act relating to the transportation in the Venice system of Federal and commingled State Domain reserves onshore for ultimate use in the Gulf Venice Refinery.

The Commission orders: (A) Gulf is required to apply for and obtain a certificate of public convenience and necessity under Section 7 of the Natural Gas Act relating to the transportation to the Venice plant of Offshore Federal Domain and commingled State Domain reserves for ultimate use in the Gulf Venice Refinery.

(B) Gulf is hereby granted temporary authorization to transport Federal and commingled State Domain reserves to the Venice plant for ultimate use in the Gulf Venice Refinery to the extent such use does not exceed the amount produced and transported from the State Domain, provided that the filing required in Ordering Paragraph (A) above is made within 60 days from the date of this order.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22689 Filed 8-5-77;8:45 am]

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[4] We recognize that in that order issuing a certificate to Gulf to sell gas to Texas Eastern Transmission Corporation pursuant to their warranty contract the Commission authorized Gulf to construct and operate "any facilities subject to the jurisdiction of the Commission necessary therefore." Texas Eastern Transmission Corp., et al., 30 FPC 1559 (1953). Gulf's certificate issued on April 6, 1964 in Docket No. CI63-123 authorizing sales to Southern Natural Gas Co. contains a similar provision (31 FPC 872). However, here some of the commingled gas which is transported by Gulf is being used for non-jurisdictional purposes in Gulf's Venice Refinery.

[5] Pennzoil Offshore Gas Operators, Inc., et al., Docket No. CI76-495, et al., order issued January 27, 1977. See also, Sabine Pipe Line Co. and Texaco Inc., Docket Nos. CP77-304 and CI77-329, orders issued July 7, 1977, and July 14, 1977.

[6] See also *FPC* v. *Amerada Petroleum Corp.*, 379 U.S. 687 (1965).

[7] See also *Louisiana Power & Light Co.* v. *FPC*, 483 F.2d 623 (1973), in which the court found that the Hinshaw Amendment (Section 1(c) of the Act) does not relieve the Commission of jurisdiction over local branches of integrated interstate systems.

[8] Colorado Interstate Gas Co., Opinion No. 777, Docket Nos. CP75-323 and CP75-300, issued September 30, 1976.

[Docket No. ER77-314]

GULF STATES UTILITIES CO.

Order Accepting for Filing in Part, Rejecting For Filing in Part, and Suspending Proposed Increased Rates

JULY 29, 1977.

On July 7, 1977, Gulf States Utilities Company (Gulf States) tendered for filing proposed rate schedule supplements which set forth changes in minimum bill-

ing demand provisions for firm power service to its Municipal and Cooperative customers.[1] The filing would increase Gulf States' revenues by $326,701, based on the period October, 1976 through June 1977.[2] Gulf States requests waiver of the notice requirements to permit effective dates of September 2, 1976, for the Cooperatives and December 1, 1976, for the Municipals.

As part of its filing, Gulf States proposes to revise billing demand provisions for service to members of the Sam Rayburn Dam Electric Cooperative[3] whose individual contracts are still in effect,[4] although no service is being rendered presently under the contracts. In its order of August 31, 1976, in Docket No. ER76-816, the Commission accepted Gulf States' proposed rate schedule changes to the members of the Sam Rayburn Dam Electric Cooperative with the exceptions of the schedules affecting Jasper-Newton Electric Cooperative and Sam Houston Electric Cooperative, who were found to have fixed-rate contracts. Since these contracts are still in effect, we shall not accept Gulf States' filing as to these customers.

Gulf States has not presented a convincing argument in support of its request for waiver of the notice requirements. We shall, therefore, deny the waiver.

A preliminary review of Gulf States' filing indicates that the proposed rate schedule supplements which would increase rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: (1) Good cause exists to accept Gulf States' rate schedule supplements, with the exception of supplements affecting Sam Houston Electric Cooperative and Jasper-Newton Electric Cooperative, for filing and to suspend the proposed increased rates and charges tendered by Gulf States on July 7, 1977, as hereinafter ordered.

(2) Good cause does not exist to grant waiver of the notice requirements to permit a retroactive effective date of September 2, 1976, for the Cooperative customers and December 1, 1976, for the Municipal customers.

The Commission orders: (A) The proposed rate schedule supplements contain increased rates and charges, tendered by Gulf States on July 7, 1977, with the exception of those affecting Sam Houston Electric Cooperative and Jasper-Newton Electric Cooperative, are hereby accepted for filing.

(B) Pursuant to the authority contained in and subject to the provisions of the Federal Power Act, particularly Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a public hearing will be held at a time and place to be specified in a subsequent Commission order concerning the lawfulness of the proposed increased rates and charges tendered by Gulf States.

(C) Pending such hearing and decision thereon, the increased rates and charges tendered by Gulf States are hereby suspended and the use thereof deferred until August 8, 1977, when they shall become effective subject to refund.

(D) Waiver of the notice requirements to permit retroactive effective dates is hereby denied.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

APPENDIX A.—*Gulf States Utilities Co., Docket No. ER77-314*

Designation	Other party	Description, rate
Supplement No. 6 to Rate Schedule FPC No. 117 (supersedes Supplement No. 4 to FPC No. 117).	Town of Abbeville	WSM
Supplement No. 4 to Rate Schedule FPC No. 112 (supersedes Supplement No. 3 to FPC No. 112).	City of Caldwell	WSM
Supplement No. 3 to Rate Schedule FPC No. 120 (supersedes Supplement No. 2 to FPC No. 120).	Town of Erath	WWM
Supplement No. 7 to Rate Schedule FPC No. 111 (supersedes Supplement No. 5 to FPC No. 111).	Town of Gueydan	WSM
Supplement No. 5 to Rate Schedule FPC No. 116 (supersedes Supplement No. 4 to FPC No. 116).	Houston County Electric Cooperative.	WSC
Supplement No. 7 to Rate Schedule FPC No. 113 (supersedes Supplement No. 5 to FPC No. 113).	City of Kaplan	WSM
Supplement No. 7 to Rate Schedule FPC No. 110 (supersedes Supplement No. 5 to FPC No. 110).	Kirbyville Light and Power Co.	WSM
Supplement No. 8 to Rate Schedule FPC No. 76 (supersedes Supplement No. 7 to FPC No. 76).	Mid-South Electric Cooperative.	WSC
Supplement No. 5 to Rate Schedule FPC No. 119 (supersedes Supplement No. 3 to FPC No. 119).	Town of New Roads	WSM
Supplement No. 5 to Rate Schedule FPC No. 115 (supersedes Supplement No. 4 to FPC No. 115).	City of Newton	WSM
Supplement No. 3 to Rate Schedule FPC No. 124 (supersedes Supplement No. 4 to FPC No. 124).	Town of Rayne	WSM
Supplement No. 7 to Rate Schedule FPC No. 118 (supersedes Supplement No. 5 to FPC No. 118).	Town of St. Martinsville.	WSM
Supplement No. 7 to Rate Schedule FPC No. 114 (supersedes Supplement No. 5 to FPC No. 114).	Town of Welsh	WSM
Supplement No. 8 to Rate Schedule FPC No. 104 (supersedes Supplement No. 7 to FPC No. 104).	Cajun Electric Power Cooperative.	WSC
Supplement No. 7 to Rate Schedule FPC No. 95 (supersedes Supplement No. 5 to FPC No. 95).	City of Jasper	WSM
Supplement No. 8 to Rate Schedule No. 96 (supersedes Supplement No. 5 to FPC No. 96).	City of Liberty	WSM
Supplement No. 8 to Rate Schedule No. 86 (supersedes Supplement No. 5 to FPC No. 86).	City of Livingston	WSM
Supplement No. 10 to Rate Schedule FPC No. 24 (supersedes Supplement No. 7 to FPC No. 24).	Town of Vinton	WSM
Supplement No. 2 to Rate Schedule No. 123 (supersedes Supplement No. 5 to FPC No. 123).	City of College Station.	WSM

[FR Doc.77-22686 Filed 8-5-77;8:45 am]

[1] The Company tendered its filing as an alternative to a petition for rehearing in another docket on April 1, 1977. Rehearing was denied and these rate schedules were acknowledged as being submitted for filing. On April 29, 1977, the Secretary notified the Company of deficiencies in its filing by letter. The deficiencies were cured in the July 7, 1977 filing.

[2] See Attachment A for Rate Schedule Designations.

[3] Town of Vinton, La., City of Jasper, Tex., City of Livingston, Tex., and Liberty, Tex., Sam Houston Electric Cooperative, and Jasper-Newton Electric Cooperative. Sam Rayburn Electric Cooperative purchased power from Gulf States under a separate fixed rate contract which is unaffected by the instant filing.

[4] Gulf States filed notices of cancellation for the individual contracts on June 13, 1977, in Docket No. ER77-375.

[Docket No. ES77-46]

INTERSTATE POWER CO.

Notice of Application

AUGUST 1, 1977.

Take notice that on July 21, 1977, an application was filed with the Federal Power Commission pursuant to Section 204(a) of the Federal Power Act by Interstate Power Company (Applicant), seeking orders authorizing the issuance and sale of $13,000,000 principal amount of the Company's First Mortgage Bonds _____% Series Due 2002 and of additional Common Stock of the par value of $3.50 per share.

Applicant is incorporated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa, and is engaged principally in the electric utility business in northern and northeastern Iowa, in southern Minnesota and a few small communities in Illinois.

Applicant proposes to issue and sell pursuant to competitive bidding in accordance with the requirements of Section 34.1(b) of the Commission's Regulations $13,000,000 principal amount of its First Mortgage Bonds _____% Series Due 2002 and, in addition, Applicant proposes to issue a sufficient number of shares of additional Common Stock to produce proceeds to it of approximately $14,000,000. It is presently proposed that sealed, written bids for the purchase of the additional Common Stock and First Mortgage Bonds will be opened at 4:30 p.m., New York Time, on September 12, 1977 and at 11 a.m. New York Time, on September 13, 1977, respectively, and that the results of such competitive bid-

ding will be furnished to this Commission.

According to the application, the net proceeds (approximately $13,000,000 from the sale of the New Bonds and approximately $14,000,000 to be received by the Applicant from the issuance and sale of the shares of additional Common Stock) will be used by the Applicant to discharge a portion of the short-term indebtedness incurred by the Applicant which were used to pay for a portion of its construction program and for other purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1977, file with the Federal Power Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22658 Filed 8-5-77;8:45 am]

[Docket No. ER76-823]

IOWA SOUTHERN UTILITIES CO.

Notice of Certification of Settlement Agreement

AUGUST 1, 1977.

Take notice that Presiding Administrative Law Judge Samuel Z. Gordon on July 21, 1977, certified to the Commission an offer of settlement submitted by Iowa Southern Utilities Company (Iowa Southern) in this proceeding.

There are no intervening parties in this case and the Presiding Judge indicates that Iowa Southern has represented that it believes the Commission Staff will support the Settlement Agreement.

Any person desiring to be heard or to protest said Settlement Agreement should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before August 22, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22667 Filed 8-5-77;8:45 am]

[Docket No. CP77-515]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

AUGUST 2, 1977.

Take notice that on July 22, 1977 Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP77-515 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to deliver certain quantities of natural gas to Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) for the account of The Peoples Gas Light and Coke Company (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that it would deliver to Michigan Wisconsin for Peoples' account 1,000,000 Mcf during the period March 1 through October 31 of each year (the Summer Period) through 1994. Applicant states that it would make such deliveries at existing points of interconnection of the facilities of Michigan Wisconsin and Applicant at a daily rate of up to 5,250 Mcf along with an additional volumes of gas for compressor fuel equal to 5 percent of the volume delivered.

It is asserted that Applicant's deliveries would enable Peoples to fulfill its delivery obligations under the Transportation and Storage Agreement dated November 29, 1974, as amended August 7, 1975, between Peoples and Michigan Wisconsin, which inter alia is the subject of Michigan Wisconsin's application filed in Docket No. CP75-182. The proposed service would have the effect of making available additional winter gas to Peoples to meet high priority firm needs, resulting in some abatement of air pollution, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22653 Filed 8-5-77;8:45 am]

[Docket No. ER77-512]

NEW BEDFORD GAS AND EDISON LIGHT CO.

Filing of Clarification of Transmission Rate Schedule

AUGUST 1, 1977.

Take notice that on July 11, 1977, New Bedford Gas and Edison Light Company (New Bedford) filed, pursuant to Section 205 of the Federal Power Act and the implementing provisions of the Commission's Regulations thereunder, a letter of clarification concerning its currently effective FPC Rate Schedule No. 21.

New Bedford indicates that by the clarification tendered, New Bedford proposes to explicitly recognize the rights of Montaup Electric Company, as a party to New Bedford's FPC Rate Schedule No. 21, to utilize certain of New Bedford's 345 KV transmission facilities to effect transfers of power owned by Montaup Electric Company by right of entitlement and to effect certain other transfers as permitted by Section 13.2(a) through (e) of the New England Power Pool Agreement dated September 1, 1971, as amended.

New Bedford requests that the Commission's notice requirements be waived pursuant to Section 35.11 of its Regulations in order to allow said filing to become effective December 1, 1975.

According to New Bedford copies of the filing have been served by New Bedford upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed

on or before August 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22666 Filed 8-5-77;8:45 am]

[Docket No. ER77-511]

NEW YORK POWER POOL

Filing of Revised New York Power Pool Agreement

AUGUST 1, 1977.

Take notice that on July 11, 1977, the New York Power Pool, composed of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, and Power Authority of the State of New York, filed revised New York Power Pool Agreement dated April 4, 1977. The New York Power Pool indicates that this Agreement will replace an existing agreement among the above listed organizations. The filing proposes that the Agreement become effective as of April 4, 1977, and waiver of the Commission's notice requirements is therefore requested.

The New York Power Pool states that the Agreement provides for charges for capability deficiency, supplemental capability and energy, emergency energy, and assured economy capability and economy energy, and a transmission compensation account is also established. The New York Power Pool further states that charges for capability deficiency and supplemental capability are based upon negotiation among the parties and economic studies. According to the New York Power Pool, charges for assured economy capability and economy energy and emergency energy are generally based upon incremental costs, and reflect the implementation of computer-operated statewide economic dispatch under the Agreement.

Any person desiring to be heard or to make any protest with reference to the New York Power Pool Agreement should, on or before August 12, 1977, file with the Federal Power Commission, 825 North Capitol Street NE., Washington, D. C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22669 Filed 8-5-77;8:45 am]

[Docket No. ER77-508]

NIAGARA MOHAWK POWER CORP.

Proposed Tariff Filing

AUGUST 8, 1977.

Take notice that Niagara Mohawk Power Corporation (Niagara) on July 11, 1977, tendered for filing as a rate schedule, a transmission agreement between Niagara and the St. Lawrence Power Company (St. Lawrence) dated July 7, 1977.

Niagara indicates that the service to be rendered by Niagara provides for the transmission of power and energy between (a) Niagara's 230 kV transmission connection at the International Border between Niagara Falls, Ontario and Niagara Falls, New York and (b) the transmission connection at the International Border between Massena, New York and Cornwall, Ontario.

Niagara further indicates that transmission capacity to be made available by Niagara to St. Lawrence will that amount scheduled on an hourly basis by St. Lawrence each day for the subsequent 24-hour period beginning at midnight. Niagara proposes an effective date of August 12, 1977.

Any person desiring to be heard or to protest said application should file a petion to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with paragraphs 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22661 Filed 8-5-77;8:45 am]

[Docket No. ER77-505]

NORTHERN INDIANA PUBLIC SERVICE CO.

Proposed Tariff, Supplement, and Cancellation

AUGUST 1, 1977.

Take notice that Northern Indiana Public Service Company (NIPSCO), on July 11, 1977, tendered for filing Fifth Revised Sheet No. 3 to its FPC Electric Tariff—Second Revised Volume No. 1, which NIPSCO indicates has been revised to include additional delivery points for the Town of Argos, Indiana, and White County Rural Electric Membership Corporation, Ulerich, Indiana. NIPSCO also tendered for filing Exhibit B–2, a supplement to the Service Agreement between NIPSCO and the Town of Argos, which NIPSCO indicates covers the supply of electric energy for resale at a delivery point located in Green Township, Marshall County, Indiana. NIPSCO also tendered for filing Exhibit B–10, a supplement to the Service Agreement between NIPSCO and White County Rural Electric Membership Corporation, which NIPSCO indicates covers the supply of electric energy for resale at a delivery point located in Jefferson Township, Carroll County, Indiana. NIPSCO requests an effective date of August 12, for the aforementioned proposed tariff and supplements.

NIPSCO also tendered for filing a notice of proposed cancellation of service at the No. 2 North Delivery Point of the La Grange County Rural Electric Membership Corporation, La Grange County, Indiana. NIPSCO requests waiver of the Commission's notice requirements to allow for an effective date of June 15, 1977, for said proposed cancellation.

According to NIPSCO copies of this filing have been served upon all customers concerned and the Public Service Commission of Indiana.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22654 Filed 8-5-77;8:45 am]

[Docket No. RP76-89]

NORTHERN NATURAL GAS CO.

Order Accepting Stipulation and Agreement

AUGUST 1, 1977.

On April 22, 1976, Northern Natural Gas Company (Northern) tendered for filing proposed changes in its FPC Gas Tariff in this docket. The proposed changes would increase revenues from jurisdictional sales by $71,723,077 annually based on sales volumes and costs for the twelve months ended December 31, 1975, as adjusted for nine months of known and reasonable changes. On May 26, 1976, the Commission accepted for filing and suspended the effectiveness of

these revised tariff sheets for the five month period to end October 27, 1976. That order also provided for a hearing and established the Top Sheet procedure. On October 15, 1976, Northern filed a motion for approval of Stipulation and Agreement to settle all the issues in the instant docket. The proffered settlement would reduce Northern's increased from $71.7 million for jurisdictional customers to $56.8 million. The Stipulation and Agreement contained four contested provisions. The Public Utilities Commission of the State of South Dakota (PUC) contests Section V of the agreement which provides that,

> Northern agrees that if its cumulative actual third party costs incurred for transporting Gulf Coast gas by October 31, 1977, are less than $4,793,000, it will refund to its jurisdictional customers the jurisdictional portion of the difference by which $4,793,000 exceeds the actual costs incurred. * * *

The PUC also contests that portion of Section II of the Settlement Agreement which provides for an increase in the weighted average straight line depreciation for all of Northern's property, except Gulf Coast, from 4.25% to 4.53%. The PUC also contests the change to a unit-of-production method of depreciation and the two portions of the Settlement dealing with advance payments. No other parties object to any portions of the Settlement.

We turn first to the Gulf Coast transportation cost question raised by PUC. PUC objects to the fact that Northern will include $4,793,000 for transporting Gulf Coast Gas during the test period, subject to refunds, for costs not actually incurred by third parties. The effect of this provision, according to PUC,

> is to cause customers to pay in advance for expenses not actually incurred. The resolution lies not in collecting money from the customers first, then refunding for the effects of actual experience at some later date, albeit with interest . . . A preferable way to treat the Gulf Coast transportation contingency would have been to either [sic] (i) required the Company to establish a realistic date for commencement of service from Gulf Coast and to reflect only the cost associated with that date in its rates or (ii) permit the Company to collect higher rates when it has established that Gulf Coast gas is flowing.[1]

Northern responds to this challenge by noting that,

> PUCSD does not question the amount of these transportation costs. The agreement merely affords Northern the only practical vehicle which will enable it to recover these costs as they are incurred. If they are not incurred, the customer is protected by means of Northern's refund obligation. In either event the customer will pay no more than the actual costs of bringing Gulf Coast gas to Northern's market area.[2]

We agree with Northern that the Settlement's inclusion of these transportation costs is a practical vehicle for recovering such costs as they are incurred. As Northern states in its comments, it does not have any pipelines in the Gulf Coast area and will have to rely on third parties to transport gas from the various blocks to Northern's system. Gas has in fact begun to flow from one of the three subject blocks (West Cameron Block 543) it is estimated that gas would be flowing from all blocks by April 1 of this year.[3] Inasmuch as the customers are fully protected by the refund provision of Section 5 of the Stipulation and Agreement, we find that the method provided for the recovery of the Gulf Coast transportation costs is just and reasonable and in the public interest and should be approved.

The Stipulation and Agreement provides for an increase in the rate of depreciation for all of Northern's property with the exception of the Gulf Coast properties from 4.25 percent to 4.53 percent, and with regard to the Gulf Coast properties, the Stipulation and Agreement allow for their depreciation on the basis of a unit-of-production methodology. PUC notes that,

> The Company accepted the Staff's recommended composite depreciation rate of 4.53 percent. The basis for the increase in the depreciation rate for the South End Supply Area was apparently due to revised forecasts of the reserves available from the South End Area. The PUC understands that the revised figures are based on American Gas Association figures collected from an industry committee that have not been revised by Staff or subject to independent analysis. Moreover, these figures were the basis of Staff's presentation in another rate proceeding which has yet to be heard and have not been cross-examined.[4]

PUC argues that,

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>
> Because the depreciation rates set in this proceeding are likely to become a floor for all future rate proceedings, PUC believes that it is incumbent upon the Company to provide a more thorough explanation of the increase in the depreciation rates before it becomes established. Until a change in depreciation rates is better supported, PUC recommends that the current depreciation rates remain in effect.[5]

The PUC contends that,

> If the FPC approves the rate set out in the Settlement Agreement, the PUC recommends that Staff's study be attached to this Settlement Agreement as support for the depreciation rate changes in the Agreement. In the event that later events provide [sic] that an adjustment to the Settlement depreciation rates is in order, there will be a basis upon which Northern's customers can request appropriate adjustments to the rates.[6]

With respect to the revised methodology set forth in the settlement agreement with respect to Gulf Coast facilities, PUC argues:

> Where a pipeline attempts to alter significantly its depreciation rate, it must meet adequately its burden of proof. (Opinion No. 769, Docket No. RP73–113, Tennessee Gas Pipeline Co., issued July 9, 1976). Here, the Settlement provides for Northern to establish a depreciation method other than the one it applies for its other facilities. Inasmuch as (i) there is no automatic adjustment in rates provided for the additional increments in reserves that will surely be forthcoming; (ii) the overall application of this method would appear to lead to an unnecessarily high rate; and (iii) there is a lack of evidence warranting the proposed 11.5¢ MCF depreciation rate, PUC believes the straight-line method is preferable at this time for the Gulf Coast properties.[7]

Northern argues that the increase in depreciation rate is the very minimum to which it is entitled. The Company notes that the 4.53 percent rate is obtained by using Staff's segmented composite straight line depreciation rates for its onshore operating properties. The Company appears to argue that this 4.53 percent rate is a significant decrease from the 5.28 percent rate which results in the application of the unit-of-production methodology which it has proposed, and should therefore be approved.

With respect to the change to the unit-of-production depreciation methodology for offshore facilities, Northern attacks what it characterizes as PUC's misstatements of facts. The most significant of these is Northern's quotation from page 4 of the PUC comments that,

> In 1977, production is expected to increase to 12 Bcf, and depreciation expenses booked could exceed $24,000,000 at the 23.806¢/Mcf rate.[8]

According to Northern, the true figure would be $2.46 million. Northern also argues that it could support a 23.87¢ per Mcf depreciation rate for the Gulf Coast area, and can certainly support the 11.5¢ per Mcf rate set forth in the settlement.

With regard to Northern's implicit argument that because it is "giving up" the significantly higher rate of depreciation which would accrue through the use of its straight unit-of-production methodology, we suggest that the Company see our recent Opinion No. 812, issued July 20, 1977, in Texas Gas Transmission Corporation, Docket No. RP74–25. In that opinion the Commission determined that a straight unit-of-production methodology put forward by Texas Gas was insufficient to meet the requirements set forth by the Court of Appeals in *Memphis Light, Gas and Water Division* v. *FPC*, 504 F. 2d 225 (D.C. Cir. 1974). In other words, we are not persuaded that by abandoning the straight unit-of-production methodology put forward in the Company's filings, the Company has in fact made any concessions. It is doubtful that such a methodology, standing alone, could be approved by this Commission in light of Memphis. We will, however, approve the settlement agreement with regard to the increased composite depreciation rate. From North-

[1] Comments of PUC at 1–2.
[2] Comments of Northern Natural Gas Company at 3.
[3] See, e.g. comments of Northern Natural at 3, esp. fn. 5.
[4] Comments of PUC at 2.
[5] Id.
[6] Id. at 3.
[7] Id. at 4.
[8] Comments of PUCSD at 4, quoted at Comments of Northern Natural Gas Company at 6.

ern's filings, it can be seen that the increase is supportable and justifiable. Even PUC, the only party contesting the depreciation increase, only argues that,

> Because the depreciation rates set in this proceeding are likely to become a floor for all future rate proceedings, PUC believes that it is incumbent upon the Company to provide a more thorough explanation of the increase in the depreciation rates before it becomes established. Until a change in depreciation rates is better supported, PUC recommends that the current depreciation rates remain in effect.[9]

On the basis of these arguments we are not inclined to upset the settlement.

We will also accept that portion of the settlement, challenged by PUC which applies a unit-of-production methodology to the Gulf Coast Properties of Northern. The Company filed for a 23.87 cents per Mcf depreciation rate for the Gulf Coast area. Following settlement negotiations, and providing for a 11.5% per Mcf depreciation rate for the Gulf Coast Area was certified. The testimony of Messrs. J. A. Jeters and C. W. Radda, and the accompanying exhibits, provides a prima facie case for the unit-of-production methodology for this area and for the 23.87 cent per Mcf depreciation charge. For these reasons we will accept the unit-of-production depreciation methodology for the Gulf Coast area (Offshore Louisiana and Texas) of Northern's system, and the settlement rate of 11.5 cents per Mcf applied to the volume of gas purchased by Northern from blocks for which Northern has an associated investment in operating properties. This acceptance of U.O.P. methodology is consistent with the determination in Texas Gas to allow unit-of-production methodology where the total units are reasonably known.

Two questions are raised with respect to advance payments. The first of these relates to some thirty-one advances made by Northern during the years 1970 and 1971. These advances are challenged by Staff and by PUC. In the settlement, however, it was agreed that the $488,000 related to these advance payments should continue to be reflected in the settlement rates subject to Northern's requesting Commission authorization to continue to reflect the outstanding balance of these advance payments in rate base during the recovery periods set forth in the respective contracts. Accordingly, Northern filed a petition for continued rate base treatment of advance payments on October 21, 1976. That filing was given a Docket No. RP77-3. Accordingly, it appears to us that the thirty-one advance payments challenged by Staff are not properly before us for determination in this proceeding. Those advances are specifically referred to in Docket No. RP77-3, which is also before the Commission. We will deal with those thirty-one advance payments in Docket No. RP77-3 where the issues are much more fully aired in the several comments that have been received in that docket.

[9] Comments of PUC at 2.

The final point of the settlement agreement objected to by PUC relates to an advance payment by Northern to Atlantic Richfield Company. This advance pursuant to an agreement dated November 7, 1975, provides for total repayment of the advances within five years, with 5% of the total advance to be repaid at the end of each of the first four years and the balance to be repaid at the end of the fifth year. As part of the settlement agreement, Northern agreed that the test period rate base balance in future rate proceedings for the advance payments made to Atlantic Richfield would be determined as if 10% repayment of such advances had occurred at the end of each of the first four years following the date of the initial deliveries of gas with repayment of the balance at the end of the fifth year. PUC argues that, "the settlement does not, however, provide for an automatic rate reduction at the end of each of the five years to reflect the reduction of rate base due to the repayments".[10]

In its response Northern argues that the repayment provision required by the settlement agreement,

> will be recognized during any rate proceeding in effect at the time each repayment occurs. At such time any offsetting increases in rate base also will be recognized. There are no provisions for automatic rate increases or decreases for increases or decreases in rate base.[11]

We agree with Northern that the provisions of Section VIII of the Stipulation and Agreement relating to the Atlantic Richfield advance should be approved and the conditions suggested by PUC should be rejected. This section of the Stipulation is prospective in application. In each rate proceeding in which the Atlantic Richfield advance is an issue, that advance will be but one of many elements of rate base to be considered. As the Arco advance account decreases, there may well be offsetting increases in other elements of rate base. It is not appropriate for us to require automatic reductions in rate base to account for the repayments on one advance payment.

The settlement also contains the following uncontested, significant provisions:

Section II provides for specific rates of depreciation for various segments of Northern's system;

Section III provides that the costs of two R&D projects (Canadian Arctic Gas and Northern Border Pipeline) are included in the rates subject to refund and rate reduction depending on the outcome of a similar issue involved in Texas Eastern Transmission Corporation, Docket No. RP75-73;

Section IV sets forth the cost impact of Opinion No. 770 on Northern's exploration division and it provides for refund if the national rates set therein are ultimately reduced, modified or reserved; and

Section VI states that the settlement cost of service includes increased transportation charges in the amount of $1,850,260 payable to Great Lakes. In the event Northern does not incur such projected cost increases by October 31, 1977, the company will refund the jurisdictional portion thereof with interest.

[10] Comments of PUC at 7.
[11] Comments of Northern at 7.

The Commission finds: The Stipulation and Agreement filed with the Commission on October 18, 1976, in the instant docket should be approved and the objections thereto denied.

The Commission orders: The Stipulation and Agreement filed with the Commission on October 18, 1976, in the instant docket is hereby approved and the objections of North Dakota Public Utilities Commission thereto denied.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22681 Filed 8-5-77;8:45 am]

[Docket No. ER77-277]

PENNSYLVANIA POWER CO.

Order Accepting for Filing and Suspending Proposed Increased Rates

AUGUST 1, 1977.

On July 11, 1977, Pennsylvania Power Company (Company) tendered for filing proposed increased rates and charges for jurisdictional sales to five of its customers.[1] The filing would increase the Company's revenues by $1,353,614 or 63.61%, based on the 12-month period ending December 31, 1977.[2] The Company proposes an effective date of August 11, 1977.

A preliminary review of Company's filing indicates that the proposed increase in rates and charges has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: Good cause exists to accept for filing and suspend the proposed increased rates and charges tendered by the Company on July 11, 1977, as hereinafter ordered.

The Commission orders: (A) The proposed increased rates and charges tendered by the Company on July 11, 1977, are hereby accepted for filing.

(B) Pursuant to the authority contained in and subject to the provisions of the Federal Power Act, particularly Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a public hearing will be held at a time and place to be specified in a subsequent Commission order concerning the lawfulness of the proposed increased rates and charges tendered by the Company.

(C) Pending such hearing and decision thereon, the increased rates and charges tendered by the Company are hereby suspended and the use thereof deferred until September 11, 1977, when they shall become effective subject to refund.

[1] Boroughs of Ellwood City, Grove City, New Wilmington, Wampum, and Zelienople, Pennsylvania.

[2] Rate Schedule Designation to be provided to the Company by future letter.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22680 Filed 8-5-77;8:45 am]

[Docket No. ER77-523]

PUGET SOUND POWER AND LIGHT CO.

Order Accepting for Filing and Suspending Proposed Increased Rates

AUGUST 1, 1977.

On July 22, 1977, Puget Sound Power and Light Company (Company) tendered for filing proposed increased rates and charges for jurisdictional sales to eleven of its customers.[1] The filing would increase the Company's revenues by $391,045, or 64%, based on the 12-month period ending October 1, 1978. The Company proposes an effective date of October 1, 1977.[2]

A preliminary review of Company's filing indicates that the proposed increase in rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: Good cause exists to accept for filing and suspend the proposed increased rates and charges tendered by the Company on July 22, 1977, as hereinafter ordered.

The Commission orders: (A) The proposed increased rates and charges tendered by the Company on July 22, 1977, are hereby accepted for filing.

(B) Pursuant to the authority contained in and subject to the provisions of the Federal Power Act, particularly Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a public hearing will be held at a time and place to be specified in a subsequent Commission order concerning the lawfulness of the proposed increased rates and charges tendered by the Company.

(C) Pending such hearing and decision thereon, the increased rates and charges tendered by the Company on July 22, 1977, are hereby suspended and the use thereof deferred until March 1, 1978, when they shall become effective subject to refund.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22678 Filed 8-5-77;8:45 am]

[1] City of Des Moines, City of DuPont, City of Ellensburg, City of Oak Harbor, Kittitas County P.U.D. No. 1, Port of Bremerton, Port of Brownsville, Port of Kingston, Port of Paulsbo, Port of Seattle, Port of Skakit County.

[2] Rate Schedule Designation to be provided to the Company by future letter.

[Docket No. ER77-523]

PUGET SOUND POWER AND LIGHT CO.

Notice of Tariff Change

AUGUST 1, 1977.

Take notice that Puget Sound Power & Light Company of Bellevue, Washington (Puget Power), on July 22, 1977, tendered for filing a change in rates applicable to electric service rendered to eleven customers under its existing Wholesale For Resale Power Contracts. Puget Power states that the proposed changes would increase revenues from these customers by $397,041 based on the 12 month period ending December 31, 1976.

Puget Power states that the reason for the proposed change in rates is that its wholesale rate base and expenses have grown significantly, while revenues have failed to keep pace since the time of the last rate change.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22663 Filed 8-5-77;8:45 am]

[Docket No. RI77-14]

S.S.C. GAS PRODUCING CO.

Settlement Proposal

AUGUST 1, 1977.

Take notice that on July 25, 1977 S.S.C. Gas Producing Company (S.S.C.) filed a settlement proposal in the captioned proceeding offering to accept a rate of 48 cents/Mcf for its wells that are the subject of this proceeding.

The proposed settlement seeks to resolve the issues surrounding the November 24, 1976, petition of S.S.C. for special relief. S.S.C. is presently receiving a rate of 37.8 cents/Mcf for sales of gas from 3 wells in Bee County, Texas, to Trunkline Gas Company (Trunkline). Under the terms of the proposed settlement, S.S.C. would continue sales of gas to Trunkline at a rate of 48 cents per Mcf.

Any person desiring to be heard or to protest said settlement proposal should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washington D.C. 20426, on or before August 22, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this proposal are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22665 Filed 8-5-77;8:45 am]

[Docket No. E-6859]

SOUTHERN CALIFORNIA EDISON CO. AND PACIFIC GAS AND ELECTRIC CO

Order Approving Headwater Benefits Settlement

AUGUST 2, 1977.

On October 26, 1976, Southern California Edison Company (Edison) requested approval of an agreement dated October 1, 1976, with Pacific Gas and Electric Company (Pacific) respecting headwater benefits in the San Joaquin River basin in California. The Commission may approve such settlements as provided in Section 13.1 of the Commission's Regulations, 18 CFR § 13.1 (1976), in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act, 16 U.S.C. § 803(f). Edison's seven upstream projects, Project Nos. 67, 120, 2017, 2085, 2086, 2174 and 2175, provide benefits to Pacific's Project No. 96, known as the Kerckhoff Project.

The agreement contains the following terms:

(a) Edison and Pacific agree that the annual payments by Pacific to Edison commencing with the year 1972 shall be $83,000; and (b) Edison and Pacific agree that the annual payment of $83,000 shall remain in effect for a minimum of five annual payments. For any periods thereafter, the annual payment amount may be reviewed and readjusted upon the written request of either party to the other in order to provide for revisions that may be appropriate by reason of changes in facilities, cost of interest, depreciation, or maintenance, or in pertinent operating conditions which might result in changes in benefit; provided that any future readjustment shall be applied only prospectively to payments after the date of the readjustment, and shall also remain in effect for a minimum of five annual payments.

Edison indicated that the increase in headwater benefits payments is a result of its increased interest rate based on imbedded cost of debt and preferred stock, and the California Public Utilities Commission's allowed return on equity.

According to the Annual Report, FPC Form 1, filed by Pacific, it has made provisions for headwater benefits payments averaging $83,000 per annum for the years 1972 through 1976 while continuing to make annual headwater benefits payments of $72,000. The proposed settlement would require Pacific to pay an additional $11,000 per annum for the past period beginning in 1972, making the total annual payments $83,000. We note that Pacific has indicated plans to expand its Kerckhoff Project. This expansion will probably affect the headwater benefits that Edison provides Pacific in the future, but construction of the facilities is not expected to begin until April 1980, and not to be completed until June 1983.

The Commission has previously made ten determinations of assessments for headwater benefits in the San Joaquin River basin. The first determination was made on January 23, 1939, for the years 1923 through 1936. The last determination, covering the years 1949 through 1953, was made on October 5, 1959 (22 FPC 646). These determinations were made in accordance with Opinion No. 36, Southern California Edison Co., Ltd. and San Joaquin Light and Power Corp. 1 FPC 567 (1939). Opinion No. 36 sets forth the portion of the annual charges for interest, maintenance, and depreciation pertaining to Edison's upstream improvements to be paid by the San Joaquin Light and Power Corp., predecessor to Pacific.

On January 1, 1965, Edison filed, pursuant to Section 13.1 of the Commission's Regulations, the first letter agreement between Edison and Pacific which set forth the amount of annual payments for headwater benefits. The agreement covered the period of 1954 through 1963, and specified future annual payments commencing with 1964 for a minimum of five years. The Commission approved these headwater benefits payments, Southern California Edison Co. and Pacific Gas and Electric Co., 33 FPC 664 (1965).

Public notice of the latest agreement was issued on June 8, 1977, and published in the Federal Register on June 21, 1977, with July 22, 1977, as the last date for filing comments. No comments were received by the Commission.

The Commission finds: The agreement of October 1, 1976, between Southern California Edison Company and Pacific Gas and Electric Company constitutes an effective and reasonable method of compensating Southern California Edison Company for benefits received by the Pacific Gas and Electric Company's Project No. 96 in the San Joaquin River basin in California.

The Commission orders: The agreement of October 1, 1976, is hereby approved with respect to settlement of headwater benefits under Section 13.1 of the Commission's Regulations under the Federal Power Act, 18 CFR § 13.1 (1976), in lieu of headwater benefits determinations under Section 10(f) of the Federal Power Act, 16 U.S.C. § 803(f), until further order of the Commission is required due to changes in conditions.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22664 Filed 8-5-77;8:45 am]

[Docket No. RP77-11]

SOUTHWEST GAS CORP.

Order Approving Pipeline Rate Settlement

AUGUST 2, 1977.

On June 14, 1977, Southwest Gas Corporation (Southwest) filed with the Commission a proposed settlement agreement in the above-captioned proceeding. The proposed agreement would settle all issues in this proceeding. For the reasons stated, the Commission shall approve the proposed agreement.

Southwest tendered for filing on November 8, 1976, a proposed rate increase of approximately $579,000 annually. The Commission, by order issued December 8, 1976, accepted the increase for filing and suspended its operation for five months until May 9, 1977. Staff served its top sheets on April 8, 1977, and a settlement conference among all parties was held on April 20, 1977. The proposed agreement is the result of that conference.

The settlement rates are based upon a settlement cost of service of $16,496,164 applicable to jurisdictional service, as shown in Appendix A. The settlement cost of service includes a rate of return of 10.11 percent with a 14 percent return on common equity, as shown in Appendix B. The agreement provides that Southwest's cost of service for volumes delivered to northern California is $1,545,699. Cost classification and allocation were computed in accordance with the United method. The parties agreed to use a rate design made up of a monthly fixed commodity charge plus a unit commodity charge for the G-1 rate schedule. The other articles in the agreement provide that the agreement shall be effective upon final Commission approval; that the agreement constitutes a negotiated settlement; that Southwest shall have the right to withdraw if any party seeks judicial review of an order approving the agreement; and that this docket shall be deemed terminated upon approval of the agreement.

Public notice of the filing of the proposed agreement was issued on July 8, 1977, with comments due on or before July 26, 1977. No adverse comments were received.

Based upon a review of the proposed agreement and the pleadings in this proceeding, the Commission finds that the agreement represents a reasonable resolution of the issues, and, therefore, should be approved.

The Commission orders: (A) The proposed agreement filed by Southwest on June 14, 1977, and incorporated herein by reference, is hereby approved.

(B) Southwest shall file within thirty (30) days of the issuance of this order Sheet No. 3-A (in accordance with Article II (C) of the agreement) reflecting the rate contained in the settlement agreement.

(C) Within forty-five (45) days of the issuance of this order, Southwest shall refund to its jurisdictional customers all amounts collected in excess of the settlement rates together with interest at the rate of 9 percent per annum. Within fifteen (15) days thereafter, Southwest shall file a report of refunds and interest with the Commission.

(D) Upon compliance with the terms of this order, this proceeding shall be terminated.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

APPENDIX A.—*Southwest Gas Corp., Docket No. RP77–11, settlement cost of service*

Line No.	Description	Amount	Classification		Allocation			Line No.
			Demand	Commodity	Demand	Commodity	Total	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	
1	Allocation percentages				[1] 34.726	[1] 90.997		
2	Gas supply expenses	$51,780,500	$3,834,818	$47,945,682	$1,331,679	$14,861,723	$16,193,402	2
	Transmission expenses:							
3	Operations	663,732	52,632	611,100	18,277	189,423	207,700	3
4	Maintenance	257,916	45,640	212,276	15,849	65,799	81,648	4
5	Customer accounts expenses	152,586	38,147	114,439	13,247	35,473	48,720	5
	Administrative and general expenses:							
6	Direct FPC jurisdictional	12,397	2,745	9,852	2,745	9,852	12,597	6
7	Northern Nevada jurisdictional	245,948	53,646	192,302	18,629	59,608	78,237	7
8	Depreciation expenses	1,003,343	273,336	820,007	94,919	254,178	349,097	8
9	Taxes other than income	355,108	88,777	266,331	30,829	82,555	113,384	9
10	Federal income taxes	984,278	246,070	738,208	85,450	228,822	314,272	10
11	Return at 10.11 pct	2,013,218	503,305	1,509,913	174,778	468,028	642,806	11
12	Total cost of service	57,559,226	5,139,116	52,420,110	1,786,402	16,255,461	18,041,863	12
13	Less allocated cost of service for volumes of gas delivered to Northern California.						1,545,699	13
14	FPC jurisdictional cost of service						16,496,164	14

[1] Amount in percent.

APPENDIX B.—*Southwest Gas Corp., Docket No. RP77–11, settlement rate of return*

[Amounts in percent]

Line No.	Description	Capitalization ratio	Cost or allowance	Return	Line No.
	(a)	(b)	(c)	(d)	
1	Long-term debt	53.29	7.78	4.15	1
2	Preferred stock	11.85	9.12	1.08	2
3	Common equity	34.86	14.00	4.88	3
4	Total	100.00		10.11	4

[FR Doc.77–22649 Filed 8–5–77;8:45 am]

[Dockets Nos. CI77–329, CP77–304, and Docket No. CP64–97]

TEXACO, INC. AND SABINE PIPE LINE CO.

Order Granting Temporary Stay, Providing for Comments and Granting Joint Motion Subject to Certain Conditions; Correction

JULY 19, 1977.

In FR Doc. 77–21096, published in the FEDERAL REGISTER on July 22, 1977 (42 FR 37592), issued by the Federal Power Commission on July 14, 1977, please change the date in the last sentence of the paragraph preceeding Ordering Paragraph A, first column, page 37593, to July 22, 1977, in conformance with Ordering Paragraph (G).

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77–22670 Filed 8–5–77;8:45 am]

[Docket No. RP75–73]

TEXAS EASTERN TRANSMISSION CORP.

Order Making Settlement Final and Ordering Refunds

AUGUST 1, 1977.

On June 6, 1977, the Commission issued an order modifying and accepting Texas Eastern Transmission Corporation's (Texas Eastern) rate settlement proposal in the above captioned proceeding.

In passing judgment on the settlement the Commission modified the terms of the proposed settlement in several respects. The Commission stated that:

While we do not view the changes herein wrought as momentous, we nevertheless respect the right of each party to reconsider and reject the settlement as we have revised and conditional it. Accordingly, rather than order the revised settlement into effect immediately, we shall offer the parties 30 days within which to present their views hereon. In providing the parties with this opportunity to respond, we manifest no intention of entertaining further comment on the merits with respect to specific issues. Silence will be construed as acceptance of the settlement, as revised and conditioned. Following receipt of these responses, if any, we shall issue an appropriate order finalizing our action on the matter. (Order of June 6, 1977, mimeo page 20).

On July 6, 1977, Texas Eastern notified the Commission that it accepts the settlement as modified and approved by the Commission and that it wishes to exercise its option under the June 6th order to request a hearing on certain advance payments issues. The advance payments hearing is being initiated by separate order. No other responses to the order of June 6th were received.

In light of the foregoing, the Commission finds that the order of June 6 should be made final and that Texas Eastern should be ordered to make refunds to its customers pursuant to the settlement.

The Commission orders: (A) The Commission's order issued in this proceeding on June 6, 1977, is hereby made final.

(B) Within 15 days from the date of this order, Texas Eastern shall file revised rates in accordance with the settlement agreement as modified and approved by the Commission on June 6, 1977.

(C) Within 30 days from the date of this order, Texas Eastern shall refund to its jurisdictional customers all amounts collected in excess of the settlement rates filed pursuant to paragraph (B) above, together with interest at the rate of 9 percent. Within 10 days thereafter, Texas Eastern shall submit a report of refunds and interest to the Commission.

(D) No refunds associated with the reserved advance payments issue shall be required pending hearing and decision thereon.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77–22675 Filed 8–5–77;8:45 am]

[Opinion No. 801–A; Docket Nos. RP74–48 and RP75–3]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Opinion and Order Denying Rehearing in Most Respects of Opinion and Order Establishing Just and Reasonable Pipeline Rates

JULY 29, 1977.

Presently before the Commission is an application for rehearing of Opinion No. 801. We deny rehearing in all respects except as to the refund condition.

On May 31, 1977, the Commission issued in this proceeding Opinion No. 801, which resolved several reserved pipeline rate issues which had not previously been settled from two rate increases filed by Transcontinental Gas Pipe Line Corporation (Transco) in Docket Nos. RP74–48 and RP75–3. Specifically, the Commission rejected rate base and cost of service treatment for unsuccessful

synthetic natural gas (SNG) project expenditures, both as originally proposed by Transco and as subsequently modified in its unilateral offer of settlement. Moreover, the Commission excluded from rate base a portion of the advance payments made by Transco to several gas producers. Finally, the Commission adopted the United rate design method for the Transco system.

On June 30, 1977, Transco applied for rehearing of the first two of these rulings, that is, expenditures for unsuccessful SNG projects and advance payments, but not as to rate design. Transco also sought rehearing as regards refunds and oral argument.

Also on June 30, 1977, Tennessee Gas Pipeline (Tennessee) petitioned the Commission for leave to intervene out of time so as to apply for rehearing of Opinion No. 801, which it did at the same time. Its rehearing goes solely to the exclusion from Transco's rate base of certain advance payments made under Order No. 499, 50 FPC 2111 (1973).

Tennessee has not advanced sufficient reasons for the Commission to find good cause to permit intervention out of time. In the first place Tennessee's petition does not indicate that it has "an interest which may be directly affected," as is required by Section 1.8(b)(2) of our Rules of Practice and Procedure. Moreover, any interest which Tennessee conceivably has in this case is adequately represented by Transco, which has sought rehearing of the very issue which concerns Tennessee. Tennessee's only interest in this proceeding relates to possible precedential impact flowing therefrom. We have already held that a desire to shape precedent does not by itself afford a basis for intervention,[1] and this is especially true when late intervention is sought. While it is clear from both Opinion No. 801 and the instant order that our rate base exclusion of certain advance payments was founded upon a review of the specific facts in this case and not a per se application of a "30 day rule", as claimed by Tennessee, we shall nonetheless entertain Tennessee's arguments on rehearing and shall construe Tennessee's application for rehearing as an application for reconsideration amicus curiae.[2]

(1) Expenditures for Unsuccessful SNG Projects. We deny Transco's application for rehearing concerning its SNG project expenditures, rejecting all of its many legal arguments, which we shall consider seriatim.

Transco first argues that the Commission's denial of rate base and cost of service treatment for unsuccessful SNG project costs contravenes the "prudent investment" test, which applies to the Commission. Transco asserting that these SNG costs are "admittedly prudent."

No one can argue with the proposition that the Commission espouses the "prudent investment" concept of rate base valuation. However, even if these SNG project expenditures are assumed to be prudent, rate base inclusion or even Transco's settlement proposal of only cost of service amortization is not necessarily mandated. Part and parcel of the "prudent investment" theory is the "used and useful" requirement; that is, only prudent investment for utility property which is used and useful to provide service to the utility's customers should be compensated. To say the least, the "used and useful" criterion should not take Transco by surprise, and it would be disingenuous to argue that the SNG studies and coal options for abandoned projects involved herein are "used and useful." While the Commission has, after long and careful deliberation, used a more liberal interpretation of "used and useful" in specific situations,[3] such is not the present case.

Transco then advances the pro forma appellate challenges of no "reasoned decisionmaking" and arbitrary and capricious establishment of a new standard, although it does not explain how the Commission has acted so badly.

Perusal of pages 5–8 of Opinion 801 should demonstrate that we fully articulated the reasons for our decision. Moreover, as discussed above, the standard which Transco failed to satisfy, "used and useful," is not arbitrary and capricious.

Transco proceeds to argue that Opinion No. 801 is contrary to prior Commission policy permitting the recovery of unsuccessful projects designed for systemwide benefit, and that, since the Commission herein retroactively changed that policy, it has been denied due process.

Transco has not been denied due process by Opinion No. 801. In the first place the Commission's decisions[4] cited by Transco are clearly distinguished from the instant proceeding, as we found in Opinion No. 801. Moreover, assuming arguendo that the Commission had through adjudicatory decisions developed a policy of allowing recovery of unsuccessful project costs, application of a changed policy in a current adjudication is not necessarily proscribed by due process.[5]

Transco next argues that, if the Commission relied in its decison upon Opinion No. 624,[6] such reliance is erroneous.

Apart from the fact that Transco's complete lack of explanation for this assertion warrants no serious consideration by the Commission, we nonetheless point out that at page 6 of Opinion No. 801 we stated in no uncertain terms that reliance upon Opinion No. 624 "is not completely warranted."

Transco furthermore assails the Commission's reliance upon Opinion Nos. 728 and 728–A. It interprets those decisions as supporting recovery of these SNG project costs.

Again Transco has failed to provide more than bold assertions. In any event we acted properly in considering the precedent of Opinion No. 728.[7] In Opinion No. 801 we recognized that there are obvious differences between Opinion No. 728 and Transco's proposal, and yet we also realized that our rejection of a full cost of service tariff for an SNG project in Opinion No. 728 establishes Commission regulatory policy which is appropriately applied to the instant case. This policy is, of course, that SNG expenditures which do not qualify as R & D can be recovered, if at all, only through the price paid for actual SNG production sold in interstate commerce.

Transco adds that it was error to consider the fact that SNG is nonjurisdictional until commingled with natural gas in interstate commerce. In support it asserts that the record demonstrates that it had never intended to treat these projects as unregulated. Transco adds that the Commission should not have equated the risk of these SNG projects to that of independent producers.

Again Transco states no basis for rehearing. The fact that a pipeline does not actually intend to sell SNG in intrastate, instead of interstate, commerce does not alter the need for the Commission to apply the very strict standards stated in Opinion No. 801 to very attempt to recover the costs of SNG projects. Furthermore, our analogy to the shareholder risk attendant the production activities of independent producers is merely illustrative and not the dispositive finding in our overall decision.

Finally, Transco questions whether the Commission considered its unilateral offer of settlement on its merits.

Scrutiny of pages 7 and 8 of Opinion No. 801 reveal that in fact the Commission rejected this offer of settlement only after assessing it on its merits. Transco's willingness in this offer of settlement to abandon rate base treatment for all four unsuccessful SNG projects and even cost of service amortization for its nephtha gasification project does not benefit its customers so as to offset the previously established reasons for denying any recovery of such unsuccessful SNG project expenditures.

(2) Advance Payments. In Opinion No. 801 the Commission allowed rate base inclusion for the following advance payments: the entire $9,000,000 advance to Occidental Petroleum ($6,659,106 governed by Order No. 465, 48 FPC 1550 (1972), and $2,340,894 governed by Order No. 499); and $4,241,000 out of $6,006,250 of advances to Cities Service Oil, Skelly

[1] Permian Basin Area Rate Proceeding, 26 FPC 193, 194 (1961).

[2] See, Permian Basin Area Rate Proceeding, 32 FPC 1382 (1964).

[3] E.g. advance payment, construction work in progress, and research and development rulemakings.

[4] Southern Natural Gas Company, 29 FPC 323 (1963); Midwestern Gas Transmission Company, et al., 32 FPC 993 (1964).

[5] E.g., *Retail, Wholesale and Department Store Union* v. *N.L.R.B.*, 466 F.2d 380 (D.C. Cir. 1972).

[6] Tennessee Gas Pipeline Company, 48 FPC 149 (1972)

[7] Transwestern Coal Gasification Company, Opinion No. 728, Docket No. CP73–211; Issued April 21, 1975.

Oil and Getty Oil (all governed by Order No. 499). Transco now seeks rehearing of the exclusion from rate base of the $1,765,250 of Order No. 499 advances made to Cities Service, Skelly and Getty. We deny rehearing in all respects.

Alleging that these advances were reasonable and appropriate, Transco assigns error to their rate base exclusion in Opinion No. 801. In support thereof it asserts that there is uncontroverted evidence that Transco acted in good faith and obtained the best possible terms under the circumstances. Transco characterizes Opinion No. 801 as arbitrary and capricious for disallowing prudent investment and as unsupported by substantial evidence. It moreover claims violation of its due process rights by the Commission's retroactive application of the new timing standard, which it views as too vague and imprecise.

In denying Transco's application for rehearing we first reject its contention that the excluded advance payments were prudently incurred. Prudency is not determined solely by the presence or absence of a good faith bargain. In Order No. 499 we expressly stated that, to be included in rate base, advances had to be expended by the recipient "producer within a reasonable time from the date such amounts advanced are included in the pipeline's rate base." Evidence introduced by Staff indicated that the advance payments at issue were not expended within a "reasonable time" and Transco did not successfully rebut this evidence. This timing standard predates Transco's advance payments to Skelly, Getty and Cities Service; thus, there is no retroactive application. Nor is this standard too imprecise.

While Transco argues that it could not have obtained better terms from these producers in light of the competitive conditions at that time, this does not establish prudency of investment. In that the advance payment program extended the "used and useful" doctrine to its broadest possible meaning, with pipelines making interest free loans with the consumers' capital, participating pipelines had a public utility burden of providing adequate protection to those consumers. If the producers as a class ignored the reasonable timing standard set by the Commission, it was incumbent upon the pipelines to apprise the Commission of this fact, not to merely acquiesce to the hard bargains struck by the producers.

Tennessee likewise challenges our exclusion of the unexpended front-end advance payments made under Order No. 499. It first argues that Order No. 499 did not set any specific timing standard other than one of reasonableness. It points to the order on reconsideration of Order No. 499, 51 FPC 818, for the Commission's intention to treat the timing issue on a case by case basis.

We do not refute what Tennessee says, but we do reiterate that the record in this case supports the exclusion of advances made to but not expanded by the producers within 30 days of the end of the adjusted test period.

Tennessee next reads precedent cited in Opinion No. 801 as not supporting what it calls the "30-day line of credit test."

In the first place such Commission precedent [8] does evince the Commission's commitment to enforce a reasonable timing relationship between when the advance is made and when it is expended, including in Natural Gas Pipe Line a "line of credit" approach. Tennessee's reordering of Opinion No. 722 does not comport with that made in Opinion No. 769–A,[9] which we incorporate herein. Secondly, in Opinion No. 801 we cited these decisions, supra note 8, as prior Commission proclamations of its intention to draw a timing relationship, but not as espousal of any specific timing interval. As noted above, we left that to each case.

Tennessee next argues that the Commission has erred by adopting Staff's 30 day rule as an irrebuttable presumption, noting that the Commission has subsequently adopted this same 30 day rule in other cases. It also seeks to justify Transco's failure to rebut Staff's case, which it attacks as not supported by substantial evidence.

As we more fully explained in Opinion No. 769–A, supra note 9, we have not established an irrebuttable presumption. Transco does, however, have a heavy burden of proof, which it did not satisfy; Apart from the burden of proof being imposed upon Transco by Section 4(e) of the Natural Gas Act, it also was faced with the previously considered timing policy expressed in Order No. 499. In this context Staff's evidence made a well pleaded case for a 30 day rule in this case. To excuse Transco from adequately responding in rebuttal to this case would indeed improperly shift the burden of proof.

Tennessee adds that Staff's timing theory, adopted in Opinion No. 801, is legally erroneous for it considers the producers' need for funds, not the pipelines' need for new gas supplies.

Tennessee has again failed to advance a cogent challenge to Opinion No. 801. It is not enough for Transco to show that it needed more gas and that its advance payments succeeded in this regard. As we stated in Opinion No. 769–A, we would have been flexible in entertaining evidence as to reasonable financing practices from the perspective of either producer or pipeline. Transco refused to submit any evidence in this regard, and by therefore excluding certain front-end advance payments we did not run afoul of *United Gas Pipe Line Company* v. *FPC*, 551 F. 2d 461 (D.C. Cir., 1977): Transco had a full opportunity to be heard and was on notice that the reasonableness of its front-end advances had been challenged. This is legally distinguishable from the summary disposition of the interest reimbursement arrangement in United.

Tennessee concludes by raising the specter of retroactivity. We reject this argument on the grounds stated above in rejecting Transco's application for rehearing.

(3) Miscellaneous. Transco reasserts on rehearing its prior request for oral argument. In Opinion No. 801 we inadvertently failed to specifically reject Transco's request for oral argument, but we now reject it. No purpose would be served by granting oral argument.

In addition Transco seeks rehearing of the effective period of the rates for which refunds are ordered, that being February 1, 1975, to October 1, 1975. Transco argues that the proper refund period should be February 1, 1975, to July 1, 1975, because as of July 1, 1975, it had in effect advance payment trackers.

We do grant rehearing in this regard. While we had originally rejected these advance payment trackers by our order of January 30, 1976, in these same dockets, we subsequently granted rehearing of that order on March 26, 1976, and permitted those trackers to become effective as of July 1, 1975, subject to further adjudication in Dockets Nos. RP74–48 and RP75–3 (AP76–1). Accordingly, refunds related to advance payments should be made for the period from February 1, 1975, to July 1, 1975.

The Commission further orders: The assignments of error and grounds for rehearing set forth in Transco's application for rehearing of Opinion No. 801 (and Tennessee's application for reconsideration amicus curiae) present no facts or legal principles that would warrant any change in or modification of the Commission's Opinion No. 801, except concerning the refund period.

The Commission orders: (A) The application for rehearing filed by Transco and the application for reconsideration amici curiae are hereby denied, except to the extent that ordering paragraphs (B) and (C) of Opinion 801 are amended to include a refund period from February 1, 1975, to July 1, 1975, relative to advance payment exclusion.

(B) Good cause has not been shown to grant Transco's request for oral argument.

(C) Transco's July 8, 1977, request for an extension of time within which to comply with ordering paragraph (B) of Opinion 801 is denied to the extent that it requests 60 days from the issuance of the instant order; however, Transco shall comply with ordering paragraph (B) within, 15 days of the date of issuance of this order.

By the Commission.[10]

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22687 Filed 8-5-77;8:45 am]

[8] Natural Gas Pipe Line Company of America, Docket No. RP73–110, issued September 4, 1974; and Columbia Gas Transmission Corporation (Getty), Opinion No. 722, Docket No. RP71–8, et al., issued March 7, 1975.

[9] Tennessee Gas Pipe Line Corporation, Opinion No. 769–A, Docket No. RP73–113, issued May 31, 1977.

[10] Commissioner Holloman, dissenting, filed a separate statement, which is filed as part of the original document.

[Docket No. ER77-509]

UNION ELECTRIC CO.

Filing of Wholesale Electric Agreement

AUGUST 2, 1977.

Take notice that on July 11, 1977, Union Electric Company (Union) tendered for filing a new Wholesale Electric Service Agreement dated June 27, 1977 between the City of Rolla, Missouri and Union. Union states that said Agreement primarily provides for increased contract capacity.

Union proposes an effective date of August 12, 1977, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection at the Federal Power Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22660 Filed 8-5-77;8:45 am]

[Opinion No. 815; Docket Nos. RP74-20, RP74-83]

UNITED GAS PIPE LINE CO.

Opinion and Order on Reserved Issues and Otherwise Approving Settlement Agreement

JULY 29, 1977.

APPEARANCES

Stephen Wakefield, Robert Webb, David Thornberry, D. M. Chrestman, and I. Jay Golub for United Gas Pipe Line Company.
Harry L. Albrecht for Natural Gas Pipeline Company of America.
Howard E. Wahrenbrock for Mississippi Valley Gas Company, Mobile Gas Service Corporation, and Clarke-Mobile Counties Gas District.
John M. Kuykendall, Jr., for Mississippi Valley Gas Company.
John F. Harrington, Christopher T. Boland, and Robert O. Koch, Steve H. Finch for Texas Gas Transmission Corporation.
Robert W. Scherry, Jr., for Mid Louisiana Gas Company.
Patrick McElgot for Wilmut Gas & Oil Company.
William T. Miller for United Municipal Distributors Group.
J. David Mann, Jr., for Laclede Gas Company.
Platt W. Davis, III, and Jack D. Head and J. Evans Attwell for Texas Eastern Transmission Corporation.
Linda E. Buck, Jas. R. Patton, David B. Robinson and Harry E. Barsh for the State of Louisiana Department of Conservation.
Edward S. Kirby, James R. Lacey, William R. Duff and Carl W. Ulrich for Public Service Electric and Gas Company.
Michael J. Manning, Jefferson D. Gillet, for Entex, Inc.
Ronald G. Kuehn, Jr., Phillip C. Wrangle for Southern Natural Gas Company.
George Webber and Norman A. Flaningan, Charles R. Brown and Henry Sullivan for Consolidated Gas Supply Corporation.
Patricia A. Curran for Federal Power Commission.

Smith, Commissioner:

This case involves the reasonableness of a proposed Stipulation and Agreement negotiated between United Gas Pipe Line Company (United), various of its jurisdictional customers[1] and the Commission staff. The procedure adopted below resulted in the proffer of the proposed settlement and the development of an evidentiary record at hearing on several reserved issues covered in the proposed Stipulation and Agreement. The record and Stipulation comes before us upon certification by the Presiding Administrative Law Judge without recommendation.

PROCEDURAL HISTORY

On September 21, 1973, United filed a proposed increase in its FPC gas tariff in Docket No. RP74-20 which would increase jurisdictional revenues by approximately $34.9 million. On November 6, 1973, the Commission accepted these increased rates for filing, suspending their effectiveness until April 6, 1974. On April 15, 1974, United filed an additional rate increase in Docket No. RP74-83 which would result in a further increase in jurisdictional revenues of approximately $92.9 million. By order of May 16, 1974, these latter rates were accepted by the Commission, subject to refund, to become effective on November 1, 1974. These two separate proposals were consolidated for purposes of hearing and decision.

In Docket No. RP75-30 United filed for a further rate increase which became effective, subject to refund, on May 20, 1975. Thus, the instant proceeding on the lawfulness of the proposed rates is concerned solely with the "locked-in" period between April 6, 1974, and May 19, 1975.

Settlement negotiations ensued between United, Commission Staff and various of United's customers affected by the proposed increased rates. These negotiations resulted in a proposed Stipulation and Agreement which was apparently circulated by United on August 1, 1975, but is unsigned by any party. By agreement of the parties to this stipulation, a procedural schedule was established for the submission of testimony and evidence regarding this settlement proposal and for a hearing to be held on certain reserved issues on December 2, 1975.

On December 2, 1975, witnesses appearing on behalf of United and Commission staff were presented for cross-examination before Presiding Administrative Law Judge Graham W. McGowan. Subsequent to this hearing, on December 24, 1975, Presiding Judge McGowan certified the unsigned proposed Stipulation and Agreement (Exhibit A) and the evidentiary record developed by the parties to the Commission. This certification was noticed by the Commission's Secretary on January 13, 1976, 41 FR 3141. Comments pursuant to this notice were filed by Entex, Inc., Natural Gas Pipe Line Co. of America, Texas Gas Transmission Corp., Mississippi River Transmission Corp., Texas Eastern Transmission Corp., the United Municipal Distributors' Group (MDG), Commission staff and United. Reply comments were filed by United and the State of Louisiana. No parties objected to the settlement although adverse positions with respect to the reserved issues were taken by certain parties as detailed below.

Subsequent to certification on June 15, 1976, the United Municipal Distributors' Group (MDG) petitioned the Commission with a request that any refunds found appropriate in this case "be assessed at a 9 percent interest rate from October 10, 1974, forward rather than at the 7 percent interest provided for in the Stipulation and Agreement herein * * *" *Petition*, pg. 1. On the authority of *American Public Gas Ass'n* v. *FPC*, ____ F. 2d ____, (D.C. Cir. 1976), CADC No. 75-1104, (May 19, 1976), MDG argues that, as a matter of law, the settlement must be revised to reflect the alleged lawful interest rate. This petition was noticed in the FEDERAL REGISTER (41 FR 27876) on July 7, 1976. On July 9, 1976, United filed an answer in opposition to the relief requested by MDG's Petition, stating that the parties negotiating this settlement did not make the stipulated interest rate of 7 percent contingent in any fashion on the outcome of the APGA appeal whereas when an item was contingent upon the outcome of another proceeding the parties expressly so provided, and that any stipulated interest rate (7 percent) is a "significant factor" in any rate proceeding. Answer, pg. 3 MDG's request is addressed on its merits in Part III of this Opinion, infra.

Moreover, on July 28, 1976, Laclede Gas Company (Laclede) filed supplemental comments to the instant settle-

[1] By order issued November 6, 1973, in Docket No. RP74-20 intervention was granted the following parties: Memphis Light, Gas and Water Division; Public Service Electric & Gas Co.; Laclede Gas Co.; Arkansas Louisiana Gas Co.; United Gas, Inc. (now Entex, Inc.); New Orleans Public Service Inc.; Southern Natural Gas Co.; Florida Gas Transmission Co.; Pub. Service Com'n of the State of New York; Mississippi Valley Gas Co. and Mobile Gas Service Corp.; the State of Louisiana; Mississippi River Transmission Corp.; Natural Gas Pipeline Co. of America; Wilmut Gas & Oil Co.; Philadelphia Gas Works; Consolidated Gas Supply Corp.; United Municipal Distributors Group (MDG); Texas Gas Transmission Corp.; Algonquin Gas Transmission Co.; and Texas Eastern Transmission Corp.

On December 12, 1973, intervention was granted Philadelphia Electric Co., Mid Louisiana Gas Co., Louisiana Gas Service Co. and Columbia Gas Transmission Corp. Moreover, on July 31, 1974, the Alabama Public Service Commission was granted intervention with Mississippi Public Service Com'n granted intervention on March 6, 1975.

ment agreement and requested that the record be reopened to give further consideration to the Agreement's stipulated rate of return in light of other developments. On August 9, 1976, Brooklyn Union Gas Company joined in Laclede's motion. United responded to Laclede's motion on August 12, 1976, opposing the reopening and stating that movants had failed to demonstrate good cause therefor under applicable Commission regulations. See, 18 C.F.R. § 1.33. Laclede's motion was denied by operation of law on August 27, 1976. See, 18 C.F.R. § 1.12(e).

THE PROPOSED STIPULATION AND AGREEMENT

Cost of Service. The parties to the proposed Stipulation and Agreement have agreed that United's jurisdictional cost of service for the locked-in period should be based on the twelve months actual operating experience ended April 30, 1975. The jurisdictional cost of service was agreed to be $422,160,271, based upon jurisdictional sales volumes of 741,234,988 Mcf at 14.73 psia. During this period, it was further stipulated, United collected from its jurisdictional customers' revenues in the amount of $428,018,396. See, Exhibit A, Appendices A and A–1.

Refunds. The parties have agreed that the refund amount is 0.79032c Mcf of jurisdictional sales volumes during the locked-in periods and that during the period the jurisdictional sales volumes is 822,545,012 at 14.73 psia, leaving a refund amount of $6,500,738. The parties have agreed to a 7 percent annual interest rate to accrue monthly until refunds are paid.

RESERVED ISSUES

I. *Purchased Gas Cost.* The stipulated jurisdictional cost of service reflects $72,906,838 of purchased gas costs attributable to 134,578,270 Mcf of currently noncertificated purchases (at an average price of 54.17c per Mcf) which United alleges are not jurisdictional producer sales under the Natural Gas Act. Commission staff regards this item of expense excessive by $8,752,329, representing the difference between the price by United for this supply and the price determined "just and reasonable" under the Commission's applicable national rate. Under the proposed Stipulation and Agreement, however, United has assumed no obligation to refund any portion of these purchased gas costs "unless some or all of the producers making such non-certificated sales to United States shall be required by order of the Federal Power Commission, in any proceeding involving such producers, to refund some portion of the amounts received during the refund [locked-in] period for such gas sales to United." Exhibit A, Art. II, pg. 8–9. The parties have agreed that in the event of a refund to United by these producers United itself would refund 81.5 percent (the allowable jurisdictional portion thereof) of such refunds from producers by crediting its Deferred Purchased Gas Cost Account.

II. *Advance Payments.* The proposed Stipulation indicates a cost of service item representing the effect of rate base treatment of advance payments in the aggregate amount of $79,238,960. These various advances are classified into three severable groups under the stipulation. See, Exhibit A Appendix E.

(A) The parties have agreed to no refund liability for those advances which are listed in Part A of Appendix E. All parties apparently concur that these payments were "reasonable and appropriate" under outstanding Commission orders. See, FPC Order No. 465, 48 FPC 1550, 1555, (1972); FPC Order No. 499, 50 F.P.C. 2111, 2115 (1973), reh. denied, 51 F.P.C. 818 (1974).

(B) In Part B of Appendix E of the proposed Stipulation advances in the amount of $65,150,718 are covered. Commission staff suggests that only $41,770,071 of this expense is "reasonable and appropriate," and, therefore, that United's cost of service be reduced by $23,380,647. According to the proposed Stipulation United has agreed to remove each advance listed in Part B to the extent it is finally determined that its recipient "will fail to make expenditures at least equal to the amount advanced by United" in conformance with the terms and purposes for which the particular advance was made, and to refund such excluded amounts to the juridictional customers for the instant locked-in period. It is apparent from a reading of the proposed stipulation that the parties consider failure to expend the full amount advanced by United for the purposes leading to the advancement is the single event which would trigger United's refund obligation with respect to these advances. Staff challenges the reasonableness of this provision on the merits under applicable law.

(C) With respect to United's 50 percent interest in an advance payment to TransOcean Oil, Inc., which it received in an exchange with Southern Natural Gas Co. for an assignment of a 50 percent interest to Southern in advance payment agreements with ECEE, Inc. and Pinto, Inc., the parties have agreed that rate base treatment of these amounts—listed in Part C of Appendix E to the Stipulation—shall be governed by the final decision, no longer subject to judicial review, of the issue in Docket Nos. RP72–91, et al. The parties to this proceeding do not contest the reasonableness of this stipulation.

III. *Interest Payments to Producers.* Under the proposed Stipulation and Agreement the parties have agreed on $48,893,220 of other operation and maintenance expenses. Exhibit A, Appendix A. Commission staff challenges this amount as excessive by $1,644,956, this amount representing the cost of interest reimbursement payments by United on loans to producers to finance exploration and production ventures.

IV. *Income Tax.* The parties have stipulated $18,892,596 as the federal income tax expense in United's total cost of service. Exhibit A, Appendix A. MDG challenges this stipulated figure as excessive by an indeterminate amount by virtue of United's alleged tax savings during the test period resulting from the use of consolidated federal income tax filings.

NON-CONTESTED ISSUES

The total cost of service agreed upon by the parties reflects $30,714,948 of purchased gas costs (84,257,859 Mcf at an average price of 36.45¢) from producers holding small producer exemptions. See, Order No. 428, 45 F.P.C. 454 (1971), as amended. The parties have agreed that United shall collect the full amount of these costs, subject to possible refund in the event that the pipeline is required to refund any part of these costs incurred during the test period. See, Opinion No. 742, 54 F.P.C. —— (August 28, 1975), aff'd, Opinion No. 742–A, 55 F.P.C. —— (July 27, 1976), where small producer refunds were only required prospectively from July 27, 1976.

The total cost of service also reflects $8,535,315 of purchased gas (13,928,064 Mcf at an average price of 61.28¢) classified as emergency purchases by United. See, Order No. 491, 50 F.P.C. 742 (1973), rev'd, Consumer Federation of America, 515 F.2d 347 (D.C. Cir. 1975). The parties have agreed that the full cost of these emergency purchases shall be collected by United, subject to possible refund if the company is ordered to refund any portion of these costs for the refund period by final Commission order in Docket No. RP72–133.

DISCUSSION

I.

Commission staff and MGD challenged United's purchased gas costs as excessive. They contend the producers from whom United purchased this gas are actually jurisdictional and that United has unlawfully included in its cost of service the full, actual cost of its purchased gas rather than excluding the cost of gas purchased from non-certificated producers above the applicable area or national rate. The Commission staff argues "that the payments in excess of the national rate which United paid to the (allegedly non-jurisdictional) producers * * * should not be recoverable from the jurisdictional ratepayer." Staff comments, p. 10. MDG generally echoes staff's argument on this issue.

There is no question that United actually paid the full amount for its purchased gas which is included in its cost of service and which is now challenged as excessive.

Commission staff and MDG argue that, as a matter of law, any pipeline sale for resale out of a commingled supply requires that the pipeline's purchase price of any element of that commingled supply be limited to the federally regulated rate in the interest of full and complete protection of the jurisdictional consumer. United responds that the Act explicitly limits the Commission's authority to regulate the price of natural gas which

is not sold "in interstate commerce," 15 U.S.C. § 717(b), and that sales "in" interstate commerce require that the purchased gas, even if commingled with gas imported from another state, must subsequently cross a state line. In the instant case the parties seem to agree that United's purchases within Louisiana will not, subsequent to purchase and commingling with interstate gas, pass into another state. If we were to accept the instant evidentiary record as an adequate factual predicate upon which to decide the jurisdiction of the Commission over the various sales indirectly challenged in this proceeding, these stipulated facts would bring this case within the ambit of Colorado Interstate Gas Co., Opinion No. 777, 56 F.P.C. ____ (September 30, 1976). In that case the Commission decided, on similar facts, that producer sales were not jurisdictional even though the gas purchased was commingled with interstate jurisdictional supplies and ultimately sold to jurisdictional customers at federally-regulated rates. However, the instant proceeding is not the appropriate case in which to decide this jurisdictional question.

It is quite apparent that a decision on this issue requires a threshold finding of Commission jurisdiction over these non-certificated sales. This subsidiary finding is of great consequence to the respective producers as well as the purchasing pipeline, United. However, no producer selling to United at a price above the applicable national or area rate ceiling has entered an appearance in this proceeding, and the Commission is wary of entering a final decision as to the jurisdictionality of these sales without first having the benefit of these producers' views. In cases such as this, the Commission is fully authorized to determine the appropriate case in which a particular issue will be addressed. Fort Pierce Util. Authority v. FPC, 526 F. 2d 993, 999 (5th Cir. 1976). The Commission has an ongoing proceeding initiated pursuant to a staff motion in a separate docket requesting that the Commission institute a show cause proceeding to determine the jurisdictional issue upon which its objection is predicated in this proceeding.[3] In the exercise of our discretion, therefore, the Commission finds that it is appropriate to address the issue of the jurisdictional character of these presently non-certificated sales to United in Docket No. CP76-238.

An additional reason in support of the deferral of decision on this jurisdictional question is the fact that the rates at issue in this proceeding have, in large measure, been derived through settlement among the interested parties. The Stipulation and Agreement of the parties. (Exhibit A, pp. 8-9) provides that

> The parties to this Stipulation and Agreement agree that those costs incurred by United to purchase the gas from producers under sales which have not been certificated are to be included in their entirety in United's cost of service for the Refund Period. United shall have no obligation to refund any portion of such purchased gas costs to any of its customers unless some or all of the producers making such non-certificated sales to United shall be required by order of the Federal Power Commission, in any proceeding involving such producers, to refund some portion of the amounts received during the refund period for such gas sales to United. In the event that such refunds are required and are ultimately made to United by the producers, United agrees that it shall refund the jurisdictional portion of such amounts which it actually receives to its jurisdictional customers.

This contingent refund obligation assumed by United will fully protect its jurisdictional ratepayers in the event that the Commission ultimately determines in Docket No. CP76-238 that the non-certificated producer sales are, and have been, jurisdictional and bound by the applicable national or area rate ceiling. Since the only ground upon which Commission staff and MDG object to the inclusion of this expenditure for purchased gas by United is the difference in cost levels which would result from finding that these producers were bound by the federally regulated rate ceiling, it is clearly in the public interest to approve the instant settlement rates, as they are subject to a contingent refund obligation upon United in respect to excessive purchased gas costs.

Recently, in *United Gas Pipe Line Co. v. FPC*, 551 F.2d 460 (D.C. Cir. 1977), the Circuit Court of Appeals for the District of Columbia reversed this Commission's summary exclusion of certain interest reimbursements by United to producers which were alleged by the pipeline to be a permissible alternative to the advance payments authorized by Commission regulations. In so ruling, the court construed the various Commission orders[3] establishing the experimental advance payments program.

> [W]e have found nothing in the Commission's orders setting up the advance payment program to indicate that the producers who were given such payments had to demonstrate an actual *need* for them. It is apparent that the Commission instituted the advance payment program merely as a means to enhance significantly the supply of natural gas in the interstate system during a period of critical nationwide gas shortages. It declared that the program was expected to intensify the development of new sources of natural gas supplies and thus alleviate the supply shortage, but it never expressly mandated that a producer show that but for the advance payments it would not be able to obtain the necessary exploration and development capital. We think it unreasonable for the Commission now to adopt such a standard for United's interest reimbursement arrangements when they apparently constitute an alternative means for attaining the same goal as the Commission's own advance payment program. (United supra, at pg. 464, footnotes omitted).

Implicitly, the court found it unreasonable without a previously expressed mandate to impose a standard of need for advance payments by producers for both standard advance payments and for "an[y] alternative means for attaining the same goal." In the instant case, both advance payments and interest reimbursements[4] made by United are in issue. While a hearing was had on both of these issues such that the question of summary disposition is not involved in these proceedings, our decision on each of these issues is rendered with deference to the court's partial construction of our advanced payment orders.

(A) *Advance Payments.* The Commission's advance payments experiment was an attempt to stimulate exploration and development by the producers of natural gas by permitting interest-free loans from jurisdictional pipelines. The advance payment regulations created the impetus for interstate pipelines to advance capital to producers by permitting the pipelines to include the carrying charges of these loans in their respective rate bases. In a series of Commission orders which first established, and then refined, the advanced payment program, the Commission undertook to define the legal standard which would govern whether any particular advance payment to a producer would qualify for rate base treatment. The controversy in this as well as other recent cases dealing with advance payments relates to when the particular advances are to be properly included in the company's rate base, rather than whether such items of expense are ever to be reflected in rate base.

Commission staff has consistently taken the position that all advance payments must be related in both time and amount to the respective producer-recipient's need for such capital. Upon this theory, Commission staff has developed a thirty-day rule, holding in effect that any advance payment which is not expended by the producer-recipient within thirty days of the date the rates become effective (end of a locked-in period) in a particular rate case is front-ended and improperly reflected in the rate base of the pipeline for recovery from its consumers through the particular rates in

[3] See, "Order to Produce Data," United Gas Pipeline Company & Certain Producer Respondents, Docket No. CP76-238, issued January 25, 1977.

[3] See, FPC Order No. 410, 44 F.P.C. 1142 (October 2, 1970); FPC Order No. 441, 46 F.P.C. 1178 (November 10, 1971); FPC Order No. 465, 48 F.P.C. 1550 (December 29, 1973); and FPC Order No. 499, 50 F.P.C. 2111 (December 28, 1973). In the instant case each of the advance payments involved were made pursuant to FPC Order No. 465, supra, with the exception of two which are governed by FPC Order No. 499, supra.

[4] On April 5, 1977, United filed with the Commission a motion requesting that the Commission consider the United decision, supra, in its disposition of the issues at bar in the instant dockets. This motion was responded to by Laclede on April 18, 1977. Laclede does not oppose the procedure suggested in United's motion but notes that an issue with similar multi-docket ramifications is presented by the return to be allowed on United's preferred stock. While United's motion was technically deemed denied under Commission Regulations, the Commission will, of course, take cognizance of any relevant pronouncements of law in considering the issues involved in this case.

issue. The Commission has refused to adopt the Commission staff's thirty-day rule as the measure of the reasonableness and appropriateness of any particular advance, opting instead to decide the issue on a case-by-case basis which will appreciate the particular factual context within which each advance payment was made. In the instant case, Commission staff predicated its position upon the thirty-day rule of thumb in recommending that certain of United's advance payments be disallowed rate base treatment for purposes of determining the just and reasonable rates to be determined in this proceeding.

It is clear from the instant evidentiary record that $23,380,650 of the $79,238,960 of advanced payments made by United had not been expended by the various producer-recipients either during the locked-in period involved in this case or within thirty days subsequent to the end of this period. According to Commission staff's rule of thumb, therefore, the $23,380,650 of unexpended advances are, by definition, front-end and should be disallowed from United's rate base. In Tennessee Gas Pipeline Co., Opinion No. 769, 55 F.P.C. ____ (July 9, 1976), mimeo., pg. 31, the Commission held that front-end advance payments were presumptively extravagant under Order No. 499, 50 F.P.C. 2111 (1973), although the definition of front-end was left by the Commission to a case-by-case determination. Various front-end definitions have been advanced in cases on this point before the Commission, among which is the Commission staff's thirty day rule of thumb. As the Commission recently reiterated:

> To begin with, a determination of reasonableness and appropriateness requires consideration of the common business practices of producers; however, we would have also considered evidence by the pipeline as to how it could reasonably finance its installment payments to the producers for specific expenditures. In other words a pipeline might be able to show that thirty days is too short. (*Tennessee Gas Pipeline Co.*, Opinion No. 769–A, ____ F.P.C. ____ (May 31, 1977 mimeo., pg. 9).

Clearly, the threshold issue is one of fact, to be determined with reference to the evidence introduced into the record.

In the instant case, Commission staff has come forward with various reasons that expenditure of advanced payments within thirty days of the end of the locked-in period must demarcate front-end advances (which are includable in the company's rate base) from others which have been made but are not appropriately recoverable from consumers through the rates herein considered. Staff's evidentiary presentation boils down to the concern that advances which have not been expended by the producer-recipient in furtherance of exploration and development were imprudently advanced in terms of timing and the carrying charges on this imprudent expenditure cannot properly be passed on to the consumer through these just and reasonable rates. United's presentation, of course, defends the prudence of the timing of its advanced payments expenditures.

A finding that the advances are front-end, does not end the inquiry, for the Commission has held only that front-end advanced payments are "presumptively extravagant," a finding which may be rebutted by a showing that the front-end advance is, nevertheless, reasonable and appropriate because a positive benefit is conferred on the consumer. See, e.g., *Tennessee, supra*, at mimeo. pg. 32; *Transcontinental Gas Pipe Line Corp.*, Opinion No. 801, ____ F.P.C. ____ (May 31, 1977), mimeo. pg. 22. The advance payment agreement must be viewed as a whole in order to determine whether the overall cost of the expenditure to the consumer will be less than it would be otherwise, regardless of the front-end nature of the payment. The incentive for exploration and development by producers will cost the consumer, but if the total cost of a particular advance is, or could be, less if front-end, the incentive to the pipeline to bargain for more favorable terms from producers would have been destroyed if front-end or lump sum advances were strictly precluded. Accordingly, the question of whether a particular advance is "reasonable and appropriate" is properly resolved by determining on the whole of the evidence whether the incentive underlying the particular advanced payment was achieved at the lowest possible cost to the consumers.

In the instant case, United has made no showing whatsoever to rebut the presumption that the front-end advances are extravagant. In the absence of such showing, the Commission finds that those sums advanced and not expended by the respective recipient-producers within thirty days of the end of the locked-in period in this case represent an extravagant expenditure by United and accordingly are not "reasonable and appropriate" for rate base treatment in this case.

(B) *Interest reimbursements.* While the Commission has consistently construed the purpose of the advance payments program to be the creation of an alternative supply of capital available to producers to spur immediate exploration and development activity, the court in *United* supra, found that the incentive for production and development by producers would be created as well by pipeline reimbursement of the carrying charges assessed the producer for capital procured from any source, including the normal capital markets. It is true that interest-free capital does provide an incentive to producers to step up exploration and development activities. United's alternative program of paying the interest charges on its producers' other capital commitments provides, in effect, interest-free loans to producers not substantively distinguishable from ordinary advance payments, other than the source of the capital.

The *United* court remanded to the Commission the question whether United's various interest reimbursement agreements "effected the same result as the advance payment program and did so at a lower cost to the consumer and at less risk to the pipeline." *United*, supra, at pg. 465. If the purpose of the advance payments program is perceived as the court viewed it—i.e., stimulation of current exploration and development for new reserves of gas, rather than the creation of an alternative source of capital for producers stymied in their efforts at capital formation—then it is clear that United's alternative program did "effect the same result as the advance payment program."

The question that remains is whether, judged under the standards applied to standard advance payments, these interest reimbursements qualify for cost of service (O&M expense) treatment as "reasonable and appropriate."

The question is whether interest reimbursement upon capital otherwise procured should be included in O&M expense unless the capital upon which the interest is advanced by United was actually expended in the activities intended to be inspired by the advance payment program. If the underlying capital was not so expended, the interest on that capital would be deemed unreasonable and inappropriate for recoupment in this rate case. The record in this case indicates that United advanced monies for the purpose of interest reimbursement, but it does not indicate that the underlying capital for which the interest is covered was, in fact, expended by the respective recipient-producer either within thirty days of the end of the locked-in period involved in this case or expended entirely for the purposes which the advanced payment program intended. Consequently, we cannot on this record make a finding that these expenditures should be included in United's cost of service.

Accordingly, we are required to remand this limited issue to the Presiding Administrative Law Judge for further proceedings to elicit evidence with respect to the timing and amount of producer expenditures of those funds upon which United assumed the obligation to pay interest. Pending decision on this issue, the terms of the Stipulation and Agreement with respect to United's refund liability on the increment associated with its interest reimbursements is found to fully protect United's consumer's interests. Consequently, we approve the Stipulation and Agreement, and reserve this question for further proceedings and determination on the merits of this issue.

III. MISCELLANEOUS ISSUES

Having disposed of the three primary issues reserved for hearing and decision by the stipulation among the parties, we turn now to several subsidiary issues raised during the hearings by individual parties. We note at the outset, however, that these issues are resolved by substantial agreement of the vast majority of parties to be affected and the Commission staff.

(A) *Federal income tax allowance.* The Stipulation and Agreement provides

for a Federal income tax component of $18,892,596 by agreement of substantially all affected parties. At hearing it was established that this component of the stipulated cost of service was arrived at through an application of the statutory 48 percent tax rate. Tr. 28. MDG argues that the use of the 48 percent statutory rate should be disallowed in favor of the alleged effective tax rate for the test period in this case. MDG relies upon *FPC* v. *United Gas Pipe Line Co.*, 386 U.S. 237 (1967), as assertedly requiring the use of only the actual taxes paid by a jurisdictional utility in determining just and reasonable rates.

This Commission's review of a proffered setlement provides a different context from that in which adverse parties present a disputed factual issue for decision. MDG's argument is predicated solely upon the fact that the settlement cost of service Federal income tax component was derived through the use of the statutory rate. This was not substantial evidence that the settlement cost of service is inflated or excessive in any respect. While United certainly bears the burden of substantiating the reasonableness of its rate increase, we cannot find on this record any evidence that the agreed-upon use of the statutory rate is not just and reasonable. Furthermore, customers of United, each with an interest similar to MDG's in this proceeding, have compromised any objection which they may have had with respect to this issue in the interest of overall settlement. The significant fact in this case is that the Federal income tax figure agreed to by the parties herein in settlement was one element leading to settlement. Because settlements of litigation are favored and upon the principles expressed in *Pennsylvania Gas & Water Co.* v. *FPC*, 463 F. 2d 1242 (D.C. Cir. 1972), we conclude that the record evidence in this case supports the instance settlement in respect to the tax component.

(B) *Interest rate on refunds.* On June 15, 1976, MDG filed a petition with the Commission which requested that United be assessed interest on any refund liability arising in this case at the rate of 9 percent from October 10, 1974, rather than at the rate of 7 percent as stipulated by the parties in their settlement of his case. MDG suggests that this modification of the proffered Stipulation and Agreement is required by *American Public Gas Association* v. *FPC*, ____ F. 2d ____ (D.C. Cir. 1976), wherein the Commission's decision to apply the increased 9 percent interest rate only to refunds on rate filing made after October 10, 1974, was reversed. On July 9, 1976, United answered MDG's petition in opposition to any change in the stipulated interest rate for refunds in this case.

The parties to this settlement have explicitly stipulated an interest rate to be applied to refunds in his proceeding. Nothing in the *APGA* decision limits the discretion of parties in settlement negotiations to agree to a lesser, or even greater, interest rate on refunds than 9 percent for the period after October 10, 1974. Similarly, the *APGA* decision does not bar the Commission from accepting such agreements where appropriate.

We have previously stated that with respect to pending settlement agreements filed prior to December 6, 1976, where there is an indication of actual bargaining for a particular refund interest rate during the course of negotiations, the Commission will apply the settled upon interest rate. *Rate of Interest on Amount Subject to Refund*, RM74–18, Order Denying Rehearing and Further Clarifying Order No. 513–A, issued December 6, 1976, mimeo, p. 5. See also, *Natural Gas Pipeline Co. of America*, Opinion No. 762–A, Docket No. RP–74–96, issued December 6, 1976. However, where the Commission has no evidence to indicate the interest rate was bargained for as an integral and key part of the settlement, it has applied the 9 percent rate, *Northern Natural Gas Co.*, Docket Nos. RP74–75, et al., July 27, 1976.

United points out that the interest rate on refunds is an important element of any rate proceeding. But MDG is not directly controverted in its statement that the 7 percent rate "was not a negotiated figure but rather was included simply because that was what Order 513 seemed to require." MDG, pg. 3. Thus, the pleadings fail to demonstrate the interest rate was an integral or key part of the settlement. MDG's requested modification of the settlement is therefore accepted as consistent with the Commission's Rules in Section 154.67, 18 CFR 154.67.

The Commission finds:

(1) United Gas Pipe Line Co. is a "natural gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas subject to this order are sales of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission.

(2) The proposed Stipulation and Agreement is just and reasonable, as modified by the provisions of this Opinion and Order.

(3) The collection of that portion of the instant increased rates attributable to United's noncertificated purchases is reasonable, subject to a contingent refund liability should it be determined that these purchases were made at a cost to United in excess of the applicable "just and reasonable", federally regulated price.

(4) The collection of that portion of the instant increased rates attributable to the $23,380,650 of United's advance payments herein determined to be a front-end and extravagant expediture has not been shown to be just and reasonable under the Act and United should be required to file revised tariff sheets in this regard as necessary to conform to this order.

(5) The collection of that portion of the instant increased rates attributable to the $1,644,956 of other operation and maintenance expense reflecting United's reimbursement of interest on loans procured by producers (as alternatives to standard advance payment agreements) is reasonable as conditioned in the Stipulation and Agreement upon refund liability in the event that, upon remand such reimbursements are found not "reasonable and appropriate".

(6) In all other respects the Stipulation and Agreement is found to be an adequate and just compromise of the matters at issue in this case and acceptance and approval of such Stipulation and Agreement is deemed to be in the public's interest and in conformance with the standards of the Natural Gas Act.

The Commission orders:

(A) The increased rates filed by United as reflected in the Stipulation and Agreement between the parties are disallowed to the extent that they do not conform to this opinion and order.

(B) Because the parties have stipulated refund procedures, United shall be required to undertake those refund obligations triggered in respect to finding Paragraph (4), supra, within sixty days of the issuance of this Opinion and Order.

(C) Within 60 days of the issuance of this Opinion and Order, United shall file revised tariff sheets for the Refund Period—April 6, 1974, through May 19, 1975—as required by finding paragraph (4), supra, which substitute sheets shall be subject to Commission review and approval.

(D) Within 30 days of the Commission's approval of Applicant's substitute tariff sheets in accordance with Paragraph (C) above, Applicant shall refund to its customers all amounts, if any, collected in excess of those which would have been payable under the rates and charges approved in accordance with Paragraph (C) above, together with interest at a rate of nine percent per annum from the date of payment to Applicant to the date of refund.

(E) Within 15 days after refunds have been made United shall file with the Commission a compliance report showing monthly billing determinants and revenues under prior, present and adjudicated rates; monthly adjudicated rate increase, monthly rate refund, and the monthly interest computation, together with a summary of such information for the total refund period. A copy of such report shall also be furnished to each state commission within whose jurisdiction the wholesale customer distributes and sells natural gas at retail.

(F) Nothing herein shall be construed as removal of United's refund liability with respect to finding paragraphs (3) and (5), supra, which is contingent upon final Commission decisions in other proceedings.

(G) Upon any final Commission decision in the two proceedings referred to in (D) supra, triggering the stipulated refund obligations agreed upon among the parties to this case, the obligations shall be satisfied within 60 days of any such final Commission decision together with an obligation upon United to file substitute tariff sheets necessary to reflect the pertinent changes required by

any such adverse resolution within the same 60 days.

By the Commission.[5]

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22688 Filed 8-5-77;8:45 am]

[Docket No. ER77-203]

WISCONSIN ELECTRIC POWER CO.

Order Accepting for Filing and Suspending Proposed Increased Rates

AUGUST 1, 1977.

On July 18, 1977, Wisconsin Electric Power Co. (Company) completed its tender for filing [1] of a proposed Power Supply Agreement with Wisconsin Michigan Power Co.[2] The filing would increase the Company's return on equity, although it would reduce pooling charges by an estimated $186,382, based on the 12-month period ending December 31, 1977. The Company proposes waiver of the notice requirements to permit an effective date of January 1, 1977.

A preliminary review of the Company's filing indicates that the proposed increase in rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds:

Good cause exists to accept for filing and suspend the proposed increased rates and charge in the Power Supply Agreement tendered by the Company on July 18, 1977, as hereinafter ordered.

The Commission orders:

(A) The proposed increased rates and charges in the Power Supply Agreement tendered by the Company on July 18, 1977, are hereby accepted for filing.

(B) Pursuant to the authority contained in and subject to the provisions of the Federal Power Act, particularly Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a public hearing will be held at a time and place to be specified in a subsequent Commission order concerning the lawfulness of the proposed increased rates and charges tendered by the Company.

(C) Pending such hearing and decision thereon, the increased rates and charges in the Power Supply Agreement tendered by the Company are hereby suspended and the use thereof deferred until January 2, 1977, when they shall become effective subject to refund.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22677 Filed 8-5-77;8:45 am]

[5] Commissioner Holloman, dissenting, filed a separate statement which is filed as part of the original document.

[1] The Company tendered its filing initially on April 27, 1977, but was notified of a filing deficiency by Commission letter.

[2] Rate Schedule Designation to be provided to the Company by future letter.

FEDERAL RESERVE SYSTEM

B.O.C. CORP.

Acquisition of Bank

B.O.C. Corp., Sheridan, Wyo., has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the Wyoming Security Bank, Sheridan, Wyo. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of 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 not later than August 30, 1977.

Board of Governors of the Federal Reserve System, August 2, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-22764 Filed 8-5-77;8:45 am]

CENTRAL BANCSHARES, INC.

Formation of Bank Holding Company

Central Bancshares, Inc., Browerville, Minn., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company through acquisition of 92 percent or more of the voting shares of Lee State Bank, Browerville, Minn. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 30, 1977.

Board of Governors of the Federal Reserve System, August 2, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-22765 Filed 8-5-77;8:45 am]

FIRST MIDWEST BANCORP., INC.

Order Approving Acquisition of Bank

First Midwest Bancorp., Inc., St. Joseph, Mo. ("Applicant"), a bank holding company within the meaning of the Bank Holding Company Act ("Act"), has applied for the Board's approval under § 3(a)(3) of the Act (12 U.S.C. § 1842(a)(3)) to acquire 80 percent or more of the voting shares of the Farmers Bank of Gower, Gower, Mo. ("Bank"), through the acquisition of 100 percent of the voting shares of L.W.J.S. Corp., Gower, Mo., a one-bank holding company with respect to Bank. L.W.J.S. Corp., which is engaged in no activities other than the ownership of shares of Bank, is to be dissolved upon consummation of the proposed transaction. Accordingly, the acquisition of L.W.J.S. Corp. is treated herein as an acquisition of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

Applicant, the 16th largest banking organization in Missouri, controls five banks with aggregate deposits of approximately $168.6 million,[1] representing approximately 0.89 percent of total deposits in commercial banks in Missouri. Applicant's acquisition of Bank, the 527th largest bank in the State, would increase its share of total deposits in the State by 0.02 percent and would not alter its ranking among other banking organizations in the State. Consummation of Applicant's proposal would not result in a significant increase in the concentration of banking resources in Missouri.

Bank holds deposits of approximately $5.2 million, representing 10.5 percent of the total deposits in commercial banks in the Clinton County banking market, and thereby ranks as the smallest of five banks located in the market.[2] None of Applicant's banking subsidiaries is located in this market, although four of its subsidiary banks are located in the St. Joseph banking market, which is adjacent to the relevant market.[3] These banks are located from 17.7 to 29.3 miles from Bank. It does not appear that any of these four banks derives significant amounts of deposits or loans from the service area of Bank; nor does it appear that any significant competition currently exists between any of Applicant's subsidiary banks, on the one hand, and Bank, on the other hand.

Missouri's restrictive branch banking laws prohibit branching by Applicant's

[1] All banking data are as of December 31, 1976.

[2] The Clinton County banking market, the relevant geographic market for the purposes of analyzing the competitive effects of the subject proposal, is approximated by all of Clinton County, Mo.

[3] The St. Joseph banking market is approximated by Buchanan County, less Rush and Bloomington townships, Andrew County and western De Kalb County, all in Missouri, and northern Doniphan County in Kansas.

banking subsidiaries into the Clinton County market. Moreover, the market's ratios of deposits per banking office and population per banking office are substantially below the State averages, and the total population of Clinton County is relatively small, suggesting that the Clinton County market is not attractive for de novo entry. On the basis of the facts of record, the Board concludes that consummation of the subject proposal would not have any significant adverse effects on existing or potential competition in any relevant area, and that competitive considerations are consistent with approval of the application.

The financial and managerial resources of Applicant, its subsidiaries, and Bank are regarded as generally satisfactory and the future prospects for each appear favorable. Applicant proposes to retire the acquisition debt associated with this proposal over a 15-year period. It appears that Applicant has the resources to amortize such debt while maintaining adequate capital levels at each of its subsidiary banks. Indeed, Applicant appears capable of amortizing this acquisition debt in less than 15 years while preserving sufficient capital levels. Accordingly, considerations relating to banking factors are consistent with approval. Considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the application, since Applicant proposes, among other things, to increase the number of hours Bank will be open for business each week, offer higher rates of interest on time accounts than are currently available from Bank, and offer an additional type of certificate of deposit.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[*] effective August 1, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-22766 Filed 8-5-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. A 8684]

ARIZONA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Forest Service, U.S. Department of Agriculture filed application Serial No. A 8684 on September 30, 1974, for a withdrawal in relation to the following described lands:

GILA AND SALT RIVER MERIDIAN, ARIZONA

CORONADO NATIONAL FOREST

Goudy Canyon Research Natural Area

Beginning at a point from which the Webb Peak Triangulation Station bears N. 89°32'03" E., 4,360.94'; thence N. 44°45'W., 1,076.09'; thence N. 06°47' W., 627.04'; thence N. 32°58' W., 325.59'; thence S. 89°-30' W., 279.39'; thence S. 19°38' W., 771.86'; thence S. 49°27' W., 846.67'; thence S. 76°-40' W., 2,143.79'; thence S. 20°59' W., 4,860.15'; thence S. 02°06' E., 896.89'; thence S. 48°46' E., 1,199.12'; thence N. 80°22' E., 2,506.74'; thence N. 14°20' E., 3,915.43'; thence N. 37°41' E., 2,685.98' to the point of beginning.

This tract, when surveyed, will probably be located within sections 25, 35, and 36, Township 8 S., Range 23 E., and section 30, Township 8 S., Range 24 E.

The area as described contains approximately 560 acres in Graham County.

The applicant desires that the lands be designated as a Research Natural Area to preserve virgin stands of Douglas fir and Mexican white pine for scientific investigation. These trees are some of the largest specimens to be found in the Southwest.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on October 21, 1974, Volume No. 39, Page No. 37403, Document No. 74-24398.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073, on or before September 6, 1977. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16 B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before September 6, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws but not the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: July 28, 1977.

MARIO L. LOPEZ,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-22694 Filed 8-5-77;8:45 am]

[A-9613]

ARIZONA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JULY 28, 1977.

The Department of the Army, Corps of Engineers, filed withdrawal application Serial No. A-9613 on June 29, 1976.

The applicant proposes to withdraw the following described lands from all forms of appropriation under the public land laws and from location and entry under the general mining laws, including the mineral leasing laws:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 4 N., R. 3 E.,
Sec. 3, lots 3 and 4, SW¼NW¼, N½SW¼, and SE¼SW¼;
Sec. 4, lots 1, 2, 5, 6, 7, 8, 9, and 10, S½SE¼, and E½SW¼.

U The areas described aggregate 534.19 acres in Maricopa County.

The surface of the following described lands has been transferred out of Federal ownership with minerals reserved to the United States; it is proposed to withdraw the mineral estate from location and entry under the mining laws, including the mineral leasing laws:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 4 N., R. 3 E.,
Sec. 3, N½SE¼NE¼.
T. 5 N., R. 3 E.,
Sec. 27, S½S½NW¼;
Sec. 33, lots 1, 2, 3, and 4, NE¼, W½SE¼, SE¼SE¼NW¼, and NE¼SW¼;
Sec. 34, lot 1, N½, NE¼SW¼, and S½-SW¼.

The areas described aggregate 884.97 acres in Maricopa County.

The applicant desires that the lands be reserved for the construction, operation, and maintenance of a Congressionally authorized flood control project and recreational development for the Cave Buttes Dam.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on August 17, 1976, Volume No. 41, Page No. 34798-34799, Document No. 76-23906.

[*] Voting for this action: Chairman Burns and Governors Wallich, Coldwell, Partee, and Lilly. Absent and not voting: Governors Gardner and Jackson.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073, on or before September 6, 1977. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Section 2351.16B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before September 6, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by the action of the Secretary of the Interior.

All communications (except for public hearing requests in connection with the pending withdrawal application should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

MARIO L. LOPEZ,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-22695 Filed 8-5-77;8:45 am]

Fish and Wildlife Service

WATER RESOURCE PROJECT TYPE ACTIVITIES

Channel Modification Guidelines

CROSS REFERENCE: For a document issued jointly by the Soil Conservation Service, Department of Agriculture and the Fish and Wildlife Service, Department of the Interior relating to proposed guidelines for use of channel modification as a means of water management in water resource project type activities, see FR Doc. 77-22520 appearing in the Part II of this issue.

National Park Service

APOSTLE ISLANDS NATIONAL LAKESHORE, WISCONSIN

Availability of Environmental Assessment Development Concept Plan, Mainland Developments

The National Park Service has prepared an environmental assessment to consider the effects of alternative proposals concerning the mainland developments at Apostle Islands National Lakeshore, Wisconsin.

The assessment states the planning problem, describes components of the local and regional environment which may affect, or be affected by, the various proposals, and discusses alternative solutions.

Copies of the environmental assessment are available at Apostle Islands National Lakeshore, 1972 Centennial Drive, Rural Route, Bayfield, Wisconsin 54814; and the Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102. Anyone wishing to comment on this document should submit remarks in writing to the Park Superintendent or the Regional Director at the above addresses on or before September 7, 1977.

Dated: July 22, 1977.

MERRILL D. BEAL,
Regional Director, Midwest Region.

[FR Doc.77-22044 Filed 8-5-77;8:45 am]

[Order No. 2]

ADMINISTRATIVE TECHNICIAN, ET AL., SAGAMORE NATIONAL HISTORIC SITE

Delegation of Authority Regarding Execution of Contracts and Purchase Orders

1. Administrative Technician. The Administrative Technician, Sagamore Hill National Historic Site, may execute, approve and administer contracts not in excess of $10,000 for supplies and equipment or services, in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Administrative Technician in behalf of any area administered by the Superintendent, Sagamore Hill National Historic Site.

2. This order supersedes Order No. 1 dated August 16, 1976 (41 FR 35159). (National Park Service Order No. 77 (38 FR 7478) as amended: North Atlantic Region Order No. 2 (42 FR 27687).

Dated: June 30, 1977.

ROY F. BEASLEY, JR.,
Superintendent, Sagamore Hill National Historic Site.

[FR Doc.77-22636 Filed 8-5-77;8:45 am]

[Order No. 5]

ADMINISTRATIVE OFFICER AND PROCUREMENT AGENT, PADRE ISLAND NATIONAL SEASHORE, TEXAS

Delegation of Authority

Section 1. *Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of $50,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations.

Section 2. *Procurement Agent.* The Procurement Agent may execute and approve contracts not in excess of $50,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 3. *Revocation.* This order supersedes Order No. 4 dated December 6, 1976 and published in 42 FR 3699 on January 19, 1977.

(National Park Service Order No. 77, 38 FR 7478 as amended; Southwest Region Order No. 5, FR 7722 as amended.)

Dated: June 10, 1977.

JOHN F. TURNEY,
Superintendent, Padre Island National Seashore.

[FR Doc.77-22643 Filed 8-5-77;8:45 am]

[Order No. 3]

ADMINISTRATIVE TECHNICIAN, RICHMOND NATIONAL BATTLEFIELD PARK

Delegation of Authority Regarding Purchase Orders for Supplies, Equipment, and Services

Section 1. Administrative Technician. The Administrative Technician of Richmond National Battlefield Park may issue purchase orders not in excess of $10,000.00 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 2. This order supersedes Richmond National Battlefield Park Order No. 2, dated June 1, 1973 and published in 38 FR 17743 on July 3, 1973.

Dated June 10, 1977.

SYLVESTER PUTNAM,
Superintendent.

[FR Doc.77-22639 Filed 8-5-77;8:45 am]

[Order No. 4]

ADMINISTRATIVE CLERK, ET AL., HOPEWELL VILLAGE NATIONAL HISTORIC SITE

Delegation of Authority Regarding Purchase Orders for Supplies, Equipment, and Services

Section 1. Administrative Assistant. The Administrative Assistant of Hopewell Village National Historic Site may issue purchase orders not in excess of $2,000.00 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 2. This order supersedes Hopewell Village National Historic Site Order No. 3, dated September 26, 1968 and published in 33 FR 15455 on October 17, 1968.

Dated: June 2, 1977.

ELIZABETH E. DISRUDE,
Superintendent.

[FR Doc.77-22642 Filed 8-5-77;8:45 am]

[Order No. 5]

ADMINISTRATIVE OFFICER, ET AL., GULF ISLANDS NATIONAL SEASHORE, FLORIDA AND MISSISSIPPI DISTRICTS

Delegation of Authority

Section 1. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $100,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 2. *Assistant Superintendent.* The Assistant Superintendent may execute, approve, and administer contracts not in excess of $100,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 3. *Procurement and Property Management Specialist.* The Procurement and Property Management Specialist may execute, approve, and administer contracts not in excess of $100,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 4. *Administrative Service Assistant.* The Administrative Service Assistant may execute, approve, and administer contracts not in excess of $10,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 5. *Revocation.* This order supersedes Order No. 4, dated February 14, 1976, and published in 41 FR 19993 on May 14, 1976. (National Park Service Order No. 77 (38 FR 7478), as amended; Southeast Region Order No. 5 (37 FR 7721) as amended.

Dated: June 7, 1977.

FRANKLIN D. PRIDEMORE,
Superintendent,
Gulf Islands National Seashore.

[FR Doc.77-22641 Filed 8-5-77;8:45 am]

[Order No. 2]

ADMINISTRATIVE OFFICER, FREDERICKSBURG AND SPOTSYLVANIA COUNTY BATTLEFIELDS MEMORIAL NATIONAL MILITARY PARK

Delegation of Authority regarding Executing of Contracts and Purchase Orders for Supplies, Equipment, or Services

Section 1. Administrative Officer. The Administrative Officer may execute and approve contracts and/or purchase orders not in excess of $50,000 for construction, supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

Section 2. This order supersedes Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, Order No. 1, published on June 13, 1972, 37 FR 11735.

Dated: May 31, 1977.

DIXON B. FREELAND,
Superintendent.

[FR Doc.77-22640 Filed 8-5-77;8:45 am]

[Order No. 5]

CASTILLO DE SAN MARCOS NATIONAL MONUMENT, FLA.

ADMINISTRATIVE OFFICER, CASTILLO DE SAN MARCUS NATIONAL MONUMENT, FLA.

Delegation of Authority Regarding Execution of Contracts and Issuance of Purchase Orders

1. *Administrative officer.* The administrative officer may execute, approve, and administer contracts and issue purchase orders for equipment, supplies, and services not in excess of $10,000 in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the administrative officer on behalf of any office or area administered by Castillo de San Marcos National Monument.

2. *Revocation.* This order supersedes Order No. 4 issued October 8, 1974.

(National Park Service Order No. 77 (38 FR 7478), as amended; Southeast Region Order No. 5 (37 FR 7721), as amended.)

Dated: April 18, 1977.

GEORGE F. SCHESVENTER,
Superintendent.

[FR Doc.77-22638 Filed 8-5-77;8:45 am]

BUCKSTAFF BATH HOUSE CO., ET AL.

Intention to Extend Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before September 7, 1977, the Department of the Interior, through the Director, National Park Service, proposes to extend the concession contracts with the following concessioners, authorizing them to continue to operate bathhouses in Hot Springs National Park, and to obtain hot mineral waters therefrom for drinking, bathing, and such other purposes as may be authorized for a period of three (3) years from January 1, 1978, through December 31, 1980.

Buckstaff Bath House Company
Health Services, Inc.
Lamar Bath House Company
Ozark Bath House Company
Superior Bath House Company, Inc.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the human environment, and that it is not a major Federal action under the National Environmental Policy Act and the guidelines of the Council on Environmental Quality. The environmental assessment may be reviewed in the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87501.

The foregoing concessioners have performed their obligations to the satisfaction of the National Park Service, under existing contracts which expire by limitation of time on December 31, 1977, and therefore, pursuant to the Act of October 9, 1965, as cited above, are entitled to be given preference in the renewal of the contracts and in the negotiation of new contracts. However, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before September 7, 1977.

Interested parties should contact the Assistant Director, Special Services, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: July 20, 1977.

JOE BROWN,
Acting Associate Director,
National Park Service.

[FR Doc.77-22651 Filed 8-5-77;8:45 am]

EVERGLADES PARK CATERING, INC.

Intention to Extend Concession Contract

Pursuant to the provisions of Section

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contract with Everglades Park Catering, Inc., authorizing it to continue to provide concession facilities and services for the public at Everglades National Park for a period of five (5) months from January 1, 1978, through May 31, 1978.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Southeast Regional Office, 1895 Phoenix Boulevard, Atlanta, Georgia 30349.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1977. An administrative decision to extend this contract for five months was made to provide the Service with sufficient time to prepare a prospectus to secure a concessioner and also to prevent the current contract expiration from occurring during the visitor season. The Secretary is also required

to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before September 7, 1977.

Interested parties should contact the Assistant Director, Special Services, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: July 29, 1977.

IRA J. HUTCHINSON,
Director, National Park Service.

[FR Doc.77-22635 Filed 8-5-77;8:45 am]

HOWARD T. ROSE CO., INC.

Intention to Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Parks Service, proposes to negotiate a concession contract with Howard T. Rose Company, Inc., authorizing it to continue to provide concession facilities and services for the public at Sailors Haven Site, Fire Island National Seashore, New York for a period of five (5) years from January 1, 1977, through December 31, 1981.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Regional Office, North Atlantic Region, 150 Causeway Street, Boston, Massachusetts 02114.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1976 and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Howard T. Rose Company, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive offers for the proposed new contract and a preference in the award of the contract, if the offer of Howard T. Rose Company, Inc., is substantially equal to others received. The Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before September 7, 1977.

Interested parties should contact the Assistant Director, Special Services, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: July 20, 1977.

WILLIAM J. WHALEN,
Director, National Park Service.

[FR Doc.77-22648 Filed 8-5-77;8:45 am]

LE CONTE LODGE, INC.

Intention to Extend Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before September 7, 1977, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contract with LeConte Lodge, Inc., authorizing it to continue to provide concession facilities and services for the public at Great Smoky Mountains National Park for a period of one (1) year from January 1, 1978, through December 31, 1978.

A review of the factors involved in extending the LeConte Lodge contract in terms of environmental changes has been made and it has been determined that the proposed extension will not cause any significant environmental impact and preparation of an environmental statement is not required. Any changes in operation which take place during the extended period will tend to reduce environmental impacts. The extension period will also be used to gather additional environmental impact data in preparation for a recommendation to either continue or discontinue the LeConte Lodge operation.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1977, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before September 7, 1977.

Interested parties should contact the Assistant Director, Special Services, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: July 22, 1977.

WILLIAM J. WHALEN,
Director, National Park Service.

[FR Doc.77-22650 Filed 8-5-77;8:45 am]

[Order No. 6 Amendment No. 1]

PROCUREMENT AGENT, MIDWEST REGIONAL OFFICE

Delegation of Authority Regarding Purchasing Authority

Order No. 6, approved February 25, 1977, and published in the FEDERAL REGISTER May 17, 1977 (42 FR 25386) sets forth limitations on contracting and procurement authority. This amendment adds paragraph (h) to Section 2 as follows:

(h) *Regional Procurement Agent.* The Regional Procurement Agent may execute and approve purchase orders and contracts not in excess of $10,000.

(National Park Service Order No. 77, 38 FR 7478 published March 22, 1973, as amended.)

Dated: June 23, 1977.

MERRILL D. BEAL,
Regional Director,
Midwest Region.

[FR Doc.77-22637 Filed 8-5-77;8:45 am]

VOYAGEURS NATIONAL PARK, MINNESOTA

Availability of Environmental Assessment on Snowmobile Operations

On June 27, 1977, in Volume 42, Number 123, page 32590 of the FEDERAL REGISTER, the National Park Service announced the availability of an environmental assessment concerning the operation of snowmobiles at Voyageurs National Park, Minnesota.

The assessment states the existing situation and describes components of the local and regional environment which may effect, or be affected by, the four alternative proposals which are addressed.

Due to the widespread interest in the assessment, the National Park Service has extended the period for public review and comment for an additional period of thirty (30) days ending on August 29, 1977.

Copies of the environmental assessment are available at Voyageurs National Park, P.O. Drawer 50, International Falls, Minnesota 56649; and the Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102. Anyone wishing to comment on this document should submit such comments in writing to the Park Superintendent or the Regional Director at the above addresses on or before August 29, 1977.

Dated: July 29, 1977.

MERRILL D. BEAL,
Regional Director,
Midwest Region.

[FR Doc.77-22645 Filed 8-5-77;8:45 am]

VOYAGEURS NATIONAL PARK, MINN.

Availability of Environmental Assessment on Landing of Aircraft

On June 27, 1977, in Volume 42, Number 123, page 32590 of the FEDERAL REGISTER, the National Park Service announced the availability of an environmental assessment concerning the landing of aircraft at Voyageurs National Park, Minn.

The assessment states the existing situation and describes components of the local and regional environment which may affect, or be affected by, the four alternative proposals which are addressed.

Due to the widespread interest in the assessment, the National Park Service has extended the period for public review and comment for an additional period of thirty (30) days ending on August 29, 1977.

Copies of the environmental assessment are available at Voyageurs National Park, P.O. Drawer 50, International Falls, Minn. 56649; and the Midwest Regional Office, 1709 Jackson Street, Omaha, Nebr. 68102. Anyone wishing to comment on this document should submit such comments in writing to the Park Superintendent or the Regional Director at the above addresses on or before August 29, 1977.

Dated: July 29, 1977.

MERRILL D. BEAL,
Regional Director,
Midwest Region.

[FR Doc.77-22646 Filed 8-5-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. NORTHWEST COLLISION CONSULTANTS

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)-(h), that a proposed consent judgment and a competitive impact statement have been filed with the United States District Court for the Western District of Washingon at Seattle in Civil No. C75-837V. The complaint in this case alleges that an association of auto body repair shops, Northwest Collision Consultants, and its members have conspired to fix the cost of auto body repair jobs, to eliminate discounts on new parts used in repairing damaged automobiles, and to fix the hourly rates that auto body repair shops charge.

The proposed judgment will enjoin the defendant and its members from having any agreement or understanding or from attempting to influence any other auto body repair shop regarding the cost of auto body repair jobs, the prices or discounts at which parts are sold the hourly rates charged, or the profit margins utilized. The judgment also prohibits understandings whereby an auto body repair shop would refuse or would not attempt to obtain a repair job. In addition, the defendant is directed to collect and hold until further order of the Court any written materials which it distributed in the past that refered to any price, discount, profit margin or cost of doing business in the automobile repair industry.

Public comment is invited on or before October 2, 1977. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco office, Antitrust Division, Department of Justice, San Francisco, California 94102.

Dated: July 29, 1977.

JOHN H. SHENEFIELD,
Acting Assistant Attorney
General, Antitrust Division.

Anthony E. Desmond, James E. Figenshaw, Christopher S. Crook, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 16432, San Francisco, California 94102; Telephone 415-556-6300; Attorneys for the United States.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON AT SEATTLE

United States of America, plaintiff, v. *Northwest Collision Consultants*, defendant.

Civil No. C75-837V.
Filed: July 29, 1977.

STIPULATION

It is stipulated by and between the undersigned parties, plaintiff United States of America, and defendant, Northwest Collision Consultants, by their respective attorneys, that:

1. The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent which it may do at any time before the entry of the proposed final judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendant in this or any other proceeding.

Dated: July 29, 1977.

For the plaintiff: John H. Shenefield, Acting, Assistant Attorney General; William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, James E. Figenshaw, Christopher S. Crook, Robert J. Ludwig, Attorneys, Department of Justice.

For the Defendant: Kane, Vandeberg & Hartinger, Washington Plaza Building, One Washington Plaza, Suite 2100, Tacoma, Washington 98402. G. Perrin Walker, Attorney for Defendant.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

United States of America, Plaintiff, v. *Northwest Collision Consultants*, Defendant.

Civil No. C75-837V.
Filed: July 29, 1977.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 3, 1975, and defendant, Northwest Collision Consultants, having appeared by its counsel, and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue;

Now, therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section I of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Defendant" means defendant Northwest Collision Consultants;

(B) "Person" means any individual, partnership, corporation, association, firm or any other business or legal entity;

(C) "Parts" means any portion of an automobile except the engine and its components;

(D) "Body repair job" means the application of new or used parts and labor to the damaged bodies of automobiles for the purpose of repairing them;

(E) "Hourly rate" means the time charge applied to the length of time that each body repair job requires; and

(F) "Body repair shop" means any person engaged in the performance and sale of a body repair job.

III

The provisions of this Final Judgment shall apply to the defendant and to each of its officers, directors, agents, employees, members, chapters, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan, or program, to fix, establish, or maintain (1) prices charged by body repair shops in the performance and sale of body repair jobs, (2) prices, discounts, markups, or other terms or conditions at which new or used parts are sold by body repair shops, (3) hourly rates charged by body repair shops, or (4) profit margins utilized by body repair shops;

(B) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence any person to use or adhere to (1) any price to be charged by a body repair shop in the performance and sale of a body repair job, (2) any price, discount, markup, or other term or condition at which new or used parts are to be sold by a body repair shop, (3) any hourly rate to be charged by a body repair shop, or (4) any profit margin to be utilized by a body repair shop;

(C) Policing, urging, coercing, influencing, or attempting to influence in any manner any body repair shop or any other person, or devising or putting into effect any procedure (including but not limited to picketing) the effect of which is to fix, maintain, or stabilize (1) prices to be charged by a body repair shop in the performance and sale of a body repair job, (2) any price, discount, markup, or other term or condition at which new or used parts are to be sold by a body repair shop, (3) any hourly rate to be charged by a body repair shop, or (4) any profit margin to be utilized by a body repair shop; and

(D) Entering into, adhering to, maintaining or furthering, any contract, agreement, understanding, plan or program with any

other person not to accept or attempt to obtain any body repair job.

V

Defendant is ordered and directed:

(A) Within 60 days after entry of this Final Judgment to serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon each of those persons who are or have been officers or members of defendant at any time since January 1, 1974;

(B) To serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members at such time as they become members:

(C) To collect from its members and hold until further order of the Court any printed or written materials distributed be defendant, including but not limited to the document entitled "Projected Operating Costs," and without regard to whether said materials are filled out or blank, which refer in any manner to (1) Any price charged or to be charged by a body repair shop in the performance and sale of a body repair job, (2) any price, discount, markup, or other term or condition at which new or used parts are sold or are to be sold by a body repair shop, (3) any hourly rate charged or to be charged by a body repair shop, (4) any profit margin utilized or to be utilized by a body repair shop, or (5) any cost of doing business as a body repair shop; and

(D) To file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsections A and C of this Section V.

VI

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of defendant, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint of interference from it, to interview officers, directors, agents, partners, members, or employees of defendant, who may have counsel present, regarding any such matters.

(B) Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

APPENDIX A

Re: Final Judgment in *United States* v. *Northwest Collision Consultants*, Civil No. C75-837V

DEAR SIR: Enclosed herewith is a copy of a Final Judgment entered ------, 1977 in *United States* v. *Northwest Collision Consultants*, Civil No. C75-837V. The terms of the Final Judgment require that a copy of said Judgment as well as this letter be served upon you. You should read the terms of the Final Judgment carefully and note that you as a member of the association are bound by its provisions. The purpose of this letter is to enable you to better understand those provisions.

The essence and intent of the Final Judgment is that you should make your own pricing and profit decisions without consulting with any other body repair shop or organization of body repair shops. These decisions include not only the total cost or bottom line figure of body repair jobs, but also the cost of parts (including whether or not some discount is given), hourly rates, and profit margins. It is, for example, illegal and a violation of the terms of the Final Judgment to attempt to influence another person to utilize a particular margin in his body repair business. In this connection, you are directed to immediately return to this office all copies in your possession of any "Projected Operating Costs" sheets, whether or not these sheets have been filled out, and any other materials you have relating to the cost of doing business which have been distributed by this office.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON AT SEATTLE

United States of America, Plaintiff, v. *Northwest Collision Consultants*, Defendant.

Civil No. C75-837V.

Filed: July 29, 1977.

COMPETITIVE IMPACT STATEMENT

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §§ 16 (b)-(h), Pub. L. 93-528 (December 21, 1974)), the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On December 3, 1975, the United States filed a civil complaint under section 4 of the Sherman Act (15 U.S.C. § 4), alleging that defendant Northwest Collision Consultants, violated section 1 of the Sherman Act (15 U.S.C. § 1). The complaint alleges a combination and conspiracy in unreasonable restraint of interstate commerce, the substantial terms of which were that the defendant and various co-conspirators agreed (1) to raise, fix, and maintain hourly rates charged by body repair shops; (2) to eliminate discounts on new parts utilized in the performance of body repair jobs; and (3) to raise, fix, and maintain prices charged by body repair shops for the performance of body repair jobs.

II. PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

In the automobile repair industry, the cost of a body repair job consists of two ingredients: (1) a charge for the parts utilized in the repair of the damaged automobile and (2) a time charge or hourly rate applied to the length of time that each body repair job requires. The time charge or hourly rate includes not only wages paid to the employees of body repair shops, but also includes taxes, insurance, office and other administrative expenses, and a profit margin. The new parts utilized in body repair jobs are all manufactured outside the State of Washington and generally sold to new car dealers who in turn sell the parts to body repair shops.

The defendant Northwest Collision Consults (NCC) is a Washington corporation composed of body repair shops located in the Greater Seattle-Tacoma Area and other communities in Western Washington. The Government contends that beginning in December of 1973 and continuing through December of 1974, the defendant and its members combined and conspired to raise the total cost of body repair jobs by raising and maintaining the hourly rates charged by body repair jobs and also by agreeing to eliminate any discounts on the new parts that are necessary for the repair of the damaged automobile. The effects of this combination and conspiracy, the Government contends, were that competition among members of the defendant was restricted, prices of body repair jobs were maintained at noncompetitive levels, and the owner of damaged automobiles were prevented from receiving competitive bids or competitive prices for body repair jobs.

III. EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is similar to an earlier consent judgment published in 41 FR 28550 on July 12, 1976. The Government later withdrew its consent to said earlier judgment following an apparent misunderstanding with defendant's counsel over the interpretation of said judgment. This misunderstanding has now been resolved.

The proposed consent judgment is binding upon all of defendant's members and expressly requires the defendant to serve all of its present members and all of its future members with copies of the judgment. Defendant NCC is prohibited by the consent judgment from having any agreement or understanding concerning any of the following: (1) The total price or cost of a body repair job, (2) any price, discount, or markup at which parts are sold, (3) any hourly rate charged by a body repair shop, or (4) any profit margin utilized by a body repair shop. In addition, the consent judgment contains express prohibitions against attempting to influence any other body repair shop in the prices, discounts, hourly rates, and profit margins which that shop employs. The consent judgment also prohibits any understanding that a body repair shop would not accept or attempt to obtain any body repair job. Finally, the defendant is required to collect from its members and hold until further order of the Court any written materials which it distributed in the past that referred to any price for a body repair job, any discount on parts, any hourly rate, any profit margin, or any cost of doing business as a body repair shop.

To assist defendant's members in understanding and abiding by all the provisions of the consent judgment, the defendant is required to accompany its service of the judg-

ment with a letter, the text of which is appended to the judgment, which explains those provisions.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to section 5(a) of the Clayton Act (15 U.S.C. § 15(a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation by and between the United States and the defendant, which provides that the United States may withdraw its consent to the proposed judgment at any time until the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed consent judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit either of the parties thereto to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), any persons wishing to comment upon the proposed judgment may, for a sixty-day period prior to the effective date of the proposed judgment, submit written comments to the United States Department of Justice, Attention Anthony E. Desmond, Chief, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, Calif. 94102. The Department of Justice will file with the Court and publish in the FEDERAL REGISTER such comments and its response to them. In evaluating any and all such comments, the Department will determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI. ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT CONSIDERED BY THE UNITED STATES

An alternative to the proposed Consent Judgment considered by the Department of Justice was a full trial on the merits. It was determined that such a trial involving substantial expense to the United States as well as the commitment of manpower, was not warranted since the equitable remedies set forth in the proposed Consent Judgment will be effective to restore competition in the automobile body repair business in the western areas of the State of Washington. Moreover, the remedies set forth in the proposed Consent Judgment provide for all the relief requested in the Complaint.

VII. DETERMINATIVE DOCUMENTS

Since there are no materials or documents which were determinative in formulating a proposal for a consent judgment, none are being filed by the plaintiff pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)).

Dated: July 29, 1977.

JAMES E. FIGENSHAW,
CHRISTOPHER S. CROOK,
Attorneys, Department of Justice.

[FR Doc.77-22779 Filed 8-5-77;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

PRIVACY ACT OF 1974

Notice of Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), section 3 of the Privacy Act of 1974, the Department of Labor hereby publishes notice of systems of records DOL/ETA-18 and DOL/ETA-19, to be established by the Employment and Training Administration; and DOL/LMSA-17 established by the Division of Enforcement, Pension and Welfare Benefits Programs. DOL/ETA-18 will be maintained by ABT Associates, Inc., Cambridge, Mass., under a research study contract to collect data from state agencies and individuals for the purpose of a statistical report under section 906 of the Social Security Act, 42 U.S.C. 1106. DOL/ETA-19 will be maintained by Stanford Research Institute, Menlo Park, Calif., under a similar contract to collect data from state agency records and individuals. The purpose of the study is to determine the extent of and the reasons for delayed filing or never filing for unemployment benefits and to determine the impact of the disqualification provisions of state unemployment insurance laws. ABT Associates, Inc., and Stanford Research Institute are contractors within the meaning of 5 U.S.C. 552a(m) of sec. 3 of the Privacy Act. These systems are exempted under 5 U.S.C. 552a(k)(4) of the Act as records to be used solely for statistical purposes.

DOL/LMSA-17 is an investigatory record, formerly a part of DOL/LMSA-16. These records have been segregated and are now established as a separate system. This system is exempted under 5 U.S.C. 552a (j)(2) and (k)(2) of the Act.

Signed at Washington, D.C., this 28th day of July 1977.

RAY MARSHALL,
Secretary of Labor.

DOL/ETA-18

System name:

Analysis of Delayed and Never Filers for Unemployment Insurance.

System location:

ABT Associates, Inc., Cambridge, Mass.

Categories of individuals covered by the system:

Individuals in employment covered by the unemployment insurance system, unemployment insurance claimants.

Categories of records in the system:

Name, wage information, unemployment insurance claim information, questionnaire responses supplied by the individual, and SSN supplied by the individual.

Authority for maintenance of the system:

Sec. 906 of the Social Security Act, 42 U.S.C. 1106.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

A research study to estimate the extent of and the reasons for delayed or never-filed for unemployment benefits. Records to be compiled are solely for statistical purposes to be used by the contractor in the conduct of this study.

Storage:

Questionnaires and tapes. When questionnaire responses have been transferred to tape, questionnaires will be destroyed.

Retrievability:

By name until merger of data sources has been completed.

Safeguards:

Only ABT Associates research staff will have access to the data files.

Retention and disposal:

Questionnaires will be destroyed after responses have been transferred to tape. When all necessary cross references and file mergers of state agency administrative information and questionnaire data have been completed, personal identifiers will be destroyed. Data tapes provided to the Federal Government will have no personal identifiers.

System manager and address:

Dr. David Stevens, Project Director ABT Associates, Inc., Cambridge, Mass.

Notification procedure:

Contact Systems Manager.

Record access procedure:

Contact Systems Manager.

Contesting record procedures:

Contact Systems Manager.

Record source categories:

State employment security agency quarterly wage files and unemployment insurance claim files, information voluntarily submitted by questionnaire respondents. Source of mailing addresses for non-filers to be determined.

Systems exempted from certain provisions of the Act:

Statistical records. In accordance with subsection (k)(4) of sec. 3 of the Act, information maintained in the system of records consisting of questionnaires and tapes is exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f). The sole purpose in collecting the information contained in the system is for the preparation of a statistical report in accordance with section 906 of the Social Security Act. The information will not be used in

whole or in part in making any determination about an identifiable individual. Identifiable information will be destroyed after all necessary cross-references have been accomplished and the resulting data will be transmitted by the contractor to the Federal agency without personal identifiers.

DOL/ETA–19

System name:

Impact of Disqualification Provisions of State Unemployment Insurance Laws.

System location:

Stanford Research Institute, Menlo Park, Calif.

Categories of individuals covered by the system:

Disqualified unemployment insurance claimants and unemployment insurance beneficiaries.

Categories of records in the system:

Personal and labor force characteristics of unemployment insurance claimants.

Authority for maintenance of the system:

Social Security Act, section 906, 42 U.S.C. 1106.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Records to be compiled are solely for statistical purposes to be used by the contractor in the conduct of his research.

Storage:

All questionnaires and computer tapes will be stored in locked files with access limited to personnel involved in the study.

Retrievability:

Indexed by contractor's control number.

Safeguards:

All materials will be kept in locked file cabinets. Rooms will also be locked.

Retention and disposal:

After the data are entered on computer, the questionnaires and the master file of names and addresses will be destroyed. The final analytical tapes will become the property of the Federal agency and will not contain personal identifiers.

Systems manager and address:

Dr. Henry Felder, Project Director, Center for the Study of Welfare Policy, Stanford Research Institute, Menlo Park, Calif. 94025.

Notification procedure:

Contact Systems Manager.

Record access procedure:

Contact Systems Manager.

Contesting record procedures:

Contact Systems Manager.

Record source categories:

State agency records containing unemployment insurance information; and information voluntarily submitted by unemployment insurance claimants.

Systems exempted from certain provisions of the Act:

Statistical Records. In accordance with subsection (k)(4) of section 3 of the Privacy Act, information maintained in the system of records consisting of questionnaires and tapes is exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f). The sole purpose in collecting the information contained in the system is for the preparation of a statistical report under section 906 of the Social Security Act. The information will not be used in whole or in part in making any determination about an identifiable individual. Identifiable information will be destroyed after all necessary cross-references have been accomplished and the resulting data will be transmitted by the contractor to the Federal agency without personal identifiers.

DOL/LMSA–17

System name:

Investigatory Files—PWBP, Division of Enforcement.

System location:

Department of Labor, Washington, D.C. 20210. Files also may be maintained at field locations.

Categories of individuals covered by the system:

Records are maintained on defendants, respondents, witnesses and other individuals involved in investigations and enforcement actions instituted by the Department of Labor under the Employee Retirement Income Security Act of 1974.

Categories of records in the system:

The system contains information gathered by PWBP in connection with investigations by it into possible violations of the Welfare and Pension Plans Disclosure Act and the Employee Retirement Income Security Act of 1974. Such information may be derived from materials filed with the Department of Labor, the Department of the Treasury and the U.S. Board of Parole, court records, articles from publications, published financial data, employee benefit plan information, corporate information, bank information, securities brokerage firm information, telephone data, statements of witnesses, information received from Federal, State, local, and foreign regulatory and law enforcement organizations, and other sources. This record also contains the work product of government personnel and consultants involved in the investigations.

Authority for maintenance of the system:

29 U.S.C. 1132, 1134, 1135, and 1136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records and the information contained in these records may be used for the following:

1. By Department of Labor, Department of Justice, Treasury Department, Commerce Department and other Federal government personnel and consultants investigating possible violations of the Employee Retirement Income Security Act of 1974.

2. In any proceeding where the Employee Retirement Income Security Act of 1974 is in issue or in which the Secretary of Labor, any past or present Federal employee or consultant directly or indirectly involved in investigations or other enforcement activities under the Employee Retirement Income Security Act of 1974, is a party or otherwise involved in an official capacity.

3. When considered appropriate and pursuant to 29 U.S.C. 1134(a), records in this system concerning any matter which is the subject of an investigation by the Department of Labor under the Employee Retirement Income Security Act of 1974 may be made available to any person actually affected by the matter under investigation, and to any department or agency of the United States.

4. Where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, or, if such agency is participating in the particular investigation, the relevant records may continue to be used by the agency to investigate possible violations of laws administered by it and to bring appropriate proceedings.

5. A record from this system of records may be disclosed to a Federal, State, local, or foreign governmental authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. At the discretion of the staff, records from this system may be given or shown to anyone during the course of an investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matter discussed therein, and those matters appear relevant to the subject of the investigation.

Policies and practices for storing, retrieving, retaining, and disposing of records in the system:

Storage:

Records may be maintained in hard copy, microfilm and machine readable form.

Retrievability:

Records are indexed by name.

Safeguards:

Access to and use of these records are limited to those persons whose official duties require such access.

Retention and disposal:

Records are maintained indefinitely.

System manager(s) and address:

Assistant Director, Division of Enforcement, PWBP, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216.

Exemption:

(a). *Criminal law enforcement.* The principal function of the Enforcement Division, Pension and Welfare Benefit Programs, pertains to the enforcement of the provisions of the Employee Retirement Income Security Act of 1974. It conducts investigations to prevent and detect violations of the Employee Retirement Income Security Act of 1974. These investigations sometime develop evidence of criminal violations. They may then be continued by PWBP under a grant of jurisdiction from the Department of Justice. When so continued investigations in appropriate cases will result in criminal prosecutions. Its activities, including joint investigations with the Department of Justice, are carried out under the provisions of the Title 18, U.S. Code, Secs. 664, 1027 and 1954, the Welfare and Pension Plans Disclosure Act and Title I of the Employee Retirement Income Security Act of 1974. In accordance with subsection (j) (2) of the Privacy Act, 5 U.S.C. 552a, an investigative material contained in the index and investigatory files of the Enforcement Division is exempt from all parts of the Act except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). The disclosure of information compiled in investigations which may result in criminal prosecution, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of investigations by the PWBP and the Enforcement Division. Knowledge of such investigations could enable subjects to take such action as is necessary to prevent detection of their criminal activities, conceal evidence, or to escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and could jeopardize the safety and well being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, or retained would significantly reduce the effectiveness of the subject investigatory activities, and in addition, may often preclude the apprehension and successful prosecution of persons engaged in criminal activities related to pension and welfare benefit plans.

(b) *Other law enforcement.* In accordance with subsection (k) (2) of the Privacy Act, any investigatory material maintained in the index and investigatory files of the Enforcement Division, Pension and Welfare Benefit Programs which is deemed not to be exempt under subsection (j) (2) of the Act is exempt from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I), and (f) of 5 U.S.C. 552a. The disclosure of information contained in such investigative files including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of the subject investigative activity. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape enforcement action. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, or retained would also impede significantly the effectiveness of the investigatory activities of the Enforcement Division.

[FR Doc.77-22597 Filed 8-5-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

INTERNATIONAL DECADE OF OCEAN EXPLORATION PROPOSAL REVIEW PANEL

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Proposal Review Panel for the Office for the International Decade of Ocean Exploration, Ad Hoc Subpanel for the SES Project.

DATE AND TIME: August 23-26, 1977, 9 a.m. to 5 p.m.

I LACE: Pepper Tree Motor Hotel, 3850 State Street, Santa Barbara, Calif. 93105.

TYPE OF MEETING: Closed.

CONTACT PERSON:

Mr. Feenan D. Jennings, Head, Office for the International Decade of Ocean Exploration, Room 605, National Science Foundation, Washington, D.C. 20550, telephone 202-632-7356.

PURPOSE OF PANEL: To provide the IDOE Proposal Review Panel members with additional expertise in the review and evaluation of proposals relating to oceanographic research related to Seagrass Ecosystem Studies (SES).

AGENDA: Detailed review and evaluation of proposals for support of the SES Project.

REASON FOR CLOSING: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

AUGUST 1, 1977.

[FR Doc.77-22702 Filed 8-5-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Revised Notice of Meeting

The meeting notice for the meeting to be held on August 11-13, 1977 in Room 1046, 1717 H Street NW., Washington, D.C., is revised as detailed below. This revision involves the addition of an item and a related schedule change to discuss the implementation of recommendations in ACRS reports to the Nuclear Regulatory Commission.

SATURDAY, AUGUST 13, 1977

8:30 a.m. to 4 p.m.: Executive Session (Open/Closed).—The Committee will complete preparation of its reports to the NRC on matters discussed during this meeting. Portions of this session will be closed as required to protect matters involved in NRC adjudicatory proceedings. A portion of this meeting will include discussion with representatives of the Nuclear Regulatory Commission Staff to discuss implementation of recommendations in ACRS reports to the Nuclear Regulatory Commission. The request for this portion of the meeting, which will be open to the public, was received on July 27, 1977 by the ACRS Office after the agenda for the 208th meeting had been formulated and transmitted to the FEDERAL REGISTER for publication. Prompt resolution is needed to insure expeditious implementation of ACRS recommendations related to public health and safety. This session is scheduled from 10 a.m. to 11 a.m.

Dated: August 4, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-22802 Filed 8-5-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SITING EVALUATION SUBCOMMITTEE

Meeting Postponed

The August 9, 1977 meeting of the ACRS Siting Evaluation Subcommittee has been postponed indefinitely.

Notice of this meeting was published in the FEDERAL REGISTER, page 37880, on July 25, 1977.

Dated: August 1, 1977.

JOHN C. HOYLE,
Advisory Committee,
Management Officer.

[FR Doc.77-22524 Filed 8-5-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON THE VERMONT YANKEE NUCLEAR POWER PLANT

Meeting Postponed

The August 16, 1977 meeting of the ACRS Subcommittee on the Vermont Yankee Nuclear Power Plant has been postponed indefinitely. Notice of this meeting was published in the FEDERAL REGISTER, page 38945, on August 1, 1977.

Dated: August 4, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc.77-22876 Filed 8-5-77;8:45 am]

[Docket Nos. 50-325, 50-324]

CAROLINA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 7 and 29 to Facility Operating Licenses Nos. DPR-71 and DPR-62, issued to Carolina Power & Light Co., which revised technical specifications for operation of the Brunswick Seam Electric Plant, Unit Nos. 1 and 2 (the facilities) located in Brunswick County, N.C. The amendments are effective as of the date of their issuance.

The amendments revise numerous provisions in the Environmental technical specifications relating to limitations and monitoring requirements for non-radiological liquid effluents.

The application for the amendments 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 set forth in the license amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised technical specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action greater than that which has already been predicted and described in the Commission's final environmental statement for the facilities dated January 1974.

For further details with respect to this action, see (1) the application for amendments dated January 11, 1977, (2) Amendment No. 7 to License No. DPR-71, (3) Amendment No. 29 to License No. DPR-62, and (4) the Commission's related environmental impact appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Southport Brunswick County Library, 109 W. Moore Street, Southport, N.C. 28461. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 25th day of July 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.77-22707 Filed 8-5-77;8:45 am]

[Docket Nos. STN 50-491, STN 50-492, and STN 50-493]

DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNIT NOS. 1, 2, AND 3)

Issuance of Revision to Limited Work Authorization

Pursuant to the provisions of 10 CFR 50.10(e) of the Nuclear Regulatory Commission's (Commission) regulations, the Commission has authorized the Duke Power Company to conduct certain site activities in connection with the Cherokee Nuclear Station, Unit Nos. 1, 2, and 3, prior to a decision regarding the issuance of construction permits. Notice of the Limited Work Authorization was published in the FEDERAL REGISTER on June 10, 1976 (41 FR 23489).

Since that time, the Atomic Safety and Licensing Board has determined that additional activities may be authorized. The additional activities that are authorized are within the scope of those authorized by 10 CFR 50.10(e)(3) and include final foundation preparation and inspection and fill placement, compaction, and testing for the Nuclear Service Water (NSW) Pond Dam; all work required to construct the NSW Pond Spillway and discharge channel; work required to install the NSW pipe in the yard; work required to construct the NSW intake structure.

Any activities undertaken pursuant to this additional authorization are entirely at the risk of the Duke Power Company and the grant of the authorization has no bearing on the issuance of construction permits with respect to the requirements of the Atomic Energy Act of 1954, as amended, and rules, regulations, or orders promulgated pursuant thereto.

A Supplemental Partial Initial Decision on matters relating to the National Environmental Policy Act and site suitability was issued by the Atomic Safety and Licensing Board in the above captioned proceeding on July 26, 1977. A copy of (1) the Supplemental Partial Initial Decision; (2) the Partial Initial Decision dated May 21, 1976; (3) the applicant's Preliminary Safety Analysis Report and amendments thereto; (4) the applicant's Environmental Report, and amendments thereto; (5) the staff's Final Environmental Statement dated October 1975; (6) the Commission's letters of authorization, dated May 28, 1976 as amended January 19, 1977, and February 23, 1977; and (7) the Commission's further letter of authorization dated July 28, 1977, are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. and the Cherokee County Library, 300 East Rutledge Avenue, Gaffney, South Carolina.

Dated at Bethesda, Maryland, this 28th day of July 1977.

For the Nuclear Regulatory Commission.

R. W. FROELICH,
Acting Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc.77-22528 Filed 8-5-77;8:45 am]

[Docket No. 50-247]

INDIAN POINT NUCLEAR GENERATING STATION UNIT NO. 2

Availability of Initial Decision of the Atomic Safety and Licensing Board and Issuance of Amendment to Facility Operating License No. DPR-26

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that initial decision, dated June 17, 1977, has been issued by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of a license amendment to the Consolidated Edison Co. of New York, Inc., for operation of Indian Point Nuclear Generating Station Unit No. 2, located in Westchester County, N.Y.

The initial decision is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, N. Y. 10548. The initial decision is also being made available at the New York State Division of the Budget, State Capitol, Albany, N.Y. 12224, and the Tri-State Regional Planning Commission, One World Trade Center, 56 South Street, New York, N.Y. 10048.

Any decision or action taken by the Atomic Safety and Licensing Board in connection with the initial decision may be reviewed by the Atomic Safety and Licensing Appeal Board.

Pursuant to the above mentioned initial decision, the Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility

Operating License DPR-26 to Consolidated Edison Co. of New York, Inc., for operation of a pressurized water nuclear reactor known as the Indian Point Nuclear Generating Station Unit No. 2. The license is amended by a change which states that the final termination date of once-through cooling is May 1, 1982.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. The application for the license amendment complies with the standards and requirements of the Act and the Commission's rules and regulations.

The license amendment is effective as of its date of issuance.

Copies of the (1) Initial Decision dated June 17, 1977, and (2) Amendment No. 32 to Facility Operating License DPR-26 are available for public inspection at the above designated locations in Washington, D.C., and New York. Single copies of both items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Md., this 29th day of July 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-22708 Filed 8-5-77;8:45 am]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government organization, siting, design, operation, and quality assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by Member Countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide, SG-D7, "Safety Related Electrical Power Systems," has been developed. An IAEA Working Group, consisting of Mr. J. Kollmannsberger, Germany; Mr. G. Kvist, Sweden; and Mr. C. J. Wylie (Duke Power Co.), United States of America, developed this draft from an IAEA collation during a meeting on May 5, 1977, and we are soliciting public comment on it. Comments on this draft received by November 1, 1977, will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a).)

Dated at Rockville, Md., this 22d day of July 1977.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.77-22709 Filed 8-5-77;8:45 am]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT & POWER CO., CENTRAL IOWA POWER COOPERATIVE, AND CORN BELT POWER COOPERATIVE

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-49 issued to Iowa Electric Light & Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative, which revised technical specifications for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. The amendment is effective as of its date of issuance.

The amendment consists of changes to the technical specifications which will reduce DAEC's operating limit minimum critical power ratio (MCPR), allowing an increase of up to 5 percent power. The power increase resulting from this license amendment is separate from the power increase sought by the licensees in their submittal of June 24, 1977, as a result of a modified ECCS analysis. This latter licensing action was noticed in the FEDERAL REGISTER on July 28, 1977 (42 FR 38442). The proposed changes will not result in any change in the present safety limit MCPR of 1.06 which has been previously reviewed and approved.

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 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 June 17, 1977, as supplemented by letters dated July 6, 1977, and July 11, 1977, (2) Amendment No. to License No. DPR-49, 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 NW., Washington, D.C., and at the Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401. 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 Operating Reactors.

Dated at Bethesda, Md., this .....

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.77-22710 Filed 8-5-77;8:45 am]

[Docket No. 50-220]

NIAGARA MOHAWK POWER CORP.

Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corp. (the licensee), located in Oswego County, N.Y.

In accordance with the licensee's application for amendment dated December 7, 1976, the amendment would revise the provisions in the Technical Specifications relating to the spent fuel pool. As amended, the Technical Specifications would permit the licensee to replace the storage racks in the present spent fuel storage pool, increasing its capacity from 1,140 fuel assemblies to 1,984 fuel assemblies.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By September 7, 1977, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of section 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioners contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and section 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Arvin E. Upton, Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street NW., Washington, D.C. 20036, the attorney for the licensee.

A jetition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitoner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated December 7, 1976, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oswego City Library, 120 E. Second Street, Oswego, N.Y.

Dated at Bethesda, Md., this 2d day of August 1977.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.77-22718 Filed 8-5-77;8:45 am]

[Docket No. 50-245]

NORTHEAST NUCLEAR ENERGY CO., THE HARTFORD ELECTRIC LIGHT CO., WESTERN MASSACHUSETTS ELECTRIC CO., AND CONNECTICUT LIGHT AND POWER CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company, which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility), located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revised the Technical Specifications for the facility to update the Limiting Conditions for Operation and Surveillance Requirements for hydraulic snubbers and to authorize a change in the method of verifying operability of the reactor vessel safety/relief valves.

The applications for the amendment comply 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 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 applications for amendment dated October 22, 1976 (as supplemented by letter dated June 15, 1977) and March 4, 1976, (2) Amendment No. 41 to License No. DPR-21, 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 NW., Washington, D.C., and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washingtn, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 1st day of August 1977.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.77-22711 Filed 8-5-77;8:45 am]

[Docket No. 50-133]

PACIFIC GAS AND ELECTRIC CO.

Establishment of Atomic Safety and Licensing Board To Rule on Petitions

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to rule on petitions and/or requests for leave to intervene in the following proceeding:

PACIFIC GAS AND ELECTRIC COMPANY

(HUMBOLDT BAY POWER PLANT, UNIT NO. 3), FACILITY OPERATING LICENSE NO. DPR-7

This action is in reference to a notice published by the Commission on June 23, 1977, in the FEDERAL REGISTER (42 FR 31847) entitled "Proposed Issuance of Amendment to Facility Operating License".

The members of the Board and their addresses are as follows:

Frederic J. Coufal, Esq., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Mr. Gustave A. Linenberger, Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. David R. Schink, Department of Oceanography, Texas A & M University, College Station, Texas 77840.

Dated at Bethesda, Maryland, this 29th day of July 1977.

ATOMIC SAFETY AND LICENSING BOARD PANEL,
JAMES R. YORE,
Chairman.

[FR Doc.77-22526 Filed 8-5-77;8:45 am]

[Docket No. 50-133]

PACIFIC GAS AND ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued

Amendment No. 15 to Facility Operating License No. DPR–7, issued to Pacific Gas and Electric Company (the licensee), which revised Technical Specifications for operation of the Humboldt Bay Power Plant, Unit No. 3 (the facility) located near Eureka, California. The amendment is effective as of its date of issuance.

This amendment incorporates into the Humboldt Bay Power Plant, Unit No. 3 Technical Specifications revised reactor vessel pressure-temperature limits for hydrostatic testing, heatup and cooldown, and critical operation. This amendment does not authorize restart of the facility which is presently not in operation.

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 51.5(d)(4) an environmental impact statement, negative declaration or 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 May 19, 1977, (2) Amendment No. 15 to License No. DPR–7, 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 NW., Washington, D.C. and at the Humboldt County Library, 636 F. Street, Eureka, California. 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 Operating Reactors.

Dated at Bethesda, Md., this 25th day of July 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-22712 Filed 8-5-77;8:45 am]

[Docket Nos. 50-387 and 50-388]

PENNSYLVANIA POWER AND LIGHT CO., ALLEGHENY ELECTRIC COOPERATIVE, INC.

Receipt of Additional Antitrust Information; Time for Submission of Views on Antitrust Matters

Pennsylvania Power and Light Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed on April 12, 1977, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information adds Allegheny Electric Cooperative, Inc. as an owner of the Susquehanna Steam Electric Station, Units 1 and 2.

The information was filed by Pennsylvania Power and Light Company in connection with their application for construction permits and operating licenses for two boiling water nuclear reactors. The Pennsylvania Power and Light Company was issued two construction permits on November 2, 1973 for their Susquehanna Steam Electric Station, Units 1 and 2. Construction is underway on a site located in Salem Township, Luzerne County, Pennsylvania.

The original antitrust portion of the application was submitted on March 23, 1971 and Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matters was published in the FEDERAL REGISTER on May 7, 1971 (36 FR 8529). The Notice of Hearing was published in the FEDERAL REGISTER on September 23, 1972 (37 FR 20090).

A copy of all the above stated documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Osterhout Free Library, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to the Allegheny Electric Cooperative, Inc. presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission on or before August 23, 1977.

Dated at Bethesda, Maryland, this 16th day of June, 1977.

For The Nuclear Regulatory Commission.

ANTHONY BOURNIA,
Acting Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc.77-20443 Filed 8-5-77;8:45 am]

[Docket Nos. 50-387A and 50-388A]

PENNSYLVANIA POWER AND LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE INC.

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, 1977:

You have requested additional antitrust advice pursuant to Section 105 of the Atomic Energy Act, as amended, in regard to the above-cited nuclear generating station.

The initial application relating to Susquehanna Station, Units 1 and 2, was reviewed in 1972. The Department advised your predecessor commission that so long as Pennsylvania Power and Light (PP&L) acted to amend certain provisions in its wholesale power contracts, an antitrust hearing would not be necessary. Those contracts have since been satisfactorily amended.

PP&L has now agreed to sell, and Allegheny Electric Cooperative, Inc. has agreed to purchase a 10 percent undivided ownership interest (105MW) in each of the Susquenhanna Units. You have asked the Department to render antitrust advice concerning Allegheny's acquisition of an ownership interest in Susquehanna Station.

Allegheny Electric Cooperative, Inc. is an association consisting of rural electric cooperatives in Pennsylvania. Allegheny supplies the demand and energy requirements of its member cooperatives only. Its 1976 annual peak demand was 368.44 MW. Allegheny does not own any existing generation or transmission. (As part of its agreement with PP&L, Allegheny will purchase approximately 47 miles of transmission line from that company. The line will be owned and paid for by Allegheny, but constructed and operated by PP&L.) In 1976, its power was supplied by the following sources:

Power Authority of the State of New York (134.45 MW).
Pennsylvania Electric Company (163.48 MW).
Metropolitan Edison Company (21.43 MW).
West Pennsylvania Power Company (31.22 MW).
Jersey Central Power & Light Company (17.30 MW).

On the basis of our review of the information submitted by Allegheny, as well as other relevant information, we conclude that no antitrust hearing will be necessary with respect to Allegheny's acquisition of an ownership interest in Susquehanna Station.

Any person whose interest may be affected by this proceeding may, pursuant to section 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 7, 1977, either (1) by delivery to the NRC Docketing and Service Section at 1717 H Street NW, Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Section.

For the Nuclear Regulatory Commission.

JEROME SALTZMAN,
Chief, Antitrust & Indemnity Group, Nuclear Reactor Regulation.

[FR Doc.77-22804 Filed 8-5-77;8:45 am]

[Docket No. PRM-50-22]

PUBLIC INTEREST RESEARCH GROUP, ET AL

Filing of Petition for Rulemaking

Notice is hereby given that William B. Schultz, Esquire, and John Abbotts, Esquire, have filed with the Nuclear Regulatory Commission a petition for rulemaking dated July 5, 1977, on behalf of the Public Interest Research Group (PIRG), Community Action Research Group (CARG), Critical Mass Energy Project, Environmental Action, Inc., and New York Public Interest Research Group (NY PIRG).

The petitioners request the Commission to initiate rulemaking to promulgate regulations for nuclear power plant decommissioning which would require plant operators to post bonds, to be held in escrow, prior to each plant's operation, to insure that funds will be available for proper and adequate isolation of radioactive material upon each plant's decommissioning. The petitioners state that the regulations should also require that nuclear power plants already in operation establish plans and immediately post bonds, to be held in escrow, to insure proper decommissioning.

The petitioners state that a formula should be established for setting an adequate bond to cover the costs of guarding and/or disposing of decommissioned power reactors, both for reactors which have been licensed and for those which will be licensed in the future, and that the Commission should establish general procedures to be followed in isolating radioactive components from decommissioned reactors.

The petitioners state that at the end of its useful life, a nuclear power reactor and associated structures are contaminated with radioactive isotopes that take thousands of years to decay and which will require several millions of dollars to isolate. It is the view of petitioners that the proposed regulations would insure that the power companies which operate reactors, and not future generations, bear the cost of decommissioning. The petitioners contend also that since decommissioning will not occur until after the 40-year operating license has expired, and may require substantial capital expenses for hundreds of years thereafter, companies which are now financially stable may not have the capacity to pay decommissioning and guardianship costs when necessary.

A copy of the petition for rule making is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Branch by October 7, 1977.

Dated at Washington, D.C., this 3d day of August 1977.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-22717 Filed 8-5-77;8:45 am]

[Docket Nos. 50-443, 50-444; Construction Permit Nos. CPPR-135, CPPR-136]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL. (SEABROOK STATION, UNITS 1 AND 2)

Order Reinstating Certain Construction Activities

Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, (the Act), and Title 10, Chapter 1, Code of Federal Regulations, Parts 2 and 50, and pursuant to the Memorandum and Order of the Atomic Safety Licensing and Appeal Board (ALAB-423) dated July 26, 1977, it is hereby ordered that Construction Permit No. CPPR-135 and Construction Permit No. CPPR-136 issued on July 7, 1976 to Public Service Company of New Hampshire, et. al., for Seabrook Station, Units 1 and 2, and suspended effective 6 p.m. (e.d.t.) on April 8, 1977, be reinstated in full as of 12:01 a.m., August 1, 1977.

Date of Issuance: July 29, 1977.

For The Nuclear Regulatory Commission.

HAROLD R. DENTON,
Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc.77-22525 Filed 8-5-77;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.115, Revision 1, "Protection Against Low-Trajectory Turbine Missiles," describes methods acceptable to the NRC staff for protecting essential systems against potential low-trajectory missiles in the event of a gross turbine failure. The regulatory guide addresses protection by means of turbine orientation and placement or by barriers. It is recognized that there are other methods of demonstrating adequate protection from potential turbine missile damage. Such alternatives, if proposed by applicants, will be reviewed by the staff and approved if found acceptable. This guide was revised as the result of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed, or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, Washington, D.C. 20555, attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 1st day of August 1977.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.77-22715 Filed 8-5-77;8:45 am]

SAFEGUARDS CONTINGENCY PLANS AND UPGRADED SAFEGUARDS FOR STRATEGIC SPECIAL NUCLEAR MATERIAL

Public Meetings

Notice is hereby given that the staff of the Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Contingency Planning Branch, will meet with those fuel-cycle licensees and their transportation agents who will be required by the proposed rule published for comment on May 19, 1977 (42 FR 25744) to submit safeguards contingency plans. The meeting will be held August 23 and 24, 1977, from 9 a.m. to 5 p.m., at the facilities of the Defense Industrial Security Institute, which are located at the Defense General Supply Center near Chester, Virginia.

On July 5, 1977, a proposed rule to require upgraded physical protection for highly enriched uranium and plutonium in NRC licensed activities was published for comment (42 FR 34310). This proposed rulemaking is part of an orderly strengthening of safeguards announced by the Commission in its memorandum and order issued January 21, 1977 (42 FR 5150). Appropriate members of NRC staff will meet with fuel-cycle licensees and their transportation agents concerning the proposed rule to upgrade safe-

guards on August 25, 1977, from 9 a.m. to 3 p.m. This meeting will also be held at the facilities of the Defense Industrial Security Institute near Chester, Virginia.

Although the primary purpose of the meetings is to give additional information to affected licensees and transportation agents as to implementation of the proposed rules, attendance is open to the interested public but limited to the space available. Persons desiring to attend either of the meetings should inform T. F. Carter, Jr., Chief, Contingency Planning Branch, Division of Safeguards, phone: 301–427–4191, before August 15, 1977, so that appropriate arrangements can be made for their attendance. Members of the public may be permitted to make oral statements in connection with the subject of either meeting, time and circumstances permitting. Statements would be limited to one per public attendee at either meeting, not to exceed 15 minutes in delivery. No participation by a member of the public need be permitted other than the making of a statement by that person. NRC staff need not respond at the meetings to any statement made by a member of the public other than to acknowledge the statement.

Dated at Silver Spring, Md., this 29th day of July, 1977.

For the Nuclear Regulatory Commission.

CLIFFORD V. SMITH, Jr.,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc.77–22716 Filed 8–5–77;8:45 am]

[Docket No. 50–346]

TOLEDO EDISON CO., AND CLEVELAND ELECTRIC ILLUMINATING CO.

Davis-Besse Nuclear Power Station, Unit No. 1; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and the Cleveland Electric Illuminating Company, for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment removes a condition which stipulated the amount of time allowed from date of issuance of the operating license for completing the installation of the gaseous radwaste treatment system oxygen monitors.

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 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) Amendment No. 5 to License No. NPF–3, and (2) the Commission's related Safety Evaluation supporting Amendment No. 5 to License No. NPF–3. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452. 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 Project Management.

Dated at Bethesda, Md., this 21 day of July 1977.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc.77–22713 Filed 8–5–77;8:45 am]

TOLEDO EDISON CO., ET AL.

Oral Argument

In the Matter of the Toledo Edison Company and the Cleveland Electric Illuminating Company, (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), Docket Nos. 50–346A, 50–500A, 50–501A. The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50–440A, 50–441A.

Notice is hereby given that, in accordance with the Appeal Board's order of July 27, 1977, oral argument on the appeals from the Licensing Board's January 6, 1977 initial decision in this antitrust proceeding is calendared for 10 a.m. on Tuesday, September 20, 1977, in the Nuclear Regulatory Commission's Public Hearing Room, 5th floor, East-West Towers, 4350 East West Highway, Bethesda, Maryland.

For the Atomic Safety and Licensing Appeal Board.

Dated: July 27, 1977.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.77–22527 Filed 8–5–77;8:45 am]

[Dockets Nos. 50–280, 50–281]

VIRGINIA ELECTRIC AND POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 32 and 31 to Facility Operating Licenses Nos. DPR–32 and DPR–37, issued to Virginia Electric & Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Stations, Units Nos. 1 and 2 (the facilities) located in Surry County, Virginia. The amendments are effective as of the date of issuance.

These amendments permit a brief outage period for the Boron Injection Tank recirculation flow path, while the reactors are operating, during which time the flow path may be serviced or repaired.

The application for the amendments 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 amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated March 23, 1977, (2) Amendments Nos. 32 and 31 to Licenses Nos. DPR–32 and DPR–37, 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, NW., Washington, D.C. and at the Swem Library, College of William and Mary, Williamsburg, Virginia. 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 Operating Reactors.

Dated at Bethesda, Md., this 26th day of July 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77–22714 Filed 8–5–77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on August 2, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202–395–4529), or from the reviewer listed.

NEW FORMS

ENVIRONMENTAL PROTECTION AGENCY

Laboratory Performance Evaluation, annually, water analysis labs providing data for EPA, Ellett, C. A., 395–5867.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

A Survey of Occupational Employment in Nuclear energy, Activities, 1977, ERDA–601, other (see SF–83), establishments with nuclear activities, Strasser, A., 395–5867.

VETERANS ADMINISTRATION

Request for Identifying Information Re Veterans Loan Records, FL 26–626, on occasion, correspondents, Lowry, R. L., 395–3772.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration:
- Chlorates and Perchlorates, DIB–9003, single time, producers of chlorates and perchlorates, C. Louis Kincannon, 395–3211.
- Crystal Growth, DIB–9005, single time, crystal growers, C. Louis Kincannon, 395–3211.
- Polypropylene Resins, DIB–9006, single time, producers of polypropylene resins, C. Louis Kincannon, 395–3211.
- Personnel Problems at On-Site Locations in Communist Countries; Personnel Problems in Representation Offices in Communist Countries, DIB–6035P, DIB–6036P, single time, U.S. companies who have sent Personnel to on-site locations. Lowry, R. L., 395–3772.

REVISIONS

DEPARTMENT OF COMMERCE

Economic Development Administration:
- Petition by a Firm for Certification of Eligibility to Apply for Adjustment, Assistance, ED–435, on occasion, import-impacted firms, Lowry, R. L., 395–3772.
- Local Public Works Application, ED–101LPW, on occasion, local and state governments; Indian Tribes, Lowry, R. L., 395–3772.
- Local Public Works Application Supplement, ED–101LPW–S, on occasion, local and state governments; Indian Tribes, Lowry, R. L., 395–3772.

EXTENSIONS

U.S. CIVIL SERVICE COMMISSION

Change Form—Recognitions and agreements, CSC 913–B, on occasion, government agencies, Marsha Traynham, 395–4529.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Claim for Reimbursement (Child Care Program), FNS–82, monthly, Institution administered by FNS, Human Resources Division, 395–3532.

Statistical Reporting Service:
- Potato Stocks Quality Survey, annually, potato growers, Marsha Traynham, 395–4529.
- Monthly Cold Storage Survey, monthly, refrigerated warehouses, Marsha Traynham, 395–4529.

Food and Nutrition Service, Regulations for the National School Lunch Program, on occasion, State agencies and school food authorities, Human Resources Division, 395–3532.

Statistical Reporting Service, Survey of Vegetables for Processing, other (see SF–83), vegetable processors, Marsha Traynham, 395–4529.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis, Follow-Up Schedule of Expenditures Abroad for Property Plant, and Equipment, BE 133 B, annually, Corporations having foreign affiliates, Marsha Traynham, 395–4529.

Economic Development Administration, Application for Technical Assistance Report Through Government Staff or by Private Contract, ED–302, on occasion, EDA qualified applicants, Lowry, R. L., 395–3772.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit:
- Application for Project Mortgage Insurance, FHA–2013, on occasion, all multifamily sponsors, Housing, Veterans, and
- Mortgagees Application for Property Appraisal and Commitment, etc., FHA–2800, on occasion, FHA approved lending institutions, Human Resources Division, 395–3532.

VELMA BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77–22916 Filed 8–5–77;8:45 am]

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period July 11, 1977 through July 22, 1977 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF AGRICULTURE

System names:

(1) Office of Operations Personnel File.

(2) Parking applications.

(3) Secretary's Controlled Correspondence.

Report Date. June 30, 1977.

Point-of-Contact:

Mr. Douglas S. Wood, U.S. Department of Agriculture, Room 2321–S, Washington, D.C. 20250.

Summary. The three systems are administrative records to be used in the office of operations.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

System Name. Transfer of U.S. Students in Foreign Medical Schools to U.S. Schools.

Report Date. July 8, 1977.

Point-of-Contact:

Phillip C. Spiller, Privacy Act Coordinator, Health Resources Administration, Room 9A07, Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20857.

Summary. This system is intended to implement the Health Professions Educational Assistance Act of 1977 by assisting U.S. citizens in foreign medical schools who wish to transfer to U.S. schools.

DEPARTMENT OF DEFENSE

System Name. Boston Equal Employment Opportunity (EEO) Skills Bank.

Report Date. July 11, 1977.

Point-of-Contact:

Mr. William Cavaney, Executive Secretary, Defense Privacy Board, Room 5H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20314.

Summary. The proposed system will establish a skills bank to provide guidance and assistance toward applying for jobs offering upward mobility opportunities.

NATIONAL SCIENCE FOUNDATION

System Name. Visiting Women Scientists Roster.

Report Date. July 12, 1977.

Point-of-Contact:

Mr. Herman G. Fleming, NSF Privacy Act Officer, National Science Foundation, Washington, D.C. 20550.

Summary. Purpose of the system is to maintain a list of women scientists to visit high schools and encourage young women to consider careers in science and technology.

DEPARTMENT OF THE INTERIOR

System Names:

(1) National Water Data Exchange Water Data Sources Directory.

(2) National Water Data Exchange User Accounting System.

Report Date. July 13, 1977.

Point-of-Contact:

Mr. Warren Dahlstrom, U.S. Department of the Interior, Washington, D.C. 20240.

Summary. The two systems will assist users of water data in the location, identification, and acquisition of needed data, and refer requester of data to the most expedient organization or individuals.

UNITED STATES INTERNATIONAL TRADE COMMISSION

System Name. Proposed Amendments to Financial Disclosure Regulations for Commission Employees.

Report Date. July 20, 1977.

Point-of-Contact:

Rhond Roth, General Counsel's office, U.S. International Trade Commission, Washington, D.C. 20436.

Summary. The proposal will increase and change the number and kind of individuals in the system of records who must submit statements of employment and financial interest.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System Names:

(1) The 1978 Survey of Disabled and Nondisabled (Statistics).

(2) Curricula Vitae of Consultants to the National Center for Health Statistics.

Report Date. July 18, 1977.

Point-of-Contact:

Mr. John D. Young, Assistant Secretary for Management and Budget, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Summary. The first system will evaluate the public's knowledge of government disability programs; the second will list potential consultants to assist National Center for Health Statistics.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-22696 Filed 8-5-77;8:45 am]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

ADVISORY GROUP ON WHITE HOUSE INFORMATION SYSTEMS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Advisory Group on White House Information Systems.

DATE: August 24 and 25, 1977.

TIME: 9 a.m. to 5:30 p.m.

PLACE: Room 308, Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C.

TYPE OF MEETING: Open, subject to space limitations. Those wishing to attend must call the contact person below at least 48 hours in advance of the meeting.

CONTACT PERSON:

Dr. Joel A. Snow, Advisory Group Executive Secretary, Office of Science and Technology Policy, Executive Office of the President, Washington, D.C. 20500; Telephone 202-395-3153.

PURPOSE OF ADVISORY GROUP: The Office of Science and Technology Policy, in accordance with the statutory mandate to advise the President and to analyze and interpret significant developments and trends in science and technology, will be identifying the information systems needs and the impact of technological advances in information and data handling as these might support the decision processes of the White House and the Executive Office of the President. The work of the Advisory Group will be based upon inputs from the relevant departments and earlier work carried out by other organizations in the Executive Branch including the Reorganization Team.

AGENDA: 9 a.m. to 5:30 p.m.—This first (organizational) panel meeting will include presentations on history and background of EOP information needs by EOP staff members; and panel discussions of these presentations, possible issues and alternatives, definition of study agenda and priorities, and future meeting agenda.

The Committee Management Secretariat, OMB, has waived the requirement of 15 days publication of notice of determination in the FEDERAL REGISTER prior to the groups' establishment.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc.77-22703 Filed 8-5-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0280]

A B SMALL BUSINESS INVESTMENT COMPANY, INC.

Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that AB Small Business Investment Company, Inc. (AB), Schoolhouse Road, Cheshire, Connecticut 06410, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application pursuant to § 107.1004 of the Regulations governing small business investment companies (SBIC) (13 CFR 107.1004)), for approval of a conflict of interest transaction.

AB desires to provide financing in the amount of $100,000 to Mr. Joseph Stasiak for the purpose of enabling that individual to purchase 100 percent of the stock of Cooper's Supermarket (Cooper's), Vista, New York, from Bozzuto's, Inc. (Bozzuto's), in order to operate Cooper's as his own business enterprise. Cooper's is an asset which was acquired by Bozzuto's several years ago in payment of its debts to Bozzuto's. Since this acquisition, the supermarket has been operated by Bozzuto's under the managership of Mr. Stasiak.

In accordance with the definition of the term "Associate of a Licensee," set forth ulnder § 107.3 of the Small Business Administration's (SBA) Regulations, Bozzuto's is an Associate of AB through its ownership of 100 percent of AB's outstanding common shares. Mr. Stasiak is also an Associate of AB due to his position as the manager of Cooper's for Bozzuto's.

Pursuant to the provisions of §§ 107.-1004 and 107.1301 of SBA Regulations, these affiliations require A B to obtain an exemption from §§ 107.1004(b)(5) and 107.1001(g), respectively, in order to provide the necessary financing to Mr. Stasiak.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit written comments to SBA on the proposed financing. Any such comments should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by A B in a newspaper of general circulation in Vista, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: July 29, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-22632 Filed 8-5-77;8:45 am]

[SBLC No. 0006]

ALLIED LENDING CORP.

Issuance of Small Business Lending Corporation Participation Agreement

On October 18, 1976, a notice was published in the FEDERAL REGISTER (41 FR 45923) stating that an application had been filed by Allied Lending Corp., Washington, D.C. 20006, with the Small Business Administration (SBA), pursuant to section 120.4(b) of the Regulations governing loan policy and participation (13 CFR 120.4 1977) or a participation agreement as a "Subsection (b) Lender" or small business lending company (SBLC).

Interested parties were given until close of business November 2, 1976, to submit their comments to SBA. Allied also published a similar notice in a newspaper of general circulation. No comments were received.

Notice is hereby given that, pursuant to section 120.4(b) of the regulations, after giving consideration to the application and all other pertinent information SBA had issued, June 14, 1977, Small Business Lending Company Participation Agreement No. 0006 to Allied Lending Corp. to operate as an SBLC in SBA Regions III and IV.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans.)

Dated: July 29, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-22629 Filed 8-5-77;8:45 am]

[License No. 03-03-0127]

AMERICAN VENTURE CAPITAL COMPANY

Issuance of Small Business Investment Company License

On March 18, 1977, a Notice was published in the FEDERAL REGISTER (42 FR 15161) stating that an application had been filed by American Venture Capital Company, Suite 200, Axe Wood West, Skippack Pike and Butler Pike, Ambler, Pennsylvania 19002, with the Small Business Administration (SBA), pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1977)) for a license as a small business investment company (SBIC).

Interested parties were given until the close of business March 28, 1977, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issue License No. 03-03-0127 to American Venture Capital Company to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, the Small Business Investment Companies.)

Dated: August 2, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-22789 Filed 8-5-77;8:45 am]

[Declaration of Disaster Loan Area No. 1351]

NEW YORK

Declaration of Disaster Loan Area

Park Avenue between 111th and 116th Streets in East Harlem, New York County, New York City, N.Y., constitutes a disaster area because of damage resulting from a fire which occurred on July 4, 1977. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on September 26, 1977, and for economic injury until the close of business on April 28, 1978, at:

Small Business Administration, District Office, 26 Federal Plaza, Room 3100, New York, N.Y. 10007.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 29, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-22628 Filed 8-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

EXEMPTION APPLICATIONS

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Operations of the Materials Transportation Bureau has received the applications described herein.

DATES: Comments by September 6, 1977, Addressed to: Section of Dockets, Office of Hazardous Materials Operations, Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION:

Complete copies of the applications are available for inspection and copying at the Public Docket Room, Office of Hazardous Materials Operations, Department of Transportation, Room 6500, Trans Point Building, 2100 Second Street, SW., Washington, D.C.

Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1. Motor vehicle, 2. Rail freight, 3. Cargo vessel, 4. Cargo-only aircraft, 5. Passenger-carrying aircraft.

New exemptions

Application No.	Applicant	Regulation(s) affected	Nature of application
7804-N	Igloo Corp., Houston, Tex	49 CFR 178.35a	To manufacture, mark and sell inside polyethylene containers, similar to DOT Specification 2SL, for shipment of certain hazardous materials. (Modes 1, 2, and 3.)
7805-N	Dow Chemical U.S.A., Freeport, Tex.	49 CFR 173.119	To authorize shipment of a flammable liquid in non-DOT portable tanks. Modes 1 and 3.)
7807-N	U.S. Environmental Protection Agency, Washington, D.C.	49 CFR 173.119	To authorize shipment of gasoline in non-DOT belly tanks and fuel containers. (Mode 1.)
7808-N	Whitmire Research Laboratories Inc., St. Louis, Mo.	49 CFR 173.34(d)(1), Note 1	To authorize shipment of certain nonflammable compressed gases in DOT 39 aluminum cylinders without safety relief devices. (Modes 1, 2, and 4.)
7809-N	U.S. Rubber Reclaiming Co., Vicksburg, Miss.	49 CFR 173.201	To authorize shipment of ground rubber in non-DOT specification polyethylene bags. (Modes 1 and 2.)
7811-N	Burdick & Jackson, Laboratories Inc., Muskegon, Mich.	49 CFR 178.210	To authorize handholes in DOT 12A fiberboard boxes authorized for flammable and corrosive liquids. (Modes 1, 2, 3, and 4.)
7812-N	Capel Klang, South San Francisco, Calif.	49 CFR 172.202(b)	To authorize use of shipping papers with a further description juxtaposed between the shipping name and hazard class. (Mode 1.)
7813-N	Lithium Corporation of America, Gastonia, N.C.	49 CFR 173.245b(a)(5)	To authorize shipment of lithium hydro-oxide monohydrate in 65 gal capacity DOT 21C fiber drums net weight not over 550 lb. (Modes 1, 2, and 3.)
7814-N	U.S. Department of Defense, Washington, D.C.	49 CFR 176.3(a), 176.76(a)(1)	To authorize transportation by cargo vessel, privately owned motor vehicles equipped with a charged cylinder tire inflator not overpacked. (Mode 3.)
7815-N	Miller Transporters Inc., Jackson, Miss.	49 CFR 173.119(m)	To authorize transportation of acrylonitrile in MC 305 and MC 306 tank motor vehicles. (Mode 1.)
7817-N	Agfa-Gevaert Inc., Teterboro, N.J.	49 CFR 172.202	To authorize use of shipping papers which do not show the hazard classification for certain n.o.s. descriptors. (Modes 1, 2, 3, 4 and 5.)
7818-N	Asiatic Petroleum Corp., New York, N.Y.	49 CFR 173.264(b)(4)	To authorize shipment of anhydrous hydrofluoric acid in non-DOT portable tanks (Modes 1, 2 and 3.)
7819-N	Hugonnet, S.A., Paris, France	49 CFR 173.119(a)(b), 173.245, 173.247, 173.272, 173.294, 173.346, 173.347, 173.348, 173.349, 173.361, 173.362(a).	To authorize shipment of flammable, corrosive, and Class B poisonous liquids in non-DOT portable tanks. (Modes 1, 2 and 3.)
7820-N	....do	49 CFR 173.32(a)(2), 173.119, 173.125, 172.128(a), 173.131(a)(1), 173.132(a)(1), 173.245(a), 173.346.	To authorize shipment of certain flammable, corrosive, and poison B liquids in non-DOT specification portable tanks. (Modes 1, 2 and 3.)
7821-N	Linden Chlorine Products, Inc., Cranford, N.J.	49 CFR 173.314	To authorize shipment of anhydrous hydrogen chloride in DOT 105A600W tank cars. (Mode 2.)

This notice of receipt of applications for new exemptions published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on August 1, 1977.

J. R. GROTHE,
Chief, Exemptions Branch, Office of Hazardous Materials Operations.

[FR Doc.77-22604 Filed 8-5-77;8:45 am]

EXEMPTION APPLICATIONS

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal of Exemption or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Operations of the Materials Transportation Bureau has received the applications described herein. Normally, the modes of transportation would be identified and the nature of application would be described, as in past publications. However, this notice is abbreviated to expedite docketing and public notice. These applications have been separated from the new applications for exemptions to facilitate processing applications awaiting disposition.

DATES: Comments by August 25, 1977, addressed to: Section of Dockets, Office of Hazardous Materials Operations, Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Complete copies of the applications are available for inspection and copying at the Public Docket Room, Office of Hazardous Materials Operations, Department of Transportation, Room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Application No.	Applicant	Renewal of special permit or exemption
3305-X	Reichhold Chemicals, Inc., Austin, Tex.	3305
3744-X	MC/B Manufacturing Chemists, Norwood, Ohio.	3744
4239-X	Fenwal Incorporated, Ashland, Mass.	4239
6517-X	Amos B. Metz, Woodland, Calif.	6517
6712-X	Air Products and Chemicals, Allentown, Pa.	6712
6932-X	Fauvet-Girel, Paris, France	6932
7005-X	Phillips Petroleum Co., Bartlesville, Okla.	7005
7010-X	Great Lakes Chemical Corp., Alexandria, Va.	7010
7010-X	Dow Chemical Co., Midland, Mich.	7010
7082-X	Igloo Corp., Houston, Tex.	7082
7418-X	Seatrain Lines, Inc., Weehawken, N.J.	7418
7434-X	Natico, Inc., Chicago, Ill.	7434
7440-X	Roux Laboratories, Inc., Jacksonville, Fla.	7440
7446-X	Kaiser Aluminum & Chemical Corp., Erie, Pa.	7446
7470-X	Hooker Chemicals & Plastics Corp., Niagara Falls, N.Y.	7470
7489-X	Micor Company, Inc., Milwaukee, Wis.	7489
7810-X	Allied Chemical Corp., Morristown, N.J.	7810
6554-P	Kiefer McNeil Division, McNeil Corp., Medina, Ohio.	6554
6614-P	Georgia-Pacific Corp., Montebello, Calif.	6614
7792-P	Vistron Corp., Cleveland, Ohio.	7792-N

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on August 1, 1977.

J. R. GROTHE,
Chief, Exemptions Branch, Office of Hazardous Materials Operations.

[FR Doc.77-22605 Filed 8-5-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Dept. Order No. 150-87]

COMMISSIONER OF INTERNAL REVENUE

Authority to Undertake Certain Tax Audits and Checks and to Furnish Tax Return Information Related Thereto to the Assistant Secretary (Administration) and Others

In accordance with the authority vested in me as Secretary of the Treasury, including 26 U.S.C. 7602, 26 U.S.C. 6103(c) and (g)(2), Reorganization Plan No. 26 of 1950, Executive Order No. 11222, 31 CFR Part O, and for the purpose of promoting public confidence in the Department of the Treasury and its administration of the Federal tax system, it is hereby ordered that:

1. Introduction.—The Commissioner of Internal Revenue shall conduct tax audits, tax checks and income tax filing record checks as provided for by this Order.

2. Definitions.—As used in this Order, the term:

(a) "Income tax filing record check" means a search by IRS of its records to verify that a tax return has been filed with it for the immediately preceding year.

(b) "Tax Audit" means a review by IRS to determine the correct Federal income tax liability of an individual for the immediately preceding two years.

(c) "Tax Check" means a search by IRS of its records to determine:

(1) Whether the individual has filed returns with respect to Federal income taxes for the immediately preceding three years;

(2) Whether there has been a failure to pay any tax within 10 days after notice and demand, or whether there has been assessed a penalty under the Internal Revenue Code of 1954, as amended, for negligence in the current year or immediately preceding three years;

(3) Whether there is a record of an investigation for possible criminal offenses under the internal revenue laws, and the results of any such investigation; and

(4) Whether there is a record of a civil penalty assessed, or proposed for assessment, under the Internal Revenue Code of 1954, as amended, for fraud.

3. Tax Audits.—(a) Prior to the nomination by the President of a person to a position in the Department or an international financial institution, the Commissioner, upon request therefor as provided in section 6(b) of this Order, shall cause a tax audit to be performed.

(b) Prior to the appointment by the Secretary (or as soon thereafter as practicable) of a person to a position:

(1) Of a confidential or policy determining character (Schedule C or Noncareer Executive Assignment) with the Department at Grades GS-14 through 18, inclusive, or Executive Schedule Levels V and IV, or similar position on other pay systems compensated at comparable rates, or

(2) With an international financial institution,

the Commissioner, upon request therefor as provided in section 6(b) of this Order, shall cause a tax audit to be performed.

(c) Promptly after the effective date of this Order, the Commissioner, upon request therefor as provided in section 6(b) of this Order, shall cause a tax audit to be performed with respect to each person who, prior to this Order being issued, has entered on duty in a position described in subsection (a) or (b) of this section.

4. Tax Checks.—(a) On an annual basis, and as close to the anniversary date of the appointment to the position as is practicable, the Commissioner, upon request therefor as provided in section 6(b) of this Order, shall cause a tax check with respect to the immediately preceding year to be performed with respect to each person who then continues to serve in a position described in section 3 of this Order.

(b) Prior to effectuation of a personnel action assigning a person to any category of positions as specified below, the Commissioner, upon request therefor as provided in section 6(b) of this Order, shall cause a tax check to be performed with respect to each person selected:

(1) By the President or the Secretary or his designees to a position described in section 3 of this Order;

(2) For initial entry into any position at any grade from GS-14 through 18, inclusive, or Executive Schedule Levels V and IV, or similar positions in other pay systems compensated at comparable rates; and

(3) For initial appointment as an expert; consultant, or advisory committee member.

5. Income Tax Filing Record Checks.—Prior to a person entering on duty in a position by appointment or promotion from within the Department and on an annual basis, as close to the anniversary date of the appointment to a position as is practicable, the Commissioner, upon request therefor as provided in section 6(b) of this Order, shall cause an income tax filing record check to be performed with respect to each person who then continues to serve in a position described in section 4(b)(2) or (3) of this Order.

6. Procedure.—(a) The Assistant Secretary (Administration), or his designee, shall request each person subject to a tax audit or tax check (or both) under this Order to execute an appropriate form providing the information neces-

sary to identify the person and locate his or her tax records and authorizing the disclosure of tax return information as provided in this Order. The original of the executed form shall remain on file with the Assistant Secretary (Administration), or his designee. A copy of the executed form shall accompany each request to the Commissioner for a tax audit or tax check. If the person declines to execute the form, the tax audit or tax check (or both) shall nevertheless be performed as specified in this Order based on such information as is available from other sources.

(b) The Commissioner shall cause a tax audit or check (or both), as appropriate under this Order, to be made upon receipt of a request therefor from the Assistant Secretary (Administration), or his designee.

(c) Upon completion of such tax audit or check (or both), the results shall be forwarded (if an appropriate disclosure authorization has been executed), for information purposes, to the Assistant Secretary (Administration), or his designees; or as requested; or to IRS officers. This shall be done in a manner consistent with sections 7 and 8 of this Order.

(d) In the case of income tax filing record checks, a list of the names and social security numbers of those persons for whom such checks are to be made shall be furnished to the Commissioner, or his designee, on a staggered basis throughout the year by the Assistant Secretary (Administration), or his designee. Upon receiving these lists, the Commissioner shall cause, as soon as is practicable, a tax filing record check to be made on each person listed.

(e) Upon completion of such income tax filing record checks, the results shall be forwarded to IRS officers for appropriate tax administration enforcement action, if warranted, in accordance with section 8 of this Order.

7. Disclosure—To the extent permitted by the executed disclosure authorization, the Commissioner, or his designee, shall furnish the results of a tax audit or tax check in summary form to the Assistant Secretary (Administration), or his designee. The underlying documentation including audit reports, tax returns and return information shall also be furnished to the Assistant Secretary (Administration), or his designee, when specifically requested in writing by the Assistant Secretary (Administration). Any or all of the same information shall similarly be furnished directly to:

(1) The President,

(2) Representatives of the Executive Office of the President,

(3) The Secretary, or

(4) The Deputy Secretary,

when the Commissioner is requested to do so, in writing, by the Assistant Secretary (Administration). The Assistant Secretary (Administration) may also provide this information, on his own initiative, to any of the above persons or other Treasury officers who have a need to know such information, such as those exercising personnel administration functions in the various Bureaus or Offices of the Department.

8. Non-Disclosure.—In any instance in which a tax audit or tax check has been performed by the Internal Revenue Service, and no individually signed disclosure authorization has been provided, and in the case of income tax filing record checks, the results of such tax audit or tax check or income tax filing record checks shall not be disclosed under this Order to anyone not employed by the Internal Revenue Service, but such results shall be furnished to appropriate officials of the Internal Revenue Service for such tax administration enforcement action as is warranted.

9. Circumstances Warranting Immediate Disclosure.—The Commissioner shall on his own initiative furnish to the Assistant Secretary (Administration), immediately following the event, the information that a civil penalty for fraud has been assessed, or is proposed for assessment, or an investigation for a possible criminal offense under the internal revenue laws has been commenced or completed with respect to any Treasury officer, employee, consultant, advisory committee member, or other person serving in the Department or an international financial institution and described in section 3 or 4 of this Order, who has provided a written disclosure authorization under section 6(a) of this Order. Such information shall not be furnished under this Order with respect to a person who has not provided an individually signed disclosure authorization.

10. Confidentiality.—It is the policy of the Department of the Treasury to make every effort to protect the privacy of all taxpayers, including its own officers and employees. Accordingly, disclosures under this Order shall be kept to the minimum necessary to promote public confidence in the Department and the administration of the Federal tax system.

11. Effect on Other Regulations and Programs.—(a) Notwithstanding any other provisions of this Order:

(1) The Internal Revenue Service shall conduct and review tax audits, checks and income tax filing record checks in accordance with this Order with regard to its employees and those in the Office of Chief Counsel, IRS, at Grades GS–15 and below; but the results of such audits, checks, and income tax filing record checks shall not be forwarded to the Assistant Secretary (Administration), except as provided for by section 9 of this Order. Each employee of the Internal Revenue Service or Office of Chief Counsel, who would otherwise be subject to a tax audit or tax check (or both) under the provisions of this Order, shall be asked to execute an appropriate disclosure authorization so that tax return information may be provided to persons authorized to receive it under section 7 of this Order.

(2) Information forwarded to the Assistant Secretary (Administration), with respect to Internal Revenue Service officers and those in the Office of Chief Counsel, at Grades GS–16 and above, will, after the review process, be returned to the Commissioner or Chief Counsel, as appropriate, for safekeeping.

(3) All disclosure authorizations executed by employees or officers of the Internal Revenue Service or Office of Chief Counsel will remain on file with the Commissioner, or his designee, or the Chief Counsel, or his designee, as appropriate.

(b) In addition, nothing in this Order precludes the Internal Revenue Service, or other Services, Bureaus or Offices of the Department which administer Federal tax or revenue laws, from adopting, with respect to their officers and employees, more stringent provisions than are provided for in sections 3, 4 and 5 of this Order, as may be allowed by law.

(c) The requirements of this Order are in addition to any other audit procedures administered by the Internal Revenue Service and applicable to all taxpayers generally. Nothing in this Order is intended to affect, in any way, the process by which the Internal Revenue Service selects returns for audit under the usual procedures applicable to all taxpayers.

(d) Nothing in this Order affects the authority of those Treasury officers, in individual Bureaus or Offices of the Department, who exercise personnel administration functions.

12. Supersession.—This Order supersedes those provisions of Administrative Circular No. 189 (Revised) which are inconsistent herewith.

13. Effective Date.—This Order is effective July 29, 1977.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc.77-22682 Filed 8-5-77;8:45 am]

Office of the Secretary

[Supplement to Dept. Circular Public Debt Series—No. 17–77]

TREASURY NOTES OF SERIES H–1980

Announcement of Interest Rate

AUGUST 3, 1977.

The Secretary of the Treasury announced on August 2, 1977, that the interest rate on the notes described in Department Circular—Public Debt Series No. 17–77, dated July 28, 1977, will be 6¾ percent per annum. Accordingly, the notes are hereby redesignated 6¾ percent Treasury Notes of Series H–1980. Interest on the notes will be payable at the rate of 6¾ percent per annum.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.77-22729 Filed 8-5-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 453]

ASSIGNMENT OF HEARINGS

AUGUST 3, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 121644 (Sub-No. 2), S & W Freight Lines, Inc., now being assigned September 12, 1977 (2 weeks), at Memphis, Tenn., in a hearing room to be later designated.

MC 100666 (Sub-No. 343), Melton Truck Lines, Inc., and MC 115162 (Sub-No. 353), Poole Truck Line, Inc., now being assigned September 21, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 127810 (Sub-No. 3), Sherman & Boddie, Inc., now being assigned September 15, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 134477 (Sub-No. 150), Schanno Transportation, Inc., now being assigned October 11, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 139261 (Sub-No. 6), Buckeye Express, Inc., now being assigned October 11, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142268 (Sub-No. 14), Gorski Bulk Transport, Inc., now being assigned October 11, 1977, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 108053 (Sub-No. 134), Little Audrey's Transportation Co., Inc., now being assigned October 12, 1977 (3 days), at Seattle, Wash., in a hearing room to be later designated.

MC 134068 (Sub-No. 31), Kodiak Refrigerated Lines, Inc., MC 138875 (Sub-No. 53), Shoemaker Trucking Co., MC 138875 (Sub-No. 39), Shoemaker Trucking Co., and MC 138875 (Sub-No. 54), Shoemaker Trucking Co., now being assigned October 17, 1977 (1 week), at Seattle, Wash., in a hearing room to be later designated.

MC 107107 (Sub-No. 452), Alterman Transport Lines, Inc., now being assigned for continued hearing on October 4, 1977 (4 days), at Miami, Fla., in a hearing room to be later designated.

MC 11207 (Sub-No. 389), Deaton, Inc., application dismissed.

MC 115730 (Sub-No. 29), the Mickow Corp., now assigned September 21, 1977, at Chicago, Ill., is canceled and application dismissed.

MC 1263 (Sub 25), McCarty Truck Line, Inc.; MC 118142 (Sub 141), M. Bruenger & Co., Inc.; MC 123389 (Sub 33), Crouse Cartage Co.; MC 119765 (Sub 43), Eight Way Xpress, Inc.; MC 133119 (Sub 108), Heyl Truck Lines, Inc.; MC 134134 (Sub 21), Mainliner Motor Express, Inc.; MC 135874 (Sub 66), LTL Perishables, Inc.; MC 139850 (Sub 8), Four Star Transportation, Inc.; MC 139876 (Sub 3), ABC Transit Co., Inc.; MC 22301 (Sub 24), Sioux Transportation Co., Inc.; MC 139999 (Sub 19), Redfeather Fast Freight, Inc.; MC 115180 (Sub 97), Onley Refrigerated Transportation, Inc.; MC 113651 (Sub 205), Indiana Refrigerator Lines, Inc.; MC 2052 (Sub 10), Blair Transfer, Inc., and MC 44989 (Sub 5), Williams Truck Line, Inc., now assigned September 8, 1977, at Omaha, Nebr., and will be held in Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 136168 (Sub 5), Wilson Certified Express, Inc., now assigned September 14, 1977, at Omaha, Nebr., and will be held in Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 114273 (Sub 290), CRST, INC., now assigned September 7, 1977, at Omaha, Nebr., and will be held in Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 142614, Van Rees Trucking, Inc., now assigned September 12, 1977, at Omaha, Nebr., and will be held in Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 142845, David Beneux Produce and Trucking, Inc., now assigned September 13, 1977, at Memphis, Tenn., and will be held in Room 978, Federal Office Building, 167 North Main Street.

MC 100666 (Sub 341), Melton Truck Lines, Inc., now assigned September 12, 1977, at Memphis, Tenn., and will be held in Room 978, Federal Office Building, 167 North Main Street.

MC-C-9684, Carl R. Rieber, Inc. v. Trans-Bridge Lines, Inc., now assigned September 8, 1977, at Memphis, Tenn., and will be held in Room 978, Federal Office Building, 167 North Main Street.

MC 141033, Continental Contract Carrier Corp., now assigned September 7, 1977, at Memphis, Tenn., and will be held in Room 978, Federal Office Building, 167 North Main Street.

No. 36580, oilfield pipe or tubing, Colorado to points in the Southwest, now assigned September 7, 1977, at Dallas, Tex., and will be held in the Tax Court Room, Room 330, U.S. Post Office and Courthouse Building, Bryan and Ervay Streets.

MC 133095 (Sub 130), Texas-Continental Express, Inc., now assigned September 12, Room 5A15-17, Federal Building, 1100 Commerce Street.

MC 139973 (Sub 15), J. H. Ware Trucking, Inc., now assigned September 13, 1977, at Dallas, Tex., and will be held in Room 5A15-17, Federal Building, 1100 Commerce Street.

MC 105045 (Sub 64), R. L. Jeffries Trucking Co., Inc., now assigned September 14, 1977, at Dallas, Tex., and will be held in Room 5A15-17, Federal Building, 1100 Commerce Street.

MC 4405 (Sub 551), Dealers Transit, Inc., now assigned September 15, 1977, at Dallas, Tex., and will be held in Room 5A15-17, Federal Building, 1100 Commerce Street.

MC 142487 (Sub 1), J. & K. K., Inc., now assigned September 7, 1977, at Olympia, Wash., and will be held in the 6th Floor Hearing Room, Highways and License Building, 12th and Capitol Way.

MC-F-12921, Osborne Group, Inc.—Control—Washington-Oregon Lumber Freighters, Inc., now assigned September 19, 1977, at Portland, Oreg., and will be held in Room 103, Pioneer Courthouse, 555 Southwest, Yamhill Street.

MC 138875 (Sub 37), Shoemaker Trucking Co., now assigned September 14, 1977, at Portland, Oreg., and will be held in Room 103, Pioneer Courthouse, 555 Southwest, Yamhill Street.

MC 128631 (Sub 53), Pack Transport, Inc., now assigned September 7, 1977, at Seattle, Wash., and will be held in Room 3086, Federal Building, 915 Second Avenue.

MC 143006, Dorwin Trucking Co., Inc., now assigned September 12, 1977, at Seattle, Wash., and will be held in Room 3086, Federal Building, 915 Second Avenue.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc.77-22758 Filed 8-5-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 3, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

FSA No. 43408—*Joint Water-Rail Container Rates—American President Lines, Ltd.* Filed by American President Lines, Ltd., (No. 26), for itself and interested rail carriers. Rates on general commodities, from Middle East ports west of Karachi and northeast of Aden (excluding Aden and Karachi), to rail stations on the U.S. Atlantic and Gulf Seaboard.

Grounds for relief—Water competition.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc.77-22759 Filed 8-5-77;8:45 am]

[Ex Parte No. MC-101]

INITIAL PROCESSING OF MOTOR CARRIER FINANCE PROCEEDINGS

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental Notice and Policy Statement.

SUMMARY: Supplemental Notice that the Commission will, beginning September 26, 1977, closely scrutinize all tendered applications in motor carrier finance proceedings prior to their being docketed and that it will reject applications found to be incomplete.

DATES: Comments must be received on or before August 26, 1977. The new practices will be instituted, unles modified by subsequent order, on or after September 26, 1977.

ADDRESS: Comments should refer to docket Ex Parte No. MC-101. An original and 11 copies should be submitted to the Section of Finance, Office of Pro-

ceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

G. M. Bober, Section of Finance, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7564.

SUPPLEMENTARY INFORMATION: Notice of this proceeding was originally published in the FEDERAL REGISTER on June 27, 1977, at page 32609. The comment date and compliance date were extended on July 22, 1977, by the entire Commission after consideration of the petition tendered by Wilmer Hill, Chairman of the Committee on Practice and Procedure, Motor Carrier Lawyers Association.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc.77-22794 Filed 8-5-77;8:45 am]

[AB 12 (Sub-No. 56)]

SOUTHERN PACIFIC TRANSPORTATION CO., ABANDONMENT BETWEEN BRENHAM AND GIDDINGS IN WASHINGTON, FAYETTE AND LEE COUNTIES, TEXAS

Notice

JULY 29, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company of its line of railroad between Giddings and Brenham, a distance of 34.92 miles, in Washington, Fayette, and Lee Counties, Texas, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because there are alternative railheads in close proximity to the subject line, and there is an adequate highway network to accommodate a diversion from rail to motor carrier. Consequently, no serious adverse impact to rural and community development will result. In addition, no significant increases in air pollution, fuel consumption, or ambient noise levels will occur.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before September 12, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-22761 Filed 8-5-77;8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409), 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10:30 a.m., August 3, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Dockets 31127 and 31162, domestic general fare increase proposed by all carriers. (Not. No. 7318, BE).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary (202–673–5068).

SUPPLEMENTARY INFORMATION: This case involves a general fare increase, applicable to all carriers nation-wide, scheduled to take effect beginning on August 15, 1977. In the public interest, the Board should decide this case as quickly as possible so that no matter what the outcome might be there will be adequate advance notice to avoid confusion to the carriers, travel agents, and members of the traveling public. Accordingly the following Members have voted that agency business requires that the Board meet on less than seven days' notice:

Chairman Alfred E. Kahn.
Member G. Joseph Minetti.
Member Lee R. West.

Vice Chairman Richard J. O'Melia was not present and did not vote.

[S–1056–77 Filed 8–3–77;5:01 pm]

2

U.S. COMMISSION ON CIVIL RIGHTS.

TIME AND DATE: 9 a.m.–12 p.m.; 2:30–4:30 p.m., Monday, August 15, 1977; 10–11 a.m., 1:30–4 p.m., Tuesday, August 16, 1977.

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public 9 a.m. to 12 p.m., Monday, August 15, 1977:

AGENDA

I. Approval of agenda.
II. Approval of minutes of last meeting.
III. Staff director's report:
(A) Status of funds.
(B) Personnel report.
(C) Correspondence:
(1) Letter from Health, Education, and Welfare Secretary Califano re report on Fort Wayne school desegregation.
(2) Letter from Secretary Califano re age discrimination study.
(3) Letter from Secretary Califano Title I PSFA funds.
(4) Letter from Secretary of Transportation Adams re report on sex discrimination in the United States Code.
(5) Letter from Federal Reserve Board Chairman Burns re letter on Equal Credit Opportunity Act.
IV. Report on civil rights developments in the Rocky Mountain region.
V. Discussion of SAC chairperson conference and SAC reorganization (no written material).
VI. Discussion re Florida SAC recommendations on citizenship requirements for police officers.
VII. Discussion re Texas SAC recommendations on School desegregation in Corpus Christi (no written material).
VIII. Discussion re request for hearing on alleged police abuse in Philadelphia.
IX. Discussion re request for Puerto Rican hearing in Chicago.
X. Discussion re proposed letter to President on universal voter registration.
XI. Discussion of administration of Justice issues.
XII. Approval of design for unemployment and underemployment study.
XIII. Decision on age discrimination hearings.

Portion open to the public 2:30–4:30 p.m., Monday, August 15, 1977.

MATTERS TO BE CONSIDERED: Approval of proposed fiscal year 1979 budget.

Portion open to the public 10–11 a.m., Tuesday, August 16, 1977: Press conference to release the Commission's national media study report.

Portion closed to the public: 1:30–4 p.m., Tuesday, August 16, 1977.

MATTER TO BE CONSIDERED: Review of a draft Commission report on women in poverty.

FOR FURTHER INFORMATION CONTACT:

Barbara Brooks, Public Affairs Unit (202–254–6697).

[S–1059–77 Filed 8–10–77;10:18 am]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 am., August 9, 1977.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be colsed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public: Hedging definition/proposed policy for Commission approval; proposed regulation 1.61; Eastern Rolling Mills, Inc.—Exemption or exclusion from registration as a commodity trading advisor.

Portions closed to the public: Enforcement matter.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey (254–6314).

[S–1055–77 Filed 8–3–77;3:51 pm]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., August 12, 1977.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BS CONSIDERED: Market surveillance meeting.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey (254–6314).

[S–1058–77 Filed 8–4–77;9:33 am]

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Federal Deposit Insurance Corporation met in open session at 4:05 p.m. on August 3, 1977, by telephone conference call, to consider the following matters:

Adoption of a resolution temporarily suspending the prepayment penalty for early withdrawal of time deposits by depositors who have suffered a demonstrable economic loss to property directly related to the flooding occurring on

July 19–20, 1977, throughout seven Pennsylvania counties.

Adoption of a resolution regarding the restructuring of a loan from the Corporation to European-American Bank & Trust Co., New York, N.Y., in connection with the bank's purchase of assets and assumption of liabilities of Franklin National Bank, New York, N.Y. (in liquidation).

In calling the meeting, the Board of Directors determined that Corporation business required consideration of the matter on less than seven days' notice to the public and that no earlier notice of the meeting was possible.

Dated: August 3, 1977.

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

[S-1062-77 Filed 8-4-77;11:10 am]

6

AUGUST 3, 1977.

FEDERAL POWER COMMISSION.

TIME AND DATE: August 10, 1977, 10 a.m.

PLACE: 825 North Capitol Street.

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 (202–275–4166).

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 8552B.

This is a list of the 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 Office of Public Information, Room 1000.

GAS AGENDA, 7653RD MEETING, AUGUST 10, 1977, REGULAR MEETING, PART I—10 A.M.

G–1. Docket No. RP77–103, Algonquin Gas Transmission Co.
G–2. Docket No. RP76–38, Arizona Electric Power Cooperative, Inc., and the City of Willcox, Ariz. v. El Paso Natural Gas Co.
G–3. Docket No. RP74–50–5, Florida Hydrocarbons Co. and Florida Gas Transmission Co.
G–4. Docket No. RI77–98, infill wells drilled pursuant to New Mexico Oil Conservation Commission Order No. R–1670–T.
G–5. Docket No. RI77–48, Elms Brothers & Co.
G–6. Docket No. RI77–87. North American Royalties, Inc.
G–7. Docket No. RI77–35. Dixie Well Service, Inc.
G–8. Docket No. CI76–14, San Salvador Development Co., Inc., et al.
G–9. Docket No. CI74–319, James M. Forgotson, operator, Gulf Coast Venture.
G–10. Docket No. CI77–306, Transco Exploration Co.
G–11. Docket No. CP76–511, Natural Gas Pipeline Co. of America.
G–12. Docket No. CP76–517, Natural Gas Pipeline Co. of America.
G–13. Docket Nos. CP77–21, et al., Tennessee Gas Pipeline Co., Columbia Gulf Transmission Co. and Southern Natural Gas Co.; Docket No. CI76–730, Mobil Oil Corp.; Docket No. CI77–120, Texaco, Inc.
G–14. Docket No. CP77–216, Distrigas of Massachusetts Corp.; Docket Nos. CP77–217 and CP77–218, Distrigas Corp.
G–15. Docket No. CP77–440, Sea Robin Pipeline Co.
G–16. Docket No. CP77–449, Natural Gas Pipeline Co. of America.
G–17. Docket No. CP77–397, Northern Natural Gas Co.
G–18. Docket No. CP77–362, Texas Gas Transmission Corp.
G–19. Docket No. CP76–246, Northern Natural Gas Co.
G–20. Docket No. CP77–489, Southern Natural Gas Co., Natural Gas Pipeline Co. of America, Columbia Gulf Transmission Co. and United Gas Pipeline Co.
G–21. Docket No. G–3072, Exxon Corp.

MISCELLANEOUS AGENDA, 7653RD MEETING, AUGUST 10, 1977, REGULAR MEETING, PART I

M–1. Docket No. R–406, purchased gas adjustment provisions in natural gas pipeline companies' FPC gas tariff.
M–2. Docket No. RM74–16, natural gas companies annual report of proved domestic gas reserves: FPC Form No. 40.
M–3. Docket No. RM75–19, end use rate schedules.
M–4. Docket No. RM76–13, the need for site selection and facility operation criteria for liquefied natural gas importation and storage terminals.
M–5. Docket No. EM76–15, regulation of small producers.
M–6. Docket No. RM76–19, application for small producer certificate and annual statement for independent producers holding small producer certificates—new Form No. 151.
M–7. Docket No. RM76–28, corporate and financial report for class C and class D natural gas companies—new FPC Form No. 155.
M–8. Docket No. RM76–33, corporate and financial reports for class A and class B natural gas companies—New Form Nos. 154A and 154M.
M–9. Docket No. RM77–12,petitions for proposed rulemaking for interim rate for sales of natural gas for 1977-78 biennium; petition for rulemaking for gas dedicated on or after January 1, 1973, for period 1977-78.
M–10. Docket No. RM77–13, national rates for jurisdictional sales of natural gas from wells commenced on or after January 1, 1977, for the period January 1, 1977, to December 31, 1978.
M–11. Docket No. RM77–14, the initial research and development program of gas research institute, payments by interstate pipeline companies for the funding thereof, and corresponding pipeline rate adjustments.
M–12. Docket No. RM77–16, petition for declaration of a pricing policy with respect to jurisdictional Alaskan natural gas.
M–13. Docket No. RM77–20, petition for notice of proposed rulemaking concerning pipeline transportation.
M–14. Docket No. RM77–21, revisions to uniform systems of accounts for natural gas companies to provide accounts for base load liquefied natural gas terminaling and processing facilities.
M–15. Docket No. RM77–23, revision in section 157 of title 18 of the code of federal regulations to provide for the exemption from certificate regulation of certain sales of natural gas flared prior to coal mining operations.
M–16. Docket No. RM74–17, amendments to schedule pages 106, 219, and 221 of FPC annual report Forms No. 1 and No. 2 to extend reporting of security holders and voting power disclosure and debt holder disclosure.
M–17. Docket No. RM75–7, amendments to schedule pages 104 and 105 of annual report Forms No. 1 and No. 2 to extend reporting of business interests and securities held by company officers and directors.
M–18. Docket No. RM75–12, revisions to FPC annual report Forms No. 1 and No. 2 to obtain future financing requirements.
M–19. Docket No. RM75–20, revisions to certain schedule pages of FPC annual report Forms No. 1 and No. 2 to obtain additional information on non-utility affiliates.
M–20. Docket No. RM75–27, amendments to uniform system of accounts for public utilities and licensees and for natural gas companies (classes A, B, C, and D) to provide for the determination of rate for computing the allowance for funds used during construction and revisions of certain schedule pages of FPC reports.
M–21. Docket No. RM76–37, statement of general policy concerning access to the regulatory information system (RIS) data bases, standard reports on microform or data on magnetic tape by other than FPC personnel.
M–22. Docket No. RM76–38, certification of compliance with approved State's coastal zone management program in applications for authorization to import or export natural gas and certification or license applications, where applicable.
M–23. Docket No. RM77–1, just and reasonable rate of return on equity for natural gas pipeline companies and public utilities.
M–24. Docket No. RM77–3, implementation of section 382(b) and 382 (c) of the energy policy and Conservation Act of 1975.
M–25. Docket No. RM77–17, amendments to uniform systems of accounts for public utilities and licenses (all classes), to regulations prescribing FPC Form No. 9 and to FPC Form Nos. 1, 1–F, 2, 2–A, and 9, concerning account 264, amortization reserve —Federal.
M–26. Docket No. RM77–22, petition for rulemaking on rate of interest on amounts subject to refund.

GAS AGENDA, 7653RD MEETING, AUGUST 10, 1977, REGULAR MEETING, PART II

CG–1. Docket No. RP72–157 (PGA No. 77–9), Consolidated Gas Supply Corp.
CG–2. Docket No. RP72–157 (PGA No. 77–8b), Consolidated Gas Supply Corp.
CG–3. Docket No. RP73–8 (PGA Nos. 77–9c and 77–10b). North Penn Gas Co.
CG–4. Docket No. RP72–133 (PGA No. 77–2a). United Gas Pipe Line Co.
CG–5. Docket No. RP77–96, Natural Gas Pipeline Co. of America.
CG–6. Docket Nos. G–2017, et al., Texas Gas Transmission Corp.
CG–7. Phillips Petroleum Co., FPC gas rate schedule No. 600; Texas Pacific Oil Co., Inc., FPC gas rate schedule No. 121.
CG–8. Docket No. CP77–39, Iowa Power and Light Co.
CG–9. Docket No. CP77–322, United Gas Pipe Line Co. and Southern Natural Gas Co.
CG–10. Docket No. CP77–122, Sea Robin Pipeline Co.

CG–11. Docket No. CP77–408, El Paso Natural Gas Co.; Docket No. CP77–411, Southwest Gas Corp.
CG–12. Docket Nos. CP77–369 and CP77–370, Transcontinental Gas Pipe Line Corp.
CG–13. Docket No. CP77–347, Western Gas Interstate Co.
CG–14. Docket No. CP77–339, Columbia Gas Transmission Corp.
CG–15. Docket No. CP77–230, Florida Gas Transmission Co., United Gas Pipe Line Co.
CG–16. Docket No. CP77–109, Texas Eastern Transmission Corp.
CG–17. Docket No. CP76–403, Texas Gas Transmission Corp.; Docket No. CP77–426, Transcontinental Gas Pipe Line Corp.
CG–18. Docket No. CP76–410, El Paso Natural Gas Co.
CG–19. Docket No. CP77–249, Trunkline Gas Co.
CG–20. Docket No. CP75–326, Transcontinental Gas Pipe Line Corp.
CG–21. Docket No. CI76–407, Columbia Gas Development Corp.; Docket No. CP76–132, Transcontinental Gas Pipe Line Corp.
CG–22. Docket No. CP77–11, Northern Natural Gas Co.; Docket No. CP77–17, Trunkline Gas Co., Panhandle Eastern Pipe Line Co.; Docket No. CP77–92, Trunkline Gas Co., Panhandle Eastern Pipe Line Co.; Docket No. CP77–54, Northern Natural Gas Co.
CG–23. Docket No. CP70–188, Texas Gas Transmission Corp.
CG–24. Docket No. CP77–427, Transcontinental Gas Pipe Line Corp.; Docket No. CP77–480, Panhandle Eastern Pipe Line Co., Trunkline Gas Co.
CG–25. Docket No. CP76–363, Transcontinental Gas Pipe Line Corp.
CG–26. Docket No. CP63–177, Texas Eastern Transmission Corp., Tennessee Gas Pipeline Co., a division of Tenneco, Inc.
CG–27. Docket Nos. CP67–381, CP68–166, and CP69–71, Tennessee Gas Pipeline Co., a division of Tenneco, Inc.
CG–28. Docket No. CP73–43, Mountain Fuel Supply Co.
CG–29. Docket No. CP74–126, El Paso Natural Gas Co.; Docket No. CP74–162, Natural Gas Pipeline Co. of America.
CG–30. Docket No. CP74–213, Michigan Wisconsin Pipe Line Co.
CG–31. Docket No. CP75–301, Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., and Michigan Wisconsin Pipe Line Co.
CG–32. Docket No. CP76–362, Texas Eastern Transmission Corp., Transcontinental Gas Pipeline Corp., Northern Natural Gas Co.
CG–33. Docket No. CP76–492, National Fuel Gas Supply Corp. and National Fuel Gas Storage Corp.
CG–34. Docket No. CP76–492, National Fuel Gas Supply Corp., National Gas Storage Corp.

KENNETH F. PLUMB,
Secretary.

[S–1057 Filed 8–3–77;5:05 pm]

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, August 10, and Thursday, August 11, 1977.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Wednesday, August 10—9 a.m.—Review of fiscal year 1979 budget; 1:30 p.m.—Review of fiscal year 1979 budget (continued). Thursday, August 11—9 a.m.—Review of fiscal year 1979 budget (continued); 1:30 p.m.—Review of fiscal year 1979 budget (continued).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee (202–634–1410).

[S–1061–77 Filed 8–4–77;10:30 am]

8

U.S. PAROLE COMMISSION.

National Commissioners (the three Commissioners presently maintaining offices at Washington, D.C., headquarters).

TIME AND DATE: Wednesday, August 17, 1977, 9:30 a.m.

PLACE: Room 338, Federal Home Loan Bank Board Building, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to 5 U.S.C. 552b(c)(10) and 28 CFR 16.205(b)(1).

MATTERS TO BE CONSIDERED: Referrals from regional directors of approximately 20 cases in which inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst (202–724–3094).

[S–1060–77 Filed 8–4–77;10:18 am]

federal register

MONDAY, AUGUST 8, 1977

PART II

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION REQUESTS

FEDERAL ELECTION COMMISSION

[Notice 1977-42, AOR's 1977-34, 1977-35, and 1977-36]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Requests 1977-34 through 1977-36 have been made public at the Commission. Copies of these requests were made available on August 2, 1977. These copies of the advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of General Counsel, Advisory Opinion Section at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1977-34: Is the political committee of a corporation required to allow its administrative and executive personnel who make political contributions by payroll deduction to earmark those contributions as a matter of right, instead of privilege, if the committee also accepts contributions by check from administrative and executive personnel and allows earmarking of those contributions? Requested by Carolyn F. Shain, Secretary of the Nationwide Political Participation Committee, Columbus, Ohio.

AOR 1977-35: May a Federal officeholder accept an honorarium from an organization before which the officeholder makes an appearance, subsequently return the honorarium to the paying organization, and thereby avoid having the original payment considered as an honorarium "accepted" for purposes of the limits on honoraria in 2 U.S.C. 441i? Requested by Senator Bob Dole, U.S. Senate, Washington, D.C.

AOR 1977-36: Do the Federal preemption provisions of 2 U.S.C. 453 and 108.7 of the Commission's regulations permit a registered political committee supporting Federal candidates to disregard a State statute providing that copies of statements and reports (required pursuant to the Federal Election Campaign Act of 1971, as amended) be filed in a different manner and with additional State offices than as specified in 2 U.S.C. 439? Requested by R. G. Leith, Secretary-Treasurer of the Western Air Line Political Action Committee, Los Angeles, California.

Date: August 2, 1977.

THOMAS E. HARRIS,
Chairman for the Federal Election Commission.

[FR Doc. 77-22705 Filed 8-5-77;8:45 am]

[Notice 1977-43, AOR 1977-37]

ADVISORY OPINION REQUEST

Pursuant to 2 U.S.C. § 437f(c) and the procedures reflected in Part 112 of the Commission's regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Request 1977-37 has been made public at the Commission. Copies of AOR 1977-37 were made available on August 4, 1977. These copies of the advisory opinion request were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street NW., Washington, D.C. 20463.

Interested persons may submit written comments on this advisory opinion request on or before September 7, 1977. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons who desire additional time in which to respond to this advisory opinion request should request in writing an extension of the comment period. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

The Commission today publishes in its entirety an advisory opinion request of the National Education Association. The subject matter of the request concerns the legality under the Federal Election Campaign Act of 1971, as amended, and regulations prescribed by the Federal Election Commission under that Act, of a proposal by the NEA Political Action Committee to raise political contributions from NEA members. The advisory opinion request, designated as AOR 1977-37, is reprinted below in the form submitted to the Commission by counsel for NEA-PAC:

JULY 25, 1977.

Re Request for an Advisory Opinion on Behalf of the National Education Association's Political Action Committee.

FEDERAL ELECTION COMMISSION,
Office of General Counsel, Advisory Opinion Section, 1325 K Street NW., Washington, D.C.

Gentlemen: This letter constitutes a request for an advisory opinion from the Federal Election Commission concerning the permissibility under Section 441b(b)(3)(A) of the Federal Election Campaign Act (hereinafter the "Act"), and Section 114.5 of the Commission's Rules and Regulations (hereinafter the "Rules"), of two systems which the National Education Association (hereinafter the "NEA") proposes to use in order to collect from its members voluntary contributions to the NEA's Political Action Committee (hereinafter the "NEA-PAC"). I make this request pursuant to Section 112.1 of the Rules as the authorized agent for the NEA-PAC.

STRUCTURE AND OPERATION OF THE NEA

The NEA is a nationwide employee organization with a current membership of approximately 1.7 million. Over 98% of the NEA's members are public school teachers, supervisors, and administrators, who come within the Active membership category. Although other membership categories are available for retired teachers, educational secretaries, paraprofessionals, etc., Active members are the only ones relevant for present purposes. Accordingly, the term "member" will be used hereinafter to mean Active members.

The NEA has an annual membership structure. An individual who joins agrees to pay dues for an entire membership year, which runs from September 1 through the following August 31. Although the NEA re-enrolls the majority of its members each year, there are certain states in which membership is "continuous." This means that a person's membership automatically is renewed from membership year to membership year, absent withdrawal.

Membership in the NEA is voluntary and in no case is it required as a condition either for obtaining or maintaining employment. In certain jurisdictions where an NEA affiliate is recognized as the exclusive collective bargaining representative, however, a nonmember of the NEA may be required by statute or contract to pay a fee to the NEA to offset his or her fair share of the costs of such representation.

The NEA has as state affiliates an association in every state, the District of Columbia and Puerto Rico, and representing educators employed in the Overseas Dependent Schools operated by the United States Department of Defense. It also has some 10,500 local affiliates, each of which is comprised essentially of employees within a particular school district. Although the NEA's State and local affiliates are required to meet certain minimum standards in order to retain their NEA affiliation, they are separately organized, self-governing entities.

The annual membership dues of the NEA presently are $30, and will increase to $35 as of the 1978-79 membership year. These dues are collected by the NEA's local affiliates and transmitted to the state affiliates, which in turn forward them to the NEA.

REVERSE CHECKOFF

The majority of NEA members prefer to pay their dues by means of payroll deduction and the local affiliates attempt to secure an appropriate checkoff system through agreement with local boards of education. NEA members are asked, in addition, to make a voluntary contribution of $1 each year to the NEA-PAC and, again, most members prefer to have this contribution handled through payroll deduction. Many boards of education are mechanically unable, or at least unwilling, to deduct different amounts for different employees (i.e., $31 for NEA members who wish to contribute $1 to the NEA-PAC; $30 for NEA members who do not wish to make such a contribution). In order to deal with this problem, the NEA has in the past set the amount of the deduction in these school districts at $31 for all NEA members and those who did not wish to make a contribution to the NEA-PAC could request a rebate. The $1 generally was paid to them within a few weeks after the receipt of the request, and in all cases well before an equivalent amount had in fact

been deducted. This system is referred to hereinafter as a "reverse checkoff."

The Commission has taken the position that the reverse checkoff is unlawful. Specifically, it contends that the contribution constitutes "a condition of membership" in violation of section 441b(b)(3)(A) of the Act. (See, e.g., transcript of Commission testimony before the Committee on House Administration, March 16, 1977, pp. 69–70, 73, 77;[1] * * *) The NEA proposes to make certain modifications in its collection system which we believe are sufficient to cure the alleged statutory defect. These modifications are described below.

PROPOSED COLLECTION SYSTEMS

SYSTEM 1

In its March 16, 1977 testimony before the Committee on House Administration, the Commission (represented by Vice-Chairman Harris, Commissioner Springer, General Counsel Oldaker, and Assistant General Counsel Swillinger) indicated that the reverse checkoff could be utilized if it was one of several means by which an individual might become an NEA member. The right of an individual to pay directly his or her membership dues in cash winthout a NEA–PAC contribution was conceded to be an acceptable alternative (T. at 72–73, 85–86, 94). Using this testimony as a point of departure, the NEA has developed and submits to the Commission for its approval, the following system for collecting from its members political contributions to the NEA–PAC:

1. *New NEA Members and NEA Members Who Are Re-enrolled Annually.* Except as otherwise provided in Paragraph 4 below, an individual who otherwise is eligible for NEA membership may use any one of the following methods to become an NEA member:

(a) The individual may at the time of NEA enrollment pay the full amount of his or her NEA annual dues in cash or by check. An individual who chooses this method may be asked at the time of enrollment to make a voluntary contribution to the NEA–PAC, and will be informed that such a contribution is not required as a condition of NEA membership. Unless an individual affirmatively agrees to make a NEA–PAC contribution, it will not be included in the amount which he or she must pay to become an NEA member. Any subsequent solicitation during the membership year will be made in the same manner. This method is referred to hereinafter as the "annual cash payment option."

(b) The individual may pay his or her NEA annual dues in several installments (the precise number of which may vary from state to state but will in no case be less than three) in cash or by check. An individual who chooses this method may be asked at the time of his or her enrollment to make a voluntary contribution to the NEA–PAC and will be informed that such a contribution is not required as a condition of NEA membership. Unless an individual affirmatively agrees to make a NEA–PAC contribution, it will not be included in the amount which he or she must pay to become an NEA member. Any subsequent solicitation during the membership year will be made in the same manner. This method is referred to hereinafter as the "installment cash payment option."

(c) The individual may at the time of NEA enrollment agree to pay his or her NEA annual dues by means of payroll deduction. In order to avoid checkoffs of different amounts for individuals employed in the same school district, the total amount checked off will include, in addition to dues, an amount identified as a voluntary contribution to the NEA–PAC. The individual will be informed of his or her right not to make such a contribution, and that, upon written request, an amount equal to the NEA–PAC contribution promptly will be paid to him or her. This system is referred to hereinafter as the "reverse checkoff."

Prior to being enrolled as an NEA member, an individual will be informed that the foregoing methods are available to him or her, and afforded an opportunity to choose the method that he or she prefers.

2. *NEA Members Who Have "Continuous" Membership.* Except as otherwise provided in Paragraph 4 below, any current NEA member who has "continuous" membership (i.e., whose membership continues from membership year to membership year, absent withdrawal) will be informed prior to each membership year that he or she may use any of the methods set forth in Paragraph 1 above to pay his or her NEA annual dues.

3. *Individuals Required to Pay a Service Fee to the NEA.* Except as otherwise provided in Paragraph 4 below, a non-member of the NEA who is required by statute or contract to pay a fee to the NEA to offset the costs of collective bargaining representation (hereinafter a "service fee"), may use any of the methods set forth in Paragraph 1 above to pay his or her service fee.

4. *Individuals Required to Use a Checkoff.* If an individual is required by statute or contract to pay membership dues or a service fee to the NEA by means of payroll deduction, thereby precluding use of the annual or installment cash payment option, a contribution to the NEA–PAC will not be included in the checkoff unless the individual affirmatively indicates that such a contribution may be included.

5. *Choice of Method.* The NEA–PAC will not accept any contributions obtained through a reverse checkoff unless the individual has been informed of the methods set forth in Paragraph 1 above and afforded an opportunity to choose the method that he or she prefers.

The foregoing is precisely the type of collection system which the Commission sanctioned in its March 16 testimony before the Congressional Committee, but the Commission did include one caveat. It stated that the alternative means by which an individual might become an NEA member could not be so burdensome as to the illusory (T. at 85–86, 94). Although we find it difficult to believe that three payments per year of some $12 each could be deemed burdensome, particularly when the average annual teacher's salary is in excess of $13,000, we would be willing, if necessary, to increase the number of installments and reduce even further the amount an individual would have to pay at any one time under the installment cash payment option.

In this letter we have made frequent reference to the position taken by the Commission before the Congressional Committee, and our reasons for doing so should be understood.

The reverse checkoff was the focal point of the March 16 hearing and the statements made by the Commission regarding the circumstances under which it could be used were a major factor in the Committee's decision not to recommend to the full House of Representatives disapproval of the Commission's proposed rules and regulations. In short, the hearing constitutes a form of "legislative history" which must properly be read as indicating a congressional intent to construe the Act as permitting the type of collection system proposed above.

A second, and more important reason is that the position taken by the Commission at the Committee hearing is legally sound. Since under the collection system proposed above an individual could avoid even the minimal burden of requesting a rebate simply by paying his or her NEA dues in cash or by check, a NEA–PAC contribution could in no sense be a "condition of membership." The deduction of the $1 (which in any event is offset by the rebate) is at most a condition of utilizing payroll deduction to pay NEA dues, and payroll deduction simply is an administrative convenience that the NEA is under no obligation to provide.

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Nor does the proposed system run afoul of the Act's prohibition against involuntary contributions. In its March 15 testimony before the Congressional Committee the Commission essentially conceded that the reverse checkoff, even without the cash payment options, was not subject to attack on voluntariness grounds (T. at 69–70, 97, 99). The availability of the options would, if anything, reduce rather than increase vulnerability in this regard.

SYSTEM 2

Unlike most other employee organizations, the NEA has an annual membership structure. An individual who joins the NEA agrees to pay dues for a full membership year, which runs from September 1 through the following August 31. Under the reverse checkoff as previously operated, the total amount checked off included, in addition to the NEA annual dues, an additional $1 which was identified as a voluntary contribution to the NEA–PAC. If an individual chose not to make such a contribution, the full $1 was paid to him or her promptly and in most cases within a few months after the start of the membership year (although at the time of payment only about $.20–.30 actually had been checked off).

In contending that the reverse checkoff violates the "condition of membership" prohibition in the Act, the Commission has cited the fact that the individual does not receive the $1 until after at least some part of the NEA–PAC deduction has been made. In order to deal with this objection, and still meet the requirement of many boards of education that the same amount be deducted for all members employed in the school district, the NEA requests Commission approval of the following collection system:

The total amount deducted would continue to include $1 in addition to NEA annual dues. And, again as before, the individual would be informed of his or her right not to make such a contribution to the NEA–PAC and that, upon request, an amount equal to the NEA–PAC contribution would be paid to him or her. However, unlike the prior system, an individual who did not wish to make a NEA–PAC contribution would be paid the entire $1 in cash or by check at the time of enrollment, or where there is "continuous" membership, before the beginning of the membership year.

Since the individual would receive the entire $1 prior to the commencement of his or her membership for the year in question, there would in effect be a pre-membership reimbursement system, and the subsequent deduction could in no sense constitute a condition of membership. Moreover, these dollars would never even become involved in the NEA–PAC financing mechanism. The NEA, rather than the NEA–PAC, would pay the $1 to the prospective member and the amount deducted would be forwarded directly to the NEA as reimbursement. In essence, the NEA would be advancing $1 to the individual prior to his or her becoming a member and the individual would be paying the NEA back on a monthly basis throughout the membership year.

[1] The letter "T" followed by numbers refers to pages in the transcript of the March 16 hearing.

CONCLUSION

The NEA submits that political contributions obtained through either of the two collection systems described above would not violate the "condition of membership" prohibition or any other provision of the Act, and respectfully requests an advisory opinion from the Commission to this effect.

Sincerely,

ROBERT H. CHANIN,
Deputy Executive Director and General Counsel.

Dated: August 3, 1977.

THOMAS E. HARRIS,
Chairman for the Federal Election Commission.

[FR Doc.11-22875 Filed 8-5-77;8:45 am]

federal register

MONDAY, AUGUST 8, 1977

PART III

DEPARTMENT OF STATE

■

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United States

DEPARTMENT OF STATE

[Public Notice 560]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Applications for fishing during 1977 have been received from the Government of the Union of the Soviet Socialist Republics, and are published herewith.

Dated: July 28, 1977.

LARRY L. SNEAD,
Acting Director, Office of Fisheries Affairs.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: Jan.-Dec. 1977

Application No. UR-77-0136
For Use of Issuing Office

State: USSR

1. Name of Vessel: Stolin
2. Vessel No./Hull No.: PE 0222 Registration No.: 123
3. Name and Address of Owner / Name and Address of Charterer
   Name: Vladivostokskaia Baza Tralovogo i Refrigeratornogo Flota
   Address: 243, Kalinina st., Vladivostok, USSR
   Cable Address: Vladivostok Baza Tralovogo i Refrigeratornogo Flota
4. Homeport and State of Registry: Vladivostok, USSR
5. Type of Vessel: Refrigerating Seiner/Trawler
6. Tonnage (Gross) 686,0 (Net) 216,0
7. Length 49.1 M. 8. Breadth 10.47 M. 9. Draft 5.1 M.
10. Horsepower 1.320 shp. 11. Maximum Speed 13.0 kt.
11. Propulsion: Diesel (1), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built: 1976
14. Number and Nationality of Personnel: 25 USSR
    Officers 15 Crew 10 Other (Specify)
15. Communications: VHF-FM (1), AM/SSB, Voice (1), Telegraphy (2),
    Other
    International Radio Call Sign: U I T N
    Radio Frequencies Monitored: 500 kcs, 156.8 mcs
    Other Working Frequencies: 454, 480, 2115, 3023.5, 4200 and 5321 kcs; 156.3 mcs
    Schedule: B - 8
16. Navigation Equipment: Loran C ( ), Loran A (1), Omega ( ), Decca ( ), Navsat ( ), Radar (1), Fathometer (2),
    Other: 1 Direction Finder, 1 Sonar, 1 Autopilot and 1 Gyrocompass
17. Cargo Capacity (MT)

Salted Fish		Freezer	1 Refrigerated Fish
Fresh Fish		Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	
Other	Refrigerated Fish 80		

18. Cargo Space

Number	Name
1	Refrigerated Fish

19. Processing Equipment (Indicate daily capacity,MT)
    Ice Plant 2 pcs 12,5 MT
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
Bering Sea	1977	Pollock		Midwater Trawl
Aleutian and Washington California Area	-"-	Hake and other finfishes		-"-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: Jan.-Dec. 1977

Application No. U-R-77-0134 For Use of Issuing Office

State: USSR

1. Name of Vessel SELETS

2. Vessel No.: Hull No. PE-0221 Registration No. 116

3. Name and Address of Owner
Vladivostokskaia Baza
Name Tralovogo i Refrigerator-nogo Flota
Address 243, Kalinina st.,
Vladivostok, USSR
Cable Address Vladivostok
Baza Tralovogo i Refrigera-tornogo Flota

Name and Address of Charterer

4. Homeport and State of Registry: Vladivostok, USSR

5. Type of Vessel Refrigerating Seiner/Trawler

6. Tonnage (Gross) 686.0 (Net) 216.0

7. Length 49.1 M. 8. Breadth 10.47 M. 9. Draft 5.1 M.

10. Horsepower 1,320 shp. 11. Maximum Speed 13.0 kt.

11. Propulsion: Diesel (1), Steam ( ), Diesel/Electric ( ),
Other

13. Date Built 1976

14. Number and Nationality of Personnel 25 USSR
Officers 15 Crew 10 Other (Specify)

15. Communications: VHF-FM (1), AM/SSB, Voice (1), Telegraphy (2),
Other
International Radio Call Sign UIKM
Radio Frequencies Monitored 500 kcs, 156.8 mcs
Other Working Frequencies 454,480,2115,3023,5, 4200 and 6321 kc 156.3 mcs
Schedule H-8

16. Navigation Equipment: Loran C ( ), Loran A (1), Omega ( ),
Decca ( ), Navsat ( ), Radar (1), Tathometer (2),
Other 1 Direction Finder, 1 Sonar, 1 Autopilot and 1 Gyrocompass

17. Cargo Capacity (MT)

Salted Fish
Fresh Fish
Frozen Fish
Fish Meal
Other Refrigerated Fish 80

18. Cargo Space

Number	Name
Freezer	1 Refrigerated Fish
Dry Hold	
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity, MT)
Ice Plant 2 pcs 12.5 MT

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
Bering Sea and Aleutian, Washington-California Area	1977	Pollock		Midwater Trawl
	-"-	Hake and other finfishes		- " -

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: Jan.-Dek/1977

Application No. For Use of Issuing Office: UR-77-0135

State: USSR

1. Name of Vessel: SOKOLOVKA

2. Vessel No.: Hull No. PE 0220 Registration No. 115

3. Name and Address of Owner / Name and Address of Charterer

Name: Vladivoskotskaia Baza Tralovogo i Refrigeratornogo Flota

Address: 243, Kalinina st., Vladivostok, USSR

Cable Address: Vladivostok Baza Tralovogo i Refrigeratornogo Flota

4. Homeport and State of Registry: Vladivostok, USSR

5. Type of Vessel: Refrigerating Seiner/Trawler

6. Tonnage (Gross) 686 (Net) 216.0

7. Length 49.1 M. 8. Breadth 10.47 M. 9. Draft 5.1 M.

10. Horsepower 1.320 shp. 11. Maximum Speed 13.0 kt.

11. Propulsion: Diesel (1), Steam ( ), Diesel/Electric ( ),

Other

13. Date Built 1976

14. Number and Nationality of Personnel 25 USSR

Officers 15 Crew 10 Other (Specify)

15. Communications: VHF-FM (1), AM/SSB, Voice ( ), Telegraphy ( ),

Other

International Radio Call Sign UIKL

Radio Frequencies Monitored 500 kcs, 156.8 mcs

Other Working Frequencies 454, 480, 2115, 3023.5, 4200 and 632 kcs; 156.3 mcs

Schedule H-8

16. Navigation Equipment: Loran C ( ), Loran A (1), Omega ( ), Decca ( ), Navsat ( ), Radar (1), Fathometer (2),

Other 1 Direction Finder, 1 Sonar, 1 Autopilot and 1 Gyrocompas

17. Cargo Capacity (MT)

Salted Fish

Fresh Fish

Frozen Fish

Fish Meal

Other Refrigerated Fish 80

18. Cargo Space Number / Name

Freezer 1 Refrigerated Fish

Dry Hold

Tanks

Other

19. Processing Equipment (Indicate daily capacity, MT)

Ice Plant 2 pcs 12,5 MT

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
Bering Sea Aleutian and Washington-California Area	1977	Pollock		Midwater Trawl
	-"-	Hake and other finfishes		- " -

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: Jan.-Dec./1977

Application No. UR-77-0029
For Use of Issuing Office

State: USSR

1. Name of Vessel SURAZH

2. Vessel No.: Hull No. PE-0224 Registration No. 134

3. Name and Address of Owner

Name Tralovogo Refrigeratornogo Flota

Address 243, Kalinina st., Vladivostok, USSR

Cable Address Vladivostok Baza Tralovogo i Refrigerator-nogo Flota

Name and Address of Charterer

4. Homeport and State of Registry: Vladivostok, USSR

5. Type of Vessel Refrigerating Seiner/Trawler

6. Tonnage (Gross) 686.0 (Net) 216.0

7. Length 49.1 M. 8. Breadth 10.47 M. 9. Draft 5.1 M.

10. Horsepower 1.320 shp. 11. Maximum Speed 13.0 kt.

11. Propulsion: Diesel (1), Steam ( ), Diesel/Electric ( ),

Other

13. Date Built 1976

14. Number and Nationality of Personnel 25 USSR

Officers 15 Crew 10 Other (Specify)

15. Communications: VHF-FM (1), AM/SSB, Voice (1), Telegraphy (2),

Other 1

International Radio Call Sign UPGY

Radio Frequencies Monitored 500 kcs, 156.8 mcs

Other Working Frequencies 454, 480, 2115, 3023,5, 4200 and 6321 kcs; 156.3 mcs

Schedule H-8

16. Navigation Equipment: Loran C (1), Loran A ( ), Onega ( ), Decca ( ), Navsat ( ), Radar (1), Fathometer (2),

Other 1 Direction Finder, 1 Sonar, 1 Autopilot and 1 Gyrocompas

17. Cargo Capacity (MT)

Salted Fish

Fresh Fish

Frozen Fish

Fish Meal

Other Refrigerated Fish 80

18. Cargo Space

Number	Name
Freezer	1 Refrigerated Fish
Dry Hold	
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity, MT)

Ice Plant 2 pcs 12.5 MT

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
Bering Sea, Aleutian, and Washington California Area	01.01-12.30/1977	Pollock		Midwater Trawl
	—"—	Hake and other finfishes		

- * -

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: Jan.-Dec./1977

Application No. For Use of Issuing Office: UR-77-0033

State: USSR

1. Name of Vessel: SEBEZH

2. Vessel No.: Hull No. No Registration No. 127

3. Name and Address of Owner
Name: Vladivostokskaia Baza Tralovogo i Refrigeratornogo Flota
Address: 243, Kalinina st.,
Vladivostok, USSR
Cable Address: Vladivostok Baza Tralovogo i Refrigeratornogo Flota

Name and Address of Charterer:

4. Homeport and State of Registry: Vladivostok, USSR

5. Type of Vessel: Refrigerating Seiner /Trawler/

6. Tonnage (Gross) 686,0 (Net) 216,0

7. Length 49.1 M. 8. Breadth 10.47 M. 9. Draft 5.1 M.

10. Horsepower 1.320 shp. 11. Maximum Speed 13.0 kt.

11. Propulsion: Diesel (1), Steam ( ), Diesel/Electric ( ),
Other

13. Date Built 1976

14. Number and Nationality of Personnel 25 USSR
Officers 15 Crew 10 Other (Specify)

15. Communications: VHF-FM (1), AM/SSB, Voice (1), Telegraphy (2),
Other
International Radio Call Sign
Radio Frequencies Monitored 500 kcs, 156.8 mcs
Other Working Frequencies 454, 480, 2115, 3023.5, 4200 and 6321 kcs; 156.3 mcs
Schedule H-8

16. Navigation Equipment: Loran C ( ), Loran A (1), Omega ( ),
Decca ( ), Navsat ( ), Radar (1), Fathometer (2),
Other 1 Direction Finder, 1 Sonar, 1 Autopilot and 1 Gyrocompass

17. Cargo Capacity (MT)

Salted Fish
Fresh Fish
Frozen Fish
Fish Meal
Other Refrigerated Fish 80

18. Cargo Space

Number	Name
Freezer	1 Refrigerated Fish
Dry Hold	
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity, MT)
Ice Plant 2 pcs 12.5 MT

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
Bering Sea, Aleutian, and Washington - California Area	01.01-12.30/1977	Pollock		Midwater Trawl
		Hake and other finfishes		- " -

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

UR-77-0238

Permit Period Applied For: 1977

Application No. UR-77-0238 For Use of Issuing Office

State: USSR

1. Name of Vessel SULAK

2. Vessel No.: Hull No. 0868 Registration No. 708

3. Name and Address of Owner

Name Base of Trawling and Refrigerating Marina

Address VLADIVOSTOK

Kalinin Street 243

Cable Address VLADIVOSTOK 43

Base of Trawling Marina

Name and Address of Charterer

4. Homeport and State of Registry: VLADIVOSTOK, USSR

5. Type of Vessel fish processing base

6. Tonnage (Gross) 18011 (Net) 11076

7. Length 174.31 M. 8. Breadth 24 M. 9. Draft 7.32 M.

10. Horsepower 5500 shp. 11. Maximum Speed 14.3 kt.

11. Propulsion: Diesel (/), Steam (-), Diesel/Electric (-),

Other

13. Date Built 1966

14. Number and Nationality of Personnel 286 USSR

Officers 47 Crew 236 Other (Specify) 3 Hag.Spec.

15. Communications: VHF-FM (2), AM/SSB, Voice (2), Telegraphy 4),

Other

International Radio Call Sign UPTO

Radio Frequencies Monitored 500 kc 1156.8 mc

Other Working Frequencies 454; 480; 2115; 3023.5; 4200; 6321 kc.

Schedule H-24

16. Navigation Equipment: Loran C (1), Loran A (1), Omega (-),

Decca (1), Navsat (-), Radar (2), Fathometer (2),

Other Radio direction finder, gyrocompas

17. Cargo Capacity (MT)

Salted Fish	-
Fresh Fish	-
Frozen Fish	6630
Fish Meal	913
Other	312 fish oil

18. Cargo Space

Number	Name
	Freezer
	Dry Hold
	Tanks
	Other

19. Processing Equipment (Indicate daily capacity,MT)

FREEZER - 4	100
PRESERVES LINE	50
FISHMEAL PLANT	20
FISH DRESSING LINE	40

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
Washington-California area	1977	Hake	Reception and processing of fish from catching Soviet trawlers	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

[FR Doc.77-22630 Filed 8-5-77;8:45 am]

federal register

MONDAY, AUGUST 8, 1977

PART IV



DEPARTMENT OF AGRICULTURE

Soil Conservation Service

■

COMPLIANCE WITH THE NATIONAL ENVIRNOMENTAL POLICY ACT, 1969; USE OF CHANNEL MODIFICATION AS A MEANS OF WATER MANAGEMENT; AND GUIDE FOR ENVIRONMENTAL ASSESSMENT

General Guidelines and Procedures

Title 7—Agriculture

CHAPTER VI—SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER F—SUPPORT ACTIVITIES

PART 650—COMPLIANCE WITH NEPA

General Guidelines

AGENCY: U.S. Department of Agriculture, Soil Conservation Service (SCS).

ACTION: Final rule.

SUMMARY: This revised rule prescribes the general guidelines for SCS's compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)). These revised rules are intended to streamline the NEPA process making the environmental impact statement a more integral part of the decisionmaking process. Sections 650.10 and 650.11 are not being used at present.

EFFECTIVE DATE: August 8, 1977.

FOR FURTHER INFORMATION CONTACT:

R. M. Davis, Administrator, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: On February 8, 1977, the Soil Conservation Service published in the FEDERAL REGISTER (42 FR 7959) proposed revisions of its rules for the preparation of environmental impact statements (EIS). During the 30-day commenting period ten (10) letters of comment were received from four (4) Federal Agencies; four (4) state agencies, one (1) conservation law foundation; and one (1) national newspaper association. All written comments were given consideration in developing the final guidelines. The full text of all comments received is on file and available for public inspection in:

Room 6105, South Agriculture Building, Environmental Services Division, Soil Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20013.

The principal points raised by those submitting written comments and the response of the SCS to each, are as follows:

Comment: It was pointed out that the proposed regulations should be significantly changed to more accurately reflect the goals of NEPA.

Respone: Numerous subsections of 7 CFR Part 650 have been changed. See the response to the other specific comments for a discussion of the changes made. Title 7 CFR Part 650 was prepared using the Council on Environmental Quality (CEQ) Guildelines, 40 CFR Part 1500 as a guide, and adapted to meet the specific requirements of the SCS Federal actions.

Comment: Since SCS provides technical assistance as well as financial assistance, the rationale for limiting the applicability of the regulations should be discussed.

Response: NEPA applies to all of SCS's assistance whether it be financial, technical, or both. However, Part 650, Subpart A, applies only to SCS's implementation of section 102(2)(C) of NEPA for those project-type actions which may lead to a decision of whether or not to prepare an EIS. SCS compliance with NEPA in its nonproject-type Federal assistance programs is or will be addressed in rules published for each program.

Comment: A question was raised concerning conservation districts and local sponsors being local government units.

Response: Conservation districts are created by State statute as subdivisions of State government. Organizations must have authority granted by State statute to install, operate and maintain measures prior to being accepted as sponsors.

Comment: In order to capture the spirit of NEPA, §§ 650.3(d) and 650.8(b)(3) should be reworded to more fully define the environment. Socioeconomic aspects and civil rights impacts were suggested for inclusion.

Response: We agree. Subsections 650.3(d) and 650.8(b)(3) have been modified as suggested.

Comment: A requirement should be added that a minimum of 90-days should elapse after filing a draft EIS with CEQ before administrative action can be taken.

Response: No change has been made relating to the 90-day waiting period. The preparation and review processes used in SCS exceed 90 days after a draft EIS has been made available to the public. The more significant 30-day waiting period after a final EIS has been made available to the public is addressed in § 650.9(d).

Comment: Specific references to laws and statutes other than NEPA should be included. The suggestions included the Endangered Species Act, the Wild and Scenic Rivers Act, the Coastal Zone Management Act, the National Historic Preservation Act, Executive Order 11593, and the Archeological and Historic Preservation Act.

Response: Subsection 650.1 as now worded covers environmentally related activities of other Federal agencies. The SCS implicitly follows laws, executive orders, court orders, and the rules and regulations of other Federal agencies which impact on SCS-assisted actions. Reference to each specific authorization is not repeated in 7 CFR Part 650 to avoid duplication.

Comment: Subsection 650.3(c) should be modified to include measures installed on public lands.

Response: Subsection 650.3(c) has been modified as suggested.

Comment: Subsection 650.4(b) should include the climate and cultural resources. Furthermore, "future uses" should be expanded.

Response: Subsection 650.4(b) has been reworded to reflect "alternative futures." Specific references to climate and cultural resources have not been incorporated. This section is intended to reflect the significant existence or resources present. To identify only a few resources would imply that other equally important resources are not significant.

Comment: Subsection 650.4(c) should be modified to reflect alternative plans ranging from "no development" through "total development."

Response: SCS uses an interdisciplinary environmental assessment and planning proceduce which emphasizes a broad interest in the planning process. Water resource projects are formulated using the Water Resources Council's Principles and Standards as a planning tool (38 FR 24778). Because of the vast differences in resources in different regions of the country, it is not practical to constrain interdisciplinary planners in the alternatives to study. The elements identified in § 650.4 (a) through (d) are planning principles accepted by planners in general. Therefore, no change has been made in this section.

Comment: Subsections 650.4(d) and 650.5 (a) and (b) should be modified so agencies representing various interests can have access not only to the final plan for evaluation, but also to the alternative plans and the scoring mechanism by which the alternatives were ranked to evaluate potential tradeoffs.

Response: SCS uses an interdisciplinary approach in planning and assessing environmental impacts of proposed Federal actions. Other agencies, groups, and individuals with expertise or special interest are invited to participate in the environmental assessment and planning process. Information collected and analyzed is public information. Agencies, groups, and individuals are welcome to review information and urged to participate in the planning process consistent with 7 CFR Part 661.

Comment: Subsection 650.6(c) should be modified to have public notices published in a newspaper for three consecutive weeks prior to a public meeting. Furthermore, § 650.9(a)(3) should be made consistent with § 650.6(c).

Response: Public notices are to be published in a newspaper serving the area where the action is proposed prior to a public meeting or hearing. Where statutes require a longer or different notification procedure, the statutes will be followed. SCS will notify people of impending public action. Subsection 650.9(a)(3) concerns the availability of a draft EIS and a single public announcement is sufficient.

Comment: Section 650.7 places the responsibility upon the responsible Federal official (RFO) for determining whether or not a proposed Federal action is a major action significantly affecting the human environment within the meaning of section 102(2)(C) of NEPA. Specific criteria should be added to clearly define when an EIS is or is not needed.

Response: The intent of § 650.7 is the preparation of an environmental assessment by an interdisciplinary team for each proposed Federal action. Based upon the actual case-by-case assessment, a decision is made by the RFO on the need for an EIS. The decision is based on environmental impacts, accumulated impacts, water quality, effects on cultural resources, social and civil rights impacts.

and other effects likely to result from a proposed federally assisted action. However, § 650.7(a) has been modified to state that major Federal actions involving realignment or increasing channel capacities, and those watershed projects requiring congressional action, after the effective date of these rules, will automatically require the preparation of an EIS. A uniform national criteria covering environmental amenities cannot realistically be made. Individual actions need to be assessed on a case-by-case basis and a determination made concerning impacts upon existing resources. The RFO will counsel with other Federal, State, and local agencies, as well as groups and individuals, prior to making a decision concerning the need for an EIS.

Comment: Subsections 650.7(a) (1) through (5) should be reworded to include concern for lands capable of agricultural production, and for cultural resources as factors to consider in determining the need for an EIS.

Response: We agree. Subsections 650.7 (a) (1) through (5) have been modified as suggested.

Comment: The negative declaration has been eliminated as a NEPA procedure. In its place is a notice of intent which will not be circulated. This should be changed.

Response: We agree. Subsection 650.7 (c) has been modified to require the notice of intent to be prepared, published in the FEDERAL REGISTER, and circulated to interested agencies and individuals when a decision has been made to prepare an EIS. Two new §§ 650.3 (f) and (g) titled Environmental Impact Appraisal and Notice of Intent have been added to define these terms.

Comment: All environmental considerations of a Federal action should be evaluated simultaneously in a single document. It would then be easier to determine the accumulated impacts caused by the proposed Federal action.

Response: We agree with the concept that environmental considerations should be evaluated simultaneously for interrelated proposed actions. Title 7 CFR Part 650 contains attempts to implement this concept.

Comment: Subsection 650.8(b)(6) should be revised to address the need to analyze and describe the cumulative effects of all proposed actions in the area, whether relative to the proposed SCS action or not.

Response: The SCS regulations are intended to include those proposed actions which are similar in nature and those projects whose impacts when accumulated with the impacts resulting from SCS actions would contribute to the effects on the impacted area.

Comment: Subsections 650.8 (a) and (b) appear to be prepared consistent with CEQ's memorandum to heads of agencies dated February 10, 1976, which confirms the concept to reduce the volume of an EIS so that it can be more easily used in the decisionmaking process. The memorandum also contained several recommendations for reducing the volume of the EIS without sacrificing the quality of information presented. We suggest that these recommendations be included in the regulations in order to maintain the quality of the EIS.

Response: We agree. Subsections 650.8 (a) and (b) have been reworded to be more consistent with CEQ's memorandum. The entire revision of Part 650 is designed to streamline the EIS. The ultimate product of the revised guidelines will be a document which contributes significantly to the decisionmaking process.

Comment: Value judgments have been written into the compliance with NEPA guidelines in lieu of making scientific studies and conclusions.

Response: The entire NEPA process involves making an interdisciplinary environmental assessment. Recommendations and conclusions resulting from the environmental assessment form the basis for deciding on the need for an EIS and provide the decision maker with documented facts on environmental impacts discussed in an EIS.

Comment: Subsection 650.9(a) does not require that copies of the EIS be furnished to the Environmental Protection Agency (EPA) for review and comment in accordance with section 309 of the Clean Air Act and section 1500.9(b) of the CEQ Guidelines.

Response: Subsection 650.9(a)(1)(i) states that "Federal agencies who have jurisdiction by law * * *." This includes EPA.

Comment: "Prime" should be deleted from subsection 650.20(c)(7) so that all agricultural land is included.

Response: Agricultural production lost in Federal actions may be a conscious tradeoff made by those responsible for the action. However, prime farmland is a fixed resource which is diminishing at an accelerated rate and should be protected to the fullest extent practicable.

Having considered the comments received, and other relevant information, the Administrator concludes that the proposed rules, with changes, should be adopted as set forth below. Accordingly, Title 7 Chapter VI, Subchapter F, Part 650, Subpart A, and § 650.20 of Subpart B are hereby amended, and will be effective on August 8, 1977.

Dated: August 2, 1977.

(Catalog of Federal Domestic Assistance programs numbered 10.901 and 10.904 National Archives Reference Services.)

B. M. DAVIS,
Administrator,
Soil Conservation Service.

Subpart A—Preparation of Environmental Impact Statements for Project-Type Actions—Guidelines

Sec.

650.1 Purpose.
650.2 Applicability.
650.3 Definition of terms.
650.4 Environmental assessment in the planning process.
650.5 Obtaining information during environmental assessment.
650.6 Public involvement during environmental assessment.
650.7 Criteria for determining whether an EIS is to be prepared.
650.8 EIS format and content.
650.9 EIS distribution and comment.

Subpart B—Related Environmental Concerns

Sec.

650.20 Reviewing and commenting on EIS's prepared by other agencies.

* * * * *

AUTHORITY: 42 U.S.C. 4332(2)(C); Executive Order 11514, 16 U.S.C. 1001–1008; 7 U.S.C. 1010–1011; 16 U.S.C. 590 a–f, q; 7 CFR 2.62.

Subpart A—Preparation of Environmental Impact Statements for Project-Type Actions—Guidelines

§ 650.1 Purpose.

This part prescribes SCS guidelines for the preparation, coordination, and review of environmental impact statements (EIS's) as required by section 102(2)(C) of NEPA of 1969. These guidelines are consistent with Executive Order 11514, dated March 5, 1970, as amended and the CEQ Guidelines for Preparation of Environmental Impact Statements, 40 CFR Part 1500. The assessment of environmental quality in SCS-assisted programs is carried out in harmony with the activities and procedures of those to whom assistance is provided. The SCS Administrator maintains liaison with CEQ. SCS policies and procedures relating to NEPA are coordinated with CEQ. SCS-assisted projects are also coordinated with Federal, State, and local agencies and other concerned individuals and groups to ensure the proper consideration of environmental values.

§ 650.2 Applicability.

(a) This part applies to those land and water resource projects or federally assisted actions for which State and local units of government receive Federal financial assistance from SCS, (7 CFR Parts 620–623 and 640–643). These regulations are effective on the date of publication of the final regulations.

(b) These regulations shall not apply to projects or independent portions of projects for which an environmental assessment has been made and an EIS or negative declaration filed with CEQ in accordance with the previous SCS rules, 7 CFR Part 650 (41 FR 24975) dated June 22, 1976. For those projects the June 22, 1976, guidelines will be utilized until completion.

§ 650.3 Definition of terms.

(a) *Environmental assessment.* The environmental assessment is an inseparable part of the planning process. The environmental assessment provides a range of concise and pertinent environmental data as well as social and economic information to indicate the need for an EIS, resources available, and alternatives for decisionmaking on the use and development of resources.

(b) *Federally assisted actions.* An action which is formulated and carried out by local units of government with financial assistance provided by the SCS. Measures located on nonfederal land are under the jurisdiction and control of the local units of government. Measures located on Federal land are under the jurisdiction and control of the

Federal land managing agency. (See 7 CFR 620.21.)

(c) *Responsible Federal officials.* The SCS Administrator is the responsible Federal official (RFO) for compliance with NEPA regarding proposed legislation, programs, legislative reports, regulations, and program EIS's. SCS State Conservationists (STC's) are the RFO's for complying with the provisions of NEPA in other SCS-assisted actions. When an SCS-assisted major Federal action involves more than one State, the Administrator will designate one STC as the RFO for that action.

(d) *Interdisciplinary planning.* SCS uses an interdisciplinary environmental assessment and planning process in which individuals and groups having different technical expertise jointly assess existing future environmental quality. The interdisciplinary group considers complexity of problems, structure, and function of natural resources, and the economic, social, and other effects of alternative actions. Effective interdisciplinary planning is closely related to public involvement in the planning process.

(e) *Statement of findings.* A statement of findings is a concise written rationale by the RFO regarding implementation of the proposed action. It will briefly describe significant concerns that were encountered in the decisionmaking process. The statement of findings will be prepared on proposed actions requiring an EIS after the 30-day administrative action period has expired following the notice of availability of the final EIS as published in the FEDERAL REGISTER by CEQ. The statement of findings will be signed and dated by the STC.

(f) *Environmental impact appraisal.* For proposed project actions for which it has been determined that an EIS will not be prepared, an environmental impact appraisal (EIA) will be prepared, to document the rationale for not preparing an EIS. The EIA will respond to the five questions in § 650.7(a) (1) through (5). It will be dated and signed by the STC.

(g) *Notice of intent.* A notice of intent is a brief statement inviting public reaction to the decision by the RFO whether or not to prepare an EIS for a major Federal action. The notice of intent will be published in the FEDERAL REGISTER, circulated to interested agencies, groups, individuals, and published in a newspaper(s) serving the area of the proposed action.

(h) *Administrative action.* For purposes of these guidelines, the signing of a statement of findings constitutes administrative action on those actions where an EIS is prepared.

§ 650.4 Environmental assessment in the planning process.

Environmental assessment and initial planning efforts for land and water resource projects are interrelated and commence simultaneously. Procedures for making environmental assessments are contained in SCS's, "Guide for Environmental Assessment," issued in March 1977. This combined effort will utilize an interdisciplinary approach. Factors to be considered in the assessment are dependent on the planning objectives. The environmental assessment continues through the planning process. The interrelated environmental assessment and planning elements are as follows:

(a) Identify the planning objectives and study needs of the sponsoring local organizations. Emphasize that environmental quality objectives are coequal with national economic development objectives.

(b) Inventory and evaluate the resource base giving due consideration to alternative futures. Environmental factors are to be studied consistent with the planning objectives.

(c) Formulate alternative plans and display impacts taking into consideration Floodplain Management (Executive Order 11988) and Protection of Wetlands (Executive Order 11990). Alternatives affecting flood plains or wetlands will be considered only where there is no practicable other way of solving the problem and the proposal includes all practical measures to minimize harm to these resources.

(d) Analyze and compare alternative plans. Alternative plans will reflect environmental considerations as appropriate.

§ 650.5 Obtaining information during environmental assessment.

(a) *Use of available data.* SCS will make use of available reports, plans, and publications which relate to the environmental issues involved.

(b) *Study by SCS.* The SCS will perform surveys and investigations using an interdisciplinary team. Information related to flood plain management and protection of wetlands will be incorporated into the environmental assessment.

(c) *Study by others.* SCS will determine if additional studies are necessary and will enter into contracts or other arrangements with qualified organizations or individuals to produce needed environmental data.

§ 650.6 Public involvement during environmental assessment.

(a) *General considerations for developing public involvement*—(1) *Identification of interested public.* Public involvement begins with the initial steps of the interrelated environmental assessment and planning process. The interested public consisting of, but not limited to individuals, groups, organizations, and governmental agencies, are to be encouraged to participate in and contribute to the interrelated planning process and environmental assessment activities.

(2) *Early public review.* Public involvement will include an early discussion of flood plain management and protection of wetlands, where appropriate. Where involved, these resources will be inventoried and presented at public meetings and in public notices.

(3) *Documentation.* A reviewable record of public involvement in the environmental assessment and planning process will be maintained by the RFO.

(b) *Public meetings.* The RFO, after consultation with the sponsors, will determine when public meetings or hearings are to be held. Environmental information will be presented and discussed along with other appropriate information. To the extent practical, pertinent information should be made available prior to the meetings.

(c) *Public notices.* Notice of each public meeting or hearing discussed in paragraph (b) of this section will be published in a newspaper(s) serving the area where the action is proposed. Where official action by the local units of government involved in the proposed is governed by State statute, the public notice and mailing requirements of the statute will be followed.

§ 650.7 Criteria for determining whether an EIS is to be prepared.

(a) *Actions which require an EIS.* (1) Major Federal actions which involve channel realignment or work to increase channel capacities.

(2) Watershed projects requiring congressional action after the effective date of these rules.

(3) All other actions which are determined to be major Federal actions significantly affecting the quality of the human environment.

(b) *Criteria for determining if an action is a major Federal action significantly affecting the quality of the human environment.* The RFO will determine the need for an EIS on an individual case basis. An EIS will be prepared if the proposed action is a major Federal action significantly affecting the quality of the human environment. An environmental assessment, using a systematic interdisciplinary analysis and evaluation of data and information responding to the five provisions of Section 102(2)(C) of NEPA, will assist the RFO in deciding if the action will require the preparation of an EIS.

The analysis and evaluation of environmental concerns will generate questions such as the following:

(1) *Environmental impact.* Will the proposed action significantly affect the quality of the human environment? e.g., significantly alter or destroy valuable wetlands, prime and unique farmland, cultural resources, threatened and endangered species, water quality, fish and wildlife habitats, wilderness and scenic areas, or perennial stream ecosystems?

(2) *Adverse environmental impacts which cannot be avoided.* What are the important environmental amenities that would be lost if the proposed action were implemented?

(3) *Alternatives.* Are there alternative methods that would achieve the planning objectives with essentially a similar commitment of resources while avoiding major adverse environmental impacts? e.g., flood plain management and protection of wetlands.

(4) *Short-term uses versus long-term productivity.* Will the proposed actions, when added to other similar actions, foreclose the enhancement of significant

long-term productivity as a tradeoff for short-term uses?

(5) *Commitment of resources.* Will the proposed action irreversibly and irretrievably commit the use of important resources? e.g., prime and unique farmland.

(c) *When to prepare an EIS.* If it is determined that the proposed action is a major Federal action that will generate significant adverse effects on the quality of the human environment, the RFO will prepare an EIS. As soon as the decision to prepare an EIS. As soon as the decision to prepare an EIS is made, the RFO will circulate a Notice of Intent. (See § 650.3(g).)

(d) *When an EIS is not prepared.* An EIS will not be prepared if the RFO determines, on the basis of the environmental assessment, that the proposed action is not a major Federal action, or is a major Federal action which will not significantly adversely affect the quality of the human environment. The RFO will distribute a notice of intent and an environmental impact appraisal to interested agencies and individuals. A notice of intent announcing the decision not to prepare an EIS, and the availability of the environmental impact appraisal, will be published in the FEDERAL REGISTER and in a newspaper(s) serving the area of the proposed action. Single copy requests for the environmental impact appraisal will be filled without charge. A charge may be made for multiple copy requests. Implementation of the proposed action will not be initiated until 30 days after the notice of intent has been published in the FEDERAL REGISTER.

(e) *Lead agency.* In certain instances, several Federal agencies may have program responsibilities relative to a major Federal action with significant impacts upon the quality of the human environment. If it is mutually decided that SCS is the lead agency, the RFO will coordinate the input of all concerned agencies in the development of the EIS. If it is mutually decided that another agency is the lead agency, SCS will cooperate in the development of an EIS. In actions involving several departments or agencies within USDA, the role of SCS will be determined in consultation with the USDA Office of the Coordinator of Environmental Quality Activities.

(f) *List of EIS's.* A current list of land and water resource projects on which EIS's are to be prepared is to be maintained by the STC.

(g) *EIS's for more than one project action.* The SCS, in certain instances will prepare an EIS covering several similar actions which are interrelated in purpose and scope. If the actions involve more than one state, the Administrator of SCS will designate one STC as the RFO.

§ 650.8 EIS format and content.

(a) *General.* The EIS should be written in concise and nontechnical language in order for it to be used as a tool in the decisionmaking process. The EIS is a public disclosure of the major environmental issues surrounding a proposed action as set forth in Section 102(2)(C) of NEPA to ensure that environmental factors are considered in decisions pertaining to the proposed action. The EIS should explain how the scope of the statement and its level of detail have been delineated in accordance with environmental issues and problems involved in the proposed action. Data and analyses in the EIS should be commensurate with the importance of the impact on the quality of the human environment as determined by the environmental analysis. Less important material should be summarized, consolidated, or simply referenced.

(b) *Sections to be included in the EIS.* The following sections will be included in the EIS. The RFO may include additional sections, maps, drawings, photographs, and other data.

(1) *Title page.*

(2) *Summary of proposed action, impacts, and alternatives.*

(3) *Environmental impact of the proposed action.* This section should contain a brief description of the environmental impacts both within and outside the planning area that may result if the proposed action is implemented. In general, the EIS will describe the impacts of the proposed action on cultural, physical, and natural resources; terrestrial and aquatic ecosystems; prime and unique farmland; and demographic and social effects, including civil rights impacts on minority groups and low-income persons.

(4) *Any adverse environmental effects which cannot be avoided should the proposal be implemented.* This section should analyze and describe those adverse impacts of the proposed action which are unavoidable.

(5) *Alternatives to the proposed action.* This section should contain an analysis and description of alternatives studied during the interrelated environmental assessment and the planning process. Environmental impacts of each alternative shall be described and appropriately displayed.

(6) *The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* This section should analyze and describe the cumulative effects of the proposed action when added to other similar actions, in an area or region. The long-term consequences on the environment should be described. This section should disclose the consequences of short-term uses of man's environment which subsequently may produce long-term impacts.

(7) *Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.* This section should identify the extent to which the proposed action will curtail or change man's use and enjoyment of resources within the planning area.

(8) *Consultation and review with appropriate Federal, State and local agencies and others.* This section will briefly describe the overall processes of consultation and coordination with interested agencies, groups, and individuals during the environmental assessment and planning process. A listing of agencies and groups requested to review the draft EIS should be included in this section of the draft EIS. This section should be expanded in the final EIS to provide a response to significant environmental concerns and comments received on the draft EIS and indicate where revisions were made in the EIS.

(9) *Appendices.* The draft and final EIS's should contain appropriate appendices, as necessary, to assist the decision maker in understanding the environmental conditions and impacts regarding the proposed action.

§ 650.9 EIS distribution and comment.

(a) *Draft EIS's.* The following steps will be taken in filing and distributing draft EIS's for review and comment:

(1) *CEQ and others.* Five copies of the draft EIS's will be sent to CEQ by the RFO. At the same time the RFO will send copies to:

(i) *Federal agencies* who have jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) *State and local agencies.* OMB Circular No. A-95 (Revised) through its system of State and areawide clearinghouses provides a means for obtaining the views of State and local environmental agencies which can assist in the preparation and review of EIS's.

(iii) *Organizations, groups, and individuals.* A copy of the draft EIS will be sent to the appropriate official of each organization or group and each individual who has requested a copy. A charge may be made for multiple copy requests.

(2) *Time period for comment.* The time period for review ends 45 days after the date CEQ publishes the notice of public availability of the draft EIS in the FEDERAL REGISTER. A 15-day extension of time for review and comment will be considered by the RFO when such requests are submitted in writing. If neither comments nor a request for an extension is received at the end of the 45-day period it will be presumed that the agency or party from whom comments were requested has no comments to make.

(3) *News releases.* In addition to the CEQ FEDERAL REGISTER notice of availability, the RFO shall announce the availability of the draft EIS in a newspaper(s) serving the area.

(4) *Revising a draft EIS.* If significant changes in the proposed action are made as a result of comments on the draft EIS, a revised draft EIS may be necessary. The revised draft EIS will be recirculated for comment in the same manner as a draft EIS.

(b) *Final EIS's.* After the review period for the draft EIS, the RFO will prepare a final EIS, making adjustments where necessary by taking into consideration and responding to significant comments and opposing viewpoints received on the draft EIS. The following

steps will be taken in filing and distributing final EIS's:

(1) Letters of comment will be appended to the final EIS. If numerous repetitive responses are received, summaries of the repetitive comments and a list of the commentators may be appended in lieu of the actual letter.

(2) The RFO shall send five copies of the final EIS to CEQ and a copy of the final EIS to each State and Federal agency, organization, group, and individual who furnished comments on the draft EIS. Single copy requests for copies of the final EIS will be provided. A charge may be made for multiple copy requests.

(c) *Supplements to EIS's.* (1) If SCS determines that it is necessary to clarify or amplify a point of concern raised after the final EIS is filed with CEQ, appropriate clarification or amplification will be sent to CEQ with informational copies furnished to those who received copies of the final EIS. The waiting periods are not applicable.

(2) If the RFO determines that the final EIS previously filed becomes inadequate due to a major change in the plan for the proposed action which significantly affects the quality of the human environment, a new EIS will be prepared, filed, and distributed as provided in paragraphs (a) and (b) of this section.

(d) *Administrative action.* The RFO will take no administrative action sooner than 30 days after the final EIS has been made available to the public and the notice of availability of the final EIS has been published in the FEDERAL REGISTER by CEQ.

(e) *Expedited procedures.* When unusual circumstances make it necessary to take action with significant impact on the quality of the human environment without observing the review provisions of paragraphs (a), (b), and (c) of this section, the STC shall request the Administrator to consult with CEQ concerning alternative arrangements.

Subpart B—Related Environmental Concerns

§ 650.20 Reviewing and commenting on EIS's prepared by other agencies.

(a) *SCS employees assigned to review and comment* on EIS's prepared by other agencies are to be familiar with SCS policies and guidelines contained in this part, and NEPA.

(b) *EIS's received for review by SCS for which SCS has expertise or interest* shall be responded to promptly. Comments are to be objective with the intent to offer suggestions to help minimize adverse impacts of the proposed action to ensure the health and welfare of the agricultural community. Comments are to be based on knowledge readily available. Field office technical guides, soil surveys, field investigation reports, and other resource data and reference materials developed by SCS and other agencies should be used and cited. It is not intended that special surveys or investigations be conducted to acquire additional information for use in preparing comments.

(c) *The SCS reviewer should consider the following kinds of concerns*—(1) *The suitability or limitations of the soils for the proposed action.* Would an alternative route, location, or layout minimize land use problems and adverse environmental impacts?

(2) *Provisions for control of erosion and management of water during construction.* Are there resources downstream that would be affected by sediment from the construction area, and does the statement provide for adequate control measures? Will lack of erosion control cause air pollution? Is the stockpiling of topsoil for future use considered in the EIS?

(3) *Provisions for soil and water conservation management measures on project lands, rights-of-way, access roads, and borrow areas.* Does the statement indicate that enduring soil and water practices are to be installed and maintained?

(4) *The effect of water discharges from project lands or rights-of-way onto other properties.* Will discharges cause erosion or flooding on other lands? Will discharges affect water quality?

(5) *The effects of disruption of the natural drainage patterns and severance of private land units.* Does the statement indicate that natural drainage patterns will be maintained? Will bridges, culverts, and other water control structures be located to ensure that adjacent lands are not flooded or otherwise restricted in use? Does the EIS describe the effects of severance on private land ownerships?

(6) *The impact on existing soil and water conservation management systems.* To what extent will conservation systems be altered, severed, or suffer blocked outlets? Will land use or cover be affected?

(7) *Impacts on prime and unique farmland.* Would an alternative location or route require less prime farmland? Does the EIS consider secondary effects on prime farmland? What benefits are foregone if prime farmland is taken?

(8) *Impacts on ecosystems.* Does the EIS describe impacts on major plant communities, and terrestrial and aquatic ecosystems?

(9) *Impacts on SCS-assisted projects.* Does the statement reflect the effect of the proposed action on present or planned SCS assisted projects?

(d) *EIS's referred to SCS for departmental comments.* EIS's referred by the USDA Coordinator for Environmental Quality Activities to the SCS national office may designate SCS as the lead agency for preparing comments for USDA. In this case, the SCS national office determines whether inputs from STC's and other USDA agencies are needed. If so, STC's and other USDA agencies are requested to forward comments to the Environmental Services Division for use in preparing the USDA response.

(e) *EIS's referred to SCS for agency comments.* EIS's received by the SCS national office are screened by the Director, Environmental Services Division to determine which office within SCS will prepare comments. If the proposed action is within one State, the draft EIS will be forwarded to the appropriate STC and he will reply directly to the agency requesting the comments. If the proposed action involves more than one State, one STC will be designated to forward SCS comments directly to the agency requesting the comments. In some cases, the action may be national or regional in scope, and require inputs from several offices within SCS. In this instance, comments will be assembled in the Environmental Services Division for preparation of a response to the agency requesting comments. A copy of each response prepared by a STC should be sent to the Director, Environmental Services Division.

(f) *EIS's sent to SCS offices other than the national office.* If a STC receives an EIS from another agency, he is to respond to the initiating agency. A copy of his comments should be sent to the Director, Environmental Services Division.

(1) *EIS's addressed to SCS area or field offices.* If an EIS is received by a field or area office of SCS, the STC will coordinate the response.

(2) *EIS's submitted to conservation districts.* SCS may furnish needed soil, water, and related resource information to the district for their use in preparing comments.

(g) *Distribution of SCS comments on other agencies' draft EIS's.* Five copies of review comments made by SCS on draft EIS's prepared by other Federal agencies are to be sent to CEQ.

(h) *Third party requests for a copy of SCS comments on another* agency's EIS will be filled after SCS has forwarded copies of its letter of comments to CEQ.

[FR Doc.77-22522 Filed 8-5-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

WATER RESOURCES PROJECT TYPE ACTIVITIES

Channel Modification Guidelines

AGENCY: Soil Conservation Service (Department of Agriculture) and Fish and Wildlife Service (Department of the Interior).

ACTION: Notice of Proposed Guidelines for Use of Channel Modification as a Means of Water Management in water resource project type activities of the Soil Conservation Service (SCS). The guidelines are not intended to have the force of rules or regulations, but are published for the information of the interested public.

SUMMARY: Stream channel modifications can both (1) protect, restore, or bring new farmland into production by removing surface and subsurface water from such lands, and (2) destroy productive wetlands and aquatic habitats which have value to fish, wildlife, and other environmental resources .This situation has resulted in confrontations between agricultural and environmental interests on proposed SCS projects where channel modifications have been planned. The draft guidelines set forth conditions under which channel modifications can be considered acceptable (or unacceptable) in such projects by planners of the Soil Conservation Service and the U.S. Fish and Wildlife Service (FWS).

An earlier version of the guidelines was tested on SCS projects in North Dakota and Louisiana. They apply only to flood prevention projects, small watershed projects, and resource conservation and development projects of the SCS.

The guidelines document discusses their background, describes the types of channel modifications, sets out the draft guidelines themselves, prescribes a procedure for coordinated planning, and outlines a method of resolving issues between SCS and FWS.

The guidelines would restrict the planning of channel modifications which would jeopardize endangered or threatened species, or drain or alter productive wetlands. They also would prohibit such modifications unless they can be accomplished with "little or no" adverse effect on (1) streams which are or may become wild and scenic rivers or which flow through parks, wilderness areas or refuges, or (2) "important fish and wildlife values" after providing appropriate mitigation or protective measures.

DATES: Comments of agencies and the interested public are invited and should be received by no later than September 15, 1977.

ADDRESSES: Comments should be addressed to the following: Lynn Greenwalt, Director, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, or R. M. Davis, Administrator, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Dr. F. Eugene Hester, Associate Director, U.S. Fish and Wildlife Service, (202–343–5715).

Mr. Joseph W. Haas, Assistant Administrator for Water Resources, Soil Conservation Service (202–447–4527).

Accordingly, the following proposed guidelines are published for informational purposes.

Dated: August 2, 1977.

LYNN G. GREENWALT,
Director,
Fish and Wildlife Service.

B. M. DAVIS,
Administrator,
Soil Conservation Service.

DRAFT CHANNEL MODIFICATION GUIDELINES

Prepared by U.S. Department of the Interior, Fish and Wildlife Service; U.S. Department of Agriculture, Soil Conservation Service

JUNE 1, 1977.

CHANNEL MODIFICATION GUIDELINES

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CHANNEL MODIFICATION GUIDELINES

I. INTRODUCTION

A. *Purpose.* These guidelines are promulgated by the Soil Conservation Service (SCS) and Fish and Wildlife Service (FWS) to guide their personnel in identifying when and where channel modification may be used as a technique for implementing water and related land resource projects. They will be used in the planning of all SCS projects or measures which qualify for either technical, financial, and/or credit assistance under the authorities for flood prevention projects, small watershed projects, and resource conservation and development projects. These program authorities contain provisions for maintaining and enhancing fish and wildlife resources as well as achieving other water management objectives.

B. *Policy.* It is the policy of the SCS and FWS that care and effort will be made to maintain and restore streams, wetlands, and riparian vegetation as functioning parts of a viable ecosystem upon which fish and wildlife resources depend.

It is also the policy of SCS and FWS to use an interdisciplinary planning process which will permit a balancing of the need to maintain a viable naturally functioning ecosystem and projected food and fiber, economic, and social needs.

The application of these guidelines, the resource inventory, interpretation, and planning assistance provided by the SCS and FWS will insure identification and consideration of alternatives to channel modification.

C. *Applicability.* These guidelines are effective on the date signed by both the SCS and FWS and will be used for all new planning starts, and other projects in the planning phase as determined to be practical by the SCS after consultation with the FWS. The guidelines are not to be applied retroactively to projects approved for construction except when preparing supplements or revisions which result in increases in the amount of channel modification and/or type of channel modification which increases the potential adverse environmental impact (re: section III B.).

After the guidelines have been used for a reasonable length of time, one year or more, their applicability and effectiveness will be reviewed. Subsequently changes will be made as determined necessary or these guidelines may be terminated at the request of either agency.

II. BACKGROUND

Congress has recognized that erosion, floodwater, and sediment can cause damage in the watersheds of the rivers and streams of the United States. It has found that loss of life and damage to property constitutes a menace to the national welfare and that the Federal Government should cooperate with states and their political subdivisions for the purposes of preventing such damages and of furthering the conservation, development, utilization, and disposal of water. In so doing, this action will also preserve, protect, and improve the Nation's land and water resources and the quality of the environment.

Congress has also recognized that rivers and streams, wetlands, and riparian vegetation constitute a valuable resource which is vital to the public interest in naturally functioning ecosystems, water transport, and maintenance of fish and wildlife populations. Dependent upon the situation, wetlands can serve as (1) natural flood detention areas; (2) sediment and debris traps; (3) water purifiers and in recycling nutrients; (4) groundwater recharge areas; (5) nursery areas for aquatic animal species; (6) important habitats for a wide variety of plant and animal species, some of which have been depleted to the point that their continued survival is endangered; and (7) areas which produce highly valuable crops of timber, fish and wildlife.

High flows in rivers and streams and periodic overflow have significant value in maintaining meandering channels and in cleansing and redistributing substrates. This action by water provides riffle pool or other habitat for fish spawning and rearing, production of aquatic invertebrates. It also provides diverse plant successional areas and other types of shoreline habitat that fulfill fish and wildlife food and cover requirements. However, it is also recognized that many areas adjacent to streams and wetlands are well suited for and have a long history of agricultural and urban uses.

Channel modification, used in a sensitive manner, is one method that can be utilized in solving specific water management problems. It may be needed to restore a water course impaired or damaged naturally or through man's unwise use or management of adjacent or upstream lands. It may also be needed to provide a safe and healthy environment and for the maintenance of existing agricultural productivity. However, channel modification can cause serious damage to fish and wildlife resource values. In addition to the direct impacts on the stream and immediate environs, the practice has, on occasion, led directly or indirectly to major drainage of wetlands, clearing of bottomland forests for intensive agriculture and increased flooding and siltation in downstream areas. Channel modification for flood control, drainage, and irrigation projects has often resulted in severe conflict with the function of the associated ecosystems, changing or reducing both the variety and abundance of fish and wildlife resources.

Because of the variety of values associated with water, it is incumbent upon the SCS and FWS to continue to share their technical expertise to help insure decisions which will result in the maximum benefits to assure long-term agricultural productivity and optimum environmental quality.

III. GUIDELINES

A. *Alternatives.* The guidelines for channel modification will be used when formulating alternative plans under the Water Resources Council's Principles and Standards. The planning process will include an inventory of resources, including fish and wildlife habitats and its geographic delineation. It will also identify appropriate means for minimizing adverse impacts on habitat values. Measurement of habitat values will be determined on a case-by-case basis in accordance with general procedures to be promulgated by the FWS and developed in consultation with the SCS.

Alternative plans will be formulated to (1) emphasize environmental quality; (2) optimize national economic development; and (3) provide varying mixes of the components of the environmental quality and national economic development objectives. For each alternative plan, there will be a display or accounting of relevant beneficial and adverse effects. A comparison of the displays will identify trade-offs between the environmental quality and economic development objectives. Within this framework and in consideration of the requirements of the National Environmental Policy Act, equal consideration will be given to environmental, and economic and technical aspects in the decisionmaking process.

In compliance with the mandates in NEPA and the Water Resources Council's Principles and Standards, the Fish and Wildlife Service will assist the Soil Conservation Service develop, evaluate, and recommend alternatives, if any, to channel modification when it is expected to cause, directly or indirectly, measurable losses of fish and wildlife resources. The alternatives will be recommended when they meet all the following tests: (1) are consistent with the Water Resources Council's Guidelines for Principles and Standards; (2) make a significant contribution to project objectives; and (3) result in less damage to fish and wildlife habitat. The following three broad types of alternatives will be considered singly or in combination:

1. *Soil and water conservation practices.*

2. *Nonstructural.*—Nonstructural measures may include, but are not limited to land use regulation, land acquisition, providing for the maintenance of aquatic areas, flood plain zoning, flood proofing existing buildings, flood forecasting, flood warning, providing flood hazard information, flood insurance, tax adjustments, emergency assistance, and relocation of properties and people.

3. *Structural.*—Structural alternatives to channel modification include but are not limited to reservoirs, flood ways, dikes, levees (including set back levees), flood walls, pumping plants, diversions, and wetland development and restoration.

B. *Types of channel modification.* Channel modification is defined in these guidelines to include actions, such as riprapping, selective snagging, clearing and snagging, widening, deepening, realignment and lining, listed generally in order of ascending impact on fish and wildlife resources.

1. *Riprapping.* The placement of irregular permanent material such as rock in critical areas along the watercourse to protect the earth materials against excessive erosive forces.

2. *Selective Snagging.* The selective removal of obstructions from a channel to increase its capacity to convey water. This includes, but is not limited to, the removal of downed timber, and accumulations of debris or obstructions.

3. *Clearing and snagging.* The removal of obstructions from the channel and stream banks, including the removal of vegetation and accumulations of bedload material to increase its capacity to convey water. It may include the removal of sediment bars, drifts, logs, snags, boulders, piling, piers, headwalls, and debris.

4. *Widening.* The overall widening of a channel to restore or increase its capacity to convey water. This usually involves clearing, snagging, and excavation of a portion of the channel side slope(s). Where practical, widening is performed on one side only with appropriate consideration given to alternating from one side to the other.

5. *Deepening.* The overall deepening of a channel to increase its capacity to convey water and/or provide drainage. Deepening usually involves clearing or snagging and excavation of a portion of the channel bottom and the channel side slope(s).

6. *Realignment.* The construction of a new channel, or a new alignment, and may involve the clearing, snagging, widening and/or deepening of the existing channel where the new alignment coincides with the existing channel. It may include straightening the alignment to restore or increase the capacity of the channel to convey water.

7. *Lining.* Placement of a nonvegetative smooth protective lining over all or part of the perimeter of a channel to prevent erosion or to increase the capacity of the channel to convey or conserve water.

C. *Channel modification as an alternative.* The following criteria will be utilized in the planning process for determining when channel modification can be considered an alternative. If used, channel modification will be the minimum required, either alone or in combination with other measures. It will be accomplished using the lease damaging construction techniques and equipment in order to retain as much of the existing characteristics of the channels riparian habitat as possible. Construction practices may include, but are not limited to, such things as seasonal construction, minimum clearing, reshaping spoil, limiting excavation to one bank (on alternating sides where appropriate), and prompt vegetation of disturbed areas.

Channel modification may be considered as an alternative for project purposes for which the SCS is currently authorized by law and which are in conformance with agency (SCS) policy and regulations: *Provided*, The modification is designed to resolve specific problems and would not cause, directly or indirectly, any of the following to occur.

1. Jeopardize the continued existence of endangered species and threatened species designated or formally proposed[1] or result in the destruction or modification of habitat of such species which is determined to be critical under the Endangered Species Act of 1973, or species similarly classified under law of the state(s) in which the project is located.

2. Result in restricted access to use of streams or stream segments developed specifically for recreation or fish and wildlife use by the general public where monetary benefits based on such use are used in the project evaluations.

3. The intent or purpose is to drain or Ifoah otherwise alter wetland types 3 through 20,[2] or the result of the modification would be to indirectly alter wetlands types 3 through 20 and provisions for appropriate mitigation or compensation by establishment of similar habitat values in the project area is not provided. Wetland types 1 and 2 with important fish and wildlife habitat values will be treated in accordance with item 3 below, and their preservation will be strongly recommended when they are adjacent to types 3 through 20 or are needed to maintain a balanced aquatic or simiaquatic ecosystem.

Also, Channel modification will not be considered as an alternative unless it can be accomplished with little or no direct or indirect adverse[3] effect on:

1. Stream or stream segments now designated or undergoing study under the Wild and Scenic Rivers Act or officially designated pursuant to other Federal or state(s) legislative actions for their important natural, esthetic, or recreational values.

2. Streams located in or flowing through or contiguous to established wilderness areas, parks, refuges, or other areas set aside pursuant to Federal or state(s) legislative actions for fish and wildlife esthetic, or recreational values.

3. Important fish and wildlife habitat values in the project impact area, state, or nation after providing for all appropriate mitigation, compensation, or preservation measures. (Measurement of habitat values will be determined on a case-by-case basis in accordance with general procedures to be promulgated by the FWS and developed in consultation with the SCS.)

IV. COORDINATION AND INTERACTION

The FWS and SCS recognize that the application of the above guidelines can most effectively be accomplished through cooperative effort during all planning phases of a water resource project. The FWS and the SCS will work cooperatively with state fish and wildlife agencies to inventory and assess the fish and wildlife resources and to plan alternatives, enhancements, replacement or necessary mitigation measures and be involved as requested throughout the planning process.

The level of effort to be devoted by FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife resources. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will so notify SCS in writing stating reasons for discontinued participation.

Even though FWS discontinues participation in planning they will eventually, as prescribed by law, become involved with reviewing and commenting on the completed watershed plan. In such instances, FWS will not oppose the project plan on the basis of channel modifications unless it is clearly evident that the plan is not in conformance with the provisions of these guidelines after consultation with SCS determining this to be the case.

The following procedures will be used in the planning of future water resource projects. The coordination identified is between the field levels of the FWS and SCS; however, both agencies recognize that planning will always involve state fish and wildlife agencies, as well as the interested public and sponsoring agencies at all stages throughout the planning process.

[1] Applicable only during a six month period immediately following the date a proposal is published in the FEDERAL REGISTER by the FWS in compliance with the Endangered Species Conservation Act of 1973.

[2] Wetland types as described in FWS circular No. 39 or subsequent publications.

[3] Rule of reason must be used in applying these guidelines and determining the actual net effects and their significance at the field level considering the value of the resource and importance of the project objectives.

Coordination of field level planning[1]

Process	SCS action	FWS action
Preapplication...	Potential application under consideration. Notifies FWS that potential application is being considered and issues invitation to meetings.	Participate in meetings.
	Assists sponsors in developing information when appropriate. (Normally requires from one to several days.) Request from FWS available fish and wildlife information and viewpoints concerning potentials for and impacts of a probable project.	Furnishes available information and FWS viewpoint concerning potentials for and impacts of a probable project. If requested, participates jointly with SCS and State fish and wildlife agency in any preliminary fish and wildlife studies needed and report findings as may be required. (Field level letter.)
Application.....	Receives application. Notifies FWS in writing that application has been received and when field examination is to begin. Issues invitation to FWS to participate in all meetings and in study and evaluation of available information. (Field examination may require a few days to several weeks.)	Participates in meetings.
	Initiates field examination and assembles available information, coordinates study and evaluation of available information and data. Begins environmental assessment.	Participates in field examination. Assembles and furnishes available fish and wildlife information and data. Participates in study and evaluation of available information and data and in identification of problems and study needs and potential solutions worthy of further study.
	Identifies problems and needs, potential solutions, and broad alternatives worthy of further study. Request FWS to work cooperatively with SCS and State fish and wildlife agency in any special studies required in this step.	Works cooperatively with SCS and State fish and wildlife agency in any special studies required and in preparing an appropriate report.
	Prepares field examination report (includes pertinent fish and wildlife information from FWS) and provides copy to FWS.	Provides inputs (letter report) for the field examination report.
	Requests FWS to participate in developing a plan of study. Prepares the study plan.	Participates with SCS in developing a plan of study. FWS will advise as to scope and detail of specific studies needed, capability of FWS to perform studies and its desire to participate in design of any contracts to secure necessary information.
	Requests planning authority (submits views of FWS with request for planning authorization.)	
Planning.....	Receives notice of planning authorization. Notifies FWS in writing. Initiates and coordinates preliminary investigation (PI) and continues environmental assessment. Notifies FWS in writing. (PI may require from several weeks to 2 yr.)	Participates in meetings and preparation of joint FWS-State fish and wildlife agency-SCS fish and wildlife inventory, assessment, base line data, and report.
	SCS initiates preparation of PI report and update of the study plan. Requests FWS participation in PI and update of plan of study.	Furnishes additional inputs to problems, needs, alternatives and impacts as the PI process progresses and jointly makes recommendations for mitigation, compensation, and enhancement. Furnishes inputs for the PI report and updating of study plan.
	Sends PI report to FWS and others.....	Participates with SCS to review the PI report with the public.
Detailed planning.	Coordinates the detailed planning stage and continuation of the environmental assessment. Notifies FWS that detailed planning is to commence and issues invitation to participate in detailed planning and in meetings.	Participates with SCS and others in detailed planning of alternatives and their components. Works cooperatively with State fish and wildlife agency and SCS to formulate the alternatives and to assess fish and wildlife impacts. Works cooperatively with SCS and State in preparation of recommendations for mitigation, compensation, and enhancement for initial draft plan and, when prepared, an EIS. Participates in meetings. Provides detailed report in accordance with Fish and Wildlife Coordination Act and sec. 12 of Public Law 83-566.
	Prepares initial draft plan and, when required, an EIS. Initiates local field review and issues invitation to FWS to participate in this review. Provides FWS with initial draft plan and an EIS, if prepared.	Provides review comments on initial draft and participates in local field review.
Review (formal).	Prepares a draft plan and EIS, if required, and circulates for interagency review.	Provides comments to Interior and works with SCS in an attempt to resolve issues, if warranted.
	SCS prepares final plan and EIS, if required. Forwards plan and EIS through system for approval and authorization.	Review plan and EIS according to FWS and Interior instructions.
Operations.....	Receives notice of authorization for installation. Notifies FWS. (Regional and area offices.) Prepares construction plans and invites FWS to review them.	Reviews pertinent construction plans.
	Notifies FWS of supplement when the channel modification guidelines are applicable. (See page 2.) Prepares supplemental plans when necessary and circulates for local field review.	Participates in formulating supplemental plan when the channel modification guidelines are applicable. Same involvement as in planning and provides inputs for supplemental plan. Also provides comments on supplemental plan when circulated for local field review.
	Forwards supplemental plan for approval. Provides FWS copy fo supplemental plan.	
Maintenance.....	Advises FWS and State fish and wildlife agency of regularly scheduled maintenance inspections with project sponsors during the life of the project.	Participates in maintenance inspections at FWS discretion. If appropriate, makes recommendations for changes in O&M agreement if necessary to insure that proper maintenance is accomplished.

[1] All steps apply to planning for small watershed projects. Appropriate steps will be followed for Public Law 534 and resource conservation and development measures planning.

NOTES.—1. SCS notifies FWS when planning is suspended, project action terminated, or other stop actions are taken.

2. The level of effort to be devoted by FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife resources. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will so notify SCS in writing stating reasons for discontinued participation.

V. RESOLUTION OF ISSUES

General

It is recognized that issues may develop which cannot be resolved at the field level. When issues arise, it will be the practice of the FWS and SCS to refer such cases and issues to the next higher respective administrative level for resolution and ultimately, if necessary, to the Secretaries of Agriculture and Interior. The Secretary of Agriculture will seek the advice and counsel of the Secretary of the Interior in reaching his decision. Consultation between the two agencies will, at each level, occur throughout the decision process.

Procedure

1. Most of the problems in applying the guidelines will be identified at the field planning level. When this occurs, the SCS Planning Staff Leader will consult directly with the FWS Field Supervisor (Ecological Services), and attempt to resolve the issue.

2. Should the SCS Planning Staff Leader and FWS Area of Field Supervisor be unable to reach agreement, the issue should be referred and coordinated as follows:

USDA:	*In consultation with USDI*
State conservationist, SCS.	Regional director and/or area manager, FWS as appropriate.
Administrator, SCS.	Director, FWS.
Assistant Secretary for Conservation, Research and Education.	Assistant Secretary, Fish and Wildlife and Parks.
Secretary of Agriculture.	Secretary of the Interior.

The decision on whether channel modification will be part of a project plan shall rest with the Secretary of Agriculture. If disagreement still exists at the Secretary's level, the FWS views and recommendations will be appended to the project plan.

At all levels in the decision process the desires and needs of the local sponsors, environmental groups, state and federal agencies, and interested public will be taken fully into account.

Dated: ----------

----------,
Director,
Fish and Wildlife Service.

Dated: ----------

----------,
Administrator,
Soil Conservation Service.

[FR Doc.77-22520 Filed 8-5-77;8:45 am]

Soil Conservation Service

GUIDE FOR ENVIRONMENTAL ASSESSMENT

General Procedures

Agency: Soil Conservation Service, USDA.

Action: Notice.

Summary: This document provides a general guide for environmental assessment for the use of Soil Conservation Service (SCS) personnel in providing resource conservation planning assistance.

The guide establishes a systematic interdisciplinary assessment process to insure that all significant environmental factors will be considered in the process of making planning decisions. This document was originally published as a field guide in March 1977, and is now in use by SCS personnel.

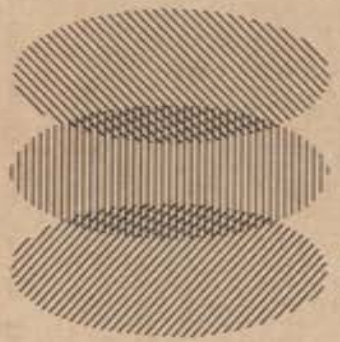
The purpose of publishing this notice in the FEDERAL REGISTER is to inform public interest groups and other organizations of the overall process being used by SCS personnel in conducting technical analyses of the environment as an integral part of planning.

Following is a full copy of the SCS, "Guide for Environmental Assessment."

Dated: August 2, 1977.

B. M. DAVIS,
Administrator, Soil Conservation Service.

GUIDE FOR ENVIRONMENTAL ASSESSMENT



UNITED STATES
DEPARTMENT OF
AGRICULTURE

SOIL
CONSERVATION
SERVICE

Foreword

This guide was prepared as part of an overall SCS effort to refine and systematize the assessment part of planning. The material presented here is a generalized guide for conducting environmental assessment. An introduction to selected analytical assessment techniques is also included. Evaluation criteria, detailed procedures, and technical standards were intentionally omitted. SCS technical specialists establish these items for regional and local geographic areas in keeping with national standards for each technical field.

This guide represents the combined thinking of many individuals and groups within SCS. The guide was developed under the leadership of Gerald R. Lowry of the Environmental Services Division, Washington, D.C. Parts of the material were adapted from Environmental Assessment Procedure, SCS, USDA, Washington, D.C., May 1974. Comments by James Cooley, Frank Busby, and other persons at the University of Georgia and Utah State University were helpful in organizing the contents. R. C. Solomon, U.S. Corps of Engineers, Vicksburg, Mississippi, provided comments. SCS technical personnel at the Washington office, the four TSC's, and state offices provided much useful review and comment towards refining the guide.

March 1977

SCS GUIDE FOR ENVIRONMENTAL ASSESSMENT

I. Introduction
- A. NEPA
- B. Philosophy

II. Initial phase of assessment
- A. Counsel sponsors
- B. Identify study needs
- C. Establish interdisciplinary team
- D. Obtain resource data
- E. Make field examination
- F. Summarize initial assessment

III. Detailed phase of assessment
- A. Develop strategy for detailed assessment
- B. Describe present conditions
- C. Predict future conditions
- D. Calculate impacts
- E. Summarize detailed assessment

IV. Supplemental phase of assessment

V. Appendixes
- A. Selected assessment references
- B. An example of an environmental matrix
- C. An example of a network analysis
- D. An example of a checklist evaluation system

SCS GUIDE FOR ENVIRONMENTAL ASSESSMENT

I. INTRODUCTION

This publication is a general guide for environmental assessment for Soil Conservation Service personnel to use in resource planning. Detailed procedures for assessment within each technical field are provided by specialists at Washington, TSC, and state office levels.

Environmental assessments and impact statements (EIS's) have become a central part of resource planning and an important basis from which an organization's technical capabilities and resource ethics are viewed. EIS's reflect the assessments on which they are based. Accordingly, it is imperative that we maintain high standards for conducting environmental assessments and selecting and training personnel who do this work.

A. The National Environmental Policy Act (NEPA) of 1969 requires all agencies of the federal government to:
   1. Use a systematic interdisciplinary approach in planning and decisionmaking that may have an impact on man's environment.
   2. Identify and develop methods and procedures for environmental assessment in consultation with the Council on Environmental Quality.
   3. Include with reports on proposed major federal actions significantly affecting the human environment detailed statements of environmental impact, adverse impacts that cannot be avoided, alternatives to the proposed action, relationships between short-term and long-term productivity, irreversible or irretrievable commitments of resources, and the comments of other organizations with jurisdiction by law or special expertise.
   4. Utilize ecological information in planning and developing resource-oriented projects.

   Additional information about NEPA, environmental impact statements, and environmental assessment in planning is contained in SCS Environment Memoranda and 7 CFR 650.

B. Philosophy and guidelines
   1. Environmental assessment is that integral part of planning that identifies and estimates the potential effects of alternative solutions on the environment. Assessments document existing environmental conditions and predict probable conditions for selected alternative futures. Environment is defined as the complex of circumstances, objects, and conditions that surround and significantly influence organisms, individuals, or communities. Environmental assessment recognizes the reality that our cultural system is based on, linked to, and part of nature. The immediate purpose of assessment is to display the environmental consequences of different alternative futures to expedite decisionmaking. Such displays minimize the risk of having unanticipated consequences during plan implementation. An ultimate objective of environmental assessment is to aid the long-term optimization of resource use mandated by Section 101 of NEPA.
   2. The most important characteristics of a good assessment are objectivity, reliability of data base, and accuracy of impact predictions. Environmental assessment in planning is based on the ecological principle that "everything affects everything," but it immediately recognizes that we cannot afford to consider all causes or measure all effects. In practice, it is necessary to be reasonable, use commonsense and be professional in identifying major, operationally significant properties and potential effects. Equally important, the results must be condensed into clear, objective summaries and displays to aid decisionmaking by sponsors, agency managers, and concerned publics. Readability and good illustrations are important.
   3. Although environmental assessments are part of all resource planning projects, the scale, scope, and intensity should vary in proportion to the complexity of the project and the importance of the potential impacts. SCS relies primarily on interdisciplinary teams (IDT's) to determine the intensity and extent of assessment efforts.
   4. Strategy for environmental assessments must be specific to the situation. There is no standard method. Persons making assessments must follow the technical literature and adapt new methods of making assessments as rapidly as better techniques become available. The material in this guide must also be adapted to individual planning programs and resources areas on a case-by-case basis. Technical specialists with training in ecology are needed as key members of assessment teams.
   5. The objective of environmental assessment is to provide adequate environmental information to decision makers, not to provide all-inclusive data bases on complex environments. Adequacy means that the support file and reports contain enough environmental data for sound resource planning.
   6. Environmental assessment information must be readily available to decision makers and interested public groups throughout planning. This is done by establishing a reviewable record in the form of correspondence, technical summaries, reports, and all other significant environmental data. This should be retained in the planning support file (the same support file established for other planning activities). The support file should be organized systematically for easy retrieval of data. The reviewable record of planning is needed during later stages of planning and for

postconstruction evaluations. The support file is documentation of compliance with NEPA and other environmental laws. This material also becomes part of an increasingly extensive resource planning data base for other uses.

7. An extensive body of literature is available on the subject of environmental assessment. A list of references that provides an introduction to this literature is included in Appendix A. At appropriate points in this guide, useful references are cited.
8. A schematic diagram can be used to illustrate a generic SCS environmental assessment process (figure 1). Note that the diagram is divided into three major phases: initial, detailed, and supplemental. Within each phase, individual steps or tasks are depicted separately. The same sequential pattern is reflected in the organization of this guide and provides an expanded explanation of assessment.
9. Figure 2 illustrates the general relationship of assessment to the six steps of the USDA Procedures for Planning Water and Related Land Resources. Although the material in this guide generally applies to the full spectrum of resource planning actions, it is especially suited to project planning, such as watershed projects and RC&D measures. Careful study of the RC&D and PL-566 planning handbooks, precedence diagrams, and planning flow charts will help in understanding the relation of assessment tasks to other items in planning.

II. INITIAL PHASE OF ASSESSMENT

A. Counsel sponsors
Assessment activities should begin with environmental counseling in response to requests for assistance. Sponsors should be encouraged to think about environmental factors as they formulate and specify objectives for the proposed action. These objectives eventually are refined as part of the component needs and provide essential guidance for designing and focusing assessment. Tell sponsors about SCS planning constraints, NEPA, and other environmental considerations, especially the NEPA requirement for considering a variety of planning alternatives. Help the sponsors recognize the many public interest groups that are concerned about changes in the natural resource base.

B. Initial identification of study needs
Some combination of district conservationists, RC&D coordinators, area conservationists, resource conservationists, watershed staff leaders, and sponsor representation may perform this task. Size, complexity, and diversity of resources and potential effects determine the extent of this activity. On complex planning actions (such as a watershed project), an initial assessment conference can be held to accomplish the following:

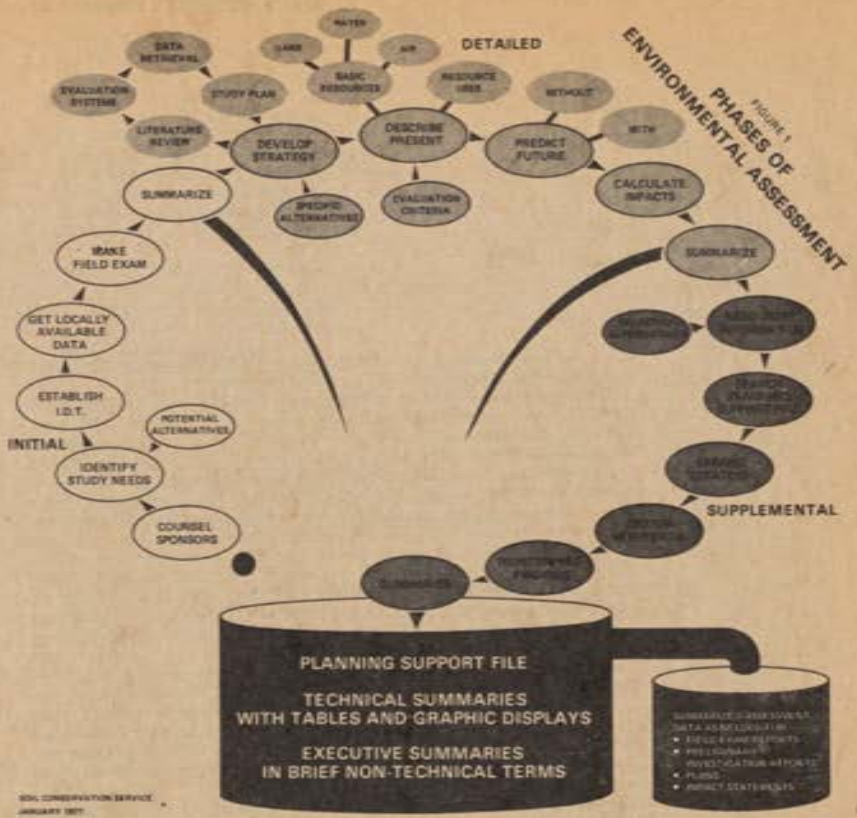


FIGURE 1

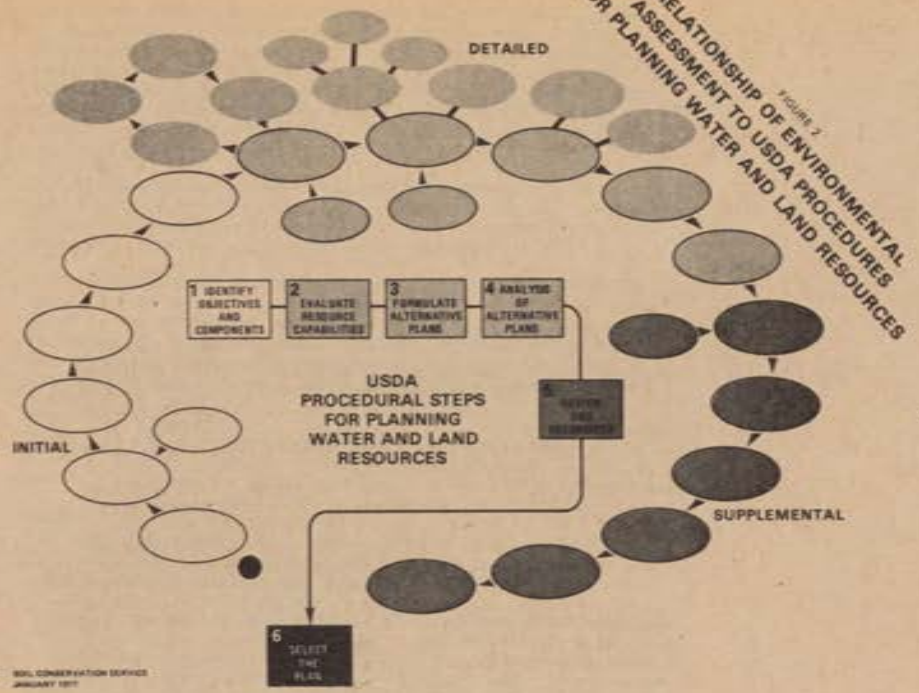


FIGURE 2

RELATIONSHIP OF ENVIRONMENTAL ASSESSMENT TO USDA PROCEDURES FOR PLANNING WATER AND LAND RESOURCES

1. On the basis of the original request for assistance and the sponsors' broad policy decisions, identify objectives and set broad boundaries for technical assessment that encompass the goals.
2. Identify the potential alternatives or range of alternatives likely to be considered, the probable zones of project influence (impact zones), and list the technical specialists needed. These estimates are the basis for initial assessment efforts and will be refined as planning proceeds. Identification of impact zones is important since they influence the extent and intensity of subsequent assessment efforts. These zones vary considerably according to the kind of effect being assessed.
3. Identify concerned public interest groups who should participate in or be informed about assessment activities. Do this early so that such groups actively participate and are consulted throughout assessment.
4. Identify and briefly document initial study needs as the beginning of the support file for each action. Also, include aerial photos, soil surveys and interpretations, copies of the request for assistance, and other readily available data.

C. Establish the interdisciplinary team

1. On the basis of the initial identification of study needs, assemble an interdisciplinary team (IDT). The IDT is the critical link in the assessment process. The IDT is a constantly evolving group of resource experts who interact with one another and the public to provide technical planning information to project decision makers. The task of the IDT is to provide information on present and alternative future environments as a rational basis for selecting plans. The IDT is the same group that assists sponsors with other phases of planning, including public participation. Ordinarily, the IDT consists of fewer persons during initial and supplemental assessment than are needed during the detailed phase.

   Designate an IDT leader to be responsible for managing assessment and establishing a reviewable record. The team leader is central to successful accomplishment of the assessment part of planning since he is responsible for coordinating and synthesizing team efforts. This individual may be at the field, area, or state office level of SCS, depending on the scale and scope of the action.
2. As the IDT performs its work, periodically reexamine the possible need for additional expertise. The IDT approach does not mean that all members participate in each activity, task, or stage. Members participate when their skills can have a significant effect on the assessment effort. People in other agencies and educational institutions, members of special interest groups, and consultants are sources of additional expertise.

3. It is essential that IDT members appreciate that concisely written records, displays, and data collections are the expected output of assessment activities. Written documents encourage precision, contribute to the reviewable record of planning, and support decisionmaking as a final objective.
4. Effective participation on IDT's includes keeping an open mind, avoiding prejudgment, and interchanging ideas with other participants. The reasoning behind recommendations should be clear and objective. The IDT should point out concerns, limitations, alternatives, and areas of possible tradeoff. Balance and objectivity should be preserved. Members of the IDT should discuss and plan collection of data to avoid overlap and inefficiency.
5. Make every effort to insure that IDT's have disciplinary strengths that reflect the economic, physical, biological, social, and other factors being considered. Balance in project emphasis occurs most easily when there is a balance of disciplinary influence on decisionmaking documents. Invite personnel from other concerned agencies and interested private organizations to participate as IDT members as their interests appear.

D. Obtain resource data
Examine locally available resource information such as the following:
1. Aerial photos and published maps.
2. Soil maps and interpretations.
3. Land use, cover types, water quality, and social and economic factors.

E. Make field examination
The field examination is a broad nonintensive analysis of resource factors and environmental concerns in the probable impact zones. Judgmental planning techniques are normally used. Sponsors and concerned environmental groups should participate to the extent possible in the initial assessment. RC&D and watershed handbooks provide additional guidance for field examinations to supplement the following key steps:
1. Before going to the field, brief the IDT on:
   a. Sponsors' objectives
   b. Locally available resource data
   c. Potential alternatives
   d. Analytical approaches to be used to obtain a broad overview analysis of the existing resource base and potential impacts
2. Make a visual inspection of the planning area and probable impact zones.

   Matrix analysis can be used to identify and document broad areas of environmental concern early in planning. See Appendix B for an example of a matrix. Refer to Leopold, et al., 1971, Appendix A, for a discussion of the matrix method. Matrices usually consist of two-dimensional arrays of environmental factors versus potential alternatives and ratings of relative effect at matrix intersections. The object is to acquire broad data quickly because some studies will not proceed beyond the initial phase. Matrices are very useful visual aids for displaying preliminary environmental relationships at public meetings. Completed matrices should usually be supplemented by narratives to clarify key interactions.

   In selecting potential alternatives and probable plan elements, take care to allow the unique aspects of the project area to dictate plan evolution. Always study the alternative of no project.

   Experienced IDT's working on routine problems may elect not to use a matrix but proceed directly to abbreviated checklists and narrative reports. Any data collected at the field examination stage should, to the extent possible, be designed to dovetail with data collected later during more intensive phases of assessment.
3. Hold an IDT group meeting after the field examination. This meeting should feature open discussion, challenge, compromise, and consensus within and among specialists. The consensus must neither suppress nor ignore inputs of an individual specialist. Keep notes and a reviewable record of group consensus or its lack. Display facts and their sources apart from opinions and recommendations.

   Provide written summaries containing data and recommendations to the team leader as soon as possible after completion of the field assessment. This material will become the basis for an overall initial assessment summary for use in the policy formation part of planning. Record interdisciplinary dissent and technical controversy to the extent reasonable. This meeting is a good time to plan for IDT participation in presenting initial assessment data at public meetings.

F. Initial assessment summary
Prepare an initial assessment summary consisting of environmental data, assessment matrices, and generalized narratives, as appropriate and needed to fit planning needs. Enter this initial assessment summary in the planning support file along with other data and findings. For watershed projects, the initial assessment summary can probably be prepared as a part of the field examination report. For RC&D measures, it could be as simple as a brief written narrative report to the RC&D Measure Steering Committee following a technical field review.

III. DETAILED PHASE OF ASSESSMENT

This is the primary data collection and future prediction phase of assessment. It begins when project decision makers agree to advance planning beyond the initial stages and begin selecting alternatives for detailed study. When this has been done, the team leader should reconvene the IDT to develop strategy for detailed assessment. At the same time, determine the need for adding or deleting individual specialists. It is also an appropriate time to discuss further public participation.

The emphasis during the detailed phase of assessment is on developing an indepth portrait of existing conditions (quality and quantity) and estimating future conditions and impacts (direct, indirect, primary, secondary, tertiary, onsite, offsite, and other).

It is the responsibility of individual members of the IDT to specify the extent of data collection for their area of expertise. This guide is not intended to provide detailed technical procedures for assessment for each technical discipline. Such procedures are selected, developed, and disseminated in the form of various SCS technical guides and publications. Some of the detailed procedures are obtained directly from the published literature in the technical field. Each professional staff specialist is responsible for keeping abreast of the latest and best evaluation procedures in his field. Guidance and training will be provided by appropriate SCS specialists as needed.

Because of the variety and complexity of resource evaluations that SCS is concerned with, it is worth repeating that environmental assessments must be tailored to each planning situation. The examples in this guide are seldom applied "as is."

Following are some points to consider in making detailed assessment studies:

- Put all technical contributions in writing. Oral conclusions, no matter how useful, do not support decisionmaking.
- Edit data summaries and narrative reports of assessment primarily for technical content to expedite their completion.
- Make a special effort to present data clearly, concisely, accurately, and objectively. Environmental data are often complex, and public understanding of ecological consequences is the goal.
- To improve efficiency, concentrate assessment in areas of significant impact for the alternatives being considered.
- Hold periodic briefings to help accomplish meaningful consensus among IDT members.
- Continue data collection until the resulting assessment summaries provide a data base that reasonably addresses the probable and significant concerns in relation to each alternative being considered.
- Record data in systematic form for permanent retention in support files.

Following is a set of procedural steps that can be adapted to the planning needs of individual projects:

A. Develop a strategy for detailed assessment

1. Review the literature

The first step in developing a detailed assessment strategy is to obtain and review literature and other planning information pertinent to the impact zone and the specific alternatives being considered. A variety of organizations may have planning materials related directly to the sponsors' concerns. Search for data describing past environmental conditions in the area. The literature review should be in proportion to the scope and scale of the project.

Persons who work on IDT's need to become familiar with the information resources available at area colleges and universities. Rapid entry to this literature can be accomplished by talking to staff specialists, each of whom often has personal collections for his own discipline. Use computerized literature retrieval systems (for example, CAIN, USDA, Washington, D.C., has 700,000 bibliographic citations from the National Agricultural Library, January 1976). Experienced IDT members already have much of the needed literature and will spend little time on this step. Following are some additional potential sources of information:

- Colleges and universities
- U.S. Fish and Wildlife Service, Bureau of Land Management, and Bureau of Reclamation
- Environmental Protection Agency and the Corps of Engineers
- U.S. Forest Service, Extension Service, Agricultural Research Service, Agricultural Stabilization and Conservation Service, and Economic Research Service
- State agencies (such as geological surveys, state historical groups, departments of natural resources)
- U.S. Geological Survey
- National Park Service (National Register of Historic Places)
- Regional planning agencies
- Private environmental organizations
- Consulting firms

2. Select an evaluation system

After existing pertinent literature has been retrieved and examined, select a system or systems for detailed environmental assessment. Detailed assessment methods include comprehensive matrix analysis, network analysis, checklist approaches, overlay methods, and a variety of other systems of evaluation.

Depending on the size, complexity, and kind of planning action being considered, certain methods are more useful than others. Publications are available that discuss the advantages, disadvantages, and situational utility of the

different systems of assessment. (See Jain and Urban, 1975, Appendix A.) For many SCS-assisted planning actions, network analysis to trace and find impacts, followed by the development of specific checklists to schedule data collection, is the most efficient strategy for detailed assessment. Note that the complexity and detail of any assessment method must be carefully tailored to the unique aspects of each planning situation. A brief discussion of four major systems follows:

a. The overview type of matrix analysis was discussed in connection with the initial phase of assessment. Matrix analysis indicates mainly areas of first-order environmental interaction. For detailed assessment, more complex matrices that account in greater detail for alternative planning actions can be prepared. For example, stepped or three-dimensional matrices are sometimes used to help account for second-order cause and effect sequences.

b. Ecological or network analysis is the systematic tracing of cause-and-effect sequences that lead to significant impacts. The resulting network diagrams help identify the interrelationships between components of ecological systems. (See Appendix C for an example.) Whereas matrix analysis identifies areas of environmental concern, network analysis shows what these concerns are and what data are needed to measure their effects.

This tracing of causes and effects is the part of assessment that requires the greatest technical skill and is the point where interdisciplinary influence is most vital. It permits analysts to discover unsuspected effects and impacts and leads naturally from past conditions to predictions of future conditions. It tends to be a deductive method because existing conditions and probable effects are estimated and then environmental data are collected to document conditions and aid in predicting impacts.

Analyze each alternative and plan element, including future without a plan, to determine potential impacts. Impacts may be caused by the inputs required to carry out a measure, by the measure itself, or by the outputs resulting from it.

Determine which evaluation factors would change as a consequence of developing each alternative. Network analysis should surface all significant impacts of the first, second, and subsequent orders.

Temper the tracing of causes and effects so that only significant effects are ultimately considered. Significance is established by determining whether an effect is of sufficient magnitude to have a material bearing on decisionmaking. The IDT makes this determination and documents its reasoning in the support file. Be sure to include all environmentally important information without overloading planning with excessive detail.

There are assessment situations where previous network diagramming has thoroughly delineated the ecological relationships and the IDT can proceed directly to preparing the checklists. Any decision to skip network analysis should be a deliberate one made by the IDT after the field examination.

Some degree of network analysis is needed in most detailed assessment efforts. For very large projects with numerous alternatives and subcomponents, network analysis can be done by project subareas to prevent schematic displays from becoming too complex. Note that completed network diagrams are a convenient basis for preparing work schedules and report outlines.

c. Checklist assessment systems are general listings of resource elements and parameters that can be investigated to detect possible impacts. General checklists are excellent as reminders of environmental data that may be needed. Such checklists are also useful as a format for displaying data in environmental assessment summaries. Use checklist systems with some kind of network analysis for best results. This will help in identifying those evaluation factors unique to specific projects and help avoid the collection of more data than are needed. Appendix D is an example of a general checklist system for environmental assessment (adapted from Environmental Assessment Procedure, SCS, 1974).

Each major element in the SCS checklist system (such as land, water, air) is evaluated according to specific parameters (such as volume of flow, dissolved oxygen, etc.). Each parameter is an individual impact indicator. Considered in total, these parameters can signal the consequences of different resource actions.

Considerable technical skill is needed to decide which parameter on a checklist needs to be studied during assessment. Evaluation standards need to be applied to the original assessment data to interpret importance. Evaluation standards are provided by SCS specialists for each technical field. For example, SCS Engineering Technical Release 58, provides information on selecting water-quality parameters and evaluating data.

d. Overlay methods consist of superimposed sets of maps containing various kinds of resource use interpretations, basic resource data, and project alternatives. At any point in the analysis, alternative locations on the overlay map that transmit the most light are the least environmentally damaging. Overlay maps are very useful in displaying data on linear corridor proposals (such as pipeline or highway locations) for the purpose of selecting the least damaging route. Overlay systems lend themselves well to computerization. McHarg, 1969, (Appendix A) provides an extensive treatment of this subject.

3. Resource data retrieval
After the possible effects and potential impacts have been anticipated through network or other analysis, IDT members can prepare specific checklists of those evaluation parameters needed to characterize the present and predict possible future environmental conditions. Once this is done, as in the last column of the network analysis example, retrieve from existing sources any of the needed data to minimize expensive field collection. Examples of possible sources include STORET, WATSTORE, and NAWDEX [1/] for water-quality data. Persons working on IDT's should keep themselves well informed of sources of data for their disciplines and geographic areas.

Examine the retrieved data and pertinent literature with the dual objective of improving the design of the assessment model and of satisfying as much of the checklist of needed environmental data as possible. Prepare a field checklist of the data and information that must be collected in the field.

4. Written study plan
As the last step in developing strategy, prepare a written plan for completing detailed assessment. This can range from a simple work schedule for a minor proposal to a detailed critical-path analysis for a highly complicated project. (See RC&D Handbook and Watershed Protection Handbook.) Clearly specify the following items:
- Team leader
- Components of work
- Time periods for completing work
- Responsible team members for each data summary
- Scheduled completion dates for summaries
- Team member responsible for preparing overall assessment summaries

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[1/] These acronyms are titles of water-quality data systems maintained by the U.S. Environmental Protection Agency and U.S. Geological Survey.

B. Describe present conditions
This part of the detailed assessment is devoted primarily to collecting data on existing environmental conditions using the field checklists as a guide. Some data are collected by IDT members working separately and other parts of the data are collected jointly but interpreted individually. Some of the data can be collected and interpreted by consulting firms functioning as IDT members. Hold periodic team meetings to coordinate field work and provide interdisciplinary influence on data interpretation.

To simplify organization and review of support files and various summaries and reports, environmental assessment can be organized and displayed in the format of basic resources (land, water, air) and resource uses (such as crop production, recreation, wildlife habitat, fish habitat, social uses, natural area, historical, and municipal water supply). A comprehensive example of this format is contained in Appendix D. This pattern of data display lends itself well to most SCS-assisted projects and is easily understood by non-SCS persons cooperating in assessment.

Describe fully the existing environment in terms of quantity and quality for each basic resource and resource use factor. In evaluating basic resources and resource uses, specify all significant physical, biological, social, and economic components, and their interactions. Evaluate only those parameters identified as significant during network or other analysis or discovered as significant during field work.

C. Predict future conditions (with and without project)
A variety of techniques is available to assist in estimating future conditions including trend extrapolation, pattern identification, probabilistic forecasting, models, simulations, and scenarios. (See Handbook of Forecasting Techniques, Appendix A.) Expert judgment about existing systems and forecasting methods is needed to produce reliable data. Some agents of change to consider in predicting future environmental conditions with and without project are:
- Successional changes in ecosystems that are occurring or will occur
- Cultural disturbances that are occurring or will occur
- Probable physical events
- Hypothetical changes associated with different alternatives

Forecasts of future environmental conditions are often based directly or indirectly on current conditions. Such methods yield useful predictions for natural, social, or economic systems that tend toward dynamic equilibrium or apply to short time periods. Conversely, basing forecasts on existing conditions is often a poor method for disturbed or unstable systems or for long time periods.

The prediction of future conditions includes anticipating futures that would be associated with each alternative including future without a plan. Alternatives are generated by sponsors, concerned publics, and the IDT during planning. Continue the evaluation of alternatives until the cause-and-effect sequences and data needs delineated by network or other analysis have been traced and satisfied. Following are some general considerations relating to predicting future environmental conditions.

1. All predictions are based on conceptual models of reality. These models range from totally intuitive to highly rational. Both may yield useful predictions of future environmental conditions. Technical specialists on the IDT at the project planning level should select the methods for forecasting future conditions. Specialist members of IDT's must be well informed about and use those methods, models, and techniques that are most acceptable professionally in the disciplines they represent.

   Complex models requiring major investments in staff and equipment are, in most cases, not justified for typical SCS-assisted projects unless the resulting computer hardware and software can be made to apply to other projects of that type.
2. Extrapolation of existing trends is the most common method of forecasting future conditions without the project. It is done by extending past environmental trend data to future points in time. Proper use of this technique includes guarding against the problem of inadequate trend data and using common sense in evaluating the resulting predictions. Uncertainties and the limitations inherent in all forecasting methods can be recognized by assigning ranges of values to predicted future conditions.
3. Consider the limits of prediction. Past efforts to predict specific conditions in the future have often proved to be highly inaccurate. Future conditions are often very difficult to predict, particularly beyond 20-25 years. This is one reason for expanding probable error limits for predictions of future conditions as prediction time is extended. This is also a valid reason for limiting predictions of future conditions to as short a period of time as practicable.
4. Past experience with similar proposals or similar resources responding to analogous changes may offer a convenient model for predicting probable futures. Using analogous situations, with carefully stated assumptions, is sometimes the only practical means of predicting impact (Dickert, 1974). Future predictions based on these kinds of analogies are usually credible.

5. Network analysis is an excellent way to identify potential environmental conditions associated with alternative futures and to detect otherwise obscure trend factors (Appendix C).
6. In constructing models for predicting future environmental conditions, be especially alert to the value of the "what if" approach to detecting obscure trends. The "what if" technique is stimulating the intuition and imagination of IDT members by postulating a variety of resource management situations and their resulting impacts, even some unlikely ones.

D. Calculate environmental impacts

The differences between future conditions without the project and predicted conditions under the various with-project alternatives are the environmental impacts. If predictions of future conditions are adequate, determination of impacts is essentially a bookkeeping task and usually does not require additional field work. Specify impacts as clearly as possible in technical terms and do not label them as good or bad in a technical sense unless the evidence is coercive. The broader labeling of impacts as favorable or unfavorable in a public policy sense should be done later in planning (such as when a draft EIS is prepared) after public participation has clarified the political value judgments.

E. Detailed assessment summaries

The planning support file should contain a reviewable record consisting of data, reports, specific and overall technical summaries, and other material relating to detailed assessment. The resulting store of data can be assembled and arrayed in various forms to fit a variety of planning needs. Needs will vary depending on the program and the actual type of measure.

This guide is not meant to stimulate separate new assessment reports. To the extent possible, assessment summaries should be written as inputs to (or actual parts of) field examination reports, preliminary investigation reports, draft and final EIS's, and various other documents needed throughout planning.

The two general kinds of assessment summaries described below may be adapted to meet individual planning needs:

1. Technical assessment summary with tabular and graphical displays.--This summary is an indepth documentation of the assessment findings of the IDT. It contains the environmental data, conclusions, and recommendations for each alternative considered. Environmental assessment checklists and network diagrams may be appropriate analytical and display devices to use.

   Assessment summaries normally are based on and supported by written reports and summaries prepared by each technical field represented on the IDT. Exact format and content are the responsibility of the IDT leader and individual specialists. Bringing assessment summaries together in a

truly interdisciplinary atmosphere of comment, challenge, controversy, consensus, and synergy is a major task of the IDT leader.

2. Executive assessment summary.--This summary is an overall narrative in laymen's language, accompanied by limited graphic and tabular summaries of data. These summaries can be provided to sponsors and other interested public groups as needed during planning. Executive summaries may make recommendations about mitigation or enhancement measures, preferable alternatives, or the need for additional study based on purely technical considerations. A brief summary of the supporting reasoning should be included.

   In project planning, these summaries are normally prepared just before the preliminary report or the preliminary investigation report in RC&D and watershed planning, respectively. In some other situations, assessment summaries can be prepared as preliminary drafts of technical appendixes or as preliminary draft EIS's, as appropriate.

IV. THE SUPPLEMENTAL PHASE OF ASSESSMENT

As the need for additional environmental data arises during later stages of planning, the IDT should reassess its earlier work and make any needed supplemental assessment. Plan formulation often requires repeating parts of the overall planning process. As noted in USDA Procedures for Water and Related Land Resources, one of the reasons for reiteration of planning is that the level of detail in environmental assessment is inadequate as a basis for selecting a recommended plan. When this is so, it is necessary to make additional assessment for selected alternatives unless the needed data can be obtained from the planning support file.

Supplementary assessment basically consists of convening the IDT, discussing the new planning needs, expanding the strategy for assessment, preparing a list of needed supplementary data, collecting the data, revising or adding to the predictions of alternative future conditions, and revising the summaries and displays of data for decision makers. This work should proceed rapidly because of the existing extensive data base and analytical models used during earlier phases of assessment. Maximum advantage should again be taken of existing data retrieval sources. Again, all new significant environmental information should be placed in the planning support file. It may be necessary to go through more than one cycle of supplementary assessment in response to overall planning needs.

# # # # #

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Appendix A.--A list of selected references relating to environmental assessment

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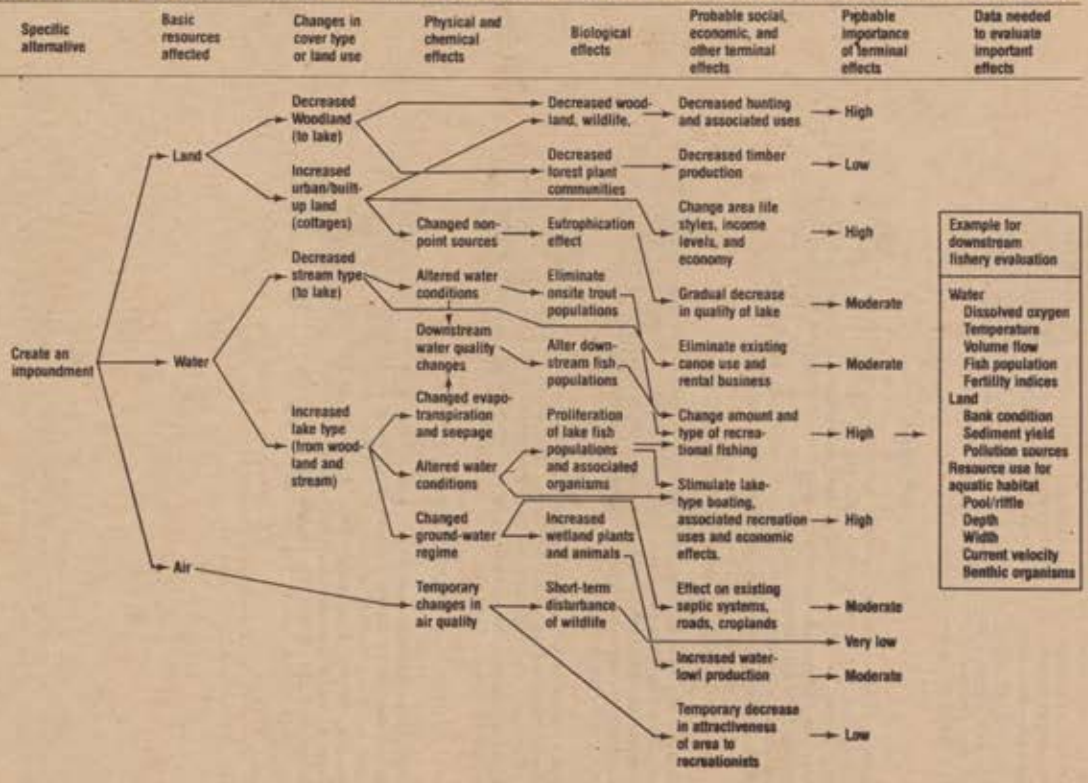
Appendix B.—
AN EXAMPLE OF A MATRIX TO DISPLAY BROAD AREAS OF ENVIRONMENTAL RELATIONSHIP

ENVIRONMENTAL FACTORS		POTENTIAL ALTERNATIVES				
		Future without a plan	Single purpose impoundment	Land treatment	Channel alteration	Multiple purpose impoundment
BASIC RESOURCES						
LAND	Cover type	Ø	O		O	Ø
	Erosion hazard	Ø		●	O	
	Flood hazard	●	●		●	●
WATER	Lake quantity		O			O
	Lake quality	O	Ø			Ø
	Stream length		Ø		O	Ø
	Stream quality	Ø	Ø	Ø	●	Ø
	Ground-water quantity		O		Ø	O
	Ground-water quality				Ø	O
AIR	Particulates & toxic gases					
	Odor		O			O
	Noise		O		O	O
RESOURCE USES						
Crop production		Ø		O		
Pasture production						
Woodland production			Ø			Ø
Wildlife production		O	Ø	Ø	O	Ø
Recreation		Ø	●		Ø	●
Municipal & industrial water		Ø				●
Mineral extraction						
Low-flow augmentation						Ø
Irrigation water						
Fish production		Ø	●		●	●
Economic development—National			O		O	Ø
Economic development—Regional		Ø	Ø		Ø	●
Social values			O			●
Unique cultural/historical/natural			O			O
Visual		O	Ø	O	●	O

RELATIONSHIP

O Slight Ø Moderate ● Important

Appendix C.—
AN EXAMPLE OF A NETWORK DIAGRAM FOR ANALYZING PROBABLE ENVIRONMENTAL IMPACTS



APPENDIX D.--An example of a general checklist system for environmental evaluation

Checklist systems of evaluation are commonly used environmental assessments. Presented here is a general system that, with variations to meet individual programs and local conditions, can be used as a reminder of the environmental conditions that should be analyzed. This material was adapted directly from Environmental Assessment Procedure, Soil Conservation Service, USDA, May 1974. Some changes were made in response to suggestions from the field. TSC's and states should modify this system as necessary to meet regional and local conditions. Also, note that SCS technical specialists change these methods as better techniques become accepted in each technical field.

Using this procedure

The basic procedure for using this system consists of selecting the basic resource and resource use data sheets needed for a particular project, adding or deleting individual parameters, collecting data and entering values on the sheet, developing relative weightings for each parameter, and summarizing the data. These activities should be done by a balanced IDT using detailed technical procedures and evaluation criteria approved by specialists in each technical field.

Display of output for decision makers

The procedure provides four tabulations of data to assist environmental analysts and decision makers: (1) basic resource quantity levels, (2) basic resource quality levels, (3) resource use ratings, and (4) resource use summary ratings. For each tabulation predictions of future conditions with and without project are made.

Individual assessment sheets in this example contain a mixture of metric and English units of measure. The units listed for each parameter represent the standard in each technical field at the time this guide was written. Metric units are gradually being adopted and users should change English units to metric units as appropriate.

Present conditions

The profile of present conditions describes the physical, biological, economic, social, and other characteristics of the area likely to be affected by the proposed actions. Judgment is critical, both in determining impact boundaries and in selecting relevant indicators. The impact boundaries vary, depending on whether the focus of the indicator and the extent of the proposed action are local or regional and on whether the boundaries are determined by political, economic, cultural, hydrologic, or ecologic units. For example, the area of influence of a proposed watershed project may well extend beyond the hydrologic boundaries of the project area. This is particularly true for economic effects if the primary trade center is outside the boundaries of the proposed project. The impact of a project on a large stream may influence conditions far beyond other project boundaries.

The profile of present conditions can be started during the initial phase of assessment. As alternatives are considered in greater detail, the profile can be refined and further focused on significant effects. When completed, the profile should clearly present the existing significant conditions, problems, needs, and the rationale for proposed alternatives.

This assessment system requires the compilation and evaluation of many kinds of data. Some of the data can be obtained from outside sources, such as federal, regional, state, and local agencies, regional and state clearinghouses, planning authorities, river commissions, and universities.

If needed information is not available, it is necessary to collect new data. Appropriate agencies such as the USDA, Agricultural Research Service, U.S. Environmental Protection Agency, and corresponding state agencies such as health, air quality, and water quality agencies should be asked to assist with the development of data collection and interpretative procedures. American Society for Testing and Materials and other standards are available for measuring indicators. Their use provides uniformity and acceptance of the measurements and is encouraged.

Predicting probable conditions that would occur under the without action and various with-project alternatives

Predict conditions following the without action alternative and each with-project alternative being considered. Estimate the impact both during installation and throughout the expected life of the action. Identify and evaluate cause-effect relationships between the alternatives and the environmental indicators being considered. The evaluation for each alternative is to be set forth in enough detail to insure that all significant interaction relationships are considered. Procedures for predicting future environmental conditions, to the extent they are available, are provided by technical specialists in SCS.

Basic resources

Land quantity levels

Dominant land use categories can be used for assessing land quantity and quality. Land use can be subdivided as needed by different technical specialists.

Often it will be desirable to consider cover types in addition to land use in land quantity analyses. When this is done, we suggest using the classification system detailed in "A Land Use and Land Cover Classification System for Use with Remote Sensor Data," Professional Paper 964, U.S. Geological Survey, 1976. The first level of the USGS classification system is also shown in the following example.

A sample form for assessing land quantity levels for each dominant land use and cover type follows. Entries are in terms of acres of each dominant land use or cover type.

ASSESSMENT SHEET

Land quantity levels

Description of area: (County, watershed, state, major land resource area, etc.)

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Land use						
Cropland	acres					
Pastureland	acres					
Rangeland	acres					
Forestland	acres					
Wildlife land	acres					
Urban land	acres					
Recreation land	acres					
Other land uses, e.g., surface-mined land	acres					
Water	acres					
Total	acres					
Cover type						
Urban or built-up land	acres					
Agricultural land	acres					
Rangeland	acres					
Forestland	acres					
Water	acres					
Wetland	acres					
Barren land	acres					
Tundra	acres					
Perennial snow or ice	acres					
Total	acres					

NOTE: The IDT may decide to use one or both of these classification systems.

Land quality levels

The guidelines for assigning quality levels to the land types shown in this section need to be tailored to local conditions. Much of the information used for evaluation indicators can be taken from existing records, such as soil surveys, range studies, woodland soil-site studies, soil interpretation records for named kinds of soils, and from other sources.

Examples of quality indicators to be considered for land uses are soil limitations such as degree and kind of erosion, flood hazard, and deposition (wind and water). Other indicators are important for one land use and not for another.

Cropland.--Soil management systems, production potential, water management system.

Pastureland.--Production potential, soil management systems, water management system.

Rangeland.--Quality or condition, woody plants, poisonous plants.

Forestland.--Suitability, species composition, stocking, forage production (understory potential).

Wildlife land.--Wildlife habitat management system.

Urban land.--Land developed to include design that overcomes soil and/or site limitations.

Recreation land.--Land developed to include design that overcomes soil and/or site limitations.

Other land uses.--For example, mined land.

ASSESSMENT SHEET

Land quality levels

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Gross erosion	acres					
A. ___ton or less/ac/yr						
B. ___to___t/ac/yr						
C. ___to___t/ac/yr						
D. ___to___t/ac/yr						
E. ___t/ac/yr or more						
Flood hazard [1] total flood plain	acres					
A. Previously flood proofed						
B. Subject to flooding						
C. No. of inhabitable properties						
D. No. of commercial & industrial properties						
Deposition, wind, or water (expressed in terms of range and kind of deposition in study area)						
Prime and unique farmland	acres					
Wetland, by category and type [2]	acres					
Salinity	acres					
Alkalinity	acres					

[1] May be expressed in frequency and/or duration.

[2] Classify wetland by category and type as in U.S. Fish and Wildlife Service Circular 39.

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions			
			Planning alternatives			
			Without project	With project		
				1	2	3
Considerations for specific uses						
Cropland						
Soil management systems	acres					
A. Adequate (item code 690)						
B. Not adequate						
Production potential	acres					
A. More than 90% of potential						
B. 70 to 90% of potential						
C. 50 to 70% of potential						
D. 30 to 50% of potential						
E. Less than 30% of potential						
Water management systems	acres					
A. Drainage, total [1/]						
1. Adequate						
2. Not adequate						
B. Irrigation						
1. Adequate						
2. Not adequate						

[1/] Total acres of cropland that would benefit from drainage practices whether installed or not.

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions			
			Planning alternatives			
			Without project	With project		
				1	2	3
Pastureland						
Production potential	acres					
A. More than 90% of potential						
B. 70 to 90% of potential						
C. 50 to 70% of potential						
D. 30 to 50% of potential						
E. Less than 30% of potential						
Soil management systems	acres					
A. Adequate						
B. Not adequate						
Water management systems	acres					
A. Drainage, total [1/]						
1. Adequate						
2. Not adequate						
B. Irrigation						
1. Adequate						
2. Not adequate						

[1/] Acres of pastureland that would benefit from drainage practices whether installed or not.

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Rangeland						
Quality or condition	acres					
A. Excellent ecological condition						
B. Good ecological condition						
C. Fair ecological condition but sufficient cover to protect soil						
D. Fair ecological condition with slight to moderate erosion or poor ecological condition but with sufficient plant cover to protect soil						
E. Poor ecological condition with insufficient plant cover to protect soil						
Woody plants	acres					
A. No problems						
B. Problems						
Poisonous plants	acres					
A. No problems						
B. Problems						

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Forestland						
Wood production forests						
Woodland suitability (site class for indicator species)	acres					
A 1						
B 2						
C 3						
D 4						
E 5						
Acceptable growing stock	acres					
A. Stand has more than 70% acceptable growing stock						
B. Stand has 50 to 70% acceptable growing stock						
C. Stand has less than 50% acceptable growing stock						
Stocking (density)	acres					
A. More than 70% stocked						
B. 50 to 70% stocked						
C. Less than 50% stocked						

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project: 1	2	3
Wood production forests (con.)						
Forage production (understory)	acres					
A. More than 80% of potential						
B. 70 to 80% of potential						
C. 50 to 70% of potential						
D. 30 to 50% of potential						
E. Less than 30% of potential						
Environmental forests	acres					
Acceptable growing stock						
A. More than 70%						
B. 50 to 70%						
C. Less than 50%						
Stocking density						
A. More than 70%						
B. 50 to 70%						
C. Less than 50%						

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project: 1	2	3
Forestland (con.)						
Christmas tree and speciality forests	acres					
Production potential						
A. More than 70%						
B. 50 to 70%						
C. Less than 50%						
Wildlife land						
Wildlife habitat management system	acres					
A. Adequate						
B. Not adequate						
Urban land (includes specialized land uses)						
Land developed to include designs that overcome the soil and/or site limitations						
A. Adequate						
B. Not adequate						
Recreation land						
Land developed to include designs that overcome soil and/or site limitations	acres					
A. Adequate						
B. Not adequate						

ASSESSMENT SHEET

Land quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions, Planning alternatives, Without project	With project 1	With project 2	With project 3
Other land uses (example follows)	acres					
Mined land						
Active	acres					
Stabilized and revegetated, including control of sediment and leachates						
A. Adequate						
B. Not adequate						
Inactive	acres					
Stabilized and revegetated, including control of sediment and leachates						
A. Adequate						
B. Not adequate						
Subsidence						
Area affected	acres					

Water quantity levels

The water resource includes surface and underground water and both quantity and quality are measured.

Describe streams in terms of average monthly discharge in cubic feet per second (cfs) and average annual discharge volume in acre-feet. Give minimum flows in cubic feet per second (cfs). Summations of periods with a 50-percent chance of no-flow occurrence in any one year can be shown as days/year. If significant for a possible use, give other frequencies and times. Describe stream size by width and depth increments for channel reaches. If pools and riffles are significant, show them in miles or percentage of the channel reach in question. Give streambank length in miles as measured on one or both sides, depending on the width of the stream.

Give storage in lakes or reservoirs in acre-feet; but if sustained yield is important because of municipal or industrial water use, show the sustained yield in million gallons per day (mgd). Give surface area of a water body in acres. If average depth is significant, show the area as an average depth of acres by depth increment, i.e., less than 3 feet deep, 80 acres; from 3 to 5 feet deep, 100 acres; etc. Give ground-water volume available for use on an annual basis in acre-feet. Show depth to the ground-water aquifer if significant for a possible use. If annual ground-water use exceeds recharge, give the expected life in years.

Other physical properties of a water resource should be inventoried where necessary to determine the impact of the proposed project. A sample assessment sheet of quantity indicators follows.

ASSESSMENT SHEET

Water quantity levels

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Streams						
Perennial	miles					
Intermittent	miles					
Ephemeral	miles					
Average discharge by months	cfs					
Average annual discharge	ac-ft					
Minimum flow	cfs/days					
No flow	days/yr					
Stream size by reach width ___ to ___ depth ___ to ___	miles					
Streambank	miles					
Type of stream channel[1/]						
Lakes or reservoir						
Effective storage	ac-ft					
Surface area	acres					
less than feet deep _____	acres					
to ____ feet deep	acres					
Shoreline	miles					
Ground water						
Major springs	no.					
Available storage	ac-ft					
Expected life	years					

[1/] Natural or manmade.

Water-quality levels

Water quality must be related to uses and standards. Most states have developed standards for their water resources.

Some of the more common water-quality indicators are shown on the sample water-quality level assessment sheet. Other indicators may need to be added and some may need to be deleted. The pertinent indicators may need to be measured at several locations in the project area, depending on need and proposed use.

Considerable data are available from federal agencies, including the Environmental Protection Agency (EPA) and the U.S. Geological Survey (USGS), and their corresponding state agencies. Local government agencies such as water and sanitary districts are also good sources. The IDT will determine what data are available and make arrangements for any additional testing. Procedures for sampling and testing should be in accordance with recognized standards. These include: Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association; the water section of the American Society for Testing and Materials book of standards; or applicable methods in EPA manuals for analyzing water.

ASSESSMENT SHEET

Water quality levels

Description of area: _____

Parameters	Unit	Present conditions	Future conditions			
			Planning alternatives			
			Without project	With project		
				1	2	3
Physical properties						
Discharge	cfs					
pH	no.					
Odor intensity index	no.					
Turbidity	Jackson units					
Suspended solids	mg/l					
Water temperature	°C					
Air temperature	°C					
Radio activity	μCi/ml					
Electrical conductance	μmho/cm					
Chemical properties						
Major cations						
Ca^{++} (calcium)	mg/l					
Mg^{++} (magnesium)	mg/l					
Na^{+} (sodium)	mg/l					
SAR (sodium adsorption ratio)	no.					
Acidity	meq/l					
Alkalinity	meq/l					

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ASSESSMENT SHEET

Water quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions			
			Planning alternatives			
			Without project	With project		
				1	2	3
Major anions						
Cl^{-} (chloride)	mg/l					
$SO_4^{=}$ (sulfate)	mg/l					
HCO_3^{-} (bicarbonate)	mg/l					
DO (dissolved oxygen)	mg/l					
COD (chemical oxygen demand)	mg/l					
Dissolved solids	mg/l					
Nitrogen compounds	mg/l					
Phosphorus	mg/l					
Toxic chemicals	mg/l					
Biological properties						
Coliforms (USPHS total)	MPN/100 ml					
Coliforms, fecal	MPN/100 ml					
Streptococcus, fecal	MPN/100 ml					
BOD (biological oxygen demand)	mg/l					

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Air quality levels

Air quality is an important consideration in environmental assessment. Examples of indicator groupings considered important for assessing air quality are particulate matter, polluting gases, odor, patterns of movement, noise, and visibility. Use standard units of measure (ASTM or others) where applicable. Indicators in addition to those shown on the air quality level assessment sheet that follow may be important in some areas and should be used.

ASSESSMENT SHEET

Air quality levels

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project 1	2	3
(Consult ASTM D-1356 for definitions)						
Particulate matter						
Pollen, peak season	months					
Pollen, count	no./m^3					
Smoke, fly ash	g/m^2/month					
Dust and other particulate matter	g/m^2/month					
Less than 2 microns	g/m^2/month					
2 to 20 microns	g/m^2/month					
More than 20 microns	g/m^2/month					
Visibility	miles or km					
Polluting gases						
Carbon monoxide	mg/m^3					
Nitric oxide, nitrogen dioxide	mg/m^3					
Ozone	mg/m^3					
Sulfur dioxides	mg/m^3					
Ammonia	mg/m^3					
Hydrogen sulfide	mg/m^3					
Hydrocarbons	mg/m^3					

ASSESSMENT SHEET

Air quality levels (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project: 1	2	3
Other odiferous components	mg/m^3					
Odor-						
Odor	odor units/ft^3					
Patterns of movement	months and duration					
Inversions						
Air drainage and frost pockets	acres affected					
Noise						
Noise spectrum	frequency					
Intensity	decibels					
Repetitive character	frequency and duration					
Season of occurrence	month					
Time of occurrence	time of day					
Neighborhood	type					

Resource Uses

The quantity and quality determinations made in the previous section have a bearing on the suitability of the water, land, and air for each resource use. A lake may store floodwater, municipal water, and sediment while providing fish and aquatic organism habitat, recreation for boating and swimming, and an esthetically pleasing view. Various resource uses are evaluated as follows.

Cropland production

Crop production is rated in terms of expected/potential for all major crops. Expected is an expression of all average yields now. Expected future without action and with various alternatives reflects the influence of projected levels of management within a specific time frame. Potential production reflects the same time frame as expected but assumes (within reason) the use of known improved cultural and management techniques and technology. The list of crops includes those extensively grown and/or important crops produced in the study area. Standard units of measure are used for each crop. These differ according to the crop. The procedure follows.

1. Determine what production information is available.
2. Develop table showing by crop average yield per acre and acres grown.
3. Analyze data using soil surveys, aerial photographs, and/or overlays showing extent and location of major soils or groups of soils where each crop is grown. Example: corn may be grown mostly on moderately deep to deep, well to moderately well drained soils, including dominant mapping units; i.e., Chester, Duffield, Berks, etc. Take into account model cropping systems.
4. Analyze all the data collected using best experts available, arrive at consensus of potential production, expected production without program and with various alternative programs. Potential production may also differ for the various alternatives.
5. Expand production data to complete "Production potential" portion of assessment sheets depicting "Land quality levels."

RESOURCE USE
for

Cropland production

Description of area: _____

Parameters	Unit	Present conditions	Future conditions (Planning alternatives)			
			Without project	With project		
				1	2	3
Corn						
expected potential	bushels					
Wheat						
expected potential	bushels					
Soybeans						
expected potential	bushels					
Sugar beets						
expected potential	tons					
Grain sorghum						
expected potential	cwt					
Rotation pasture						
expected potential	aum					
Hay						
expected potential	tons					
Summary rating						

Fish habitat

Fish habitat evaluation usually includes consideration of the following four factors: (1) physical features of water areas, (2) biological productivity, (3) water quality, and (4) threatened or endangered species.

For lakes and ponds, display total acres in the physical feature inventory. Depth, water quality, and other data may also be displayed, as appropriate.

For streams, a model can be devised for each watershed, using selected stream features. Suggested features to consider are width, flow, pool-riffle ratio, percentage stream shade, pool quality, and riffle quality.

Biological productivity evaluations may include the following factors:

1. Fish (pounds of fish, diversity of species, and size relationship). If practical, determine the pounds of fish per mile by sampling. Consider local adaptation in rating diversity of species. Consider the percentage of fish of catchable size and the presence or absence of young of the year fish.
2. Benthic organisms. Beck's Diversity Index or a similar procedure can be used.
3. Other vertebrates present.
4. Water-quality limitations for fish and other aquatic organisms.

Threatened or endangered aquatic species, if present, should be evaluated and recorded.

RESOURCE USE
for

Fish habitat

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Lakes or ponds	acres					
Water quality	rating					
Biological productivity						
Fish	lb/ac					
Threatened or endangered species	number					
Streams						
Physical features	mi/ mi value					
Biological productivity						
Fish	lb/mi					
Diversity	rating					
Size	rating					
Benthic organisms	index					
Other vertebrates (list)	no.					
Water quality	rating					
Threatened or endangered species (list)	number					
Summary rating						

Industrial water supply

Evaluation of the industrial water supply is related to the needs of the industry to be served and to the type of industry. Limit the evaluation to (1) the current and projected needs of existing industries that depend on the supply, (2) the estimated current and projected needs of any new industries identified by the sponsors that will depend on the supply, and (3) the currently available supply and its potential for meeting the projected industrial demand.

Industrial need.--Industry representatives or the sponsor's consultants should identify the current and projected needs of the industry in million gallons per day for the projected life of the project. Show need by months if the demand is seasonal.

Quantity available.--Industry representatives or the sponsor's consultants should furnish the present and projected quantity and the source of industrial water supply. Show quantity by months if the supply varies. If the present and projected supply is interrelated with other uses such as recreation during certain seasons, indicate any restrictions, water rights, etc.

Quality available.--The ideal quality of water required for industrial use varies widely for the many purposes to which water is put. As a request, it is difficult to organize the quality requirements of water used for each of the many different industrial processes into standards. Individual industries have established specific water-quality criteria. When developing water resource projects with industrial water, be sure that the water quality will be suitable for the intended industrial use.

People employed.--Show numbers of people now employed and projected to be employed.

Net benefits.--Estimate the net benefits in dollars resulting from the improved industrial water supply.

Quality of the effluent.--The various state agencies have published water-quality standards. The Permit Assistance and Evaluation Division, Office of Water Enforcement, U.S. Environmental Protection Agency, Washington, D.C. 20460, has published "Interim Effluent Guidance for NPDES Permits," which establishes effluent criteria for specific industries. Publications can be obtained from the EPA regional offices. All industries are expected to meet minimum EPA criteria (by best practicable control technology currently available) by July 1, 1977. These agencies should be consulted to rate the quality of industrial effluent as adequate or not adequate.

Quantity of effluent.--Industry representatives or the sponsor's consultants should furnish the current quantity of effluent in million gallons per day and an estimate of the future quantity for the evaluation period. If the quantity varies, show the variation by months.

RESOURCE USE
for

Industrial water type industry

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Industrial need	mgd					
Quantity available	mgd					
People employed	no.					
Quality of effluent						
A. Adequate	mgd					
B. Not adequate	mgd					
Quantity of effluent	mgd					

Summary rating

Irrigation water

Evaluate water as a resource for irrigation of agricultural crops. Relate water requirements to water supply under present conditions, future without action, and identifiable alternative development plans. Assess the irrigation water not used by evapotranspiration that becomes available for other uses. Describe the economic feasibility of each alternative action in terms of net benefits.

Evaluate irrigation water requirements by considering such things as the extent and characteristics of the lands to be irrigated; type and quality of crop to be grown; consumptive use of each crop under the existing climatic conditions; irrigation method to be used; water application efficiency considering proper application depth, rate, and timing of irrigation; reuse of tailwater; and special water uses for plan quality, cooling, and frost protection. Evaluate efficiency of conveyance of the irrigation water from the point of supply to the point of use by considering such things as the type of and extent of the conveyance system; adequacy of control and measuring structures; seepage and management losses.

Assess the water supply available under present, future without action, and each alternative action in terms of quantity and quality. Evaluate separately water supplies available for diversion from direct streamflow and from storage, both surface and ground water. This evaluation includes assessment of the availability and quality of the water supply with respect to the irrigation season and the dependability of the supply. Legal restraints on availability must also be considered.

RESOURCE USE
for

Irrigation water

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project 1	With project 2	With project 3
Irrigation water requirements	ac-ft/yr					
Area served	acres					
Water use efficiency	%					
Conveyance efficiency	%					
Available supply						
Direct flow	ac-ft/yr					
Reservoir storage	ac-ft/yr					
Ground-water storage	ac-ft/yr					
Reuse	ac-ft/yr					
Quality	rating					
Adequacy to meet requirements	%					
Availability vs. time of need	rating					
Return waters						
Surface flow	ac-ft/yr					
Ground-water recharge	ac-ft/yr					
Quality	rating					
Summary rating						

Low flow

Evaluate low-flow maintenance or augmentation for effectiveness in improving stream characteristics. An alternative to the low-flow use section is to show the impact on other resource uses, e.g., fish resource use, municipal water supply use, industrial water supply use.

Low-flow maintenance or augmentation is accomplished by releasing water from impoundments or other sources into a stream in a predetermined manner. The purpose of such releases is to augment or increase the rate or duration of flow in a particular reach or in the entire stream unit in order to improve or enhance one or more of the environmental factors listed on the following resource use sheet.

As previously indicated under Water quantity levels, minimum flow is shown in cubic feet per second (cfs) with periods of no-flow given in days for the frequency of occurrence commensurate with the possible uses. Data on duration of no flow may be useful in evaluating the impact on other environmental factors such as fish and recreation.

Minimum-flow data may be readily available for some streams. If not, frequency analyses of stream-gage data from federal and state agencies or special studies are required.

The needs for water to improve or enhance other resource uses should be developed in consultation with personnel who have expertise in the particular fields under consideration. For example, the EPA provides data on the need for, value of, and impact of storage and releases for water-quality control in federal projects.

Assign a rating of 1 to 5 to low-flow augmentation for the resource use. Consider all environmental consequences of the low-flow regulation action, both adverse and beneficial. Even though storage and release of water may be planned for only one purpose, e.g., water quality, weigh both the positive and negative effects of the other resource uses in making the composite rating for low flow.

RESOURCE USE
for

Low flow

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Minimum flow	cfs/days					
Water quality	needed cfs					
Fish	needed cfs					
Wildlife	needed cfs					
Recreation	needed cfs					
Esthetic	needed cfs					

Summary rating

Mineral extraction

This evaluation should be based on the quantity indicators for land and the quality indicators for land, water, and air. Because the potential hazards and environmental degradation due to surface mining, underground mining, and fluid mineral extraction are different, evaluate each of these categories of mineral extraction separately.

Surface mining (quarries, pits).--Surface mining of materials such as copper, iron, phosphate, and oil shale is generally on a large scale because of low unit value and/or large tonnage requirements.

Sand and gravel, dimension stone, and coal operations may be large or small.

Any surface mining operation generates large volumes of waste material, and all have the potential for contributing to air and water pollution because of extraction or processing procedures. Dewatering of deep pits or quarries can result in local lowering of the water table.

Spoil banks and gob piles themselves are often sterile and expensive to restore to a useful purpose. Abandoned (orphan) spoil banks will probably not be rehabilitated because of the high costs and the low priority for public funding.

Reclamation laws may or may not be adequate to insure proper reclamation of areas still subject to surface mineral extraction operations.

Spoil banks and gob piles are often major sediment sources, and runoff from coal-mined areas is acid and high in iron and sulphates.

Underground mining.--Underground mining and the associated processing operations often result in large volumes of waste material. Some of this material may accumulate as waste rock piles at the mine. These piles may be unstable and may be a major sediment source. More waste material is generated, usually as sludge or slurry, at processing or cleaning plants. Crushing or smelting operations may generate significant air pollution.

Underground excavations sometimes collapse, and this results in some degree of surface subsidence, which can be detrimental to overlying roads, railroads, dams, or buildings.

Waste water from mine dewatering or seepage, as well as waste water from cleaning and processing operations, may be of extremely poor quality.

Fluid mineral extraction.--Extraction of fluid (oil and gas) or fluidized (brine, sulfur) minerals can result in surface subsidence.

Ground-water contamination can result from improperly cased or sealed wells.

The potential hazard of spills must be considered, both at the well and at associated bulk storage and loading facilities.

RESOURCE USE
for
Mineral extraction

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without Project	Future conditions: Planning alternatives: With project: 1	2	3
Active strip mines or quarries						
Industrial need	ton					
Quantity available	ton					
People employed	no.					
Pollution control						
Air						
Adequate	acre					
Not adequate	acre					
Water						
Adequate	acre					
Not adequate	acre					
Underground mines and processing plants						
Industrial need	ton					
Quantity available	ton					
People employed	no.					
Waste stabilization						
Adequate	acre					
Not adequate	acre					
Pollution control						
Air						
Adequate	no. of mines					
Not adequate						
Water						
Adequate	no. of mines					
Not adequate						

RESOURCE USE
for

Mineral extraction (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Fluid mineral extraction and facilities						
Industrial need	ton or bbl					
Quantity available	ton or bbl					
People employed	no.					
Pollution control						
Air						
Adequate	no. or acres					
Not adequate	no. or acres					
Water						
Adequate	no. or acres					
Not adequate	no. or acres					

Summary rating

Municipal water supply

Municipal water supply is assessed on the quantity and quality of water needed and available under present and future conditions.

Municipal water supply needs are predicted from unit consumption per capita or number of hookups; such data are obtained from local municipal water utility organizations, water companies and districts, planning commissions, and demographic organizations.

Municipal water-quality ratings are determined by local or general Public Health Service drinking water standards. Consider the practicability of treating water to meet required standards and quality management.

Consider reuse of water for municipal, industrial, irrigation, or other resource uses. Sanitation districts and similar organizations can provide data relative to quantity and quality of effluent.

Cost and economic feasibility of municipal water may be useful in ranking the resource for this use compared to other possible uses.

RESOURCE USE
for

Municipal water

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Population	no.					
Total hookups	no.					
Consumption per capita or hookup	gal					
Municipal water needs	mgd					
Quantity available	mgd					
Quantity vs. need	pct					
Quality	rating					
Water reuse						
Quantity	mgd					
Quality	rating					

Summary rating

Pastureland production

Pastureland production is rated in terms of expected/potential in terms of animal unit months (aum). Expected is an expression of the average yield now. Expected future without action and with various alternatives reflect the influence of projected levels of management within a specific time frame. Potential pastureland production is a projection of possible yield within the same time frame as the expected but using, within reason, known improved cultural and management techniques and technology.

The same procedure used for cropland production can be adapted to determining pastureland production.

RESOURCE USE
for

Pastureland production

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Forage - expected potential	aum/ acre					

Summary rating

Rangeland production

Rangeland production is expressed in terms of expected/potential range condition class for each range site. The range condition class designation reflects both quality and amount of production. Expected means that this is the present condition class level and that under future without action and alternatives. Potential means the condition rating possible with existing technology. The range condition class for a specific range site is determined in accordance with criteria in the local technical guide. Where local experience data are available and the grazing situation (season of use, kind and class of livestock, size of grazing units, etc.) is known, the range condition class can be further interpreted in terms of animal unit months of available grazing.

RESOURCE USE
for

Rangeland production

Description of area: _____

Parameters		Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Range site A[1/]							
	expected potential	range condition class					
Range site B[1/]							
	expected potential	range condition class					
Range site C[1/]							
	expected potential	range condition class					
Range site D[1/]							
	expected potential	range condition class					
Etc.							
	expected potential	range condition class					
Summary rating							

[1/] Use local name for each range site.

Recreation

Evaluate recreation as a use on the basis of the resources and activities available. Evaluate each significant activity as well as quality factors such as proximity, access, and water quality compared to the local and state water-quality standard for the proposed use, i.e., swimming, boating, etc.

Population in local area of influence.--Determine the present population in the local area of influence (usually a 2-hour drive). For columns headed future without and with, estimate the project population that will generate future demand, for example, 5 to 10 years after installation. Round out population to the nearest thousand. Finer calculations imply accuracy that is not consistent with the method.

Resource analysis.--Evaluate resource use on the basis of the resources and recreation activities available. The resources should include the quantity and quality of recreation land and water in the watershed and in the local area of influence. Calculate the quantity on the basis of acres of recreation land per 1,000 people and compared with standards for the state or with standards that provide adequate recreation opportunities for all persons.

Quality factors, such as proximity and access, should reflect the needs of the people in the specific area being served and reasonably or substantially attainable. Compare the water quality with local and state standards for the proposed use. The following quality ratings can be used: 1, unsuited; 2, poor; 3, neutral or fair; 4, good; and 5, excellent. Overall, the land or site must be suitable for the purpose for which it is intended.

Rate recreation facilities and developments within the watershed according to the same scale. When these areas are viewed or inventoried, note the following items to facilitate calculations of supply; number of campsites, number of picnic tables, square feet or linear feet of beach, acres of boating waters, fishing waters, and open hunting areas.

Activity analysis.--Estimates of supply (recreation visits per year) on existing recreation areas are based on the items listed, on the latest inventories by the National Association of Conservation Districts and the Bureau of Outdoor Recreation, or on estimates by the State Comprehensive Outdoor Recreation Plan, local recreation commission, etc. Base the estimate of supply in the future without action on the loss of facilities and installation of new or additional recreation facilities by other agencies, government units, programs, private entrepreneurs, etc. Supply in alternatives is based on the future without action and the net addition or loss of facilities provided by the alternatives. In the alternative columns record only those activities on which the project would make a major impact.

Estimates of the demand for visitor days per year are generally based on local surveys. These surveys are based on population in the local area of influence, participation rates (see TSC Technical Notes, BOR Surveys, etc.), or the utilization of existing facilities on heavy-use days. Often estimates of supply (availability) and demand (use) can be obtained from reports already prepared, e.g., North Atlantic regional water resource studies, river basin studies, Appalachia reports, state comprehensive outdoor recreation plans, etc. Future demand can also be based on the estimated future population times participation rates.

Generally, future participation rates are expected to be higher than present because of increased leisure time, greater mobility, improved facilities, and higher income. Record supply and demand for all activities in the "Present" and "Future without action" columns. In the alternative columns, record the supply and demand for only those activities on which the project would make a major impact. Obtain totals of the supply columns and demand columns for all activities in the "Present" and "Future without action" columns.

To determine the effect of the project alternatives, total the entries in the supply columns and demand columns for activities where there is a major impact created by the alternative.

The opportunity index for the activities to be influenced by the project is obtained by dividing the subtotal for supply column by the subtotal for demand column and multiplying by 100.

Quality and uniqueness of the activity must also be considered along with the quantity even though such an evaluation is often subjective. If desired, supply and demand can be converted to dollar evaluations for later use in the economic analysis.

RESOURCE USE
for

Recreation

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Population in local area of influence (LAI)	no.					
Recreation land						
Quantity in LAI[1/]	acres					
Quantity in 1,000 pop in LAI	acres					
Quantity in watershed	acres					
Quality in watershed						
Adequate[2/]	acres					
Not adequate	acres					
Proximity	rating[3/]					
Access	rating					
Hunting land	acres					
Recreation facilities and development	rating					
Recreation water						
Quantity in LAI	acres					
Quantity per 1,000 pop. in LAI	acres					
Quantity in watershed	acres					
Quality in watershed	rating					
Fishing water, stream	miles					
Fishing water, lakes	acres					

[1/] LAI, local area of influence, generally a 2-hour drive.

[2/] Land is developed to include design that overcomes the soil limitations.

[3/] Rating scale: 1, unsuited; 2, poor; 3, neutral or fair; 4, good; 5, excellent.

RESOURCE USE
for

Recreation (con.)

Description of area: _____

Parameters	Unit	Present conditions 1/	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project 1	With project 2	With project 3
Ratio of supply to demand in local area of influence						
Camping	visits per					
Supply	year					
Demand						
Picnicking	visits per					
Supply	year					
Demand						
Swimming	visits per					
Supply	year					
Demand						
Boating	visits per					
Supply	year					
Demand						
Fishing	visits per					
Supply	year					
Demand						
Hunting	visits per					
Supply	year					
Demand						
(other)	visits per					
Supply	year					
Demand						
Total	visits per					
Supply	year					
Demand						

1/ Record supply and demand for all major activities in the local area of influence (LAI).

2/ Record supply and demand for all major activities influenced by the project alternatives.

RESOURCE USE
for

Recreation (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project 1	With project 2	With project 3
Total opportunity 3/	visits per					
Supply	year					
Demand						
Opportunity index 4/	percent					
Summary	rating					

3/ Total opportunity: the supply and demand of all major activities influenced by the project alternatives.

4/ Opportunity index: total supply divided by total demand times 100.

Wildlife habitat

The wildlife habitat evaluation is based on the quantity, quality, and degree of interspersion of each kind of wildlife habitat in the area under consideration. Most wildlife habitat is created, improved, or maintained by planting vegetation, manipulating existing vegetation, inducing natural establishment of plants, or by combination of such actions; thus, wildlife use and land use go hand-in-hand.

The measurable factors are the vegetative types and conditions according to the various land uses as related to wildlife needs. All significant wildlife species in the project area, both game and nongame, should be considered.

The initial unit of measure is actual acres. The value unit is a quality-size relationship. It is determined by analyzing the habitat condition present or expected on the land.

Wildlife habitat can be grouped into three basic categories for purposes of this assessment procedure: openland habitat, woodland habitat, and wetland habitat. Wetland areas can be recorded by type.

Each habitat model should contain at least three major components:

1. The percentage occurrence component, which is a percentage relationship of habitat elements to one another on a given area.
2. The mangement condition, which is an expression of vegetative quality.
3. The interspersion factor, which considers distribution of vegetation.

In the model each component is assigned a point value expressed in tenths (0-1.0) and used to determine an acre value. These values are not intended to portray all the factors influencing the populations of wildlife on a given area. But, it is assumed that other factors will remain constant or at least not be affected by the activities. For this reason models will vary for each land resource area. It is necessary to make assessments for each major woodland type and possibly for each primary agricultural area within the area being appraised. Assessments should also be made for the site of each proposed structure.

Land use figures can be obtained from the land quantity assessment sheets, crop and pasture management data from cropland and pastureland assessment field notes, and forest types, amounts, and management data from the woodland production field notes.

In most places, it is necessary to make an evaluation for (1) structural works of improvement and for (2) land use and treatment since it is important to separate direct and indirect effects. The effects of the structural works are more direct and immediate; the effects of land use and treatment are based more on land use changes and conservation practices expected or predicted over the life of the project.

The total acreage of the area being evaluated and the total acreage of each structure site are assessed an acre-value for open land habitat and woodland habitat. Thus, there may be 50,000 acres in the area and this acreage may have a 10,000 acre-value as woodland wildlife habitat and a 45,000 acre-value asopen land wildlife habitat.

Determine and record key open land and woodland wildlife species. Note threatened or endangered species on the assessment sheets for open land, woodland, or wetland habitat, both by entire area and site locations.

For each alternative, predict future conditions by using projected land use and management figures.

RESOURCE USE
for

Wildlife habitat

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Site location (impoundments, channels, etc.)						
Open land	ac/ac-value					
Major species	numbers					
Threatened or endangered species	list					
Woodland (by type)	ac/ac-value					
Major species	numbers					
Threatened or endangered species	list					
Wetland (by type)	ac/ac-value					
Major species	numbers					
Threatened or endangered species	list					
Total area (land use and treatment)						
Open land	ac/ac-value					
Major species	numbers					
Threatened or endangered species	list					
Woodland (by type)	ac/ac value					
Major species	numbers					
Threatened or endangered species	list					
Wetland (by type)	acres					
Major species	numbers					
Threatened or endangered species	list					
Summary rating						

Woodland production

Forests used primarily for wood production are rated in terms of expected/potential average annual growth or average yield of wood. Expected means the amount of production that is estimated to exist or will exist under future without action and under the alternatives presented. Potential means the average amount of growth or production that is possible with fully stocked stands for the age classes that exist. The standard unit of measure used for wood production is cubic feet, but it may be desirable in some study areas to use other units of measure or to refine the factors used.

Environmental forest,[2/] Christmas tree areas, and specialty forests are rated in terms of acre equivalent acres/total acres. To determine equivalent acres, convert total acres in production to full production acres for the type of forest or use.

[2/] Environmental forests are those forests known to be devoted to uses that totally exclude them from production of wood products. Examples might be residential areas, parks, or recreation areas, etc.

RESOURCE USE
for

Woodland Production

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Wood production forest						
Wood products Expected Potential	ft^3 or bd ft					
Forage production Expected Potential	aum					
Environmental forests 1/	acres					
Christmas tree areas 1/	acres					
Specialty crop forests 1/	acres					

Summary rating

_____

1/ Acre equivalent over acres.

Economic

Economic analyses are provided in accordance with the SCS Economics Guide and SCS policy. Economic considerations are important in identifying problems and alternatives. Economic impacts should be viewed from both a national and regional viewpoint. National economic development effects are commonly referred to as primary benefits, i.e., flood damage reduction, recreation, fish and wildlife habitat, irrigation, drainage, municipal and industrial water supply, and water quality. Regional external economies are not included as national economic effects. Costs of resource use are external or induced costs and should be included in total installation costs.

Regional effects are gains or losses in regional income and employment. Regional income includes benefits accruing to residents of the region, economies external to the region, and increases in regional wages and salaries. Measurements of external economies utilize input-output (I-O) regional studies. Employment data are presented in terms of additional man-years, which include seasonal and year-long employment.

RESOURCE USE
for

Economic (national)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
National viewpoint						
Flood damages	avg. annual $					
Flood damage reduction	avg. annual $					
Other benefits	avg. annual $					
Costs	avg. annual $					
Net benefits	avg. annual $					
Regional viewpoint						
Benefits accruing to residents of the region	avg. annual/$					
Regional cost	avg. annual/$					
Net regional benefits	avg. annual/$					
New regional employment	man-years					

Summary rating

Visual quality

Visual resources are made up of topography, diversity of geologic materials, diversity of vegetation texture and density, distribution and visual condition of water in lakes and streams, and compatability of land use, including farms, forests, and urban areas. An area of high visual quality could include all these items. An area of water has been found to be a consistent preference. An area with low visual quality would have predominantly one kind of relief, one kind of geologic material, very little water, and visually incompatible land uses.

Geologic surface material.--Esthetic value is enhanced by the presence of a wide variety of geologic materials. Use should be compatible with geologic materials. Mudflats around a lake are undesirable, but rocky shores are very desirable. A high-quality geologic surface material would be pleasing to view and convenient to use according to the purpose, i.e., a rocky, erosion-free shore or bank on a lake or stream, a sand beach for swimming, good deep soil for farming, etc. A low-quality area would have predominantly the same material regardless of use.

Water-land ratio.--Visual quality is assumed to be high if about 10 percent of a large area is covered with well-distributed water bodies or stream corridors, average if 3 to 5 percent covered, and low if 2 percent or less is covered.

For high visual quality, the water must be visible from several places, have an irregular shoreline, and contrast with the surrounding land. Streams should have some flow most of the season for a high-quality rating.

Sound.--This item refers to sounds caused directly by improvements such as a pumping plant or indirectly, e.g., by automobiles or motorboats. A noisy diesel pumping plant in a residential area might be unsuitable and rate 1 on a numerical scale of 1 to 5, but an electric plant might be less objectionable and rate 2 or 3. The ideal would be a very low noise level, 5.

Odor.--Waste disposal systems and sewage lagoons may be unsuitable, rating 1, if they create disagreeable odors near a residential area or recreation area but may be tolerated, rating 2 or 3 on a numerical scale of 1 to 5, if in a relatively unused area such as a forest or farm. Here again, the ideal would be the absence of objectionable odors, rating 5.

Visibility.--This item refers to particles in the air that hamper visibility. Probably the greatest threat in SCS projects comes from blowing dust. The presence of blowing dust in quantities substantial enough to reduce visibility is not acceptable. A slight hazard would be fair or neutral and rate 3, and the absence of the threat would be excellent or 5.

Linear structures.--Linear structures may enhance or detract from the visual quality of the landscape. A linear structure in an area of topographic diversity may enhance the visual quality by interrupting the pattern. Conversely, a linear structure located in a flat landscape may detract by visually changing the horizon line or by blocking views of distant mountains or coastlines. The impact of the linear structure on the landscape can be lessened if the structure is made from materials that "fit" with the surroundings and provide a welcome break in the pattern.

Dams.--Dams constructed with SCS assistance are generally made of earth. They have a mechanical principal spillway and usually an earth emergency spillway. Dams add water and open space, thus expanding the view, which is generally an improvement. Dams may add or detract from the visual quality of the landscape. The rating depends on how well the dam and pool fit into the landscape. The scars caused by borrow pits and emergency spillways may have a negative effect on the visual quality of the dam and, if substantial, reduce the rating by one point.

Recreation facilities.--These include shelter houses, restrooms, swimming beaches, boat docks, and parking lots. Such facilities generally are accepted as a part of the total project and may either add or detract from the visual quality of the area. Facilities on the shoreline may disrupt the continuity of the view and detract from the visual quality unless properly located and designed to fit in the landscape. Normally, recreation facilities are rated 2, 3, or 4 unless there is a very outstanding feature present in the development.

Other structures.--Buildings, pumping plants, sewage treatment plants, and other structures associated with SCS projects are usually relatively small and, if well planned, neither add nor detract from the visual quality of the area. They may detract if located close to a residential or recreation area and do not "fit" well with their surroundings. Normal rating would be 2 or 3 on a numerical scale of 1 to 5; 1, unsuited; 2, poor; 3, neutral; 4, good; and 5, excellent.

RESOURCE USE
for

Visual quality of the landscape

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Land						
Visual quality of land	rating					
Geologic surface material	rating					
Water						
Water-land ratio	rating					
Visual quality of water body or stream	rating					
Air						
Sound	rating					
Odor	rating					
Visibility	rating					
Manmade objects						
Linear structures (dikes, spoils, channels)	rating					
Dams	rating					
Recreation facilities (shelter houses, restrooms, swimming beaches, boat docks, etc.)	rating					
Other structures (buildings, pumping plants, sewage treatment plants, etc.)	rating					
Summary rating						

Social

Program activities of SCS have a significant impact on the social well-being of the nation's citizenry. This impact needs to be measured during planning and taken into account in decisionmaking and in preparing environmental impact statements. Factors that may be pertinent include population (total density and stratification), health factors (adequacy of domestic water supply, sewage disposal, doctors, dentists, hospitals, residences for the aged), housing (total, adequacy), and education (pupil/classroom ratio). Data from secondary sources are usually obtained for social evaluations. An excellent source of information about social assessment is, "A Guide to the Preparation of the Social Well-being Account, Social Assessment Manual," by Stephen Fitzsimmons, Lorrie Stuart, and Peter Wolff, July 1975.

RESOURCE USE
for
Social

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Total population	no.					
Population density	no./mi^2					
Age						
Under 5	pct					
5-14	pct					
15-44	pct					
45-64	pct					
64 and over	pct					
Water supply						
Individual systems	no.					
Community	gal/capita/day					
Sewage disposal						
Individual systems served by public system	no. of pop.					
Health						
Doctors per 1,000 pop.	no.					
Dentists per 1,000 pop.	no.					
Hospitals (beds per 1,000 pop.)	no.					
Residence for aged (beds per 1,000 pop.)	no.					
Vector control	acres					
Housing						
Total	no.					
Adequacy (safe, sanitary, decent)	pct					
Person per household	no.					

RESOURCE USE
for

Social (con.)

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	With project: 1	2	3
Education						
Pupils per classroom	no.					
Pupil teacher	ratio					
Median school completed	yr					
Outmigration	no/year					
Median family income	$/yr					
Below poverty level of _____/year	pct					
Income distribution						
Less than $3,000	pct					
$3,000 to 10,000	pct					
Greater than $10,000	pct					
Safety of life						
Level of flood protection to populated areas	freq.					

Summary rating

Unique cultural, historical, archeological, architectural, and natural resources

Factors for this activity include landmarks and cultural resources.

Landmarks.--Landmarks are generally made up of components of the natural system that have some prehistorical, historical, or other unique characteristic.

Cultural resources.--Factors (impacts) are related to man's influence and include such things as prehistorical, historical, and present cultural groups, migration, patterns of living, etc. Develop factors as necessary to display these resources and resource uses.

Threatened species.--List name of animal species and approximate population in impact zone. List name of plant species and acres present in affected area. Note whether the designation is by state or federal listing.

RESOURCE USE
for

Unique, Cultural, Historical, and Natural

Description of area: _____

Parameters	Unit	Present conditions	Future conditions: Planning alternatives: Without project	Future conditions: Planning alternatives: With project 1	2	3
Use density	no. of people/mi^2					
Landmarks						
Historical sites and monuments	no.					
Unique natural geologic areas	no.					
Archeological sites	no.					
Architectural sites	no.					
Scientific sites	no.					
Cultural resources						
Population migration	pct					
Ethnic groups	no.					
Seasonal homes	no.					
Threatened or endangered species						
Animals	no.					
Plants	acres					
Summary rating						

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Summarizing checklist assessment data for decision makers

Checklist assessment findings may be reflected in a variety of ways in program planning documents. A short executive summary of the assessment and a map of the project area are usually needed. Such narrative summaries will usually be prepared by the interdisciplinary team and highlight significant impacts and include recommendations about specific alternatives. Overview summaries containing brief summaries of the ratings by the interdisciplinary team may also be useful. A general format for this section is shown on the opposite page.

More detailed technical summaries may also be needed to support planning documents. The second section may contain quantity and quality rating sheets for those resources that are likely to be affected by the proposed action and rating sheets for each resource use.

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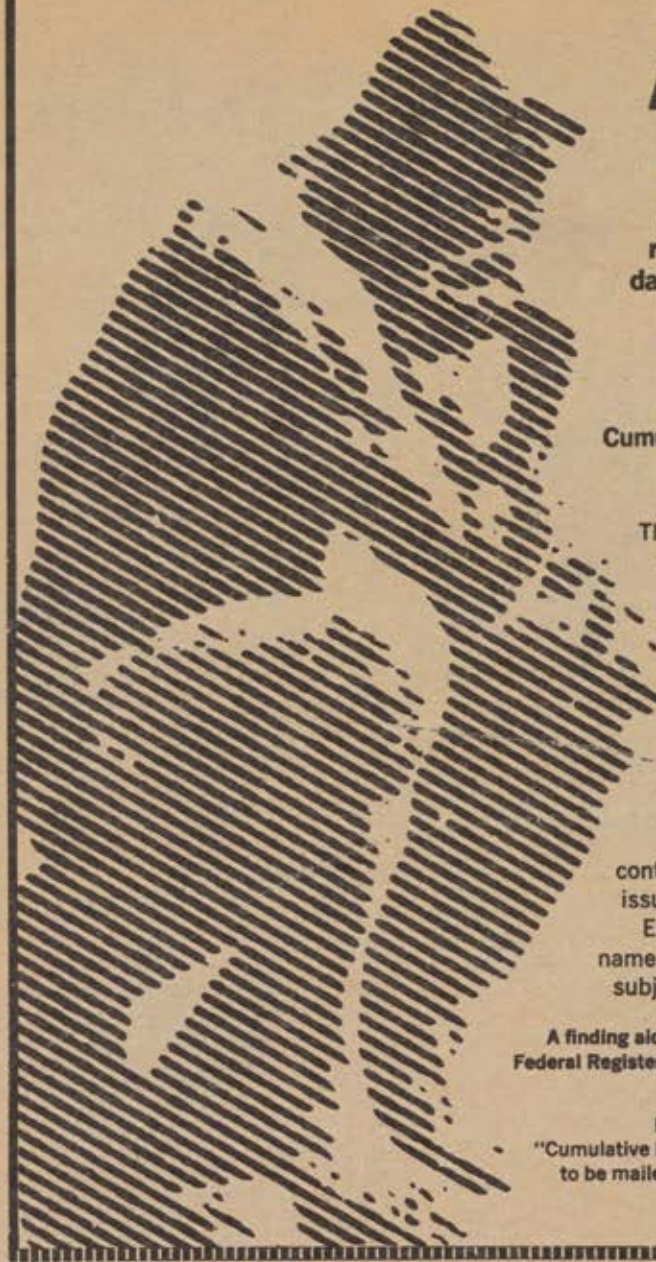
SUMMARY RATINGS

Description of area: _____

Basic resources and resource uses	Present conditions	Future conditions			
		Planning alternatives			
		Without project	With project		
			1	2	3
Land quantity					
Land quality					
Water quantity					
Water quality					
Air quality					
Cropland production					
Fish habitat					
Industrial water supply					
Irrigation water					
Low flow					
Mineral production					
Municipal water supply					
Pastureland production					
Rangeland production					
Recreation					
Wildlife habitat					
Woodland production					
Economic national					
Economic regional					
Visual quality of landscape					
Social					
Unique, cultural, historical, and natural					

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[FR Doc.77-22521 Filed 8-5-77;8:45 am]



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