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federal register

WEDNESDAY, MARCH 7, 1979

highlights

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

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Subcommittee on Human Cell Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology, Washington, D.C. (closed), 3-22 and 3-23-79 ..... 11278; 2-28-79

Other Items of Interest:

LSC—Grants and contracts; solicitation of written comments or recommendations (6 documents) ..... 11867—11868; 3-2-79

rules and regulations

[4410-10-M]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Addition of Air Canada to Listing

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This is an amendment of the regulations of the Immigration and Naturalization Service to add a carrier to the list of transportation lines which have entered into agreements with the Commissioner of Immigration and Naturalization to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. This amendment is necessary because transportation lines which have signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: January 10, 1979.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

On January 10, 1979, the Commissioner of Immigration and Naturalization concluded an agreement with Air Canada to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries pursuant to section 238(d) of the Immigration and Nationality Act and 8 CFR Part 238. Accordingly, 8 CFR 238.3(b) will be amended by adding "Air Canada" to the listing in alphabetical sequence.

In the light of the foregoing, the following amendment is hereby prescribed to Chapter I of Title 8 of the Code of Federal Regulations.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit,* the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Air Canada."

(Sec. 103 and 238(d), 8 U.S.C. 1103 and 1228(d)).

Effective date: The amendment contained in this order becomes effective on January 10, 1979.

Dated: March 2, 1979.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 79-6875 Filed 3-6-79; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

[ERA-R-79-9]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Adjustments to Lower and Upper Tier Crude Oil Price Ceilings To Reflect Impact of Inflation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA), of the Department of Energy (DOE), by this action issues Crude Oil Price Schedule No. 14, effective March 1, 1979, for the months of March, April and May 1979. The Schedule provides monthly crude oil price increases to take into account the impact of inflation, as permitted under the Emergency Petroleum Allocation Act of 1973, as amended (EPAA, Pub. L. 93-159).

Beginning in March 1979, inflation adjustments will be applied to the projected February 1979 lower tier and upper tier prices (approximately $5.74 per barrel and $12.82 per barrel respectively), resulting in lower tier and upper tier prices for the months of March, April, and May 1979 of approximately $5.78, $5.82, and $5.86 per barrel (lower tier) and $12.90, $12.98, and $13.06 per barrel (upper tier), respectively.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B110, Washington, D.C. 20461, 202-634-2170.

Charles P. Little (Crude Oil Pricing Branch), Economic Regulatory Administration, 2000 M Street, NW., Room 6128, Washington, D.C. 20461, 202-254-6296.

Jeffrey C. Conrad (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 7132, Washington, D.C. 20461, 202-252-6754.

SUPPLEMENTARY INFORMATION:

A. INTRODUCTION

Under the EPAA, Congress provided flexibility to control first sale prices of domestic crude oil as long as the national weighted average first sale price ("actual composite price") did not exceed $7.66 per barrel ("statutory composite price") for all domestic crude oil produced and sold in February 1976. Beginning in March 1976, the EPAA authorized increases in the statutory composite price to reflect the effects of inflation and to provide production incentives. Under present authority, the statutory composite price is adjusted upward at a rate not to exceed 10 percent annually.

With the issuance of Crude Oil Price Schedule No. 9 (42 FR 62125, December 9, 1977), the ERA undertook to continue the policy, announced by the

President in the National Energy Plan (NEP) and implemented by the Federal Energy Administration (FEA) in Crude Oil Price Schedule No. 8 (42 FR 45284, September 9, 1977), to adjust both lower tier and upper tier ceiling prices to reflect only the rate of inflation as measured by the GNP deflator. Reference should be made to the Notice which accompanied Crude Oil Price Schedule No. 8 for a description of prior actions taken by FEA to achieve compliance with the composite price constraints of the EPAA and for a discussion of the domestic crude oil pricing policy set forth in the NEP.

B. CRUDE OIL PRICE SCHEDULE No. 14

This price schedule continues the policy as described in the Notice which accompanied Crude Oil Price Schedule No. 8. Accordingly, under Crude Oil Price Schedule No. 14, effective March 1, 1979, the February 1979 lower tier ceiling price (the May 15, 1973 posted price plus $2.05 per barrel, resulting in an average first sale price of approximately $5.74 per barrel), and the February 1979 upper tier price (the September 30, 1975 posted price plus $.15, resulting in an average first sale price of approximately $12.82 per barrel), are adjusted for inflation for March, April and May 1979, based on the first revision of the GNP deflator published on February 21, 1979, which reflects an annual rate of inflation of 8.1 percent.

1. LOWER TIER CEILING PRICES

Adjustments to ceiling prices for lower tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in March, April and May 1979 are determined pursuant to the following methodology:

A. ERA has computed a monthly adjustment factor of .00651 which when applied over a twelve-month period yields an effective annual rate of adjustment of 8.1 percent.

B. March 1979 adjustment=($5.74) (.00651) per barrel=$.037 per barrel rounded to $.04 per barrel.

C. April 1979 adjustment=-($5.74+.04) (.00651) per barrel=$.037 per barrel rounded to $.04 per barrel.

D. May 1979 adjustment=($5.74+.04+.04) (.00651) per barrel=$.038 per barrel rounded to $.04 per barrel.

Based upon the monthly adjustments computed above, average lower tier ceiling prices for the months of March, April, and May 1979 are computed as follows:

March 1979=$5.74+$.04=$5.78
April 1979=$5.78+$.04=$5.82
May 1979=$5.82+$.04=$5.86

Using an average highest posted field price on May 15, 1973 of $3.69 per barrel and the monthly adjustments as computed above, lower tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price [1]
March 1979	May 15, 1973 highest posted field price plus $2.09.	$5.78
April 1979	May 15, 1973 highest posted field price plus $2.13.	5.82
May 1979	May 15, 1973 highest posted field price plus $2.17.	5.86

[1] Estimated average first sale price.

2. UPPER TIER CEILING PRICES

Adjustments to ceiling prices for upper tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in March, April and May 1979 are determined pursuant to the following methodology:

A. Adjustment factor (explained above)=.00651

B. March 1979 adjustment=(12.82) (.00651) per barrel=$.083 per barrel rounded to $.08 per barrel.

C. April 1979 adjustment=(12.82+.08) (.00651) per barrel=$.083 per barrel rounded to $.08 per barrel.

D. May 1979 adjustment=($12.82+.08+.08) (.00651) per barrel=$.084 per barrel rounded to $.08 per barrel.

Based upon monthly adjustments computed above, average upper tier ceiling prices for the months of March, April, and May 1979 are computed as follows:

March 1979=$12.82+$.08=$12.90.
April 1979=$12.90+$.08=$12.98.
May 1979=$12.98+$.08=$13.06.

Using an average highest posted field price on September 30, 1975 of $12.67 per barrel and the monthly adjustments as computed above, upper tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price [1]
March 1979	Sept. 30, 1975 highest posted field price plus $0.23.	$12.90
April 1979	Sept. 30, 1975 highest posted field price plus $0.31.	12.98
May 1979	Sept. 30, 1975 highest posted field price plus $0.39.	13.06

[1] Estimated average first sale price.

Month	Estimated average lower tier ceiling price	Actual lower tier price	Estimated average upper tier ceiling price	Actual upper tier price [4]	Statutory composite price	Actual composite price [5]	Cumulative excess receipts (millions)
1976:							
February	$5.04	$5.05	$11.35	$11.48	$7.66	$7.87	$49
March	5.07	5.07	11.42	11.39	7.72	7.79	67
April	5.10	5.07	11.49	11.52	7.78	7.86	86
May	5.14	5.13	11.56	11.55	7.84	7.89	97
June	5.17	5.15	11.62	11.60	7.88	7.99	123
July	5.17	5.19	11.62	11.60	7.93	8.04	152
August	5.17	5.18	11.62	11.62	7.98	8.03	164
September	5.17	5.17	11.62	11.65	8.04	8.19	198
October	5.17	5.15	11.62	11.62	8.11	8.23	228
November	5.17	5.17	11.62	11.62	8.17	8.40	282
December	5.17	5.17	11.62	11.64	8.24	8.40	322
1977:							
January	$5.17	$5.17	$11.42	$11.44	$8.30	$8.28	$316
February	5.17	5.18	11.42	11.39	8.37	8.33	308
March	5.17	5.15	10.97	11.03	8.44	8.19	246
April	5.17	5.15	10.97	10.97	8.50	8.14	161
May	5.17	5.18	10.97	10.98	8.57	8.23	76
June	5.17	5.16	10.97	10.92	8.64	8.17	−36
July	5.17	5.16	10.97	11.00	8.71	8.21	−159
August	5.17	5.18	10.97	10.93	8.78	8.25	−295
September	5.20	5.20	11.23	11.21	8.85	8.26	−446
October	5.23	5.23	11.49	11.42	8.92	8.36	−595
November	5.26	5.24	11.75	11.63	8.99	8.35	−761
December	5.28	5.25	11.80	11.76	9.06	8.40	−937
1978:							
January	$5.30	$5.28	$11.85	$11.78	$9.13	$8.34	−$1,137
February	5.32	5.29	11.90	11.81	9.21	8.48	−1,306
March	5.35	5.34	11.96	11.88	9.28	8.41	−1,536
April	5.38	5.35	12.02	11.94	9.35	8.44	−1,772
May	5.41	5.38	12.08	11.98	9.43	8.43	−2,042

Month	Estimated average lower tier ceiling price	Actual lower tier price	Estimated average upper tier ceiling price	Actual upper tier price [4]	Statutory composite price	Actual composite price [1]	Cumulative excess receipts (millions)
1978:							
June	$5.44	$5.46	$12.15	$12.08	$9.50	$8.68	−2,255
July	5.47	5.46	12.22	12.15	9.58	8.60	−2,516
August	5.50	5.50	12.29	12.22	9.66	8.67	−2,779
September	5.55	5.55	12.39	12.35	9.73	8.78	−3,024
October	5.60	5.60	12.50	12.43	9.81	8.81	−3,291
November	5.65	[2]5.65	12.61	[2]12.53	9.89	[2]8.85	[2] −3,559
December	[2]5.68	[2]5.68	[2]12.68	[2]12.60	9.97	[2]8.95	[2] −3,835
1979:							
January	[2]$5.71		[2]$12.75		$10.05		
February	[2]5.74		[2]12.82		10.13		
March	[2]5.78		[2]12.90		10.21		
April	[2]5.82		[2]12.98		10.29		
May	[2]5.86		[2]13.06		10.37		

[1] Beginning with the month of September 1976, includes prices for stripper well crude oil production at values imputed in accordance with sec. 121 of the ECPA. Effects of Alaska North Slope (ANS) crude oil production, which commenced June 20, 1977, are included.
[2] Preliminary.
[3] Projected on the basis of Crude Oil Price Schedule Nos. 13 and 14.
[4] Does not include effects of ANS or Naval Petroleum Reserves crude oil production.

(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. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective March 1, 1979.

Issued in Washington, D.C., February 27, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

Section 212.77 is amended in the Appendix to add Schedule No. 14 of Monthly Price Adjustments, as follows:

§ 212.77 **Adjustments to ceiling prices.**

* * * * *

APPENDIX

* * * * *

SCHEDULE NO. 14 OF MONTHLY PRICE ADJUSTMENTS EFFECTIVE MARCH 1, 1979

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (plus)
1976:		
February	1.35	−1.32
March	1.38	−1.25
April	1.41	−1.18
May	1.45	−1.11
June	1.48	−1.05
July	1.48	−1.05
August	1.48	−1.05
September	1.48	−1.05
October	1.48	−1.05
November	1.48	−1.05
December	1.48	−1.05
1977:		
January	1.48	−1.25
February	1.48	−1.25
March	1.48	−1.70
April	1.48	−1.70
May	1.48	−1.70
June	1.48	−1.70

SCHEDULE NO. 14 OF MONTHLY PRICE ADJUSTMENTS EFFECTIVE MARCH 1, 1979 —Continued

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (plus)
1977:		
July	1.48	−1.70
August	1.48	−1.70
September	1.51	−1.44
October	1.54	−1.1.18
November	1.57	−.92
December	1.59	−.87
1978:		
January	1.61	−.82
February	1.63	−.77
March	1.66	−.71
April	1.69	−.65
May	1.72	−.59
June	1.75	−.52
July	1.78	−.45
August	1.81	−.38
September	1.86	−.28
October	1.91	−.17
November	1.96	−.06
December	1.99	.01
1979:		
January	2.02	.08
February	2.05	.15
March	2.09	.23
April	2.13	.31
May	2.17	.39

[1] The price referred to in 10 CFR 212.73(b)(1) or in 212.73(c)(1), 212.73(c)(3), and 212.73(c)(4).
[2] The price referred to in 10 CFR 212.74(b)(1).

This schedule of monthly price adjustments was issued by the Economic Regulatory Administration on February 1979 pursuant to 10 CFR 212.77. It restates without change the lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February 1976 through February 1979, as determined under 10 CFR 212.73, 212.74, and 212.77. Both lower tier and upper tier ceiling prices, which were increased under Schedule No. 13 effective December 1, 1978, are further increased as indicated in this schedule, effective March 1, 1979.

This schedule is effective only through May 31, 1979.

[FR Doc. 79-6601 Filed 3-1-79; 11:11 am]

[7535-01-M]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Final Rule—Credit Union Service Corporation

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to implement the provisions of the April 19, 1977, amendments to the Federal Credit Union Act (Act) (Pub. L. 95-22, 91 Stat. 49) which authorizes Federal credit unions to invest in, to make loans to, or extend lines of credit to, organizations providing services associated with the routine operations of credit unions. This rule will amend existing 12 CFR 701.27-2, Participation in Accounting Service Center.

DATE: Effective April 9, 1979.

ADDRESS: National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Either Layne L. Bumgardner, Office of Examination and Insurance, or Todd A. Okun, Office of General Counsel, at the above address. Telephone: (202) 254-8760 (Mr. Bumgardner) or (202) 632-4870 (Mr. Okun).

SUPPLEMENTARY INFORMATION: On November 3, 1978, the Administration published a proposed rule (43 FR 51407) to implement the provisions of the April 19, 1977, amendments to the Act (Pub. L. 95-22, 91 Stat. 49) which authorize Federal credit unions to invest in, to make loans to, or to extend lines of credit to, organizations providing services associated with the routine operation of credit unions. The proposed rule was to amend existing 12 CFR 701.27-2, Participation in Accounting Service Center. Public comment was invited, to be received on or before January 2, 1979. Upon review

of these comments and after a thorough reconsideration of the proposed rule by the Administration, various changes, as set forth below, have been made.

ANALYSIS OF CHANGES AND COMMENTS

1. DEFINITION OF "CREDIT UNION SERVICE CORPORATION"

Several commenters questioned the definitional section of the proposed rule that defined "credit union service corporation" to be both the entity described at Section 107(7)(I) and Section 107(5)(D) of the Federal Credit Union Act. The thrust of the comments was that this definition is unduly restrictive and is not legally mandated. However, in light of the mandate in the legislative history by Congressman St Germain that "leeway" authority is to be "exercised on a carefully controlled basis by NCUA," the Administration feels justified in tying the two definitions together. In addition, the Administration finds no substantive difference in an organization "which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve" and an organization "providing services which are associated with the routine operations of credit unions." The legislative history also indicates that the House committee stands ready to review "leeway" interpretation matters upon request from NCUA "[S]hould a case be made for a more liberal interpretation of the provisions."

It might also be noted that the Federal Credit Union Act specifically intertwines the lending and investment powers. For instance, section 107(7)(A) allows a Federal credit union to "invest" its funds in "loans exclusively to members." The Administration believes then, based upon the foregoing paragraphs, that its interpretation of sections 107(5)(D) and 107(7)(I) is justified. While it may restrict the permissible activities for Federal credit unions in this field, legislative history mandates a rather conservative approach. Hence the one percent limit on investment and lending authorities have been retained in the final regulation.

2. CORPORATE FORM OF ORGANIZATION

Several commenters objected to the restriction of the proposed credit union service corporation to the corporate form of ownership. The Administration did not include other forms of ownership in this regulation because of a planned revision to the provisions of § 701.28 (Joint Operations and Activities). This revision will properly recognize various types of service contracts, joint agreements, and other partnership types of arrangement that Federal credit unions may establish. These other forms of joint ownership arrangements normally have not resulted in the creation of a separate entity, as is the case with a credit union service corporation, that is established through the issuance of stock. Therefore, joint operations will be allowed to continue in noncorporate form. However, from a regulatory point of view, particularly concerning the issuance of stock, the Administration feels justified in limiting credit union service corporations to the corporate form. It should be noted that all commenters on this subject agreed that the corporate form would be the most convenient and efficient form but objected, in principle, to designating the corporate form as the only allowable one. However, because this Administration and participating Federal credit unions will be dealing for the first time with credit union service corporations, the Administration feels justified in limiting the structure of these entities to the corporate form, at least throughout the infancy of the full implementation of the rule. As all parties become more familiar with these entities, both from an operational and regulatory point of view, the Administration will consider other forms of organizational structure.

3. BYLAWS AND ARTICLES OF INCORPORATION

Another subject of comment concerned the requirement that the articles of incorporation and bylaws of a credit union service corporation state specifically that it will comply with the Federal Credit Union Act and the National Credit Union Administration Rules and Regulations. It is suggested that since these organizations will be creatures of the various states, this requirement may cause conflict with state law. Because all participating Federal credit unions are, in any event, subject to these requirements, it is not necessary to explicitly so state in the regulation itself and that provision, previously appearing in Section (c)(1), is deleted.

4. RECEIPT OF SERVICES BY STOCKHOLDER CREDIT UNIONS

Several commenters felt that requiring stockholder credit unions to receive services from credit union service corporations was unduly restrictive. However, the Administration believes that this requirement is not burdensome and will ensure that investment in credit union service corporations is for the purpose of obtaining services and not for purposes of speculation. It is noted, however, that circumstances may dictate that making use of such services cannot be continuous for a stockholder Federal credit union. Therefore, a requirement has been added to the regulation at Section (c)(1)(i) that a stockholder Federal credit union must use the services of the credit union service corporation within 6 months of its purchase of stock and, after that time, it may not fail to use services of the credit union service corporation in a manner which is normal for the service provided.

5. ALLOCATION OF SERVICE CHARGES

Related to the issue of selling services to parties other than the owners of a credit union service corporation is the issue raised by several commenters concerning the servicing of all stockholders on a fair and equitable basis. Commenters addressing this issue indicated this language was too broad and would need interpretation concerning the allocation of service charges. Specific questions were raised concerning giving discounts for high volume users of a data processing service center and requiring minimum charges for low volume users. In view of these comments, the Administration has again incorporated at paragraph (c)(1)(ii) language similar to the existing § 701.27-2 to require that service charges be allocated to each user on a basis that recognizes the amount of cost needed to provide the services used. In any event, it is the Administration's intention that a credit union service corporation should not operate at a loss. Therefore, revenue from the sale of services to its stockholders and the limited sale of services to other parties should cover the operating costs of the service corporation.

6. SALE OF SERVICES TO NONSTOCKHOLDERS

Several commenters objected to the requirement that a credit union service corporation only sell its services to its stockholder credit unions. These commenters noted the present provisions of § 701.27-2 which permit sales to non-owner credit unions.

In the preamble to the proposed regulation, the Administration noted that credit union service corporations should be ventures in cooperation and not be profit-making ventures. However, several commenters indicated that the sale of services to parties other than stockholder credit unions was necessary to assist in implementing "high technology projects" with high initial investment requirements. The Administration finds that the restriction prohibiting the sale of services to parties other than stockholders may create unnecessary hardship in operating efficiently while taking full advantages of economies of scale. Therefore, the Administration has modified the proposed regulation and has included in paragraph (c)(1)(iii) a provision sim-

ilar to that provided in the present § 701.27-2 that will allow the sale of services to nonstockholders to a limited extent. The provision has been modified to provide clearer meaning and will no longer require approval by the Administrator on an individual basis to implement the authority.

7. EXAMINATION FEE

Several commenters questioned the requirement that the credit union service corporation be assessed an examination fee. The Administration believes that in view of the limited number of credit union service corporations, an additional fee need not be assessed. Therefore, the examination fee requirement has been removed from the final regulation.

8. PECUNIARY INTEREST AND SALARIES OF OFFICIALS AND EMPLOYEES

Several commenters have questioned the provision in the proposed regulation that prohibits officers, directors, and employees from having a pecuniary interest in the credit union service corporation and from receiving a salary in excess of reimbursement for necessary expenses incurred in operating the credit union service corporation. It was felt that these prohibitions were unduly restrictive and would inhibit competent employees from accepting employment with the credit union service corporation.

The Administration continues to believe that a prohibition on such equity ownership interests for officials and employees is proper and will serve to preclude any conflicts of interests. To make this point even clearer, the proposed regulation has been changed to state explicitly that this type of equity ownership interest is precluded not only where ownership would be direct but where an indirect method of ownership might be attempted to circumvent the regulation.

However, the Administration agrees that it should be permissible for employees of a Federal credit union stockholder to earn a salary or compensation for employment in the credit union service corporation if the corporation should conclude that such duties merit greater compensation than the salary the employee is earning from the constituent Federal credit union. However, none of the officials of the Federal credit union may receive a salary. This is in keeping with the same prohibition relating to officials' employment with constituent Federal credit unions. Appropriate changes have been made in the regulation at Section c(2).

9. TERMINATION OF DESIGNATION "CREDIT UNION SERVICE CORPORATION"

Several commenters asked for further explanation of the provision allowing the Administrator to terminate the designation "credit union service corporation" under certain circumstances. The practical effect of Section (d) is that once the designation is withdrawn, investment in or loans to the corporation shall become impermissible for Federal credit unions. These stockholder Federal credit unions will then be required to divest their stock in a manner and within a time frame appropriate to the individual circumstances of a given situation, as determined by the Administrator. A Federal credit union may not renew or extend any loans or balances outstanding under a line of credit to a credit union service corporation after it receives a notice requiring divestiture of its stock in the corporation. Therefore, Section (d) has been amended accordingly.

10. ADDITIONAL CHANGES AND COMMENTS

a. Several technical changes have been made in the designation of sections and in the references to them in the body of the regulation to make the regulation more readable. In addition, Section (f) has been amended by adding section (f)(5) to make it clear that all time periods described in section (f) are exclusive of Saturdays, Sundays and Federal holidays.

b. The Administration notes that all loans to credit union service corporations may have maturities of no greater than twelve years pursuant to section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)). While setting no requirements on the payment of interest on such loans, the Administration recommends that such interest payments be made at least annually.

c. Numerous commenters questioned the nine recommended service contract provisions enumerated in the preamble to the proposed regulations. Without discussing the substance of each of the recommendations, the Administration believes, in general that contracts containing the nine enumerated provisions would represent, ideally, the safest and most complete contract. These provisions, however, are only recommendations and do not themselves appear in the regulation in order to allow credit union service corporations the flexibility to adapt their contracts to the particular circumstances of their dealings. They are recommendations and not requirements.

d. One commenter raised a question concerning a credit union service corporation's ability to purchase and sell such items as computer hardware, software, land, buildings, etc. The Administration has not imposed limits upon such purchase and sales because participating Federal credit unions are required to abide by NCUA Rules and Regulations, the Federal Credit Union Act and all current policies concerning such sales. Hence violation of these rules, interpretations, or of the Act would result in the invoking of Section (d) of the regulation, that is, the revoking of the designation of "credit union service corporation."

e. Several commenters raised questions concerning the recording of investments in and/or loans to a credit union service corporation. The following entries clarify the Administration's policy on the proper accounting entries which will be incorporated in the Accounting Manual for Federal Credit Unions at its next revision:

(1) Dr. Investment in Credit Union Service Corporation (748).	XXXX	
Cr. Cash (731)		XXXX

To record the initial investment in credit union service corporation stock.

(2) Dr. Gain (Loss) on Investments (420)	XXXX	
Cr. Allowance for Losses on Investments (749).		XXXX

To record the reduction in the value of a Federal credit union's investment in the stock of a credit union service corporation. As an option to this entry, a Federal credit union which continues to receive services from a credit union service corporation may disclose such a reduction in value by a footnote to its financial statements.

(3) Dr. Loans to Credit Union Service Corporation (744).	XXXX	
Cr. Cash (731)		XXXX

To record the lending of funds by a Federal credit union to a credit union service corporation, under the provisions of § 701.27-2(e).

(4) Dr. Gain (Loss) on Investment (420)	XXXX	
Cr. Allowance for Losses on Investments (749).		XXXX

To record the expected amount of loss on a loan or balance outstanding under a line of credit to a credit union service corporation upon default of scheduled interest and/or principal payments.

(5) Dr. Other Prepaid and Deferred Expenses (769).	XXXX	
Cr. Cash (731)		XXXX

To record the advance of up to 3 months estimated payments for services from a credit union service corporation.

NOTE.—Advance payments to a credit union service corporation which exceed the amount of 3 months' payments for services must meet the requirements for a loan to a credit union service corporation in Section (e). See entry number (3) for proper account classification for loans to a credit union service corporation.

(6) Dr. (appropriate operating expense account).	XXXX	
Cr. Other Prepaid and Deferred Expenses (769).		XXXX

To amortize advance payments to a credit union service corporation. Amortization should occur at regular intervals during the period for which a

Federal credit union contracts for services from a credit union service corporation.

LAWRENCE CONNELL,
Administrator.

MARCH 1, 1979.

(Sec. 107(7)(I), 91 Stat. 49, (12 U.S.C. 1757(7)(I)); Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).)

Accordingly, 12 CFR 701.27-2 is amended to read as follows:

§ 701.27-2 Credit Union Service Corporation.

(a) For purposes of this section:

(1) A "credit union service corporation," an organization described at Section 107(7)(I) of the Federal Credit Union Act, and a "credit union organazation," as described at Section 107(5)(D) of the Federal Credit Union Act, are identical entities. They are organizations incorporated under State law which are wholly-owned and controlled by credit unions. Designation as a "credit union service corporation" is contingent on Administration approval.

(2) A "Federal credit union" means a credit union chartered pursuant to Section 109 of the Federal Credit Union Act, its officers, directors, employees, agents or representatives.

(b) The purpose of a credit union service corporation is to provide only those goods and services and perform only those functions that are associated with routine credit union operations. It may provide any or all of the following to its stockholder credit unions:

(1) Data processing services;

(2) Promotion, marketing and general management support services;

(3) Access to sophisticated accounting systems;

(4) Non-profit debt counseling services;

(5) Management training and education to credit union personnel;

(6) Services related to processing, selling or servicing mortage loans;

(7) Credit card services;

(8) Automated teller machine services; and

(9) Other services, as determined by the Administrator, that are commonly associated with the routine operations of credit unions.

(c) A Federal credit union, group of Federal credit unions, or a group of Federal and State credit unions may agree to form a credit union service corporation and submit an application to the Administrator for approval to form such a corporation. The application shall include:

(1) The articles of incorporation and bylaws of the proposed credit union service corporation which explicitly state that the credit union service corporation shall:

(i) Provide services to each of its credit union stockholders and provide that each Federal credit union stockholder must purchase services within 6 months of its purchase of stock, and thereafter, in a manner which is normal for the service provided;

(ii) Charge service fees to each party using services which are sufficient to cover the cost of services used by each;

(iii) Have authority to provide services to nonstockholders, provided the total fees for services paid by nonstockholders during the current fiscal year shall not exceed 20% of the previous fiscal year's cost of operation:

(iv) Provide the following statement prior to any party lending funds to or investing funds in the corporation:

"THE DESIGNATION OF AS A 'CREDIT UNION SERVICE CORPORATION', BY THE NATIONAL CREDIT UNION ADMINISTRATION DOES NOT INDICATE APPROVAL OF THE FINANCIAL CONDITION OF THE CORPORATION OR THE MERITS OF ANY LOAN TO OR INVESTMENT IN THE CORPORATION";

(v) Be subject to examination by the Administrator or his authorized representative; and

(vi) Submit call reports upon request by the Administrator.

(2) Written acknowledgement that any official and/or employee of a Federal credit union with an equity interest in a credit union service corporation shall have no direct or indirect pecuniary interest in the corporation and no official of a Federal credit union shall receive any salary or compensation other than reimbursement for necessary expenses incurred in operating the credit union service corporation; and

(3) Any other information requested by the Administrator.

(d) The Administrator may terminate the designation of any corporation as a credit union service corporation if it operates in an unsafe and unsound manner, violates the conditions of its approval as a credit union service corporation, or violates any applicable provision of the Federal Credit Union Act or National Credit Union Administration Rules and Regulations. When such designation is terminated, any constituent Federal credit union shall be required to divest its stock in the credit union service corporation in a manner and within a time frame appropriate to individual circumstances as determined by the Administrator. A Federal credit union shall not renew or extend any loans or balances outstanding under a line of credit to a credit union service corporation after receiving notice requiring divestiture of its stock in the corporation.

(e) A Federal credit union may invest, in total, up to 1 per centum of its paid-in and unimpaired capital and surplus in stock of credit union service corporations. A Federal credit union may lend, in total, an additional 1 percent of its paid-in and unimpaired capital and surplus only to credit union service corporations in which it has invested. Such investment authority does not include authority to invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility, financial institution or any other similar organization, corporation, association, or to lend funds to these entities, except as otherwise expressly provided in the Federal Credit Union Act.

(f) The following procedures apply to any application made under the provisions of this section:

(1) Application for approval as a credit union service corporation shall be submitted to the appropriate Regional Office and shall contain the information described in parargraph (c) of this section;

(2) Application for approval to form a credit union service corporation that will engage in any of the activities described in paragraph (b)(1)-(8) of this section shall be acted upon by the Administration within a 45 day period that begins on the date of receipt by the Regional Office of the complete written record on the application. In the event of the failure of the Administration to act on such an application within 45 days, the application shall be deemed to be approved. Action on any application shall be deemed to have been taken when written notice is received by the applicant;

(3) Application for approval to form a credit union service corporation that will not perform any of the activities described in paragraph (b)(1)-(8) of this section shall be acted upon in the same manner as an application described in paragraph (f)(2) of this section *except*, that such action must be taken within 90 days of receipt of a complete record on the application;

(4) Any addition to the functions performed or the goods and services provided by an approved credit union service corporation must be approved prior to implementation. Any addition involving engaging *de novo* in activities described in paragraph (b)(1)-(8) of this section shall be acted upon within 45 days, pursuant to paragraph (f)(2) of this section. Any addition involving engaging *de novo* in any activities not described in paragraph (b)(1)-(8) of this section shall be acted upon within 90 days, pursuant to paragraph (f)(3) of this section; and

(5) All time periods in Section (f) shall be exclusive of Saturdays, Sundays, and Federal holidays.

[FR Doc. 79-6873 Filed 3-6-79; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, BUREAU OF TRADE REGULATION

REVISION OF EXPORTS CONTROLLED BY OTHER AGENCIES

AGENCY: Office of Export Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Until recently, approval of the Maritime Administration of the Department of Commerce was required prior to the export of all watercraft from the United States. The Office of Export Administration (OEA) did not exercise jurisdiction over such vessels. However, enactment of Pub. L. 94-412 (50 U.S.C. 1601 et seq.) had the effect of limiting Maritime Administration controls over exports to watercraft of 5 net tons or more documented (or last documented) by means of registration with the U.S. Coast Guard. In order to fulfill its responsibilities under the Export Administration Act of 1969, as amended, OEA has asserted jurisdiction over the export of vessels from the United States with the exception of those controlled solely by the Maritime Administration. Vessels of war, as defined in the U.S. Munitions List, continue to be subject to the International Traffic In Arms Regulations (ITAR) of the Office of Munitions Control, Department of State. This rule also specifies the watercraft now subject to OEA jurisdictions which require written OEA approval to export to all destinations, except Canada (for certain vessels and destinations both OEA and Maritime Administration approval is required). The case by case review of applications involving these vessels is necessary for national security reasons and is consistent with the controls over such vessels maintained by countries with which we cooperate in an international system of controls over trade in strategic commodities. All other watercraft controlled for export by the OEA may be exported under General License *G-DEST* to all destinations except Southern Rhodesia, Cuba, North Korea, Vietnam, Cambodia and the Republic of South Africa and Namibia if intended for delivery to or for use by or for military for police entities. It should be noted that, as indicated in § 385.7 of the regulations, Pub. L. 95-435, effective October 10, 1978, prohibits the export to Uganda of virtually all commodities, including vessels controlled under these Regulations.

EFFECTIVE DATE OF ACTION: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Dale F. Snell, Jr., Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-2440).

SUPPLEMENTARY INFORMATION: It has been determined that these Regulations are "not significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082 *et seq.*, January 9, 1979) and Industry and Trade Administration Administrative Instructions 1-6 (44 FR 2093 *et seq.*, January 9, 1979), which implement Executive Order 12044 (43 FR 12661 *et seq.*, March 23, 1978), "improving Government Regulations". Accordingly, the Export Administration Regulations (15 CFR Part 368 *et seq.*) are revised as follows:

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

1. Section 370.10(f) is revised to read as follows:

* * * * *

(f) *Watercraft.* Regulations administered by the Departments listed below govern the export of watercraft.

(1) *Export Authorization by U.S. Department of State.* Vessels of war, as defined in the U.S. Munition List, require export authorization from the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520.

(2) *Export Authorization by U.S. Maritime Administration and Office of Export Administration.* All watercraft of 5 net tons or more documented (or last documented) by means of registration with the U.S. Coast Guard require export authorization from the U.S. Maritime Administration, Washington, D.C. 20235. Such vessels also require export authorization from the Office of Export Administration if intended for export (i) to a destination in Country Groups S or Z, or (ii) to any other destination, except Canada, if it is less than 3,000 gross tons and is covered by Commodity Control List (CCL) entry No. 1416.

NOTE: Approval of the Maritime Administration also is required for a transfer to a person who is not a citizen of the United States of any interest in a vessel documented (or last documented) by means of registration with the U.S. Coast Guard. Transfer of an "interest" includes the sale, mortgage, charter or lease of such vessels by United States citizens.

(3) *Export Authorization by Office of Export Administration.* All watercraft not covered by the provisions of paragraph (f) (1) and (2) of this section require export authorization only from the Office of Export Administration. Such watercraft require a validated license to export to all destinations, except Canada, if covered by CCL entry No. 1416. Otherwise the watercraft is included in CCL entry No. 6499 and a validated license is required only for export to Country Groups S or Z or for export to the Republic of South Africa or Namibia if intended for delivery to or for use by or for military or police entities in these destinations.[1]

PART 379—TECHNICAL DATA

§§ 379.4 [Amended]

2. Sections 379.4(d)(6) and 379.4(f)(1)(i)(e) are revised by deleting the footnotes to these subparagraphs and renumbering the remaining footnotes.

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

Supplement No. 1 [Amended]

3. Supplement No. 1 to Part 385, Advisory Notes for Selected CCL Entries, is revised by adding the following entry:

1416A Vessels, as follows:
(a) Hydrofoil vessels;
(b) * * *
(c) * * *
(d) * * *
(e) * * *
(f) * * *

NOTE.—Licenses are likely to be approved for export to satisfactory end users of hydrofoil vessels using only rigid V foils and not possessing significant rough water capability, extractable technology applicable to significant rough water, or amphibious capability.

PART 399—COMMODITY CONTROL LIST

4. The Commodity Control List, incorporated by reference in 15 CFR Part 399, is revised to add the following entry:

[1] See § 385.7 regarding exports to Uganda.

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	GLV & Value Limits T	V	Q
1416A Vessels, as follows:	.....	MG.....	QSTVWYZ	1,000	1,000	0

(a) Hydrofoil vessels;
(b) Sea-going vessels, including sea-going fishing vessels and coasters, and hulls therefor, designed for speeds of over 26 knots when in full load (design) condition, taking into consideration hull form (configuration) as well as power plant;
(c) Vessels with hulls and propulsion machinery made wholly or primarily of non-magnetic materials;
(d) New ships with decks and platforms specially designed or strengthened to receive weapons;
(e) Vessels incorporating any item included in a CCL entry beginning with the numeral 2 or listed in Supplement No. 2 to Part 370, any item described in entry No's. 1430, 1485, 1501, 1502, and 1510 (*Except all types of fish finding or whale finding equipment*), or arrangements for the degaussing of the vessel; and
(f) Specially designed parts and accessories for the above. (Also see §§ 370.10(a) and (f).)

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

RAUER H. MEYER,
Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 79-6861 Filed 3-6-79;8:45 am]

PART 373—SPECIAL LICENSING PROCEDURES

Clarification of the Term "Parts" for Service Supply Procedure

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Recently the question arose as to whether "sub-assemblies" were considered to be parts within the scope of the Service Supply procedure. An exporter participating in this procedure indicated that "in the electronics industry, the term "repair parts" is typically used to refer to practically anything required to effect a repair—individual parts, components or sub-assemblies, etc. The Office of Export Administration agrees that "sub-assemblies" should be considered to be parts within the scope of the Service Supply procedure, and has revised the procedure to include "sub-assemblies" within the definition of "parts." Also, a definition for "sub-assemblies" has been developed and included in the Service Supply procedure.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Dale F. Snell, Jr., Chief, Management Services Branch, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-2440).

SUPPLEMENTARY INFORMATION: It has been determined that these Regulations are "not significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082 *et seq.*, January 9, 1979) and Industry and Trade Administration Administrative Instructions 1-6 (44 FR 2093 *et seq.*, January 9, 1979), which implement Executive Order 12044 (43 FR 12661 *et seq.*, March 23, 1978), "Improving Government Regulations". Accordingly, Section 373.7 of the Export Administration Regulations (15 CFR 373.7) is revised as follows:

§ 373.7 Service Supply (SL) procedure.

* * * * *

(a) Definitions and interpretations.

* * *

(8) *Spare parts.* The term "spare parts" refers to parts in the kinds and quantities normally and customarily kept on hand in the event they are needed to assure prompt repair of equipment. (It includes "sub-assemblies," but does not include test instruments and operating supplies.) Commodities that improve or change the basic design characteristics, e.g., as to accuracy, capability, or productivity, of the equipment upon which they are installed, are not deemed to be spare parts within the meaning of the Service Supply (SL) procedure.

(9) *Sub-assembly.* The term "sub-assembly" means a number of components assembled to perform a specific function or functions, replaceable as an entity, and not capable of operating by itself. One example would be printed circuit boards with components mounted thereon. This definition does not include major sub-systems such as those composed of a number of sub-assemblies, for example, the entire memory bank or the complete central processing section of a computer.

* * * * *

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

RAUER H. MEYER,
Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 79-6860 Filed 3-6-79; 8:45 am]

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

SUBCHAPTER I—OTHER REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

[Docket No. RM79-20]

CERTAIN SALES OF NATURAL GAS BY INTRASTATE PIPELINES

MARCH 1, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final regulations.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations by adding to Part 284 a new Subpart C permitting intrastate pipelines to sell natural gas to interstate pipelines and to local distribution companies served by interstate pipelines, in accordance with the provision of the subpart. This rulemaking implements section 311(b) of the Natural Gas Policy Act of 1978. These amendments also conform the table of Parts for Subchapter I to reflect these and other recent amendments to Subchapter I, and incorporates the NGPA's definitions for all terms defined in the NGPA.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426 (202) 275-4166.

SUPPLEMENTARY INFORMATION

I. BACKGROUND

Section 311(b) of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. 95-621, November 9, 1978, provides that

the Federal Energy Regulatory Commission (Commission) may, by rule or order, authorize any intrastate pipeline to sell natural gas to any interstate pipeline and any local distribution company served by an interstate pipeline. Section 311(b) also sets forth certain requirements relating to rates and charges, duration and other matters in connection with the sales, and states that sales authorized under section 311(b) are subject to such other terms and conditions as the Commission may prescribe.

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

On February 5, 1979, the Commission issued a Further Notice of Proposed Rulemaking and Public Hearing (44 FR 7976, February 8, 1979) which proposed a new Subpart C and requested further data, views and comments with respect to the implementation of section 311(b) and also invited participation in a public hearing on the proposal. The public hearing was held on February 23, 1979, at which five persons testified, representing pipeline companies, an electric utility and the State of Louisiana. Twenty-three comments were received. Several suggestions contained in the comments have been incorporated into the final rule.

This rule shall become effective March 1, 1979.

II. Discussion of Comments

1. *What is the appropriate period for determining "weighted average acquisition cost of natural gas"?* Many parties commented on the proposed rule which would have based the determination of weighted average acquisition costs on the basis of volumes acquired over a 12-month period. No party agreed with the proposal and several presented arguments as to why the proposal should not be accepted.[1] The most commonly stated reason was that the proposal failed to permit the intrastate pipeline to recover actual and contemporaneous costs of gas associated with 311(b) sales. The Conference Report on the NGPA, S. Rep. No. 94-1126, 94th Cong., 2nd Sess. (1978), at page 108, states that:

> • • • weighted average acquisition cost is meant to be a contemporaneous determination. It is not based upon an historical cost which may have been lower. Instead, it is intended to look to the cost of the gas at the time is acquired and resold.

Upon review of the comments received and the arguments presented, the Commission believes that the proposal of February 5 should be modifed to more accurately reflect the Congressional policy quoted above. The final rule provides that "weighted average acquisition cost" will be based upon "the most recent calendar month for which data are available prior to the first day of the billing period in which deliveries pursuant to the sale occur and for which deliveries the weighted average acquisition cost is to be charged."

The Commission is aware that many interstate pipelines and local distribution companies who would be qualified to purchase natural gas under this program may have particular tariff provisions or requirements of state regulation which do not permit rate adjustments rapidly enough to provide the requisite revenues at the end of the billing period as may be necessary to meet the charges by the selling intrastate pipeline. This would be exacerbated by a methodology which provided for billing based upon actual purchase volumes and actual weighted average acquisition cost experienced for the billing period. Consequently, the Commission has imposed a condition in § 284.145(d) that the purchaser be notified of the rate to be charged under § 284.144 at least five (5) days prior to the beginning of each billing period.

The final rule's method for determination of weighted average acquired costs, with the adjustments permitted in § 284.144(a)(2) is deemed to be an acceptable method for calculation, but it is not mandatory. Parties to a sale, for example, may agree to a method of calculation and billing for the recovery of the cost of gas which is based on the method we noticed on February 5, 1979. However, no method may result in a per unit charge for the cost of gas delivered during any billing period which exceeds the unit cost for such deliveries as would be calculated under the method prescribed in § 284.144(a)(1) and (2).

2. *Should the Commission's existing regulations covering emergency transactions be retained?* Rules implementing provisions for emergency transactions under the Natural Gas Act were issued with the Interim Regulations Implementing the Natural Gas Policy Act of 1978, Subpart C of Part 157, Title 18, Code of Federal Regulations. The rules issued on December 1, 1978, advised the public that the emergency provisions under the Natural Gas Act might be terminated after March 1, 1979. Several parties have argued against the revocation of the emergency provisions. The Commission will not act at this time to revoke them. They will remain effective until the Commission takes further action to modify them in a separate rulemaking, to be announced at a later date. The Commission intends to carefully analyze and compare the scope of Part 157 and Part 284 to make sure that all necessary emergency transactions are permitted to take place. After this analysis the Commission will revise Subpart C of Part 157 to cover emergency transactions not covered under Part 284 of the Regulations and which the Commission concludes are necessary to continue. Consequently, the regulations currently contained in Part 157 of the Commission's regulations remain effective until further action of the Commission.

3. *Should the Commission modify the language of the rule to clarify its policy such that natural gas which is purchased to meet reasonably projected needs shall not be considered to be acquired primarily for resale pursuant to section 311(b)?* Three parties suggested that § 284.145(c) may be read to technically prohibit sales which section 311(b) was intended to permit. Section 311(b)(7)(B) provides that the Commission shall disapprove any transaction which involves, "the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to (section 311(b))(1)." The Conference Report clarifies the intent of Congress by explaining at page 109 that:

> [g]as that is determined by the Commission to be reasonably projected to be necessary to meet an intrastate pipeline's future market and buyer requirements shall not be considered by the Commission to be solely or primarily acquired by the intrastate pipeline for the purchase and resale in the interstate market.

The proposal in § 284.145(c) generally adopted the language in section 311(b)(7)(B). To avoid any confusion, the Commission has added to § 284.145(c) language which also generally follows the clarifying language in the Conference Report.

4. *Should the definition of "intrastate pipelines" be expanded to include the so-called "Hinshaw" pipelines?* Several parties commented on the fact

[1] We note, however, that Oklahoma Natural Gas Company proposed a similar methodology in its comments filed on November 20, 1978, in response to the November 13, 1978 notice.

that the definition of "intrastate pipelines" in section 2(6) of the NGPA does not include natural gas companies defined in section 1(c) of the Natural Gas Act (so-called Hinshaw pipelines). The language in section 2(16) of the NGPA and the importance of the resolution of this issue to the implementation of both Titles I and II of the NGPA requires that the Commission consider issues outside of the scope of these rules. Consequently, the Commission will consider and resolve the issue of the appropriate classification of pipelines not subject to the jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act in a separate proceeding which the Commission intends to address in the immediate future.

5. *What procedural requirements should govern proceedings to terminate sales under this subpart?* Two companies addressed the issue of procedural requirements for proceedings to terminate sales under this rule. One party stated that any such proceeding should involve an adjudicatory hearing. Another party stated that such a proceeding should be initiated only through informal hearings so that patently unwarranted complaints may be eliminated. Neither suggestion is adopted. The language in the proposal follows section 311(b)(6) of the NGPA. The Commission prefers to retain its discretion, to be exercised on a case-by-case basis, to establish appropriate procedures to determine whether a transaction should be terminated. Such procedures may, in appropriate circumstances, include the use of either adjudicatory or informal hearings.

6. *Should reasonable profits be allowed on sale of natural gas by intrastate pipelines?* Two parties were concerned that the proposal did not provide for reasonable profits on the resale of the natural gas itself. The Conference Report, at page 108, specifically states that:

> [t]he conferees do not intend the selling pipeline to make a profit on the purchase and sale aspects of the transaction.

In compliance with Congressional policy, the rule will not permit reasonable profits on the resale of the gas by the intrastate pipeline. However, as pointed out below, an opportunity to earn a reasonable profit is permitted on those services enumerated in section 311(b)(2)(B) of the NGPA.

7. *Should the regulations specifically express the policy that the intrastate pipeline may earn a reasonable profit on expenses incurred in the process of providing gathering, treatment, processing, transportation, and delivery services?* The proposal provided for recovery of expenses incurred in the process of providing gathering, treating, processing, transporting and delivering natural gas and any profits as determined in accordance with § 284.123, but did not specifically state inclusion of an opportunity to earn a reasonable profit. To avoid any possible problems in the future with regard to this issue, the Commission has included in the final rule language which incorporates the provisions of section 311(b)(2)(B)(ii) which states that the Commission should permit the selling intrastate pipeline an opportunity to earn a reasonable profit on services described in section 311(b)(2)(B)(i).

8. *Should the "weighted average acquisition cost of natural gas" be based on the costs of system supply or the costs associated with specific contracts?* One party suggested that the language of the proposal be clarified so that the weighted average acquisition cost be determined by reference to only the specific contractual sources of supply from which the natural gas delivered under the sale is received. Section 311(b)(2)(C) provides for an adjustment to the fair and equitable price to compensate for any increase in the pipeline's weighted average acquisition cost of natural gas as the result of purchasing volumes in excess of those that would otherwise have been purchased under existing contracts. In order that section 311(b) transactions bear their fair share at the cost of any change in the weighted average acquisition cost of gas as the result of additional purchases under existing contracts in order to make the transactions, the methodology would permit the attribution of the cost of the additional purchases to the section 311(b) transaction. However, such an adjustment under section 311(b)(2)(C) is only available if the costs associated with the additional purchases of the natural gas for the 311(b) transaction results in an increase in the weighted average acquisition cost of natural gas to the intrastate pipeline's other customers.

9. *Should a rebuttable presumption in favor of extensions be created in § 284.146?* The Commission elects not to create a rebuttable presumption in favor of extensions. The Commission adopts the proposal which permits intrastate pipelines to continue sales pursuant to this rule without requiring further action by the Commission and, at the same time, protects the Commission's discretion to examine such extensions.

III. Summary of the Final Rule

Subpart C of Part 284 permits intrastate pipelines to sell natural gas to interstate pipelines and to local distribution companies served by interstate pipelines, in accordance with its provisions. These sales may take place without prior Commission approval, but as required by section 311(b)(4) of the NGPA and § 284.145(b) of the regulations, are subject to interruption to the extent that natural gas subject to the sale is required by selling pipeline to provide adequate service to the pipeline's customers at the time of the sale. Upon complaint or its own motion, the Commission may terminate a sale after making certain findings enumerated in section 311(b)(6) of the NGPA.

Sales are limited to two years' duration under § 284.145(a) and can be extended for periods of up to two years each if not disapproved by the Commission after opportunity for oral and written comments. The Commission may modify the terms of a proposed extension and impose upon sales or extensions terms and conditions it deems appropriate and in the public interest.

Section 284.145(c) of the regulations states that no sales under Subpart C may involve natural gas acquired by the intrastate pipeline solely or primarily for the purpose of resale under section 311(b). It also states that the Commission shall consider whether the intrastate pipeline reasonably anticipated the needs of its future market in determining whether a sales contract was entered into solely or primarily for the purpose of resale under this rule.

Section 284.143 requires "weighted average billing cost of natural gas" to be determined according to the cost of system supply. For any billing period in which deliveries pursuant to this rule occur, the weighted average acquisition cost shall be computed by (1) determining the actual quantities of natural gas (expressed in terms of MMBtu's) purchased by the intrastate pipeline from each source of supply during the most recent calendar month for which data are available prior to the first day of the billing period in which deliveries pursuant to the sale are to occur and for which deliveries the weighted average acquisition cost is to be charged; (2) multiplying the MMBtu's attributable to each source of supply by the most recent price actually paid during the calendar month upon which the volumes are computed with respect to each source; and (3) dividing the sum of the products computed in (2) by the sum of the BBMtu's determined in (1). Thus, the calculation of the weighted average cost shall be determined in accordance with the most recent prices paid.

The intrastate pipeline's weighted average acquisition cost of natural gas is one of the three components of the permissible rates and charges for a sale under Subpart C. The pipeline may add, as provided in § 284.144(a)(2), an adjustment to reflect any difference between the weighted average acquisition cost of natural gas used for

purposes of billing during the latest billing period and the actual weighted average acquisition cost experienced during the same billing period; plus, under § 284.144(a)(3) an amount to recover the costs of gathering, treating, processing, transporting and delivering the gas as provided in § 284.123 of Subpart B of Part 284 (Interim Regulations, 43 F.R. 56628-56629, December 1, 1978). Section 284.148(a)(4) requires the filing of the method to be followed in computing any unit cost difference between the weighted average acquisition cost used for billing period purposes and actual cost for the same billing period. Under § 284.123(b), an intrastate pipeline may base its rates upon the methodology and cost used (1) in designing its rates to recover the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage) included in its firm sales rate schedules for city-gate service on file with a state regulatory agency; or (2) in determining the allowance permitted by an appropriate state regulatory agency for city-gate service by the intrastate pipeline. The pipeline may elect to use the rates contained in a transportation rate schedule for intrastate service on file with the state regulatory agency which the pipeline determines covers service comparable to service under Subpart B. Instead of any of these methods, an intrastate pipeline may file proposed rates with the Commission, with information showing the rates to be fair and equitable, and may commence service using those rates, subject to refund.

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

As discussed above, a condition was added in § 284.145(d) that the purchaser be notified of the rate to be charged under § 284.144 at least five (5) days prior to the beginning of each billing period.

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

As announced in the November 13 and February 5 proposals, this rule shall become effective on March 1, 1979. The rule should be implemented as soon as possible in order that needed supplies of natural gas may reach the interstate market. Additionally, these provisions relieve any unnecessary restrictions against the sales permitted by this rule. It should also be noted that these regulations do not require any actions be taken. It merely permits parties to enter into transactions under these regulations.

Two additional amendments have been included in this rulemaking. The first merely conforms the table of Parts for Subchapter I to reflect this and other amendments that have recently been made in the Subchapter. The second incorporates at Part 280, for purposes of Subchapter I, the NGPA's definition for all terms defined in the NGPA.

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

In consideration of the foregoing, the Commission amends Subchapter I, Part 284, Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective March 1, 1979.

By the Commission.

KENNETH F. PLUMB,
Secretary.

1. Subchapter I is amended by striking the table of Parts and inserting in lieu thereof the following table:

Part
280 General provisions applicable to Subchapter I.
281 Natural gas curtailment.
282 [Reserved]
283 [Reserved]
284 Certain sales and transportation of natural gas.
285 [Reserved]
286 Administrative procedures.

2. Subchapter I is amended by adding a new Part 280 to read as follows:

PART 280—GENERAL PROVISIONS APPLICABLE TO SUBCHAPTER I

Sec.
280.101 Definitions.

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

§ 280.101 Definitions.

(a) *NGPA definitions.* Terms defined in the NGPA shall have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subpart.

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

(1) "NGPA" means the Natural Gas Policy Act of 1978.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

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

Subpart C—Certain Sales by Intrastate Pipelines

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

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

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

Subpart C—Certain Sales by Intrastate Pipelines

§ 284.141 Applicability.

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

(a) Interstate pipelines; and

(b) Local distribution companies served by interstate pipelines.

§ 284.142 Sales by intrastate pipelines.

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

§ 284.143 Definitions.

(a) "Weighted average acquisition cost of natural gas" means the system supply cost of natural gas to an intrastate pipeline for any billing period in which deliveries pursuant to this subpart occur, computed by:

(1) Determining the actual quantities of natural gas (expressed in terms of MMBtu's) purchased by the intrastate pipeline from each source of supply, excluding any quantities for which the intrastate pipeline makes an adjustment under § 284.144(b), during the most recent calendar month for which data are available prior to five days before the commencement of the billing period in which deliveries pursuant to the sale are to occur and for which deliveries the weighted average acquisition cost is to be charged;

(2) Multiplying the MMBtu's attributable to each source of supply by the latest price per MMBtu actually paid during the calendar month that the volumes are computed under paragraph (a)(1) of this section with respect to each source of supply; and

(3) Dividing the sum of the products computed under paragraph (a)(2) of this section by the sum of the MMBtu's determined under subparagraph (1).

(b) "Billing period" is any period during which deliveries are made pursuant to this subpart and for which the purchaser will be charged a unit cost for the volumes so delivered calculated in accordance with § 284.144. Such period may not be less than a calendar month.

§ 284.144 Rates and charges.

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

(1) Its actual weighted average acquisition cost of natural gas calculated at least five days before the first day of the billing period for which the weighted average acquisition cost will be charged for deliveries made during that billing period; plus

(2) An adjustment to reflect any difference between the weighted average acquisition cost of natural gas used for billing purposes for the most recent billing period and the actual weighted average acquisition cost experienced during that same billing period for which actual data are now available and for which the actual weighted average acquisition costs of natural gas have not yet been recovered; plus

(3) An amount to recover the costs of gathering, treating, processing, transporting, and delivering the natural gas (including an opportunity to earn a reasonable profit thereon) as determined in accordance with § 284.123; plus

(4) An adjustment as may be determined under paragraph (b) of this section.

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

(1) Is acquired under an existing contract;

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

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

§ 284.145 Terms and conditions.

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

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

(c) No sale pursuant to this subpart may involve natural gas acquired by the intrastate pipeline under a sales contract with the producer or other supplier entered into solely or primarily for the purpose of resale pursuant to this subpart. The Commission shall consider, in determining whether an intrastate pipeline's contract with a producer or other supplier has been entered into solely or primarily for resale of the subject gas pursuant to this subpart, whether the intrastate pipeline did or could have reasonably projected that the natural gas subject to the contract was necessary to meet the pipeline's future market and buyer requirements, including growth, both in the number of customers and in the demands of existing customers.

(d) The purchaser under this subpart shall be notified of the rate to be charged under § 284.144 at least five days prior to the beginning of each billing period.

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

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

§ 284.146 Extensions.

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

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

§ 284.147 Terminations.

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

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

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

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

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

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

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

(d) Upon complaint of any interested person or upon its own motion, the Commission may, prior to a hearing as provided in paragraph (b) of this section, suspend a sale pursuant to this subpart pending the hearing if it determines that any of the findings under paragraph (c) of this section is likely to be made following the hearing.

§ 284.148 Reporting requirements.

(a) *Initial report.* Within 60 days after commencing deliveries under a sale pursuant to this subpart, an intrastate pipeline shall file with the appropriate state regulatory agency and with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) The exact legal name of the intrastate pipeline and the name, title and mailing address of the person or persons to whom communications regarding the sale pursuant to this subpart should be addressed;

(2) A description of the sale, including:

(i) The identity of the parties;

(ii) The dates of commencement and anticipated termination of the sale;

(iii) The estimated total and daily quantities (in MMBtu's) of natural gas; and

(iv) The rate to be charged;

(3) A computation showing the methodology for determining the weighted average acquisition cost of natural gas under this subpart;

(4) A computation showing the methodology used to determine any unit cost difference between the weighted average acquisition cost used for billing period purposes and actual cost for the same billing period;

(5) A computation showing the methodology to be employed for arriving at the rate charged to recover the cost of gathering, treating, processing, transporting and delivering the natural gas associated with the sale;

(6) Computation of an adjustment, if any, under § 284.165(b), including:

(i) The basis for attributing certain additional acquisitions of natural gas to a sale pursuant to this subpart;

(ii) The identity of the existing contract under which the additional acquisitions are made and the price (per MMBtu) of natural gas purchased under the contract; and

(iii) Each point of delivery of additional acquisitions of natural gas to the intrastate pipeline; and

(7) An affidavit that service pursuant to the sale is subject to interruption to the extent that natural gas subject to the sale under this subpart is required to enable the intrastate pipeline involved to provide adequate service to its customers at the time of the sale.

(b) *Subsequent report.* If any significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, appropriate amendments to its initial report, signed by a senior official of the company.

(c) *Extension report.* Not less than 90 days prior to the expiration of a contract for the sale of natural gas pursuant to this subpart, an intrastate pipeline seeking to extend the sale beyond the initial two-year period or any period of extension shall file with the Commission and the appropriate state regulatory agency an extension report signed by a senior official of the company, under oath, stating:

(1) Current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) The proposed terms of the extension.

(d) *Final report.* Within 60 days after the termination of any sale or extension under this subpart, the interstate pipeline or local distribution company served by an interstate pipeline which purchased natural gas pursuant to this subpart shall file with the Commission and the appropriate state regulatory agency, under oath, a final report signed by a senior official of the company, stating:

(1) The actual quantities of natural gas purchased, on a monthly and total basis;

(2) The actual rate paid (per MMBtu) for each month and the total amount paid; and

(3) The points of delivery.

[FR Doc. 79-6856 Filed 3-6-79; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 79-79]

PART 141—ENTRY OF MERCHANDISE

Documents and Information Required To Be Filed at the Time of Entry of Certain Articles of Steel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the Special Summary Steel Invoice (SSSI), Customs Form 5520, which presently must be presented to Customs at the time of entry for each shipment of certain articles of steel having an aggregate purchase price over $2,500. The amendment modifies the present SSSI to require the name of the producer in every case and the sales price to the first unrelated purchaser in the United States when the seller (exporter) is related to the importer, and relaxes existing minimum monetary reporting requirements.

This document also modifies existing instructions for preparation of the SSSI relating to freight charges incurred after importation of the merchandise into the United States, the submission of information concerning commissions, and the identity of the importer. This additional information provided on the SSSI will be used in connection with the administration of the trigger price mechanism (TPM) under the Antidumping Act, 1921, as amended.

EFFECTIVE DATE: The revised SSSI must be presented at the time of entry for each shipment of steel mill products exported on or after May 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank R. Brennan, Office of Operations, U.S. Customs Service, Washington, D.C. 20229 (202-566-8235); Theodore Hume, Office of the Chief Counsel, U.S. Customs Service, Washington, D.C. 20220 (202-566-5476).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 16, 1978, notice was published in the FEDERAL REGISTER (43 FR 47543) of a proposal to amend § 141.89(b)(1), Customs Regulations (19 CFR 141.89(b)(1)), relating to the SSSI which must be presented at the time of entry for each shipment of certain articles of steel having an aggregate purchase price over $2,500.

The information provided on the SSSI is used in connection with the Treasury Department's ("Department") trigger price mechanism (TPM) which was announced in the FEDERAL REGISTER on December 30, 1977 (42 FR 65214). Final regulations requiring presentation of the SSSI to the Customs Service (Customs) were adopted by a document published in the FEDERAL REGISTER on February 13, 1978 (43 FR 6065) as T.D. 78-53.

Under the TPM, the invoice prices of importations of steel mill products are monitored by comparing them to "trigger" prices established by the Department on the basis of its best estimate of the costs of producing—and delivering to the United States—steel mill products by the world's most efficient steel industry. Imports of these products are monitored to determine whether investigations under the Antidumping Act, 1921, as amended, would be appropriate.

The amendments to § 141.89(b)(1), Customs Regulations, and to the instructions for preparation of the SSSI contained in this document are intended to address a number of problems which have arisen since the implementation of the TPM and adoption of the SSSI. In certain cases, information presently required is not being provided, and in some cases, additional information is needed to administer the TPM effectively. Specific areas in which new information will be required concern (1) identification of producers; (2) the sales price to the first unrelated purchaser, if available at the time of entry, when the seller and importer are related; (3) freight charges incurred after the merchandise is imported into the United States; (4) commissions paid or allowed; and (5) name of the importer.

The principal changes effected by these amendments require the identi-

fication of the producer and, in certain related party transactions, the sales price to the first unrelated purchaser in the United States. In this regard, the proposed amendments to § 141.89(b)(1) have been modified to take account of comments received. The proposal to require ex-mill and subsequent sales prices has been limited considerably. As amended, § 141.89(b)(1), provides that when the importer and seller are related within the meaning of 19 U.S.C. 166, the importer shall provide evidence of the sales price to the first unrelated purchaser in the United States if that price is available at the time of entry. This information must be provided whenever the resale contract has been concluded before the time of entry. Failure to provide this information will constitute incomplete submission of the SSSI, and the entry is subject to rejection by Customs. If the resale price is not known at the time of entry because, for example, the merchandise is entering inventory, new procedures to track resales will be adopted, including audits of inventories and additional reporting methods. If the seller and importer are not related parties, their international transaction price will continue to be compared to trigger prices.

Written comments on the proposed amendments were invited from all interested persons to be received on or before November 15, 1978. Many comments were received in response to that notice. As mentioned above and more fully explained below, the final rule has been modified to take account of these comments.

This document also will amend § 141.89(b)(1) to relax the reporting requirement by increasing the minimum monetary reporting level. Presently, the SSSI must be presented to Customs at the time of entry for each shipment of certain articles of steel having an aggregate purchase price over $2,500. The amendment will increase the monetary level so the SSSI will be required at the time of entry for each shipment of certain articles of steel having an aggregate purchase price of $10,000 or over, except for importations from contiguous countries where the SSSI will be required for articles having an aggregate purchase price of $5,000 or over. This amendment was not discussed in the November 15, 1978 notice but because it relaxes an existing requirement, opportunity for public comment is considered to be unnecessary.

Discussion of Major Comments

Use of ex-mill price information would seriously prejudice non-mill-related sellers/importers

A number of commenters, representing generally the interests of the non-mill-related sellers/importers, claim that the proposal to monitor the ex-mill and subsequent sales prices would seriously disrupt the competitive relationship between mill-related and non-mill-related sellers/importers. These commenters argue that the relevant price under the TPM is the price in the first arm's-length transaction in the United States. Accordingly, the commenters contend that when the seller and importer are related, the Department should look to the sale to the first unrelated purchaser in the United States to determine whether the sale has been made at or above the trigger price, including the costs of the related party importer.

The alleged effect on the competitive relationship between mill-related and non-mill-related sellers/importers has caused the Department to consider whether the present policy of looking only to resale prices would provide an adequate basis for dealing with possible evasion problems in connection with reporting information necessary to administer the TPM. It appears that when resale price information is provided at the time of entry, Customs can monitor the transactions effectively to ensure that resales are at or above trigger prices plus the costs of the importer. However, in many cases, the sales price to the first unrelated purchaser is not provided to Customs at the time of entry, even though the contract of sale has been concluded before entry in the great majority of related party sales.

The Department, therefore, has decided to modify its proposal with respect to the reporting of ex-mill and subsequent sales prices. The invoice price currently provided in sales by a seller to an unrelated importer will be sufficient to monitor the transactions. However, when the seller is related to the importer, the sales price to the first unrelated purchaser must be privided if that price is known at the time of entry. The importer shall complete the resale portion of the SSSI if the sale occurred after exportation. The importer shall complete section 31 of the SSSI whether or not the sale occurred after exportation and shall sign the SSSI.

This change in the Department's proposal should meet the concerns expressed by non-mill-related sellers/importers because it would affect equally all sellers selling to related parties, whether or not mill-related. The possible evasion problems cited in the Department's notice also will be addressed because experience with the TPM to date indicates that most shipments of steel that are imported in related party transactions have been resold in back-to-back sales before the entry of the merchandise. The availability of this resale price information at the time of entry will permit the comparison to trigger prices to be made immediately and thereby will facilitate the monitoring process under the TPM.

There are, however, circumstances in which the resale price information is not available at the time of entry. This occurs when imported merchandise has been purchased for inventory or to be converted into another product by the related party importer. In those cases, the Department will consider an international transaction price (intracompany price) which is below the trigger price as an appropriate circumstance in which to consider the initiation of an antidumping proceeding. If an antidumping investigation is initiated, respondents will be required to show, where appropriate, that resales are at or above fair value—not trigger price. In addition, when the international transaction price is at or above trigger price, the Department will continue to seek eventual resale price data. Special audits currently are being conducted of selected importers to verify, in part, that sales from inventory are at or above trigger prices, including the importers' costs. These audits may be used by the Department to consider further measures if the information developed indicates that further measures may be necessary.

Purchase price or ex-mill price is not available or would involve the disclosure of confidential business information

Some commenters assert that the foreign purchase price is not available to sellers in circumstances in which steel is bought and sold through middlemen. In addition, these commenters and others claim that identifying the source of the merchandise would result in the disclosure of confidential business information.

The Department is of the opinion that, as a minimum, the seller be required to identify the producer in all cases to assist in determining, with respect to sales below trigger prices, whether there are sales below fair value, that is, below the foreign market sales price of the producers of the merchandise. Because the identity of the producer is critical to the effective operation of the TPM, the problems posed in a small number of instances do not appear to merit a change in this requirement. However, if the seller considers that disclosure of the name of the producer would

reveal confidential business information, instead of identifying the producer on the SSSI, he may furnish the name of the producer directly to Customs Headquarters by certified mail, together with a statement of the reasons why he believes the name should not be disclosed, and enter the number of the certified mail receipt in section 6 of the SSSI. The name and statement shall be directed to the U.S. Customs Service, Attention: O:D:A, 1301 Constitution Avenue, N.W., Room 4120, Washington, D.C. 20229. If Customs agrees that disclosure of the name of the producer would reveal confidential business information, the name will be protected from disclosure.

The Department's decision to amend its proposal to require only the resale price date in related party transactions should eliminate any problem of confidentiality or availability raised by the disclosure of price data. As stated above, when the resale price is not available at the time of entry, the Department will use other means to monitor the resale price.

If in the course of its monitoring (including audits), the Department finds that a U.S. consumer of steel is using a foreign buying agent to avoid a direct sale from the foreign mill to that consumer so that the related firms, viewed as a whole, are acquiring steel below applicable trigger prices, the Department will consider the ex-mill price as the proper basis for comparison to the trigger price. That is consistent with prior practice in antidumping cases.

COMMISSIONS

In response to a number of commenters, the instructions for completing the SSSI have been amended to clarify requirements with respect to reporting commissions. The Department's policy with respect to commissions paid by a foreign seller to an unrelated importer will not change. When the foreign seller is unrelated to the importer, a commission paid to the importer will be treated as a reduction in the invoice price, and an adjustment in the amount of the commission will be made in the invoice price before a comparison is made to the trigger price.

The treatment of commissions in sales by a seller to a related importer will vary depending upon the availability at the time of entry of the resale price to the first unrelated purchaser. If the resale price information is available at the time of entry, Customs will monitor that sale to determine if it is at or above the applicable trigger price, and the commission paid by the seller to its related importer will be disregarded. However, if the resale price information is not available at the time of entry, the Department will monitor the international transaction price and will deduct any commissions paid to the related importer before a comparison is made to the trigger price. If the resulting comparison indicates a sale below the trigger price, the Department will consider the initiation of an antidumping proceeding.

MONETARY REPORTING LEVEL

Presently, the SSSI must be presented to Customs at the time of entry for each shipment of certain articles of steel having an aggregate purchase price over $2,500. Upon review it has been concluded that the minimum reporting requirement could be relaxed and the objectives of the TPM could still be met effectively if the minimum monetary reporting level were increased. Accordingly, the amendment would increase the monetary level so the SSSI would be required at the time of entry for each shipment of certain articles of steel having an aggregate purchase price of $10,000 or over, except for importations from contiguous countries where the SSSI would be required for articles having an aggregate purchase price of $5,000 or over.

EDITORIAL CHANGES

Certain non-substantive changes also have been made to the SSSI. The items have been renumbered. Check-off blocks have been added to section 8 to indicate whether the importer is the importer of record. The separate items for reporting the width and length of steel mill products have been eliminated. Width and length have been given code numbers along with the other extras. These code numbers are found in section 4 in the SSSI. Width and length extras now will be reported by code number in section 18a. The price will be placed in section 18b. The section for mill price has been deleted and resale price substituted. Sections 29 and 30 for duty and selling expenses and processing have been added. Further, check-off blocks have been added to section 31 for the importer to indicate whether the merchandise has been resold.

SPECIAL SUMMARY STEEL INVOICE

Copies of the amended Special Summary Steel Invoice (SSSI), designated as Customs Form 5520, may be obtained from any district director of Customs or through any U.S. Embassy or Consulate. Copies also may be printed privately or by facsimile if they are identical in contents and size and not inferior in paper quality to the form available from U.S. Government sources. A copy of the SSSI, as revised, and instructions for its use are set forth below:

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
19 U.S.C. 1481, 1482, 1484

SPECIAL SUMMARY STEEL INVOICE

(Prepare in Duplicate)

FORM APPROVED
O.M.B. No. 48-R0547

1. SELLER	2. DOCUMENT NO.	3. INVOICE NO. AND DATE	4. CODES FOR COLUMN 18
	5. REFERENCES		C - Width D - Length E - Edging F - Chemistry G - Quality (e.g. commercial deep drawing) H - Heat treating I - Coating J - Inspection and testing K - Surface treatments OTHER(S)–Specify: L - M - N -
6. PRODUCER IF OTHER THAN SELLER (Name and Address)	7. BUYER		
8. IMPORTER — Importer of Record? ☐ Yes ☐ No	9. ORIGIN OF GOODS	10. DATE PRICE TERMS AGREED	11. CURRENCY/EXCH RATE (If fixed or Agreed)
	12. TERMS OF SALE, PAYMENTS AND DISCOUNTS		

13. MARKS AND NUMBERS	14. AISI Category	15. DESCRIPTION OF GOODS (INCLUDE SPECIFICATIONS)	16. QUANTITY	17. BASE PRICE	18. EXTRAS a. code	18. EXTRAS b. price	19. UNIT PRICE a. home mkt.	19. UNIT PRICE b. invoice	19. UNIT PRICE c. resale	20. INVOICE TOTALS

21. ☐ If the production of these goods involved furnishing goods or services to the seller *(e.g., assists such as dies, molds, tools, engineering work)* and the value is not included in the invoice price, check Box 21 and explain above.

23. PACKING COSTS

22. DECLARATION OF SELLER/SHIPPER (OR AGENT)

I declare:

(A) ☐ If there are any commissions, rebates, drawbacks, or bounties allowed upon exportation of goods, I have checked Box (A) and itemized separately above.

(B) ☐ If any unrelated incentives or reimbursements of dumping duties, or other inducements not reflected in this invoice have been, or will be, paid, granted, or received in connection with the sale of these goods, I have checked Box (B) and explained above.

I further declare that there is no other invoice differing from this one (unless otherwise described above) and that all statements contained in this invoice and declaration are true and correct.

SIGNATURE OF SELLER/SHIPPER (OR AGENT): X

24. TRANSPORTATION COSTS TO POINT OF EXPORTATION

25. OCEAN, AIR, OR INTERNATIONAL FREIGHT

26. INSURANCE COSTS

31. DECLARATION OF IMPORTER (When providing information)

Merchandise ☐ has ☐ has not been resold as of this date.

IMPORTER SIGNATURE: X

DATE:

29. DUTY

30. SELLING EXPENSES & PROCESSING

27. FREIGHT FROM U.S. POINT OF IMPORTATION

28. OTHER COSTS *(Specify)*

Previous editions are obsolete

Customs Form 5520 (1-18-79)

[4810-01-M]

INSTRUCTIONS FOR PREPARATION OF SPECIAL SUMMARY STEEL INVOICE

(Required for each shipment of certain articles of steel valued at $10,000 or over or, if from a contiguous country, valued at $5,000 or over)

NOTE.—Where this summary invoice covers several types of merchandise priced in different ways, each should be shown separately. Prepare in duplicate. Continuation sheets may be used.

The numbered items which follow correspond to the section numbers on the Special Summary Steel Invoice.

1. SELLER: Give the name and address (city and country) of the seller of the goods. If the goods were not sold before export, give the name and address (city and country) of the person from whom the goods were obtained by the U.S. importer.

2. DOCUMENT NUMBER—

3. INVOICE NUMBER & DATE—

4. REFERENCE—This information is used to identify a particular shipment.

5. CODES FOR EXTRAS (COLUMN 18): This section refers to the additional price for extras such as width and length. The applicable code from section 4 should be shown in section 18a, and the price for each extra should be shown in section 18b. The extras listed are expressed in terms as now understood in the U.S. market.

6. PRODUCER IF OTHER THAN SELLER: Give the producer's name, address (city and country).

7. BUYER: Give the name and address of the buyer of the imported merchandise. In those instances where the importer is related to the foreign seller and the importer has sold the goods to a person in the United States who is unrelated to the importer or the foreign seller, this section should show the name and address of the unrelated person.

8. IMPORTER: Give the name and address of the person by whom or for whose account the goods are being imported. Check yes or no to indicate if the importer is also importer of record.

9. COUNTRY OF ORIGIN: Give the name of the country in which the imported merchandise was produced or manufactured. Further labor, work, or material added to the article in another country must substantially transform the article in order to change the "country of origin." When goods are invoiced in, or exported from, a country other than the one in which they originated, the actual country of origin should be specified, rather than the country of invoice or exportation.

10. DATE PRICE TERMS AGREED: Show the date on which the final sales price for this shipment was agreed. If a contract or purchase order was renegotiated, show the date of the renegotiated contract or purchase order. If the international transaction bringing the goods to the United States is between related parties and the importer has sold the goods to an unrelated party in the United States, show here the date on which the final sales price to the unrelated party was agreed.

11. CURRENCY USED/EXCHANGE RATE: State the currency of the country used to make payment, for example, Japanese yen, U.S. dollars, etc.

Indicate whether the rate of exchange is a fixed rate or a rate agreed upon between the seller and buyer. State the rate.

12. TERMS OF SALE, PAYMENTS AND DISCOUNTS: Give the conditions under which the international sale was made:

(1) How payment is to be made (letter of credit, draft, etc.);

(2) The terms and place of delivery (C.I.F., F.O.B. port, etc.); (charges to place of delivery are presumed to be included in unit price);

(3) Show discounts involved, by type and amount; and

(4) Indicate time of payment (30 days after delivery, 90 days from bill of lading, etc.).

13. MARKS AND NUMBERS: Show the marks and numbers which appear on the package in which the goods are contained. Those marks and numbers should be shown opposite the description of the goods contained in those packages. Indicate the quantity of packages in each group (range) of marks and numbers or descriptions.

14. AISI CATEGORY: Show the appropriate AISI (American Iron & Steel Institute) category number from the list at the end of the instructions.

15. DESCRIPTION OF GOODS (INCLUDE SPECIFICATIONS): Each item of goods should be described completely and accurately in the invoice. Give the name by which it is known in the country of production or exportation, the article number, its grade or quality, size and dimensions, and all other characteristics essential to a complete description of the goods. Besides a full description of the goods, steel specifications that this merchandise meets must be shown.

When information on the component material of any article of imported goods is essential to a determination of the applicable trigger price or of the classification or Customs valuation, the invoice should include: an analysis of the article or the formula under which it was manufactured; a description of each of the component materials of which the article is composed; and the percentage of each component by weight and value that make up the article.

16. QUANTITY: State the total quantity in the weights and measures of the country or place from which the goods are shipped or in the weights and measures of the United States. Show the net weight, not the gross weight. Also specify whether actual weight or theoretical minimum weight is shown.

17. BASE PRICE: Show here for each steel category the price per unit, exclusive of extras, on which the total sales price was based. The base price is a component of section 19b.

18. EXTRAS: Show here for each steel category the price of each extra added to the base price. Use appropriate codes from section 4 where applicable. The extra charge is a component of section 19b. More than one extra may be listed for each product.

19a. HOME MARKET UNIT PRICE: The seller completing the invoice should state the unit base price, terms, and currency at which the seller sold or offered for sale and consumption such or similar goods in the home market at the date nearest to the date shown in section 10. If such or similar goods are not sold or offered for sale and consumption in the home market, the state-

ment "not sold in home market" should be shown in column 19a.

NOTE: Where the international transaction bringing the goods to the United States is between related parties and the importer has sold the goods to an unrelated party in the United States, also show here the unit base price, terms, and currency at which such or similar goods were sold or offered for sale and consumption in the home market at the date nearest to the date of exportation rather than the date of purchase.

19b. INVOICE UNIT PRICE: The unit price for each item shall be stated as the price in the currency of purchase-per short ton, metric ton, pound, foot, kilo, etc. Specify unit of quantity.

If the current unit price for export to the United States is not the same as the invoice unit price (or contract price), the seller completing the invoice may state the export price in parenthesis under the invoice price in section 19b and explain.

NOTE: If the goods were not purchased, the seller completing the invoice should state the price that he would have received or would be willing to receive if the goods were sold in the ordinary course of trade for exportation to the United States.

19c. RESALE UNIT PRICE: Where the international transaction bringing the goods to the United States is between related parties and the importer has sold the goods to an unrelated party in the United States, the price shown in section 19c should be the price to the unrelated party. Regarding the resale price to the unrelated party, the following items of information must be specified:

(1) Unit of quantity used,

(2) Whether based on actual weight or theoretical minimum weight, or other,

(3) Time of delivery if different from section 12,

(4) Whether the following importer's charges are included in the price and the amount of each charge:

Group a: (Show these charges in section 28.) Unloading if not included in ocean freight; Wharfage; Handling on pier.

Group b: (Show this charge in section 29.) Duty.

Group c (Selling expenses and processing). Show these charges in section 30: Brokerage, Port tax, Port charges, Commission, Sale's agent commission, Additional insurance, Selling expenses (excluding commission), Office overhead, Further processing or treatment, and Warehousing.

20. INVOICE TOTALS: Show the total price (invoice unit price times the total number of units).

21. ASSISTS, DIES & MOLDS, ETC.: If the invoice price or value of the goods does not include the costs of dies, molds, tools, engineering work, etc., furnished for the production of the goods, check the box in section 21, and explain.

22. DECLARATION OF SELLER/SHIPPER (OR AGENT):

A. Check Box A and explain if any buying or selling commission, rebate, drawback, or bounty has been or will be made or granted on exportation of the goods.

B. Check Box B and explain if any payment or other element of value other than shown on the invoice has been or will be paid, granted or received in connection with the sale of these goods.

23. PACKING COSTS: Show here the packing costs for the international shipment. Do not show any packing included as an extra in section 18. Show here the total cost and also the unit cost per unit of quantity.

24. TRANSPORTATION COSTS TO POINT OF EXPORTATION: Show here the total cost and also the unit cost of transporting the goods from the mill or factory to the point of exportation, that is, the foreign inland freight charge.

25. OCEAN, AIR, OR INTERNATIONAL FREIGHT: Show here the total cost and also the unit cost per unit of quantity.

26. INSURANCE COSTS: Show the insurance costs pertaining to the international transaction from the place of shipment to the place of delivery in the United States. Show here the total cost and also the unit cost per unit of quantity.

27 FREIGHT FROM U.S. POINT OF IMPORTATION: Show here the cost of transporting the goods from the point of importation in the United States if these costs are borne by the exporter or a party related to the exporter. If these costs cannot be determined before entry, provide the contract terms stating the exporter's liability.

28. OTHER COSTS: All charges and fees should be specified separately by name and amount, whether or not they are included in the invoice unit price (section 19b). Show here the total cost and also the unit cost per unit of quantity, and specify if included in the invoice unit price. When charges or fees do not apply uniformly to all items, indicate the items to which the charges or fees apply.

Charges and fees include: Unloading charge, Wharfage fee, Handling, Additional insurance, Buying commissions, Selling commissions, License fees, Royalties, and Others.

If the actual amounts of any charges or fees are unknown to the seller or shipper, they should not be estimated. The name of the specific charge or fee should be indicated, followed by the statement "Actual amount not known."

29. DUTY: In case of an international transaction between related parties and a resale price to an unrelated party, show here the amount paid for duty. Indicate whether the amount is included in the resale price.

30. SELLING EXPENSES AND PROCESSING: In case of an international transaction between related parties and a resale price to an unrelated party, show here the amount of the following importer's charges; and indicate if the amount is included in the resale price: Brokerage, Port tax, Port charges, Commission, Sale's agent commission, Additional insurance, Selling expenses (excluding commission), Office overhead, Further processing or treatment, Warehousing.

31. DECLARATION OF IMPORTER: If the international transaction bringing the goods to the United States is between related parties, the importer must indicate in section 31 if the merchandise has or has not been resold as of the date he signs the SSSI. The importer must show the date in section 31 and also sign the SSSI in section 31.

If the international transaction (whether between related parties or unrelated parties) is based on terms of sale that do not include any of the charges in sections 24 through 28, the importer may provide these charges so long as the importer indicates he is supplying the charges and signs the SSSI.

NOTE: Whenever an importer provides the data in section 19c (resale unit price) and/or

sections 24 through 30, the importer should place an asterisk (*) next to these amounts to show he, not the foreign seller, is supplying the data. The importer should then sign the SSSI in section 31.

CATEGORY NO. AND PRODUCTS

1. Ingots, blooms, billets, slabs, etc.
2. Wire rods.
3. Structural shapes—plain 3 inches and over.
4. Sheet piling.
5. Plates.
6. Rail and track accessories.
7. Wheels and axles.
8. Concrete and reinforcing bars.
9. Bar shapes under 3 inches.
10. Bars—hot rolled—carbon.
11. Bars—hot rolled—alloy.
12. Bars—cold finished.
13. Hollow drill steel.
14. Welded pipe and tubing.
15. Other pipe and tubing.
16. Round and shaped wire.
17. Flat wire.
18. Bale ties.
19. Galvanized wire fencing.
20. Wire nails.
21. Barbed wire.
22. Black plate.
23. Tin plate.
24. Terne plate.
25. Sheets—hot rolled.
26. Sheets—cold rolled.
27. Sheets—coated (including galvanized).
28. Sheets—coated—alloy.
29. Strip—hot rolled.
30. Strip—cold rolled.
31. Strip—hot and cold rolled—alloy.
32. Sheets other—electric coated.

APPLICABILITY OF E.O. 12044

These amendments are considered not to be significant because they are essentially nonsubstantive, primarily procedural, do not materially change existing, or establish new policy, and relax existing minimum monetary reporting requirements. Accordingly, this document is not subject to the Treasury Department directive implementing Executive Order 12044, "Improving Government Regulations".

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Legal Publications Division, U.S. Customs Service. However, other personnel in the Customs Service and the Department of the Treasury assisted in its development.

AMENDMENT TO THE REGULATIONS

Part 141 of the Customs Regulations (19 CFR Part 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The introductory paragraph to § 141.89(b)(1), Customs Regulations (19 CFR 141.89(b)(1)), is amended to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

* * * * *

(b) *Special Summary Steel Invoice.* (1) A Special Summary Steel Invoice (Customs Form 5520) shall be presented in duplicate for each shipment which is determined by the district director to have an aggregate purchase price of $10,000 or over or, if from a contiguous country, of $5,000 or over, including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States, and which contains any of the articles of steel listed in paragraph (b)(2) of this section. In addition to the information required by section 141.86, the Special Summary Steel Invoice shall set forth the following:

* * * * *

2. Section 141.89(b)(1) is further amended by adding a new subparagraph (E) to read as follows:

(b) * * *
(1) * * *

(E) The name of the producer, the importer, and the price paid by the first unrelated purchaser in the United States, if that price is available at the time of entry. One or more continuation sheets may be used to supply this information, if necessary.

* * * * *

(R.S. 251, as amended, sections 207, 407, 42 Stat. 14, 18, sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759, 77A Stat. 14, Tariff Schedules of the United States, General Headnote 11 (19 U.S.C. 66, 166, 173, 1202, 1481, 1484, 1624))

ROBERT E. CHASEN,
Commissioner of Customs.

Approved: March 1, 1979.

HENRY C. STOCKELL, Jr.,
Acting General Counsel.

[FR Doc. 79-6822, Filed 3-6-79; 8:45 am]

[4810-22-M]

[T.D. 79-80]

PART 153—ANTIDUMPING

Notice of Modification or Revocation of Dumping Findings

AGENCY: United States Treasury Department.

ACTION: Revocation of Dumping Findings.

SUMMARY: This notice is to inform the public that portland gray cement from Portugal, aminoacetic acid (glycine) from France, whole dried eggs from Holland, clear sheet glass weighing over 28 ounces per square foot from France, and asbestos cement pipe from Japan are no longer being sold at less than fair value under the Antidumping Act, 1921.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Barbara J. Victor, Operations Officer, U.S. Customs Service, Duty Assessment Division, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: The findings of dumping listed below were published in the FEDERAL REGISTER on the dates indicated:

Commodity	Country	T.D.	"Federal Register" notice
Portland gray cement	Portugal	55501	(26 FR 10476) (Nov. 7, 1961)
Aminoacetic acid (glycine)	France	70-71	(35 FR 5009) (Mar. 24, 1970)
Whole dried eggs	Holland	70-198	(35 FR 14609) (Sept. 18, 1970)
Clear sheet glass weighing over 28 ounces per square foot	France	71-293	(36 FR 23360) (Dec. 9, 1971)
Asbestos cement pipe	Japan	72-178	(37 FR 12727) (June 28, 1972)

A "Notice of Tentative Determination to Modify or Revoke Dumping Findings" with respect to the above-mentioned commodities from the countries indicated was published in the FEDERAL REGISTER of October 2, 1978 (43 F.R. 45497-98). Views were then requested from interested par-

ties. However, no submissions were received.

The findings listed above have been in effect for at least 4 years, and there appears to be no likelihood of resumption of sales at less than fair value. Moreover, there is no record of imports during the last 4 years of the merchandise covered by these findings.

Based on these facts, I hereby determine that portland gray cement from Portugal, aminoacetic acid (glycine) from France, whole dried eggs from Holland, clear sheet glass weighing over 28 ounces per square foot from France, and asbestos cement pipe from Japan are not being, nor are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*), and the findings of dumping referred to above are hereby revoked.

Written comments were received with regard to proposed revocations of the dumping findings relating to canned Bartlett pears from Australia and pig iron from Czechoslovakia, East Germany, Romania, the U.S.S.R., and West Germany, which were included in the above-cited "Notice of Tentative Determination to Modify or Revoke Dumping Findings." Analysis of these comments not having been completed, these findings are not covered by this final revocation notice.

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended by deleting from the columns headed "Merchandise", "Country", and "T.D." the following:

Commodity	Country	T.D.
Portland gray cement	Portugal	55501
Aminoacetic acid (glycine)	France	70-71
Whole dried eggs	Holland	70-198
Clear sheet glass weighing over 28 ounces per square foot.	France	[1]71-293
Asbestos cement pipe	Japan	72-178

[1]Modified by T.D. 78-242; July 19, 1978.

This notice is published pursuant to § 153.44(d) of the Customs Regulations (19 CFR 153.44(d)).

(Secs. 201, as amended, 407; 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

FEBRUARY 28, 1979.

[FR Doc. 79-6874 Filed 3-6-79; 8:45 am]

[1505-01-M]

Title 20—Employee's Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulation No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Subpart C—Basic Computation of Benefits and Lump Sums

Corrections

In FR Doc. 78-36344 appearing at page 60877 in the issue for Friday, December 29, 1978, make the following changes:

(1) On page 60877, the Regulation number should have been printed as set forth above.

(2) On page 60879, first column, thirteenth line from the top, "administative" should read "administrative".

(3) On page 60880, first column, the formula should be printed as follows:

$$\frac{\$11,311.72}{\$\ 9,779.44} \times \$180 = \$208.$$

$$\frac{\$11,311.72}{\$\ 9,779.44} \times \$1,085 = \$1,255.$$

Also, in the first column, second line of (*a*), "ocurrred" should read "occurred".

(4) On page 60880, third column, second line of § 404.212a (b)(1)(iii), delete the comma after "which".

(5) On page 60881, second column, eighth line of § 404.219(b)(2), delete "the".

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7597]

PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Limitation on Capital Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the limitation on the deductibility of capital losses by taxpayers other than corporations. Changes in the applicable tax law were made by the Tax Reform Act of 1976 and the Tax Reduction and Simplification Act of 1977. These regulations provide necessary guidance to the public for compliance with applicable parts of those Acts.

EFFECTIVE DATES: The regulations are effective for taxable years beginning after December 31, 1976, except for the amendment conforming the regulations under section 1211(b) to the repeal of a special provision with respect to taxpayers paying the tax imposed by section 3, which is effective for taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

David B. Cubeta of the legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3926).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 31, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1211(b) of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to sections 501(b)(6) and 1401 of the Tax Reform Act of 1976 (90 Stat. 1559, 1731) and section 102(b)(14) of the Tax Reduction and Simplification Act of 1977 (91 Stat. 138). No substantive comments were received, and no public hearing was requested or held. The proposed amendments are adopted by this Treasury decision with one minor change as explained below.

EXPLANATION

These regulations provide new rules under section 1211(b) relating to the amount of ordinary income against which capital losses may be offset by taxpayers other than corporations. These rules increase the maximum amount of the capital loss deduction against ordinary income from $1,000 to $2,000 for taxable years beginning in 1977 and to $3,000 for taxable years beginning after 1977. It is provided that these maximum amounts are applicable to losses incurred in and carried over from taxable years beginning both before January 1, 1970, and after December 31, 1969. Because the Code and regulations already contain special rules for losses incurred in and carried over from taxable years begin-

ning before 1970, this provision is necessary to avoid the complexity and burdensome computations that would otherwise result. Special rules are provided for a married taxpayer filing a separate return. If such a taxpayer has only post-1969 loss carryovers, the deduction is limited to one-half of the applicable $1,000, $2,000, or $3,000 amount. However, if losses are carried over from taxable years beginning before January 1, 1970, the deduction is limited to the lesser of the applicable $1,000, $2,000, or $3,000 amount, or the sum of one-half of that amount plus the pre-1970 losses.

These regulations are also conformed to the repeal of a special provision with respect to taxpayers paying the tax imposed by section 3 and to the substitution of the term "capital gain net income" for the term "net capital gain".

The regulations also reflect an amendment to section 1211(b)(1)(A) which, for taxable years beginning after December 31, 1976, limits deductible capital losses to the amount of taxable income for the taxable year reduced (but not below zero) by the zero bracket amount.

The notice of proposed rulemaking published on May 31, 1978, contained a miscalculation in the application to the 1978 tax year of the facts in example (9) of existing § 1.1211-1(b)(8). The notice stated that the transitional additional allowance for 1978 would be $2,800. The correct figure for the 1978 transitional additional allowance is $2,450. This Treasury decision corrects the error.

These regulations impose no new reporting burdens or recordkeeping requirements. The principal effect of these regulations is to establish a new limitation upon the amount of ordinary income against which capital losses may be offset. The effectiveness of this limitation will be monitored by customary audit and returns processing procedures to insure both that the applicable limitation is not exceeded and that the taxpayer has taken the full deduction to which he is entitled.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, the amendments proposed to § 1.1211 and to paragraph (b) of § 1.1211-1 of the Income Tax Regulations (26 CFR Part 1) are hereby adopted with the following change: Paragraph (b)(8) of § 1.1211-1, as set forth in paragraph (2) of the notice of proposed rulemaking published on May 31, 1978 (43 FR 23607), is amended by striking out "$2,800" as it appears in the next to last sentence of example (9) and by inserting in lieu thereof "$2,450".

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

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: February 21, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

§ 1.1211 [Deleted]

Paragraph 1. Section 1.1211 and the historical note are deleted.

Par. 2. Paragraph (b) of § 1.1211-1 is amended by striking out "net capital gain" each place it appears in subparagraph (3) (ii) and (iv) and inserting in lieu thereof "capital gain net income (net capital gain for taxable years beginning before January 1, 1977)", by striking out "net capital gains and losses" as it appears in subparagraph (3)(v) and inserting in lieu thereof "capital gain net income (net capital gains for taxable years beginning before January 1, 1977) and net capital losses", by revising subparagraphs (2), (3)(i), (6)(ii), and (7), and by adding new material at the end of each example in subparagraph (8). The revised provisions and added material read as follows:

§ 1.1211-1 Limitation on capital losses.

* * * * *

(b) *Taxpayers other than corporations.* * * *

(2) *Additional allowance.* Except as otherwise provided by subparagraph (3) of this paragraph, the additional allowance deductible under section 1211(b) for taxable years beginning after December 31, 1969, shall be the least of—

(i) The taxable income for the taxable year reduced, but not below zero, by the zero bracket amount (in the case of taxable years beginning before January 1, 1977, the taxable income for the taxable year);

(ii) $3,000 ($2,000 for taxable years beginning in 1977; $1,000 for taxable years beginning before January 1, 1977); or

(iii) The sum of the excess of the net short-term capital loss over the net long-term capital gain, plus one-half of the excess of the net long-term capital loss over the net short-term capital gain.

(3) *Transitional additional allowance*—(i) *In general.* If, pursuant to the provisions of § 1.1212-1(b) and subdivision (iii) of this subparagraph, there is carried to the taxable year from a taxable year beginning before January 1, 1970, a long-term capital loss, and if for the taxable year there is an excess of net long-term capital loss over net short-term capital gain, then, in lieu of the additional allowance provided by subparagraph (2) of this paragraph, the transitional additional allowance deductible under section 1211(b) shall be the least of—

(*a*) The taxable income for the taxable year reduced, but not below zero, by the zero bracket amount (in the case of taxable years beginning before January 1, 1977, the taxable income for the taxable year);

(*b*) $3,000 ($2,000 for taxable years beginning in 1977; $1,000 for taxable years beginning before January 1, 1977); or

(*c*) The sum of the excess of the net short-term capital loss over the net long-term capital gain; that portion of the excess of the net long-term capital loss over the net short-term capital gain computed as provided in subdivision (ii) of this subparagraph; plus one-half of the remaining portion of the excess of the net long-term capital loss over the net short-term capital gain.

* * * * *

(6) *Special rules.* * * *

(ii) For taxable years beginning before January 1, 1976, in case the tax is computed under section 3 and the regulations thereunder (relating to optional tax tables for individuals), the term "taxable income" as used in section 1211(b) and this paragraph shall be read as "adjusted gross income."

* * * * *

(7) *Married taxpayers filing separate returns*— (i) *In general.* In the case of a husband or a wife who files a separate return for a taxable year beginning after December 31, 1969, the $3,000, $2,000, and $1,000 amounts specified in subparagraphs (2)(ii) and (3)(i)(*b*) of this paragraph shall instead be $1,500, $1,000, and $500, respectively.

(ii) *Special rule.* If, pursuant to the provisions of § 1.1212-1(b) and subparagraph (3) (iii) or (iv) of this paragraph, there is carried to the taxable year from a taxable year beginning before January 1, 1970, a short-term capital loss or a long-term capital loss, the $1,500, $1,000 and $500 amounts specified in subdivision (i) of this subparagraph shall instead be maximum amounts of $3,000, $2,000, and $1,000

respectively, equal to $1,500, $1,000, and $500, respectively, plus the total of the transitional net long-term capital loss component for the taxable year computed as provided by subparagraph (3)(ii) of this paragraph and the transitional net short-term capital loss component for the taxable year computed as provided by subparagraph (3)(iv) of this paragraph.

(8) *Examples.* The provisions of section 1211(b) may be illustrated by the following examples:

Example (1). * * * If A had the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions in 1977, the additional allowance would be $2,000, and a net long-term capital loss of $100 would be carried over. For a taxable year beginning in 1978 or thereafter, these facts would give rise to a $2,050 additional allowance and no carryover.

Example (2). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the same result would be reached.

Example (3). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the result would remain unchanged.

Example (4). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the result would remain unchanged.

Example (5). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the additional allowance would be $2,000, and there would be no carryover.

Example (6). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the transitional additional allowance would be $1,800. No amount would remain to be carried over to the succeeding taxable year.

Example (7). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the transitional additional allowance would be $1,900. No amount would remain to be carried over to the succeeding taxable year.

Example (8). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions as in example (7) for a married individual filing a separate return for a taxable year beginning in 1977 or thereafter, the transitional additional allowance would be $1,900. No amount would remain to be carried over to the succeeding taxable year.

Example (9). * * * Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for a taxable year beginning in 1977, the transitional additional allowance would be $2,000. A net long-term capital loss of $800 would remain to be carried over. Of this amount $100 would be treated as carried over from 1969. Assuming the original facts for a taxable year beginning in 1978, the transitional additional allowance would be $2,450. No amount would remain to be carried over to the succeeding taxable year.

[FR Doc. 79-6835 Filed 3-6-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1067-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Alabama: Approval of Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing its approval of regulations adopted by the Alabama Air Pollution Control Commission for particulate emissions from xylene oxidation processes. Emissions from thermal oxidation of process wastes will no longer be subject to incinerator regulations. A new process weight regulation more stringent than the general process weight regulation now applied to the process alone will apply to both process and incinerator emissions. A net reduction in particulate emissions is expected from the implementation of the revised regulations. There will be no significant impact on a nearby area in which secondary particulate standards have not been attained.

DATE: This action is effective April 6, 1979.

ADDRESSES: Copies of the materials submitted by the State of Alabama in connection with this revision are available for public inspection during normal business hours at the following locations:

Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36130.

Air Programs Branch, Air & Hazardous Materials Division, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Eliot Cooper of EPA Region IV's Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia (telephone 404/881-3286; FTS 257-3286).

SUPPLEMENTARY INFORMATION: On September 12, 1978, following notice and public hearing in conformity with 40 CFR 51.4 and 51.6, the Alabama Air Pollution Control Commission adopted changes in its regulation for particulate emissions from xylene oxidation. This revised regulation was submitted for EPA's approval on September 13, 1978, and was announced as proposed rulemaking on November 6, 1978 (43 FR 51649). No comments were received in response to the notice of proposal.

This revision consists of a change in Chapter 4 of the Alabama Air Pollution Control Rules and Regulations; to this chapter is added Part 4.12, which limits particulate emissions from any xylene oxidation process to the amount calculated by the equations:

$$E = 2.75P^{0.62} \text{ (if } P < 30 \text{ tons/hour)}$$

$$E = 13.15\,P^{0.16} \text{ (if } P \geq 30 \text{ tons/hour)}$$

Where:

E = Emissions in pounds per hour
P = Process weight per hour in tons per hour

Where a thermal oxidizer is used for reduction of process waste from a xylene oxidation process, and no other streams are added, the thermal oxidizer shall be considered a part of the process system. This new process weight regulation is more stringent than the general process weight regulation which formerly applied to xylene oxidation processes.

These processes produce large amounts of liquid wastes which are reduced in thermal oxidizers. Due to the composition of the wastes, their oxidation produces particulate emissions which are very difficult to control. Until now, they have been regulated under Part 3.2, Incinerators, of the Alabama regulations (Part 5.2 of the Morgan County regulations). However, attempts to meet the specified emission limit, 0.2 pounds per 100 pounds of waste charged, have been unsuccessful. Investigation has revealed that these attempts embody what the Agency considers to be Best Available Control Technology. The revised regulations apply to one source, Amoco Chemical Corporation in Decatur. Since 1974, Amoco has been attempting to meet the presently applied regulation for incinerators and is now under a variance (not Federally approved).

Since allowable and actual emissions from xylene oxidation processes will be reduced by this change in regulations, and since there is no significant impact from these emissions on the secondary nonattainment area in Decatur, we find this revision in the Ala-

bama plan to be approvable, and it is hereby approved.

This action is effective April 6, 1979.

(Sec. 110(a), Clean Air Act (42 U.S.C. 7410(a))

Dated: February 28, 1979.

DOUGLAS M. COSTLE,
Administrator.

Incorporation by reference of the State Implementation Plan approved by the Director of the Federal Register May 18, 1972. A copy of the incorporated material is on file in the Federal Register Library.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart B—Alabama

In § 52.50, paragraph (c) is amended by adding subparagraph (18) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(18) Part 4.12, dealing with particulate emissions from xylene oxidation, submitted by the Alabama Air Pollution Control Commission on September 13, 1978.

[FR Doc. 79-6933 Filed 3-6-79; 8:45 am]

[6560-01-M]

[FRL 1069-05]

PARTS 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Massachusetts Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice EPA approves two revisions to the Massachusetts Implementation Plan and amends 40 CFR 52.1126, "Control Strategy: Sulfur Oxides," to allow Crane and Company, Inc., Dalton, and Schweitzer Division, Kimberly-Clark Corporation, Columbia Mill, Lee, to burn higher sulfur fuel in accordance with Regulation 5.1, "Sulfur Content of Fuels and Control Thereof," of the Massachusetts Implementation Plan.

EFFECTIVE DATE: April 6, 1979.

FOR FURTHER INFORMATION CONTACT:

Deborah Ikehara, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: On March 24, 1978 (43 FR 12324) the Administrator published in the FEDERAL REGISTER a final rulemaking notice approving Regulation 5.1 "Sulfur Content of Fuels and Control Thereof," for the Berkshire Air Pollution Control District (BAPCD) as a revision to the Massachusetts State Implementation Plan (SIP). The revision, submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE) on April 14, 1977, allows all sources in the BAPCD to burn fossil fuel with a sulfur content not to exceed 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2% sulfur content by weight residual fuel oil). The BAPCD is the same geographic area as the Berkshire Intrastate Air Quality Control Region.

However, two sources were excluded from implementing the provisions of the revised SIP and were limited by EPA to use of fossil fuel with a sulfur content not to exceed 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0% sulfur content by weight residual fuel oil), in accordance with the requirements of the original SIP. These sources, Crane and Company, Inc., Dalton, and Schweitzer Division, Kimberly-Clark Corporation, Columbia Mill, Lee, were predicted by computer dispersion modeling to cause violations of the National Ambient Air Quality standards (NAAQS) for sulfur dioxide (SO_2) while burning 2.2% sulfur content residual oil.

On August 11, 1978, after proper notice and public hearing, the Commissioner of the Massachusetts DEQE submitted a SIP revision request to allow Kimberly-Clark's Columbia Mill to burn 2.2% sulfur content residual oil. The revision provides for a change in stack configuration at the Columbia Mill whereby the combustion products emitted from three stacks of 56, 59.5, and 72.2 feet will be emitted through one new 122 foot stack.

Dispersion modeling, included as technical support for the revision, shows that the modification will allow the Columbia Mill to burn 2.2% sulfur content residual oil without jeopardizing the NAAQS for SO_2. The new taller stack, which is necessary to avoid high ambient concentrations which could have occurred due to the adverse aerodynamic effects of nearby structures on plume dispersal from the shorter stacks, also eliminates the previously modeled NAAQS violations. Therefore, on November 16, 1978 (43 FR 53472) the Regional Administrator published a notice in the FEDERAL REGISTER proposing to approve the plan revision and remove the Columbia Mill from the list of disapproved sources in 40 CFR 52.1126.

On August 31, 1978, after proper notice and public hearing, the Commissioner of the Massachusetts DEQE submitted a SIP revision request to allow Crane and Company's Pioneer Mill to burn 2.2% sulfur content residual oil. Technical support for the revision consisted of a demonstration that the concentration predictions obtained by application of the Valley model are overly conservative for the Dalton area, based on actual air quality and meteorological data collected at ambient monitoring stations selected by EPA and DEQE and established and operated by Crane and Company, Inc.

One of the monitoring stations measured SO_2 impacts in the area to the southeast of the source where the model predicted the only NAAQS violations, and the other provided an indication of population exposure to general SO_2 levels in the Dalton Area. SO_2 levels at the source-oriented site did not exceed 13% of the 3-hour secondary standard of 0.5 ppm and 24% of the 24-hour primary standard of 0.14 ppm. Analyses of the SO_2 and meteorological data and of the previous modeling results show that the burning of 2.2% sulfur oil at the Pioneer Mill will not jeopardize the NAAQS. Therefore, the Regional Administrator published a FEDERAL REGISTER notice on November 14, 1978 (43 FR 52747) proposing to approve the plan revision and remove Crane and Company from the list of disapproved sources in 40 CFR 52.1126.

During the 30-day comment periods following publication of each notice of proposed rulemaking, one letter of comment was submitted, supporting EPA's proposed approval for Kimberly-Clark's Columbia Mill.

Neither SIP revision is subject to the requirements for Prevention of Significant Deterioration (PSD) in 40 CFR 52.21. First, since these fuel changes are specifically excluded from the definition of a "major modification" (40 CFR 52.21(b)(2)(ii)(d)), PSD permits are not required; second, the SIP revisions, although resulting in increased emissions, do not consume increment because a SIP revision which proposed an increase in allowable emissions (from 1.0% to 2.2% sulfur oil) for all sources in the BAPCD was pending in the Regional Office on August 7, 1977 (40 CFR 52.21(b)(11)(i)).

After evaluation of the State's submittal, the Administrator has determined that the Massachusettts revisions meet the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, the revisions are approved as revisions to the Massachusetts Implementation Plan.

(Sec. 110(a), Clean Air Act, as amended, (42 U.S.C. 7410).)

Dated: February 28, 1979.

DOUGLAS M. COSTLE,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart W—Massachusetts

1. In § 52.1120(c), subparagraph (13) is revised to read as follows:

§ 52.1120 Identification of Plan

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(13) A revision to Regulation 5.1, Sulfur Content of Fuels and Control Thereof, for the Berkshire Air Pollution Control District, submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering on April 14, 1977, and additional technical information submitted on August 11, 1978, pertaining to the Schweitzer Division, Kimberly-Clark Corporation, Columbia Mill, Lee, and on August 31, 1978, pertaining to Crane and Company, Inc., Dalton.

§ 52.1126 [Amended]

2. In § 52.1126, paragraph (g) is revoked.

[FR Doc. 79-6934 Filed 3-6-79; 8:45 am]

[6560-01-M]

[FRL 1068-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Revision of the State of Delaware Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of the revision of the Delaware State Implementation Plan to include a Consent Order for the Delaware City Generating Station of the Delmarva Power and Light Company at Delaware City, Delaware. The revision requires Delmarva to achieve compliance with Delaware's sulfur dioxide regulation by June 1, 1980 and specifies milestones which the company must meet toward that end. During the time Delaware is installing equipment to achieve compliance the company is permitted to burn 3.5 percent sulfur fuel rather than the 1.0 percent sulfur fuel normally required. The air quality impact of this revision has been evaluated and it has been found that it will not lead to violations of the air quality standards.

EFFECTIVE DATE: Immediately March 7, 1979.

ADDRESSES: Copies of the SIP revision and associated support and comment material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Sts., Philadelphia, PA 19106, Attn: Raymond D. Chalmers.

Delaware Department of Natural Resources and Environmental Control, Division of Environmental Control, Air Resources Section, Tatnall Building, Capitol Complex, Dover, Delaware 19901, Attn: Mr. Robert French.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Raymond D. Chalmers, 215-597-4750.

SUPPLEMENTARY INFORMATION: On August 5, 1975 Delaware's Secretary of Natural Resources and Environmental Control, John Bryson, acting for the Governor, submitted to EPA Region III a proposed revision of the Delaware State Implementation Plan (SIP) for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). The revision was requested to include within the SIP a Consent Order for the Delaware City Generating Station of the Delmarva Power and Light Company. Secretary Bryson certified that the Order was adopted in accordance with the public hearing and notice requirements of 40 CFR, Part 51.4 and all relevant State procedural requirements. The Secretary also asked that EPA review and process the Consent Order as a revision of the Delaware SIP.

The Order is designed to bring Getty Oil Company (Eastern Operations) and Delmarva Power and Light Company into compliance with Delaware's regulations governing the control of air pollution as they apply to the power generating station at Delaware City. The final compliance date is June 1, 1980, at which time the generating station will have installed flue gas desulfurization facilities that will limit its sulfur dioxide emissions to a level equivalent to that which would result from the uncontrolled burning of one percent sulfur fuel. Fuel of up to 3.5 percent sulfur content will be permitted to be burned by Delmarva at the Delaware City plant until the required compliance date. The compliance schedule for the plant is as follows:

Screening Agreement: July 1, 1975.
Screening Study: July 1, 1976.
Process Agreement: September 1, 1976.
Final Design and Specifications: June 1, 1977.
Decision on Construction: August 15, 1977.
Department Permit Review: September 1, 1977.
Contract for Construction: October 1, 1977.
Process Construction: April 1, 1980.
Process Operational and in Compliance: June 1, 1980.

Delaware has adhered to this schedule. A Wellman-Lord scrubber is now being installed by the company that will enable it to meet the Consent Order's requirements.

EPA was precluded from considering the Consent Order as a SIP revision at the time Delaware requested this because the April 16, 1975 Supreme Court Decision in *Train* v. *NRDC* had left the agency without a policy for dealing with such deferrals of SIP requirements for individual sources beyond the NAAQS attainment deadline set by Congress in the Clean Air Act of 1970.

EPA policy was clarified with the publication on December 16, 1975 of proposed regulations for post-attainment date variances. The Region III Administrator at that time, Daniel J. Snyder III, basing his determination on these regulations, informed Secretary Bryson on March 31, 1976 of EPA's position regarding the revision.

The Regional Administrator determined that EPA would be able to approve the revision only if the compliance schedule and control strategy demonstration submitted by the State were adequate. He found the compliance schedule to be adequate because it contained the required increments of progress and provisions for compliance upon completion. He was unable to make a determination of the adequacy of the control strategy because Delaware had submitted insufficient information regarding the revision's effect on the strategy. Accordingly, he informed Secretary Bryson that the SIP revision could not be approved until a demonstration was made that the sulfur dioxide control strategy, taking the Consent Order into account, contained sufficient emission limitations to provide for attainment of standards for the full term of the variance. The impact of the variance was required to be analyzed for all areas within the Metropolitan Philadelphia Interstate AQCR and elsewhere where the impact of the Order might interfere with attainment or maintenance of standards.

On March 27, 1978 the requested demonstration was received. This demonstration is presented in a report entitled "An Air Quality Analysis near the Getty Refining and Market Company, Delaware Refinery." This report

adequately shows, through diffusion modeling, that the strategy to attain and maintain the NAAQS will not be adversely affected by the revision. On October 2, 1978, EPA proposed the revision in the FEDERAL REGISTER. During the public comment period, no comments were received.

The revision has been found to meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

In view of the above evaluation, the Administrator approves the amendment of the Delaware SIP to include the Consent Order for Getty and Delmarva.

(42 U.S.C. 7401)

Dated: February 28, 1979.

DOUGLAS M. COSTLE,
Administrator.

Part 52 of Title 40 of the Code of Federal Regulations is amended as follows:

Subpart I—Delaware

§ 52.420 [Amended]

1. In § 52.420—Identification of Plan, paragraph (c)(11) is amended to read as follows:

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(11) A Consent Order for the Getty Oil Company and the Delmarva Power and Light Company submitted on August 5, 1975 by the Delaware Department of Natural Resources and Environmental Control.

[FR Doc. 79-6935 Filed 3-6-79; 8:45 am]

[6560-01-M]

[FRL 1067-6]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by the State of Louisiana, Air Control Commission to Boise Southern Co.

AGENCY: Environmental Protection Agency.

Action: Final rule.

SUMMARY: The Administrator of the EPA hereby approves a Delayed Compliance Order issued by the State of Louisiana to Boise Southern Company, Elizabeth, Louisiana. The Order requires the company to bring air emissions from its recovery boiler at its paper mill in Elizabeth, Louisiana, into compliance with certain regulations contained in the federally-approved Louisiana State Implementation Plan (SIP). Because of the Administrator's approval, Boise Southern Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provision of the Clean Air Act for violation(s) of the SIP regulation covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on March 7, 1979.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region 6, Air Compliance Branch, Enforcement Division, First International Building, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT:

James Veach, Legal Branch, Enforcement Division, U.S. Environmental Protection Agency, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270, telephone number: (214) 767-2760.

SUPPLEMENTARY INFORMATION: On December 5, 1978, the Regional Administrator of EPA's Region 6 office published in the FEDERAL REGISTER, 43 FR 56912 (1978), a notice proposing approval of a delayed compliance order issued by the State of Louisiana to Boise Southern Company. The notice asked for public comments by January 4, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Boise Southern Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Boise Southern Company on a schedule to bring its recovery boiler in Elizabeth, Louisiana, into compliance as expeditiously as practicable with Section 23.4(1) of the Louisiana Air Control Commission Regulations, a part of the federally approved Louisiana State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(c) and 113(d)(7) of the Act. The Louisiana Air Control Commission decided not to impose emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Boise Southern to delay compliance with the SIP regulations covered by the Order until January 1, 1979. The facility was unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Boise Southern Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Louisiana State Implementation Plan.

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

Dated: February 28, 1979.

DOUGLAS M. COSTLE,
Administrator.

In the consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.231 to read as follows:

§ 65.231 EPA approval of state delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	Date of FR proposed	SIP regulation(s) involved	Final compliance date
Boise Southern Co.	Elizabeth, La.	DCO-78-1	§ 23.4(1) LACCR.	Dec. 5, 1978	Jan. 1, 1979.

[FR Doc. 79-6936 Filed 3-6-79; 8:45 am]

[4110-07-M]

Title 45—Public Welfare

CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Notification of Child Abuse and Neglect; Correction

AGENCY: Social Security Administration, HEW.

ACTION: Correction.

SUMMARY: This document corrects FR Doc. 77-3343 appearing at page 6584 in the FEDERAL REGISTER on February 3, 1977, in which paragraph (a)(2) of 45 CFR 233.90 was inadvertently omitted. A prior FR Doc. 77-1600 appearing at page 3307 in the FEDERAL REGISTER of January 18, 1977, carried the following texts. The correct and complete § 233.90(a) is set forth below:

EFFECTIVE DATE: February 3, 1979.

FOR FURTHER INFORMATION CONTACT:

Miss Joyce Fernandez, Program Specialist, Office of E a Family Assistance, Social Security Administration, 330 C Street, S.W., Washington, D.C. 20201, (202) 245-0982.

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State, nor may the State agency prorate or otherwise reduce the money amount for any need item included in the standard on the basis of assumed contributions from nonlegally responsible individuals living in the household.

In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions; and

(2) Where it has reason to believe that the home in which a relative and child receiving aid reside is unsuitable because of the neglect, abuse, or exploitation of such child, the State or local agency will:

(i) Bring such condition to the attention of a court, law-enforcement agency, or other appropriate agency in the State, providing whatever data it has with respect to the situation;

(ii) In reporting such conditions, use the same criteria as are used in the State for all other parents and children; and

(iii) Cooperate with the court or other agency in planning and implementing action in the best interest of the child.

* * * * *

Dated: February 12, 1979.

L. DAVID TAYLOR,
Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 79-6963 Filed 3-6-79; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-931]

PART 0—COMMISSION ORGANIZATION

Reflecting Establishment of the Office of Public Affairs

AGENCY: Federal Communications Commission.

ACTION: Amendment of rules.

SUMMARY: This amendment changes the Commission's Rules to incorporate the new Office of Public Affairs. Establishment of this Office was necessary in order to fully respond to a number of significant issues involving citizen participation in FCC proceedings, public awareness of FCC regulatory requirements, and industry equal employment opportunity and minority enterprise programs.

EFFECTIVE DATE: February 16, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Bernard I. Kahn, Office of Executive Director, 632-7513.

SUPPLEMENTARY INFORMATION:

ADOPTED: November 9, 1978.

Released: March 2, 1979.

Order. Amendment of Part 0 of the Commission's rules to reflect establishment of the Office of Public Affairs.

1. Executive Order 12044 identified three areas of immediate concern to the President in the Federal regulatory program: (1) That new opportunities be opened up for public participation in the regulatory process; (2) that regulations be more understandable; and (3) that agencies exercise more effective review over the development of regulations. To better achieve the goals of this Executive Order, it has been proposed that a new Office of Public Affairs, reporting directly to the Commission, be established.

2. Establishment of the Office of Public Affairs would enable the Commission to consolidate all resources directly related to public information, consumer assistance, and industry EEO activities. The Commission finds that the consolidation would, in turn, provide better focus and leadership for improving public understanding of the Commission's regulatory requirements and give increased visibility to the Commission's efforts to assist minority entrepreneurs seeking to participate in telecommunications industries. The proposed Office would also help to encourage public participation in FCC decision-making processes, promote greater consistency throughout the Commission in dealing with the public, and facilitate staff coordination of plans, programs, and projects in this area. For these reasons, the Commission is hereby approving establishment of the Office of Public Affairs. Part 0 of the Commission's Rules and Regulations, which describes the organization of the Commission, is being amended to include this Office.

3. The changes now being made in the Commission's rules concern agency organization. The prior notice, procedure, and effective date provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C. 553, therefore do not apply. Authority for the amendments which are being made is contained in Sections 4(i) and 5(b) of

the Communications Act of 1934, as amended.

4. *Accordingly, it is ordered,* That effective February 16, 1979, Part 0 of the Commission's rules and regulations is amended as set forth below.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

1. In § 0.5 new paragraphs (a)(14) and (b)(7) are added to read:

§ 0.5 General description of Commission organization and operations.

* * * * *

(a) * * *

(14) Office of Public Affairs.

(b) * * *

(7) *Office of Public Affairs.* The Office of Public Affairs has primary responsibility for the Commission's Public Information, Consumer Assistance, Industry Equal Employment Opportunity (EEO) and Minority Enterprise programs. The major purpose of these programs is to inform the public of the Commission's regulatory requirements, to facilitate public participation in the Commission's decision-making processes, and to apprise the public of Commission policies promoting equal employment opportunity and minority participation in the telecommunications industry.

* * * * *

2. Section 0.15 is added to read as follows:

OFFICE OF PUBLIC AFFAIRS

§ 0.15 Functions of the Office

The Office of Public Affairs is directly responsible to the Commission. The Office has the following duties and responsibilities:

(a) Develop, recommend, coordinate and administer Commission objectives, plans and programs to enhance public understanding of and compliance with the Commission's regulatory requirements. Evaluate public information dissemination practices and develop methods of improving these practices.

(b) Act as the principal channel for communicating information to the news media, regulated industries, and the general public on Commission policies, programs, and activities. Make official announcements of Commission decisions and actions. Maintain liaison with the information media to facilitate the dissemination of news and information on FCC activities. Advise the Commission on public reaction to and comment on FCC policies and programs.

(c) Develop, recommend, coordinate and administer objectives, plans and programs to encourage participation by the public in the Commission's decision-making processes. Promote increased awareness within the Commission of the impact of Commission policies on the ability of consumers of communications services to participate in decisions that affect them. Evaluate the effectiveness of mechanisms developed and used to facilitate public input and develop new initiatives as appropriate.

(d) Serve as the Commission's primary point of contact with individual consumers of communications services and with organizations of such consumers. Maintain liaison with consumers to facilitate an interchange of information and cooperative efforts to improve the Commission's information-gathering, policy-making, and information dissemination functions.

(e) Act as the principal point of public contact in disseminating information about Commission programs to promote equal employment opportunity and minority enterprise in Commission-regulated industries. Maintain liaison with industry representatives, women's and minority groups and other interested parties regarding public information about and public evaluation of these programs. Organize FCC seminars and serve as FCC spokesperson to outside organizations on these subjects.

(f) Develop and implement programs to assist in providing information to minority entrepreneurs engaged in or seeking to participate in telecommunications industries regulated by the Commission.

(g) Review Commission contract procurement policy to devise ways of increasing information about proposed Commission contracts received by minority contractors.

(h) Advise the Commission on its information dissemination and public participation policies, as they affect liaison with the information media, the public and the Commission's regulatees. Provide policy and program guidance to the bureaus and offices on these subjects based on feedback received through the information dissemination functions of the Office.

(i) Maintain liaison with the Field Operations Bureau regarding the public information and consumer assistance activities of the Commission's field offices.

§§ 0.11, 0.12, 0.41, and 0.42 [Amended]

3. Sections 0.11(h), 0.41(p), and 0.42(d) are deleted. In § 0.12, paragraphs (j) and (m) are deleted, and paragraphs (k) and (l) become (j) and (k), respectively.

§ 0.422 [Amended]

4. In § 0.422, the phrase "Public Information Officer's office" is replaced by "Public Information Division."

§ 0.423 [Amended]

5. In § 0.423, the words "Public Information Officer" are replaced by "Chief, Public Information Division."

§ 0.443 [Amended]

6. In § 0.443, the words "Public Information Officer" are replaced by "Public Information Division."

§ 0.605 [Amended]

7. In § 0.605, paragraphs (b), (c)(1), (d)(1), and (d)(3) are amended as follows: The words "Public Information Office" in paragraph 0.605(b) are replaced by "Public Information Division". The words "Public Information Officer" in §§ 0.605(c)(1), 0.605(d)(1), and 0.605(d)(3) are replaced by the words "Chief, Public Information Division".

[FR Doc. 79-6857 Filed 3-6-79; 8:45 am]

[6712-01-M]

[FCC 79-121]

PART 1—PRACTICE AND PROCEDURE

Amending Rule of Practice and Procedure Concerning Exceptions; Oral Argument

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: To aid the decision writer and to expedite the preparation of decisions, the FCC requires that reply briefs contain a table of contents and a table of citations.

EFFECTIVE DATE: March 13, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Upton Guthery, 202-632-6444.

ORDER

In the matter of amendment of § 1.277, Rules of Practice and Procedure.

Adopted: February 22, 1979;

Released: March 2, 1979.

By the Commission: 1. Section 1.276(a)(2) of the Rules requires that briefs shall contain, among other things, a table of contents and a table of citations. These tables are helpful to the decision-writer and tend to expedite the preparation of decisions. Apparently through oversight,

§ 1.277(c), which provides for reply briefs, does not provide for such tables. Since the tables would be equally helpful to the staff in considering reply briefs, we are imposing a requirement that reply briefs contain a table of contents and a table of citations.

2. The amendment is set out in the attached Appendix. Authority for its adoption is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because the amendment is procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

3. Accordingly, *It is ordered*, Effective March 13, 1979, That § 1.277 is amended as set out in the attached Appendix.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

In Part 1 of Chapter I of Title 47 of the Code of Federal Regulations, the third sentence of § 1.277(c) is revised to read as follows:

§ 1.277 Exceptions; oral argument.

* * * * *

(c) * * * Within 10 days, or such other time as the Commission may specify, after the time for filing exceptions has expired, any other party may file a reply brief, which shall not exceed 25 double-spaced typewritten pages and shall contain a table of contents and a table of citations * * *.

* * * * *

[FR Doc. 79-6858 Filed 3-6-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Docket No. 37130]

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

SUBCHAPTER B—PRACTICE AND PROCEDURE

PART 1100—GENERAL RULES OF PRACTICE

Special Docket Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is establishing an employee board in its Bureau of Traffic to act upon Special Docket applications filed under Rule 23(e) of the General Rules of Practice and to authorize reduced rate filings in cases of calamitous visitation under 49 U.S.C. 10721 (formerly section 22 of the Interstate Commerce Act). These functions were formerly delegated to the Vice-Chairman's office. This action, which is designed to relieve congestion on the Commission's formal docket and on the Vice-Chairman's personal docket, will create an appeal process (to a division of the Commission) in Special Docket matters and will allow for orders to be issued in connection with both granted and denied Special Docket applications. In the past, orders were issued only in connection with granted applications. The board will be designated as the Special Docket Board, and will be comprised of three members: Martin E. Foley, Chairman, B. Scott Walker and Alfred Killelea.

Because these rules involve the internal organization and procedures of the Commission, they are issued in final form, and public comments are not being requested.

EFFECTIVE DATE: May 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Martin E. Foley, 202-275-7348.

Accordingly, Parts 1011 and 1100 of Title 49 to the Code of Federal Regulations are revised as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

§ 1011.5 [Amended]

1. By deleting subparagraphs (2) and (3) of § 1011.5(b) which now delegate authority over Special Docket matters and reduced rate matters to the Vice-Chairman of the Commission.

2. By redesignating § 1011.5(b)(4) as § 1011.5(b)(2).

3. By adding a new paragraph (k) to § 1011.6, to read as follows:

§ 1011.6 Employee Boards.

* * * * *

(k) *Special Docket Board.* Determination of Special Docket Proceedings under Rules 23(e) and (f) of the General Rules of Practice and reduced rate matters arising in cases of calamitous visitation under 49 U.S.C. 10721 and in related matters, to authorize relief from the provisions of 49 U.S.C. 10726, 10730 and 11707.

PART 1100—GENERAL RULES OF PRACTICE

Subpart A—Rules of General Applicability

4. By deleting the second sentence of § 1100.23(e), which now reads: "If the petition is granted an appropriate order will be entered."

5. By revising § 1100.23(f) to read as follows:

§ 1100.23 Informal complaints seeking damages. (Rule 23)

* * * * *

(f) *Six Months' Rule.* If an informal complaint seeking damages (other than a Special Docket petition) cannot be disposed of informally or is denied or is withdrawn by complainant from further consideration, the parties affected will be so notified in writing by the Commission. Special Docket petitions will be either granted or denied by the entrance of an order. Except as authorized in Rule 225 of the Commission's Special Rules of Practice, the matter in the complaint or petition will not be reconsidered unless, within six months after the date the notice is mailed or the order is served, either a formal complaint as to the matter is filed or it is informally resubmitted on an additional-fact basis. A filing or resubmission will be deemed to relate back to the date of the original filing, but reference to that date and the Commission's file number must be made in the resubmission, or in the formal complaint filed. If the matter is not so resubmitted, or included in a formal complaint, as provided in this section, complainant will be deemed to have abandoned the complaint and no complaint seeking damages based on the same cause of action will thereafter be placed on file or considered unless itself filed within the statutory period.

Subpart B—Special Rules of Practice

6. By revising § 1100.225(a) and (b) to read as follows:

§ 1100.225 Rules of practice governing the procedures of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, and the Special Docket Board. (Rule 225)

(a) The proceedings of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, and the Special Docket Board shall be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and except when applications, petitions, or statements are required to be attested, oaths will not be administered.

(b) A petition for reconsideration of an order of the Motor Carrier Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, or the Special Docket Board may be filed by any interested person.

• • • • •

This decision is issued under authority of 49 U.S.C. 10321.

Decided: January 31, 1979.

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

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6904 Filed 3-6-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4138]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determinations for the City of Roanoke, Virginia; Correction

AGENCY: Federal Insurance Administration, JUD.

ACTION: Correction of final rule.

SUMMARY: The Federal Insurance Administration has erroneously published at 44 FR 7692 of February 7, 1979, the final flood elevation determination for the City of Roanoke, Virginia. This notice will serve as a cancellation of the publication. A new notice of final flood elevation determination will be published in the near future.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

(National Flood Insurance Act of 1978 (Title XII of Housing and Urban Development Act of 1968), effective January 28, 1979 (33 FR 17804, November 28, 1978), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719).

NOTE.—In accordance with Section 7(O)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 STAT. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 27, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6810 Filed 3-6-79; 8:45 am]

proposed rules

[3410-01-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[7 CFR Part 2900]

ESSENTIAL AGRICULTURAL USES OF NATURAL GAS

Availability of Draft Environmental Impact Statement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of availability of draft environmental impact statement and request for comments.

SUMMARY: Notice is hereby given that the Office of Energy (OE) has prepared a Draft Environmental Impact Statement (DEIS) in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) in connection with the proposed rule by the Secretary of Agriculture to certify the essential agricultural uses of natural gas to the Secretary of Energy under Section 401 of the Natural Gas Policy Act (Pub. L. 95-621). (43 FR 54938, November 24, 1978).

The Department of Agriculture earlier prepared a preliminary impact analysis of the proposed rule. In response to public comment, a draft environmental impact statement has been prepared which discusses the economic and environmental consequences of four alternative curtailment plans. This statement examines the impacts on agriculture, affected industries, air quality, water quality, and biological resources.

DATE: Comments must be received on or before April 23, 1979.

ADDRESS: Send comments to: Director, Office of Energy, U.S. Department of Agriculture, Room 226-E, Administration Building, 12th and Independence Ave., S.W., Washington, D.C. 20250. The Draft Environmental Impact Statement may be examined during regular business hours at the Office of Energy in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C. Room 5173. Copies of the OE DEIS may be obtained upon request to the OE at the above address.

FOR FURTHER INFORMATION CONTACT:

Additional information may be secured on request, submitted to Weldon V. Barton, Director, Office of Energy, Department of Agriculture, (202) 447-2455.

SUPPLEMENTARY INFORMATION: Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the OE Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council of Environmental Quality guidelines.

Dated at Washington, D.C. this 27th day of February 1979.

WELDON V. BARTON,
Director, Office of Energy.

[FR Doc. 79-7106 Filed 3-6-79; 8:50 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 2]

RULES OF PRACTICE

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is amending its rule dealing with *ex parte* communications and the separation of adjudicatory and non-adjudicatory functions so that those rules will accord with the Government in the Sunshine Act, Pub. L. No. 94-409. The substance of the proposed rules is largely unchanged from the Commission's current rules and practices in the areas involved.

DATE: Comments must be received on or before April 23, 1979.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch. Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Ostrach, Esq., Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (202) 634-3224.

SUPPLEMENTARY INFORMATION: These proposed amendments have two primary purposes. They are designed to adapt the Commission's rules to the terminology of the Government in the Sunshine Act and they are also designed to codify the practices the Commission now employs in its adjudicatory proceedings with regard to *ex parte* communications.

Both the separation of functions regulation, § 2.719, and the *ex parte* regulation, § 2.780, are based on the concept of "Commission adjudicatory employees." This term is new, but the principle it represents is embodied in the present regulations. It is intended to include all of those employees who participate in the making of the Commission's (or the subordinate adjudicatory panels') decisions in adjudicatory proceedings, and it should be broadly construed. Of course, it does not include those people whose participation in the decisionmaking process is limited to appearance as witnesses or counsel.

The Commission has requested the General Counsel's office to examine the extent to which direct communications between the Commissioners and the Commission staff may legally and practically be employed as management tools. In particular, the study will examine the extent to which Commissioners can, not on the record, communicate with staff on issues which arise in specific proceeding in adjudication without violating the *ex parte* provisions of the Administrative Procedure Act and without violating the "hearing" requirement of the Atomic Energy Act. This study, which is now scheduled to be completed in approximately two months, may lead to recommendations for modification of the regulations proposed below or for other modifications in the Commission's current regulations and practices. Public comment on the issue of such communications may be made now or may be made after the General Counsel's recommendations are made public.

Proposed § 2.719 is drawn from 5 U.S.C. 554(d) and the Commission's present regulation on separation of

functions. Subsection (b) is designed to prevent adjudicatory employees from being subordinate to non-adjudicatory employees so that no situations can arise in which the independence of the Commission's adjudications may be suspect. Subsection (c) will prevent Commission staff personnel who have appeared as parties in adjudications from participating in making the decisions in those or factualy related adjudications. This provision does not apply to uncontested applications for initial licenses or to informal rulemakings conducted pursuant to 5 U.S.C. 553.

Section 2.780 is intended to cover all Commission adjudications. It does not apply to informal rulemakings or to decisions on requests for enforcement action pursuant to 10 CFR 2.206. It does apply once an enforcement proceeding has been instituted pursuant to 10 CFR 2.202. There are several specific exclusions from the definition of *ex parte* communication in subsection 2.780(b). The first exception involves requests for reports on the current status of a proceeding or upon scheduling matters. This exception permits the parties to obtain easily this necessary and routine information. The second exception is for *ex parte* communications which are specifically permitted by statute or regulation, such as requests for subpoenas or discussions of certain classified information (see 10 CFR 2.912). This exception simply recognizes that the policy against *ex parte* communications can be overcome by other policy considerations. Aslo excluded from the definition are communications by or to members of the Office of the General Counsel regarding matters pending before a court or another agency. Although in most cases issues are litigated in the courts only after they have been adjudicated by the Commission, there have been cases in which matters were pending in litigation at the same time that those or related issues were before the Commission or the Boards. In such cases it is sometimes necessary for members of the Office of the General Counsel to discuss the litigation with the parties who may also be parties to the Commission proceeding. Subsection 2.780(b)(3) recognizes this need and excludes such communications from the definition of *ex parte* communications so long as they are limited to discussions of the matters pending before the court (or other agency). The fourth exemption permits adjudicatory employees to communicate directly with the staff in uncontested licensing proceedings which, as defined by 10 CFR 2.4(n), are proceedings in which the only parties are the staff and the applicant and where there are no issues in dispute. This provision is carried over from 10 CFR 2.780(e) as it is presently written. The absence of any dispute involving the application ensures that this provision will not prejudice any party.

The final exclusion from the definition of *ex parte* communications involves generic issues. This exclusion takes account of the Commission's dual responsibilities as both an adjudicatory and a rulemaking body. The Commission often has before it generic rulemaking proposals which would alter Commission policy in broad areas of its responsibilities. In many cases such proposals, if adopted, would have an effect on adjudicatory proceedings and, in some cases, on matters currently in issue in such adjudications. To include these generic matters within the definition of *ex parte* communications would significantly impair the Commission's ability to resolve generic issues through rulemaking. Since the same generic issue may affect many adjudications, each with separate parties, resolution of these issues through adjudicatory or quasi-adjudicatory procedures might in some cases prevent the Commission from taking needed regulatory action in an expeditious fashion. The Commission believes that this policy accords with law and is justified for the policy reasons given above. However, the Commission recognizes that this provision cannot be used as a means of circumventing the adjudicatory process and will act to ensure that its use is limited to matters that are of generic rather than limited concern.

Subsections (c) and (d) of § 2.780 are the essential operative provisions of the *ex parte* rule. Together they bar *ex parte* communications either to or from Commission adjudicatory employees. The prohibitions apply to "interested persons" as that term is used in the Government in the Sunshine Act. The long-standing Commission policy against *ex parte* communications between adjudicatory and non-adjudicatory employees is also made explicit. Subsection (e) is a codification of current procedures for dealing with *ex parte* communications. It provides that, to the extent possible, *ex parte* communications will be channeled to the Office of the Executive Director for Operations for handling by that office. Since the communications will not reach any adjudicatory employee, this means they will in most cases not have to be copied and circulated to the parties. This will result in a significant cost savings to the Commission which presently copies and circulates all *ex parte* communications regardless of the volume of such communications or whether they reached the Commission employee to whom they were sent. Subsections (f) and (g) provide how *ex parte* communications which are received or made by adjudicatory employees will be treated. They are modeled after the provisions of the Sunshine Act, and also provide that, in most cases, the Secretary of the Commission will send copies of the communication to all parties to the proceeding.

Subsection (h) explains how proceedings to impose sanctions for violations of the *ex parte* rule shall be commenced. The Commission expects that the sanctions imposed in any case will take into account the intent of the persons involved, the seriousness of the violation, the nature of the issues and their importance to the proceeding, the interests of other parties or persons, the public interest and other relevant factors. Subsection (i) defines when the prohibition against *ex parte* communications comes into effect. Subsection (j)(1) defines the term proceeding so as to exclude export and import proceedings from the definition, since those proceedings are separately treated in Part 110 of the Commission's regulations. Furthermore, consistent with current Commission policy, rulemaking proceedings conducted pursuant to Subpart H of 10 CFR Part 2 are also not included within the coverage of the *ex parte* prohibition except as the Commission may otherwise direct in particular rulemakings. Subsection (j)(2) defines the term "interested person" as that term is defined in the legislative history of the Sunshine Act. H.R. Rep. 94-880 Part I, 94th Cong. 2nd Sess. at 19-20 (1976).

Pursuant to section 161 of the Atomic Energy Act and 5 U.S.C. 553, notice is hereby given that adoption of the following amendments to 10 CFR Part 2 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. All comments must be received by April 23, 1979. Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. It is proposed to amend § 2.719 to read as follows:

§ 2.719 Separation of Functions: Commission Adjudicatory Employees.

(a) As defined in this section, Commission adjudicatory employees include:

(1) The Chairman and Commissioners and members of their personal staffs;

(2) Members of the Atomic Safety and Licensing Appeal Panel and members of the staff of that panel;

(3) Members of the Atomic Safety and Licensing Board Panel and members of the staff of that panel;

(4) The General Counsel and employees of the Office of the General Counsel;

(5) The Director of the Office of Policy Evaluation and employees of that office;

(6) The Secretary and employees of the Office of the Secretary; and

(7) The Director of the Office of Inspector and Auditor and employees of that office.

(b) Commission adjudicatory employees shall perform no duties inconsistent with their adjudicatory responsibilities. In carrying out their adjudicatory responsibilities these employees will not be responsible to or subject to the supervision or direction of any Commission officer or employee except another Commission adjudicatory employee acting under this Subpart.

(c) Except as provided in § 2.780 of this Subpart and except in uncontested proceedings involving an application for initial licensing, no officer or employee of the Commission except a member of the Commission who has engaged in the performance of any investigative or prosecuting functions in that case or in any factually related case may participate or advise in the initial or final decision, except as a witness or counsel in the proceeding. Representation of the Commission in any court of law or before any agency other than the Commission does not constitute the performance of investigative or prosecuting functions for the purposes of this section.

2. It is proposed to amend § 2.780 to read as follows:

§ 2.780 Ex parte communications: Commission adjudicatory employees.

(a) As defined in this section, Commission adjudicatory employees include:

(1) The Chairman and Commissioners and members of their personal staffs;

(2) Members of the Atomic Safety and Licensing Appeal Panel and members of the staff of that panel;

(3) Members of the Atomic Safety and Licensing Board Panel and members of the staff of that panel;

(4) The General Counsel and employees of the Office of the General Counsel;

(5) The Director of the Office of Policy Evaluation and employees of that office;

(6) The Secretary and employees of the Office of the Secretary; and

(7) The Director of the Office of Inspector and Auditor and employees of that office.

(b) As used in this section, the term *ex parte* communication means an oral or written communication relevant to the merits of any proceeding on the record pending before the NRC which is not made on the public record and with respect to which reasonable prior notice to all participants in the proceeding is not given, but it shall not include:

(1) Requests for status reports;

(2) *Ex parte* communications specifically permitted by statute or regulation (for example, § 2.720 of this part);

(3) Communications made to or by members of the Office of the General Counsel regarding matters pending before a court or another agency;

(4) Communications between staff and any Commission adjudicatory employee in a proceeding involving an application for initial licensing other than in a contested proceeding as defined by § 2.4(n) of this Part; and

(5) Communications between the Commission and staff regarding generic issues involving public health and safety or other statutory responsibilities of the Commission not specifically related to any particular proceeding pending before the Commission.

(c) No Commission adjudicatory employee will make or knowingly cause to be made to any interested person outside the NRC or to any NRC employee engaged in the performance of investigative or prosecuting functions in that or in any factually related proceeding an *ex parte* communication.

(d) No interested person outside the NRC and no NRC employee engaged in the performance of investigative or prosecuting functions in that proceeding or any factually related proceeding shall make or shall knowingly cause to be made to any Commission adjudicatory employee an *ex parte* communication.

(e) To the extent possible, all *ex parte* communications directed to any Commission adjudicatory employee will be referred to the Office of the Executive Director for Operations for handling by that office, and such *ex parte* communications will not be transmitted to the Commission adjudicatory employee to whom they were directed. Such *ex parte* communications shall be placed in a file associated with but separate from the record of the proceeding to which the *ex parte* communication pertains. If a communication was made or solicited by a Commission adjudicatory employee, or if it is otherwise appropriate, the Executive Director for Operations will serve the *ex parte* communication on all parties to the proceeding to which it pertains.

(f) Any Commission adjudicatory employee who, despite paragraph (e) of this section, receives, makes or knowingly causes to be made a communication prohibited by this section will place in a public file associated with but separate from the public record of that proceeding:

(1) All such communications which are written;

(2) Memoranda stating the substance of any such communications which were oral; and

(3) All written responses, and memoranda stating the substance of all oral responses to the materials discussed in paragraphs (f)(1) and (f)(2) of this section.

(g) The Secretary will send copies of any communication of the kinds listed in paragraphs (f)(1), (2) and (3) of this section to all participants to the proceeding with respect to which it was made, and will notify the communicator of the provisions of this regulation prohibiting *ex parte* communications. If the communications are from persons other than participants to the proceedings or their agents, and the Secretary determines that it would be too burdensome to send copies of the communications to all participants because: (1) the communications are so voluminous, or (2) the communications are of such borderline relevance to the issues of the proceeding, or (3) the participants to the proceeding are so numerous, the Secretary may instead notify the participants that the communications have been received, placed in the file, and are available for examination, and will be sent upon request.

(h) Upon receipt of a communication knowingly made or knowingly caused to be made in violation of this section, a Commission adjudicatory employee may, to the extent consistent with the interests of justice and the policy of the underlying statutes, recommend to the appropriate Commission adjudicatory tribunal that the person making or causing the prohibited communication be made to show cause why his claim or interest in the proceeding should not be denied, disregarded, dismissed or otherwise adversely affected because of such violation.

(i) The prohibitions of this section shall apply when a proceeding is first noticed for a formal hearing on the record, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibition shall apply at the time he acquires such knowledge.

(j) As used in this section:

(1) The term proceeding shall not refer to any proceeding or proceedings governed by Part 110 of this chapter, and except as the Commission may otherwise direct, shall not refer to any proceeding for the adoption, amendment or repeal of any rule or regulation which is conducted pursuant to Subpart H of this Part, and

(2) The term interested person is intended to be a wide, inclusive term covering any individual or other

person with an interest in the agency proceeding that is greater than the general interest the public as a whole may have. The interest need not be monetary, nor need a person be a party to, or intervenor in, the agency proceeding to come under this section. The term includes, but is not limited to, parties, competitors, public officials, and nonprofit or public interest organizations and associations with a special interest in the matter regulated. The term does not include a member of the public at large who makes a casual or general expression of opinion about pending proceedings.

For the Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

Dated at Washington, DC, this 1st day of March 1979.

[FR Doc. 79-6674 Filed 3-6-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211 and 212]

[Docket No. ERA-R-78-12]

AMENDMENTS TO IMPOSE THE ENTITLEMENT OBLIGATION ON THE FIRST PURCHASE OF PRICE CONTROLLED DOMESTIC CRUDE OIL

Proposed Rulemaking; Cancellation of Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Proposed rulemaking; cancellation of public hearing.

SUMMARY: On January 25, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposed to amend its domestic crude oil allocation (or entitlements) program to impose the entitlement purchase obligation on the first purchase of price-controlled domestic crude oil, regardless of whether the purchaser is a refiner, reseller, or some other user of crude oil. (44 FR 5296)

In the same notice, DOE announced that a public hearing would be held on March 8, 1979, in Denver, Colorado for the purpose of accepting oral comments on the proposed regulations. Because only two requests to speak were made, DOE has determined after consultation with the requesting parties that the public hearing will not be necessary. Accordingly, the hearing previously scheduled for March 8, 1979 is cancelled.

However, the public hearing in Washington, D.C. will be held as announced on March 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214B, Washington, D.C. 20461, (202) 254-4201.

Daniel J. Thomas (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2310, Washington, D.C. 20461, (202) 254-7477.

Issued in Washington, D.C., March 1, 1979.

DOUGLAS G. ROBINSON,
Assistant Administration, Regulations and Emergency Planning, Economic Regulatory Administrator.

[FR Doc. 79-6915 Filed 3-6-79; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 720]

PROTECTION OF PRIVACY OF INDIVIDUAL RECORDS

Proposed Rulemaking—Exemptions

AGENCY: National Credit Union Administration.

ACTION: Privacy Act Notice and Proposed Revisions to 12 CFR 720.35.

SUMMARY: NCUA proposes to amend 12 CFR 720.35, Exemptions, to give notice of another new system of records which is exempt from certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a (1974)) (the "Privacy Act") pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)).

DATES: Comments must be received on or before April 7, 1979.

ADDRESS: Send written comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Beatrix D. Fields, Staff Attorney, Office of General Counsel, or telephone (202) 632-4870.

SUPPLEMENTARY INFORMATION: Subsection (k) of the Privacy Act (5 U.S.C. 552a(k)) sets forth specific exemptions for systems of records which may be exempted from certain provisions of the Privacy Act. Those NCUA systems of records which are exempt pursuant to subsection (k) are described in § 720.35(c) of its rules and regulations (12 CFR 720.35(c)). In accordance with the Privacy Act, NCUA is creating a new system of records that is considered to be an exempted system under subsection (k)(2) of the Privacy Act. The system is designated NCUA-31 and entitled Litigation Case Files. Thus, NCUA proposes to amend § 720.35 to reflect the existence of this new exempted system.

When a new system of records is proposed, subsection (o) of the Privacy Act (5 U.S.C. 552a(o)), requires that a Report on the New System of Records ("Report") be submitted for review to Congress and to the Office of Management and Budget. Additionally, an opportunity for public notice and comment on the proposed new system, NCUA-31: Litigation Case Files, is being provided concurrently with this proposed amendment.

NCUA-31 would be exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act (5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I)(f)), insofar as this system of records contains investigatory materials compiled for law enforcement purposes. However, if any individual is denied any right, privilege or benefit to which the individual would otherwise be entitled by Federal law, or for which the individual otherwise would be eligible, as a result of the maintenance of such records, such records or information contained therein will be accessible to the individual: *Provided*, The identity of a confidential source is not disclosed.

The records contained in NCUA-31 are used in connection with the execution of NCUA's legal and enforcement responsibilities under the Federal Credit Union Act (12 U.S.C. 1786, 1789) and the Federal Tort Claims Act (28 U.S.C. 2671-2680). Records may contain unverified, unsolicited statements sometimes received from confidential sources. In addition, reports of investigations or other internal agency memoranda may be included in these files. NCUA believes that the disclosure of the existence of the information in this system or the identity of sources of information may seriously hamper and undermine effective enforcement of the Federal credit union laws. Such disclosure may prematurely alert individuals that they are under investigation or provide access to evidentiary information. Similary, an accounting as required by subsection (c)(1) of the Privacy Act (5 U.S.C. 522a(c)(1)) should not be disclosed, as it may indicate that records have been forwarded to the Justice Department for consideration of criminal proceedings. If such an accounting is disclosed, an individual may flee the jurisdiction or otherwise interfere with criminal prosecution. During litigation access to case file information is limited by the bounds of applicable discovery rules as to disclosure of investigatory materials. After the conclusion of an administrative or judicial proceeding, it is necessary to retain investigatory materials intact. Further legal

action as a result of limited administrative suspensions, temporary injunctions or judicial appeals, may require the use of the collected information in the future.

For these reasons, NCUA believes that the public interest in effective prosecution and defense of Federal credit union laws requires that investigatory materials be exempted from various provisions of the Privacy Act.

LAWRENCE CONNELL,
Administrator.

MARCH 1, 1979.

(5 U.S.C. 552a(k)).

It is proposed to amend 12 CFR 720.35 as set forth below:

§ 720.35 [Amended]

1. In § 720.35(a), by deleting the word "three" and inserting instead the word "four" in the first sentence.

2. In § 720.35(c), insert the following sentences after the third full sentence: System NCUA-31, entitled, "Litigation Case Files" consists of records utilized in the consideration, litigation or appeal of administrative, civil or criminal proceeding, or the settling of certain tort claims. To the extent that litigation is contemplated or pursued against an individual and information is maintained in a case file that identifies the individual, in order to protect the position of the Administration in any legal action and to effectively enforce the law, the records in this system are exempted, pursuant to section (k)(2) of the Act (5 U.S.C. 552a(k)(2)), from sections (e)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Act (5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)).

[FR Doc. 79-6872 Filed 3-6-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 4, 16 and 131]

[Docket No. RM 79-23]

HYDROELECTRIC PROJECTS

Regulations Prescribing General Provisions for Preliminary Permit and License Applications; REgulations Governing Applications for, Amendments to, and Cancellation of Preliminary Permits.

MARCH 5, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission gives notice that it proposes to amend its regulations concerning preliminary permits and licenses for hydroelectric projects under Part I of the Federal Power Act. The amended regulations prescribe technical filing requirements and evaluation procedures applicable to both preliminary permit and license applications. The amendments also affect the regulations pertaining specifically to the content of preliminary permit applications, amendments to preliminary permits, and cancellation of preliminary permits.

DATES: Comments are due by April 9, 1979.

FOR FURTHER INFORMATION:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 275-4166.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Federal Energy Regulatory Commission (Commission) proposes to amend certain of its regulations concerning preliminary permits and licenses for hydroelectric projects under Part I of the Federal Power Act (Act). The amended regulations prescribe technical filing requirements and evaluation procedures applicable to both preliminary permit and license applications. The amendments also affect the regulations pertaining specifically to the content of preliminary permit applications, amendments to preliminary permits, and cancellation of preliminary permits.

I. BACKGROUND

Seeking to respond and lend encouragement to the recent heightened interest in hydroelectric development, Congress provided in Title IV of the Public Utility Regulatory Policies Act (PURPA) component of the National Energy Act for a program whereby the Secretary of Energy will grant loans for feasibility studies and for construction of small hydroelectric projects (installed capacity of 15 MW or less) located at existing dams. The Commission is charged under Section 405 of PURPA with establishing simple licensing procedures for projects eligible under the PURPA provisions.

In the interest of acting more promptly on all license applications, and in anticipation of the enactment of PURPA, the Commission determined in 1978 to carry out a thorough reform of its requirements and procedures for license applications. The first phase of this reform was instituted in September 1978, with issuance of a rulemaking on the "shortform" license procedures applicable to all "minor" projects (installed capacity of 1.5 MW or less). See Order No. 11, Docket No. RM78-9, 43 FR 40215 (September 11, 1978).

The second phase of the reform will cover all "major" projects (installed capacity greater than 1.5 MW) where at least the dam(s) and reservoir(s) are already in existence. The Commission intends to consider a proposed rulemaking on this phase by April 1, 1979. A third and final phase will cover all major projects which must be constructed in their entirety.

The revisions contemplated in this three-stage reform pertain primarily to the content of license applications. Maximum efficiency cannot be attained, however, unless the uncertainty regarding such technical and procedural matters as form, subscription and verification, service, number of copies, correction of deficiencies, and evaluation of competing applications is eliminated. Accordingly, we propose to amend and consolidate the general provisions governing these requirements and procedures for all preliminary permit and license applications.

The amended regulations are intended to make the Commission's technical filing requirements and procedures easier to identify and comprehend. The regulations are also intended to make clear that diligence is expected, not only of the Commission staff, but of initial applicants and those who would file competing applications, as well.

A well-rounded program of licensing reform must also reach the requirements governing preliminary permits. As enunciated in sections 4(f) and 5 of the act, 16 U.S.C. 797(f) and 798, the purpose of a preliminary permit is to secure for the permittee priority of application for a license for a project while the permittee obtains the data and performs the acts required to determine the feasibility of the project and support an application for a license. A preliminary permit is not a prerequisite to a license, and therefore is sought on a voluntary basis. The protections afforded by permits result in frequent permit applications, however. In view of the close nexus between preliminary permits and licenses, the Commission proposes to amend the regulations concerning the substance of preliminary permit applications, amendments to preliminary permits, and cancellation of preliminary permits, as well.

The amended regulations are designed to minimize the filing burden on applicants for preliminary permits while requiring sufficient information to enable the Commission to carry out its responsibilities under the Act. The regulations also make clear the purpose of a permit and the consequences of failure to carry out that purpose. We believe these changes will further facilitate ultimate licensing of small hydroelectric projects at existing

dams, in accordance with section 405 of PURPA.

We now proceed to a description and explanation of the specific regulations.

II. Description of Proposed General Provisions

§ 4.30 who may file

Section 4.30 specifies who may file an application for a preliminary permit or a license. Since any permittee is a potential licensee, the qualifications must be the same. The section therefore paraphrases, in somewhat streamlined form, the provisions of Section 4(e) of the Act, 16 U.S.C. 797(e), specifying who may obtain a license. In recognition of the priority afforded by a preliminary permit, § 4.30 also provides that the Commission will not entertain an application for a preliminary permit for a project which would conflict with a project for which a preliminary permit is outstanding, or for which there is a pending license application filed by a permittee during the term of its permit. Nor will the Commission entertain an application for a license for a project which would conflict with a project for which a preliminary permit has been issued, until either the permittee files an application for a license or the permit expires, whichever occurs first.

§ 4.31 acceptance for filing or rejection

Section 4.31 governs acceptance and rejection of preliminary permit and license applications. Section 4.31(a) provides references to the specific minimum requirements which an application must meet. Besides incorporating certain provisions of the Commission's rules of practice and procedure by reference, the section requires conformance with specific subsequent provisions governing the substance of an application, according to its type.

Section 4.31(b) requires that an original and nine copies of the application be filed with the Secretary. The treatment of maps and drawings included in license applications is also prescribed.

Section 4.31(c) prescribes the actions which the Commission or its delegate will take upon receipt of a conforming application, including issuance of public notice and, in the event that lands of the United States are affected, notification of the appropriate federal office under Section 24 of the Act, 16 U.S.C. 818.

Under § 4.31(d), a deficient application may be rejected outright, or the applicant may be afforded additional time, not to exceed 45 days in the case of a preliminary permit application, or 90 days in the case of a license application, to correct the deficiencies. If the deficiencies are not corrected within the time provided, then the application will be rejected. Moreover, § 4.31(e) provides that an application will be deemed "accepted for filing" as of the time of the initial submittal, but only if it is made whole within the time prescribed by the Commission or its delegate. Under current practice, an application is recorded as filed and assigned a project number, however deficient it may be, when the first document is received by the Secretary. The Commission staff must often keep track of incomplete applications for protracted periods while making repeated requests that deficiencies be corrected. The revised regulations would place a greater burden of diligence in submitting a conforming application on the applicant, and would free the Commission staff to concentrate its efforts on viable applications. Rejections based on deficiencies would be without prejudice to refiling.

Section 4.31(f) provides that an applicant may be required to provide any additional information or documents that are deemed necessary or desirable to process the application. These materials would go beyond the threshold requirements for a conforming application, and their absence from the initial application would therefore not prevent acceptance of the application for filing. Failure to provide the information requested, however, would be sufficient ground for holding the proceeding in abeyance, dismissing the application, or taking other appropriate action. In certain instances, an applicant may also be requested to provide copies of the complete application to specified persons or agencies.

Finally, § 4.31(g) provides that a prospective applicant may submit preliminary copies of its application to the Director, Division of Licensed Projects, for the purpose of obtaining staff advice concerning the sufficiency of the application. Conferences between applicants and the staff regarding deficiencies or other application-related matters are also permitted. Once again, the object of the regulation is to avoid application deficiencies and consequent delays.

§ 4.32 specifications for maps and drawings

Section 4.32 provides the specifications which must be followed in preparing all maps and drawings filed with applications, except as otherwise prescribed. This section supplants the existing § 4.42. All references to § 4.42 elsewhere in the regulations will therefore be amended to refer to § 4.32.

§ 4.33 disposition of conflicting applications

Section 4.33, which has no corresponding provision among the existing regulations, governs conflicting applications for preliminary permits and licenses. The provisions of this section are intended to minimize the uncertainty and delay that may attend disposition of applications contemplating development of the same resource. Under the current regulations, there is no time limitation on the submittal of competing applications. If the Commission staff has fully processed an initial application, and is on the verge of recommending action to the Commission, a last-minute competing application may render the entire effort futile. A series of such competing applications could delay the matter indefinitely.

The proposed § 4.33(a) permits the filing of a competing application, but requires that the application, or a notice of intent to file such an application, be submitted prior to the end of the period prescribed in the public notice of the *initial* application for preliminary permit or license for filing of protests and petitions to intervene. Under § 4.33(c), if a timely notice of intent is submitted, the prospective applicant will be afforded an additional 60 days beyond the end of the public notice period to submit the application. Thus, if no competing application or notice of intent is forthcoming during the prescribed period, the Commission staff may proceed with its work on the initial application without fear of wasted effort or delay. Even if a competing application is filed, there is greater certainty with respect to the applicants among whom the Commission will ultimately have to choose, and the proceeding may go forward free of disruption.

Section 4.33(b) specifies the requirements for form and content of a notice of intent to file a competing application. Section 4.33(d) provides that competing applications must be self-contained and must conform to the requirements of § 4.31.

Under § 4.33(e), if a pending application for a preliminary permit conflicts with a pending application for a license, and the applicant for a license has demonstrated its ability to carry out its plans, then the Commission will favor the applicant for a license.

Section 4.33(f) sets forth the bases for selection between or among competing applicants when there are two or more applications for a preliminary permit, or two or more applications for a license by applicants who are not permittees under outstanding preliminary permits. These provisions reflect the provisions of Section 7(a) of the Act, 16 U.S.C. 800(a), including the concept of state or municipal preference and the concept that, where the preference does not apply, the applicant whose plan is "best adapted" will prevail. The proposed regulation in-

jects the additional concept that, all other things being equal, the principle "first in time, first in right" will apply. We are not ruling here on the question whether the state or municipal preference under section 7(a) applies in a relicensing proceeding under section 15(a) of the Act, 16 U.S.C. 808(a). That question is the subject of a pending proceeding on a petition for declaratory order in *City of Bountiful, Utah, et al.*, Docket No. EL78-43.

Finally, § 4.33(g) provides the bases for selection between or among competing applicants when there are two or more applications for a license, and one of the applications was filed by a permittee under an outstanding preliminary permit. The latter applicant is entitled to priority status.

§ 4.34 HEARINGS ON APPLICATIONS

Section 4.34 provides that the Commission may order a hearing on an application on its own motion or the motion of any party in interest. Hearings are to be limited to the issues prescribed by order of the Commission.

III. DESCRIPTION OF PROPOSED REGULATIONS CONCERNING PRELIMINARY PERMITS

§ 4.80 APPLICABILITY AND PURPOSE

This section states that §§ 4.80 through 4.83 pertain to preliminary permits under Part I of the Féderal Power Act. The section also enunciates the sole purpose of a preliminary permit, as provided in section 5 of the Act.

§ 4.81 CONTENTS OF APPLICATION

Section 4.81 prescribes the information and documents which must be included in an application for a preliminary permit. Section 4.81(a) calls for an initial statement providing the identity and nature of the applicant, the name and location of the proposed project, and the proposed term of the permit.

The remainder of the information is to be provided in four numbered exhibits. Exhibit 1 (§ 4.81(b)) would include a description of the proposed project, including its principal structures and features and any lands of the United States that are affected. While the information need only be provided "to the extent possible," the degree of specificity and completeness of the description could have a bearing on the Commission's assessment of the applicant's ability to complete its preparations during the term of the permit, and on a comparison by the Commission of competing applications.

Exhibit 2 (§ 4.81(c)) would contain a study plan and work schedule. The plan would specify and describe the studies, tests, and plans that had already been carried out or prepared, as well as those projected for completion during the term of the proposed permit. A work schedule providing a timetable for the projected activities would be included with the plan. Two essential milestones in the schedule would be the interval at which the permittee will make a final determination regarding the technical, economic, and financial feasibility of the proposed project, and the interval at which the permittee will file an application for a license, if appropriate. A permit is meaningless if these milestones cannot be attained during its term. The study plan and work schedule would help the Commission monitor the progress of its permittees and hold them accountable.

Exhibit 3 (§ 4.81(d)) would contain a statement of costs and financing. Applicants would be asked to estimate the costs of carrying out or preparing the studies, tests, and plans identified in Exhibit 2, and to state the expected sources and extent of financing for those activities. The Commission would thus have some basis for determining the applicant's financial ability to fulfill the purposes of the permit. The exhibit would also call for a description of the proposed market for the power generated at the project, including any available information concerning the revenues to be derived from sale of the power. This information would be significant to an assessment of the economic and financial viability of the project itself.

Exhibit 4 (§ 4.81(e)) would include a map or series of maps showing the location of the proposed project, the physical interrelationships of its principal features, a proposed project boundary, and any lands of the United States that are affected by the project. In order to ensure accuracy and uniform quality, applicants would be required to base the maps on U.S. Geological Survey topographical quadrangle sheets or similar planimetric maps of a state agency, if available.

§ 4.82 AMENDMENTS

Section 4.82 allows permittees to file applications for amendment of their permits. Amendments may include any extension of the term of the permit that does not cause the term to exceed three years. If an application for an amendment requests a material change in the project, public notice of the application will be given.

§ 4.83 CANCELLATION AND LOSS OF PRIORITY

Finally, § 4.83 makes clear that a permit may be cancelled for failure of the permittee to comply with the specific terms and conditions of the permit or for "other good cause shown, after notice and opportunity for hearing." Such cancellation will result in loss of the permittee's priority of application for a license for the project, as will expiration of the permit before a license application is filed. These provisions are intended to emphasize the consequences of failure to prosecute the plans and studies under the permit. This section is entirely new.

IV. PROPOSED DELETIONS

Besides revising, consolidating, and adding to the pertinent existing regulations, this rulemaking would eliminate certain of the regulations altogether. Sections 4.33 and 4.85 governing "issuance and acknowledgement of acceptance" of licenses and preliminary permits, respectively, have been deleted. The same general language is provided in standard ordering paragraphs in each license, and the Act does not require acceptance of a permit.

Section 4.86, which allows for some construction work on a proposed project during the term of the preliminary permit, has also been eliminated. There is no longer any doubt that construction work in advance of issuance of a license is inappropriate.

Finally, § 131.10, which prescribes a format for preliminary permit applications, has been deleted as superfluous. With each element of required information assigned to the initial statement or a particular numbered exhibit, the prescribed format is no longer needed.

V. WRITTEN COMMENT PROCEDURES

The Commission invites interested persons to submit written comments on the matters proposed in this notice. An original and 14 copies of such comments should be filed with the Commission by April 9, 1979. Comments submitted by mail should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments should refer to Docket No. RM79-23.

Written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426. The Commission will consider all timely comments before acting on the matters proposed in this notice.

(Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Public Utility Regulatory Policies Act, Pub. L. 95-617, 92 Stat. 3117 *et seq.*; and Executive Order 12009, 42 FR 46267)

In consideration of the foregoing, the Commission proposes to amend Parts 4 and 16 of Subchapter B and Part 131 of Subchapter D, Chapter I,

Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

KENNETH F. PLUMB,
Secretary.

(A) Sections 4.30 through 4.33 are amended by deleting the existing sections and replacing them with the following:

APPLICATION FOR PRELIMINARY PERMIT OR LICENSE: GENERAL PROVISIONS

§ 4.30 Who may file.

(a) Any citizen, association of citizens, domestic corporation, municipality, or state may apply for a preliminary permit or a license for a water power project under Part I of the Federal Power Act.

(b) The Commission will not entertain an application for a preliminary permit for a proposed project which would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a proposed project for which a preliminary permit is outstanding, or for which there is a pending license application filed by a permittee during the term of its permit.

(c) The Commission will not entertain an application for a license for a proposed project which would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a proposed project for which a preliminary permit has been issued, until either the permittee files an application for a license or the permit expires, whichever occurs first.

§ 4.31 Acceptance for filing or rejection.

(a) Each application for a preliminary permit or a license must:

(1) Conform to the requirements of §§ 1.5, 1.14, 1.15, 1.16, and 1.17 of this chapter, except as otherwise prescribed in this part; and

(2) Contain all of the information and documents prescribed in the following sections of this chapter, according to the type of application:

(i) Preliminary permit: § 4.81;

(ii) License for a minor project: § 4.60;

(iii) License for a proposed major project: §§ 4.40 and 4.41;

(iv) License for a constructed major project: §§ 4.50 and 4.51;

(v) License for a transmission line: §§ 4.70 and 4.71;

(vi) New license for a licensed project: § 16.6; or

(vii) Nonpower license for a licensed project: § 16.7.

(b) Each applicant for a preliminary permit or a license must submit to the Secretary for filing an original and nine copies of the application, including full-size prints of all required maps and drawings. The originals (microfilm) of maps and drawings included in a license application (see § 4.32(a)) are not to be filed with the initial application, but will be requested pursuant to paragraph (c) of this section.

(c) When an application for a preliminary permit or a license is found to conform to the requirements of paragraphs (a) and (b) of this section, the Commission or its delegate will:

(1) Assign a project number to the application, unless the project has already been assigned a number;

(2) Notify the applicant that the application has been accepted for filing, specifying the project number assigned and the date upon which the application was accepted, and requesting (for a license application) the originals (microfilm) of required maps and drawings;

(3) Issue public notice of the application as required in the Federal Power Act; and

(4) If the project affects lands of the United States, notify the appropriate federal office of the application and the specific lands affected, pursuant to Section 24 of the Federal Power Act.

(d) Any application for a preliminary permit or a license that fails to conform to the requirements of paragraphs (a) and (b) of this section may be rejected. In the alternative, the applicant may be notified of the specific deficiencies in the application and afforded additional time, not to exceed 45 days from the date of the notification in the case of an application for a preliminary permit, or 90 days from the date of the notification in the case of an application license, to correct the deficiencies. Deficiencies must be corrected by submitting an original and nine copies of the specified materials to the Secretary for filing within the additional time provided. If the application is then found to conform to the requirements of paragraphs (a) and (b) of this section, action will be taken in accordance with paragraph (c) of this section. If the application is found not to conform, it will be rejected.

(e) An application for a preliminary permit or a license will be deemed "accepted for filing" as of the time of the initial submittal to the Secretary if the Secretary receives all of the information and documents necessary to conform to the requirements of paragraphs (a) and (b) of this section within the time prescribed by the Commission or its delegate under paragraph (d) of this section.

(f) An applicant for a preliminary permit or a license may be required to submit any additional information or documents that the Commission or its delegate deems necessary or desirable to process the application. The information or documents must take such form, and must be submitted within such time, as the Commission or its delegate prescribes. An applicant may also be required to provide copies of the complete application, or any of the additional information or documents that are filed, to such person, agency, or other entity as the Commission or its delegate prescribes. If an applicant fails to provide additional information or documents or copies of submitted materials, as required, the Commission or its delegate may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

(g) A prospective applicant for a preliminary permit or a license may, prior to submitting its application for filing, seek advice from the Commission staff regarding the sufficiency of the application. For this purpose, five copies of the application should be submitted to the Director, Division of Licensed Projects. An applicant or prospective applicant may confer with the Commission staff at any time regarding deficiencies or other matters related to its application. All conferences are subject to the requirements of § 1.4(d) of this chapter governing ex parte communications. The opinions or advice of the staff will not bind the Commission or any person delegated authority to act on its behalf.

§ 4.32 Specifications for maps and drawings.

All required maps and drawings must conform to the following specifications, except as otherwise prescribed in this chapter:

(a) Each original map and drawing must consist of a print on silver 35mm microfilm mounted on Type D (3¼" by 7⅜₁₆") aperture cards. Two duplicates must be made of each original. Full-size prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches. A space five inches high by seven inches wide must be provided in the lower right corner of each sheet. The upper half of this space must bear the title, scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear.

(b) Each map must be drawn to a scale no smaller than one inch equals 1,000 feet, and must show: (1) True and magnetic meridians; (2) state, county, and township lines; and (3) boundaries of reservations of the United States (see 16 U.S.C. 796(2)), if any.

(c) Drawings depicting project structures must be drawn to a scale no smaller than: (1) One inch equals 50 feet for plans, elevations, and profiles; and (2) one inch equals 10 feet for sec-

tions. Other drawings must be drawn to a scale appropriate to show the details required by pertinent regulations.

(d) Each map and drawing must be so drawn and lettered as to be legible when reduced to prints 10.5 inches in smaller dimension. Following notification to the applicant that the application has been accepted for filing (see § 4.31(c)), such reduced prints must be bound in each copy of the application which is submitted.

§ 4.33 Filing and disposition of conflicting applications.

(a) Any citizen, association of citizens, domestic corporation, municipality, or state may file an application for a preliminary permit or a license for a project which would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved and utilized by a project for which a preliminary permit or license application has already been filed ("initial application"). Such an application, or a notice of intent to file such an application, must be submitted for filing on or before the last date for the filing of protests or petitions to intervene prescribed in the public notice of the initial application for a preliminary permit or a license issued under paragraph (c)(3) of § 4.31.

(b) Any notice of intent to file an application for a preliminary permit or a license that is submitted for filing under paragraph (a) of this section must conform to the requirements of §§ 1.14, 1.15, 1.16, and 1.17 of this chapter, and must include:

(1) The exact name and business address of the prospective applicant; and

(2) An unequivocal statement of intent to file an application for a preliminary permit or a license.

(c) Any prospective applicant who has filed a notice of intent which conforms to the requirements of paragraphs (a) and (b) of this section may file an application for a preliminary permit or a license. The application must be submitted for filing not later than 60 days beyond the last date for the filing of protests or petitions to intervene prescribed in the public notice of the initial application for a preliminary permit or a license.

(d) Any application for a preliminary permit or a license that is submitted for filing under this section must be self-contained and conform to the requirements of paragraphs (a) and (b) of § 4.31. The application will be treated in accordance with § 4.31.

(e) If a pending application for a preliminary permit and a pending application for a license propose projects which would develop, conserve, and utilize, in whole or in part, the same water resources, and the applicant for a license has demonstrated its ability to carry out its plans, then the Commission will favor the applicant for a license.

(f) If two or more applications for preliminary permits, or two or more applications for licenses by applicants who are not permittees under outstanding preliminary permits, are filed for projects which would develop, conserve, and utilize, in whole or in part, the same water resources, then the Commission will select between or among the applicants on the following bases:

(1) If both of two applicants are either a municipality or a state, or neither of them is a municipality or a state, then the Commission will favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans;

(2) If both of two applicants are either a municipality or a state, or neither of them is a municipality or a state, and the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, then the Commission will favor the applicant whose application was first accepted for filing (see § 4.31(e));

(3) If one of two applicants is a municipality or a state, and the other is not, and the plans of the municipality or state are at least as well adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, then the Commission will favor the municipality or state; or

(4) If one of two applicants is a municipality or a state, and the other is not, and the plans of the applicant who is not a municipality or a state are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, then the Commission will inform the municipality or state of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the municipality or state to render its plans at least as well adapted as the other plans. If the plans of the municipality or state are rendered at least as well adapted within the time allowed, then the Commission will favor the municipality or state. If the plans of the municipality or state are not rendered at least as well adapted within the time allowed, then the Commission will favor the other applicant.

(g) If two or more applications for licenses are filed for projects which would develop, conserve, and utilize, in whole or in part, the same water resources, and one of the applications was filed by a permittee under an outstanding preliminary permit ("priority applicant"), then the Commission will select between or among the applicants on the following bases:

(1) The criteria of paragraph (f) of this section will govern selection among all applicants who are not priority applicants;

(2) If the plans of the priority applicant are at least as well adapted as the plans of each other applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, then the Commission will favor the priority applicant; or

(3) If the plans of an applicant who is not a priority applicant are better adapted than the plans of the priority applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, then the Commission will inform the priority applicant of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the priority applicant to render its plans at least as well adapted as the other plans. If the plans of the priority applicant are rendered at least as well adapted within the time allowed, then the Commission will favor the priority applicant. If the plans of the priority applicant are not rendered at least as well adapted within the time allowed, then the Commission will favor the other applicant.

§ 4.34 Hearings on applications.

The Commission may order a hearing on an application or applications for a preliminary permit or a license, upon either its own motion or the motion of any party in interest. Any such hearing shall be limited to the issues prescribed by order of the Commission.

§ 4.42 [Deleted]

§§ 4.41, 4.50, 4.51, 4.71 [Amended]

§ 16.6 [Amended]

§ 131.2 [Amended]

(B) Section 4.42 is deleted; all references to § 4.42 in §§ 4.41 and 4.51 are amended to refer to § 4.32; all references in §§ 4.50 and 4.71 to "§§ 4.40 to 4.42, inclusive" are amended to refer to "§§ 4.32, 4.40, and 4.41"; the reference in § 16.6 to "§§ 4.40 through 4.42 of this chapter, inclusive and in § 4.51 of this chapter" is amended to refer to "§§ 4.32, 4.40, 4.41, and 4.51 of this chapter"; and the reference in § 131.2 to "§§ 4.30–4.42 of this chapter" is

amended to refer to "§§ 4.30-4.41 of this chapter."

(C) Sections 4.80 through 4.86 are amended by deleting the existing sections and replacing them with the following:

APPLICATION FOR PRELIMINARY PERMIT; AMENDMENT AND CANCELLATION OF PRELIMINARY PERMIT

§ 4.80 Applicability and purpose.

Sections 4.80 through 4.83 pertain to preliminary permits under Part I of the Federal Power Act. The sole purpose of a preliminary permit is to secure priority of application for a license for a water power project under Part I of the Federal Power Act while the permittee obtains the data and performs the acts required to determine the feasibility of the project and to support an application for a license.

§ 4.81 Contents of application.

Each application for a preliminary permit must include the following initial statement and numbered exhibits containing the information and documents specified:

(a) Initial statement:

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION APPLICATION FOR PRELIMINARY PERMIT

1. [Name of applicant] applies to the Federal Energy Regulatory Commission for a preliminary permit for the proposed [name of project] water power project, as described in the attached exhibits. This application is made in order that the applicant may secure and maintain priority of application for a license for the project under Part I of the Federal Power Act while obtaining the data and performing the acts required to determine the feasibility of the project and to support an application for a license.

2. The location of the proposed project is:

State or territory:————
County:————
Township or nearby town:————
Stream or other body of water:————

3. The exact name and business address of each applicant are:

_____

_____

_____

The exact name and business address of each person authorized to act as agent for the applicant in this application are:

_____

_____

_____

4. [Name of applicant] is a [citizen, association of citizens, domestic corporation, municipality, or state, as appropriate].

5. The proposed term of the requested permit is [period not to exceed 36 months].

(b) *Exhibit 1* must contain a description of the proposed project, specifying and including, to the extent possible:

(1) The number, physical composition, dimensions, general configuration and, where applicable, age and condition, of any dams, spillways, penstocks, powerhouses, tailraces, or other structures, whether existing or proposed, to be included as part of the project;

(2) The number, surface area, storage capacity, and normal maximum surface elevation (mean sea level) of any reservoirs, whether existing or proposed, to be included as part of the project;

(3) The number, length, voltage, interconnections and, where applicable, age and condition, of any primary transmission lines, whether existing or proposed, to be included as part of the project (see 16 U.S.C. 796(11));

(4) The number, rated capacity, total estimated average annual energy production and, where applicable, age and condition, of any turbines or generators, whether existing or proposed, to be included as part of the project;

(5) All lands of the United States that are enclosed within the proposed project boundary described under subparagraph (e)(3) of this section, identified and tabulated by legal subdivisions of a public land survey of the affected area; and

(6) Any other information demonstrating in what manner the proposed project would develop, conserve, and utilize in the public interest the water resources of the region.

(c) *Exhibit 2* must contain a study plan and work schedule, specifying and describing:

(1) Any studies, investigations, tests, or surveys that have already taken place, and any maps, plans, or specifications that have already been prepared, to determine the technical, economic, and financial feasibility of the proposed project (including any evaluation of its environmental impacts), or to support an application for a license for the project;

(2) Any studies, investigations, tests, or surveys that are proposed to be carried out, and any maps, plans, or specifications that are proposed to be prepared, to determine the technical, economic, and financial feasibility of the proposed project, taking into consideration its environmental impacts, and to support an application for a license for the project, including:

(i) A description, including the approximate location, of any activity that would alter or disturb lands or waters in the vicinity of the proposed project; and

(ii) An account of the applicant's plans to consult with federal, state, or local agencies, including those administering any public lands affected by the proposed project; and

(3) A proposed schedule, the total duration of which does not exceed the proposed term of the permit, showing:

(i) The intervals at which the studies, investigations, tests, surveys, maps, plans, or specifications identified under subparagraph (2) are proposed to be completed;

(ii) The interval at which the applicant will determine finally that:

(A) The project is not technically, economically, or financially feasible, taking into consideration its environmental impacts, and an application for a license will not be filed; or

(B) The project is technically, economically, and financially feasible, taking into consideration its environmental impacts, and an application for a license will be filed; and

(iii) The interval at which the applicant will file an application for a license for the project, in the event the project is determined to be feasible.

(d) *Exhibit 3* must contain a statement of costs and financing, specifying and including, to the extent possible:

(1) The estimated costs of carrying out or preparing the studies, investigations, tests, surveys, maps, plans or specifications identified under paragraph (c)(2) of this section;

(2) The expected sources and extent of financing available to the applicant to carry out or prepare the studies, investigations, tests, surveys, maps, plans, or specifications identified under paragraph (c)(2) of this section; and

(3) A description of the proposed market for the power generated at the project, including the identity of the proposed purchaser or purchasers of the power, and any information that is available concerning the revenues to be derived from sale of the power.

(e) *Exhibit 4* must include a map or series of maps, to be prepared on United States Geological Survey topographical quadrangle sheets or similar planimetric maps of a state agency, if available. The map(s) need not conform to the precise specifications of paragraphs (a) and (b) of § 4.32. The map(s) must show:

(1) The location of the project as a whole with reference to the affected stream or other body of water and, if possible, to a nearby town or any other permanent monuments or objects that can be noted on the map and recognized in the field;

(2) The relative locations and physical interrelationships of the principal project features identified under paragraph (b) of this section; and

(3) A proposed boundary for the project, enclosing all of the principal project features identified under paragraph (b) of this section, any nonfederal lands necessary for the purposes

of the project, and any lands of the United States (including reservations), identified on the map by legal subdivisions of a public land survey of the affected area (including the smallest of such subdivisions), that are occupied or used in whole or in part by the project. If the scale of the base map(s) is not sufficient to show clearly and legibly all of the information required by this paragraph, then the map(s) submitted must be enlarged to a scale that is adequate for that purpose.

§ 4.82 Amendments.

(a) Any permittee may file an application for amendment of its permit, including any extension of the term of the permit that would not cause the term to exceed three years. Each application for amendment of a permit must conform, as far as applicable, to the requirements of paragraphs (a) and (b) of § 4.31.

(b) If an application for amendment of a preliminary permit requests any material change in the proposed project, then public notice of the application will be issued as required in paragraph (c) (3) of § 4.31.

§ 4.83 Cancellation and loss of priority.

(a) The Commission may cancel a preliminary permit if the permittee fails to comply with the specific terms and conditions of the permit. The Commission may also cancel a permit for other good cause shown, after notice and opportunity for hearing. Cancellation of a permit will result in loss of the permittee's priority of application for a license for the proposed project.

(b) Failure of a permittee to file an application for a license before the permit expires will result in loss of the permittee's priority of application for a license for the proposed project.

§§ 131.3 and 131.4 [Amended]

(D) The reference in § 131.3 to "§§ 4.80–4.86 of this chapter" is deleted, and the reference in § 131.4 to "§§ 4.30–4.86 of this chapter" is amended to refer to "§§ 4.30–4.71 of this chapter."

§ 131.10 [Deleted]

(E) Section 131.10 is deleted in its entirety.

(F) The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

[FR Doc. 79-6862 Filed 3-6-79; 8:45 am]

[6450-01-M]

[18 CFR Part 290]

[Docket No. RM 79-6]

COST OF PROVIDING RETAIL ELECTRIC SERVICE

Collection and Reporting of Information

MARCH 1, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposes regulations.

SUMMARY: These regulations implement section 133 of the Public Utility Regulatory Policies Act of 1978 and establish procedures governing the collection and reporting of information concerning the cost of providing retail electric service.

PUBLIC HEARINGS: Dates and locations to be announced.

WRITTEN COMMENTS: Written comments by April 6, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM 79-6)

FOR FURTHER INFORMATION CONTACT:

Gregory D. Martin, Office of Commissioner, Matthew Holden, 825 N. Capitol St., N.E., Room 9010, Washington, D.C. 20426, Phone: (202) 275-4176.

William Lindsay, Office of Electric Power Regulation, 825 N. Capitol St., N.E., Room 5200, Washington, D.C. 20426, Phone: (202) 275-4777

SUPPLEMENTARY INFORMATION:

BACKGROUND

We are issuing, at this time, *proposed* rules as to information that electric utilities shall report on the costs of providing electric service. These rules have been developed, to this point, under the instructions of Congress pursuant to section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The law requires that the final rule be put into effect within 180 days of the date of enactment, that is, by May 8, 1979.

In view of the strict schedule set by the statute, the period for public comment on this proposed rulemaking is necessarily short. The *proposed* rule is not sacrosanct. We would welcome comments as to how it might be improved, so as to serve the purposes of the statute.

Insofar as the Commission is under a 6-month time constraint in issuing final rules with respect to this matter, we have attempted in the development of the proposed rule to provide for input by interested persons at the earliest possible stages in our development of this proposal. In particular, we have made a special effort to invite state regulatory authorities to communicate their views of how implementation of this rule will affect their responsibilities at the state level. We have also received a number of inquiries from national organizations concerned with electric utility regulation such as the American Public Power Association, the National Rural Electric Cooperatives, Inc., and the Edison Electric Institute. Commission staff was authorized to begin discussions with persons in these organizations as well as in other agencies of the government having regulatory and economic expertise. The records of these discussions have been made a part of the public file on this matter. We have directed that, in all such discussions and in following-up on any other inquires that have come to the attention of the Commission, the staff adhere scrupulously to the procedures for identifying and recording the subject matter of conversations in the manner earlier adhered to with respect to the development of the interim regulations under the Natural Gas Policy Act.

In addition, an informal public conference was held on December 4, 1978, the record of which was transcribed and analyzed for further use. This informal public conference, as well as the ongoing discussions we have held, have been of great value in establishing our understanding, to this point, of the issues and the potential consequences perceived by persons who would be affected by the regulations which are now proposed.

These rules are now proposed for formal public consideration and the Commission will provide a full opportunity for oral as well as written comment. In order to assure the widest possible opportunity for comment, to take into account local and regional concerns, and to assist participants who may not be able to participate before the Commissionin Washington, D.C., the Commission will schedule several regional hearings on this proposed rulemaking.

TO WHOM WILL THE REGULATIONS APPLY AND WHAT INFORMATION IS TO BE SOUGHT?

The regulations will apply to all electric utilities having total sales, other than resale, in excess of 500 million kilowatt hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

The Secretary of Energy has identified electric utilities subject to these regulations. The first list issued for

comment on December 22, 1978 (published here as Appendix A) contains: 157 investor-owned electric utilities; 29 cooperatively owned electric utilities; 69 non-Federal publicly owned electric utilities; and 3 Federally owned electric utilities.

Each utility with over this amount of retail sales is required to file with the Commission and its State regulatory authority all information except for information which may be proprietary concerning bills and consumption patterns of individual customers and information specifically exempted by the Commission. They are also required to make the information available to the public in the manner prescribed by the Commission. It should be noted regarding proprietary information that utilities will be required to make available for review by this Commission and the relevant State regulatory authority all information related to individual customers for verification and enforcement purposes.

Title I of PURPA states that the Congressional purposes are to encourage:

(1) the conversation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources; and

(3) equitable rates to electric consumers.

Congress required that State regulatory authorities and nonregulated utilities consider and make determinations regarding cost of service, the cost basis of declining block rates, time-of-day rates, seasonal rates, interruptible rates, and load management techniques within three years after the enactment of the Act or if that schedule is not met in the first rate proceeding which commences three years after the enactment of the Act. In addition, State regulatory authorities and nonregulated utilities are required under certain circumstances to make a determination as to whether or not lifeline rates should be implemented.

Congress expressly intended section 133 to be the vehicle for making good information regarding costs of providing electric service readily available to everyone concerned. ("Joint Explanatory Statement of the Committee of Conference," p. 86.)

At a minimum, the Commission is obligated under section 133 of PURPA to require the collection and reporting of information which allows, to the extent practicable, the identification of:

(1) customer, demand and energy costs components;

(2) costs of serving each customer class to include subgroups within classes, at different voltage levels, times of use and other appropriate factors;

(3) daily and seasonal kilowatt load curves for the utility system and each customer class served under different rate schedules;

(4) annual capital, maintenance and operating cost for transmitting and distributing electricity and for each generating unit; and

(5) costs of purchased power reflecting daily and seasonal differences.

Within the statute the Commission has broad discretion to require utilities to report cost of service information in the form and manner the Commission deems necessary to fulfill the purposes of section 133 of PURPA.

The Commission's authority to collect and publish information pursuant to other laws is not affected by any authority granted under PURPA.

WHAT INFORMATION IS NECESSARY?

In general, two costing methods, marginal costs and fully allocated costs and various applications of each, are employed by utilites and regulatory agencies. Both reflect the capital, operating and maintenance costs for generation, transmission, distribution and overhead. They attempt to measure those costs differently.

Fully allocated cost methods focus on total accounting costs incurred or expected to be incurred in the delivery of service during a specified period.

Marginal cost if defined as the expected change in the total cost of production to supply one additional unit of output.

We were faced, at the outset of this proceeding, with the question of whether we should require the reporting of information to express marginal costs exclusively, or information to express embedded costs exclusively.

We have considered both proposals. We have concluded at this time to propose the inclusion of both marginal and embedded costs.

Some have argued that section 115(a) calls for a marginalist method of determining costs, relying on the language concerning a change in total costs of additional capacity is added to meet additional demand. However, the "Joint Explanatory State of the Committee of Conference" specifically states:

> The Conferees chose the phrase "take into account" [the change in costs] so as not to imply a preference for a State regulatory authority or nonregulated utility to follow any specific costing methodology for determining cost of service. The State regulatory authority or nonregulated utility has discretion to select which costing methodology or methodologies it chooses, consistent with State law.

It is also clear the Congress contemplated broad opportunities for participation in rate proceedings. In this context it is the Commission's role to ensure, through the section 133 rule, that the states, utilities, consumers or intervenors all have good information on a timely basis. It would be inappropriate, on the basis of present knowledge, to attempt in this proposed rulemaking a definitive resolution of the major conceptual issues. The Commission should, instead, develop rules which can be used objectively to assist in a variety of cost determinations as may be indicated by the needs of users of the data. The accounting cost concepts are, in general, more clearly understood. On that basis, we here propose to require the reporting of both accounting and marginal costs.

The quantification of costs of service using the two methods involves the use of different procedures.

Fully allocated cost of service studies require the following information for the test year: rate base, depreciation, fixed operation and maintenance expenses, taxes and cost of capital. These items are functionalized under the generation, transmission and distribution functions. The analyst must also have, for the test year, information as to the utility's expenses for fuel, variable operation and maintenance expenses, power purchases, customer accounting, sales promotion, administration and other (general). Finally, the analyst needs some information about customer demands in the test year.

Collection of the accounting cost information (subpart B) coupled with the load information (subpart D), is intended to permit the development of fully allocated accounting cost of service studies under a variety of methods currently in use. The specification in this proposed rule of the various information elements should not be taken as a preference for any specific methodology which coincidentally is based on the same information elements.

The quantification of marginal costs is more complicated. At a minimum, it involves determining: (1) costing periods; (2) marginal energy (running) costs; (3) marginal generating capacity (demand) costs; (4) marginal transmission capacity costs; (5) marginal distribution costs (demand and customer costs); and (6) marginal losses.

In the electric utility industry, the change in output can be viewed as having three different dimensions: the additional cost of supplying an additional kilowatt-hour of electricity (marginal energy cost), the additional cost of supplying an additional kilowatt of capacity including the cost of maintaining adequate reserve capacity (marginal capacity or demand cost), and the additional cost of adding a new customer (marginal customer cost). Marginal demand cost is measured per kilowatt (kW) of additional demand, energy cost per kilowatt-hour (kWh) of additional consumption, and

customer cost per additional customer served.

The objective in determining costing periods is to differentiate between periods of high and low costs.

Marginal energy costs refer to the costs of fuel and variable operation and maintenance expenses incurred in producing an additional kilowatt of electricity.

Marginal generation capacity costs refer to the costs that would be incurred to meet a small permanent change in the level or pattern of demand.

Marginal transmission capacity costs reflect costs of additions to transmission systems that are causally related to system peak demand.

How marginal distribution costs should be determined is a matter on which there is no clear agreement among experts. The disagreement involves a proper distinction between customer-related distribution costs; *i.e.*, costs directly related to adding a new customer and varying proportionately to the number of customers, and demand related distribution costs; *i.e.*, costs associated with serving a particular load.

Another procedure in a marginal cost analysis is the computation of marginal losses. This procedure is necessary because losses affect marginal capacity and marginal energy costs. The size of the transmission and distribution facilities is related to the maximum load and energy losses during transmission and transformation. For purposes of most costing analyses, what needs to be determined is the difference between electricity input and electricity output; *i.e.*, and the difference between electricity generated and electricity delivered to customers at each voltage level.

Proponents of marginal costing do not agree on a single appropriate method. The diversity of professional opinion is also found within the Commission Staff. The Commission rejects, accordingly, the concept that it could or should approve any one model or set forth an authorized list of acceptable methods for calculating marginal costs under this regulation. However, we are proposing that each utility choose an appropriate marginal cost approach for calculating the costs of providing service.

The marginal cost information (subpart C), together with the load information (subpart D), should enable utilities (as well regulatory authorities and others) to calculate the extent to which total cost of supplying electric power is likely to change if, (1) additional capacity is added to meet peak demand; (2) additional kilowatt-hours of electric energy are delivered to customers; or (3) additional customers are added to the distribution system. In addition, the information will permit identification of differences in the cost of serving various classes of customers that can be attributed to receiving electricity at different voltage levels and to variations in daily and seasonal time of use.

RAW INFORMATION AND COST CALCULATION

The Commission has had to consider whether the purpose of section 133 whould best be served by requiring the utilities to report only single element information (hereafter referred to as raw information), which could then be used as the basis on which costs could be calculated by costing periods, by customer class and by voltage level, or whether utilities should report some level of calculated costs for such functions and classes. To be useful, the information must be calculated. The question is where the burden of the calculations should lie—with the utility providing the information or with each of the several potential users of the information, *i.e.*, state commissions, intervenors and the ERA.

The statutory language requires interpretation. In one part of section 133, there is reference ot information "necessary to allow determination of the costs associated with providing electric service;" in another part, the language seems to imply that costs should be calculated and reported by various categories.

In the informal comment period, there was substantial comment, especially form state agencies, in favor of a raw information approach. Certain state commissions have expressed the significantly different view that at least some level of calculation must be completed by the reporting utility in order to make the information useful to those who would seek to use it. Within the Commmission, most of the staff is convenced that the purposes of section 133 would best be served if utilities were required to report certain costs calculated by customer class, costing period, the voltage level.

While a raw information approach may be legally sufficient for purposes of carrying out the minimum requirements of section 133, for the purposes of this rulemaking we adopt the recommendations of the majority view among the staff, *viz.*, that the reporting utilities should be required to calculate marginal costs by customer class, by costing period and by voltage level.

With regard to the question of whether utilities should be required to report any cost calculations, whether marginal or accounting cost, as opposed to simply reporting raw information, at least one state commissioner and many of the FERC staff feel that it is necessary to require utilities to submit more material than that which would simply permit users other than the reporting utilities to calculate cost of service by class.

Attached to the proposed rule are two summary tables. Completion of one table would require the development of a full accounting cost study and completion of the other would require the performance of a marginal cost study, though in neither instance does the table require the use of a specific methodology. Comments are solicited specifically as to whether utilities should be required to calculate and report accounting and marginal costs using the summary tables as set out in the proposed rule.

If the Commission is not to require that reporting utilities calculate costs using the summary tables, the question becomes what is the irreducible minimum amount of information that must be reported by the subject utilities in order to reasonably permit the most likely potential users, or intervenors, to perform full marginal cost of service studies.

Comments are specifically asked to be directed at the following questions:

(1) With respect to marginal energy costs, whether the Commission should require utilities to report *calculated* marginal energy costs or whether it is reasonably possible for users of the reported raw information to derive marginal energy costs from the information as to the cost of fuel, power purchases, variable operations expenses and loads, as required in the proposed regulation; and

(2) Whether the utilities should be required to *calculate* a carrying charge rate or whether raw information as to income and property taxes, depreciation, return and expenses are sufficient so as to allow the user to reasonably perform such a calculation.

To assist the public in its consideration, Appendix B contains the staff's concept of the basis for the margin cost information call proposed in the rulemaking and Appendix C contains the concept as proposed for the raw information approach. The proposed rulemeking assumes that the utilities are uniquely situated to calculate the margin energy costs and a carrying charge rate. Appendix C reflects the determination that parties other than the utilities can calculate those items given certain raw information.

FORMAT FOR COLLECTION OF RAW INFORMATION

Regarding the appropriate format for the collection of raw information, the question to which comments are specifically solicited, is whether the raw information tools now available to us (FERC Form 1 already required by 18 CFR 141.1 of a majority of the utilities subject to this rulemaking) can be

modified to allow us as a practical matter to meet the purposes of the law. The most likely alternative to the modifying of Form 1 would be the development of an entirely new form.

We have considered, but not here proposed, an approach which would utilize an existing report, FERC Form 1, required by 18 CFR 141.1. Much of the information required for either generic approach (marginal or fully allocated) may well be already contained in FERC Form 1 with the exception of some information as to future plant, costs and loads. Since most privately-owned utilities covered by Title I of PURPA must file the FERC Form 1 annually, this approach would utilize the form, with certain amendments, for section 133 purposes. It would also be necessary to expand the form so as to include those entities that do not now report in that fashion.

Under the Form 1 raw information proposal, utilities covered under section 133 would be required to file information, including load information, annually. Both the proposed rule and the Form 1 raw information proposal would require utilities to conduct load research at least every five years.

Filing requirements under the Form 1 raw information proposal would apply to each utility with annual electric operating revenues of $2,500,000 or more whether or not the utility is jurisdictional under the Federal Power Act and each electric utility covered by section 133. Electric utilities which do not meet the 500 million kilowatt hours sales other than resale standard would be exempt from the requirement to report class load information and cost information relating to planned additions to plant.

They would also be exempt from filing the several years of historic information relating to plant, sales, operations and loads. Under this alternate approach, the initial filing date would be extended to March 31, 1981, four months beyond that prescribed in section 133(c).

For a more thorough treatment of the Form 1 approach, see Appendix C.

WHAT LOAD INFORMATION IS NECESSARY?

Section 133(a)(2) of PURPA requires the gathering of information with respect to customers' demand for electricity reflecting daily and seasonal differences in use. The proposed regulation would require the collection of this load information for individual customer classes, the system as a whole, and in certain cases, for power pools. The proposed regulation would also require the reporting of certain system, pool and class loads that may be needed for estimation of marginal costs and accounting costs.

The majority of the load information is required for the reporting period, but there are additional requirements for systems (or pool) load reporting for historic and projected periods. For individual class load information collection, an accuracy standard is established consistent with general industry practice in conducting load research.

The Commission recognizes that large expenses may be associated with conducting load research. We also understand that, in most instances, class load shapes do not change appreciably over the short run. For those reasons, the regulations require updated load research no more frequently than every five years. The class load information to be reported, however, is that applicable to the current period. Load research conducted within five years of the reporting period can provide estimates of class load factors, from which estimates of current class loads can be obtained when combined with current kWh sales, numbers of customers and other factors such as known changes in appliance mix.

Without detailing the specific information required, there are several aspects of this section of the proposed regulation to which we call special attention. Specifically, there are five blanket exemptions that are proposed in this rulemaking to be granted in the final rule. One exemption is for the *separate* reporting of all load data for a class if it represents no more than 5% of the annual or daily system peak and is not a major retail class (*i.e.*, residential, commercial, industrial). Instead, that class may be combined with other classes for reporting purposes. The second exemption would be to the reporting of *hourly* class load data by utilities for any small class meeting the criteria of the first exemption. The third proposed exemption would release the reporting utility from the accuracy standard for sampling of loads, if loads can be estimated without sampling, such as for street lighting, or if load data from other utilities are to be used. The transferability of the load data must be documented as a condition of the exemption. The fourth blanket exemption would apply if the State regulatory authority waived the requirement for *separate* jurisdictional reporting of class loads. Finally, for any utility given an extension for filing class load data, an exemption would be granted to filing load data at the time of a request for a rate increase.

Two exemptions would be considered and would require a separate application under the "Exemption and Extension" section of the proposed rules. One exemption would be considered for filing load data for any customer class if this class is to be drastically altered or eliminated. An exemption also would be considered for utilities reporting separately the class load data if they intend to jointly engage in load research.

One blanket extension is proposed to be granted in the final rule. For any utility that has not commenced load research on the date of the PURPA enactment, or that has not been directed to do so by its State regulatory agency, a one-year extension for filing *hourly* class load data would be allowed.

EXEMPTIONS AND EXTENSIONS

Section 133 provides that these rules:

> . . . may provide for the exemption by the Commission of an electric utility or class of electric utilities from gathering all or part of such information, in cases where such utility or utilities show and the Commission finds after public notice and opportunity for the presentation of written data, views, and arguments that gathering such information is not likely to carry out the purposes of this section.

The proposed rules establish a mechanism for the application for an granting of such exemptions in the future. In addition, the proposed rules would immediately grant certain exemptions, based upon showings to be made by utilities during the process of this rulemaking. As to these proposed exemptions, this proposed rulemaking constitutes the public notice, and the opportunity for comment on the proposed rules constitutes the comment opportunity required by section 133 before an exemption may be granted, as it would be in this instance in the final rule. In accordance with the terms of the Act, utilities or classes of utilities desiring these proposed exemptions must show in their comments on this proposed rule that the gathering of the information covered by the exemption is not likely to carry out the purposes of section 133.

The proposed general procedure for the granting of exemptions is found in subpart F. The particular exemptions which would be granted in this rule all have to do with load information (subpart D), and are described above in the section of the Preamble dealing with load information.

Finally, section 133 provides particularly that the Commission may permit an extension of the first reporting obligation, otherwise occurring two years after enactment, "for good cause shown." It is noteworthy that both the criterion and procedure for the granting of such extensions are less rigorous than those established for exemptions. As with the exemptions, the proposed rules both establish a mechanism for granting extensions (in subpart F) and propose a particular extension (in subpart D) of one year for the filing of hourly class load data for utilities which have not commenced a

class load research program as of the date of enactment.

WRITTEN COMMENTS

Interested persons are invited to submit written comments on the proposed regulation to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Comments should reference Docket No. RM79-6 on the outside of the envelope and on all documents submitted to the Commission. In view of the short comment period available on these proposed regulations, and in order that the Commission be able to take into account as many comments as possible, the Commission requests that persons submitting comments assist in three ways. First, persons should identify specifically the section or subpart they are addressing. Second, comments should clearly state whether they involve technical, policy or legal matters. Finally, where comments urge a different approach from one presented, specific alternative language should be proposed to the extent practicable.

Fifteen (15) copies should be submitted. All comments and related information received by the Commission by April 6, 1979 will be considered prior to the promulgation of interim regulations on May 8, 1979. All comments will be retained and considered prior to the promulgation of final regulations.

The Commission intends to allow an opportunity for the oral presentation of data, views and arguments. These proceedings will be held at times and places to be announced.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267).

In consideration of the foregoing, it is proposed to amend Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

KENNETH F. PLUMB,
Secretary.

1. Chapter I of Title 18 is amended by adding new Subchapter K, Part 290 to read as follows:

SUBCHAPTER K—REGULATIONS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

PART 290—COLLECTION OF COST OF SERVICE INFORMATION UNDER SECTION 133 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

Subpart A—Coverage, compliance and form of information

Sec.
290.101 Coverage.
290.102 Compliance.
290.103 Form of the information.

Subpart B—Accounting cost information.

Sec.
290.201 Rate base information.
290.202 Operation and maintenance cost information.
290.203 Income and sales tax information.
290.204 Rate of return information.

Subpart C—Marginal cost information.

Sec.
290.301 General instructions for reporting marginal cost information.
290.302 Generation cost information.
290.303 Energy cost information.
290.304 Transmission cost information.
290.305 Distribution and customer cost information.
290.306 Other cost information to be reported.
290.307 Annual carrying charge rates.
290.308 Costing periods.

Subpart D—Load information

Sec.
290.401 General instructions for reporting load information.
290.402 Load information for the total of all customer classes (system load information).
290.403 Load information for individual customer classes.
290.404 Certain exemptions from reporting load information by individual customer classes.
290.405 Extension for reporting hourly load information by individual customer classes.
290.406 Other information to be reported.

Subpart E—Calculated costs

Sec.
290.501 Accounting cost calculations.
290.502 Marginal cost calculations.

Subpart F—Exemptions and extensions

Sec.
290.601 Exemptions.
290.602 Extensions.

Subpart G—Enforcement

Sec.
290.701 Enforcement provisions.

AUTHORITY: This part is issued under the Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117.

Subpart A—Coverage, Compliance and Form of the Information

§ 290.101 Coverage.

These rules apply to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

§ 290.102 Compliance.

(a) *Information gathering and filing.* Each electric utility covered under these rules shall gather information as specified in Subparts B, C, D, and E of this part, and shall file an original and one copy of such information with the Federal Energy Regulatory Commission (Commission) and an additional copy of such information with each State regulatory authority having ratemaking authority over such utility. The utility shall retain additional copies of such information and shall make them available at the principal offices of the utility for public inspection and copying.

(b) *Time of filing and reporting period.* (1) Information required under paragraph (a) of this section shall be filed on or before November 1, 1980, and on or before the date 2 years after the date of the initial filing, except as provided in paragraph (c) of this section.

(2) Except as specified in paragraph (c)(2) of this section, the reporting period covered by the information shall be a recent 12-month period the end date of which does not precede the filing date by more than 6 months. Information for earlier years and future years, as specified in Subparts C and D of this part, shall be reported on a calendar year basis.

(c) *Reporting of information at the time of a rate increase application.* (1) At the time of making an application or proposal for a rate increase, each utility shall file with the Commission and appropriate State ratemaking authorities, and make available to the public, the information specified in Subparts B, C, D, and E of this part. The utility shall next be required to file information specified in Subparts B, C, D, and E of this part 2 years from the time of the rate increase application, or at the time of the next subsequent rate increase application, whichever occurs first.

(2) The reporting period covered by the information required under paragraph (c)(1) of this section shall be the same as the test period that is used in the calculations supporting the rate increase application. If a future test period is used, the information shall be estimated for the test period, and

the procedure used for estimation shall be described. Information for earlier years and future years, as required in Subparts C and D of this part, shall be reported on a calendar year basis.

(d) *Date of initial filing.* The provisions of paragraph (c) of this section do not take effect prior to November 1, 1980.

§ 290.103 Form of the information.

The information required to be reported shall be submitted on suitable standard forms prescribed by the Commission or in any form otherwise determined by the Commission. With regard to specific items of cost information, if an account number from the FERC Uniform System of Accounts is specified in Subparts B and C, public utilities under the Federal Power Act shall file in accordance with the specified accounts. Utilities covered by Section 133 of the Public Utility Regulatory Policies Act (PURPA) but not presently required to keep their books by the FERC Uniform System of Accounts may provide this information in accordance with the system of accounts presently employed, so long as all required individual items of information are fully defined and expressed in the same detail as in the FERC Uniform System of Accounts.

Subpart B—Accounting Cost Information

§ 290.201 Rate base information.

For rate base information, balances shall be reported at the beginning and end of the reporting period together with the average of the thirteen monthly balances, if available. The following information shall be reported:

(a) *Plant accounts.* For plant account balances, (FERC [1] Accounts 301 through 399) and any sub-accounts:

(1) The balances in each account, by account.

(2) A functional breakdown of distribution plant into demand and customer related components, and an explanation of the functional allocation used.

(3) A breakdown of demand related transmission or distribution plant assigned to the different service levels provided and an explanation of this allocation.

(4) A breakdown of all plant directly assigned to specific customers or customer classes if such assignment is appropriate based on prior precedent.

(b) *Depreciation reserve.* The depreciation reserve associated with each plant account specified in paragraph (a) of this section, by account number.

(c) *Depreciation expense.* The depreciation expense associated with each plant account specified in paragraph (a) of this section, by account number.

(d) *Cash working capital.* Estimates of cash working capital required, including an explanation of the computation. Sufficient information shall be submitted to enable a calculation on the basis of the conventions utilized in the particular jurisdictions. If the estimated cash working capital requirement is based on a lead lag study, a summary of the study shall also be filed.

(e) *Construction work in progress.* For each project under construction:

(1) A description of plant including appropriate functionalization; such as production, transmission, distribution, general, common, and other.

(2) A starting construction date.

(3) The expected completion date and estimated cost as of the in-service date.

(f) *Prepayments.* A breakdown of the components of all prepayments.

(g) *Accumulated deferred income tax.* The amount of accumulated deferred income taxes, with an explanation as to their derivation and source.

(h) *Materials and supplies.* The amounts for materials and supplies (FERC Accounts 151 through 163).

(i) *Electric plant held for future use.* The amount for electric plant held for future use, itemized as to land and other, and functionalized.

(j) *Nuclear fuel materials.* The amounts for nuclear fuel materials (FERC accounts 120.1 through 120.3).

§ 290.202 Operation and maintenance cost information.

For O&M expenses the following information shall be reported:

(a) *Operation & Maintenance expense accounts.* For O&M expenses (FERC accounts 500 through 598 and 901 through 932) and any subaccounts:

(1) The balances in each account, by account.

(2) A functional breakdown of distribution O&M expenses into demand and customer related components and an explanation of the functional allocation made.

(3) A breakdown of demand related transmission and distribution O&M expenses assigned to the different service levels provided and an explanation of the allocation method.

(4) A breakdown of all O&M expenses directly assigned to specific customers or customer classes if such assignment is appropriate based on prior precedent.

(5) Monthly information on fuel expense, estimating the amounts for each month included in each of the costing periods utilized in reporting the marginal costing information under Subpart C of this part.

(b) *Payroll.* The payroll associate with each O&M expense account, by account number.

(c) *Taxes.* All property taxes, payments in lieu of taxes, and other non-income-related taxes.

§ 290.203 Income and sales tax information.

If applicable to the reporting period, the following information necessary to calculate income and sales tax shall be reported:

(a) *Tax rates.* The applicable income tax rates and sales tax rates.

(b) *Differences in income items and deductions.* A specification of the differences in income items and deductions for Federal and State income taxes.

(c) *Itemized deductions.* An itemization of the Federal income tax deductions in addition to those contained in §§ 290.201 and 290.202; such as, interest, tax depreciation above book depreciation, etc.

(d) *Adjustments to taxes.* Federal and State adjustments for such items as provisions for deferred income taxes, income taxes deferred in previous years, and investment tax credits, including the amortization and reporting period amounts.

§ 290.204 Rate of return information.

The following information shall be averaged for the reporting period and reported:

(a) *Capitalization.*

(b) *Costs of capital.* Costs of capital, including interest costs and book values of the various issues of debt and preferred stock book value and dividends for the various issues of preferred stock.

Subpart C—Marginal Cost Information

§ 290.301 General instructions for reporting marginal cost information.

All marginal cost information shall be reported in accordance with the following general instructions:

(a) *Estimates of future costs and inflation factors used.* All estimates of future costs shall be reported in constant (base year) dollars, and the inflation factors used shall be indicated.

(b) *Historic costs.* All historic costs shall be as recorded.

(c) *Designation of estimations.* All estimated historic and reporting year information shall be designated "Est.".

(d) *Information not applicable.* All requested information not applicable to the utility's operations shall be designated "Not Applicable".

§ 290.302 Generation cost information.

For generation costs the following information shall be reported:

(a) *Production planning information for existing generating plants.* For

[1] FERC accounts refer to FPC accounts so numbered.

each generating unit within an existing generating plant:

(1) Plant-unit identification.

(2) If jointly owned, the percent ownership of the unit's total capability.

(3) The kind of unit (steam, internal combustion, gas turbine, nuclear, conventional hydroelectric, pumped storage, or other);

(4) Estimated retirement date.

(5) Primary and secondary fuel types.

(6) Maximum generator nameplate rating (in kilowatts) and reratings, if any.

(7) Net continuous unit capability (in kilowatts):

(i) When not limited by condenser water; and

(ii) When limited by condenser water.

(8) Normalized annual fixed operation and maintenance expenses.

(9) Cost of fuel per kilowatt-hour of net generation under typical operating conditions.

(10) Cost of fuel per million Btu's.

(11) Heat rates at 100, 75 and 50 percent of rated capacity.

(12) Non-fuel variable operating costs per kilowatt-hour of net generation for the reporting year and, if expected to change, for each of the next 10 years.

(13) Maintenance requirements (days of maintenance per year) for the reporting year and, if expected to change, for each of the next 10 years.

(14) Forced outage rates (percent) for the reporting year and, if expected to change, for each of the next 10 years.

(15) Minimum daily operating capacity.

(16) Start-up time to achieve 85 percent of nameplate capacity.

(17) If the unit is hydroelectric, the following information for each month of the reporting year and, if expected to change, for each month of the next 10 years:

(i) Kilowatt-hour production.

(ii) Maximum continuous generating capability.

(b) *Production planning information for planned additions to generating plants.* For each generating unit which is planned to go into operation during the next 10 years:

(1) Plant-unit identification.

(2) If to be jointly owned, the planned percent ownership of the unit's planned capability.

(3) Kind of unit (steam, internal combustion, gas turbine, nuclear, conventional hydroelectric, pumped storage, or other).

(4) Planned date of commercial operation.

(5) Estimated earliest possible date of commercial operation.

(6) Estimated plant life.

(7) Primary and secondary fuel types.

(8) Maximum generator nameplate rating (kilowatts).

(9) Annual estimated expenditures up to planned date of commercial operation (including AFUDC or CWIP earnings as applicable).

(10) Estimated capital cost per kilowatt.

(11) Estimated annual fixed operation and maintenance expenses.

(12) Estimated cost of fuel per kilowatt-hour of net generation.

(13) Estimated cost of fuel per million Btu's.

(14) Estimated heat rates at 100, 75 and 50 percent of rated capacity.

(15) Estimated non-fuel variable operating costs per kilowatt-hour of net generation.

(16) Estimated maintenance requirements (days of maintenance per year) for the first year of commercial operation and, if expected to change, for each of the remaining years in the 10-year planning period.

(17) Estimated forced outage rates (percent) for the first year of commercial operation and, if expected to change, for each of the remaining years in the 10-year planning period.

(18) If the unit is hydroelectric, the following information for each month of the first year of commercial operation and, if expected to change, for each month of the remaining years in the 10-year planning period:

(i) Kilowatt-hour production.

(ii) Maximum continous generating capability.

(c) *Planning method used.* A description of the system planning method or model used to determine the pattern of generating capacity additions specified in paragraph (b) of this section.

(d) *Ten year resource forecast requirements.* A 10-year resource plan which identifies the requirements for the construction of new electric generating facilities to meet forecasted system summer and winter peak load levels, as indicated in the demand forecast specified in § 290.402(e); for the summer and winter peaks of each of the 10 years in the planning period, the following information:

(1) The net dependable capacity available from existing generating plants.

(2) The total capacity available from firm purchases.

(3) The total firm capacity obligations to other systems.

(4) The net dependable capacity plus net purchases (paragraphs (d)(1) plus (d)(2) of this section minus paragraph (d)(3)).

(5) The total reserve capacity required for the system.

(6) The reserve capacity available through interchange or emergency agreements.

(7) The reserve capacity required to be supplied by own system (paragraph (d)(5) of this section minus paragraph (d)(6)).

(8) The net assured system capacity (paragraph (d)(4) of this section minus paragraph (d)(5)).

(e) *Estimated capital investment and operation and maintenance expense.* (1) The estimated capital investment (per kilowatt of installed capacity) if a hypothetical minimum cost (per kilowatt) generating unit of an appropriate size were installed.

(2) The estimated fuel and variable O&M expenses (per kilowatt-hour) for this unit.

§ 290.303 Energy cost information.

For energy costs the following information shall be reported:

(a) *Hourly marginal energy costs.* Hourly marginal energy costs (cents per kWh) for the reporting year and for the next 5 years.

(b) *Typical hourly marginal energy costs as an alternative.* As an alternative to paragraph (a) of this section, hourly marginal energy costs for a typical weekday, a typical weekend day and the system's peak day for each month of the reporting year and the next 5 years, if the utility certifies that it will make the information specified in paragraph (a) of this section available upon request.

(c) *Pool hourly marginal energy costs.* As an alternative to paragraphs (a) and (b) of this section, the hourly marginal energy costs for the pool if the utility is a member of a centrally dispatched power pool.

(d) *Procedures used.* A general description of the procedures used in estimating hourly marginal energy costs.

(e) *Hydroelectric units.* If a hydroelectric unit is used to meet a marginal load, the assumptions and procedures used in valuing the electricity produced from the hydro source.

(f) *Effect of purchased power costs.* The hours in which the marginal energy cost is likely to be determined by the price paid for purchased power, with citations to contracts, tariffs or agreements currently in effect and likely to determine the hourly marginal energy costs indicated in paragraphs (a), (b) or (c).

(g) *Marginal energy costs by costing period and by year.* Estimates of the average hourly marginal energy cost by costing period for the reporting year and for the next 5 years using the costing periods specified in § 290.308.

(h) *Calculated marginal energy costs by costing period.* A single marginal energy cost calculated for each of the costing periods, using the information specified in paragraph (g) of this section and the assumptions and procedures used in making these calculations.

(i) *Effect of energy loss.* The estimated marginal energy costs at the principal delivery voltage levels for the different costing periods using the estimates of energy loss factors specified in § 290.406(c).

§ 290.304 Transmission cost information.

For transmission costs the following information shall be reported:

(a) *Plant information.* For transmission plant:

(1) The cost of additions to transmission plant, excluding replacements, by voltage level for the reporting year and for each of the previous 10 years, including all capitalized costs (for example, AFUDC).

(2) The annual budgeted costs of additions to transmission plant, excluding replacements, by voltage level for each of the next 10 years, including all capitalized costs (for example, AFUDC).

(3) An estimate of the costs of additional transmission plant that would be required for the installation of the hypothetical minimum cost per kilowatt generating unit described in § 290.302(e).

(4) For paragraphs (a)(1) and (a)(2) of this section, payments received or an estimate of those to be received from other utilities for use of the additional transmission capacity.

(5) A system map showing existing generation sites and transmission lines and those proposed for the next 10 years.

(b) *Operation and maintenance expense.* For O&M expenses (FERC Accounts 560 through 573):

(1) The transmission O&M expenses for the reporting year and for each of the previous 10 years, adjusting any extraordinary or non-recurring expenses to typical levels.

(2) The estimated transmission O&M expenses for each of the next 10 years.

(3) The O&M expenses associated with the installation of the transmission plant specified in paragraph (a)(3) of this section.

(4) For paragraphs (b)(1) and (b)(2) of this section, the following:

(i) Dispatch expenses related to pool or interchange operations.

(ii) Any fixed payments, such as rental payments.

§ 290.305 Distribution and customer cost information.

For distribution and customer costs the following information shall be reported:

(a) *Plant information.* For distribution plant:

(1) The account balances (FERC Accounts 360 through 373) for each of the previous 5 years and for each of the next 5 years.

(2) For paragraph (a)(1) of this section, the amount of investment incurred each year for replacement of existing plant.

(3) For the reporting year, an estimate of the investment associated with a minimum distribution system; that is, the investment in facilities at capacity levels sufficient to serve customers at a minimum level of demand. (The minimum level of demand is the actual minimum demand level for which service is currently being installed. A methodology for determining a minimum distribution system is described in Chapter VI of the *Electric Utility Cost Allocation Manual* published by the National Association of Regulatory Utility Commissioners (1973, Washington, D.C.).)

(4) As an alternative to paragraph (a)(3) of this section, a certification by the utility that it will make the information specified in paragraph (a)(3) available upon request.

(5) An estimate of the current cost of connecting a new customer to the distribution system for each customer class.

(b) *Operation and maintenance expense.* For O&M expenses:

(1) The account balances (FERC Accounts 580 through 598) for each of the previous 5 years and for each of the next 5 years.

(2) For paragraph (b)(1) of this section, a breakdown of:

(i) All O&M expenses directly assigned to specific customers or customer classes.

(ii) Extraordinary and non-recurring expenses.

(3) For each item in paragraph (b)(2) of this section, a differentiation between costs associated with materials and costs associated with labor.

§ 290.306 Other cost information to be reported.

For each of the previous 5 years, the following information shall be reported:

(a) *Customer expenses.* Customer account expenses, by account (FERC Accounts 901 through 910).

(b) *Sales expenses.* Sales expenses, by account (FERC Accounts 911 through 916), indicating separate amounts attributable to specific customers or customer classes.

(c) *Administrative and general expenses.* Administrative and general expenses, by account (FERC Accounts 920 through 932).

(d) *Certain taxes.* Social security and unemployment taxes paid (FERC Account 480.1).

(e) *Electric plant in service.* Electric plant in service, end of the year (FERC Account 101).

(f) *General plant.* General plant, by account, end of the year (FERC Accounts 389 through 399).

(g) *Materials and supplies.* Materials and supplies, by account, end of the year (FERC Accounts 151 through 157 and 163).

(h) *Prepayments.* Prepayments, end of the year (FERC Account 165).

§ 290.307 Annual carrying charge rates.

For annual carrying charge rates the following shall be reported:

(a) *Estimates.* Estimates of current annual carrying charge rates for generation, transmission, and distribution facilities based on annual revenue requirement calculations for hypothetical $1000 investments and calculated in accordance with the following rules:

(1) Carrying charge rates shall reflect only 4 types of cost—depreciation, return, income and property related taxes, and insurance.

(2) The calculations shall correspond to the regulatory prescriptions of the predominant regulatory authority. If the reporting utility operates in more than one state and if differences in regulatory prescriptions between states significantly affect the carrying charges rates (and, thus, system planning), such differences shall be indicated by the presentation of separate carrying charge rates for each jurisdiction.

(3) Publicly owned systems shall present carrying charge rates calculated with reference to the cost factors relevant to their system planning.

(4) The rate of return component shall be based on the utility's expected capital structure and marginal costs of debt, preferred, and common equity or customer contributed capital. The utility may use the allowed rate of return on common equity from its last rate proceeding as the component cost of common equity.

(b) *Worksheets.* Worksheets showing how the calculations specified in paragraph (a) of this section were made and indicating the basis for each cost component.

§ 290.308 Costing periods.

The costing periods that could be used to implement time differentiated pricing shall be reported as well as a description of the information and assumptions used in deriving these costing periods.

Subpart D—Load Information

§ 290.401 General instructions for reporting load information.

Load information shall be reported in accordance with the following general instructions:

(a) *Hourly load information.* Kilowatt (kW) loads shall be reported as total 60-minute integrated demands for each hour of a 24-hour period, beginning at 12:01 a.m. and ending at 12:00 midnight, local time. If loads are

metered on a different basis, the time interval of integration and the factor which converts reported loads to an hourly intergrated basis shall be specified.

(b) *Separate jurisdictional loads.* For utilities that serve at retail in more than one retail regulatory jurisdiction, individual customer class loads, as specified in § 290.403, shall be reported separately for each jurisdiction.

(c) *Master metering.* For purposes of reporting information in § 290.406, "customers" shall be defined as meters. A utility which uses master metering shall report the number of master meters separately and identify the classes of customers served under master meters.

(d) *Typical day loads.* For typical day loads, as specified in §§ 290.402 and 290.403, the kW loads reported for each hour shall be the average of the hourly loads for the given hour for each weekday or weekend day in each month.

§ 290.402 Load information for the total of all customer classes (system load information).

For system load the following information shall be reported:

(a) *General.* The kW load as measured by the sum of the coincidental net generation and purchases, plus or minus net interchange, minus temporary deliveries (not interchange) of emergency power to another system, which information shall be consistent with the monthly coincidental peak kW loads as reported in FERC Form 1, *Annual Report*, p. 431, column (b).

(b) *Pool load information.* If the utility is a member of a power pool that centrally dispatches or a power pool that plans future bulk power facilities as a pool, load information, as specified in this section, for the pool as well as the utility, unless otherwise indicated. If one member of the pool satisfies this filing requirement, the other members need only name the utility reporting the information.

(c) *Historic peak loads.* For each of the previous 10 years, the annual peak load (kWs) on the system, indicating the date, day of the week and time of day for each peak. This information is not required for power pool reporting.

(d) *Reporting period loads.* For the reporting period:

(1) kW load for each clock hour of each day. Utilities that provide the Edison Electric Institute with "Load Diversity Studies" may provide this information in computer compatible form to satisfy this reporting requirement.

(2) As an alternative to paragraph (d)(1) of this section, hourly system loads for a typical weekday, a typical weekend day and the system's peak day for each month in the reporting period, if the utility certifies that it will make the information specified in paragraph (d)(1) of this section available upon request.

(3) Actual and weather normalized monthly peak (maximum coincidental kW) load for each month, indicating the date, day of the week and time of day for each peak.

(4) Actual and weather normalized summer and winter peak (maximum coincidental kW) load.

(5) Maximum demand (kWs) on the distribution system at the primary and secondary voltage levels, and identification of the primary and secondary distribution voltages (kVs). This information is not required for power pool reporting.

(e) *Projected load information.* For each of the next 10 years:

(1) The projected annual load duration curves and the duration of load (in hours) at 100, 80, 60, 40, and 20 percent of the peak load and an indication as to whether this information was used as the basis for the planned capacity additions reported under § 290.302(b).

(2) The average annual growth rates implied by the projected load curves specified in paragraph (e)(1), for total kilowatt-hour sales, summer peak load, and winter peak load.

(3) Hourly loads for a typical weekday, a typical weekend day and the system's peak day for each month.

(4) The projected maximum demand (kWs) on the distribution system at the primary and secondary voltage levels, using the same definition of primary and secondary distribution as used in reporting under paragraph (d)(5) of this section.

§ 290.403 Load information for individual customer classes.

(a) *General.* For each customer class for which there is a separate rate and for each month in the reporting period, the following information shall be reported:

(1) The class maximum demand, in kWs, noncoincidental with the system peak.

(2) The class contribution in kWs, to the monthly maximum jurisdictional noncoincidental (with the system) demand.

(3) The class contribution, in KWs, to the monthly system maximum coincidental demand.

(4) Hourly class loads for a typical weekday, a typical weekend day, the class's peak day, the jurisdiction's peak day and the system's peak day.

(b) *Use of estimated information.* Information specified in paragraph (a) of this section may be obtained for each customer class through the use of estimation techniques.

(1) Estimates may be based on sample metering, except where load estimates of comparable accuracy can otherwise be made.

(2) Sampling techniques based on metering of groups of customers shall be acceptable if adequate account is taken of demand diversity and if the required statistical accuracy criteria specified in paragraph (c) of this section are satisfied.

(3) A description of the sampling method used shall be provided by the utility.

(c) *Accuracy standard.* The sampling method and procedures for collecting, processing, and analyzing the sample loads, taken together, shall be adequate to ensure that each mean hourly load reported for the class represents the actual class load to an accuracy of ± 10 percent at the 95 percent confidence level.

(d) *Load research conducted every 5 years.* The load research necessary for reporting class loads specified in paragraph (a) of this section need not be conducted more frequently than every 5 years. For each reporting period, the class load factors (hourly, daily and monthly) derived from the most recent load research study shall be used to estimate the kW demand using current kWh sales, customers and other billing determinants. A description and example of the estimation technique and underlying information used for the estimation shall be provided.

§ 290.404 Certain exemptions from reporting load information by individual customer classes.

(a) *Combined reporting of class load information.* For reporting class loads specified in § 290.403(a), 2 customer classes may be combined for any reporting period so long as at least one of the classes does not have loads of 5 percent or more of either the system's daily or annual peak loads and so long as they are not both major customer classes (residential, commercial, industrial). A combined class may be further combined with other customer classes if the criteria specified in this paragraph are met.

(b) *Exemption for hourly load information.* A utility is exempted from reporting hourly class load information as specified in § 290.403(a) for each reporting period if, for the customer class, the class loads (or the combined class loads if the classes have been combined pursuant to paragraph (a) of this section) are not 5 percent or more of either the system's daily or annual peak load, so long as the class (or any part of the combined class) is not a major customer class as defined in paragraph (a) of this section.

(c) *Provisions for exemption from accuracy standard.* Class load infor-

mation need not meet the accuracy standards specified in § 290.403(c), if:

(1) The customer class laods for a particular class may be determined from methods not dependent on direct measurement or sampling; or

(2) The customer class loads for a similarly situated utility are to be used instead.

(d) *Support for borrowed information.* For customer classes exempted from the accuracy standard under paragraph (c)(2) of this section, applicable material supporting the adequacy of the borrowed load information shall be submitted for the customer classes for which the exemption is taken. The material shall include such information as climate variation, type of commercial or industrial activity, residential construction types, customer mix, large appliance saturation, and other geographic, economic and demographic information as may properly support a claim of comparability.

(e) *Applicability of borrowed information.* For customer classes exempted from the accuracy standards under paragraph (c)(2) of this section, suitable adjustments for numbers of customers and total consumption shall be made to ensure the applicability of load information to the exempted class.

(f) *Waiver of reporting requirement for retail jurisdictional loads.* Class loads need not be reported separately by retail jurisdiction if the regulatory bodies in the 2 or more jurisdictions agree to waive the requirement for separate jurisdictional reporting.

(g) *Exemption based on extension of time.* Any utility granted a 1-year extension for filing hourly class load information under § 290.405(a) is also exempted from filing such information if the utility applies for a rate increase during the 1-year extension period.

(h) *No exemptions for major classes on time of use rates.* No exemption will be granted for information specified in paragraphs (a) through (g) of this section regarding a customer class, if the class is a subclass of one of the major retail customer classes and is served under a separate rate schedule based on time of use.

(i) *Exemption if the customer class is to be changed.* An exemption may be granted from the reporting requirements of this section if a utility serves a customer class under a separate rate schedule and that class is to be combined with another class of customers or is to be drastically altered, either on the initiative of the utility or at the direction of the State regulatory agency. The utility shall apply for such exemption under § 290.601.

(j) *Exemption for joint load research.* If a group of utilities intends to engage in joint load research for the purpose of fulfilling the reporting requirements of §§ 290.402 and 290.403, the group may apply to the Commission under § 290.601 for an exemption from the requirement that each utility in the group separately report system and class load information.

§ 290.405 Extension for reporting hourly load information by individual customer classes.

Any utility which certifies that it had not commenced a program for the collection of hourly class load information by means of sample metering or other techniques at the time that PURPA was passed and had not been ordered to collect such information by any other regulatory authority, shall be granted a 1-year extension beyond the initial 2-year filing period for reporting the hourly class load information specified in § 290.403(a)(4).

§ 290.406 Other information to be reported.

The following additional information shall be reported:

(a) *Assumptions used and description of weather normalization techniques.* For weather normalized information reported in § 290.402 and for any other load information normalized for weather, the utility shall report the weather parameters used for normalization and a brief description and demonstration of the normalization techniques employed.

(b) *Information on individual customer classes.* For each individual customer class included in § 290.403(a) the following information shall be reported:

(1) The monthly energy sales, in thousand kWh, for each month in the reporting period.

(2) The number of customers at the end of the reporting period.

(3) For the reporting period and for each of the previous 5 years, the number of new customers by primary, secondary, and transmission voltage levels, including an identification of the voltage (kVs) included in the primary, secondary, and transmission voltage levels.

(c) *Loss factors.* The utility shall report the estimated loss factors, both for energy (kWh) and demand (kW), resulting from the transmission of electricity from the busbar to the principal delivery voltage levels at which sales are made. If different loss factors apply to peak and off-peak losses, both sets of loss factors shall be provided.

(d) *Effective date of rate changes.* If a rate change for some or all of the classes goes into effect during the reporting period, the utility shall report the effective date of the rate change and the approximate date on which bills are first received under the new rate for each class. If automatic adjustment clauses for any month result in a rate adjustment of more than 10 percent of the previous month's rate, that month shall be so designated.

(e) *Shifts on and off daylight savings time.* The utility shall report the hour, day and month of shifts on and off daylight savings time, if applicable, and shall report the time zones in which the retail load is located.

Subpart E—Calculated Costs

§ 290.501 Accounting cost calculations.

(a) *Calculated accounting costs of providing service.* The utility shall calculate the accounting costs of providing service by costing period, customer class, and voltage level and shall complete a summary Table 1. The table shall be completed for each jurisdiction in which the utility operates, unless the utility can show that the jurisdictional variation is not significant. If a method for calculating accounting costs has been specified by State law or by the State regulatory authority having rate approval authority over the utility, the calculation method used by the utility shall be consistent with such method. In the case of a non-regulated utility, the calculation method used shall be consistent with any legal constraint upon such utility's rate-making procedure.

(b) *Description of method used.* The reporting utility shall describe the method used for the calculations specified in paragraph (a) of this section.

(c) *Cost study.* The reporting utility shall provide a copy of any cost study upon which the information entered in the summary Table 1 is based, or certify that such study has been conducted and will be made available upon request.

(d) *Alternative submission of information.* If a recent, fully allocated retail class cost of service study has been made, the utility may submit that study in lieu of the information specified in this section and in subpart B (regarding accounting cost information) if such study includes all information specified in this section and that subpart.

§ 290.502 Marginal cost calculations.

(a) *Calculated marginal costs of providing service.* The utility shall calculate the marginal costs of providing service by costing period, customer class, and voltage level and shall complete and submit a summary Table 2. The table shall be completed for each jurisdiction in which the utility operates, unless the utility can show that the jurisdictional variation is not significant. If a method for calculating marginal costs has been specified by State law or by the State regulatory authority having rate approval authority over the utility, the calcula-

tion method used by the utility shall be consistent with such method. In the case of a non-regulated utility, the calculation method used shall be consistent with any applicable legal constraints upon such utility's ratemaking procedure.

(b) *Description of method used.* The utility shall describe the method used for the calculations specified in paragraph (a) of this section, including

(1) A description of how demand related costs were determined for different costing periods.

(2) A listing of the different components of demand related costs (marginal generation, transmission, and distribution capacity costs) and how such costs were calculated.

(3) The marginal energy costs calculated in § 290.303.

(4) A listing of the different components of customer costs and how such costs were calculated.

(c) *Cost study.* The utility shall provide a copy of the cost study upon which the information entered in the summary Table 2 is based or certify that such study has been conducted and will be made available upon request.

(d) *Alternative submission of information.* If a recent, retail class marginal cost of service study has been made, the utility may submit that study in lieu of the information specified in this section and in Subpart C (regarding marginal cost information) if such study includes all information specified in this section and that subpart.

TABLE 1.—*Illustrative Summary of Accounting Costs by Costing Period, Customer Class and Voltage Level*

Customer Class and Voltage Level	Costing Period				Annual Customer Cost
	Peak Hours		Off-Peak Hours		
	I	II	III	IV	
Customer Class A:					
Voltage Level 1					$/customer
Demand Costs:					
Generation	$/kW	$/kW	$/kW		
Transmission	$/kW	$/kW	$/kW		
Distribution	$/kW	$/kW	$/kW		
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Voltage Level 2					$/customer
Demand Costs:					
Generation	$/kW	$/kW	$/kW		
Transmission	$/kW	$/kW	$/kW		
Distribution	$/kW	$/kW	$/kW		
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Customer Class B:					
Voltage Level 1					$/customer
Demand Costs:					
Generation	$/kW	$/kW	$/kW		
Transmission	$/kW	$/kW	$/kW		
Distribution	$/kW	$/kW	$/kW		
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	

N.B.—Both the number and designation of the costing periods, customer classes, and voltage levels shown in this table are illustrative. They are not intended to suggest any constraint on the reporting utility's choice of the specifications most appropriate to its operations. The costing periods, customer classes, and voltage levels chosen, however, should be clearly specified either in the table headings or in footnotes.

TABLE 2.—*Illustrative Summary of Marginal Costs by Costing Period, Customer Class and Voltage Level*

Customer Class and Voltage Level	Costing Period				Annual Customer Cost
	Peak Hours		Off-Peak Hours		
	I	II	III	IV	
Customer Class A:					
Voltage Level 1					$/customer
Demand Costs:					
Generation	$/kW	$/kW	$/kW		
Transmission	$/kW	$/kW	$/kW		
Distribution	$/kW	$/kW	$/kW		
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Voltage Level 2					$/customer
Demand Costs:					
Generation	$/kW	$/kW	$/kW		
Transmission	$/kW	$/kW	$/kW		
Distribution	$/kW	$/kW	$/kW		
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Customer Class B:					
Voltage Level 1					$/customer
Demand Costs:					
Generation	$/kW	$/kW	$/kW		
Transmission	$/kW	$/kW	$/kW		
Distribution	$/kW	$/kW	$/kW		
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	

N.B.—Both the number and designation of the costing periods, customer classes, and voltage levels shown in this table are illustrative. They are not intended to suggest any constraint on the reporting utility's choice of the specifications most appropriate to its operations. The costing periods, customer classes, and voltage levels chosen, however, should be clearly specified either in the table headings or in footnotes.

Subpart F—Exemptions and Extensions

§ 290.601 Exemptions.

(a) *Application.* Any electric utility may apply for an exemption from all or part of the requirements set forth in Subparts A through E of this part by filing an application at least 1 year prior to the time the information would otherwise be required, which application shall contain the following information:

(1) The name and location of the applicant.

(2) The nature and duration of the exemption sought, including a list of the requirements set forth in Subparts A through E of this part for which each exemption is sought and information explaining why the gathering of such information will not be likely to carry out the purposes of section 133 of PURPA.

(3) A plan of compliance setting forth the utility's plan for full compliance with the rules in terms of the steps which the utility will take to obtain the required information and

the time when the information will be supplied.

(4) A statement of any action taken by a State regulatory authority in response to an application made by the utility under paragraph (b) of this section, together with any statement of concurrence by a State regulatory authority, if any.

(b) *Concurring statement by State regulatory authority.* Each electric utility which is regulated by a State regulatory authority and which applies for an exemption under paragraph (a) of this section, shall apply to each State regulatory authority having jurisdiction over such utility for a statement of concurrence with the exemption sought.

(c) *Requests by State regulatory authorities.* A State regulatory authority may act on behalf of 1 or more utilities subject to its regulation in requesting a total or partial exemption. Such requests shall be filed at least 1 year prior to the time the information would otherwise be required and shall contain the following information:

(1) The name and location of the utility for which the exemption is sought.

(2) The nature and duration of the exemption sought including a list of the requirements set forth in Subparts A through E of this part for which each exemption is sought and information explaining why the gathering of such information will not be likely to carry out the purposes of section 133 of PURPA.

(d) *Public notice and comment.* (1) Within 15 days following receipt of the completed application for exemption submitted in accordance with paragraphs (a) or (c) of this section:

(i) The application shall be noticed in the FEDERAL REGISTER.

(ii) The utility shall apply to each State regulatory authority by which it is regulated to have such application published in the official state publication, if any, in which rate change applications are usually noticed.

(iii) The utility shall have such application published in a sufficient number of newspapers of general circulation in the applicable jurisdictions so as to give widest practicable notice to interested parties.

(2) A period of 45 days shall be permitted for receipt of written data, views, arguments, or other comments on the application, which period shall commence at the time all requirements imposed in paragraph (d)(1) of this section have been fulfilled.

(3) Additional information required for purposes of review and evaluation of the application may be requested by Commission Staff.

(4) Within 15 days following the conclusion of the comment period, the applicant may file reply comments.

(e) *Scope of exemption.* A reporting utility must submit a separate application for each information filing from which it seeks a partial or total exemption. An exemption granted by the Commission shall apply only to the next information filing required under § 290.102, unless otherwise specifically provided by the Commission.

§ 290.602 Extensions.

(a) *Applications.* Any electric utility may apply for an extension of the 2-year deadline for the filing of all or part of the information required under this part. Such application must be made no less than 180 days prior to the time the information filing would otherwise be required, and must contain the following information:

(1) The name and location of the applicant.

(2) A description of the information requirements for which the extension is sought, including the length of the proposed extension.

(3) A showing of good cause for the extension sought.

(4) A statement describing plans for application for, or proposal of, any rate increase during the period covered by the extension.

(5) A statement of any action taken by a State regulatory authority in response to an application made by the utility under paragraph (d) of this section, together with the statement of concurrence by the State regulatory authority, if any.

(6) A plan of compliance setting forth the utility's plan for full compliance with the rules in terms of the steps which the utility will take to obtain the required information and the time when the information will be supplied.

(b) *Additional information.* Additional information required for purposes of review and evaluation of the application may be requested by Commission Staff.

(c) *Comments by interested parties.* The Commission may seek comments from interested parties on applications for extensions.

(d) *Concurring statement by State regulatory authority.* Each electric utility which is regulated by a State regulatory authority and which applies for an extension under paragraph (a) of this section, must apply to each State regulatory authority having jurisdiction over such utility for a statement of concurrence with the extension sought.

Subpart G—Enforcement

§ 290.701 Enforcement provisions.

(a) *Applicability.* It shall be unlawful for any person to violate any provision of this part. Pursuant to section 133(d) of PURPA, any person that violates any provision of this part shall be subject to those sanctions prescribed in paragraph (b) of this section.

(b) *Sanctions.* The following sanctions are prescribed for violation of this part:

(1) Whoever violates any provision of this part shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of this part shall be fined not more than $5,000 for each violation.

(3) Whenever it appears to the Commission or to its designee that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this part, the Commission or its designee may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by paragraph (a) of this section.

(4) Any person suffering legal wrong because of any act or practice arising out of any violation of paragraph (a) of this section may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts have jurisdiction of actions under this subparagraph without regard to the amount in controversy. Nothing in this subparagraph shall authorize any person to recover damages.

APPENDIX A

[Docket No. ERA-R-78-25]

REQUIREMENT FOR STATE AND LOCAL AGENCIES TO NOTIFY THE DEPARTMENT OF ENERGY OF THEIR RATEMAKING AUTHORITY OVER GAS AND ELECTRIC UTILITIES COVERED BY TITLES I AND III OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 AND TITLE II OF THE NATIONAL ENERGY CONSERVATION POLICY ACT OF 1978

AGENCY: Economic Regulatory Administration (ERA), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act (PURPA) (Pub. L. 95-617) and section 211(b) of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619) require the Secretary of Energy to publish lists, before the beginning of each calendar year, identifying each gas utility and electric utility to which Titles I and III of PURPA and Part 1 of Title II of NECPA, apply during such calendar year. This Notice includes the list for 1979 and requires each State regula-

tory authority to notify the Secretary of Energy of each gas and electric utility on the list for which such State regulatory authority has ratemaking authority. This Notice also requests public comment on the accuracy of the list of gas utilities and electric utilities.

DATE: State regulatory authorities must respond in writing on or before January 29, 1979. Other written comments on the accuracy of the lists should also be received by January 29, 1979.

ADDRESS: State regulatory authorities must send 15 copies of the required written response to: Department of Energy, Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Docket No. ERA-R-78-25, Washington, D.C. 20461, Telephone: (202) 254-5201.

Other persons or organizations wishing to comment on the accuracy of the lists should send 5 copies of written comments to the address above.

Letters should include the writer's name, address and telephone number.

FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Serfass, Office of Utility Systems Economic Regulatory Administration, Department of Energy, 2000 M Street, NW. (Vanguard 538), Washington, D.C. 20461, Telephone: (202) 254-9700.

NOTICE

As required by the Public Utility Regulatory Policies Act (PURPA), sections 102(c) and 301(d), and the National Energy Conservation Policy Act (NECPA), section 211(b), hereinafter referred to as the "Act(s)", the U.S. Department of Energy (DOE) is publishing the following list of utilities which sell natural gas and electricity and will be covered by the Act(s) in 1979. As further required by the Act(s), State regulatory authorities are to notify the Secretary of Energy as to their ratemaking authority over listed utilities. One of the chief purposes of this Notice is to inform utilities, other government agencies, and interested persons as to which utilities are covered by the two Act(s). The inclusion or exclusion of any utility does not affect the legal obligations of such utility or the responsible State regulatory authority under the Act(s).

The term "State regulatory authority" means any agency of the 50 States, the District of Columbia or Puerto Rico (or political subdivision thereof), which has authority to fix, modify, or approve rates for the sale of electric energy or natural gas by any utility (other than by such State agency), except that in the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA (Pub. L. 95-617) deals with retail regulatory policies for electric utilities. Section 102(c) requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, State agency or Federal agency, which sells electric energy. An electric utility is covered by Title I for any calendar year if the electric utility had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1979 if it exceeded the threshold in 1976 or 1977.

Title III of PURPA deals with retail policies for natural gas utilities. Section 301(d) of Title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which Title III applies during such calendar year. A gas utility is defined as any person, State agency or Federal agency, engaged in the local distribution and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by Title III for any calendar year if the gas utility had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1979 if it exceeded the threshold in 1976 or 1977.

Title II, Part 1, of NECPA (Pub. L. 95-619) deals with residential conservation programs. Section 211(b) also contains a requirement to publish a list of electric and gas utilities. The NECPA requirements for coverage of gas utilities and electric utilities are different in three respects:

(1) The threshold for electric utilities is 750 million kilowatt-hours for purposes other than resale;

(2) A utility is covered for any calendar year if it exceeded the threshold during the second preceding calendar year. A utility is covered in 1979 if it exceeded the threshold in 1977; and

(3) Only utilities which have some residential sales are covered.

The following list covers both PURPA and NECPA requirements, with exceptions noted for listed utilities not covered by NECPA. The list is alphabetical, but subdivided into electric utilities and gas utilities and further subdivided by type of ownership: privately-owned, publicly-owned, and rural cooperative.

All electric utilities, except those marked (*), are covered by both the regulatory policy provisions of PURPA Title I *and* the residential conservation provisions of NECPA. All gas utilities, except those marked (*), are covered by both the regulatory policy provisions of PURPA Title III, and the residential conservation provisions of NECPA. Those electric utilities marked (8) are *not* covered by NECPA.

No later than January 29, 1979, each State regulatory authority must notify the Department of Energy of each utility on the list over which it has ratemaking authority. Such notification must include appropriate legal citations, and for any listed utility known to be subject to other ratemaking authorities within the State for other portions of its service area, a precise description of the portion to which such notification applies. In the event that more than one agency claims ratemaking authority over the same service area of any listed utility, the Secretary will request such agencies to identify the lead agency for purposes of PURPA and NECPA compliance, reporting, and eligibility for financial assistance.

All interested persons including State regulatory authorities, are invited to comment on any errors or omissions with respect to the list.

ELECTRIC UTILITIES

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976 or 1977. All, except those marked (*), are covered by PURPA Title I and NECPA Title II. Utilities marked (*) either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1977 or do not have residential sales and, therefore, they are not covered by NECPA Title II.

INVESTOR-OWNED

Alabama Power Company
*Alcoa Generating Corporation
Appalachian Power Company
Arizona Public Service Company
Arkansas-Missouri Power Company
Arkansas Power & Light Company
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company
Blackstone Valley Electric Company
Boston Edison Company
Brockton Edison Company
California-Pacific Utilities Company
Cambridge Electric Light Company
Carolina Power & Light Company
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Telephone & Utilities Corporation
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Citizens Utilities Company
Cleveland Electric Illuminating Company
Columbus & Southern Ohio Electric Company
Commonwealth Edison Company
Community Public Service Company
Connecticut Light & Power Company
Consolidated Edison Company of New York
Consumers power Company
Dallas Power & Light Company
Dayton Power & Light Company
Delmarva Power & Light Company
Detroit Edison Company
Duke Power Company
Duquesne Light Company
El Paso Electric Company
Electric Energy, Incorporated
Empire District Electric Company
*Fall River Electric Light Company
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company
Hartford Electric Light Company
Hawaiian Electric Company
Houston Lighting & Power Company
Idaho Power Company
Illinois Power Company
*Indiana & Michigan Electric Company
Indianapolis Power & Light Company
Interstate Power Company
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company
Iowa Power & Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
*Lake Superior District Power Company

Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
*Missouri Edison Company
Missouri Power & Light Company
Missouri Public Service Company
Missouri Utilities Company
Monongahela Power Company
Montana-Dakota Utilities Company
Montana Power Company
Narragansett Electric Company
Nevada Power Company
New Bedford Gas & Edison Light Company
*New Mexico Electric Service Company
New Orleans Public Service
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Northern Indiana Public Service Company
Northern States Power Company
*Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Ohio Valley Electric Corporation
Oklahoma Gas & Electric Company
*Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company
Pacific Gas & Electric Company
Pacific Power & Light Company
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company
Potomac Electric Power Company
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric & Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Tampa Electric Company
Texas Electric Service Company
Texas Power & Light Company
Toledo Edison Company
Tucson Gas & Electric Company
*UGI Corporation
Union Electric Company
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company
Virginia Electric & Power Company
Washington Water Power Company
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Wheeling Electric Company
Wisconsin Electric Power Company
Wisconsin Michigan Power Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation

PUBLICLY-OWNED

*Albany Water, Gas & Light Commission
Anaheim—Electrical Division
Austin Electric Department
*Bristol Electric System (TN)
*Bryan Municipal Electric System (TX)
*Burbank Public Service Department
Central Lincoln People's Utility District (OR)
Chatanooga Electric Power Board
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Put Utilities
Decatur Electric Department (AL)
*Detroit Public Lighting Department
Eugene Water & Electric Company
Fayetteville Public Works Commission (NC)
*Florence Electricity Department (AL)
*Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Boc (FL)
Garland Electric Department (TX)
*Glendale Public Service Department (CA)
*Greeneville Light & Power System (TN)
*Greenville Utilities Commission (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
*Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utility Board (TN)
*Lafayette Utility System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
Lincoln Electric System (NB)
Los Angeles Department of Water and Power
Lower Colorado River Authority
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District
Omaha Public Power District
Orlando Utilities Commission (FL)
*Palo Alto Electric Utility (CA)
*Pasadena Water & Power Department (CA)
*Power Authority of New York
*Port Angeles Light & Water Department (WA)
*Public Utility District No. 1 of Benton County (WA)
*Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
Public Utility District of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Water Resources Authority of Puerto Rico
*Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rocky Mountain Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio Public Service Board (TX)
*San Francisco Public Utilities Commission
Santa Clara Electric Department (CA)
Seattle Department of Lighting (WA)
South Carolina Public Service Authority
Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
*Taunton Municipal Lighting Plant (MA)
*Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

RURAL ELECTRIC COOPERATIVES

*Appalachian Electric Cooperative
*Chugach Electric Association
*Clay Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*First Electric Cooperative Corporation
*Four County Electric Power Association
*Gibson County Electric Membership Corporation
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation
*Jackson Electric Membership Corporation
*Lee County Electric Cooperative
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
*Moon Lake Electric Association
*Pedernales Electric Cooperative
*Pennyrile Rural Electric Cooperative Corporation
*Singing River Electric Power Association
*South Central Power Company
Southern Maryland Electric Cooperative
*Southern Pine Electric Power Association
*Southwest Louisiana Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Umatilla Electric Cooperative Association
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative
*West Kentucky Rural Electic Cooperative Corporation

FEDERAL AGENCIES

*Bonneville Power Administration
*Tennessee Valley Authority
*Western Area Power Administration

GAS UTILITIES

All utilities listed below had natural gas sales, for purposes other than resale in excess of 10 billion cubic feet in 1976 or 1977. All except those marked (*), are covered by PURPA Title III and NECPA Title II. Utilities marked (*) either do not exceed the threshold in 1977 or do not have residential sales and, therefore, are not covered by NECPA Title II.

INVESTOR-OWNED

Alabama Gas Corporation
*Alabama-Tennessee Natural Gas Company
Alaska Gas & Service Company
*Anadarko Production Company

Arizona Public Service Company
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Company
Arkansas Western Gas Company
Atlanta Gas light Company
Baltimore Gas & Electric Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Cabot Corporation Utility Division
California-Pacific Utilities
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation
Central Florida Gas Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Chattanooga Gas Company
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Service Gas Company
Citizens Gas and Coke Utility
*Colorado Interstate Gas Company
Columbia Gas System
Commonwealth Gas Company
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York
Consolidated Gas Supply Corporation
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & LIght Company
East Ohio Gas Company
*East Tennessee Natural Gas Company
Elizabethtown Gas Company
*El Paso Natural Gas Company
Entex, Incorporated
Equitable Gas Company
Florida Gas Company
*Florida Gas Transmission Company
Gas Light Company of Columbus
Gas Service Company
Gulf States Utilities Company
Houston Natural Gas Corporation
Illinois Power Company
Indiana Gas Company
Inland Gas Company
Inter City Gas Limited
Intermountain Gas Company
Interstate Power Company
Iowa Electric Light & Power Company
Iowa Illinois Gas & Electric Company
Iowa Power & Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company
Kansas Power & Light Company
Kokomo Gas & Fuel Company
Laclede Gas Company Consolidated
Lone Star Gas Company
Long Island Lighting Company
Louisiana Gas & Electric Company
Louisiana Gas Service Company
Louisiana Intrastate Gas Corporation
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Metropolitan Utilities District of Omaha
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnesota Gas Company
*Mississippi River Transmission Corporation
Mississippi Valley Gas Company
Missouri Public Service Company
Mobil Gas Service Corporation
Montana-Dakota Utilities Company
Montana Power Company
Mountain Fuel Supply Company
Nashville Gas Company
National Fuel Gas Distribution Corporation
New Jersey Natural Gas Company
New Orieans Public Service
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
North Carolina Natural Gas Corporation
North Central Public Service Company
North Penn Gas Company
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company
Northern States Power Company
Northwest Natural Gas Company
Northwestern Public Service Company
Oklahoma Gas & Electric Company
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company
Pennsylvania Gas & Water Company
People's Gas Light & Coke Company
Peoples Gas System
Peoples Natural Gas Company
Philadelphia Electric Company
Phillips Gas & Oil Company
Phillips Natural Gas Company
Phillips Petroleum Company
Piedmont Natural Gas Company
Pioneer Natural Gas Company
Providence Gas Company
Public Service Company of Colorado
Public Service Company of North Carolina
Public Service Electric & Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
Sierra Pacific Power Company
South Carolina Electric & Gas Company
South Jersey Gas Company
Southeast Alabama Gas District
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Natural Gas Company
Southern Union Gas Company
Southwest Gas Corporation
Terre Haute Gas Corporation
*Texas Eastern Transmission Corporation
Texas Utilities
Tucson Gas & Electric Company
UGI Corporation
Union Gas Systems
Union Light, Heat & Power Company
United Cities Gas Company
United Gas Pipeline Company
Virgina Electric Power Company
Washington Gas Light Company
Washington Natural Gas Company
Washington Water Power Company
West Ohio Gas Company
Western Gas Corporation
Western Kentucky Gas Company
Western Slope Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation

APPENDIX B

STAFF DISCUSSION OF THE MARGINAL COST INFORMATION REQUIRED UNDER THE PROPOSED RULES

Introduction

The marginal cost data gathered pursuant to Subpart C, together with the load data collected in accordance with Subpart D, should provide the information necessary for utilities (as well as state regulatory authorities and intervenors) to calculate the extent to which the total cost of supplying electric power is likely to change if (1) additional capacity is added to meet peak demand, (2) additional kilowatt-hours of electric energy are delivered ot customers, or (3) additional customers are added to the distribution system. In addition, the data will permit identification of differences in the marginal costs of serving various classes of customers that can be attributed to receiving electricity at different voltage levels and to variations in hourly, daily and seasonal time of use.

Marginal Cost—A General Framework

In general, marginal cost is defined as the expected change in the total cost of supplying one additional unit of output. In the electric utility industry, the change in output can be viewed as having three separate cost dimensions: the additional cost of supplying an additional kilowatt-hour of electricity (marginal energy cost), the additional cost of supplying an additional kilowatt of capacity, including the cost of maintaining adequate reserve capacity (marginal capacity or demand cost),[1] [2] and the additional cost of adding a new customer (marginal customer cost). Demand cost is measured per kilowatt (kW) of additional demand, energy cost per kilowatt-hour (kWh) of additional consumption, and customer cost per additional customer served.

Marginal costs can be calculated on a short-run, intermediate-run or long-run basis. In economic theory, these terms are used to refer to the conditions and constraints under which it is assumed that a firm is responding to a change in demand. Short-run marginal costs are the additional cost that would be incurred by the firm to satisfy an increase in demand with existing plant and equipment. Long-run marginal costs are the additional costs that would be incurred by the firm to meet an increase in demand with a completely optimal mix of plant and equipment, a mix that may bear little, if any, resemblance to the firm's existing plant and equipment. Along the same lines, intermediate run costs may be viewed as the additional costs that would result from meeting an increase in demand a mix of existing and new equipment.

An increase in demand will cause a firm to incur costs immediately, in the near future, and further into the future, regardless of which type of adaptation is assumed. For example, a correct calculation of short run marginal costs would required determining the change in total costs of production resulting from an increase in demand, even if these costs are expected to be incurred several years in the future. The same standard would also apply to the calculation of intermediate and long-run costs. In others words, any marginal cost calculation, short-, inter-

[1] Marginal capacity (or demand) cost can be further delineated as marginal generation capacity cost, marginal transmission capacity cost, and marginal distribution capacity cost.

[2] For capacity cost, the ideal would be to measure the change in costs for a one kW change in capacity. In most instances, this calculation cannot be performed since generating plants are typically available only in much larger blocks of capacity. Therefore, it will generally be necessary to estimate the cost of a one kW charge by dividing the change in total cost by the total change in kW capacity.

mediate-, or long-run, requires estimating all additional costs that can be attributed to the projected increase in demand as far into the future as can be foreseen.[3]

The marginal cost approach has two major characteristics that distinguish it from the accounting cost approach. The first notion is that "cost causality" has to be defined in terms of costs that are likely to be incurred rather than costs that may already be recorded on the books. Implicit in this approach is the notion that "causality" should be viewed as a forward looking concept. That is, a change in the current pattern of demand is responsible for a change in costs only if a change in cost is caused by and occurs after a change in demand.

A second characteristic of the marginal cost approach is its emphasis on *changes* in cost. For example, most accounting cost methods require an allocation of all capacity costs, net of depreciation. Generally, the allocation is to customer classes. In contrast, the marginal cost approach considers only *changes* in capacity costs. Moreover, the marginal capacity costs are generally not allocated to customer classes but instead are assigned to costing periods based on the degree of likelihood that the system peak will occur during that period.

The information required in Subpart C of the proposed regulations can be used to calculate short run, intermediate and long-term marginal costs. While short-run marginal costs may be more appropriate for achieving efficient resource use, there may be practical considerations that would mandate the use of intermediate or long-run marginal costs. For example, a problem in calculating short-run marginal costs is that one of its components at the time of system peak, the probability of loss of load times a monetary estimate of the damage that such a loss of load would produce, may be difficult to calculate. Second, short-run marginal costs tend to exhibit more instability than intermediate- or long-run marginal costs. Therefore, if rates were to be established on the basis of short-run marginal costs, it could impair the ability of consumers to make rational choices and plan intelligently for the future. Since the degree of instability will vary among utilities, it will be left to the reporting utility to decide which type of marginal costs are to be reported for Table 2 (Illustrative Summary of Marginal Costs By Costing Period, Customer Class and Voltage Level). (See Subpart E.)

Reporting Requirements

The reporting requirements for marginal cost information are divided into seven sections in addition to the general instructions:

1. Generation cost information
2. Energy cost information
3. Transmission cost information
4. Distribution and customer cost information
5. Other cost information to be reported
6. Annual carrying charge rates
7. Costing periods

1. Generation cost information

The data collected in this section are used in the calculation of marginal generation capacity costs. Marginal generation capacity costs refer to the costs that would be incurred to meet a small permanent change in the level or pattern of kW demand. There are a number of methods currently proposed for calculating these costs. In general, each of the methods hypothesizes a change in load and then compares the costs that would be incurred to meet the changed load with the costs that would be incurred to meet the unchanged load. The difference in costs, when divided by the hypothesized kW change, constitutes an estimate of marginal generation capacity costs. The calculation of marginal generation cost should take into account the need for maintaining reserve capacity and may take into account the impact of losses on the cost of supplying a kilowatt of electric power to different voltage levels.

Some care should be given to distinguishing generation capacity costs from generation capital costs. For example, an increment in demand may change the size or timing of a generation unit. If the operation of this unit produces fuel savings for the system, a correct calculation of generation capacity costs would require subtracting the monetary value of the fuel savings from the estimate of the unit's capital costs.

2. Energy cost information

The data collected in this section are used in the calculation of marginal energy costs. Marginal energy cost at any hour refers to the cost of fuel and variable operation and maintenance expenses incurred in producing an additional kWh of electricity. For example, the fuel and variable operation and maintenance cost of the most expensive machine on line may be the marginal energy cost. For a utility without adequate capacity of its own, the marginal energy cost is the cost of purchased energy.

There are exceptions to the "most expensive" machine rule. The most common examples are the need to run a machine with high running costs for purposes of area protection and voltage control or the need to keep an expensive unit on line at night because it will be required to meet load the next day. Even though these machines may be the most expensive machines on line at a particular time, their costs would not constitute the marginal energy costs of the system since the loading of these machines would be neither decreased or increased in response to further changes in demand.

3. Transmission cost information

The data collected in this section are used in the calculation of marginal transmission costs. This calculation involves determining the costs of additions to transmission systems that are causally related to system peak demand. These overall demand-related costs would include, at a minimum, both capital costs and fixed operation and maintenance expenses. General plant, working capital, and administrative and general expenses are additional components of demand-related transmission costs under certain costing methods.

It should be noted that the information requested in this section focuses on the overall cost of additions to transmission plant on an historic and projected basis. A possible refinement would involve subtracting from total transmission expenditures those expenditures that were incurred or are likely to be incurred in constructing remote generating plants or in building EHV lines in connection with pooling agreements.

4. Distribution and customer cost data

This section is designed to collect distribution system data necessary for the calculation of marginal distribution capacity- and customer-related costs. An electric distribution system performs two functions—the connection of customers to the system and the carrying of their maximum loads. Hence, distribution system costs should be separated into customer-related and capacity- (or demand-) related costs. Further, since connection costs and demand levels are likely to vary considerably among customers, these costs should be estimated for each customer class (and voltage level).

Operation and maintenance expenses associated with distribution are also collected in this section. The marginal overhead investment and expenses that, under certain costing methods, are added to the distribution costs, are requested in the next section.

5. Other cost information to be reported

The cost data required in this section have several purposes. Sales and customer account expenses together with the data on the number of customers in each class (Subpart D) are used, under certain methods, in the calculation of marginal customer cost. The marginal values of these expenses are approximated by adjusted historical data. In addition to these two items, the annual capital cost of a minimum distribution system may also be included as a component of customer costs.

Working capital and general plant investment as well as administrative and general expenses are used, under certain costing methods, in the calculation of the marginal capacity costs of generation, transmission and distribution. Here also, the marginal effects of these cost components are estimated using historical data.

6. Annual carrying charge rates

The purpose of this section is to obtain carrying charge rates used in the calculation of marginal capacity costs. The calculation of marginal capacity cost for generation, transmission, and distribution facilities involves the conversion of the incremental capital investments into annual charges for carrying and repaying the investments, as well as accounting for all other expenses created by the addition of those facilities. What is sought are level annual charges representing the annual revenue requirements that arise from the marginal investments. The annual carrying charge rates are intended to account for those charges that are most directly related to the level of the per kilowatt incremental investment in these facilities—namely, depreciation, return, income and property-related taxes, and insurance. The data necessary to compute other related charges, such as plant-related operation and maintenance expenses, administrative and general expenses, general plant, and working capital requirements are dealt with in other sections.

Carrying charges can be and are computed in a variety of ways in investment analyses. However, to prevent the possible exclusion or duplication of some of these costs in the final calculations of marginal capacity costs, the Commission has chosen to specify the components to be included in the carrying charge rates as the four items indicated above. At the same time, allowance is made

[3] To ease the reporting burden on utilities, estimates of future loads and costs are not required beyond ten years. A reporting utility may, however, supply load and cost estimates beyond ten years if it believes the longer time span provides a more accurate reflection of its planning efforts.

for differences in regulatory treatment of various items so that the resulting costs should be reflective of the cost considerations entering into the reporting utility's investment decisions. In situations where the reporting utility operates in more than one state the costing procedures are required to correspond to the prevailing regulatory prescriptions of the predominant regulatory authority unless the state-to-state differences would substantially affect the results. In the latter instance, the utility is required to report separate rates by jurisdiction.

Publicly owned utilities are required to calculate the carrying charge rates based on those cost considerations relevant to their system.

7. Costing periods

Since costing periods can ultimately serve as a basis for establishing pricing periods, costing periods should be selected so as to be intelligible to the consumer and to promote economic efficiency. If all consumers were sufficiently sophisticated and if the cost of perfect metering were very low, one could simply cost each hour of the year separately. However, since neither of the above conditions pertain, it makes sense to group hours of similar costs together and then make judgments which attempt to balance the goals of economic efficiency and consumer comprehension. Therefore, the general objectives in determining costing and pricing periods is to differentiate between periods of high costs and low costs (and, if appropriate, intermediate costs) of providing electric service. Typically, these cost levels closely follow periods of high and low demand.

It could be expected that on a typical weekday most utilities would be able to distinguish at least two costing periods. It is also likely that there will be sufficient variation in costs between seasons to justify seasonal distinctions in the daily costing periods. Therefore, at least four costing periods may be expected to result from the analysis required for this section.

Several approaches have been suggested for the determination of costing periods. One approach is to caluclate loss-of-load probabilities (LOLPs) for different hours in the future. Costing periods are determined by grouping together hours with similar LOLP values. The same LOLP values can also be used for determining the portion of capacity related costs that will be borne by each costing period. A second approach involves examining daily and seasonal system load curves. Hours of similar load are grouped together on the presumption that they reflect periods of similar cost.

It is not apparent that any one of these approaches is clearly preferable. Therefore, the proposed rule would permit each utility to pick the method that appears to be most suitable to its needs and then describe the assumptions and procedures required by that method. The level of description should be sufficient to allow informed non-company personnel to understand how the costing periods were selected.

APPENDIX C

STAFF DISCUSSION OF THE FORM 1 RAW INFORMATION PROPOSAL

Introduction

Section 133 of the Public Utilities Regulatory Policies Act (PURPA) requires the Federal Energy Regulatory Commission (Commission) to promulgate rules to govern the collection and reporting of information "necessary to allow determination of the costs associated with providing electric service."

The purpose of Section 133 as stated in the "Joint Explanatory Statement of the Committee of Conference" is to require electric utilities to gather information (under rules prescribed by the Commission) which is necessary to determine the costs associated with providing electric service and to provide for the filing and publication of this information. "The conferees intend that good information with regard to costs of providing service must be readily available on a timely basis to everyone concerned."

The ensuing proposal for rules under Section 133 attempts to provide all parties ready access to uniform and comprehensive information necessary for determining and assigning the costs of providing electric service. It adopts the view that the FERC should require utilities to submit information sufficient to accommodate the development of cost of service studies using applications of either fully allocated cost (accounting cost) or marginal cost principles.

A very large portion of the information required to perform cost of service calculations by either of the marginal cost methods or fully allocated cost methods are required to be reported annually by utilities in FERC Form 1 and Form 12. There is good reason to believe that it would lessen the burden on electric utilities, State Regulatory authorities, and the Commission if the Commission were to utilize an existing reporting form, with amendments, for reporting purposes in accordance with Section 133 of PURPA. Therefore, this proposal would amend the current regulations, 18 CFR Part 141, Statements and Reports, which prescribes certain reports and statements jurisdictional utilities must file. Covered utilities would be required to file with the FERC and State regulatory authorities information required under Part 141.1 as would be amended.

OBLIGATIONS OF THE COMMISSION

In brief, the Commission is obligated under Section 133 of PURPA to require, at a minimum, that information is collected and is reported which allows to the extent it is practicable, the identification of:

(1) Customer, demand and energy costs components, to the maximum extent practicable;

(2) Costs of serving each customer class to include subgroups within classes, at different voltage levels, time of use and other appropriate factors;

(3) Daily and seasonal kilowatt load curves for the utility system and each customer class served under different rate schedules;

(4) Actual capital, maintenance and operating costs for transmission, distributing of electricity and for each generating unit; and

(5) Actual costs for purchased power reflecting daily and seasonal difference.

In addition, Section 133 requires the Commission to:

(6) Issue rules within 180 days after the enactment of the Act;

(7) Prescribe the methods, procedures, and format to be used by utilities in collecting the required information;

(8) Prescribe the manner in which utilities must make the required information, as reported to the Commission and any changes thereto at the time of an application for a rate increase, available to the public; and

(9) Periodically review its findings, if it has granted exemptions to the information collection and reporting regulation, as to whether collecting the information is not likely to carry out the purposes of Section 133.[1]

OBLIGATIONS OF ELECTRIC UTILITIES

The utilities, for their part, are required to file all information, except as specifically exempted by the Commission and except for information which may be proprietory, as regards bills and consumption patterns of individual customers, with the Commission and the State regulatory authority, and make it available to the public as prescribed by the Commission. In addition, utilities are required to make available for review by the Commission and the relevant state regulatory authority all information related to individual customers for verification of accuracy and enforcement purposes.

COMMISSION'S BROAD DISCRETION

With the exception of the four items required under subsections 133(a) (1), (2), (3), and (4) the Commission seems to have broad discretion to require utilities to report any information and in the form and manner as the Commission deems necessary to fulfill the purposes of section 133.

In that regard there are at least three options as to the kind of rule the Commission might issue. These options vary as to philosophy and amount of information to be collected and reported, and the costs incurred by the utility. Without discussing the merits the alternatives are as follows:

(1) The submission of cost of service studies using uniform account practices and test periods;

(2) Require the submission of using the accounting practices and test periods as required by the relevant state regulatory authority or as prescribed by management in the case of non-regulated utilities; or

(3) Require the submission of "raw information" sufficient to accommodate the development of cost of service studies based on either marginal cost or average fully allocated cost principles.

INFORMATION NEEDED FOR COSTING ANALYSES

In general, two costing methods and various applications of each are contemplated in this proposal, marginal cost and fully allocated cost methods.

In general, marginal cost methods are future oriented. They require information as to existing and future plant, costs and loads. Marginal cost methods seek to measure the change in total costs as a result of a change in output. To derive marginal costs one needs to examine the utility's costs plant, and loads retrospectively and prospectively.

Fully allocated cost methods, by contrast, focus on the present. They require information as to existing plant, costs and loads. Fully allocated cost methods attempt to measure actual total costs associated with

[1] For detailed legal analysis of the Commission's authority and responsibilities under Section 133, see the memorandum of December —, 1978 from Peter Lesch to Commissioner Holden and a concurring memorandum of December —, 1978, from John O'Sullivan to Commissioner Holden.

providing a service. To derive fully allocated costs, one needs to examine the utility's costs incurred.

Both costing methods reflect the capital, operating and maintenance costs for generation, transmission, distribution and overhead, but for different time periods as indicated above.

In attempting to quantify costs of service the two methods employ different procedures. Hybrid models of each method may vary as to their application of these procedures and information requirements.

Notwithstanding the various hybrids, in general, the quantification of marginal costs involves determining: (1) costing periods, (2) marginal running (energy) costs, (3) marginal generating capacity (demand) costs, (4) marginal transmission capacity costs, (5) marginal distribution costs (demand and customer costs), and (6) marginal losses.

With respect to *costing periods*, what has to be determined are the time periods in which demand for electricity is likely to exceed the system's output capacity. It may also involve determining the amount of excess demand in each period. This analysis is significant to the marginalist approach as it would allow an identification of the periods to which higher costs should be assessed based on the need for additional capacity and the value of that capacity. The information requirements for this analysis may include:

(1) Total installed capacity;

(2) Contracts or arrangements for additional capacity, e.g., interconnection or power pool agreements;

(3) Equipment maintenance schedules;

(5) Probability of forced outages;

(6) Reserve requirements, and

(7) Total coincident demands at various times and voltage levels.

In computing *marginal running costs* the analyst attempts to identify the additional fuel and variable operations and maintenance expenses associated with providing service in each costing period for a specified future time (planning period). The objective is to determine the costs associated with estimates of additional energy production on the assumption that incremental energy costs will vary from energy costs that might be obtained if the system were operated under optimal conditions. Information necessary to perform a determination of marginal running costs include:

(1) Forecasted peak loads and load duration;

(2) Planned additions to plant;

(3) Forecasted energy production;

(4) Estimates of fuel and variable operations and maintenance expenses; and

(5) Purchased power costs.

As for *marginal generating capacity costs* the analyst attempts to determine the change in total generating capacity costs resulting from a change in generating capacity needed to meet additional demands. For this determination the following information for new or displaced machines is needed:

(1) Interest rate and cost of capital;

(2) Amount of reserved capacity;

(3) Schedule of future additions or reductions to generating plant including fuel type and kilowatt capacity;

(4) Annual fixed operation and maintenance; and

(5) Additional capacity available from other sources.

With respect to *marginal transmission capacity costs*, what needs to be determined are the costs of expanding transmission capacity as a result of expected growth in peak demand. The primary assumption is that transmission capacity is directly related to generation capacity which is a function of the system maximum demand (maximum coincident demand) and losses which occur in the process of transmitting and transforming electricity. Analyzing marginal transmission capacity costs requires information as to:

(1) Expected increase in system peak demand;

(2) Number and types of facilities, e.g., line voltage levels and switching stations;

(3) Per unit fixed capital costs for additional facilities;

(4) Annual fixed operation and maintenance expense;

(5) Transmission agreements with others; and

(6) An understanding of the system's transmission design procedures.

How *marginal distribution costs* should be derived is a matter to which there is no clear agreement among rate experts. The disagreement involves a proper distinction between customer-related distribution costs, i.e., costs directly related to adding a new customer and varying proportionately to the number of customers, and demand related distribution costs, i.e., costs associated with serving a particular load. There are many theories as to cost causation in distribution systems and perhaps a corresponding number of cost allocation methods. In general the following kinds of information is needed to determine marginal distribution costs by most methods:

(1) Number of customers;

(2) Coincident demands;

(3) Number and types of facilities, e.g., meters, poles, lines, transformer conductors;

(4) Per unit fixed capital costs for additional facilities; and

(5) Annual fixed operation and maintenance expense.

Another procedure performed in a marginal cost analysis is the computation of *marginal losses*. This procedure is necessary because energy losses affect marginal capacity and marginal energy costs for transmission and distribution. The size of the transmission and distribution facilities is related to the maximum load and energy losses during transmission and transformation. Generally speaking losses are calculated as a product of current and resistance. For purposes of most costing analyses what needs to be determined is the difference between electricity input and electricity output, i.e., the difference of power generated and power delivered to customers at each voltage level. Information necessary for determining marginal energy losses include:

(1) Distance between the generation and ultimate delivery point;

(2) Number of power transformations;

(3) System peak demand;

(4) Customers' individual maximum demands; and

(5) Loads factors on and off peak; and

(6) Voltage level from which power is taken.

To develop fully allocated cost of service studies the analyst needs the following information from the electric utility's books in the test years rate base, depreciation, operation and maintenance expenses, taxes and cost of capital. These items are functionalized under the generation transmission and distribution functions. Also, for the test year, the analyst must have information as to the utility's expenses for fuel, variable operations and maintenance expenses, power purchases, customer accounting, sales promotion, administration and other (general). Finally, the analyst needs some information about customer demands and energy usage in the test year.

These are minimum information requirements essential to calculating either marginal costs or embedded costs studies. Some particular models of either approach may use more or less information, but the items specified above should suffice *most* applications.

Proposed Regulation

The following proposed regulation adopts the view that rules under Section 133 rules the Commission should require utilities to collect and report information which would accommodate the development of cost of service studies using applications of either marginal cost principles or average fully allocated cost principles.

This approach, raw information, appears consistent with the spirit and intent of the law as it relates to the obligations of state regulatory authorities and non-regulated utilities to consider and to make determinations as to certain Federal standards and the discretion reposed in both parties with respect to the utilization of any costing method deemed appropriate for making determinations as to the cost of service standard established in Section 115(a). It seems the Congress intended that State regulatory authorities and non-regulated utilities should have adequate information to fulfill their obligations under the Act but they should also have complete discretion as to the selection of costing methods in their deliberations. The Conference report specifically states:

The Conferees chose the phrase "take into account" so as not to imply a reference for a State regulatory authority or non-regulated utility to follow any specific costing methodology for determining cost of service. The State regulatory authority or non-regulated authority *has discretion to select* which costing *methodology or methodologies it chooses*, consistent with State law. [Emphasis added.]

This "raw information approach," as do other proposals, recognizes that there is not general consensus or uniform application of either average fully allocated cost methods or marginal cost methods among rate experts. Within the same regulatory jurisdiction, some utilities are allowed to use different fully distributed embedded cost methods, i.e., average and excess demand, peak responsibility or non-coincident peak, or different marginal cost methods, for allocating costs and structuring rates. In addition this approach takes cognizance of the fact that there are still unresolved issues as regards to costing methods and rate design which are best dealt with by the relevant ratemaking authority. For example, in the design of time of use rates applying marginal cost principles, there are several approaches for calculating marginal costs which would yield similar but different cost estimates for the same utility system. There is the "peaker approach" based on the costs of peak demand and the carrying charges of a new combustion turbine. Another approach "system planning approach", at-

tempts to simulate the manner in which the utility system is planned and dispatched at the lowest cost given a permanent increase in load. Marginal costs, under the "system planning approach", are the additional costs incurred to meet the additional load. A third approach, the "forward—backward approach, identifies the marginal generation capacity cost of meeting changes in peak demand using either the carrying charges of a baseload unit less fuel expenses saved or the carrying charges avoided as a result of bringing the unit on line earlier or later than planned. The "modified peaker approach, allocates marginal generation capacity costs to costing periods using relative marginal energy costs.

Allowing State regulatory authorities and non-regulated utilities broad latitude as to the choices of costing methods, the proposed regulation encourages discussion of theoretical issues; provides for the presentation of proposed resolutions to disputed issues in the regulatory arena; and allows utilities and State regulatory authorities to take in to account their specific environment and circumstances.

A very large portion of the information required for either generic approach are already contained in FERC Form—I with the exception of some information as to future plant, costs, and loads. Since most electric utilities covered by Title I of PURPA must file the FERC Form—I annually, the raw information approach would utilize the form, with certain amendments, for section 133 purposes.

Several modifications of Form—I are proposed. One modification would be to amend schedules on pages 432 through 434 pertaining to generating plants so as to require information to be reported for each unit in a plant rather than for the plants on a aggregate basis. Another amendment to the same schedule would add a "line 46" which would require information as to heat rates at 100, 75, and 50 percent of rated capacity. A new "line 13" would be added which would require information as to maintenance requirements, in days, for generating plant.

The present "line 13" and following lines would be retained and renumbered "line 14" in seriatim. A new schedule relating to "planned additions to generating plant" would be added which would require for the next ten years and for each unit information as to:

(1) Plant-unit identification.
(2) If to be jointly owned, indicate expected percent ownership of unit's planned capability.
(3) Kind of unit (steam, internal combustion, gas turbine, nuclear, or hydroelectric).
(4) Planned date of commercial operation.
(5) Estimated earliest possible date of commercial operation.
(6) Expected plant life.
(7) Primary and secondary fuel types.
(8) Maximum generator nameplate rating (Kilowatts).
(9) Annual expected expenditures up to planned date of commercial operation (including AFUDC or CWIP earnings as applicable).
(10) Capital cost per kilowatt.
(11) Annual fixed operation and maintenance expenses.
(12) Cost of fuel per kilowatt-hour of net generator.
(13) Cost of fuel per million Btu.
(14) Heat rates at 100, 75, and 50 percent of rated capacity.
(15) Non-fuel variable operating costs per kilowatt-hour of net generation.
(16) Maintenance requirements (days of maintenance per year) for each of the first ten (10) years of commercial operation; if expected to change.
(17) Forced outage rates (percent) for each of the first ten (10) years of commercial operation.
(18) If unit is hydroelectric, provide the following, by month, for each of the first ten (10) years of commercial operation, if expected to change:
(i) kilowatt-hour production.
(ii) maximum continuous generating capability.

Note the above information would be the same as that required for existing plant with the three aforementioned modifications with the exception of information as to expected annual expenditures, "date of planned commercial operation" and "estimated earliest possible date of commercial operation."

Finally the schedule entitled "Electric Energy Account", page 431, would be amended to include a new part or subsection relating to information on class loads by time of day and by season. There would be certain provisions for the use of alternate information.

Under this proposal, utilities covered under section 133 would be required to file the above described information annually. Although class load information would be reported annually utilities would be required to conduct load research at least once every five years.

PURPA requires the filing of reports within two years of enactment of PURPA and "periodically, but not less frequently than every 2 years thereafter." Since most electric utilities either effect or apply for rate increases on an annual basis, the Commission would propose to require utilities covered under Section 133 to report cost of service information annually.

Filing requirements would apply to each utility's with annual electric operating revenues of $2,500,000 or more whether or not the utility is jurisdictional under the Federal Power Act and each electric utility that appears on the list as published by the Secretary of covered utilities as required by Section 133 of PURPA. Electric utilities not meeting this second criterion would be exempt from the requirement to report class load information and cost information relating to planned additions to plant. They would also be exempt from filing the several years of historic information relating to plant, sales, operations and loads.

Finally, for utilities covered under Section 133, there are certain exemptions and extensions for reporting requirements if specified conditions are met.

The Commission would propose to extend the initial filing period four months, March 31, 1981, beyond that prescribed in Section 133(c). It is believed that such extension of time would greatly lessen the unnecessary reporting burden for utilities, reduce administrative burden for the Commission, and aid the process of obtaining more complete and accurate information.

Appendix D—Public Law 95-617—92 STAT. 3133

§ 133 Gathering Information on Costs of Service.

(a) Information Required To Be Gathered.—Each electric utility shall periodically gather information under such rules (promulgated by the Commission) as the Commission determines necessary to allow determination of the costs associated with providing electric service. For purposes of this section, and for purposes of any consideration and determination respecting the standard established by section 111(d)(2), such costs shall be separated, the maximum extent practicable, into the following components: customer cost component, demand cost component, and energy cost component. Rules under this subsection shall include requirements for the gathering of the following information with respect to each electric utility—

(1) the costs of serving each electric consumer class, including costs of serving different consumption patterns within such class, based on voltage level, time of use, and other appropriate factors;

(2) daily kilowatt demand load curves for all electric consumer classes combined representative of daily and seasonal differences in demand, and daily kilowatt demand load curves for each electric consumer class for which there is a separate rate, representative of daily and seasonal differences in demand;

(3) annual capital, operating, and maintenacnce costs—

(A) for transmission and distribution services, and

(B) for each type of generating unit; and

(4) costs of purchased power, including representative daily and seasonal differences in the amount of such costs.

Such rules shall provide that information required to be gathered under this section shall be presented in such categories and such detail as may be necessary to carry out the purpose of this section.

(b) Commission Rules.—The Commission shall, within 180 days after the date of enactment of this Act, by rule, prescribe the methods, procedure, and format to be used by electric utilities in gathering the information described in this section. Such rules may provide for the exemption by the Commission of an electric utility or class of electric utilities from gathering all or part of such information, in such cases where such utility or utilities show and the Commission finds, after public notice and opportunity for the presentation of written data, views, and arguments, that gathering such information is not likely to carry out the purposes of this section. The Commission shall periodically review such findings and may revise such rules.

(c) Filing and Publication.—Not later than two years after the date of enactment of this Act, and periodically, but not less frequently than every two years thereafter, each electric utility shall file with—

(1) the Commission, and

(2) any State regulatory authority which has ratemaking authority for such utility,

the information gathered pursuant to this section and make such information available to the public in such form and manner as the Commission shall prescribe. In addition, at the time of application for, or proposal of, any rate increase, each electric utility shall make such information available to the public in such form and manner as the Commission shall prescribe. The two-year perod after the date of the enactment specified in this subsection may be extended by the Commission for a reasonable additional period in the case of any electric utility for good cause shown.

(d) Enforcement.—For purposes of enforcement, any violation of a requirement of

this section shall be treated as a violation of a provision of the Energy Supply and Environmental Coordination Act of 1974 enforceable under section 12 of such Act (notwithstanding any expiration date in such Act) except that in applying the provisions of such section 12 any reference to the Federal Energy Administrator shall be treated as a reference to the Commission.

[FR Doc. 79-6739 Filed 3-6-79; 8:45 am]

[4710-08-M]

DEPARTMENT OF STATE

[22 CFR Part 17]

[Docket No. SD-142]

OVERPAYMENT TO ANNUITANTS UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Proposed Rule

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: Section 822(d) of the Foreign Service Act (22 U.S.C. 1076a(d)) provides that recovery of overpayments to annuitants under the Foreign Service Retirement and Disability System may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible. The purpose of the proposed regulations is to establish procedures to notify annuitants who have been overpaid that the State Department has a right of recovery of overpayments but that they are entitled to request that the Secretary of State not exercise that right. The proposed regulations further establish means for filing and processing any such request and for appeal from an unfavorable administrative determination.

DATES: Written comments by the public are invited within the period ending May 7, 1979.

ADDRESSES: Send written comments to K. E. Malmborg, Assistant Legal Adviser for Management, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT:

K. E. Malmborg, Assistant Legal Adviser for Management, Department of State, Washington, D.C. 20520.

SUPPLEMENTARY INFORMATION: The proposed regulations will be issued under 22 U.S.C. 2658, 1061, and 842. Under them, the first procedural step is to notify annuitants under the Foreign Service Retirement and Disability System that they have been overpaid, the amount, the cause, the intention of the Department to seek repayment, and the right of the annuitant to contest overpayment or to request a waiver of repayment.

In the event of contest or request for waiver, the regulations call for a determination by the Director of the Office of Finance. The final decision is to be written and sent to the annuitant who is also to be advised of the right to appeal to the Foreign Service Grievance Board.

In both the initial determination stage and the appeal stage, the Department will apply the standards developed by the former Civil Service Commission for an analogous determination. These standards (5 C.F.R. 831.1402-1404) include capacity to repay, fault, equity and good conscience. The standards and procedures were adopted by the Civil Service Commission in light of the decision in *Shannon* v. *United States Civil Service Commission*, 444 F. Supp. 354 (N.D. Cal. 1977). The presently proposed regulations reflect the decision of the Comptroller General (No. B-191785) of August 14, 1978.

In accordance with the decision of the Comptroller General, these regulations shall apply only to overpayments of annuities which existed on and after October 1, 1976. Overpayments already repaid may not be refunded.

In consideration of the foregoing it is proposed to amend 22 CFR Chapter I, by adding a new Part 17 to read as follows:

PART 17: OVERPAYMENTS TO ANNUITANTS UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec.
17.1 Definitions.
17.2 General provisions.
17.3 Notice to annuitants.
17.4 Initial determination.
17.5 Notice of decision and right of appeal.
17.6 Appeal.

Authority: 22 U.S.C. 842; 22 U.S.C. 1061; 22 U.S.C. 2658; and Executive Order 1089 (25 FR 12429).

§ 17.1 Definitions.

(a) "Act" means the Foreign Service Act of 1946, as amended.

(b) "Annuitant" has the meaning set forth in section 804(1) of the Act (22 U.S.C. 1064(1)).

(c) "Foreign Service Greivance Board" means the Board established by 22 CFR 16.10 under sections 691 and 692 of the Act (22 U.S.C. 1037-1037c).

(d) "Overpayments" has the same meaning as in § 822(d) of the Act (22 U.S.C. 1076a(d)).

(e) "Secretary" means the Secretary of State.

§ 17.2 General provisions.

Section 822(d) of the Act (22 U.S.C. 1076(d)) provides that recovery of overpayments by the Department of State of benefits to annuitants may not be made when, in the judgment of the Secretary, the individual recipient is without fault and recovery would be against equity and good conscience or administratively infeasible. This part establishes procedures for notification to annuitants of their rights, for administrative determination of those rights and for appeals of negative determinations. The standards for waiver of overpayments are those set forth in the regulations governing overpayments from the Civil Service Retirement and Disability Fund (5 CFR 831.1402-831.1404).

§ 17.3 Notice to annuitants.

The Office of Finance, Department of State, shall give written notification to any person who has received an overpayment, the cause of the overpayment, the intention of the Department to seek repayment of the overpayment, and the basis for that action, the right of the annuitant to contest the alleged overpayment or to request a waiver of recovery, and the procedure to follow in case of such contest or appeal. The notification shall allow at least 30 days from its date within which the annuitant may file a written response, which may include evidence, argument, or both.

§ 17.4 Initial determination.

(a) The Director of the Office of Finance will be responsible for preparing an administrative file as a basis for determination in each case where an annuitant contests a claim to recover overpayment or requests waiver of recovery. This file shall include: all correspondence with the annuitant; documentation on the computation of the annuity or annuities in question; and any information available to the Department which bears on the application of the standards of waiver of recovery to the particular case.

(b) On the basis of the administrative file, the Director, after consultation with and review of the preliminary findings by the Office of the Legal Adviser and Office of Employee Relations, Bureau of Personnel, shall prepare a preliminary finding. This preliminary finding shall contain a positive or negative determination on all material issues raised by the contest or request for waiver. In the latter case, there shall be a determination of the applicability or non-applicability of each of the standards set forth in 5 CFR 831.1402 through 831.1404 (references to 5 U.S.C. Chap. 83 shall be deemed references to Title VIII of the Foreign Service Act).

(c) The Director shall make the final administrative determination.

(d) At any time before the final administrative decision, the Director

may request the annuitant to supplement his or her submission with additional factual information and may request that the annuitant authorize the Department of State to have access to bank and other financial records bearing on the application of the standards in 5 CFR 831.1402 through 831.1404.

§ 17.5 Notice of decision and right of appeal.

If the annuitant, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(a) The final administrative decision shall be reduced to writing and the Director shall send it expeditiously to the annuitant.

(b) If the decision is adverse to the annuitant, the notification of the decision shall include a written description of the annuitant's rights of appeal to the Foreign Service Grievance Board, including time to file, where to file and applicable procedure.

§ 17.6 Appeal.

The Foreign Service Grievance Board shall entertain any appeal under this part in accordance with the regulations of the Board set forth in 22 CFR Part 16. The Director of the Office of Finance, with such assistance as may be necessary, shall represent the Department in proceedings before the Board. The decision of the Board is final.

Dated: February 15, 1979.

JAMES H. MICHEL,
Deputy Legal Adviser.

[FR Doc. 79-6868 Filed 3-6-79; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 120a]

LAND ACQUISITIONS

Public Hearings on Proposed Regulations

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of public hearings on proposed land acquisition regulations.

SUMMARY: This notice provides dates, times, and locations of hearings to be held on a proposed new Part 120a to Title 25 of the Code of Federal Regulations.

EFFECTIVE DATE: The first of several hearings will commence on March 28, 1979, in Seattle, Washington. For additional hearing dates see below.

ADDRESSES: For the locations of the hearings, see below.

FOR FURTHER INFORMATION CONTACT:

Louis H. White, Realty Specialist, Bureau of Indian Affairs, 1951 Constitution Ave., N.W., Washington, D.C. 20245, telephone (202) 343-7574.

SUPPLEMENTARY INFORMATION: On July 26, 1978, a Notice of Proposed Rulemaking which would add a new Part 120a to Title 25 of the Code of Federal Regulations dealing with the acquisition of land for Indians in a trust or restricted status, was published in the FEDERAL REGISTER, 43 F.R. 32311-32314. Interested parties were given until October 24, 1978, to submit comments and suggestions. As a result of numerous requests for public hearings, arrangements have been made to hold hearings at the various locations indicated.

On July 26, 1978, a Notice of Proposed Rulemaking covering Land Acquisition Regulations, 25 CFR 120a, was published in the FEDERAL REGISTER, 43 F.R. 32311-32314. Interested persons were given until October 24, 1978, to submit comments and suggestions. In response to that notice, a great number of comments were received and several persons requested that public hearings be held. To honor those requests, public hearings on the proposed regulations will be held at the time and locations indicated below. Those desiring to make a presentation at one of the hearings should notify the specified contact person prior to the scheduled date. Those not furnishing advance notification but desiring to make a statement may do so if adequate time remains on the hearing date after scheduled statements have been received.

HEARING LOCATIONS, DATES AND CONTACT PERSONS

Seattle, Washington

9:00 a.m., March 28, 1979, Rooms 380 and 390, Federal Building, 915 2nd Avenue.

Contact Person

Jack Glasgow, Realty Specialist, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon 97208, Telephone (503) 231-6714.

Minneapolis, Minnesota

9:00 a.m., April 3, 1979, 2nd Floor Conference Room, Bureau of Indian Affairs Area Office, 831 2nd Avenue South.

Contact Person

Joseph Brewer, Sr., Realty Officer, Aberdeen Area Office, Bureau of Indian Affairs, Federal Building, 115 4th Avenue S.E., Aberdeen, S.C. 57401, Telephone: (605) 225-0250 Ext. 393.

Oklahoma City, Oklahoma

9:00 a.m., April 3, 1979, Room 911, Murrah Building, 200 N.W. Fifth.

Contact Person

William Pruner, Realty Officer, Shawnee Agency, Bureau of Indian Affairs, Federal Building, Shawnee, Oklahoma 74801, Telephone: (405) 273-0317.

Spokane, Washington

9:00 a.m., April 4, 1979, Room 752, U.S. Courthouse, West 920 Riverside Avenue.

Contact Person

Jack Glasgow, Realty Specialist, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon 97208, Telephone: (503) 231-6714.

Pierre, South Dakota

9:00 a.m., April 5, 1979, Room 440, Federal Building.

Contact Person

Joseph Brewer, Sr., Realty Officer, Aberdeen Area Office, Bureau of Indian Affairs, Federal Building, 115 4th Avenue S.E., Aberdeen, S.D. 57401, Telephone: (605) 225-0250 Ext. 393.

Albuquerque, New Mexico

9:00 a.m., April 5, 1979, Southwest Indian Polytechnic Institute, 9169 Coors Road, N.W.

Contact Person

Raymond M. Jackson, Realty Officer, Phoenix Area Office, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, AZ 85011, Telephone: (602) 261-4195.

Billings, Montana

9:00 a.m., April 11, 1979, Carter Room, Northern Hotel, Broadway and First Avenue North.

Contact Person

Dorothy Vail, Realty Specialist, Billings Area Office, Bureau of Indian Affairs, Federal Building, 316 N. 26th Street, Billings, Montana 59101, Telephone: (406) 657-6301.

All comments received at these hearings will be considered together with written comments already received when a final decision on the regulations is made.

FORREST J. GERARD
Assistant Secretary, Indian Affairs.

[FR Doc. 79-7018 Filed 3-6-79; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 20]

[LR-203-76]

PROCEDURE FOR VARIOUS ESTATE TAX ELECTIONS UNDER THE TAX REFORM ACT OF 1976; AND DEFINITION OF NET EARNINGS FROM SELF-EMPLOYMENT FOR CERTAIN OWNERS AND TENANTS OF FARMS AND MATERIAL PARTICIPATION REQUIREMENTS FOR VALUATION OF CERTAIN FARM AND CLOSELY HELD BUSINESS REAL PROPERTY AND METHOD OF VALUING FARM REAL PROPERTY ACCORDING TO ACTUAL USE

Public Hearing On Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations and amendments thereto.

SUMMARY: This document provides notice of a public hearing on proposed regulations and amendments thereto under the following sections of the Internal Revenue Code of 1954: section 1402, relating to self employment income tax, and sections 2032A, 6166, and 6324A relating to various estate tax elections and valuation of certain farm and closely held business real property. The proposed regulations appeared in the FEDERAL REGISTER for July 13, 1978 (43 FR 30070) and July 19, 1978 (43 FR 31039). The amendments to the proposed regulations appeared in the FEDERAL REGISTER for December 21, 1978 (43 FR 59517).

DATES: The public hearing will be held on April 3, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by March 20, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outline of oral comments on the proposed regulations should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-203-76), 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224; telephone 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations and amendments thereto under the following sections of the Internal Revenue Code of 1954: section 1402, relating to self employment income tax, and sections 2032A, 6166, and 6324A, relating to various estate tax elections and valuation of certain farm and closely held business property.

On July 13, 1978, the FEDERAL REGISTER published proposed Estate Tax Regulations (26 CFR Part 20) under sections 2032A, 6166, and 6324A of the Internal Revenue Code of 1954 (43 FR 30070), and on July 19, 1978, the FEDERAL REGISTER published proposed Income Tax Regulations (26 CFR Part 1) under section 1402 and Estate Tax Regulations (26 CFR Part 20) under section 2032A (43 FR 31039). On December 21, 1978 (43 FR 59517), the FEDERAL REGISTER published amendments to the proposed regulations that appeared in the FEDERAL REGISTER for July 13, 1978 (43 FR 30070). The comment period for the proposed regulations was extended from September 18, 1978, to November 17, 1978, by a Notice of Extension of Time for Comments that appeared in the FEDERAL REGISTER for September 25, 1978 (43 FR 43330).

The rules of § 601.601 (a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notices of proposed rulemaking, the notice of amendments, and the extension notice, and who desire to present oral comments at the hearing on the proposed regulations, must submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject. As stated above, outlines must be delivered or mailed by March 20, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time taken by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, those attending the hearing cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

[FR Doc. 79-6831 Filed 3-6-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1069-7]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Proposed Regulation Governing the Burning of Coal by New England Power Co.'s Brayton Point Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Massachusetts Implementation Plan, as approved by EPA during January, 1978 (43 FR 1793), contains a sulfur in fuel limitation of 1.21 pounds per million Btu heat release potential, and a particulate matter emission limitation of 0.12 pounds per million Btu for Units 1, 2, and 3 of the Brayton Point Power Station in the Southeastern Massachusetts Air Pollution Control District. The proposed revision would specify for coal burning at Brayton Point Station that the sulfur in fuel limitation is to be measured on a monthly period, and establish a daily limitation of 2.31 pounds per million Btu. Emissions of particulate matter from the facility would be limited to a maximum of 0.08 pounds per million Btu heat input, an emission reduction of 33⅓ percent from the present regulation. The proposed regulation would remain in effect until November 1, 1988.

DATE: Comments must be received on or before April 6, 1979.

ADDRESSES: Copies of the Massachusetts submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and Massachusetts Department of Environmental Quality Engineering, Division of Air and Hazardous Materials, Room 320, 600 Washington Street, Boston, Massachusetts 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT:

David Stonefield, Air Branch, Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, 617/223-5609.

SUPPLEMENTARY INFORMATION: On September 7, 1978, the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted a revision to the State Implementation Plan (SIP), Regulation 7.17, "Coal Conversion—Brayton Point Station, New England Power Company" which would regulate the conversion from oil to coal at Units 1, 2, and 3 of Brayton Point Power Station in the Southeastern Massachusetts Air Pollution Control District (SEMAPCD). Although the existing SIP regulations include all fossil fuels, the purpose of the present revision is to specify conditions under which coal may be burned. The coal used by the facility would have a sulfur content not in excess of 1.21 pounds per million Btu heat release potential on the average for a monthly period (defined as a thirty day running average), and not to exceed 2.31 pounds per million Btu average heat release potential in any day, as measured in accordance with procedures prescribed by the Massachusetts Department. Emissions of particulate matter from Units 1, 2, and 3 of the facility would be limited to a maximum of 0.08 pounds per million Btu input, a 33⅓ percent reduction from the present regulatory limit of 0.12 pounds per million Btu. Solid fuel burning would be conducted in conformance with all other applicable laws and regulations of the SIP. Since the facility was built with a capability of burning coal, the presently proposed conversion is not subject to New Source Performance Standards [40 CFR 60.2(h)].

Existing SIP regulations approved during January, 1978, specifically Regulation 5.1, "Sulfur Content of Fuels and Control Thereof", temporarily permit this plant to burn fossil fuel with a sulfur content not in excess of 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent sulfur content residual fuel oil by weight, or 1.5 percent sulfur content coal) until July 1, 1979. A permanent oil regulation is presently being developed. The presently proposed regulation would provide for the continued burning of the higher sulfur content fuel upon conversion of the facility to coal. The regulation would remain in effect until November 1, 1988.

In this Notice, the Administrator is proposing to approve the SIP revision specified above, for Units 1, 2, and 3 of Brayton Point Station. Prior to final approval of this SIP revision the Administrator must find that the revision will not cause or substantially contribute to concentrations of pollutants in excess of National Ambient Air Quality Standards (NAAQS). The regulation which has been submitted for approval will directly affect the emission limitations for both sulfur dioxide (SO_2) and total suspend particulates (TSP). Accordingly, EPA's review of the air quality impact of the proposed SIP revision includes the anticipated effects for SO_2 and TSP. A discussion of EPA's evaluation follows:

The SEMAPCD is the same geographic area as the Massachusetts portion of the Metropolitan Providence Interstate Air Quality Control Region (AQCR). EPA has designated the SEMAPCD as "attainment" for sulfur dioxide standards based on no recent violations of the primary or secondary NAAQS for SO_2 in this area. EPA has designated specific portions of the SEMAPCD, including the Fall River area in the vicinity of Brayton Point Station, as "non-attainment" for the total suspended particulate secondary standard, based on secondary 24-hour TSP violations in the area. These designations were published in the FEDERAL REGISTER of March 3, 1978 (43 FR 8962).

Present Massachusetts air pollution regulations allow the burning of any fossil fuel (including coal) having a sulfur content not in excess of 1.21 pounds per million Btu until July 1, 1979. The Massachusetts Department has adopted this new regulation to specify the conditions under which coal may be burned at Brayton Point Station while still adhering to the 1.21 pounds per million Btu sulfur limit. This regulation permits compliance with that limit to be determined on the basis of a monthly period. In EPA's view, measurement of sulfur content on a monthly basis is permissible under the currently approved SIP. (No measuring time is specifically provided in the currently approved SIP.) During February 1979, the Massachusetts Department transmitted its policy for sampling and analysis of solid fossil fuels. The method is consistent with EPA proposed New Source Performance Standards (NSPS), Method 19. EPA is proposing to approve this revision based upon use of these sampling and analysis methods and thus these methods cannot be substantially altered without a revision to the SIP.

EPA has throughly evaluated the technical support for this revision. Extensive air quality modeling and data analyses were performed prior to approval by EPA in January, 1978 of the temporary SIP relaxation allowing the use of fuel having a sulfur content of 1.21 pounds per million Btu. Sulfur dioxide concentrations in ambient air have been monitored by the Massachusetts Department and the New England Power Company from 1975 to the present and at no time have exceeded the NAAQS for SO_2 in the SEMAPCD. Actual experience with the higher sulfur fuels, however, has been limited to 1978 and a brief period during 1975. A modeling study was performed by a consultant using four years of meteorological data combined with assumed emissions from Brayton Point Station and Somerset Station, operated by Montaup Electric Company, based upon use by these 2 sources of fuel having a sulfur content of 1.21 pounds per million Btu. All other residual oil users in the area were modeled using fuel containing 0.55 pounds sulfur per million Btu. Modeling results indicated that based upon 100 percent load at Brayton Point and the present operating limit of 75 percent of full load at Somerset Station when burning high sulfur fuel, there would be no violations of sulfur dioxide ambient air quality standards. Moreover, an analysis of growth anticipated in the area indicated that violations are not expected during and immediately beyond the period of the regulation. EPA's review of additional information on dispersion modeling submitted by the New England Power Company suggests that SO_2 concentrations from the Brayton Point Station will be higher than predicted by the model. Despite this, EPA has concluded after a careful comparison of observed with predicted ambient SO_2 concentrations, that SO_2 standards will not be violated by this action.

The concentrations predicted by the modeling study were based on a constant emission rate for the four years reviewed. This is appropriate for annual concentration predictions, but because sulfur content of coal can vary considerably from day to day while averaging 1.21 pounds per million Btu, a further objective of the coal conversion study was to determine what effect firing coal would have on short term ambient air concentrations. Compliance with the 24-hour and the 3-hour sulfur dioxide standards was evaluated using a statistical analysis. A log-normal frequency distribution of sulfur in coal, with an average of 1.21 pounds sulfur was used in this statistical approach to estimate the air quality impact from sulfur variability. The likelihood of joint occurrence of the plant burning coal with a sulfur content sufficient to cause a violation of standards in combination with meteorology which would be conducive to formation of high SO_2 concentrations was found to be within the limits prescribed by the NAAQS. It was estimated that neither

the 3-hour SO_2 standard nor the 24-hour standard is expected to be exceeded more than once a year on average. To ensure the applicability of the results, a 24-hour emission limit of 2.31 pounds sulfur per million Btu, reflecting the upper variability limit assumed in the statistical analysis, is incorporated in the regulation.

In accordance with the requirements of the August 7, 1977 Clean Air Act Amendments (Pub. L. 95-95), the Massachusetts Department is presently developing SIP revisions for TSP non-attainment areas in the State including the Fall River area. To date it has been assumed that the area is frequently subject to considerable influence by particulate emissions such as road sanding operations plus wind and vehicle caused reentrainment of sand and other materials. Monitoring and emissions data collected as part of a study now being conducted by the Massachusetts Department will be used to define the types, quantities, and sources of particulate matter contributing to elevated TSP levels in order to develop effective control strategies to attain and maintain TSP standards. Present regulations limit particulate emissions from Brayton Point Station to 0.12 pounds per million Btu input. Because of the concern with attainment and maintenance of the TSP NAAQS, the SIP revision herein proposed provides for a more restrictive emission limitation, 0.08 pounds per million Btu, whenever coal is burned in the Brayton Point facility. By restricting emissions below those presently allowed, the Massachusetts Department and EPA have attempted to ensure that particulate matter attributable to this facility will be limited. The Massachusetts Department and EPA share the opinion that the proposed particulate emission limitation represents the degree of stringency which this facility may reasonably be expected to achieve while burning coal.

EPA has determined that the proposed revision does not require a Prevention of Significant Deterioration (PSD) analysis. 40 CFR 51.24(a)(2) requires such an analysis for any SIP revision which would result in increased air quality deterioration over any baseline concentration. The PSD regulations generally set the baseline concentration against which pollution increments are measured as "actual air quality as of August 7, 1977" [40 CFR 51.24(b)(11)]. However, the regulations make an exception in cases where any SIP revision relaxing emission limitations was under review by EPA on that date [40 CFR 51.24(b)(11)(i)]. In such cases, the additional contributions from existing sources subject to the pending relaxation are included in the baseline.

Although an emission limit of 0.55 pounds sulfur per million Btu was in effect for the SEMAPCD during August, 1977, the State of Massachusetts had submitted an SIP revision to EPA allowing the burning of fuel with a sulfur content of 1.21 pounds per million Btu (approximately 2.2 percent sulfur content oil or 1.5 percent sulfur content coal) at Brayton Point Station and other specified sources and this revision was pending action by EPA on August 7, 1977. (The particulate emission limit was not affected by that proposal. Since the proposed regulation is not estimated to result in increased particulate emissions, a PSD analysis is not required for this pollutant.) This proposed revision retains the same overall 1.21 pounds per million Btu sulfur in fuel limit contained in the regulation which was under consideration by EPA on August 7, 1977, while also specifying a maximum daily average. This proposed revision simply specifies for coal burning that the 1.21 pounds per million Btu sulfur in fuel limit is to be measured for a monthly period. Because monthly measurement is also permissible under the currently approved SIP, the revision does not constitute a relaxation for SO_2 emissions, and consequently, no PSD analysis is required for SO_2.

An evaluation of other environmental impacts which could result from conversion to coal at Brayton Point Station has been performed by the U.S. Department of Energy and the results presented in a Draft Environmental Impact Statement (EIS) entitled *Coal Conversion Program—New England Power Company.* Measures to mitigate potential adverse impacts will be taken by the Company and are described in supporting materials submitted by the Massachusetts Department.

The Administrator's decision to approve or disapprove this SIP revision will be based on whether it meets the requirements of Sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601). The EPA solicits comments regarding the approvability of the regulations being considered, especially comments relating to the potential air quality effects of the variability in sulfur content of coal.

Dated: February 26, 1979.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc. 79-6937 Filed 3-6-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1051-2]

DELAYED COMPLIANCE ORDERS

Proposed Disapproval of an Administrative Order Issued by Indiana Air Pollution Control Board to Bethlehem Steel Corp.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to disapprove an Administrative Order issued by the Indiana Air Pollution Control Board to Bethlehem Steel Corporation. The Order requires the Company to bring air emissions from its coke oven batteries in Burns Harbor, Indiana, into compliance by July 1, 1979, with Regulations APC-3 and APC-5 of the Indiana Air Pollution Control Board (Indiana APC-3 and Indiana APC-5). It is important to note that Indiana APC-3 is different than State Implementation Plan (SIP) APC-3. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order would constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed disapproval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before April 6, 1979

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Michael Smith, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

SUPPLEMENTARY INFORMATION: Bethlehem Steel Corporation operates a steel production facility at Burns Harbor, Indiana. The Order under

consideration addresses emissions from two coke oven batteries at the facility, which are subject to Indiana APC-3 as promulgated on October 7, 1974, and Indiana APC-5, as promulgated on December 6, 1968. Indiana APC-3 sets the standards for visible emissions, but is less stringent than the federally approved SIP APC-3. The Order does not require compliance with the applicable Indiana SIP. The cited Indiana APC-3 contains a 15-minute exemption which was disapproved when submitted by the State (40 FR 50032, October 28, 1975) and does not appear as part of the Indiana SIP. An approval of this Order would constitute approval of compliance with a requirement less stringent than the applicable Indiana SIP and is not authorized by Section 113(d)(1) of the Act. There are several other points in the Order which do not meet U.S. EPA's approval. These include:

(1) Paragraph 10 of the Findings states that there is no currently available control technology guaranteed to bring coke batteries into compliance—but that the Order was a "best effort" program. This is contrary to the U.S. EPA's position that controls exist that can attain compliance and it undercuts the reasonableness and enforceability of the Order.

(2) Paragraph 2 of the Order states that notwithstanding paragraph 1 (Requirement for compliance), Bethlehem may challenge the applicability and technical feasibility of APC-3 and APC-5, should it fail to comply with the regulations. This means that Bethlehem agrees to install equipment, but if it fails to comply with the regulations, it may challenge the regulations. This equates to no *real* agreement or Order to comply with the regulations.

(3) Paragraph 8 contains a clause which states that if there is a delay in meeting interim or final dates for pushing controls (and compliance) which is "Not within the reasonable control of" Bethlehem, then the Board agrees not to impose or seek criminal or civil penalties. The Board also agrees not to seek criminal penalties for delay (from such events) in meeting the final date for charging controls (and compliance), and no civil or criminal penalties for delays beyond the interim charging program dates. These provisions amount to agreements not to enforce violations of the Order.

(4) U.S. EPA is not satisfied that the program to control stack emissions is sufficient to attain compliance.

(5) The State Order addresses each operation (push, charge, etc.) separately. Regulation APC-5 considers the entire coke battery to be a single "process." In addressing the operations separately, there is *no* requirement for compliance at the stacks, standpipes, doors, etc.

In addition, a civil action has been initiated by U.S. EPA under Section 113(b) of the Act against the Bethlehem Steel Corporation. This action is based, in part, upon violations of regulations APC-3 and APC-5 of the Indiana State Implementation Plan by the Company's coke batteries located in Burns Harbor, Indiana. Because the civil action addresses the facilities which are the subject of the Order under consideration, the filing of the action in itself constituted a rejection of the Order issued by the Indiana Air Pollution Control Board.

Because this Order has been issued by the State to a major source of emissions and permits a delay in compliance with the applicable regulations, it must be approved by U.S. EPA before it can become effective as a Delayed Compliance Order under Section 113(d) of the Act. U.S. EPA may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Order is disapproved by U.S. EPA, source compliance with its terms would not preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would similarly not be precluded. If disapproved, the Order would not constitute an addition to the Indiana SIP. All interested persons are invited to submit written comments on the proposed disapproval of the Order.

Written comments received by the date specified above will be considered in determining whether U.S. EPA will disapprove the Order. After the public comment period, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

AUTHORITY: 42 U.S.C. 7413, 7601.

Dated: January 26, 1979.

JOHN MCGUIRE,
Regional Administrator,
Region V.

CAUSE NO. A-59

FINDINGS OF FACT

Air Pollution Control Board of the State of Indiana, Plaintiff vs. Bethlehem Steel Corporation, Burns Harbor, Indiana, Respondent.

1. That the Air Pollution Control Board of the State of Indiana ("the Board") is an agency of the State of Indiana duly empowered pursuant to IC 13-1-1 et seq., to act upon complaints of alleged air pollution brought by any person and to issue such orders with respect thereto as it deems proper.

2. That the Board has jurisdiction over both the subject matter and the parties to this action.

3. That pursuant to the provisions of IC 13-1-1 and IC 13-7-11-2, notice and service of same is hereby waived by Respondent.

4. That Bethlehem Steel Corporation owns and operates a steel production facility in Burns Harbor, Indiana.

5. That as part of its steel production process, Respondent owns and operates two by-product coke oven batteries.

6. That notwithstanding the control systems presently installed and operating, the Board's investigation of the operation of the coke oven batteries discloses possible violations of the standards set forth in Indiana Regulations APC 3 and APC 5.

7. That on March 29, 1973, the Board adopted a valid Order between the Respondent and the Board. Said Order set forth dates for compliance with Indiana Regulations APC 3 and APC 5 by Respondent. On July 24, 1973; February 26, 1975; October 22, 1975; June 23, 1976; and August 24, 1977, Amendments No. 1, No. 2, No. 3, No. 4, and No. 5, respectively, to that Order were adopted by the Board, which Amendments amended and superseded certain dates for compliance by the dates outlined in said Amendments. That for purpose of clarity, the schedules for compliance are incorporated in their entirety, including both incremental dates that have passed and those yet to come.

8. That in order to comply with the Delayed Compliance Order requirements of the Clean Air Act as amended August 7, 1977, both the Respondent and the Board desire that these Findings of Fact and Recommended Order amend and supersede the Order adopted March 29, 1973, as amended, with respect to the pushing and charging emissions from Batteries No. 1 and No. 2 set forth herein.

9. That after a thorough investigation of all relevant facts, including public comment, the Board has determined that the Respondent is unable to immediately comply with the requirements of APC 3 and APC 5, where applicable, at the Burns Harbor Plant Coke Oven Batteries, and therefore, pursuant to Section 113(d) of the Federal Clean Air Act, issues this Delayed Compliance Order which:

(A) Has been issued after notice to the public containing the contents of the proposed order and opportunity for public hearing;

(B) Contains a schedule and timetable for compliance;

(C) Requires compliance with applicable interim requirements and requires the emission monitoring and reporting by the source authorized to be required under Sections 110(a)(2)(F) and 114(a)(1) of the Federal Clean Air Act;

(D) Provides for final compliance with the requirements of the applicable regulations as expeditiously as practicable, but in no event later than July 1, 1979; and,

(E) Hereby notifies the Respondent that unless exempted under Section 120(a)(2)(B) or (C), of the Federal Clean Air Act, it will be required to pay a noncompliance penalty effective July 1, 1979, in the event Respondent fails to achieve final compliance by July 1, 1979.

10. That there is no readily available control technology or known operating technologies guaranteed to bring coke batteries into compliance with Indiana Regulations APC 3 and APC 5. The compliance program set forth in the following Order, however, represents the best efforts of the Board and the Respondent to devise a program to provide for achieving compliance with APC 3 and APC 5 by July 1, 1979.

11. That pursuant to Section 107 of the Federal Clean Air Act, as amended, the area in the vicinity of the Burns Harbor Plant has been recommended by the Board and designated by the United States Environmental Protection Agency on March 3, 1978,

as unclassifiable with respect to attainment of the National Ambient Air Quality Standard for particulate matter.

12. That on March 22, 1978, the Board approved for public hearing revised Regulation APC 3 regarding visible emissions and new Regulation APC 9 regarding coke oven emissions which, if promulgated as proposed, may alter the performance required to achieve compliance with State regulations at the coke oven bateries.

RECOMMENDED ORDER

Now, therefore, based upon the above Findings of Fact and upon consent of the parties, *it is hereby ordered, adjudged and decreed* as follows:

1. That Respondent, Bethlehem Steel Corporation, shall abate particulate emissions according to the following schedule which provides for compliance with Indiana Air Pollution Control Board Regulations APC 3 and APC 5 no later than July 1, 1979.

A. Pushing Emissions.

1. Submit final plans for three enclosed coke guides, two quench cars, and two stationary gas cleaning systems with associated air pollution control equipment for Batteries No. 1 and No. 2 by October 31, 1976.

2. Place purchase orders by November 30, 1976.

3. Complete installation by November 30, 1978.

4. Achieve compliance by February 15, 1979.

B. Charging Emissions.

1. Submit program for modified stage charging by September 1, 1977.

2. Commence issuance of purchase orders pursuant to preliminary engineering by October 31, 1977.

3. Commence construction by April 1, 1978.

4. Complete engineering by July 31, 1978.

5. Complete construction by June 3, 1979.

6. Achieve compliance by July 1, 1979.

2. That notwithstanding the provisions of paragraph 1 hereof, nothing herein shall be or shall be deemed to be a waiver of Respondent's right to challenge the applicability or technical feasibility of Indiana Air Pollution Control Board Regulations APC 3 and APC 5 in any action brought to enforce the terms and conditions of this Order, which action is based in whole or in part on a failure to achieve compliance with said Regulations, provided however, that this provision shall not excuse the Respondent from installing the control equipment committed to in paragraph 1 of this Order.

3. That in the interim and until the time that compliance with Indiana Regulation APC 3 and APC 5 is achieved, Respondent shall employ the Operation and Maintenance Practice Program attached to this Order as Exhibit I with respect to the pushing and charging emissions from Batteries No. 1 and No. 2. This is the best practicable system of emissions reduction for the interim period.

4. That beginning thirty (30) days after the date of this Order, quarterly progress reports shall be submitted by the Respondent to the Board. Respondent shall include in such reports emission monitoring data required by paragraph 5 of this Order.

5. Respondent shall monitor the pressure drop and water flow rate of the land-based scrubber on Coke Oven Batteries No. 1 and No. 2, and shall maintain such data at the office of the Environmental Control Department at Burns Harbor and make such data available for inspection upon the request of a staff member of the Air Pollution Control Division.

6. That upon application of Respondent, the provisions of this Order and plans and schedules submitted and approved hereunder may be modified by the Board when air pollution control standards applicable to the by-product coke ovens are changed; provided, however, that this Order shall be construed to provide for final compliance with the requirements of the applicable regulations as expeditiously as practicable, but in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such regulations, whichever is later. Any order, decision or other action taken by the Board upon such application may be appealed to the courts of the State as provided by IC 4-22-1-1 et seq.

7. Failure of the Respondent to achieve final compliance with Indiana Regulations APC 3 and APC 5 by July 1, 1979, may subject Respondent to a claim for a noncompliance penalty in accordance with Section 120 of the Clean Air Act, 42 USC 7420 and any State Regulations that may be submitted to and approved by the Administrator in accordance with that Section. Notwithstanding the above, Respondent reserves the right to contest in any forum the application of such penalty for noncompliance to any source covered by this Order.

8. That should events occur which cause a delay in meeting any interim dates established in this Order and these events are entirely beyond the control of the Respondent, upon application of Respondent these dates may be modified by the Board. Any order, decision or other action taken by the Board upon such application may be appealed to the courts of the State as provided by IC 4-22-1-1 et seq.

Should the Air Pollution Control Board, after hearing, determine that a delay in meeting the requirements of Section 1(A) of this Order is due to events which are not within the reasonable control of the Respondent, the Air Pollution Control Board agrees not to impose or seek any civil or criminal penalties for any delay beyond either the interim dates set forth in this Order or the July 1, 1979, date established by the Clean Air Act, other than those provided for under Section 120 of the Clean Air Act. Should the Air Pollution Control Board after hearing determine that a delay in meeting the requirements of Section 1(B) of this Order is due to events which are not within the reasonable control of Respondent, the Air Pollution Control Board agrees not to impose or seek criminal penalties for delays beyond the July 1, 1979, date established by the Clean Air Act or civil or criminal penalties for any delays beyond any of the interim dates set forth in this Order, other than those provided for under Section 120 of the Clean Air Act or rules or regulations promulgated thereunder.

9. This Order shall terminate with respect to any of the operations referred to in Section 1(A) or 1(B) as of the date that emissions from such operations are in compliance.

10. That nothing herein contained shall in any way affect the Board's right to enforce Air Pollution regulations which deal with provisions not covered by this Order.

I have reviewed the above Findings of Fact and Recommended Order and hereby recommend that the Air Pollution Control Board adopt this as its Final Order.

Dated: November 15, 1978.

HARRY D. WILLIAMS,
Director,
Air Pollution Control Division.

I am duly authorized to legally bind Bethlehem Steel Corporation in this matter, and I have received a copy of the above Recommended Order and agree to be bound by said Order when issued by the Board and hereby waive the notice required by Indiana Code 13-1-1 and 13-7-11-2.

Dated: November 13, 1978.

C. R. ROUGH,
Bethlehem Steel Corporation.

[FR Doc. 79-6940 Filed 3-6-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[Docket No. VII-79-DCO-2; FRL 1070-7]

DELAYED COMPLIANCE ORDERS

Notice of Proposed Approval of an Administrative Order by Nebraska Department of Environmental Control to City of Fremont, Nebr.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Nebraska Department of Environmental Control to city of Fremont, Nebraska. The order requires the company to bring air emissions from its Lon D. Wright Memorial Power Plant, Units 6 and 7 at Fremont, Nebraska into compliance with certain regulations contained in the federally approved Nebraska State Implementation Plan (SIP) by June 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before April 6, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 East Eleventh Street, Kansas City, Missouri 64106. The state order, supporting material, and public comments received in response to this notice may

be inspected and copied (for appropriate charges) at this address during normal business hours.

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

SUPPLEMENTARY INFORMATION: The city of Fremont, Nebraska operates a power plant at Fremont, Nebraska. The order under consideration addresses emissions from Units No. 6 and 7 at the facility, which are subject to Rules 6 and 13 of the Nebraska Air Pollution Control Rules and Regulations. These regulations limit the emissions of particulate matter and are part of the federally approved Nebraska State Implementation Plan. The city of Fremont is unable to immediately comply with these regulations. The order requires final compliance with the regulations by June 15, 1979, through construction of baghouses and imposes interim controls and reporting requirements. The inclusion of emission monitoring requirements in the order would be unreasonable.

Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Nebraska SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

AUTHORITY: 42 U.S.C. 7413, 7601.

Dated: February 26, 1979.

DAVID R. ALEXANDER,
Acting Regional Administrator, Environmental Protection Agency, Region VII.

PART 65—DELAYED COMPLIANCE ORDER

1. By amending the table in § 65.321 to reflect approval of the following order:

[Docket No. VII-79-DCO-2]

Text of Order follows:

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL

In the matter of City of Fremont, Nebraska, Respondent. Case No. 98, Third Amended Administrative Order.

Now on this 25th day of January, 1979, this matter came on for hearing instanter on the oral motion of Judy M. Lange, Assistant Legal Counsel, Department of Environmental Control, that Respondent cannot immediately comply with Rules 6 and 13 of the Nebraska Air Pollution Control Rules and Regulations by February 28, 1979 due to equipment delays resulting from strikes occurring with suppliers, and that after a thorough investigation of all relevant facts, including the seriousness of the aforesaid violation and any good faith efforts to comply, it has been determined that compliance in accordance with the schedule hereinafter set forth is reasonable and expeditious, and the Director being fully advised in the premises,

Therefore, *it is ordered* that Respondent complete the following acts with respect to Units 6 and 7 of the Lon D. Wright Memorial Power Plant at Fremont, Nebraska, on or before the dates specified:

1. Complete construction of the emission control equipment by April 15, 1979;

2. Conduct tests and submit test results by June 15, 1979, the final date for compliance with Rules 6 and 13 of the Nebraska Air Pollution Control Rules and Regulations;

3. Submit progress report for Item No. 1 to the Department of Environmental Control within five (5) days after said date;

4. Interim requirements during the period of this Order pursuant to Section 113(d)(1)(C) of the Clean Air Act (42 U.S.C. 7413(d)(1)(C)) include the following:

a. Beginning January 2, 1979 Respondent will operate Unit No. 7 at 8 megawatts except in case of an emergency. On January 10, 1979 a period of shakedown for the baghouse controls shall commence and last for a period of forty-five days. Respondent shall report to the Department weekly on progress and on the daily load at which the Unit operated the previous week. The Department shall consider an emergency to exist in the following situations:

(i) when a different load is required by the baghouse manufacturer;

(ii) when outside demands for current because of cold weather makes increased load necessary to heat residences and businesses of a health nature; and

(iii) if Unit No. 8 breaks down.

b. Unit No. 6 will be inoperative from January 2, 1979 to March 1, 1979 at which time a period of shakedown for the baghouse control shall commence and which will last until April 15, 1979. Respondent shall report to the Department each week on progress made toward compliance.

5. No emission monitoring and reporting shall be required during the period of this Order pursuant to Section 113(d)(1)(C) of the Clean Air Act because such requirements were not determined to be reasonable and practicable for the reason that the period of the Order is short in duration.

Notice of this Order has been published in a newspaper of general circulation in the area of Fremont, Nebraska at least thirty (30) days prior to the issuance of this Order, and an affidavit of said publication is attached hereto and incorporated herein; and notice is hereby given pursuant to Section 113(d)(1)(E) of the Clean Air Act (42 U.S.C. 7413) that since Respondent's operation is a major source, failure to comply by July 1, 1979, shall be cause for the Administrator of the U.S. Environmental Protection Agency (EPA) (or its designee) to assess and collect a noncompliance penalty from Respondent under Section 120 of the Clean Air Act (42 U.S.C. 7420).

DAN T. DRAIN,
Director, Nebraska Department of Environmental Control.

[FR Doc. 79-6939 Filed 3-6-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3500]

LEASING OF MINERALS OTHER THAN OIL AND GAS, GENERAL

Subpart 3503-Fees, Rentals, and Royalties; Requirement of Minimum Production or Minimum Royalty Payments in Potassium, Sodium, Sulphur, and Phosphate

AGENCY: Bureau of Land Management, Interior.

Action: Proposed rulemaking.

SUMMARY: This proposed rulemaking would require a provision in potassium, sodium, sulphur, and phosphate mineral leases calling for minimum production or the payment of a specified minimum royalty. The minimum production or minimum royalty requirement is necessary to discourage speculation in minerals on public lands. The intended effect is to encourage production and to insure a fair return to the United States for disposition of mineral rights.

DATE: Comment by May 7, 1979.

ADDRESS: Director (210), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 at the above address on regular work days from 7:45 a.m. to 4:15 p.m.

FOR FURTHER INFORMATION, CONTACT:

David M. Carty at the above address or telephone 202-343-7753.

SUPPLEMENTARY INFORMATION: The principal author of this document in David M. Carty of the Division of Mineral Resources, Bureau of Land Management, Department of the Interior.

This notice proposes amendments to 43 CFR Subpart 3503, which currently provides that leases will require the payment of a royalty on a minimum annual production beginning with the 6th full calendar lease year for potassium, sodium and sulphur, and beginning with the 4th year of the lease for phosphate.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et. seq.) provides that all leases for phosphate and potash "shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof." Therefore, a lease for these two minerals *must* contain at least one of a number of alternative conditions in order to comply with the statute. For example, the lease may include a choice on the part of the lessee to either pay a minimum royalty or produce a minimum amount of the mineral reserves. It may also include either one of these requirements (minimum production or minimum royalty) alone. Although, it may not be practical to demand a minimum royalty payment without the option of minimum production. Production would generate production royalty to the government.

There are also a number of alternatives for defining the "minimum royalty" and "minimum annual production." Minimum royalty could be set at a fixed amount without any reference to the amount of mineral produced. It would also be calculated to equal the production royalties which would be derived from an estimation of the actual amount of production in any given year in the future. In the former case, the minimum royalty would simply increase the holding costs of the lease. The second calculation would involve a production related diligence requirement. Minimum annual production can be defined as (1) mining only enough of the mineral deposit to generate production royalties equal to the minimum royalty, (2) mining the percentage of the mineral reserves which is estimated will actually be produced annually, or (3) mining a fixed percentage of the identified economic reserves.

The existing regulations do not identify the amount of the royalty and the minimum annual production. The amount of both is established on a case-by-case basis in each lease. Under current practice, this will usually mean a requirement to mine enough of the mineral deposit to generate a production royalty per acre equal to the minimum royalty. The existing average minimum royalty is $1 per acre. By statute and regulation, minimum royalties paid for any one year are credited against rentals accruing for that year. Because rentals average $1 per acre, the net effect of this practice on a non-producing lease is that payment of no more than $1 per acre annually is required to hold a lease.

The proposed rules would provide that leases for sodium potassium, sulphur and phosphate minerals will require either a minimum annual production or the payment of a specified minimum roylaty. The calculation of the minimum royalty is without reference to any estimate of actual production. The minimum royalty payment is set at $6 per acre per year beginning the fourth or sixth year, increasing to $11 per acre per year beginning with the tenth year. Minimum annual production is still not defined. However, it will continue to be set in accordance with existing practice, i.e., mine enough of the deposit to generate a production royalty equal to the minimum royalty. Like the existing regulations, the obligation commences with the 4th year of the lease for phosphate, and with the sixth full calendar year of the lease term for potassium, sodium, and sulphur. Hardrock mineral leases on acquired lands are not affected by this rulemaking.

In 1920, Congress determined in the Mineral Leasing Act that an acceptable holding cost (in the minimum annual rental) for leases should increase to at least $1 in the 4th year for phosphate and the 6th year for sodium and potash. The minimum royalty has been calculated under existing practice at $1 to coincide with this congressional estimate of a minimum holding cost. However, the effect of inflation since 1920 alone has substantially altered the value of the dollar. Therefore, the $6 figure was based upon an estimate of the inflationary impact on the dollar since 1920, i.e., it now takes at least $5 to equal a dollar in 1920 (the credit of a $1 rental produces a net minimum royalty of $5). It was also decided that doubling the holding costs in the 10th year of the lease may discourage excessive speculation.

Although the $6 and $11 minimum royalty payment amounts may deter some speculation in these minerals on public lands and will increase the return to the United States for holding mineral rights, it will not necessarily encourage diligent production of mineral resources as would a minimum royalty based upon actual production.

A fixed minimum royalty instead of one based upon production was selected for the following reasons:

(a) Because it is difficult to accurately predict future market conditions, it is impossible to determine the actual amount of production in a given future year.

(b) Increased holding costs based on an actual production estimates may not cause significant increases in the amount of potash, phosphate or sodium produced from Federal deposits. Demand for these minerals remains fairly constant regardless of price changes.

(c) Based on past experience in the Department with such a system, the administrative cost of implementing a production based royalty would be expected to exceed financial benefits to the United States.

(d) The apparent lack of legal authority to create phosphate, potassium, sodium or sulphur logical mining units (LMU) for the purposes of allowing royalties from producing leases in LMU to be credited to the minimum royalty obligations of the non-producing leases.

Both statute and regulation allow the suspension, modification or reduction of royalty obligations upon a showing of hardships in specific cases. However, suspension, modification or reduction will be considered only if production is achieved. The imposition of a minimum production or minimum royalty requirement in sodium and sulphur leases has been decided to be necessary to discourage speculation and ensure a greater return to the United States for the disposition of mineral rights.

Although the requirements proposed in this notice would not apply to leases issued prior to the effective date of the amendments, the proposal provides that leases which are renewed or readjusted after the effective date will be subject to the minimum production or the maximum royalty payment (i.e., $11 per acre) beginning with the first year after the renewal or readjustment.

Option for Comment

The option of requiring minimum production and eliminating the alternative of paying a minimum royalty is also being considered. Under this option, new leases for phosphate, potash, sodium and sulphur would require that by the beginning of the 10th lease year, a percentage of the reserves (somewhere between 1% and 5%) must be mined annually in order to hold the lease. It may be the same percentage for all minerals or different percentages fixed for each mineral or an individual percentage included in each lease on a case-by-case basis. The reserves will be identified, through information provided by the lessee, as the amount of deposits which can be economically mined using technology available at the time the lease is issued.

The rules would provide for a suspension, reduction or modification of the minimum production requirement which may, if justified, be granted before production is achieved. If leases are included within a single economic or unit operation containing other leases or properties controlled by the lessee (all leases or properties would not necessarily have to be contiguous), leases may also include a special minimum production requirement which relieves the lessee of the obligation to produce on other leases within the single operation if a specific percentage of the total reserves in the unit are produced annually from any lease in the unit. Phosphate, potash and sulphur leases renewed or readjusted after the effective date of the rules would be treated as if they were new leases, i.e., minimum production requirements would take effect 10 years after the lease is renewed or readjusted. In the case of sodium leases, the minimum production requirement would become effective 5 years after the lease is renewed.

This option will achieve the timely production which would not necessarily be achieved under the first option. With the provision for adjusting the minimum production requirement for a single unit operation and the provision for suspension, modification or reduction of those requirements, there will also be no necessity for a lessee to attempt to unnaturally increase production in an inelastic market in order to meet lease requirements. There is questionable legal authority for the special minimum production requirement in the case of a unit operation. The legal authority for this special unit operation provision is presently being examined by the Solicitor's office. Comments on this authority are also requested.

With regard to the possibility of economic impacts, there are approximately 466,000 acres of public land currently under lease of which many are in production and not subject to these royalties. The maximum possible cost to the industry in any one year would be less than 5 million dollars. Therefore, the Department of the Interior has determined that this document is not a significant regulatory proposal requiring preparation of a regulatory analysis under Executive Order 12044.

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)(3) is required.

Environmental assessment is an integral part of the evaluation of any lease application. Furthermore, the requirement of a reasonable minimum royalty is not expected to significantly change the number of leases developed nor the techniques used in their development.

Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), it is proposed to amend section 3503.3-2 of Subpart 3503, Part 3500, Title 43 of the Code of Federal Regulations as set forth below:

1. Section 3503.3-2(b)(2)-(6) is amended to read as follows:

§ 3503.3-2 General statement, royalties

* * * * *

(b) Minimum Royalty
(1) * * *

(2) Potassium, Sodium, and Sulphur. Leases will require, beginning with the 6th full calendar year of the lease term, a minimum annual production or the payment of a minimum royalty of $6 per acre per year, increasing to $11 per acre per year beginning with the 10th full calendar year of the lease term, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) Phosphate. Leases will require, beginning with the 4th year of the lease, a minimum annual production or the payment of a minimum royalty of $6 per acre per year increasing to $11 per acre per year beginning with the 10th year of the lease, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(4) Minimum Royalty Requirements. Lessees if electing to make minimum royalty payments instead of meeting minimum production requirements will not be granted reductions in the amounts specified unless production in commercial quantities is first achieved.

(5) Provided the lessee has established minimum production as specified by the terms of the lease, the lessee may request that the Secretary reduce the amount of minimum production specified in the lease upon the basis of a showing by the lessee.

The petition shall include, among other relevant information (A) the operator's estimate of the tonnage of leased minerals in the leased land; (B) all available information as to the grade thereof; (C) the plan of operations for the leased property and any adjoining property to be worked with it; (D) a general statement of the method used in mining and processing the leased minerals; (E) the estimated rate of extraction; and (F) possible absorption in the markets. Within 6 months after receiving this information, the authorized officer will determine whether the minimum production requirement in the lease should be reduced or not. In making that determination, th authorized officer will consider what would be a reasonable time period needed to mine the leased deposits in view of their location and the lessee's operations on adjacent lands.

(6) Any potassium, sodium, phosphate or sulphur lease renewal or readjusted after the effective date of these regulations shall require a minimum production or a minimum royalty of $11 per acre per year beginning with the first year of the renewed or readjusted lease.

* * * * *

GUY R. MARTIN,
Assistant Secretary of the Interior.

MARCH 2, 1979.

[FR Doc. 79-6823 Filed 3-6-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Chapter I]

[CC Docket No. 79-35; FCC 79-118]

MARITIME SATELLITE TELECOMMUNICATIONS ACT

Implementation of Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking to implement requirements of the International Maritime Satellite Telecommunications Act, Pub. L. No. 95-564 (1978).

SUMMARY: Commission institutes a rulemaking proceeding to consider (1) operational arrangements for providing maritime satellite services via INMARSAT, and (2) regulatory safeguards to assure that the costs of maritime satellite services are borne by the users of such services and not the users of other communications services provided by Comsat. Comsat is the U.S. designated operating entity in INMARSAT.

DATES: Comments regarding operational interconnection arrangements are requested on or before March 19,

1979, and reply comments on or before March 30, 1979. Comments regarding all other matters are requested on or before April 23, 1979, and reply comments on or before May 8, 1979.

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

FOR FURTHER INFORMATION CONTACT:

James L. Ball, International Programs Staff, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION:

Adopted: February 22, 1979.

Released: February 26, 1979.

By the Commission:

1. Notice is given pursuant to Section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(1970), and § 1.412 of the Commission's Rules and Regulations, 47 CFR 1.412 (1976), of a proposed rulemaking into the above-captioned matter. The purpose of this notice is to provide interested parties an opportunity to comment on proposals we are making to implement certain requirements imposed on this Commission by the International Maritime Satellite Telecommunications Act, Pub. L. No. 95-564, 92 Stat. 2392 (1978).

2. The International Maritime Satellite Tellecommunications Act (herein referred to as "the Maritime Satellite Act" or "the Act") became law on November 1, 1978. It declares that it is the policy of the United States to provide for U.S. participation in the International Maritime Sattellite Organization (INMARSAT) in order to develop a global maritime satellite system that will meet the maritime commercial and safety needs of the United States and foreign countries.

Background

A. Development of INMARSAT

3. INMARSAT is intended to be an independent international organization that will provide for the ownership and operation of such a system. It was conceived after an extended process of international study and negotiation by both government and industry representatives from 40 nations. In 1972, the Intergovernmental Maritime Consultative Organization (IMCO) established a panel of representatives from over 20 countries, including the United States, to study the feasibility of creating an international maritime satellite system.[1] The panel included U.S. Government, common carrier, and maritime industry representatives. It completed its study in 1974 and issued a report that (1) examined operational requirements and technical parameters for a maritime satellite system; (2) provided an economic assessment for such a system; and (3) included a draft agreement that would create an international organization to operate the system.

4. IMCO thereafter convened an Intergovernmental Conference in 1975 to consider the establishment of an international maritime satellite organization. U.S. participation in the Conference again was through U.S. Government, common carrier, and maritime industry representatives.[2] After three sessions, the Conference adopted and opened for signature in 1976 two separate agreements providing for the establishment of INMARSAT—a Convention to be signed by governments and an Operating Agreement to be signed by either governments or their designated operating entities. These instruments set forth the legal and financial requirements for participation in INMARSAT and the institutional basis upon which the organization will operate.[3] Both agreements must go into force on or before September 3, 1979, for INMARSAT to come into being.[4]

B. Docket No. 20281

5. We initiated Docket No. 20281 in preparation for the 1975 Intergovernmental Conference and requested comments from interested parties on a number of issues relating to the establishment of an international maritime satellite communications system. *International Maritime Satellite System*, 50 F.C.C. 2d 640 (1974). We considered the comments filed in adopting recommendations to the Department of State for the first session of the Conference. Subsequently, we invited further comments regarding the designation of a private communications entity to be the U.S. participant and investor in any international organization that may be created to establish an international maritime satellite system. *International Maritime Satellite System*, 55 F.C.C. 2d 87 (1975). In doing so, we made certain assumptions and proposals intended to stimulate comments and alternative proposals concerning the identity and operation of such an entity. However, Congress has since determined the identity of the U.S. operating entity and resolved a number of issues concerning its operation by enactment of the Maritime Satellite Act. We are therefore terminating Docket No. 20281 today as moot.

C. Maritime Satellite Act

6. The Maritime Satellite Act amends the Communications Satellite Act of 1962, 47 U.S.C. 701 (1976), to designate the Communications Satellite Corporation (Comsat) as the U.S. operating entity in INMARSAT and place sole responsibility on Comsat for any financial obligations it incurs in that capacity. The Act permits only Comsat to own and operate the U.S. share of jointly owned international space segment and associated ancilliary facilities established for the purpose of providing maritime satellite services. It also permits Comsat to own and operate satellite earth terminal stations in the United States, but provides that this Commission may authorize ownership of earth stations by persons other than Comsat at any time it determines that such additional ownership will enhance the provision of maritime satellite services in the public interest.[5] The Act specifically requires Comsat to interconnect its earth stations with the facilities and services of U.S. domestic and interna-

[1] IMCO is a specialized agency of the United Nations established to provide an institutional basis for intergovernmental consultation and study of regulatory problems and technical matters involving international shipping and maritime safety.

[2] U.S. Government participation included representatives from this Commission, Department of State, Office of Telecommunications Policy (now the National Telecommunications and Information Administration), MARAD, U.S. Coast Guard, and NASA. In addition, the U.S. delegation included Congressional advisors from the House of Representatives.

[3] This dual agreement concept was adopted at the insistence of the United States because of longstanding U.S. policy to utilize commercial telecommunications facilities to the maximum extent feasible. The United States insisted that INMARSAT arrangements permit a member government to designate a private commercial entity which could assume full financial, technical and operational responsibility on behalf of that government, without government financial guarantee to INMARSAT.

[4] The Conference also established a Preparatory Committee to prepare recommendations on technical and operational matters related to the design and implementation of a maritime satellite communications system and institutional matters associated with the creation of an organization to manage the system. The Committee's work is necessary to permit INMARSAT an opportunity to make essential decisions with respect to technical, operational, organizational and economic matters as soon as possible after INMARSAT comes into being. U.S. participation in the Committee has been through this Commission, NTIA, Department of State, MARAD, and the U.S. Coast Guard, as well as through representatives of U.S. carriers and the maritime industry.

[5] The Act also provides for authorization of ownership and operation of satellite earth terminal stations by any person, including the Federal Government, for the exclusive purposes of training personnel in the use of equipment associated with the operation and maintenance of such stations, or in, carrying out experimentation relating to maritime satellite services.

tional common carriers, as authorized by this Commission, for the purpose of extending maritime satellite services to users in the United States and beyond.[6] In addition, it requires Comsat to interconnect its earth stations with the facilities and services of private communications systems, unless this Commission finds that such interconnection would not serve the public interest.

7. The act requires this Commission to (1) determine the operational arrangements under which Comsat will interconnect its earth stations with U.S. domestic and international carriers, and with private communications systems; (2) establish procedures for the continuing review of the telecommunications activities of Comsat as the U.S. designated entity in INMARSAT; (3) make recommendations to the President for the purpose of assisting him in issuance of instructions to Comsat;[7] and, (4) institute proceedings, grant authorizations, and prescribe rules as may be necessary to carry out the provisions of the Act. In addition, the Commission is to conduct a study of Comsat's corporate structure and activities to determine whether any changes are required to ensure that Comsat is able to fulfill its statuatory roles and obligations, and also to conduct a study of public maritime coast station services to determine what effect maritime satellite services will have on public coast station operations.

Scope of This Proceeding

8. This proceeding is initiated for three purposes. First, we seek comments from interested parties on the operational arrangements by which Comsat and U.S. domestic and international carriers interconnect their facilities for the purpose of extending maritime satellite services to users in the United States and beyond. We believe that such arrangements must promote operational and cost benefits that will result in efficient service at reasonable, nondiscriminatory charges to users. With this objective in mind, we are raising certain policy issues relating to ownership of satellite earth terminal stations, and we are making specific proposals regarding authorization of carriers to interconnect with Comsat to extend maritime satellite services to users in the United States and beyond. We invite interested parties to comment on these issues and proposals, or submit alternative proposals which better fulfill our fundamental policy objective.

9. Second, we seek comments from interested parties on the operational arrangements by which Comsat will interconnect its facilities and services with private communications systems authorized by this Commission. We are not making any specific proposals in this notice regarding such interconnection. Instead, we invite the views of current or prospective operators of private communications systems as to (1) their maritime communications needs, and (2) the advantages or benefits they foresee from interconnection of their facilities with those of Comsat to receive maritime satellite services. In addition, we invite the comments of all interested parties on the potential effects of such interconnection on international and domestic carriers accessing Comsat's facilities to provide common carrier maritime satellite services.

10. Third, we seek comments regarding regulatory safeguards with respect to Comsat's investment in INMARSAT. We believe that safeguards will be necessary to (1) assure that Comsat's participation in INMARSAT will not adversely effect its participation in INTELSAT, and (2) prevent Comsat from cross-subsidizing its maritime satellite services with its other communications services. We believe that the cost of any financial commitments Comsat makes in providing maritime satellite services should be borne by the users of such services and not the users of other communications services provided by Comsat. We expressed this view prior to the February, 1976 Intergovernmental Conference in a letter to the Secretary of State providing recommendations concerning the formation of an international maritime satellite organization.[8]

Operational Arrangements

A. Requirements of the Act

11. In enacting the Maritime Satellite Act, Congress recognized that maritime satellite services in the United States will essentially be an extension of existing domestic and international communications services, many of which are offered on a competitive basis by a number of carriers. H. R. Rep. No. 95-1134, Part 1, 95th Cong., 2d Sess. 11 (1978). Congress anticipated that maritime satellite services will be made available to customers on land over existing telephone, telegraph, telex and data systems connecting with maritime satellite earth terminal stations. However, given the very high start-up costs and a potentially limited market for maritime satellite services, the maritime satellite system itself will be operated as a single, integrated system, with little or no chance for duplicative or competitive systems to exist. S. Rep. No. 95-1036, 95th Cong., 2d Sess. 6 (1978). As a result, Congress concluded that the U.S. designated operating entity in INMARSAT would be the monopoly supplier of the U.S. space segment capacity obtained from that system, whether that entity is Comsat or a multi-carrier corporation comprised of competing carriers. *Id.*

12. Congress's selection of Comsat as the U.S. operating entity was based, in part, on a concern that an entity owned by carriers which also engage in the competitive pickup and delivery of maritime communications could result in arbitrary market segmentation, joint marketing of services, or discrimination against non-owners regarding interconnection to the satellite system. *Id.* Congress agreed with FCC Chairman Ferris that the fundamental policy issue before it was:

> how to ensure that the integrated satellite system is operated effectively and efficiently, while simultaneously preserving the present competitive environment for the pickup and delivery of maritime and other communications services, *Id;* quoting the testimony of Chairman Ferris,

and adopted his conclusion that:

> [i]t therefore may be desirable to designate an operating entity which neither owns nor is owned by any carrier which participates in the competitive pickup and delivery of the maritime communications services in the United States, *Id;* quoting the testimony of Chairman Ferris.

Congress sought to achieve this result and to effect economies of operation in the provision of the space segment portion of maritime satellite service by designating Comsat as the U.S. entity and requiring it to participate with U.S. domestic and international carriers in providing through services between ship stations and customers on land. See H. R. Rep. No. 95-1134 at 11.

13. The Act anticipates a "participating carrier" mode of operation in which Comsat is the sole provider of space segment capacity obained from INMARSAT and U.S. domestic and in-

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[6] The Act specifically forbids Comsat from interconnecting its earth terminal stations with the facilities and services of any common carrier, or other entity in which Comsat has an ownership interest.

[7] The Act requires the President to exercise supervision over and issue instructions to Comsat as may be necessary to ensure that Comsat's relationships and activities with foreign governments, international entities and INMARSAT are consistent with the U.S. national interest and foreign policy. It authorizes the Commission to issue instructions to Comsat with respect to regulatory matters within the Commission's jurisdiction. However, if an instruction of the Commission conflicts with an instruction of the President, the instruction of the President shall prevail.

[8] Letter to Secretary of State Kissinger from Chairman Wiley, January 27, 1976.

ternational carriers are limited to providing customer access to the satellite system by means of their onshore networks. S. Rep. No. 95-1036, at 9. Comsat is to ". . . receive and assemble maritime satellite traffic at earth stations and route outbound traffic over the satellite system to ship and other marine stations and inbound traffic to the appropriate carrier for terrestrial pickup and delivery to onshore points." In comparison to a "carrier's carrier" arrangement in which Comsat would only provide satellite transmission capacity to U.S. carriers authorized to provide end-to-end maritime satellite service, Congress anticipates that a "participating carrier" arrangement will (1) eliminate the layering of investment costs and operating and administrative expenses that would otherwise occur under a "carrier's carrier" arrangement and be passed on to customers, and (2) promote a more competitive environment for the provision of customer access to the satellite system. *See* S. Rep. No. 95-1036, at 10, and H. R. Rep. No. 95-1134 at 11.

B. OWNERSHIP AND OPERATION OF SATELLITE EARTH TERMINAL STATIONS

14. Consideration of U.S. INMARSAT earth stations presents three distinct threshold questions: (1) whether additional ownership of U.S. earth stations by "persons" other than Comsat would enhance the provision of maritime satellite services in the public interest; (2) what U.S. earth station facilities will be initially required to provide service via INMARSAT; and (3) what alternatives are available for providing such facilities. As for the first question, Section 503(c)(1) of the Act provides that Comsat "may own and operate satellite earth terminal stations in the United States." However, the Act also permits ownership of earth stations to be extended to "persons" other than Comsat. Section 503(f) provides:

> The Commission may authorize ownership of satellite earth terminal stations by persons other than the corporation at any time the Commission determines that such additional ownership will enhance the provision of maritime satellite services in the public interest.

15. Section 503(c)(1) appears to contemplate Comsat's ownership and operation of earth stations as a necessary part of an overall operational scheme for the interconnection of such stations with the onshore networks of U.S. domestic and international carriers, and with private communications systems, in order to extend maritime satellite services within the U.S. and beyond. This would be consistent with Comsat's role as the sole U.S. provider of space segment capacity obtained from INMARSAT, as provided for Section 503(c)(4) of the Act.

16. The Commission's power to authorize ownership of earth stations by "persons" other than Comsat pursuant to Section 503(f) is discretionary. Such authorization must be based on a determination that additional ownership will "enhance the provision of maritime satellite services in the public interest." The legislative history of the Act does not specify the precise meaning of this standard. However, it is clear that Congress did not wish to limit earth station ownership to Comsat if ownership by other "persons" will result in public interest benefits. Accordingly, we will consider earth station ownership by "persons" other than Comsat if such ownership will result in definitive operational and cost benefits to maritime customers. We will not authorize such ownership where it will detract from the efficient operation of the earth stations or increase costs to customers unless such factors are clearly outweighed by distinct compensating public interest benefits.

17. While we presently anticipate handling maritime earth station applications on a case-by-case basis, we do not wish to place any artificial limitations, restrictions or impediments on additional ownership of U.S. earth stations by "persons" other than Comsat. Accordingly, this proceeding will consider whether additional ownership of U.S. INMARSAT earth station facilities by "persons" other than Comsat will enhance the provisions of maritime satellite services in the public interest. Consequently, we are herein soliciting comments from interested parties which could result in establishing a record upon which such a general finding can be made regarding this issue.[9]

18. As for the second question, which adresses the problem of the number of stations necessary to provide service via INMARSAT, it is unclear whether only two U.S. earth stations will be initially required as are now being unitlized for MARISAT, whether more stations will be initially needed, and whether further additional stations will be needed in the future. While we anticipate that only a small number of earth stations will be initially required to provide service via INMARSAT, we note that Congress foresees that future growth in maritime satellite services may provoke a desire for more and less costly earth stations possibly owned by "persons" other than Comsat. See H.R. Rep. No. 95-1134, at

[9] We hasten to point out that such a finding would not be conclusive as to any particular applicant for any particular facilities, nor would such a finding be conclusive as to the need for any particular facilities or the number of stations accessing the INMARSAT system.

12. We do not wish to place any impediments on the number of earth stations which may be authorized in the United States, however, we are concerned that an unjustified proliferation of stations may result in unnecessary cost burdens being passed on to the user public. Additionally, we recognize that the question of the number of earth stations (separate from the ownership question) involves potential technical considerations, such as access to INMARSAT satellites and efficient use of frequencies on the international system, which will involve decisions by INMARSAT. We will consider the need for additional stations in the future, as we will consider ownership of particular facilities in individual earth station applications (see paragraph 17), on a case-by-case basis.

19. As for the third question, there appear to be three alternatives for providing initial earth station facilities:

(1) Earth stations that are now used for INTELSAT traffic; [10]

(2) Earth stations that are now used for MARISAT traffic; and

(3) New earth stations that would be constructed and dedicated for use by INMARSAT.

Each alternative poses certain policy questions with regard to earth station ownership and operation.[11]

20. The U.S. earth stations now used to handle INTELSAT traffic and those used to handle MARISAT traffic are already jointly owned by Comsat and other carriers. Pursuant to interim Commission policy, earth stations used for INTELSAT traffic are jointly owned by Comsat and U.S. international carriers which provide overseas communications services via the INTELSAT system. See *Ownership and Operation of Earth Stations, 5 F.C.C. 2d 812 (1966).*[12] Under this policy Comsat has fifty-percent interest in each earth station, and acts as manager of the stations, subject to overall control and guidance on basic policy and investment matters by all

[10] This alternative may be available if INMARSAT decides to lease Maritime Communications Subsystem (MCS) packages on three INTELSAT V satellites as part of a follow-on system to MARISAT.

[11] The ownership questions involved at this juncture are related to the ownership issue discussed in paragraphs 14-17 above, but do not directly impinge on the general question of whether additional ownership by persons other than Comsat would enhance the provision of maritime satellite service in the public interest.

[12] Initially, Comsat was the sole U.S. earth station licensee with undivided responsibility for design, construction and operation. *See Proposed Global Commercial Satellite System,* 38 F.C.C. 1104 (1965). Thereafter, the Commission modified its policy to provide for joint ownership. *See Ownership and Operation of Earth Stations, supra.*

licensees through the Earth Station Ownership Committee (ESOC consists of one representative from each joint licensee). The remaining interest in each earth station is divided among the other carriers in accordance with their use of the stations. Because joint ownership of these stations is an accomplished fact pursuant to definitive Commission policy, made in connection with their use for INTELSAT traffic, it is unclear whether their use for INMARSAT traffic would be consistent with the intent and meaning of Sections 503(c) and 503(f) of the Act. We believe the following questions must be considered:

(1) Would use of these stations for handling INMARSAT traffic under their current ownership arrangements first require Commission determination that such use would "enhance the provision of maritime satellite services in the public interest?" If so, would their use offer definitive operational and cost benefits to maritime customers?

(2) What modifications would be required in these stations to (1) handle INMARSAT traffic, and (2) accommodate the operational arrangements we are proposing in this proceeding concerning interconnection with the on-shore networks of U.S. domestic and international carriers, and with private communications systems? What would be the costs of such modifications and how would the costs be allocated?

(3) Would the use of any of these stations to handle INMARSAT traffic require any changes in existing arrangements for their ownership and operation in connection with the INTELSAT system?

(4) What additional operational and cost allocation arrangements will be required to make these stations available to Comsat for the purpose of providing maritime satellite services via INMARSAT? Should Comsat be required to pay the joint licensees a periodic rental rate or some form of use charge?

21. The two U.S. earth stations now used for MARISAT traffic are jointly owned by members of the MARISAT consortium [13] and are co-located with domestic satellite earth stations licensed to COMSAT General. *See Comsat General Corporation, et al.*, 59 F.C.C. 2a 386, at 387 (1976). These stations consist of dedicated antennas for domestic and MARISAT traffic (plus one backup antenna) and certain common integrated facilities. The propsect of using these stations for IN-MARSAT traffic poses the following questions:

(1) Should Comsat become the sole licensee of these stations for the purpose of handling INMARSAT traffic once MARISAT is no longer operational? Would Comsat's sole ownership and operation of the stations offer definitive operational and cost benefits for maritime customers?

(2) Should the current ownership and licensing arrangements be continued? Would maintaining these arrangements "enhance the provision of maritime satellite services in the public interest?"

(3) What modifications would be required in these stations to (1) handle INMARSAT traffic, and (2) accommodate the operational arrangements we are porposing in this proceeding for interconnection with on-shore networks? What would be the costs of such modifications and how would the costs be allocated if the current joint ownership arrangement is maintained?

(4) If Comsat should become the sole owner and operator of the stations, how should common costs, and facilities be allocated between maritime and domestic satellite services for ratemaking purposes?

(5) Should other "persons" in addition to Comsat and the current licensees be eligible to become joint owners in these stations?

22. If dedicated earth stations are constructed, or if ownership of the two MARISAT stations is opened to "persons" in addition to Comsat and the current joint licensees, the following questions should be addressed:

(1) What "persons" should be eligible for ownership and what standards should determine ownership eligibility? Should only common carriers be eligible for ownership, or should ownership of private communications systems or other users of maritime satellite service be eligible?

(2) Which common carriers other than Comsat should be eligible for earth station ownership? Should only those carriers which are authorized to interconnect their on-shore networks with Comsat's facilities and services be eligible or should "connecting carriers" (e.g. independent telephone companies) also be eligible for ownership?

(3) Would the Western Union Telegraph Company be eligible for earth station ownership if it is authorized to interconnect its network with Comsat's facilities and services, or would it be barred by Section 222 of the Communications Act of 1934 from such ownership? Should other domestic carriers which provide specialized common carrier services be eligible for each station ownership if they are authorized to interconnect their networks with Comsat's facilities and services?

(4) If earth station ownership is extended to "persons" other than Comsat, on what basis should ownership shares be determined? Should ownership shares of common carriers be related to the level of traffic each provides to the maritime satellite system? Should a minimum or maximum level of earth station investment be set? If so, what should Comsat's investment be? If not, how would their ownership shares be determined?

(5) Would earth station ownership by carriers other than Comsat vest in those carriers the right to exercise a measure of operational control of the stations? Would such control be permitted under the Act? If so, what would be the nature of such control and how would it be exercised? Would joint operational control of earth stations between Comsat and other carriers result in increased administrative and other costs that would be passed on to customers? How would that control affect Comsat's role as the sole U.S. provider of INMARSAT space segment capacity?

(6) If non-common carriers are permitted to retain ownership in earth stations that are used to provide common carrier services, should they be permitted a measure of operational control over those stations? If so, what would be the nature of such control and how would it be exercised?

C. AUTHORIZATION OF ON-SHORE INTERCONNECTION

23. We propose a policy permitting any U.S. domestic or international common carrier to seek authorization to provide terrestrial access to the maritime satellite system by direct interconnection with Comsat's facilities. Such a policy would permit customers the opportunity to seek alternative means of accessing the satellite system among a variety of carriers. As a result, we anticipate that (1) innovative and specialized record and data communications services developed for customers with domestic or international communications needs will also become available to customers with maritime communications needs, and (2) growth in maritime satellite services will be promoted. We do not believe that limiting carrier interconnection to only those carriers now providing maritime communications (via MARISAT or public coast stations) would serve the public interest. Such an artificial restriction would preclude other domestic and international carriers from directly interconnecting their onshore networks with the earth stations and require them to indirectly connect their networks with those of authorized maritime carriers in order to access the satellite system. This could involve unnecessary operational complexities and result in greater costs being passed on to customers.

[13] COMSAT General; RCA Global Communications, Inc.; ITT World Communications, Inc.; Western Union International.

Telex and Telegraph Services

24. We anticipate that the International Record Carriers (IRCs) will directly interconnect their international teleprinter networks with the earth stations to provide their customers access to the satellite system for telex and message telegraph services.[14] Additionally, we anticipate that Western Union will directly interconnect its Telex, and TWX networks with the earth stations to provide its customers with access to the satellite system for telex and message telegraph services. We believe that direct interconnection of Western Union's network to the earth stations will offer two benefits to Western Union's customers. First, it will eliminate costs that would otherwise be passed on to customers if Western Union is required to route traffic through the networks of other carriers authorized to provide customer access. Such costs would include those incurred by authorized carrriers for use of their switching equipment and circuitry, plus any administrative costs they may incur in routing Western Union traffic over their networks to Comsat's earth stations. We expect that cost savings would be reflected through Western Union's charges to customers. Second, direct interconnection will avoid opportunities for circuit trouble that would otherwise be created by introducing an additional network into routing traffic between Western Union's facilities and the earth stations. The introduction of an additional network would add an unnecessary degree of operational complexity to a function that could be accomplished at potentially less customer cost by direct interconnection of Western Union's network with the satellite system.

AVD and Other Specialized Services

25. Under the policy we propose, specialized U.S. domestic and international carriers, as well as AT&T and the IRCs, will have the opportunity to directly interconnect their networks with the satellite system in order to offer to maritime customers the various AVD and other specialized data, facsimile and record services they competitively provide to domestic and international communications customers.[15] In the future, we anticipate that specialized voice, record and data services will become even more competitive and innovative, with new carriers seeking to enter the market. We believe that these services should be available to maritime customers as well as other communications users. The cost to the customer for such services can be made more attractive by (1) direct interconnection of specialized carriers' networks to the earth stations, or (2) customer lease of voice-grade channels from domestic carrriers directly connecting his office to the earth stations. For instance, direct interconnection of specialized carriers' networks could result in cost cutting benefits to customers similar to those resulting from direct interconnection of Western Union's network to the earth stations. And, lease of voice-grade channels connecting a customer's office with the earth station would permit customers with particular communcations needs a further opportunity to minimize the cost of accessing the satellite system. In order to promote the use of the maritime satellite system for specialized communications services, Comsat could assist the customer in obtaining voice-grade channels from a carrier that would fulfill the customer's particular needs.

Telephone Service

26. Maritime satellite telephone service will be provided by interconnection of the earth stations with the nationwide switched telephone network. We anticipate that telephone service would be offered on a fully automated basis, allowing direct dial of both ship-to-shore and shore-to-ship calls. A maritime satellite call would be handled essentially like an international telephone call (IDDD), with charges for calls appearing on a customers regular telephone bill.

SAFEGUARDS AGAINST CROSS-SUBSIDIZATION

27. As indicated in paragraph 10 above, we seek to establish regulatory safeguards with respect to Comsat's investment in INMARSAT for two reasons. First, Comsat's participation in INMARSAT should not be permitted to adversely affect its participation in INTELSAT or futherance of the objectives set forth in Section 102 of the Communications Satellite Act. Second, Comsat's provision of maritime satellite services should not be cross-subsidized with other communications services it provides. Both the Communications Act and the Communications Satellite Act, as well as the Maritime Satellite Act, gives the Commission authority to take necessary measures to protect the public interest against such potentialities. We believe that Comsat's participation in INMARSAT and the immediate economic prospects for that organization require the exercise of this authority.

28. INMARSAT will necessarily involve substantial capital investment which will ultimately be passed on to ratepayers. The INMARSAT Convention and the Operating Agreement provide that each signatory or its designated entity shall contribute to the capital requirements of the organization and shall have a financial interest in proportion to its investment share. An initial capital ceiling of $200 million has been set by the Operating Agreement. The investment share of Comsat as the U.S. designated entity is 17 percent, or $34 million.[16] This does not include whatever investment costs for earth stations and other operational and administrative expenses Comsat will incur. After commencement of operation of an INMARSAT satellite system, investment shares will be periodically redetermined in accordance with the Operating Agreement on the basis of utilization of space segment.

29. Further, although maritime satellite service offers Comsat the potential for significant future earnings, the immediate prospects for an economically viable maritime satellite system appear uncertain. The Economic, Marketing and Financial Panel of the INMARSAT Preparatory Committee does not expect total cumulative INMARSAT revenues to equal total cumulative INMARSAT costs until the late 1980's at the earliest.[17] Even this projection may be optimistic. There is reason for concern that initial losses may not be recouped until after that date. The revenue forecasts upon which the projection is predicated were developed from traffic forecasts based on a number of critical assumptions made because of (1) a lack of meaningful historical information on maritime satellite usage, and (2) the

[14] Essentially, "telex" service is a customer-to-customer switched record service using telegraph-grade connecting circuits and having a two-way communications capability. Telex is a time-measured service, while telegram or "message telegraph service" is measured by word count. Section 222(a) of the Communications Act premits the IRCs to provide international telex and message telegraph services from cities approved by the Commission as gateways. Currently, there are five cities being utilized as gateways for telex: New York, Washington; Miami; New Orleans; and San Francisco. ITT, RCA, TRT and WUI are authorized to pickup and deliver international record services in each of these cities.

[15] Alternate voice data (AVD) service consists of leased channels, each with sufficient bandwidth so that it may be used for voice communications, or, with appropriate equipment, for record communication. Facsimile essentially involves the electronic transmission and reproduction of documents, in which an image is scanned at a transmitter, reconstructed at a receiving station, and then duplicated on paper.

[16] Comsat has stated its intention to (1) increase its investment share from 17 to 30 percent, and (2) subscribe in May, 1979, to any additional investment share necessary to meet the requisite 95% of initial investment shares required by the INMARSAT Convention in order to bring INMARSAT into existence.

[17] *See* Report of the Fourth Session of the Economic, Marketing and Financial Panel, Prepcom/Econ/Report 4, July 7, 1978, submitted to the INMARSAT Preparatory Committee, July 13, 1978.

failure of countries representing an estimated 50 percent of the world's vessels to report any traffic estimates for future maritime satellite usage by their vessels. The Panel of course cannot be faulted for the substantial data problems it faced. Nevertheless, the uncertainty of the assumptions made renders doubtful the Panel's traffic and revenue forecasts, and ultimately its breakeven projection.

30. We are therefore concerned that the costs of financial commitments undertaken by Comsat, as the U.S. operating entity in INMARSAT, not be passed on to users of communications services other than maritime satellite services. Comsat may not properly consider such costs in determining rates for other communications services it offers. This view is consistent with our general policy that the costs of providing a service is at the heart of the statutory requirements of Sections 201 through 205 for just, reasonable and nondiscriminatory rates and that costs are to be directly controlling in rate setting, or are to be considered as the reference point or benchmark from which to measure departures from this basis.[18] And, we believe that it is consistent with our prior determination that cross-subsidization between services is generally inimical to the public interest.[19]

31. In keeping with our statutory mandate under the Communications Act to ensure carrier accountability for rates, charges and practices, we intend to provide a mechanism to guard against any cross-subsidization of maritime satellite services with other communications services Comsat provides. There are several possible approaches for the Commission to track and prevent or correct cross-subsidization. These include, but are not necessarily limited to: (1) requiring Comsat to establish a separate subsidiary for maritime satellite services; (2) changing elements of the basic structure and operation of Comsat without a separate subsidiary for maritime; (3) requiring Comsat to establish a separate system of accounts for maritime satellite services; and (4) a combination approach. A separate subsidiary or a structural/operational change in Comsat could insure arms-length dealings with regard to Comsat's provision of maritime services. A separate system of accounts would enable this Commission to isolate Comsat's costs associated with the provision of maritime satellite services from other communications services, and to compare those costs with the revenue received for maritime satellite services. We believe that these approaches may offer the potential for reasonable assurances that any losses Comsat may incur in initially providing maritime satellite service are not passed on to its non-maritime customers. We invite comments from interested parties concerning these approaches and any other regulatory measures which they believe should be taken to guard against cross-subsidization. We will not propose specific subsidiary arrangements, structural changes, or maritime accounting rules at this time, but will examine the results of our Comsat Study (see paragraph 7) to determine whether such measures should be applied to Comsat.

32. For purposes of this proceeding, we request Comsat to indicate by what means it intends to fund its initial INMARSAT investment and how it intends to treat any losses it may sustain during initial maritime satellite operations. We are particularly concerned as to what effect such investment or any initial losses may have on its INTELSAT obligations and provision of INTELSAT services. We also request that Comsat provide a breakdown of all costs, including, but not limited to, operational, administrative, equipment, and hardware costs it expects to incur in providing maritime satellite service and participating in the INMARSAT organization. Comsat should identify the common costs, joint costs, and overhead costs it expects to incur, and indicate how they will be allocated or accounted for between corporate organizational units and the service they provide. This information will also provide initial input for our analysis of Comsat in our Comsat in our Comsat Study—particularly with regard to Comsat's authority and obligations to INMARSAT vis-a-vis INTELSAT.

Need for Compliance With Procedural Schedule

33. The Maritime Satellite Act requires that we make an initial determination of the operational arrangement under which Comsat will interconnect with domestic and international carriers, and with private communications systems and transmit a report to Congress concerning such determination, no later than May 1, 1979. Our initial report will be limited to operational arrangements for interconnection. This will fulfill the specific requirement of the Act. We will treat the question of earth station ownership in a subsequent report when it can be determined which U.S. earth stations will be used for initial INMARSAT services.

34. In view of the Act's requirement, we will strictly adhere to the procedural guidelines established in this Notice. Extensions of time for filing comments and reply comments will not be granted, except in extraordinary situations upon good cause as outlined in the Public Notice (No. 6963) of September 5, 1978. We instruct the Chief, Common Carrier Bureau to supplement the record by obtaining information necessary for the conduct of this proceeding and preparation of a report to Congress. We expect full cooperation from Commission licensees in providing any information, completely and expeditiously, that may be so requested.

35. Accordingly, *It is ordered*, That, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 154(j) (1971) and Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b) (1970), a rule making into the above-captioned matter is instituted.

36. *It is further ordered*, That, interested parties may file comments concerning the proposals made in paragraphs 23 through 26 above on or before March 19, 1979, and reply comments on or before March 30, 1979.

37. *It is further ordered*, That interested parties may file comments concerning all other matters raised in this Notice on or before April 23, 1977, and reply comments on or before May 8, 1979.

38. *It is further ordered*, That, in accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments, responses, replies or other pleadings provided for herein. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of responses filed in this proceeding shall be available for public inspection during regular business hours in the Commission's Reference Room at its headquarters at 1919 M Street, N.W., Washington, D.C.

Federal Communications Commission,

William J. Tricarico,
Secretary.

[FR Doc. 79-6942 Filed 3-6-79; 8:45 am]

[18] *Private Line Rate Cases*, 34 F.C.C. 244, 297 (1961), 34 F.C.C. 217, 231 (1963); *Re WATS, 35 F.C.C. 149, 153-56 (1963); Re WATS, 37 F.C.C. 695, 698 (1964); Re Part 61 of the Rules, 25 F.C.C. 957, 965, (1970), 40 F.C.C. 2d 149, 154 (1973); Re 48 kHz, 29 F.C.C. 2d 493 (1971); Hi-Lo, 55 F.C.C. 2d 224, 241 (1975), 58 F.C.C. 2d 362, 266 (1976); Re WATS, 59 F.C.C. 2d 671, 678 (1976); 64 F.C.C. 2d 538 (1977); AT&T Private Line Rate Cases, 61 F.C.C. 2d 587, 607 (1976); 64 F.C.C. 2d 971 (1977).*

[19] *AT&T Private Line Cases*, 61 F.C.C. 2d 587, 609 (1978).

[6712-01-M]

[47 CFR Part 97]

[SS Docket No. 79-22; FCC 79-95]

AMATEUR EXTRA CLASS LICENSE

Eliminating Granting of Credit Toward the Telegraphy Portion of Examination to Former Holders of the Amateur Extra First Class License

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to delete § 97.25(d) from its Rules. This provides credit toward the telegraphy portion of the Amateur Extra Class license examination to holders of the former Amateur Extra First Class license and its successor licenses.

DATES: Comments shall be filed by April 30, 1979, and Reply comments shall be filed by May 30, 1979.

ADDRESSES: Comments shall be filed with: Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mr. Philip W. Savitz, Personal Radio Division, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Adopted: February 14, 1979.

Released: February 27, 1979.

By the Commission: Commissioner Quello absent.

1. In accordance with the Administrative Procedure Act, 5 U.S.C. 553, and § 1.412 of the Commission's Rules, the Commission hereby gives Notice of Proposed Rule Making in the above captioned matter.

2. During the period from June 1923 to June 1933 the Federal Radio Commission issued Amateur Extra First Class operator licenses. Subsequently, the equivalent license issued by the Federal Communications Commission was designated "Class A," and then "Advanced."

3. In 1952 the Commission created the Amateur Extra Class license. Obtaining this license requires successful completion of written examinations in nine areas of basic, general, intermediate and advanced amateur practice. These written examination requirements are much more stringent than those associated with the Amateur Extra First Class license. However, the telegraphy proficiency requirement for the Extra First license was 20 words per minute, which is the same as the current requirement for the Amateur Extra Class license.

4. Recognizing this identical telegraphy requirement, the Commission, in its Report and Order in Docket No. 19163, released on September 13, 1972, amended § 97.25(d) of its Rules to provide that credit for the telegraphy portion of the Amateur Extra Class examination be granted to applicants who present proof of having continuously held the Amateur Extra First Class license and its successor licenses.

5. Section 97.25(d) has now been in effect for more than six years. Recently, the number of persons seeking examination credit pursuant to this provision has declined to the point where such an application is now a rarity. As it appears that § 97.25(d) has become obsolete, the Commission is proposing its deletion from the Rules, effective six months from the adoption of such an order. This delay will give any former holder of the Amateur Extra First Class license who may remain a final opportunity to receive telegraphy credit toward the Amateur Extra Class examination.

6. The specific rule amendments we are proposing are set forth below. Authority for these proposals is contained in Sections 4(i), 5(e), and 303 of the Communications Act of 1934, as amended. We invite interested parties to submit comments concerning our proposals on or before April 30, 1979, and reply comments on or before May 30, 1979. An original and five copies of all comments and reply comments shall be furnished the Commission, pursuant to § 1.419 of the Rules. Respondents wishing each Commissioner to have a personal copy of the comments may submit an additional six copies. Members of the public wishing to express interest in our proposals but unable to provide the required copies may participate informally by submitting one copy of their comments, without regard to form, provided the correct Docket number is specified in the heading of the comments. All comments and reply comments filed in this proceeding should be sent to the Secretary, Federal Communications Commission, Washington, D.C. 20554.

7. Individuals wishing to inspect the comments and reply comments filed in this proceeding may do so during regular business hours, 8:00 A.M. to 5:30 P.M., Monday through Friday, in the Commission's Public Reference Room, 1919 "M" Street, N.W., Washington, D.C. 20554.

8. For further information contact Mr. Philip W. Savitz, Personal Radio Division, FCC, 1919 "M" Street, NW, Washington, D.C. 20554, (202) 632-7175.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

The Federal Communications Commission proposes to amend Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations as follows:

§ 97.25 [Amended]

1. In § 97.25 paragraph (d) is deleted and paragraph (e) is redesignated as paragraph (d).

[FR Doc. 79-6917 Filed 3-6-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1082]

[Ex Parte No. 362]

AIR FREIGHT FORWARDER RESTRICTIONS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to delete 49 CFR 1082.1, because it restates the provisions of the Interstate Commerce Act (49 U.S.C. 10921) which prohibit air freight forwarders from conducting operations which are subject to the provisions of the Act without a permit from the Interstate Commerce Commission.

DATES: Comments must be filed by April 6, 1979.

ADDRESS: Send comments to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Martin E. Foley, Director, Bureau of Traffic, 202-275-7348.

SUPPLEMENTAL INFORMATION: 49 CFR 1082.1 is, in effect, an exemption from the licensing provisions of former Part IV of the Interstate Commerce Act for the air-truck intermodal operations of air freight forwarders (also known as indirect air carriers which at this time are still regulated by the Civil Aeronautics Board under the provisions of the Federal Aviation Act). The current rule has provisions, largely duplicative of those in 49 U.S.C. 10921, which serve to prevent the air freight forwarder from conducting operations as a surface freight forwarder without a permit from the Commission. Many air freight forwarders do, in fact, hold permits from the Commission authorizing them to conduct forwarding operations subject to the Interstate Commerce Act.

We see no need to retain a regulation which essentially is redundant of the provisions of the statute. Further,

paragraph (c) of the regulation is unnecessarily restrictive. We find that 49 U.S.C. 10921 does not preclude an air freight forwarder from collecting a fee for having advanced the charges of the motor carrier—a routine service requested by many shippers. We propose to delete 49 CFR 1082.1 entirely to encourage the development of intermodalism.

The proposed action does not appear to constitute a major federal action requiring the preparation of an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

Interested persons are invited to comment (in duplicate) on or before April 6, 1979.

This notice of proposed rulemaking is issued pursuant to sections 553 and 559 of the Administrative Procedure Act (5 U.S.C. 553 and 559), former sections 203 and 204 of the Interstate Commerce Act (49 U.S.C. 10102, 10342, 10521, 11101, and 10321), and section 1003 of the Federal Aviation Act of 1958 (49 U.S.C. 1003).

Dated: February 9, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown absent and not participating.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-6905 Filed 3-6-79; 8:45]

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.

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 34507; Order 79-3-2]

EL AL ISRAEL AIRLINES, LTD.

Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause: Order 79-3-2.

SUMMARY: The Board proposes to approve the following application:

Applicant: El Al Airlines Limited; Docket: 34507.

Application date: January 17, 1979.

Authority sought: El Al requests authority to serve Miami and Chicago, to conduct beyond service from New York or Miami to Mexico City, Mexico, and to perform charter flights in accordance with the terms of the August 1978 U.S.-Israel Protocol. The Board proposes in addition to authorize El Al to conduct charters not covered by the bilateral agreement, under U.S. rules which currently would not require El Al to secure prior approval by the Board for those flights.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN March 23, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Israel. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

ADDRESSES FOR OBJECTIONS:

Docket 34507, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Ruth J. Weinstein, Esq., Hale, Russell, Gray, Seamon & Birkett, 122 East 42nd Street, New York, N.Y. 10017.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT:

Robert W. Kneisley, Legal Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5035.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-6906 Filed 3-6-79; 8:45 am]

[6320-01-M]

[Order 79-3-8; Docket 34884]

UNITED AIR LINES, INC.

Order of Investigaion and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of March 1979.

By tariff revisions [1] marked to become effective March 31, 1979, United Air Lines, Inc. (United) proposes to amend its denied boarding compensation rules to provide that it will not pay compensaion to those passengers involuntarily denied boarding when the seating capacity of the aircraft is unexpectedly reduced due to inoperative emergency evacuation doors and slides which render certain passenger seats unusable.

United states that when an emergency door or slide is inoperative, it is necesary for it to block off seaing in certain sections of the aircraft in order to maintain evacuation capability of the aircraft. This reduced seating can result in denying boarding to some passengers holding reservations. It alleges that this sitution cannot be foreseen sufficiently in advance to limit the number of reservations accepted, and therefore it believes that it should not be penalized for such denied boardings. It further alleges that this situation is entirely analogous to the substitution of a different aircraft of lesser capacity when required by operational or safety reasons and that the Board does not require payment of compensation to displaced passengers when such a substitution occurs.

No complaints have been filed.

The Board finds that United's proposal may be unlawful and should be investigated. The Board further concludes that the proposal should be suspended pending investigation.

We find that the operational problem for which United seeks an exception is closely analogous to the types of operation problems, *i. e.* extraordinary fuel requirements and reduction in allowable takeoff or landing weight or reasons beyond the carrier's control (high summer temperatures, etc.), for which the carriers sought, and were denied exeption from the requirement to pay denied boarding compensation (DBC) when Part 250 was adopted.[2] There we said that occasional operational problems are to be expected in the normal course of operations. Passengers involuntarily denied boarding in these situations are no less inconvenienced than those passengers bumped because of overbooking and deserve compensation.

We also recently denied a request of Hawaiian Airlines to be excused from paying DBC when it had to bump passengers in order to carry emergency stretcher patients.[3] We see no reason, as we said in the stretcher case, why the DBC cost arising from the need to preempt seats in an emergency situation, or the cost resulting from operational problems of the type cited by United should not be spread to all passengers (DBC is a cost to the carrier which is reflected in the fare level) rather than be absorbed by the passengers bumped.

Accordingly, pursuant to sections 102, 204(a), 403, 404, and 1002, of the Federal Aviation Act of 1958:

1. We institute an investigation to determine whether the provisions set forth in Appendix A insofar as they apply on interstate and overseas transportation, and rules, regulations, and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to the unlawful, to determine and prescribe the lawful provisions, and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the tariff provisions specified in Appendix A insofar as they apply on interstate and overseas air transportation are suspended and their use deferred to and including

[1] Revisions to Airlines Tariff Publishing Company, Agent, Tariffs C.A.B. Nos. 142, 175, 248 and 294.

[2] ER-503, August 3, 1967.

[3] Order 79-1-44, January 5, 1979.

June 28, 1979, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board; and

3. Copies of this order shall be filed with the tariffs, and served upon United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A

TARIFF C.A.B. NO. 142, ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT

On 3rd and 4th Revised Pages 178-W, subparagraph 3 to Exception 1 in Rule 382(X)(5)(a).

On 1st Revised Page 178-Y, subparagraph (4) in the portion of Rule 382(X)(6) entitled Compensation for Involuntary Denied Boarding.

TARIFF C.A.B. NO. 175, ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT

On 3rd and 4th Revised Pages 90, subparagraph 3 to Exception 1 in Rule 100(X)(5)(a).

On 1st Revised Page 92, subparagraph (4) in the portion of Rule 100(X)(6) entitled Compensation for Involuntary Denied Boarding.

TARIFF C.A.B. NO. 248, ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT

On 3rd and 4th Revised Pages 44-H, subparagraph 3 to Exception 1 in Rule 382(X)(5)(a).

On 1st Revised Page 44-J, subparagraph (4) in the portion of Rule 100(X)(6) entitled Compensation for Involuntary Denied Boarding.

TARIFF C.A.B. NO. 294, ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT

On 2nd and 3rd Revised Pages 66-O, subparagraph 3 to Exception 1 in Rule 382(X)(5)(a).

On 4th Revised Page 66-Q, subparagraph (4) in the portion of Rule 382(X)(6) entitled Compensation for Involuntary Denied Boarding.

[FR Doc. 79-6907 Filed 3-6-79; 8:45 am]

[4] All Members concurred.

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

PROPOSED INLAND ENERGY IMPACT ASSISTANCE ACT OF 1979

Notice of Environmental Impact Scoping Meeting

Notice is hereby given that the Economic Development Administration (EDA) of the U.S. Department of Commerce will conduct an environmental impact scoping meeting in regard to the preparation of an environmental impact statement for the proposed Inland Energy Impact Assistance Act of 1979.

The proposed legislation will provide financial and technical assistance to States and Indian tribes. Such assistance will be used to help local communities anticipate, plan for, and finance public works construction and other activities needed to mitigate adverse impacts resulting from increased energy resource development. Under certain circumstances assistance will be provided directly to local communities to meet special emergency needs associated with energy resource development.

The purpose of the scoping meeting is to identify issues which should be considered in the Environmental Impact Statement.

The Economic Development Administration invites all parties who might have an interest in the proposed legislation to attend and assist in the identification of environmental issues and concerns regarding the proposed legislation.

The scoping meeting will be held on March 12, 1979, at 10:15 p.m. in the Wyer Auditorium of the Denver Public Library, 1357 Broadway, Denver, Colorado.

Dated: March 1, 1979.

ROBERT HALL,
Assistant Secretary for Economic Development.

[FR Doc. 79-6869 Filed 3-6-79; 8:45 am]

[3510-24-M]

SEVEN PRODUCING FIRMS

Petitions for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from seven firms: (1) Poly-Quip, Inc., P. O. Box 56, St. Joseph, Tennessee 38481, a producer of tire retreading equipment and supplies (accepted February 15, 1979); (2) Sokol Crystal Products, Inc., Highway 18 East, Dodgeville, Wisconsin 53533, a producer of quartz crystals and other electronic products (accepted February 16, 1979); (3) Royal Down Products, Inc., 101 North Front Street, Belding, Michigan 48809, a producer of down outerwear and sleeping bags (accepted February 26, 1979); (4) F. W. Fischer Company, Inc., 520 Eighth Avenue, New York, N.Y. 10018 a producer of children's coats (accepted February 27, 1979); (5) Penobscot Shoe Company, 450 North Main Street, Old Town, Maine 04468, a producer of men's and women's shoes (accepted February 28, 1979); (6) G & S Handbag Manufacturing Company, Inc., 44 West 28th Street, New York, New York 10001, a producer of handbags (accepted February 28, 1979); and (7) Climette, Inc., 131 West 33rd Street, New York, New York 10001, a producer of children's jackets and coats (accepted February 28, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business March 19, 1979.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-6755 Filed 3-6-79; 8:45 am]

[3510-24-M]

Office of the Secretary

NBS VISITING COMMITTEE

Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and under the authority of, and as directed by statute, the Secretary of Commerce has authorized the renewal of the charter of the National Bureau of Standards Visiting Committee.

The NBS Visiting Committee was first established by Section 10 of the Act of March 3, 1901, which created the National Bureau of Standards. Its statutory purpose is to advise and report to the Secretary of Commerce upon the efficiency of the Bureau's scientific work and the condition of its equipment. The Committee's recommendations have significantly contributed to the overall operations of the institution.

As legally required, the Committee will continue with a balanced representation of five members prominent in the fields of science, engineering, or technology who are not in the employ of the U.S. Government. Balance on the Committee is achieved by maintaining representation from both the business and academic communities

and by consideration of primary technical interest (e.g., physic, chemistry, engineering). The appointment of each member of the Committee is for five years and the periods of service are so arranged so that one member retires each year. The Chairperson of the Committee is appointed by the Secretary of Commerce and is ordinarily the senior member in terms of service.

The NBS Visiting Committee is uniquely suited to evaluate overall operations and equipment of NBS from an external point of view and report to the Secretary of Commerce. Its function cannot be accomplished by any organizational element or other committee of the Department.

The Visiting Committee functions solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of the Congress.

Inquiries or comments may be addressd to the Committee Control Officer, Ms. Kathryn J. Byerly, Office of the Director, Administration Building, Room A-1111, National Bureau of Standards, U.S. Department of Commerce, Washington, D.C. 20234, telephone: 301 921-3413.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary for Administration.

FEBRUARY 28, 1979.

[FR. Doc. 79-6870 Filed 3-6-79; 8:45 am]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

PROPOSED FUTURES CONTRACTS

Availability

The Commodity Futures Trading Commission ("Commission") is making available and requesting public comment on nine proposed futures contracts:

From the Amex Commodities Exchange

1. A 90-Day U.S. Treasury Bills contract;
2. A 20-Year U.S. Treasury Bonds contract;
3. A 5-7 Year U.S. Treasury Notes contract; and
4. A 90-Day Certificates of Deposit contract.

From the Chicago Board of Trade

5. A 4-6 Year U.S. Treasury Notes contract.

From the Commodity Exchange, Inc.

6. A 3-Month U.S. Treasury Bills contract;
7. A 1-Year U.S. Treasury Bills contract;
8. A 2-Year U.S. Treasury Notes contract; and
9. Government National Mortgage Association Certificates contract.

These Exchanges have applied to the Commission, pursuant to section 6 of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 8 (1976), for contract market designation to trade futures contracts in these nine commodities under sections 5 and 5a of the Act, 7 U.S.C. 7 and 7a (1976).

Copies of these proposed contracts will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco. The Commission will also furnish copies upon request made to the Executive Secretariat.

Any person interested in expressing views on the terms and conditions of any of these proposed contracts should send comments by April 6, 1979 to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581. (202) 254-6313. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington on March 2, 1979.

GARY L. SEEVERS,
Acting Chairman.

[FR Doc. 79-6926 Filed 3-6-79; 8:45 am]

[6351-01-M]

PROPOSED FUTURES CONTRACT

Availability

The Commodity Futures Trading Commission ("Commission") is making available and requesting public comment on a Plywood—Southern Delivery futures contract submitted by the Chicago Board of Trade.

Copies of this proposed contract will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco. The Commission will also furnish copies upon request made to the Executive Secretariat.

Any person interested in expressing views on the terms and conditions of this proposed contract should send comments by April 6, 1979 to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. (202) 254-6313. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington on March 2, 1979.

GARY L. SEEVERS,
Acting Chairman.

[FR Doc. 79-6927 Filed 3-6-79; 8:45 am]

[3810-71-M]

DEPARTMENT OF DEFENSE

Department of the Navy

PROPOSED NEW REGIONAL MEDICAL CENTER, SAN DIEGO, CALIF.

Public Hearing and Availability of Draft Environmental Impact Statement

Notice is hereby given that a public hearing will be held for the purpose of receiving oral and written comments concerning the Draft Environmental Impact Statement (DEIS) for the proposed replacement of the Naval Regional Medical Center, San Diego, California. The purpose of the project is to replace the present substandard facilities with a modern Naval Regional Medical Center. The public hearing will be held on March 21, 1979, at 7:00 p.m. in the Silver Room of the Convention and Performing Arts Center at 202 "C" Street, San Diego, California.

A short presentation describing the project and its expected environmental impact will be made at the beginning of the session, followed by an opportunity for public comment. Interested individuals, representatives of organizations, and public officials wishing to make oral comments regarding the DEIS are invited to attend and participate in the hearings. Persons wishing to speak may register in advance by contacting either of the following:

Commanding Officer (Code 201), Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, CA 94066, Telephone number (415) 877-7546.

Director, San Diego Branch, Western Division, Naval Facilities Engineering Command, 1220 Pacific Coast Highway, San Diego, CA 92132, Telephone number (714) 235-3881.

Speakers may also register on the evening of the hearing by filling out a registration card at the door. Oral statments at the hearing may be limited in length if there are a large number of speakers. In any case, lengthy comments should be submitted in writing and summarized orally. Only registered speakers will be recognized. Written comments are not required, but are strongly preferred to ensure accuracy of the record and appropriate Navy response in preparing the final EIS. All presentations (including those received separately from the public hearing) will be made a part of the project record and included within the final EIS along with Navy response to each comment.

Written comments concerning the DEIS will be served by the Western Division, Naval Facilities Engineering Command at the above address at any time before or after the Public Hearing until March 30, 1979.

Copies of the DEIS have been made available to the Citizens Comprehensive Planning Organization (CCPO) of San Diego for public review. Additionally, copies of the DEIS are available for public inspection at the San Diego Branch Office of the Western Division, Naval Facilities Engineering Command, 1220 Pacific Coast Highway, San Diego, CA.

In accordance with 32 CFR 288.10 (1977) copies of the Draft Environmental Statement are available for Forty Dollars ($40.00) to cover the cost of printing from the Commanding Officer, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, CA 94066, telephone number (415) 877-7546; or the San Diego Branch, Western Division, Naval Facilities Engineering Command, 1220 Pacific Coast Highway, San Diego, CA 92132, telephone number (714) 235-3880. Checks payable to the United States Treasury will be accepted for copies of the DEIS.

Dated: March 2, 1979.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 79-6871 Filed 3-6-79 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 79-01-NG]

GREAT LAKES GAS TRANSMISSION CO.

Application for Authorization to Import Natural Gas from Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of application and invitation to submit comments and petitions to intervene in the proceeding.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of an application filed by Great Lakes Gas Transmission Company (Great Lakes) pursuant to Section 3 of the Natural Gas Act, to purchase an additional daily quantity of 6,400 Mcf of natural gas from TransCanada Pipe Lines Limited (TransCanada), Canada. The gas would be imported at a point on the United States-Canadian boundary near Emerson, Manitoba. The purpose of the proposed increase in imported volumes is to offset reductions in the British thermal unit (Btu) content of the gas presently being imported under existing authorizations. The additional daily volumes would increase the current authorized volume of 87,600 Mcf per day to 94,000 Mcf per day.

DATE: Petitions to intervene, comments and requests for hearing: March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division, 2000 M Street, NW., Room 6318, Washington, D.C. 20461 telephone 202-254-9730.

Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue, NW., Room 5116, Washington, D.C. 20461, telephone 202-633-9380.

SUPPLEMENTARY INFORMATION: The ERA hereby invites petitions for intervention, comments on the application in ERA Docket No. 79-01-NG, and requests for hearing to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street, Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8) and the regulation under the Natural Gas Act (18 CFR 157.10). Such petitions for intervention, comments, or requests for hearing should be marked "ERA Docket No. 79-01-NG" on the first page and the envelope, and will be accepted for consideration if filed no later than 4:30 p.m., March 21, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened therein must file a petition to intervene in accordance with the above-mentioned rules.

A formal hearing will not be held on this application if no petition to intervene is filed within the required time, or if the ERA on its own review of the matter finds that a grant of the approval is in the public interest. However, if during the appropriate comment period a request for such hearing is timely filed by an intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required, further notice of such hearing will be duly given.

The complete application as filed in ERA Docket No. 79-01-NG is available for public viewing and copying in Room B-110, 2000 M Street, NW., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday except Federal holidays.

Issued in Washington, D.C., on March 1, 1979.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-6757 Filed 3-6-79 8:45 am]

[6450-01-M]

Federal Energy Regulatory Commission

ALABAMA POWER CO.

[Project No. 2146 (Lay Dam)]

Application for Change in Land Rights

FEBRUARY 27, 1979.

Take notice that on December 19, 1978 an application was filed with the Federal Energy Regulatory Commission by the Alabama Power Company (correspondence to: R.P. McDonald, Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291), for a change in land rights. The Lay Dam Development of Project No. 2146 is located on the Coosa River, Talladega County, near Childersburg, Alabama.

THE PROPOSAL

Alabama Power Company, Licensee for the Coosa River Project (FERC No. 2146), seeks authorization of the Federal Energy Regulatory Commission to grant an easement of varying width over lands within the flood easement of Lay Dam Development (between elevations 396 and 408) to the State of Alabama Highway Department for reconstruction, widening, and maintenance of a bridge, and approaches, on State Route 235 over Talladega Creek in Talladega County, Alabama, adjacent to the town of Childersburg. When completed, the new bridge would be a four-lane reinforced concrete structure, replacing the existing wooden bridge which would be removed.

Privately-owned lands within the boundary of a U.S. Military Reservation (Alabama Ordnance Works—inactive) would be affected.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 1.8 or 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any protest or petition to intervene

must be filed on or before March 16, 1979. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6766 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. CI79-219]

AMINOIL, USA, INC.

Application

FEBRUARY 26, 1979.

Take notice that on January 12, 1979, Aminoil, USA, Inc. (Aminoil), Golden Gate Center, 2800 North Loop West, P.O. Box 94193, Houston, Texas 77018 filed in Docket No. CI79-219 an application pursuant to Section 7(c) of the Natural Gas Act, as amended, and § 2.75 of the Commission's General Policy and Interpretations, *Optional Procedure For* Certificating New Producer Sales *Of Natural Gas,* for a certificate of public convenience and necessity authorizing the sale of natural gas from its interest in Block A-298 Field, High Island Area, Offshore Texas to Natural Gas Pipeline Company of America, all as more fully set forth in the application, which is on file with the Commisison and open to public inspection.

The contract is for a period of fifteen years. Aminoil requests that the Commission issue it a certificate authorizing an intitial base rate of $4.00 per Mcf at 14.30 psia subject to BTU adjustment.

Any person desiring to be heard or to make any protest with reference to said application, on or before March 19, 1979, should file with the Federal Energy Regulatory 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). 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 Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on 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. 79-6767 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. RA79-14]

ANADARKO PRODUCTION CO.

Filing of Petition for Review

FEBRUARY 28, 1979.

Take notice that Anadarko Production Company on February 12, 1979, filed a Petition for Review under 42 U.S.C. 719(b) (1977 Supp.) from an order of the Secretary of Energy, issued on January 18, 1979, denying in part exception relief from the Mandatory Petroleum Price Regulations.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before March 16, 1979, file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement, Department of Energy, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6768 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. RP78-5]

CITY OF DES ARC, ARK., COMPLAINANT, V. MISSISSIPPI RIVER TRANSMISSION CORP., RESPONDENT

Presiding Administrative Law Judge's Certification of Stipulation and Agreement and Conditional Motion of Des Arc To Withdraw

FEBRUARY 28, 1979.

Take notice that on February 9, 1979, the Presiding Judge certified to the Commission a proposed stipulation and agreement, the record, and a conditional motion of Des Arc to withdraw its application requesting that the Commission direct the respondent, Mississippi River Transmission Corporation (MRT), to increase Des Arc's daily contract demand allocation by 300 Mcf per day. The proposed settlement agreement provides a means of resolving Des Arc's asserted need for additional natural gas supplies during peak winter periods without the necessity of a Section 7(a) proceeding.

Both MRT and the Commission Staff expressed their support for the proposed Stipulation and Agreement on the record and joined in Des Arc's request that it be certified to the Commission.

Any person desiring to be heard or to protest the above-described settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 12, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of the agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6769 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-198]

CONNECTICUT LIGHT AND POWER CO.

Filing

FEBRUARY 27, 1979.

Take notice that on February 12, 1979, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed Amendment to Purchase Agreement With Respect to Various Gas Turbine Units (Amendment) dated October 15, 1978 between (1) CL&P, The Hartford Electric Light Company (HELCO) and (2) Central Vermont Public Service Corporation (CVPS).

CL&P states that CVPS has executed a contract with CL&P and HELCO for the purchase of gas turbine generating capacity in the amount of 26,000

kilowatts for the period May 1, 1978 to October 31, 1978.

CL&P further states that the Amendment provides for an extension of the termination date of the Purchase Agreement from October 31, 1978 to November 30, 1978 for which period CVPS is purchasing 12,000 kilowatts of capacity and associated energy.

CL&P requests waiver of the Commission's notice requirements in order to allow for an effective date of November 1, 1978.

Copies of this rate schedule have been mailed to HELCO, Hartford, Connecticut, and CVPS, Rutland, Vermont, according to CL&P.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6770 Filed 3-6-79; 8:45 am]

[6450-01-M]

Docket Nos. ER76-39, ER76-340, and ER76-363

KANSAS POWER AND LIGHT CO.

Stipulation and Settlement Agreement and Motion for Approval Thereof

FEBRUARY 27, 1979.

Take notice that Kansas Power and Light Company (KPL) on February 2, 1979, tendered for filing a Stipulation and Agreement of Settlement and moved that the Commission order acceptance thereof and the termination of these proceedings.

KPL indicates that this settlement was reached through informal discussions between KPL and its wholesale customers.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before March 6, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are in file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6771 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-199]

NORTHERN STATES POWER CO.

Filing

FEBRUARY 27, 1979.

Take notice that Northern States Power Company (Northern States) on February 12, 1979, tendered for filing Supplement No. 2, dated January 2, 1979, to the Firm Power Service Resale Agreement, dated June 1, 1970, with the City of Buffalo, Minnesota.

Northern States indicates that Supplement No. 2 provides for delivery to the City at transmission voltage with the City billed in accordance with the rate schedule for Firm Power Service, Transmission Voltage, Schedule A-1. Northern States requests an effective date of March 14, 1979.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before March 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6772 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket Nos. ER76-149 and E-9537]

PUBLIC SERVICE COMPANY OF INDIANA

Refund Report

FEBRUARY 27, 1979.

Take notice that on January 29, 1979, Public Service Company of Indiana (PSCI) submitted for filing a refund report with respect to the above referenced dockets. According to PSCI, the amount of refund to be calculated is the difference in billing under prior rate schedules [1] which became effective on March 31, 1976 and rate schedules accepted for filing by the Commission in its November 8, 1978 order (plus 9% interest). PSCI stated that the refunds were computed for the period beginning March 31, 1976 through January 26, 1979.

PSCI states that since the proposed rate schedule applicable to the City of Crawfordsville (Crawfordsville) became effective May 2, 1978, the refunds as they relate to Crawfordsville were computed for the period beginning May 2, 1979. Finally, PSCI opines that the refunds report applicable to Hoosier Energy Division of Indiana Statewide Rural Electric Cooperative, Inc., have not been calculated due to PSCI's Motion for stay of the Commission's action on PSCI's December 8, 1978 Petition for Rehearing.

Any person desiring to be heard or to protest said refund report should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 6, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6773 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. RP73-64 (PGA78-2) (DCA78-2)]

SOUTHERN NATURAL GAS CO.

Certification of Settlement Agreement

FEBRUARY 26, 1979.

On February 7, 1979, the Presiding Administrative Law Judge certified to the Commission the proposed agreement reached in settlement of issues raised by intervenors to this proceeding. The Joint Motion to Terminate Proceeding and Approve Filing was filed on January 8, 1979, on behalf of Southern Natural Gas Company, Atlanta Gas Light Company, and Staff of the Federal Energy Regulatory Commission. That motion contains an agreed stipulation of facts, which forms the basis for the parties' agreement that the Commission should approve Southern's filing as of July 2, 1978, terminate this proceeding and remove the refund obligation imposed in the Commission's order suspending this tariff sheet.

This proceeding was instituted pursuant to the Commission's June 30, 1978 order, which accepted for filing and suspended for one day, subject to refund, the tariff sheet filed by Southern Natural Gas Company. If approved, the proposed agreement would

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[1] Applicable to Customers served under FERC Electric Tariff Fourth Revised Volume No. 1, FERC Electric Tariff Second Revised Volume No. 2, Second Revised Exhibit I of the City of Frankfort, Indiana Interconnection Agreement (Rate Schedule No. 224).

resolve all of the issues in this proceeding.

Any person desiring to be heard or to protest said Joint Motion to Terminate Proceedings should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before March 5, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this Joint Motion are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6774 Filed 3-6-79; 8:45 am]

[6450-01-M]

SOUTHWESTERN ELECTRIC POWER CO.

[Docket Nos. ER76-177, ER76-207, ER76-208 and ER76-210]

Compliance Filing

FEBRUARY 27, 1979.

Take notice that on February 12, 1979, Southwestern Electic Power Company (SWEPCO) tendered a revised compliance filing pursuant to Opinion No. 28 in the above-captioned proceeding. SWEPCO's compliance filing of November 30, 1978, was found to be deficient and SWEPCO was notified by Commission letter dated January 16, 1979.

Any person desiring to be heard or to protest said filing should file comments or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before March 15, 1979. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-6775 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-188]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Application

FEBRUARY 27, 1979.

Take notice that on February 21, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-188 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas, on an emergency basis, purchased from TransCanada Pipelines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to import a total quantity of 5,000,000 Mcf of natural gas until April 1, 1979, or such later date which may be needed and which the appropriate authorities may authorize as the end of the period for emergency sale and importation. Existing facilities would be utilized at the import point on the United States-Canadian international boundary near Niagara Falls, New York. Further, Applicant asserts that the natural gas proposed to be imported is part of Trans-Canada's system supply and is not to be purchased and produced from specific fields for resale to Applicant; therefore, Applicant requests waiver of Section 153.3(d) of the Commission's Regulations under the Natural Gas Act requiring field names, locations, and reserve estimates on a field-by-field basis.

It is indicated that the gas proposed to be imported is needed to aid Applicant in maintaining its system deliveries during the remaining winter period and that to the extent it makes withdrawals of base storage gas unnecessary, Applicant would not be forced to curtail its summer customers as severely to restore the storage balance necessary for the inception of the 1979-80 winter.

It is indicated that the price to be paid would include all transmission costs of moving gas in Canada to the international boundary line and would not be greater than the current border price of $2.16 (U.S.) per million Btu's.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 7, 1979, file with the Federal Energy Regulatory 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). 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. 79-6776 Filed 3-6-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-29]

TENNESSEE GAS PIPELINE CO.

Order Accepting for Filing and Suspending Rate Increase Subject to Conditions and establishing Procedures

FEBRUARY 28, 1979.

On January 29, 1979, Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco, Inc., filed revised tariff sheets to its FERC Gas Tariff, Volume Nos. 1 and 2.[1] The rates proposed herein by Tennessee are intended to increase revenues by $13.6 million over the rates currently in effect, subject to refund, in Docket No. RP77-62. Tennessee proposes March 1, 1979 as the effective date for these revised tariff sheets. The test period is based upon actual costs for the twelve months ended September 30, 1978, as adjusted for known and measurable changes through June 30, 1979.

The proposed rate increase is based upon claimed increases in costs associated with gas plant and related expenses, materials, supplies, wages and services, transportation of gas by others, and rate of return requirements. Tennessee reflects the Federal income tax rate of 46% in this filing. The increased costs claimed by Tennessee are partially offset by this decreased income tax rate.

Tennessee's proposed rates are based on an overall rate of return of 12.13%, and a 15% return on equity capital. This filing reflects a test period reduction in sales volumes of 70 Bcf, and the inclusion of sales during the test period to the Bear Creek Storage Company, which is an uncertificated project. Additionally, Tennessee has adjusted operation and maintenance expenses by $699,970 to reflect the amortization of expenses related to an unsuccessful gas supply project in Docket No. CP77-100, *et. al.*

Tennessee's base tariff rates reflect the current cost of purchased gas reflected in its PGA filing which became effective January 1, 1979, in Docket No. RP73-114, *et al.*, which is consistent with Tennessee's election under the Commission's Order No. 13.[2] Tennessee states that it will file substitute tariff sheets to reflect the current average cost of purchased gas reflected in any Tennessee PGA filing which becomes effective prior to the effective date of the subject filing.

Finally, Tennessee requests waiver of the requirements of § 154.63 (e)(2)(ii) of the Regulations to permit the inclusion of uncertificated gas supply facilities in the filing. We shall grant waiver of that section, subject to

[1] See Appendix A attached below.

[2] Issued October 18, 1978 in Docket No. R-406.

the conditions in Ordering Paragraph (C).

Public notice of Tennessee's filing was issued on February 2, 1979, requiring protests or petitions to intervene to be filed on or before February 21, 1979.[3] Petitions to intervene have been filed by Consolidated Edison Company of New York, Inc., Public Service Electric and Gas Company, Rochester Gas and Electric Corporation, The New England Customer Group, and Knoxville Utilities Board, *et. al.* Good cause exists to grant these petitions to intervene, and they are hereby granted.

Based upon a review of Tennessee's filing, the Commission finds that the proposed rate increase has not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Tennessee's revised tariff sheets to its FERC Gas Tariff, Volume Nos. 1 and 2, suspend their effectiveness for five months until August 1, 1979, when it shall be permitted to become effective subject to refund in the manner prescribed in the Natural Gas Act subject to the conditions set forth below. We shall also set the matter for hearing.

The Commission Orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8 and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Tennessee Gas Pipeline Company.

(B) Pending hearing and decision, and subject ot the conditions of Ordering Paragraphs (C), (D), and (H) below, Tennessee's proposed Revised Tariff Sheets to its FERC Gas Tariff Volume Nos. 1 and 2, set forth in Appendix A hereto, are accepted for filing and suspended for five months until August 1, 1979, when they may become effective subject to refund, in the manner prescribed by the Natural Gas Act and the Commission's Regulations.

(C) Tennessee shall file substitute revised tariff sheets as of July 1, 1979, reflecting the elimination of costs associated with facilities which are not in service by June 30, 1979, pursuant to the requirements of 18 CFR 154.63(e)(2)(ii) and subject to condition that Tennessee shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

(D) The revised tariff sheets discussed in Ordering Paragraph C above shall also reflect the actual balance of advance payments in Account 166 outstanding as of June 30, 1979, subject to condition that inclusion of a higher overall advance payments balance shall not be permitted to increase the level of the original suspended rates.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before June 1, 1979.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

(G) These petitioners are permitted to intervene in the captioned proceeding subject to the Commission's rules and regulations: *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(H) Acceptance for filing of the tariff sheets enumerated in Appendix A is conditioned upon Tennessee reflecting the effective GRI Funding Unit on the effective date of the increased rates and any resulting reduction in costs, as per opinion Nos. 30 and 30-A.

By the Commission. Commissioner Holden voted present.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

TENNESSEE GAS PIPELING COMPANY, DOCKET NO. RP79-29, REVISED TARIFF SHEETS

Ninth Revised Volume No. 1

Twenty-Fourth Revised Sheet Nos. 12A and 12B
First Revised Sheet Nos. 66 and 71.

Sixth Revised Volume No. 2

First Revised Sheet Nos. 266J, 268C, 277B, 285E, 286E, 287E, 297D and 297E;
Second Revised Sheet Nos. 264H, 266I, and 274E;
Third Revised Sheet No. 141A;
Fourth Revised Sheet Nos. 246D, 247D, 248D, 249H, and 249I;
Fifth Revised Sheet No. 245D;
Sixth Revised Sheet Nos. 76 and 215;
Seventh Revised Sheet Nos. 53, 54, and 77;
Eighth Revised Sheet No. 141; and
Tenth Revised Sheet Nos. 11 and 12.

[FR. Doc. 79-6777 Filed 3-6-79; 8:45 am]

[3] An errata notice was issued February 6, 1979, to correctly state the Docket number.

[6450-01-M]

Office of Hearings and Appeals

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

February 5, through February 9, 1979

Notice is hereby given that during the period February 5 through February 9, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m.

and 5:00 p.m., e.s.t., except federal holidays.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

FEBRUARY 28, 1979.

PROPOSED DECISIONS AND ORDERS

Blanton Oil Company, Sullivan, Missouri, DEE-1404, motor gasoline

Blanton Oil Company filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would result in the termination of Blanton's base period supplier/purchaser relationship with Wallis Oil Company and the reassignment of Sunmark Industries as Blanton's base period supplier of motor gasoline. On February 9, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Cities Service Company, Tulsa, Oklahoma, DEE-1828, crude oil

Cities Service Company filed an Application for Exception from the provisions of 10 CFR 212.83(c)(2)(iii)(E). The exception request, if granted, would permit Cities to pass through in its retail sales of propane an amount of increased non-product costs in excess of the permissible passthrough level specified in § 212.83(c)(2)(iii)(E). On February 6, 1979, the DOE issued a Proposed Decision and Order in which it tentatively determined that the exception request be denied.

Champlin Petroleum Company, Fort Worth, Texas, DEE-2011, crude oil

The Champlin Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Champlin to sell at upper tier ceiling prices the crude oil which it produces for the benefit of the working interest owners from the Lawrence W. O'Connor property, Reservoir FO-40. On February 6, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in order to provide Champlin with an incentive to invest in equipment necessary for the continued operation of the property.

Great Southern Oil & Gas Co., Inc., Shreveport, Louisiana, DXE-2132

The Great Southern Oil & Gas Co., Inc., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell the crude oil which it produces from the St. Martin Bank & Trust Company Lease at market prices. On February 9, 1979, the DOE issued a Proposed Decision and Order which tentatively determined that an extension of exception relief should be granted with respect to the St. Martin Lease.

Guam Oil & Refining Co., Inc., Territory of Guam, DEE-2015, crude oil

Guam Oil & Refining Co., Inc., filed an Application for Exception in which it requested an exception from those provisions of § 211.67(f)(4) of the DOE Entitlements Program that reduce the value of an entitlement by twenty-one cents. On February 6, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Gulf Oil Corporation, Tulsa, Oklahoma, DXE-2087, crude oil

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Gulf to continue selling at upper tier ceiling prices certain quantities of crude oil which it produces from the South Stanley Lease. On February 5, 1979, the DOE issued a Proposed Decision and Order which determined that Gulf should be permitted to sell at upper tier ceiling prices 55.50 percent of the crude oil produced from the property for the benefit of the working interest owners.

Husky Oil Company, Denver, Colorado, DEE-1436, DEE-1444, crude oil

The Husky Oil Company filed two Applications for Exception from the provisions of 10 CFR 212.73. The exception requests, if granted, would permit the firm to sell at market prices the crude oil which it produces from the Fleisher and Victory Leases located in Santa Barbara County, California. On February 5, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception requests be granted in part.

Standard Oil Company (Ohio), Cleveland, Ohio, DEE-1995, crude oil

Standard Oil Company (Ohio) filed an Application for Exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit the firm to sell at upper tier ceiling prices the crude oil which it produces from the Barndt lease located in the Sage Creek Field, Wyoming. On February 6, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

[FR Doc. 79-6759 Filed 3-6-79; 8:45 am]

[6450-01-M]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

January 29 through February 2, 1979

Notice is hereby given that during the period January 29 through February 2, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedure, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except federal holidays.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

FEBRUARY 28, 1979.

PROPOSED DECISIONS AND ORDERS

Amerada Hess Corporation, New York, New York, DEE-2073, crude oil

The Amerada Hess Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell the crude oil produced at the Tioga Madison Unit for the benefit of the working interest owners at upper tier ceiling prices. On January 29, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Atlantic Richfield Company, Los Angeles, California, DEE-1981, motor gasoline

Atlantic Richfield Company (Arco) filed an Application for Exception from the provisions of 10 CFR, Part 211. The exception request, if granted, would relieve the firm of its obligation to contine to supply motor gasoline to eight refiners who purchased that product from Arco during the base period. On January 29, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request should be denied.

Beacon Oil Company, Hanford, California, DEX-0059, crude oil

On February 2, 1979, the Department of Energy issued a Proposed Decision and Order to the Beacon Oil Company (Beacon) which determines that the firm received an excessive measure of exception relief from the Entitlements Program (10 CFR 211.67) for its 1977 fiscal year. The Proposed Order would require Beacon to purchase $256,303 of entitlements over a six month period in

order to return the excessive exception relief benefits which it received for 1977.

Charter Oil Company, Jacksonville, Florida, DEX-0063, crude oil

In accordance with Decisions and Orders issued to the Charter Oil Company which granted the firm exception relief from the provisions of 10 CFR 211.67 (the Entitlements Program), the firm submitted actual financial data for its 1977 fiscal year. On February 1, 1979, after reviewing the level of exception relief granted to Charter, the DOE issued a Proposed Decision and Order which determined that Charter should purchase $1,060,053 of entitlements to return the excess entitlements exception relief benefits which it received for its 1977 fiscal year.

Chevron U.S.A., Inc., San Francisco, California, DEE-1289, crude oil

On May 23, 1978, Chevron U.S.A., Inc. (Chevron) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The Chevron exception request, if granted, would permit the working interest owners to sell the crude oil which is produced from the N-1-C Ranger Fault Block VI at upper tier ceiling prices. On January 30, 1979, the DOE issued a Proposed Decision and Order in which it determined to grant the Chevron exception request in part.

Commercial Bottle Gas, Charlotte, North Carolina, DEE-0968, propane.

Commercial Bottle Gas filed an Application for Exception from the provisions of 10 CFR 212.93. The exception request, if granted, would permit the firm to increase the prices it charges for propane above the maximum permissible selling prices. In particular, the firm requested that it be permitted to include as a non-product cost of the labor costs it attributes to its owner. On January 29, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Consumers Power Company, Jackson, Michigan, FEE-4392, residual fuel oil

Consumers Power Company filed an Application for Exception which, if granted, would permit the firm to retain the revenues which it received as a result of its allegedly erroneous participation in the Entitlements Program during the period November 1974 through January 1975. On January January 29, 1979 the DOE issued a Proposed Decision and Order which determined that the exception be denied.

G. R. Nance, Co., Inc., Los Angeles, California, DEE-0957, crude oil

G. R. Nance Co., Inc., filed an application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell the crude oil produced from the Desser Et Al Lease located in Wilmington, California without regard to the maxiumum price levels specified in Part 212, Subpart D. On January 30, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request be denied.

The Maurice L. Brown Company, Kansas City, Missouri, DEE-1448, crude oil

The Maurice L. Brown Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Brown to sell the crude oil which it expects to produce from the State 19-1 Lease, located in Lea County, New Mexico, at prices in excess of the applicable lower tier ceiling price levels. On January 31, 1979, the DOE issued a Proposed Decision and Order which determined that the Brown exception request be granted.

Montara Petroleum Company, Palo Alto, California, DEE-0114, crude oil

Montara Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Montara and its partners to sell the crude oil which the firm expects to produce from the DT-32X well, located in the Cat Canyon Field, Santa Barbara County, California, at prices in excess of the applicable lower tier ceiling price levels. On January 30, 1979, the DOE issued a Proposed Decision and Order which determined that the Montara exception request be granted.

Moran Pipe and Supply Company, Seminole, Oklahoma, DXE-1992, crude oil

Moran Pipe and Supply Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be permitted to continue selling a portion of the crude oil produced from the Cozer Lease, located in Seminole County, Oklahoma at upper tier ceiling prices. On January 30, 1979, the DOE issued a Proposed Decision and Order which determined that the Moran exception request be granted.

Southland Royalty Company, Fort Worth, Texas, DEE-1964, DEE-1965, crude oil

Southland Royalty Company filed two Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception requests, if granted, would permit Southland to sell the crude oil produced for the benefit of the working interest owners from the Joss Federal and House Creek Federal 12-1 Leases at prices in excess of the applicable lower tier ceiling prices. On January 29, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Tesoro Petroleum Corporation, San Antonio, Texas, DPI-0019, crude oil

Tesoro Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR 213.35(c). The exception request, if granted, would result in the refund to the firm of license fees which it previously paid on imports of low-sulphur residual fuel oil. On January 30, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request should be denied.

Texaco, Inc., White Plains, New York, DEE-1858, motor gasoline

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR 212.83(c). The exception request, if granted, would permit the firm to adjust its base period marketing costs to eliminate the marketing costs associated with certain bulk plants sold by the firm to independent marketers. On January 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Universal Mineral Corporation, Dallas, Texas, DEE-1834. crude oil

Universal Mineral Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The Application requested retroactive and prospective exception relief which, if granted, would permit Universal to sell the crude oil produced from the No. 1 Humble-Dowdy Fee Lease well located in Duval County, Texas, at market price levels. On January 30, 1979, the DOE issued a Proposed Decision and Order which determined that the request for prospective exception relief be granted.

John Wight, Billings, Montana, DEE-1417, crude oil

John Wight filed an Application for Exception from the provisions of 10 CFR, Part 214 (the Canadian Crude Oil Allocation Program). The exception request, if granted, would result in the issuance of an Order by the DOE designating Wight's Shelby, Montana refinery a priority I refinery under the Canadian Allocation Program and allocating 5,000 barrels per day of Canadian heavy crude oil rights to the refinery. On February 2, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request should be granted.

[FR Doc. 79-6760 Filed 3-6-79; 8:45 am]

[6450-01-M]

Office of Assistant Secretary for International Affairs

PROPOSED SUBSEQUENT ARRANGEMENT

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan.

The subsequent arrangement to be carried out under the above mentioned agreement involves contract S-JA-229 for the sale of one milligram of U-236 enriched to greater than 99% and one milligram of U-234 enriched to greater than 99% for use as a spike for mass spectrometry work at the University of Tokyo, and contract S-JA-243 for the sale of 2000 milligrams of Uranium enriched to 99.07% in U-234 for use in general research and development for in-core neutron detectors by the Toshiba Corporation, Tokyo, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than March 26, 1979.

For the Department of Energy.

Dated: March 1, 1979.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs International Programs.

[FR Doc. 79-6761 Filed 3-6-79; 8:45 am]

[6450-01-M]

PROPOSED SUBSEQUENT ARRANGEMENT

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan.

The subsequent arrangement to be carried out under the above mentioned agreement involves the following sales:

Contract No.	United States to	Description of Material
S-EU-541	France	Standard samples containing 175g normal uranium.
S-EU-545	W. Germany.	Standard samples containing 700g normal uranium.
S-JA-238	Japan	Standard samples containing 875g normal uranium.
S-JA-239	Japan	Standard samples containing 500g uranium enriched to 2.38 in U-235.
S-JA-240	Japan	Standard samples containing 2,625g normal uranium.
S-JA-241	Japan	Standard samples containing 100g of pitch blend ore containing .0101 weight percent of uranium.
S-JA-242	Japan	Standard samples containing 500g uranium enriched to 1.349% in U-235.

The standard samples listed above are to be used for the calibration of equipment.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than March 26, 1979.

For the Department of Energy.

Dated: March 1, 1979.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs International Programs.

[FR Doc. 79-6762 Filed 3-6-79; 8:45 am]

[6450-01-M]

PROPOSED SUBSEQUENT ARRANGEMENTS

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning the Peaceful Uses of Atomic Energy and the Agreements for Cooperation Between the Government of the United States of America and the Governments of Japan, Norway, and Sweden.

The subsequent arrangements to be carried out under the above mentioned agreements involve approvals of the following transfers:

RTD/EU(JA)-24—Transfer from Japan to West Germany of a fission counter containing 0.005289 g Uranium, 89.89% enriched in U-235, to be used in West Germany for testing characteristic performance of fission chamber for future improvements.

RTD/NO(JA)-21—Transfer from Japan to Norway of 9,300 g Uranium, containing 934 g U-235, for irradiation in the Halden Boiling Water Reactor in Norway in order to study the pellet/cladding mechanical interaction behavior.

RTD/SW(EU)-96—Transfer from West Germany to Sweden of ten fuel rods containing 1,830 g Uranium and 54.8 g U-235 for irradiation tests and consequent measurement and examination at Studsvik, Sweden.

RTD/SW(EU)-97—Transfer from West Germany to Sweden of 8 spherical fuel elements containing 25 g Uranium and 5.02 g U-235 and 30 g Thorium for irradiation in the B-2 reactor in Studsvik, Sweden for test purposes.

RTD/EU(SW)-41—Transfer from Sweden to West Germany of 10 fuel rods containing 1,848 g Uranium, and 56.4 g U-235, for post irradiation examination and ultimate disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approvals of these transfers of nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than March 26, 1979.

Dated: March 1, 1979.

For the Department of Energy.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs International Programs.

[FR Doc. 79-6763 Filed 3-6-79; 8:45 am]

[6450-01-M]

Office of Energy Research

HIGH ENERGY PHYSICS ADVISORY PANEL

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the High Energy Physics Advisory Panel will meet Friday, March 23, 1979, from 9:00 a.m. to 6:00 p.m., and reconvene Saturday, March 24, 1979, from 9:00 a.m. to 4:00 p.m., in Room 8222c of the U.S. Department of Energy building located at 20 Massachusetts Avenue, N.W., Washington, D.C.

The purpose of the Panel is to provide advice and guidance on a continuing basis with respect to the high energy physics research program.

The tentative agenda is as follows:

1. President's FY 1980 High Energy Physics Budget Requests.
2. US/People's Republic of China Agreement on Collaboration in High Energy Physics.
3. FY 1979 Fermi National Accelerator Laboratory Program and the Current Status of the Energy Saver Project
4. FY 1980 Budgets and Program Alternatives at Argonne National Laboratory, Brookhaven National Laboratory, Fermi National Accelerator Laboratory, Lawrence Berkeley Laboratory, and Stanford Linear Accelerator Center.
5. Public Comment (10 Minute Rule).

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee concerning items on the agenda will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements concerning items on the agenda should inform Georgia Hildreth, Director, Advisory Committee Management, 202/252-5187, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may pur-

chase a copy of the transcript from the reporter. An Executive Summary of the meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C., on February 27, 1979.

GEORGIA HILDRETH,
Director,
Advisory Committee Management.

[FR Doc. 79-6758 Filed 3-6-79; 8:45 am]

[6450-01-M]

Office of the Secretary

NORTHERN TIER STUDY REPORT

Pubic Hearings and Comment on the Department of Energy's (DOE) Draft Report: Petroleum Supply Alternatives for the Northern Tier and Inland States Through the Year 2000

AGENCY: Department of Energy.

ACTION: Notice of Public Hearings and comment on the Department of Energy's (DOE) draft report entitled: *Petroleum Supply Alternatives for the Northern Tier and Inland States Through the Year 2000,* dated February 21, 1979.

SUMMARY: DOE has recently released a preliminary draft study of the various transportation system alternatives which have been proposed to deliver Alaskan and other crude oils from the West Coast to Northern Tier and Inland States. A final report will not be issued until receipt and consideration of public comments.

For the purposes of the study, "Northern Tier States" includes Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, Minnesota, Wisconsin, Michigan, Illinois, Indiana and Ohio. The term "Inland States" includes those States other than the Northern Tier States, California, Alaska and Hawaii.

The DOE crude oil transportation study is being conducted to address the dual issues of transportation alternatives for delivery of Alaska North Slope (ANS) crude oil and the means for resolving forecasted petroleum transportation deficits in Northern Tier States.

DOE seeks public comments on the preliminary results of the crude oil transportation study in preparation for issuance of a final report in early summer 1979. Comments on the ability of the various alternatives to penetrate existing pipeline markets will be particularly helpful.

DATES: Comments by April 20, 1979, 4:30 p.m.; Requests to speak by March 22, 1979, 4:30 p.m.; Hearing dates: *Seattle Hearing*—April 3, 1979, 9:30 a.m. and continued if necessary at 9:30 a.m. at the same location on the following day; *Billings Hearing*—April 5, 1979, 9:30 a.m.; *St. Paul Hearing*—April 6, 1979, 9:30 a.m. and continued if necessary at 9:30 a.m. at the same location on the following day; *Chicago Hearing*—April 10, 1979, 9:30 a.m. and continued if necessary at 9:30 a.m. at the same location on the following day; *Washington Hearing*—April 12, 1979, 9:30 a.m. and continued if necessary at 9:30 a.m. at the same location on the following day.

ADDRESSES: All comments to: Public Hearing Management, Box WY, Dept. of Energy, Room 2313, 2000 M Street NW, Washington, DC 20461; Request to speak: *Seattle Hearing*—Dept. of Energy, Attn Janet Marcan, Federal Bldg, 915 Second Ave., Room 1992, Seattle, WA 98174, (206) 399-7270; *Billings Hearing*—Dept. of Energy, Attn Dale Eriksen, 1075 S. Yukon St., P.O. Box 26247, Belmar Branch, Lakewood, CO 80226, (303) 234-2420; *St. Paul and Chicago Hearings*—Dept. of Energy, Attn Ken Kramer, 175 West Jackson Blvd, Chicago, IL 60604, (312) 353-3926; *Washington Hearing*—Dept. of Energy, Attn Robert C. Gillette, Economic Regulatory Administration, Room 2313, 2000 M Street NW, Washington, DC 20461, (202) 254-5201.

HEARING LOCATIONS: *Seattle Hearing*—New Federal Bldg, South Auditorium, 4th Floor, 915 Second Ave., Seattle, WA 98174; *Billings Hearing*—War Bonnet Inn, War Council Room No. 4, 2612 Belknap Ave., Billings, MT 59101; *St. Paul Hearing*—Federal Court Bldg, Room 627, 4th and Roberts, St. Paul, MN 55101; *Chicago Hearing*—Federal Bldg, Room 349, 230 South Dearborn St., Chicago, IL 60604; *Washington Hearing*—2000 M Street NW, Room 2105, Washington, DC 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Department of Energy, Public Hearing Management, 2000 M Street, N.W., Room 2214, Washington, D.C. 20461, (202) 254-5201.

William L. Webb (Office of Public Information), Department of Energy, Public Hearing Management, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Mario Cardullo (Study Director), Department of Energy, 20 Massachusetts Avenue, N.W., Room 8229, Washington, D.C. 20545, (202) 376-1846.

Paul Douglass (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Ave., S.W., Rm 6A-141, Washington, D.C. 20585, (202) 252-6718.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Northern Tier States have been impacted by the Canadian Government's announced curtailment of crude oil exports in the early 1980's and by the continued decline of domestic crude supplies. In addition, there has been a growing surplus of Alaskan North Slope (ANS) crude oil on the West Coast of the United States. These factors have stimulated a series of alternative proposals to transport both ANS and foreign crude oil to the Northern Tier region.

Several factors have so far impeded the progress of all west-to-east pipeline projects. Public opposition has arisen both within Canada and the United States to construction of a West Coast oil port. The number of competing pipeline proposals designed to serve the Northern Tier created an atmosphere of investor uncertainty that any single project could obtain the necessary permits, and be financed and built in a reasonable time.

Recognizing the possibility that a potentially needed project might not be built, the 95th Congress enacted legislation (Title V, Public Law 95-617) which would provide a decisionmaking process by which the President could approve one or more projects for expedited processing of Federal permits.

In response to these developments and to concerns raised in earlier departmental studies about the adequacy of energy transportation facilities in some Northern Tier States, DOE established in early 1978 an energy transportation project office which would:

- Forecast the demand for crude oil and refined petroleum products in the Northern Tier and Inland States through 2000;
- Assess the potential supply of petroleum under the current crude and petroleum product transportation system;
- Evaluate various transportation alternatives to move crude oil to the Northern Tier and Inland States;
- Assist the U.S. Department of the Interior in preparing the environmental impact statement for the Northern Tier Pipeline Company proposal; and
- Provide an analytical basis upon which the President may select a crude oil transportation alternative or alternatives deemed to be in the national interest for expedited treatment in the Federal permitting process.

II. ALTERNATIVES

The crude oil transportation alternatives considered in the DOE study were divided into Northern route and Sourthern route categories. The alternatives considered for meeting forecasted transportation deficits are:

NORTHERN ROUTES—

- Northern Tier pipeline
- Trans-Mountain pipeline reversal
- Foothills (Alaska Highway) pipeline
- Kitimat pipeline
- Unit trains
- Arctic marine systems (Dome, Globtik, and Seatrain)

SOUTHERN ROUTES—

- Expanded midcontinent pipelines (including Texoma and Northern pipeline proposals)
- PACTEX and Four Corners pipelines
- Trans-Guatemala pipeline
- Panama transshipment (Oil Port) Terminal Facility

III. Preliminary Findings

The preliminary findings regarding various transportation deficits are:

- The Northern Tier States face potential transportation deficits for meeting average consumer demand ranging from 0 in 1980 to between 226 and 384 MB/D of refined product in 2000.
- This unfulfilled need is concentrated in the Montana and Minnesota refinery centers.
- Under normal operating conditions (90% refinery capacity utilization), potential transportation deficits for meeting average refinery demand range from 109 MB/D in 1980 to 214 MB/D of crude oil in 2000.
- Transportation deficits for meeting peak consumer demand range from 52 MB/D in 1980 to 847 MB/D in 2000. Transportation deficits for meeting peak refinery demand range from 157 MB/D in 1980 to 621 MB/D in 2000.

The potential for using ANS crude oil in the Northern Tier and Inland States is affected by a number of factors including existing refinery configurations, transportation economics, and types of products required by consumers. This study analyzed these various factors and found that:

- The maximum processing capacity for ANS crude in the Northern Tier States is 625 to 708 MB/D, if other high sulfur crude oils are excluded.
- It is unlikely that indigenous high sulfur crudes such as those available in Wyoming and other Northern Tier States would be displaced. Therefore, the maximum processing capacity for ANS crude is reduced to 400-500 MB/D with 25 to 30% of this potential concentrated in Washington State refineries.
- Based on this processing potential, a west-to-east crude oil pipeline could transport between 300 to 350 MB/D of ANS crude from the West Coast, provided that the economics were competitive.

Assessment of Alternatives

- Northern Tier refineries are capable of absorbing approximately 300 to 350 MB/D of ANS crude oil. To that extent, a pipeline serving these refineries from the West Coast would assist in the disposition of surplus crude oil and encourage increased production in California and Alaska.
- A Pipeline from the West Coast (Northern route) could be competitive in delivering foreign sweet crude oil, such as Indonesia light crude, to midcontinent refineries. The economic viability of such a pipeline depends on market conditions in the important midcontinent refinery area.

How to Obtain Draft Report

Copies of the draft report may be obtained by writing the Office of Public Information, Department of Energy, Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, or Press Room DOE, Room 8F-044, 1000 Independence Avenue S.W., Washington, D.C.

IV. Procedures for Submission of Written Comments and Public Hearings

A. Written Comment Procedures

Interested parties are invited to participate in this proceeding by submitting data, views, and arguments with respect to the specific items for comment set forth in this Notice. Comments should be identified on the outside of the envelope and on the documents submitted to the DOE with the designation, "Northern Tier Public Inquiry". Ten (10) copies should be submitted. All comments will be available for public inspection in the ERA Office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Comments should be received by April 20, 1979, 4:30 p.m. in order to be considered.

Any information or data you consider to be confidential must be so identified and submitted in writting, one copy only. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. Public Hearings

1. *Requesting Opportunity to Participate.*—The times and places for the hearings are indicated in the "Dates" and "Addresses" section of this Notice. If necessary to present all testimony, hearings will be continued at 9:30 a.m. of the next day following the first day of the hearing.

Any person may make a written request for an opportunity to make an oral presentation at the hearings. Requests should be submitted by March 22, 1979, 4:30 p.m. You should provide a phone number where you may be contacted through the day before the hearing. If you are elected to be heard, you will be so notified by the DOE before 4:30 p.m. March 27, 1979. You must sumit 100 copies of your statement to the address given above for requests to speak for the Washington Hearing before 4:30 p.m., on the day before the Hearing (April 11, 1979), and bring your 100 copies of all other hearing locations noted earlier in this Notice to the hearing room on the morning of the hearing.

2. *Conduct of hearings.*—DOE 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. Each presentation may be limited based on the number of persons requesting to be heard.

A DOE 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. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to the presiding official at the above address before 4:30 p.m., on the day prior to the hearing. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. DOE, or the presiding officer if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. Any further procedural rules needed for proper conduct of this 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 DOE and made available for inspection at the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, 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.

Issued in Washington, D.C., March 5, 1979.

ALVIN L. ALM,
Assistant Secretary for Policy and Evaluation.

[FR Doc. 79-7021 Filed 3-6-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

Office of Water and Waste Management

[FRL 1061-7]

GRANTS FOR PUBLIC PARTICIPATION

Availability of Funds

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Funds for Water Quality Management Public Participation Training Grants.

SUMMARY: The Office of Water and Waste Management (OWWM) of the Environmental Protection Agency (EPA) is providing fiscal year 1979 funding for nonprofit State or local public interest organizations. The purpose of this assistance is to increase public awareness and stimulate public involvement in EPA's Water Quality Management Program. EPA will make grants of up to $10,000 per State for public education and involvement efforts relating to integration of programs under Sections 208, 201, 106, 303(e), and 205(g) of the Clean Water Act (the Act); water related aspects of State/EPA Agreement development; urban runoff and combined sewer overflow project development and implementation; rural clean water model project development and implementation; groundwater protection planning; 208 plan implementation monitoring; water conservation; advanced waste treatment and pretreatment decisions; or a combination of these objectives.

EFFECTIVE DATE: March 7, 1979.

ADDRESS: EPA is developing an Agencywide public participation policy. This OWWM effort is serving as a pilot in the development of a policy for small grants for public participation activities. Public comments are invited and should be submitted by April 5, 1979. Please submit comments to Mrs. Evelyn T. Thornton, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone Number (202) 755-0860.

FOR FURTHER INFORMATION CONTACT:

Ms. Marsha Ramsay, Water Planning Division (WH-554), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Tel No. (202) 755-6026.

SUPPLEMENTARY INFORMATION: Section 101(e) of the Clean Water Act requires that public participation in the development, revision and enforcement of any program under the Act be provided for, encouraged and assisted by the EPA Administrator and the States. Section 104(a) of the Act requires the Administrator to establish programs to abate pollution, and encourage the public to conduct activities to help abate pollution, and Section 104(b) authorizes the Administrator to make grants for such purposes.

GRANTEE ELIGIBILITY

Nonprofit State or local public interest organizations may apply. An applicant must have the public interest as its primary purpose and may not represent commercial interests. An applicant must possess the capability to involve in its project individuals and organizations throughout the State who are interested or active in relevant environmental issues. An applicant should meet this requirement through its own membership or previously established relationships with other organizations whose membership or communication networks would enable it to satisfy this requirement. EPA may award a grant to an eligible applicant in each State or may consider an award to an organization for a program in more than one State if the program objectives can be met effectively, and if the States are within one EPA region.

APPLICATION REQUEST/SUBMISSION

EPA Form 5700-31, Application for Federal Assistance (Short Form), may be used for this activity. In instances where the short form is not appropriate, EPA Form 5700-33 shall be used. Applications and additional information should be obtained from the Public Participation Coordinators in EPA Regional offices. Completed applications should be submitted to the Regional Administrators. The deadline for application submission is May 7, 1979.

Region and State	Regional Administrator and Address	Public Participation Coordinator
REGION I		
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	William R. Adams, Jr., US EPA, Region I, John F. Kennedy, Federal Bldg., Boston, MA 02203.	Barry Jordon, FTS 8-223-0967, CML 617-223-0967.
REGION II		
New Jersey, New York	Eckardt C. Beck, US EPA, Region II, 26 Federal Plaza, New York, NY 10007.	Ray Pfortner, FTS 8-264-4536, CML 212-597-8307.
REGION III		
Delaware, Maryland, Pennsylvania, Virginia, West Virginia	Jack Schramm, US EPA, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.	George Hoessel, FTS 8-597-8307, CML 215-597-8307.
REGION IV		
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	John White, US EPA, Region IV, 345 Courtland Street, NE, Atlanta, GA 30308.	Pat Jeanson, FTS 8-257-3004, CML 404-881-3004.
REGION V		
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	John McGuire, US EPA, Region V, 230 South Dearborn, Chicago, IL 60604.	Annette Nussbaum, FTS 8-353-2165, CML 312-353-2165.
REGION VI		
Arkansas, Louisiana, New Mexico, Oklahoma, Texas	Adelene Harrison, US EPA, Region VI, 1201 Elm Street, First International Bldg., Dallas, TX 75270.	Rosemary Henderson, FTS 8-729-2662, CML 214-767-2662.
REGION VII		
Iowa, Kansas, Missouri, Nebraska	Kathleen Q. Camin, US EPA, Region VII, 324 East 11th Street, Kansas City, MO 64106.	Betti Harris, FTS 8-758-5895, CML 816-374-5895.

Region and State	Regional Administrator and Address	Public Participation Coordinator
REGION VIII		
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	Alan Merson, US EPA, Region VIII, 1860 Lincoln Street, Denver, CO 80203.	Allen Hertzke, FTS 8-327-4904, CML 303-837-4904
REGION IX		
Arizona, California, Hawaii, Nevada	Paul DeFalco, Jr., US EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105.	Bev Reed, FTS 8-556-7554, CML 415-556-7554.
REGION X		
Alaska, Idaho, Oregon, Washington	Donald P. Dubois, US EPA, Region X, 1200 6th Avenue, Seattle, WA 98101.	Lisa Corbyn, FTS 8-399-1216, CML 206-442-1216.

APPLICATION REQUIREMENTS

1. An application for a public participation grant must include the following:

a. A description of the nature, scope, and purpose of the applicant's public participation activities for which EPA funds are requested. This must demonstrate the applicant's proposed efforts for increasing public awareness and stimulating public involvement in water quality management objectives. Such efforts must be in support of State priorities and include one or more of the following:

(1) Integration of programs under Sections 208, 201, 106, 303(e), and 205(g) of the Act.

(2) Water related aspects of State/EPA Agreement development.

(3) Urban runoff and combined sewer overflow project development and implementation.

(4) Rural clean water model project development and implementation.

(5) Groundwater protection planning.

(6) 208 plan implementation monitoring.

(7) Water conservation.

(8) Advanced waste treatment and pretreatment decisions.

b. A description of how the applicant will administer or supervise the administration of activities for which assistance is sought. The applicant must indicate how the activities will be evaluated.

c. A description of the nature, size, and purpose of the applicant organization. The applicant should also state how long prior to submission of application the applicant (or other member organizations of a coalition which will cooperate on the grant) has been organized and active. The applicant must demonstrate fiscal management capability.

d. A description of how the applicant intends to involve and work cooperatively with a variety of diverse organizations, State, and local officials, and State and local water quality management agencies, and with other groups and individuals outside its organizations and outside its geographic area.

CRITERIA FOR AWARD

EPA will review applications from eligible applicants to determine that the application requirements have been met, and apply the following award criteria.

1. Project design:

a. Sound methodolgy which could be reasonably expected to accomplish project objectives.

b. The extent to which alternative and innovative approaches or solutions to relevant environmental problems or program objective will be employed, considered or encouraged.

2. The extent to which the project makes use of volunteers (professional, students, and others) when such assistance is available and would enhance the project.

3. The extent to which the long term effect of the project is significant:

a. The continued utility beyond the funding period of material, processes, or networks developed during the project.

b. The applicant's plans to incorporate successful aspects of the project into existing programs and organizations without additional Federal Assistance.

4. Preference will be given to citizen groups and volunteer organizations.

5. Preference will be given to applicants who have been organized for at least one year prior to the date of application for a grant under this notice.

TERMS AND CONDITIONS OF AWARD

1. The actual amont of each grant will be determined at the time of grant award based on reasonableness of costs associated with program activities. However, the Federal funds may not exceed 95% of the eligible costs of any grant or $10,000 per state. The applicant must provide at least 5% matching contribution (cash or space, heat, lights, volunteered services, or other in-kind contributions).

2. Grantees may provide financial assistance to individuals or organizations with which they cooperate, or which provide them with services related to the project, when provided for in the approved application or when deemed appropriate by the grantee and approved by the Project Officer.

3. Grant funds shall not be used for taking stands on Federal legislation or for litigation.

4. The applicant must comply with the provisions of 40 CFR Part 30.

5. Each grantee shall provide a copy of its approved work program to the State water quality management agency for information and coordination.

6. Each grantee shall submit a mid-project and a final report to the Project Officer. The final report shall summarize activities carried out, evaluate the program, and identify water quality management implementation problems.

Dated: February 16, 1979.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 79-6703 Filed 3-6-79; 8:45 am]

[6560-01-M]

[FRL 1070-3; OPP-50404]

DOW CHEMCIAL U.S.A., ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 464-EUP-57. Dow Chemical U.S.A., Midland, Michigan 48640. This experimental use permit allows the use of 1,400 pounds of the insecticide chlorpyrifos on cotton to evaluate control of the bollworm and boll weevil. A total of 400 acres is involved; the program is authorized only in the State of

Mississippi. The experimental use permit is effective from May 1, 1979 to May 1, 1980. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.342). (PM-12, Room: E-229, Telephone: 202/426-9425)

No. 1016-EUP-53. Union Carbide Corp., Arlington, Virginia 22202. This experimental use permit allows the use of 64 pounds of the insecticide carbaryl on sorghum to evaluate control of the chinch bug and corn earworm. A total of 40 acres is involved; the program is authorized only in the State of Kansas. The experimental use permit is effective from February 16, 1979 to February 16, 1980. Permanent tolerances have been established for residues of the active ingredient in or on sorghum forage or grain (40 CFR 180.169). (PM-12, Room: E-229, Telephone: 202/426-9425)

No. 264-EUP-54. Amchem Products, Inc., Ambler, Pennsylvania 19002. This experimental use permit allows the use of 3,226.5 pounds of the herbicide 2,3,6-trichlorophenylacetic acid, sodium salt in lakes and ponds to evaluate control of hydrilla and egeria. A total of 116 acres is involved; the program is authorized only in the States of California, Florida, Georgia, Louisiana, South Carolina, and Texas. The experimental use permit is effective from February 15, 1979 to February 15, 1980. This experimental use permit is being issued with the limitations that water to be treated will be a minimum of 10 miles from any area where it will be used for irrigation or potable water purposes; and treated areas will be posted as such and be restricted from fishing and the taking of shellfish, where applicable, until residues of the active ingredient have dropped below 0.01 part per million. (PM-23, Room: E-351, Telephone: 202/755-1397)

Interested parties wishing to review the experimental use permit are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory Authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat.819; 7 U.S.C. 136).

Dated: February 23, 1979.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-6895 Filed 3-6-79; 8:45 am]

[FRL 1070-1]

COMMUNITY HEALTH AND ENVIRONMENTAL SURVEILLANCE SYSTEM (CHESS)

Availability of Information

Further information on the Evironmental Protection Agency's monograph, "Health Consequences of Sulfur Oxides: A Report from CHESS, 1970-1971" (May 1974), is available as appendices to EPA's *Research Outlook 1978* and *Research Outlook 1979.* Requests for copies of these documents should be addressed to: Technical Information Office, RD-674, Office of Research and Development, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dated: February 27, 1979.

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

[FR Doc. 79-6894 Filed 3-6-79; 8:45 am]

[6560-01-M]

[FRL 1070-8]

DATA COLLECTION ACTIVITIES

The purpose of this notice is to identify certain data collection activities to be undertaken by the United States Environmental Protection Agency (EPA) during the next six month period (January 1, 1979 through June 30, 1979) for specific industrial point source categories. Prior notification of such data collection activities will alert affected industries that potential data collection instruments are forthcoming and thus enable them to fully participate in EPA's rulemaking activities.

Several data collection activities mentioned in this notice were contained in EPA's FEDERAL REGISTER notice of Data Collection Activities dated July 7, 1978. Data collection activities repeated in this FEDERAL REGISTER notice did not commence during the previous reporting period (July 7, 1978 through December 31, 1978).

The following list identifies the category and type of data (economic assessment, technical assessment and analytical sampling) to be collected under authority of Section 308 of the Clean Water Act of 1977, in developing effluent limitations guidelines under Sections 301, 304, 306, and 307 of the Act. Included for each industrial category is the name, organizational location and telephone number of the individual most familiar with the described data collection activity. These activities are subject to Office of Management and Budget (OMB) aproval in accordance with OMB clearance No. 158-R-0160 and are published twice yearly in the FEDERAL REGISTER. Notification is also a requirement for OMB concurrence under the Federal Reports Act (144 U.S.C. 3501 et seq.).

Dated: February 1, 1979.

THOMAS C. JORLING,
Assistant Administrator
for Water and Waste Management.

Survey of aluminum forming industry (analytical sampling).

Number of plants in sample: 30.

Estimated reporting hour burden: 20 man-hours per plant.

Point of contact: Patricia E. Williams, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552) 401 M Street, S.W., Washington, D.C. 20460 (202) 426-2586.

Survey of battery manufacturing industry (analytical sampling).

Number of plants in sample: 30.

Estimated reporting hour burden: 20 man-hours per plant.

Point of contact: Ernst P. Hall, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines, Division (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2576.

Survey of coal mining industry (analytical sampling).

Number of mines of sample: 15.

Estimated reporting hour burden: 150 man-hours per mine.

Point of contact: William Telliard, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2726.

Survey of coal mining industry (analytical sampling).

Number of mines in sample: 10.

Estimated reporting hour burden: 50 man-hours per mine

Point of contact: William Telliard, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2726.

Survey of copper forming industry (analytical sampling).

Number of plants in sample: 15.

Estimated reporting hour burden: 20 man-hours per plant.

Point of contact: Ernst P. Hall, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2576.

Survey of explosives industry (analytical sampling).

Number of plants in sample: 8.

Estimated reporting hour burden: 16 man-hours per plant.

Point of contact: Walter J. Hunt, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2724.

Survey of organic chemicals industry (analytical sampling).

Number of plants in samle: 600 (maximum).

Estimated reporting hour burden: 240 man-hours per survey (30 day survey).

Point of contact: Paul Fahrenthold, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent

Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2497.

Survey of paint and ink industry (analytical sampling).

Number of plants in sample: 3.

Estimated reporting hour burden: 2 man-hours per plant.

Point of contact: James R. Berlow, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2554.

Survey of pesticide industry analytical sampling).

Number of plants in sample: 17.

Estimated reporting hour burden: 240 man-hours per survey (30 day survey).

Point of contact: George M. Jett, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2497.

Survey of phosphate industry (analytical sampling).

Number of plants in sample: 10.

Estimated reporting hour burden: 16 man-hours per plant.

Point of contact: Walter J. Hunt, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines, Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2724.

Survey of photographic supplies industry (analytical sampling).

Number of plants in sample: 8.

Estimated reporting hour burden: 20,man-hours per plant.

Point of contact: Ernst P. Hall, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2576.

Survey of plastics industry (analytical sampling).

Number of plants in sample: 60.

Estimated reporting hour burden: 240 man-hours per survey (30 day survey).

Point of contact: Paul Fahrenthold, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Divsion, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2497.

Survey of porcelain enameling industry (analytical sampling).

Number of plants in sample: 5.

Estimated reporting hour burden: 20 man-hours per plant.

Point of contact: Ernst P. Hall, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2576.

Survey of printing and publishing industry (anayltical sampling).

Number of plants in sample: 30.

Estimated reporting hour burden: 3 man-hours per plant.

Point of contact: Carl Kassebaum, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-7797.

Survey of pulp, paper and paperboard industry (anayltical sampling).

Number of plants in sample: 40.

Estimated reporting hour burden: 72 man-hours per plant.

Point of contact: Robert W. Dellinger, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2497.

Survey of steam electric industry (anayltical sampling).

Number of plants in sample: 10.

Estimated reporting hour burden: 4 man-hours per plant.

Point of contact: John Lum, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-4617.

Survey of timber products industry (anayltical sampling).

Number of plants in sample: 5.

Estimated reporting hour burden: 4 man-hours per plant.

Point of contact: Richard E. Williams, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2554.

Survey of publicly owned sewage treatment works (site selection and analytical sampling).

Number of plants in sample: 80 canadidate sites for initial telephone screening; 40 sites for analytical sampling.

Estimated reporting hour burden: 0.33 man-hours for telephone screening; 40 man-hours for analytical sampling.

Point of contact: Maurice E. B. Owens, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street, S.W., Washington, D.C. 20460, (202) 755-1331.

Survey of 21 industrial categories contained in Settlement Agreement—Natural Resources Defense Council, et al. v Train, June 7, 1976 (for asbestos only) (analytical sampling).

Number of plants in sample: 150.

Estimated reporting hour burden: 6 man-hours per plant.

Point of contact: M. Dean Neptune, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-6770.

Survey of adhesives and sealants industry (economic assessment).

Number of plants in sample: 500.

Estimated reporting hour burden: 40 man-hours per plant.

Point of contact: L. Jean Noroian, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2617.

Survey of auto and other laundries industry (economic assessment).

Number of plants in sample: 1,000.

Estimated reporting hour burden: 24 man-hours per plant.

Point of contact: Emily Hartnell, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street, S.W., Washington, D.C. 20460, (202) 755-2484.

Survey of battery manufacturing industry (economic assessment).

Number of plants in sample: 100.

Estimated reporting hour burden: 16 man-hours per plant.

Point of contact: Emily Hartnell, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street, S.W., Washington, D.C. 20460, (202) 755-2484.

Survey of copper forming industry (economic assessment).

Number of plants in sample: 125.

Estimated reporting hour burden: 40 man-hours per plant.

Point of contact: William Webster, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2617.

Survey of electroplating industry (economic assessment).

Number of plants in sample: 250.

Estimated reporting hour burden: 40 man-hours per plant.

Point of contact: William Webster, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-2617.

Survey of explosives industry (economic assessment).

Number of plants in sample: 50.

Estimated reporting hour burden: 40 man-hours per plant.

Point of contact: L. Jean Noroian, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 426-2617.

Survey of inorganic chemicals industry (economic assessment).

Number of plants in sample: 150.

Estimated reporting hour burden: 24 man-hours per plant.

Point of contact: Sammy K. Ng, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 755-7733.

Survey of paint and ink industry (economic assessment).

Number of plants in sample: 91.

Estimated reporting hour burden: 10 man-hours per plant.

Point of contact: Louis DuPuis, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 755-7733.

Survey of petroleum refining industry (economic assessment).

Number of plants in sample: 24.

Estimated reporting hour burden: 40 man-hours per plant.

Point of contact: Louis DuPuis, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 755-7733.

Survey of pharmaceuticals industry (economic assessment).

Number of plants in sample: 200.

Estimated reporting hour burden: 40 man-hours per plant.

Point of contact: L. Jean Noroian, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 426-2617.

Survey of photographic supplies industry (economic assessment).

Number of plants in sample: 100.

Estimated reporting hour burden: 40 manhours per plant.

Point of contact: William Webster, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 426-2617.

Survey of soaps and detergents industry (economic assessment).

Number of plants in sample: 250.

Estimated reporting hour burden: 40 manhours per plant.

Point of contact: L. Jean Noroian, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 426-2617.

Survey of electric and electronic components industry (technical assessment).

Number of plants in sample: 500.

Estimated reporting hour burden: 4 manhours per plant.

Point of contact: Walter J. Hunt, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2724.

Survey of electroplating industry (technical assessment).

Number of plants in sample: 20.

Estimated reporting hour burden: 20 manhours per plant.

Point of contact: J. Bill Hansen, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2586.

Survey of fruits and vegetables industry—Phase II (technical assessment).

Number of plants in sample: 300.

Estimated reporting hour burden: 5 manhours per plant.

Point of contact: Donald F. Anderson, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2707.

Survey of leather industry (technical assessment).

Number of plants in sample: 140.

Estimated reporting hour burden: 3 manhours per plant.

Point of contact: Donald F. Anderson, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2707.

Survey of ore mining and dressing industry (technical assessment).

Number of mines in sample: 140.

Estimated reporting hour burden: 4 manhours per mine.

Point of contact: William Telliard, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2726.

Survey of pesticide chemicals industry (technical assessment).

Number of plants in sample: 55.

Estimated reporting hour burden: 40 manhours per plant.

Point of contact: George M. Jett, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2497.

Survey of petroleum refining industry (technical assessment).

Number of plants in sample: 72.

Estimated reporting hour burden: 8 manhours per plant.

Point of contact: John Cunningham, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-4617.

Survey of pharmaceutical manufacturing industry (technical assessment).

Number of plants in sample: 800.

Estimated reporting hour burden: 32 manhours per plant.

Point of contact: Joseph S. Vitalis, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2724.

Survey of phosphate industry (technical assessment).

Number of plants in sample: 50.

Estimated reporting hour burden: 4 manhours per plant.

Point of contact: Walter J. Hunt, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2724.

Survey of plastics processing industry (technical assessment).

Number of plants in sample: 15.

Estimated reporting hour burden: 20 manhours per plant.

Point of contact: Ernst P. Hall, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation, (WH-586), 401 M Street SW., Washington, D.C. 20460, (202) 426-2576.

Survey of pulp, paper, and paperboard industry (technical assessment).

Number of plants in sample: 750.

Estimated reporting hour burden: 40 manhours per plant.

Point of contact: Robert W. Dellinger, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2497.

Survey of red meat processing industry (technical assessment).

Number of plants in sample: 56.

Estimated reporting hour burden: 20 manhours per plant.

Point of contact: Elwood H. Forsht, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division, (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2707.

Survey of seafood facilities in Alaska (technical assessment).

Number of plants in sample: 140.

Estimated reporting hour burden: 6 manhours per plant.

Point of contact: Calvin J. Dysinger, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2707.

Survey of timber products industry (technical assessment).

Number of plants in sample: 120.

Estimated reporting hour burden: 2 manhours per plant.

Point of contact: Richard E. Williams, U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division (WH-552), 401 M Street SW., Washington, D.C. 20460, (202) 426-2554.

[FR Doc. 79-6901 Filed 3-6-79; 8:45 am]

[6560-01-M]

[OPP-00090; FRL 1070-4]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, SCIENTIFIC ADVISORY PANEL

Open Meeting

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

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:30 a.m. to 4:30 p.m. daily on Thursday and Friday, March 22, and 23, 1979. The meeting will be held in Room 1112A, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766), Room 803, Crystal Mall, Building No. 2, at the above address (telephone: 703-557-7560).

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under section 6(b) and 25(a) prior to implementation. On the agenda for this meeting are:

1. Presentation of the decision options being considered by the Agency to conclude RPAR (Rebuttable Presumption Against Registration) actions on benonyl and thiophanate methyl products;

2. Discussion of the Agency's section 6(b)(2) action on dibromo chloropropane (DBCP) and;

3. In addition, the Agency may present status reports on other ongoing

programs of the Office of Pesticide Programs.

Copies of draft documents may be obtained by contacting Dr. William Wells, Acting Director, Special Pesticide Review Division (TS-791), Room 447, East Tower, EPA, 401 M Street, S.W., Washington, D.C. 20460 (telephone: 202-755-5687).

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled and to confirm that the Panel will review all of the agenda items. Interested persons are permitted to file written statements before or after the meeting, and may upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit the required number of copies of a summary no later than March 19, 1979.

Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to be instructed on the format and the number of copies to submit to ensure appropriate consideration by the Panel.

The tentative date for the next Scientific Advisory Panel meeting is April 25-27, 1979.

(Section 25(d) of FIFRA, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

Dated: February 28, 1979.

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

[FR Doc. 79-6898 Filed 3-6-79; 8:45 am]

[6560-01-M]

[OPP-42034B; FRL 1070-6]

NORTH DAKOTA

Amendment to State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

Section 4(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended in 1972, 1975 and 1978 (92 Stat. 819, 7 U.S.C. *et seq.*) and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators of restricted use pesticides to submit a plan for that purpose, subject to approval by the Environmental Protection Agency (EPA), and maintain the plan as approved. Notice of approval of the North Dakota State Plan was published in the FEDERAL REGISTER on Dec. 23, 1976 (41 FR 55932). Subsequently, on December 28, 1978, North Dakota requested that EPA approve an amendment to the State Plan. This amendment would add three categories with specific standards of competence under which commercial applicators could become certified to apply restricted use pesticides. These three categories are: (1) Vertebrate Animal Control; (2) Forest Pest Control; and (3) Aquatic Pest Control.

PUBLIC COMMENT

Interested persons are invited to submit written comments on the proposed amendment to the North Dakota State Plan. A copy of the proposed amendment may be examined during normal business hours at the following locations:

1. Department of Agriculture, State Capitol, Bismarck, North Dakota, telephone (701) 224-2232.

2. Cooperative Extension Service, Room 108, Morrill Hall, North Dakota State University, Fargo, North Dakota, telephone (701) 237-7171.

3. Pesticides Branch, EPA Region VIII, Room 2013, 1860 Lincoln Street, Denver, Colorado, telephone (303) 837-3926.

4. Federal Register Section, Program Support Division, Office of Pesticide Programs, EPA, Room 401, East Tower, Waterside Mall, 401 M Street S.W., Washington, D.C., telephone (202) 755-4854.

Written comments should be submitted to the Chief, Pesticides Branch, EPA Region VIII, 1860 Lincoln Street, Denver, Colorado 80295 and must be received on or before April 6, 1979.

Dated: February 2, 1979.

ALAN MERSON,
Regional Administrator, Region VIII.

[FR Doc. 79-6899 Filed 3-6-79; 8:45 am]

[6560-01-M]

[PP 8G2029/T185; FRL 1070-2]

PERMETHRIN

Establishment of a Temporary Tolerance; Pesticide Program

ICI America, Inc., Wilmington, DE 19897, submitted a pesticide petition (PP 8G2029) to the Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for residues of the insecticide ermithrin (*cis* and *trans* isomers of (3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity celery at 5 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (10182-EUP-9) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerance was adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerance would protect the public health. The temporary tolerance has been established for the pesticide, therefore, with the following provisions:

The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

ICI America, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires January 25, 1980. Residues not in excess of 5 ppm remaining in or on celery after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Franklin Gee, Product Manager 17, Registration Division (TS-767), Office of Pesticide Programs, East Tower, 401 M St. SW, Washington DC 20460 (202/426-9425).

Dated: February 23, 1979.

(Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)].)

HERBERT S. HARRISON,
Acting Director, Registration Division.

[FR Doc. 79-6896 Filed 3-6-79; 8:45 am]

[6560-01-M]

[FRL 1069-8]

SCIENCE ADVISORY BOARD SUBCOMMITTEE ON MOBILE SOURCES

Open Meeting

As required by Pub. L. 92-463, notice is hereby given that a meeting of the

Subcommittee on Mobile Sources of the Science Advisory Board will be held beginning at 9:15 a.m., March 22, and 23, 1979 in Room 1101 West Tower, Environmental Protection Agency, 401, M Street, S.W., Washington, D.C. 20460. This will be the first meeting of the Subcommittee on Mobile Sources, and is a rescheduling of the meeting that was to have taken place of February 20 and 21, cancelled due to inclement weather. The Agenda includes a briefing on diesel health effects research being conducted by the Environmental Protection Agency, the Department of Transportation, and the automobile industry; a summary of provisions of the Clean Air Act relating to mobile sources; and a review of the Mobile Sources Research Plan prepared by EPA's Mobile Sources Research Committee. The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Mr. Terry F. Yosie, Staff Officer, or Ms. Janet Steel, Staff Assistant, Subcommittee on Mobile Sources, (703) 557-7720, by close of business March 16, 1979. Anyone having registered for the February 20-21 meeting need not reregister.

Dated: March 1, 1979.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

[FR Doc. 79-6897 Filed 3-6-79 8:45 am]

[6560-01-M]

[OPP-00089; FRL 1071-1]

STATE FIFRA ISSUES RESEARCH AND EVALUATION GROUP (SFIREG)

Open Meeting

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

ACTION: Notice of open meeting.

SUMMARY: There will be a one-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) on Monday, March 26, 1979 from 8:30 a.m. to 4:30 p.m.

The meeting will be held in Room 3906-3908 Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Mr. P. H. Gray, Jr., Operations Division (TS-770), Office of Pesticide Programs, Room: E-507, EPA, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 755-7014.

SUPPLEMENTARY INFORMATION: This is the second meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the December 1978 meeting of SFIREG;
2. Regional reports;
3. Working Committee reports;
4. Status of USDA integrated pest management program;
5. EPA policy concerning State certification and training programs; and
6. Other subjects which may arise.

Dated: March 2, 1979.

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

[FR Doc. 79-6900 Filed 3-6-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

AM BROADCAST APPLICATIONS

Ready and Available for Processing

Adopted: February 28, 1979; Released: March 1, 1979; By the Chief, Broadcast Facilities Division; Cut-Off Date: April 18, 1979.

Notice is hereby given, pursuant to § 1.571(c) of the Commission's Rules, that on April 19, 1979, the AM applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.591(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on April 18, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. by the close of business on April 18, 1979. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached Appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to § 1.571(c) of the Commission's Rules.

Any party in interest desiring to file pleadings concerning these applications, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

BP-20380—NEW, Clarksville, Tennessee, Two Rivers Broadcasting Co., Req., 1550 kHz, 250 W, DA-2, U.

BP-20382—KWSO, Wasco, California, KWSO, Inc., Has: 1050 kHz, 1 kW, Day, Req: 1050 kHz, 5kW, DA-Day.

BP-20435—WCLE, Cleveland, Tennessee, Southeastern Enterprises, Inc., Has: 1570 kHz, 1kW, Day, Req: 1570 kHz, 2.5 kW, Day.

BP-20816—NEW, Ashland City, Tennessee, Cheatham Broadcasting Corp., Req: 790 kHz, 500 W, DA-Day.

BP-20822—WKIN, Kingsport, Tennessee, Radio Station WKIN, Inc., Has: 1320 kHz, 5 kW, Day. Req: 1320 kHz, 500 W, 5 kW-LS, DA-N, U.

BP-20836—NEW, Aberdeen, North Carolina, Aberdeen Broadcasters, Inc., Req: 1350 kHz, 2.5 kW, DA-Day.

BP-20862—WSLG, Gonzales, Louisiana, Ascension Parish Broadcasting Co., Has: 1090 kHz, 500 W, DA-Day, Req: 1090 kHz, 10 kW, DA-Day.

BP-20868—NEW, Opp, Alabama, Opp Radio, Inc., Req: 1290 kHz, 500 W, 2.5 kW-LS, DA-2, U.

BP-21076—NEW, Camp Lejuene, North Carolina, Francom, Inc., Req: 1580 kHz, 10 kW (5 kW-CH), Day.

BP-21127—NEW, Hazard, Kentucky, Perry Broadcasting Co., Req: 1170 kHz, 250 W, Day.

BP-21135—KWIQ, Moses Lake, Washington, KWIQ Radio, Inc., Has: 1260 kHz, 1 kW, Day, Req: 1260 kHz, 500 W, 1 kW-LS, DA-N, U.

BP-21192—NEW, Springfield, Tennessee, Fred Harron, Req: 1190 kHz, 250 W, Day.

BP-21194—NEW, Ashland City, Tennessee, Andrew Jackson Broadcasting Corp., Req: 1190 kHz, 500 W, Day.

BP-21201—WQIN, Lykens, Pennsylvania, Quinn Broadcasting, Inc., Has: 1290 kHz, 500 W, Day, Req: 1290 kHz, 1 kW, Day.

BP-21203—KGMS, Sacramento, California, KULA Broadcasting Corporation, Has: 1380 kHz, 1kW, DA-2, U. Req: 1380 kHz, 5 kW, DA-2, U.

BP-21214—WLLS, Hartford Kentucky, Hayward F. Spinks, Has: 1600 kHz, 500 W, Day, Req: 1600 kHz, 1000 W, Day.

BP-21218—WHTH, Heath, Ohio, Runnymeade, Inc., Has: 1000 kHz, 250 W, DA-Day, Req: 790 kHz, 500 W, DA-Day.

BMP-780830AI—KKYN, Plainview, Texas, Panhandle Broadcasting, Inc., Has: 1090 kHz, 500 W, 2.5 kW-LS, DA-2, U, Req: 1090 kHz, 500 W, 5 kW-LS, DA-2, U.

BP-780724AC—NEW, Yucca Valley, California, Lee R. Shoblom, Req: 1420 kHz, 1 Kw, Day.

BP-780726AD—NEW, China Grove, North Carolina, South Rowan Broadcasting Company, Inc., Req: 1140 kHz, 250 W, Day.

BP-780726AI—WJKY, Jamestown, Kentucky, Lake Cumberland Broadcasters, Has: 1060 kHz, 1 kW, Day, Req: 1060 kHz, 2.5 kW, Day.

BP-780727AC—WBBR, Travelers Rest, South Carolina, Piedmont Broadcasting Company, Inc., Has: 1580 kHz, 1 kW, Day, Req: 1580 kHz, 5 kW (1kW-CR), Day.

BP-780727AL—NEW, Freeland, Pennsylvania, Family Broadcasting of Pennsylvania, Req: 1300 kHz, 500 W, Day.

BP-780727AN—WGRK, Greensburg, Kentucky, Veer Broadcasting Company, Inc., Has: 1550 kHz, 250 W, Day, Req: 1540 kHz, 1 kW (500 W-CH), Day.
BP-780728AC—NEW, Hilton Head Island, South Carolina, Hilton Head Media, Req: 1130 kHz, 1 kW, Day.
BP-780728AM—NEW, Flemingsburg, Kentucky, Flemingsburg Broadcasting Company, Inc., Req: 1060 kHz, 1 kW (500 W-CH), DA-2, Day.
BP-780728AT—KEDA, San Antonio, Texas, D & E Broadcasting Company, Inc., Has: 1540 kHz, 1 kW, Day, Req: 1540 kHz, 1 kW, 5 kW-LS, DA-2, U.
BP-780807AI—KUBA, Yuba City, California, Neider and Mills, Has: 1600 kHz, 500 W, kW-LS, DA-N, U. Req: 1600 kHz, 1 kW, 5 kW-LS, DA-N, U.
BP-780807AK—NEW, Sierra Vista, Arizona, Hometown Communications, Inc., Req: 1470 kHz, 2.5 kW, Day.
BP-780828AG—NEW, Glenwood, Arkansas, Caddo Broadcasting Corporation, Req: 1470 kHz, 2.5 kW, Day.
BP-780829AF—WTZE, Tazwell, Virginia, Tazwell Broadcasting, Inc., Has: 1470 kHz, 2.5 kW, Day, Req: 1470 kHz, 5 kW, Day.
BP-780831AT—KLDR, Aurora, Colorado, Leo Payne Broadcasting, Inc., Has: 1090 kHz, 50 kW, DA-Day (Denver), Req: 1090 kHz, 500 W, 50 kW-LS, DA-2, U (Aurora).
BP-780831AV—KDES, Palm Springs, California, Tourtelot Broadcasting Company, Has: 920 kHz, 500 W, 5 kW-LS, DA-2, U, Req: 920 kHz, 1 kW, 5 kW-LS, DA-2, U.
BP-780901AG—WKKQ, Hibbing, Minnesota, WKKQ, Inc., Has: 1060 kHz, 5 kW, Day, Req: 1080 kHz, 5 kW, 10 kW-LS, DA-N, U.
BP-780911AL—WTNN, Millington, Tennessee, The Moore Company, Inc., Has: 1380 kHz, 500 W, Day, Req: 1380 kHz, 1 kW, Day.
BP-780912AB—NEW, Plover, Wisconsin, Viking Communications, Ltd., Req: 1530 kHz, 50 kW (10 kW-CH), DA-2, Day.
BP-780922AL—NEW, Whitefish, Montana, Big Mountain Broadcasting Co., Inc., Req: 1450 kHz, 250 W, 1 kW-LS, U.
BP-781106AO—NEW, Odessa, Texas, L & T Enterprises, Inc., Req: 1000 kHz, 250 W, Day.
BP-781204AF—KGST, Fresno, California, International Radio, Inc., Has: 1600 kHz, 5 kW, Day, Req: 1600 kHz, 5 kW, DA-N, U.
BP-781205AE—KLFB, Lubbock, Texas, La Fiesta Broadcasting Co., Inc., Has: 1420 kHz, 500 W, Day, Req: 1420 kHz, 500 W, DA-N, U.

[FR Doc. 79-6824 Filed 3-6-79 8:45 pm]

[6712-01-M]

[Docket No. 21499; FCC 79-97]

AMERICAN TELEPHONE AND TELEGRAPH CO. AND ASSOCIATED BELL SYSTEM COMPANIES

Memorandum Opinion and Order

Adopted: February 14, 1979; Released: March 6, 1979; (see: 43 FR 4110); By the Commission: Commissioner Quello absent.

In the Matter of American Telephone and Telegraph Company and Associated Bell System companies, offer of facilities for use by other common carriers.

1. We here consider four matters concerning American Telephone and Telegraph Company and its Associated Operating Companies' (AT&T) provision of domestic facilities to the International Record Carriers (IRCs). The first petition requests that we order AT&T to provide certain facilities used for overseas television transmission on a contract, rather than tariff, basis; the second petition requests that we order AT&T to provide certain facilities on a group/supergroup basis; and the third petition requests that we order AT&T to provide domestic entrance facilities on an indefeasible right of use (IRU) basis (as well as capacity in those facilities in increments greater than voice-grade circuits). We also consider, on our own motion, certain contractual arrangements between AT&T and the IRCs for domestic facilities. Since all of these matters relate to either implementation or interpretation of our actions in Docket No. 20452, *infra*, we will consider them in the same order.

I. Background

2. Docket No. 20452 was an investigation into the lawfulness of AT&T's offering of entrance (*e.g.*, between earth stations and operating centers) and intercity (*e.g.*, between and among operating centers in different cities) facilities to the IRCs under identical General Leasing contracts while it offered the domestic satellite common carriers (DSCCs) and the specialized common carriers (SCCs) essentially identical facilities under Other Common Carrier (OCC) facilities tariffs.[1] The applicable tariffs contained higher charges for facilities than the AT&T-IRC General Leasing contracts, thereby resulting in preferential rate treatment for the IRCs. We found this rate preference to be unlawfully discriminatory under Section 202(a) of the Act, 47 U.S.C. 202(a), and ordered AT&T to eliminate the discrimination, 63 FCC 2d at 765-69, 66 FCC 2d at 528-30, 532. AT&T chose to file facilities tariffs on May 27, 1977 in which the facilities and service capabilities previously offered to the IRCs under the General Leasing contracts were provided to them by OCC facility tariffs at the same charges paid by the DSCCS and SCCs. These tariffs became effective January 9, 1978 and we held in our reconsideration of Docket 20452 that such tariffs complied with our *Final Decision* to the extent they eliminated an obvious and unjustified discrimination, 66 FCC 2d at 539. We also held that the IRCs did not allege sufficient facts to show that these tariffs, by not offering voice circuits on a group and supergroup basis, constituted a withdrawal or impairment of service under Section 214 of the Act, 47 U.S.C. 214, 66 FCC 2d at 540.[2]

II. RCA Petition Concerning Facilities for Overseas Television Transmission

3. RCA Global Communications, Inc. (RCA) filed a petition on March 8, 1978 requesting that we order AT&T and certain affiliated operating companies to continue to provide local television channels at charges specified in contracts with the IRCs, and to declare the termination of those contracts void. AT&T has filed an opposition and RCA has replied. To understand the nature of this request we must go back to 1966 and 1977. At that time RCA (and other IRCs) and AT&T entered into contracts whereby AT&T provided, among other things, for television channel facilities connecting RCA's operating centers in New York and San Francisco to earth stations which serve as entrance and exit points for overseas television transmission. In May and June 1977, AT&T sent RCA (and other IRCs) termination notices of that portion of the contracts which provided for local television transmission between RCA's operating centers and AT&T's operating centers.[3] AT&T claims this action was in response to our *Final Decision* in Docket 20452.

4. RCA claims that this termination is in violation of our Docket 20452 *Reconsideration Order*, 66 FCC 2d at 532, paras. 23-24. It argues that our Order explicitly excluded consideration of contracts involving terrestrial television channels and that AT&T has no basis to alter the then-existing arrangement. Since that Order indicated that the Commission would initiate a proceeding in the near future to investigate other contractual arrangements not covered by that docket, RCA argues that no changes may be made in the *status quo*, i.e., the alteration or termination of existing contracts, pending further Commission action.

5. Because of the termination of this portion of the contracts, the IRCs now take these local television channel facilities under Bell System Operating Companies OCC facility tariffs, which are the same tariffs under which the domestic satellite carriers take similar

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[1] *Interconnection Facilities Provided to the International Record Carriers*, 52 FCC 2d 1014 (1975) (*Designation Order*), 63 FCC 2d 761 (1976) (*Final Decision*), *recon. denied*, 66 FCC 2d 517 (*Reconsideration Order*), *aff'd sub nom. Western Union International, Inc.* v. *FCC*, 568 F. 2d 1012 (2d Cir. 1977), *cert. denied*, 46 U.S.L.W. 3751 (June 5, 1978).

[2] The Court of Appeals affirmed the Docket 20452 orders. See n. 1, *supra*.

[3] AT&T did not terminate the portion of the contracts relating to interexchange facilities which provide for television transmission between AT&T's operating centers and the earth stations.

service.[4] According to RCA, our order in *Overseas Television Transmission Service*, 18 FCC 2d 402 (1969), restricts the IRCs to providing overseas television service only one week out of four on a "rotational basis." Therefore, RCA argues, it is unfair for the IRCs to pay tariffed monthly rates, which it claims increase the charge for this service over three times the contract charge. It claims this to be an unreasonable economic burden and states that the IRCs can no longer offer this service on a profitable basis. Because the IRCs are totally dependent on AT&T for the lines necessary to provide overseas television service, RCA also argues that termination of these contracts is an unfair use of AT&T's monopoly power to destroy competition in the overseas television service field.

6. AT&T acknowledges that our *Reconsideration Order* excluded from consideration in Docket 20452 contracts other than the General Leasing contracts between AT&T and the IRCs, but it argues that that Order explicitly excepted the local television channel facilities here in issue from this exclusion.[5] It also claims that even if the subject facilities contracts were excluded from consideration in Docket 20452, it still had the right to terminate the contracts according to their terms because our *Reconsideration Order* did not require AT&T to do, or refrain from doing, anything with respect to the contractual arrangements not under consideration in that Order.

7. RCA misconstrues our *Reconsideration Order* in Docket 20452. We there directed AT&T to remove the unlawful discrimination in its provision of entrance and intercity facilities provided under the identical General Leasing contracts AT&T had with the IRCs. As to other domestic facility contractual arrangements AT&T had with the IRCs, such as the television transmission facilities in question, we explicitly excluded them from our consideration and holding, 66 FCC 2d at 532, and thus imposed no obligation on AT&T with respect to provision of such facilities either under contracts or by tariff. Therefore, RCA's argument that Docket 20452 *requires* AT&T to continue furnishing the facilities in question under contract is incorrect. What is involved here is carrier-initiated action, in this regard, we note that AT&T has merely terminated the contract pursuant to its terms.[6] RCA argues that the provisions of the contracts themselves do not permit AT&T to sever the contracts and terminate only the local television channel facilities, leaving the rates for the interexchange facilities in effect. However, we believe the contract clearly allows either party to terminate the contract in part as AT&T has done.[7] RCA's further arguments that the tariffs place an unreasonable economic burden on the IRCs,[8] that it is contrary to Commission policy, etc., have no relevance to the issue of whether AT&T may legally terminate these contracts consistent with the terms of such contracts or our *Reconsideration Order* in Docket 20452. RCA's present petition only requests that we order AT&T to continue providing the local facilities in question pursuant to a contract rate and on this basis RCA clearly has shown no right to relief. We note here, however, that the reasonableness and lawfulness of the tariffs under which RCA must now take these facilities will be considered as appropriate in our pending proceeding in Docket No. 21499, *AT&T Offer of Facilities for Use by OCCs*, 66 FCC 2d 1018 (1977). AT&T's continued provision of interexchange facilities under contract to the IRCs will also be examined at that time, although we expect AT&T to now consider the continued viability of these contracts in light of our *Spanish International Network* Order, fn. 8, *supra*.

III. RCA Petition Concerning Group/Supergroup Facilities

8. RCA filed another petition, February 14, 1978, requesting that we order AT&T and certain affiliated Bell System Operating Companies to (1) provide RCA and other IRCs with group and/or supergroup bandwidth facilities between and among the IRCs' operating centers and the overseas cable stations and satellite earth stations, and to permit the subdivision of such facilities by the IRCs into quantities of digital and/or analog channels and (2) provide the IRCs appropriate access to space under AT&T's control at the overseas cable stations and satellite earth stations for the installation and maintenance of IRC channelization equipment associated with group and supergroup facilities. AT&T has filed an opposition and RCA has replied. Western Union International, Inc. (WUI) has also filed comments supporting RCA's request.

9. Group bandwidth facilities are facilities having a maximum equivalent carrier spectrum of 48 KHz for use as a wideband channel or as channels of lesser bandwidth which may carry up to 12 voice-grade channels. Supergroup bandwidth facilities have a maximum spectrum of 240 KHz which may carry up to 60 voice-grade channels. Group and supergroup facilities may be utilized to carry voice-grade, subvoice-grade, high and low speed data, or any combination of these signals.

10. AT&T presently offers facilities to the IRCs under Bell Operating Companies Tariff FCC No. 4 (Tariff BOC 4) which offers single voice-grade bandwidth circuits. These circuits can be channelized into lesser bandwidths for subvoice-grade transmission. This tariff also offers 50 and 56 kilobit per second (kbps) circuits for data transmission only which can be channelized to derive multiple data transmissions at speeds lower than 56 kpbs.

11. Prior to our Docket 20452 proceeding, AT&T offered facilities on a group and supergroup basis to RCA under the General Leasing contracts. When AT&T filed Tariff BOC 4, in response to our *Final Decision* in Docket 20452, there was no provision offering facilities on a group or supergroup basis. RCA filed petitions to suspend or reject this tariff filing, arguing in part, that group and supergroup facilities were no longer being offered. We denied RCA's petitions in our *Reconsideration Order*, holding that the IRCs had not alleged sufficient facts

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[4] See, *e.g.*, New York Telephone Company Tariff FCC No. 39 and Pacific Telephone and Telegraph Company Tariff FCC No. 126.

[5] AT&T points to our language at 66 FCC 2d 532, fn. 19, where we stated, "According to AT&T, the local channel facilities furnished the IRCs are physically the same as those offered by Bell System associated companies in the OCC facility tariffs and they are not, therefore, the subject of AT&T's request for clarification."

[6] See RCA's petition (Exhibit A, para. 10, and Exhibit B, para. 11) which shows that these contracts "shall continue in effect until terminated by lessee or lessor upon thirty (30) days notice in writing to the other party."

[7] We believe that the most reasonable interpretation of the contracts is that they are severable and thus could be terminated in part. The contract terms make available the local channels and the interexchange channels to the IRCs separately and the rates for each are also separately stated.

[8] We also note that RCA's argument that the tariffs place an unreasonable economic burden on the IRCs appears to be effectively mooted by our recent action in *Spanish International Network*, CC Docket No. 78-218, FCC 78-714, adopted October 5, 1978, *review pending sub nom. ITT World Communications, Inc.* v. *FCC*, No. 79-1046, D.C. Cir. As discussed in para. 5 above, RCA claims that it is unfair for the IRCs to pay tariffed monthly rates for local television transmission facilities when they provide overseas television transmission service on only a weekly rotational basis. Our action in *Spanish International Network* requires that the international carriers eliminate the weekly rotational arrangement under which they currently provide overseas television transmission service by filing appropriate applications under Section 214, 47 U.S.C. 214. It will also likely require the international carriers to make revisions to their joint tariff which provides for weekly rotational service. AT&T should also consider the validity of its existing contracts with the IRCs for interexchange facilities which seem to be premised on the continuation of the weekly rotational arrangement basis. It appears such contracts may now conflict with our *Spanish International Network* holding.

to show that the utility and quality of the facilities they would receive under tariff were so different from those it received under contract as to raise a question of service discontinuance within the meaning of Section 214(a), 47 U.S.C. 214(a). See 66 FCC 2d at 537, 540. RCA has also requested such facilities from AT&T by letter since then, but AT&T has declined to make such an offering to RCA.[9]

12. RCA claims that the "intent" of our *Final Decision* and our *Reconsideration Order* in Docket 20452 was that AT&T provide group and supergroup facilities to the IRCs. It relies heavily for this assertion on the language in our *Reconsideration Order*, 66 FCC at 526, fn. 14, where, in disposing of another issue, we stated, "[f]urther, we expect that Bell would be generally willing to meet a carrier's particular need for group or supergroup facilities under special construction provisions of applicable BOC facility tariffs." AT&T responds to this argument by claiming that our Docket 20452 orders impose no "direct obligation" on it to provide group/supergroup facilities to the IRCs, that this footnote was merely an "expectation" expressed by the Commission, that even that expectation was premised on a showing by RCA of a "particular need" for such facilities, and that RCA's real motivation is to obtain facilities at a bulk rate.

13. RCA also argues that denial of group/supergroup facilities to the IRCs constitutes an unlawful discrimination under Section 202(a) of the Act because such facilities are offered to the DSCCS and were offered to Western Union Telegraph Co. (WU) under contracts that now have expired. The DSCCs are offered supergroup facilities under AT&T Tariff No. 265,[10] while WU was offered both group and supergroup facilities under contract.[11] AT&T argues that neither offering is a general offering which need be extended to others. The offering to the DSCCs, AT&T claims, was made in response to our conditioned grant of AT&T's application to provide domestic communications satellite services, *see AT&T*, 42 FCC 2d 654 (1973), *recon. denied*, 45 FCC 2d 93 (1974), which AT&T claims would not have been granted if it had not offered group/supergroup facilities to the DSCCs. AT&T also claims that since no carrier is currently taking group/supergroup facilities under Tariff No. 265 (and only one carrier ever did since it was offered), this tariff should not be a basis for extending this offering to others. As to the offering to WU under contract, AT&T claims that this contract has been terminated[12] and likewise should not be a basis for extending these facilities to others.

14. Further, RCA claims that denial of group/supergroup facilities constitutes an unauthorized discontinuance of service under Section 214 of the Act, 47 U.S.C. 214. RCA argues that Tariff BOC 4 is not equivalent to a group/supergroup facility offering because there is a less "operational flexibility" under the tariff. For example, RCA argues, this tariff does not provide for transmitting different types of signals in combination, for transmitting different types of signals alternately, or for transmitting data above 56 kbps, all of which was possible under the group/supergroup facilites offering under contract. AT&T argues that this issue, having been decided in our *Reconsideration Order* and affirmed by the U.S. Court of Appeals, *supra*, is *res judicata*. AT&T also claims that Tariff BOC 4 is equivalent to what the IRCs were provided under contract and that RCA never used the group/supergroup facilities for the "operational flexibility" purpose presented in the instant petition. AT&T also argues that RCA's affidavit alleging different technical characteristics between Tariff BOC 4 and group/supergroup facilities is vague, general, and does not show that RCA has a present need for these facilities for this alleged purpose. Finally, RCA argues that a carrier with monopoly control over essential facilities may not deny other carriers reasonable access to facilities under its control which are required for other carriers' authorized communications services, citing *Specialized Common Carrier Services*, 24 FCC 2d 318 (1970) (*Specialized Common Carrier*) *and Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F. 2d 1250 (3rd Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975) (*Bell of Pa.*). AT&T claims that this argument is procedurally defective at this point in the pleading cycle and should not be considered here.[13]

15. RCA's argument that our orders in Docket 20452 affirmatively require the offering of group/supergroup facilities by AT&T to RCA and the other IRCs is without merit. Our *Reconsideration Order*, to the extent it discussed this issue prospectively, can not be reasonably read to affirmatively impose such an obligation. The language quoted by RCA in footnote 14 of that *Order*, 66 FCC 2d at 526, explicity stated that it was our "expectation" that AT&T would be "generally willing" to meet an IRC's "particular need" for group/supergroup facilities. RCA has made no factual showing herein of any "particular need" for the facilities in question.[14] Similarly, RCA's argument that AT&T has discontinued service without Section 214 authroization is incorrect. This argument was raised in our *Reconsideration Order*, and we there stated that RCA had not alleged sufficient facts to warrant further inquiry on this issue, 66 FCC 2d at 540.[15] Because the IRCs receive the equivalent facilities under tariff they formerly received under contract (albeit on a different basis), and because they allege only general speculative harm to their service customers, we reach the same conclusion as to Section 214 here.

16. The above discussion, however, does not dispose of the question of whether AT&T should nonetheless be required to offer these facilities in the future to the IRCs or OCCs in general on some other legal ground or policy basis, such as under our basic interconnection and competition policies embodied in Section 201(a). Our general policy, arising out of the advent of competition in the domestic telecommunications marketplace, has been to require AT&T, to provide essential domestic interconnection facilities to other non-telephone company carriers on a just, reasonable, and otherwise lawful basis. *See Bell Telephone Com-*

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[9] RCA sent a letter to AT&T, dated December 27, 1977, requesting group/supergroup facilities and AT&T responded by letter to RCA, dated January 24, 1978, denying this request.

[10] AT&T Tariff No. 265, Section 3.2, Original Page 19. While AT&T does not provide group bandwidth directly under this tariff, it will channelize supergroup facilities into group equivalent spectrums at the request of the carrier.

[11] WU was offered these facilities under a number of letter agreements with AT&T's associated companies, all of which contained identical attachments setting forth the terms and conditions. *See, e.g.*, AT&T-WU Letter Agreement dated June 13, 1971, effective September 19, 1968, in which AT&T, Southern Bell Telephone & Telegraph Co., and the Bell Telephone Co. of Pa. offered supergroup facilities between WU's offices at Atlanta Ga. and Pittsburgh, Pa.

[12] AT&T and its associated companies sent notices of termination to WU indicating that these facilities, among others, would no longer be offered under contract as of October 1, 1978. *See American Telephone and Telegraph Company and Bell System Operating Companies*, 69 FCC 2d 724 (1978), *review pending sub nom. Western Union Telegraph Co.* v. *FCC*, No. 78-1955, D.C. Cir., which allowed the tariffs under which WU is offered other facilities to become effective.

[13] AT&T and RCA have both submitted a number of procedural pleadings regarding this argument. However, because of the manner in which we are disposing of RCA's request for group/supergroup facilities, see para. 16, *infra*, these precedural pleadings are moot.

[14] RCA cites no examples of inability to meet the service needs of its customers as a result of AT&T's actions.

[15] This issue was specifically raised on appeal (*see, e.g.*, Joint Brief of Petitioners WUI and RCA, November 18, 1977, pp. 54-56) and the Second Circuit found no merit in the petitioners' contentions. *Western Union International, Inc.* v. *FCC*, *supra*, 568 F. 2d at 1020.

pany of Pa. v. *FCC*, 503 F. 2d 1250 (3rd Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975). While AT&T's obligation to do so is clear, there is often controversy as to the scope of its obligation, *e.g.*, what facilities are essential for the OCCs to provide their services and what charges should apply. See, *e.g.*, Docket 20099, AT&T Offer of Facilities for Use by OCCs, 47 FCC 2d 660, *modified*, 49 FCC 2d 729 (1974), 52 FCC 2d (1975). In this context, RCA's argument that AT&T's denial of group/supergroup facilities to the IRCs constitutes an unlawful discrimination under Section 202(a) may have some merit. More importantly, it raises a question of a possible unreasonable denial of service under Section 201(a) of the Act. While the IRC's pleadings are unpersuasive as to the essential nature of those facilities to their operations, AT&T's pleadings are not much more convincing. AT&T offers no specific reason why it will not offer such facilities to the IRCs, such as unavailability or technical constraints. While AT&T argues that its group/supergroup offering to the DSCCs was made in response to a condition we imposed on accepting its application for domestic communications satellite service, we do not believe this condition necessarily differentiates the offering to the DSCCs such as to warrant not offering these same facilitie to the IRCs. Also, AT&T's argument that the DSCCs do not currently utilize this service is not dispositive since, to the extent Section 202(a) is relevant, we must look not only at actual violations but also the potential for Section 202(a) violations. On balance, we believe possible questions of lawfulness under Section 202(a) and Section 201(a) have been raised and we must determine whether AT&T should be required to offer such facilities to RCA or other IRCs, and if so, at what rates, terms, and conditions.[16] However, we do not believe we should look at these important interconnection questions on an *ad hoc* basis. The last time the OCCs' interconnection needs were considered in depth was in Docket 20099, *supra*. Accordingly, we believe these interconnection issues should be determined in the broad context of defining the scope of AT&T's prospective interconnection obligations which will result in a more uniform and consistent policy on this matter.[17] We shall therefore consider whether the IRCs and OCCs in general should be offered group/supergroup facilities, and at what charges, when we address these issues in a broader context in Docket 21499, *supra*, at para. 7. Thus, RCA and other carriers will have an opportunity to show whether they have any "particular need" for such facilities as well as the practical extent of any "operational flexibility" under such facilities.

IV. ITT's Petition

17. ITT World Communications, Inc. (ITT) filed this petition June 8, 1978. AT&T has responded and ITT has replied. RCA and WUI have also filed comments supporting ITT's petition. ITT makes two requests. The first is similar to RCA's request concerning group/supergroup facilities and can be summarily disposed of here. Specifically, ITT requests that we order AT&T to make available to ITT and the other IRCs capacity in its domesic entrance facilities in increments of bandwidth greater than voicegrade circuits. This request is broader than RCA's request for group/supergroup bandwidth as it apparently includes *all* types of bandwidth (*i.e.*, mastergroup, 1.544 megabit channels, etc.). ITT raises the same basic arguments for this request that RCA raised in its petition, see paras. 12-14, *supra*, and we need not address them again. We will consider this issue in our Docket 21499 proceeding and ITT may raise any related questions at that time.

18. ITT's second request is that we order AT&T to make available to ITT and the other IRCs domestic entrance facilities, used in the provision of overseas services between the overseas cableheads or earth stations and the authorized gateway cities, on an indefeasible right of user (IRU) basis.[18] ITT argues that we have found it to be in the public interest for IRCs to obtain IRUs in cables, *American Telephone and Telegraph Co.*, 37 FCC 1151 (1964), earth stations, *Ownership and Operation of Earth Stations*, 5 FCC 2d 812 (1966), microwave systems, *All American Cable and Radio, Inc.*, 15 FCC 2d (1968) (*All America*), and in the maritime satellite system, *Comsat General Corp.*, 52 FCC 2d 983 (1975). It claims that the rationale for granting IRUs in these facilities equally applies to the domestic entrance portion of international service offerings. ITT states that its inability to obtain IRUs in these domestic entrance facilities places it in a competitive disadvantage vis-a-vis AT&T in offering international services. This results, ITT claims, because it is less costly to provide service on an IRU basis, as opposed to a tariff lease basis (which is the method by which the IRCs are presently taking these services).[19] WUI and RCA rely upon the same arguments in their comments.

19. AT&T claims that it would not be in the public interest to grant IRUs in the domestic entrance facilities provided to the IRCs. It argues that we have granted IRUs only when a facility was discrete and specifically identifiable. The domestic entrance facilities, it claims, are not discrete because this traffic uses the same facilities used for transmission of domestic traffic. The IRC services transiting these facilities, AT&T claims, may be routed in a number of ways between a cablehead or earth station and an IRC operating center. To grant IRUs in such facilities, it argues, would give the IRCs certain rights, akin to ownership rights, in specific traffic patterns for its services. This, AT&T claims, would detrimentally affect its ability to effectively manage its domestic network because the IRCs could then prevent AT&T from rerouting traffic. The ability to reroute traffic patterns, AT&T claims, is necessary to obtain the most efficient and effective use of its total domestic network.

20. We have already stated that granting IRUs in domestic entrance facilities would require a substantial change in Commission policy, *See* Docket 20452, 66 FCC 2d at 519, note 4, and we find, basically, that ITT has failed to allege sufficient facts or policy reasons to justify further exploration of the IRU question. We have previously found, contrary to the claims of ITT and WUI, that IRUs are *not* in the public interest *per se*, *All America*, 15 FCC at 12; *Communications Satellite Corp.*, 23 FCC 2d at 855, and therefore will not grant an IRU interest here without a finding that it would be in the public interest to do so. Our general policy in this field is that AT&T should provide essential domestic inter-connection facilities to other non-telephone company carriers, see para. 16, *supra*, and this has generally been accomplished through the tariffing process, not through contractual ownership arrangements such as IRUs. We have also required AT&T, in its tariffs, to make available its private line services (and facilities, employed therein) for resale by those choosing to become common carriers on this basis.[20] *See Resale and Shared Use of*

[16] Under Section 201(a) we may prescribe the rates, terms and conditions of interconnection only after opportunity for hearing.

[17] While we are taking a broad industry look at the scope of the Bell System Operating Companies' interconnection obligation, that does not preclude us from acting on individual interconnection disputes. See, *e.g.*, *ITT Worldcom* v. *Pacific Telephone and Telegraph Company*, File No. TS 4-79, where ITT Worldcom seeks a 50 kbps facility from Pacific.

[18] An IRU gives a carrier an interest in the facility in question which includes an indisputable right to use a proportionate share of the facility. See *Communications Satellite Corp.*, 23 FCC 2d 850, 855 at note 9 (1970).

[19] An IRU allows a carrier, in effect, to purchase a portion of a facility at costs proportionate to the facility's total cost without including a return element to the licensee. It also allows for inclusion of this investment in the acquiring carrier's rate base. *Id.*

[20] We are also concerned that certain OCCs, such as the Specialized Common Carriers, obtain facilities from AT&T and

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Common Carrier Services, 60 FCC 2d 261 (1976), *modified*, 60 FCC 2d 588, 61 FCC 2d 70, *recon.*, 62 FCC 2d 588 (1977), *aff'd sub. nom. AT&T v. FCC*, 572 F. 2d 17 (2nd Cir. 1978), *cert. denied*,——U.S.——, 99 S. Ct. 213 (1978).

21. Moreover, we are concerned that any grant of IRUs in the domestic facilities in question could lead to technical and efficiency problems which do not generally exist with IRU grants in earth stations or cables used for international traffic where traffic patterns are clearly definable in technical and operational terms. AT&T states that, unlike international facilities, domestic entrance facilities have no specific transmission path since they are in integral part of the domestic network. Because an IRU grant would give an IRC a right to use a portion of a specific facility, such a grant could hinder AT&T's ability to later route and reroute IRC and non-IRC traffic in the most effective and efficient manner under AT&T's current network planning. The IRCs have not demonstrated how the specific facilities in which they propose to acquire IRUs can be technically and operationally differentiated from the overall domestic network employed by AT&T in order to make the IRU concept workable in practice. Accordingly, nothing ITT or the other IRCs have alleged convinces us that we should embark at this time on a general proceeding to alter fundamental policy.

V. Certain AT&T/IRC Contractual Arrangements

22. We stated in docket 20452, 66 FCC 2d at 532, that we would initiate a proceeding in the near future to consider the lawfulness under Section 202(a) of certain other contracts whereby AT&T offers domestic facilities to the IRCs, either individually or jointly, which were not offered to the DSCCs and SCCs on the same basis. These contracts were described in our *Reconsideration Order*, 66 FCC 2d at 531-32. From our examination of the contracts it appears that they are, for the most part, instances where AT&T provides common carrier facilities to an IRC for a narrow purpose, as opposed to the facilities at issue in our investigation of the General Leasing contracts in Docket 20452, see para 2, *supra*. The General Leasing contracts were of broader applicability to AT&T's provision of voice-grade circuits to IRCs at rates substantially lower than those charged the DSCCs and SCCs for the same facilities under tariff and contained no termination dates. While the contracts referred to above may not raise the serious questions of lawfulness found to exist with the General Leasing contracts in docket 20452,[21] which required remedial Commission action, we will examine once again AT&T's provision of domestic facilities to IRCs (as well as OCCs in general) under contract. In order to afford AT&T and the affected IRCs a reasonable opportunity to justify the lawfulness under Sections 202(a) and 201 of the facilities contracts identified above, and any other domestic facility contracts (whether they are entrance, intercity or otherwise) existing between AT&T and one or more IRCs (or OCCs in general), we will consider the lawfulness of all such contracts in our proceeding in Docket No. 21499, *supra*.[22]

VI. Conclusion

23. In summary, we are denying RCA's petition that AT&T provide it overseas local channel television facilities under contract rates, rather than under tariff, because we found that neither Docket 20452 nor the contracts themselves require AT&T to continue to provide RCA such facilities on a contractual basis. The lawfulness of the tariffs under which RCA takes this service will be considered as appropriate in Docket 21499 which we initiated to investigate AT&T's various OCC facilities tariffs. While we rejected RCA's arguments in its other petition that Docket 20452 or Section 214 of the Act *requires* AT&T to provide group/supergroup facilities, we are concerned that denial of these facilities to RCA or the other carriers may be unreasonable or otherwise unlawful in the context of our general interconnection policies. We will consider these issues in Docket 21499. We are denying both requests in ITT's petition. ITT did not raise any arguments in its request for bandwidth greater than voice-grade circuits that we did not already consider in RCA's petition requesting group/supergroup facilities as to ITT's request for IRUs in domestic entrance facilities, it has not shown that further inquiry at this time on this matter would be in the public interest. Finally, we will not institute a separate investigation into the remaining ATT&T-IRC contracts, but will consider them in Docket 21499. We shall issue further orders in the near future which will delineate specific issues and procedures in the docket.[23]

24. Accordingly, *It is ordered*, That RCA's petition concerning facilities for overseas television transmission, its petition concerning group/supergroup facilities, and ITT's petition requesting capacity greater than voice-grade circuits and IRUs in domestic facilities, ARE HEREBY GRANTED to the extent indicated herein and otherwise ARE DENIED.

25. *It is further ordered*, That, for the purpose of inclusion in the record of this proceeding, AT&T and its Associated Operating Companies are to be prepared to file two copies of all currently effective contracts which AT&T or its associated companies presently have with any IRCs or OCCs which govern the provision of domestic interconnection facilities. These copies shall be filed in accordance with further orders to be issued in this proceeding.

26. *It is further ordered*, That the Secretary shall send a copy of this

Footnotes continued from last page

BOCs under separate facilities tariffs, while other OCCs, such as the so-called value-added or resale carriers, obtain facilities under AT&T's non-carrier customer tariffs such as AT&T Tariff FCC No. 260. We expect to explore this apparent inconsistency in our Docket 21499 proceeding.

[21] While the size and application of these contracts may not be as broad as the General Leasing contracts discussed in Docket 20452, there still exist important questions of lawfulness to be examined in hearing. For instance, the telegraph grade facility provided to an IRC under contract, which is not offered to any other IRCs, DSCCs or SCCs, may constitute a violation of Section 201(a) if other IRCs, DSCCs or SCCs reasonably require such telegraph grade facilities. Also, the voice-grade facilities provided by AT&T to RCA under contract for maritime satellite services are also of questionable lawfulness. These facilities, for all intents and purposes, appear to be identical to the facilities we found unlawfully discriminatory via similar facilities provided to OCCs under tariff in Docket 20452 (*i.e.*, voice-grade circuits) which were provided to the IRCs under the General Leasing contracts. Similarly, the contracts providing interexchange channel facilities to the three IRCs for overseas television service would appear questionable for the reasons stated at fn. 8, *supra*. Also, such contract facilities may violate Section 202(a) if they cannot be sufficiently differentiated from the facilities covered by the General Leasing contracts found unlawful in Docket 20452 or similar facilities provided to the OCCs under tariff.

[22] We intend to consider AT&T's domestic facilities contracts with other carriers so that we can remove any uncertainty among AT&T, IRCs, OCCs, and other interested parties regarding the legal status of such contracts under the Act and our regulatory policies. Our statements are not meant to alter our existing general policy that AT&T, its Associated Operating Companies, and other telephone companies are now obligated to provide essential interconnection facilities to all OCCs on a just, reasonable and otherwise lawful basis and that tariffs are most effective in accomplishing these purposes. See, *e.g.*, para. 20, *supra*. However, we intend to consider in the Docket 21499 proceeding whether general policy guidelines should be established to identify situations where Bell and other providers of facilities to OCCs may enter into contracts with reasonable assurance that such contracts will be consistent with the Act and our regulatory policies.

[23] We are considering the initiation of either phased or concurrent hearings depending on the issues involved and the action we may take on Bell's recent tariff revisions to the OCC facilities tariffs.

Order by certified mail, return receipt requested, to American Telephone and Telegraph Company, RCA Global Communications, Inc., ITT World Communications, Inc., Western Union International, Inc., and shall cause a copy to be published in the FEDERAL REGISTER.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-6827 filed 3-6-79; 8:45 am]

[6712-01-M]

[SS Docket No. 79-15]

DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

Designation Order

Adopted: February 13, 1979.

Released: February 16, 1979.

In the matter of the application of Fred L. Pittillo, 7830 Dale Street, Buena Park, California 90620, for amateur radio station and novice class operator licenses.

The Chief, Safety and Special Radio Services Bureau, has under consideration an application for an Amateur radio station license and a Novice Class Operator license filed by Fred. L. Pittillo and dated November 17, 1978.

1. Pittillo was granted a Citizens Band radio station license for a five year term on July 26, 1974. An Initial Decision (FCC 78D-34) released June 20, 1978, by Chief Administrative Law Judge Chester F. Naumowicz, Jr., revoked Pittillo's Citizens Band license. The decision was not appealed and became effective on August 9, 1978. That decision concluded that, on June 23, 1976, Pittillo's station was operated by Pittillo's wife on the frequency 27.435 MHz, a frequency not authorized for CB operation,[1] in violation of § 95.41(d)[2] of the Commission's Rules. The decision further concluded that, on February 23, 1977, Pittillo's station was again operated on an unauthorized frequency, 27.615 MHz,[3] this time by Pittillo himself, in violation of § 95.455(a) of the Commission's Rules. Additionally, the Decision concluded that, on February 23, 1977, Pittillo violated §§ 95.469(b) (communications exceeding five consecutive minutes) and 95.471(c) (station identification requirements) of the Commission's Rules. The Decision further concluded that violations of the Commission's frequency assignments (such as those by Pittillo's station) must be viewed with the utmost gravity and that the public interest would be ill served by continuing the operating authority of any licensee who willfully operated outside his assigned frequency.

2. In view of the Findings and Conclusions of the Initial Decision which revoked Pittillo's Citizens Band license it cannot be determined that a grant of Pittillo's Amateur application would serve the public interest, convenience and necessity. Therefore, the Commission must designate the application for hearing. The doctrine of collateral estoppel applies to the findings and conclusions of the Initial Decision, which will not be relitigated in this proceeding.

Accordingly, *it is ordered*, Pursuant to Section 309(e) of the Communications Act of 1934, as amended, and §§ 0.331 and 1.973 of the Commission's Rules, that the captioned application *is designated for hearing* at a time and place to be specified by subsequent Order, upon the following issues:

(1) To determine the effect of the facts and conclusions contained in the Initial Decision released June 20, 1978 (FCC 78D-34), upon the applicant's qualifications to be a licensee of the Commission.

(2) To determine, in light of the evidence adduced under the foregoing issue, whether the applicant has the requisite qualifications to be a licensee of the Commission.

(3) To determine whether the public interest, convenience, and necessity would be served by a grant of the application for Amateur radio station and Novice Class Operator licenses.

It is further ordered, That to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall within twenty days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in the Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

It is further ordered, That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the applicant at this address as shown in the caption.

CHIEF, SAFETY AND SPECIAL RADIO SERVICES BUREAU,
GERALD M. ZUCKERMAN,
Chief, Legal, Advisory and Enforcement Division.

[FR Doc. 79-6828 Filed 3-6-79; 8:45 am]

[1] The frequency 27.435 MHz was allocated to the Business Radio Service.

[2] The Commission's Citizens Band Rules have been revised and renumbered. The Rules referred to herein are those in effect at the time of the operation.

[3] The frequency 27.615 MHz was allocated for the use of United States Government radio stations.

[6712-01-M]

[SS Docket Nos. 79-32, 79-33, 79-34]

BOB L. SCARBOROUGH; DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATES ISSUES

Order To Show Cause, Suspension, and Designation Order

Adopted: February 23, 1979; Released: March 1, 1979.

In the matter of Revocation of License of BOB L. SCARBOROUGH, 3028 North 37th Drive, Phoenix, Arizona 85019, Licensee of Station WB7VUN in the Amateur Radio Service; Suspension of License of BOB L. SCARBOROUGH, 3028 North 37th Drive, Phoenix, Arizona 85019, Amateur Novice Class Radio Operator Licensee; Application of BOB L. SCARBOROUGH, 3028 North 37th Drive, Phoenix, Arizona 85019, For Advanced Class Amateur Radio Operator License and Amateur Station License.

The Chief, Safety and Special Radio Services Bureau has under consideration the Amateur Radio station WB7VUN and Novice Class Operator licenses of Bob L. Scarborough, granted March 10, 1978, for two-year terms.[1] Also under consideration are Scarborough's applications to upgrade to General Class Operator dated August 23, 1978, and to Advanced Class Operator dated September 25, 1978. The application for General Class Operator license is deemed superceded by the application for Advanced Class Operator license and will be dismissed. Scarborough was also the licensee of Citizens Band Radio station license KAVI-1739, issued June 20, 1977 and cancelled at his request January 24, 1979.

1. Information before the Commission indicates that on February 9, 1978, Scarborough's station made radio transmissions on the frequency 27.616 MHz. That frequency was assigned for use by the United States Government stations. Scarborough did not possess a license authorizing the use of that frequency. Thus, the operation was apparently in violation of Section 301 of the Communications Act of 1934, as amended. Moreover, if the apparent operation of February 9, 1978, was under the color of authority of Scarborough's CB station license KAVI-1739, the operation was in violation of the following CB Rules: 95.455(a) (authorized frequencies) and 95.471(c) (station identification requirements).[2]

2. The information before the Commission further indicates that the Feb-

[1] The Amateur licenses were granted without consideration of the conduct discussed below.

[2] Part 95 of the Commission's Rules has been revised and renumbered. The Rules cited herein are those in effect on the date in question.

ruary 9, 1978, transmissions were not identified by any Commission assigned call sign but rather were identified by the designation "48HF2." Thus, it appears that the operator participated in a club or organization whose members operate on unauthorized frequencies and use special identifiers in an effort to avoid detection by the Commission.

3. The apparent operation on February 9, 1978, was the subject of an Official Notice of Violation mailed to Scarborough on February 21, 1978. In a response to that document received by the Commission on March 1, 1978, Scarborough claimed he had never owned a radio transmitter capable of operating on unauthorized frequencies. In light of the apparent operation on February 9, 1978, it appears that this statement by Scarborough was a misrepresentation.

4. The apparent operating violations by Scarborough call into question his qualifications to remain a Commission licensee in any radio service. *Raymond C. Standring,* —— FCC 2d ——, 42 RR 2d 1589 (1978). The apparent misrepresentation by Scarborough also calls into question his qualifications to remain a licensee. *Nick J. Chaconas,* 28 FCC 2d 231 (1971); *FCC* v. *WOKO, Inc.,* 329 U.S. 223 (1946). These matters preclude the Commission from determining that a grant of Scarborough's application would serve the public interest, convenience, and necessity.

5. Section 312(a)(4) of the Communications Act of 1934, as amended, provides that radio station licenses may be revoked for willful violation of the Communications Act or of Commission Rules. Section 303(m)(1)(A) of the Communications Act provides that an operator's license may be suspended for willful violation of the Communications Act or of Commission Rules. Section 309(e) of the Communications Act requires the Commission to designate an application for hearing where it cannot find that grant of the application would serve the public interest, convenience, and necessity.

6. Accordingly, *It is ordered,* That Scarborough show cause why the license for station WB7VUN should not be revoked and the Novice Class Operator's license of Scarborough is suspended for the remainder of the license term. The suspension will be held in abeyance if Scarborough requests a hearing or submits a written statement for consideration.[3]

7. *It is further ordered,* That Scarborough's application for an Advanced Class Operator's license is designated for hearing on the issues specified below.

8. *It is further ordered,* That if Scarborough wants a hearing on the revocation, suspension, and/or application matters, he must file a written request for a hearing within 30 days.[4][5] If a hearing is requested, the time, place, and Presiding Judge will be specified by subsequent order.

9. *It is further order,* That if Scarborough waives his right to a hearing on the supension matter and does not submit a statement, the suspension will take effect 30 days after Scarborough receives this order;[6] if Scarborough waives his right to a hearing and submit a written statement, that suspension matter will be certified to the Commission for administrative disposition.[3] If Scarborough waives his right to a hearing on the revocation matter, it will be certified to the Commission for administrative disposition pursuant to § 1.92(c) of the Rules.

10. *It is further ordered,* That the matters in this proceeding will be resolved upon the following issues:

(a) To determine whether the transmissions of February 9, 1978, were in violation of Section 301 of the Communications Act of 1934, as amended, or § 95.455(a) of the Commission's Rules.

(b) To determine whether the transmissions on February 9, 1978, were identified by a club identifier in lieu of Commission assigned call sign, in violation of § 95.471(c) of the Commission's Rules.

(c) To determine whether the licensee made misrepresentations or was less than candid in representations to the Commission.

(d) To determine whether Bob L. Scarborough has the requisite qualifications to remains a Commission licensee.

(e) To determine whether the suspension order should be affirmed, modified, or dismissed.

(f) To determine whether grant of the application would serve the public interest, convenience, and necessity.

11. *It is further ordered,* That pursuant to Section 1.227 of the Rules, the revocation, suspension, and application proceedings are consolidated for hearing.

12. *It is further ordered,* That the application for General Class Operator's license of Bob L. Scarborough is dismissed.

13. *It is further ordered,* That copies of this order shall be sent by Certified Mail—Return Receipt Requests and by Regular Mail to the licensee at his address of record (shown in the caption).

CHIEF, SAFETY AND SPECIAL RADIO SERVICES BUREAU,
GERALD M. ZUCKERMAN,
Chief, Legal, Advisory, and Enforcement Division.

[FR Doc. 79-6826 Filed 3-6-79; 8:45 am]

[3] Any contrary provisions of § 1.85 of the Rules are waived.

[4] Any contrary provisions of § 1.85 and 1.221(c) of the Rules are waived.

[5] The attached form should be used to request or waived hearing. It should be mailed to the Federal Communications Commission, Washington, D.C. 20554.

[6] If Scarborough waives hearing and does not submit a statement on the suspension matter, he must submit his license to the Commission within 30 days to be retained during the suspension period.

[6712-01-M]

[SS Docket No. 79-17]

HORACE A. TRENT, JR.; DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

Designation Order

Adopted: February 14, 1979; Released: February 26, 1979.

In the Matter of the application of Horace A. Trent, Jr., 2303 North 51st Street, Philadelphia, Pennsylvania 19131, for Amateur radio station and Novice Class Operator Licenses.

1. The Chief, Safety and Special Radio Services Bureau, has under consideration the above-entitled application for an Amateur radio station license and for a Novice Class Operator license. The application was filed by Horace A. Trent, Jr., and was dated June 20, 1978.

2. Trent was granted a Citizens Band (CB) radio station license July 7, 1976, for a five year term. On February 3, 1978, the Commission issued an Order (SS-516-77) revoking Trent's Citizens Band radio station license. In that Order it was concluded that Trent had been convicted on February 9, 1977, in Federal Court under Section 502 of the Communications Act of 1934, as amended. The conviction stemmed from Trent's wilful and repeated violation in November and December, 1976, of § 95.95(c) of the Commission's Rules by failing to identify with Commission assigned call sign;[1] § 95.41(d) of the Commission's Rules, by operating on a frequency not authorized for use in the Citizens Band Radio Service; and § 95.83(b) of the Commission's Rules, by attempting to communicate with stations more than 150 miles distant.

3. In view of the Findings and of the Conclusions of the Order of Revocation (SS-516-77) issued on February 3, 1978, and effective March 10, 1978, it cannot be determined that a grant of Trent's above-captioned application would serve the public interest, convenience and necessity. Therefore, the Commission must designate the application for hearing. The doctrine of collateral estoppel applies to the findings and conclusions of the Order of Revocation and shall not be relitigated in this proceeding.

Accordingly, *it is ordered,* Pursuant to Section 309(e) of the Communica-

[1] Effective August 1, 1978, the Commission's Citizens Band Radio Service Rules were revised and renumbered. The rules cited herein are those in effect on the dates discussed.

tions Act of 1934, as amended, and §§ 0.331 and 1.973 of the Commission's Rules, that the captioned application is designated for hearing at a time and a place to be specified by subsequent Order, upon the following issues:

(1) To determine the effect of the facts and conclusions contained in the Order of Revocation, issued February 3, 1978 (SS-516-77) upon the applicant's qualifications to be a licensee of the Commission.

(2) To determine, in light of the evidence adduced under issue (1), whether the applicant has the requisite qualifications to be a licensee of the Commission.

(3) To determine whether the public interest, convenience, and necessity would be served by a grant of the application for Amateur radio station and Novice Class Operator licenses.

It is further ordered, That to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall within twenty days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

It is further ordered, That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the applicant at his address as shown in the caption.

CHIEF, SAFETY AND SPECIAL RADIO SERVICES BUREAU,
GERALD M. ZUCKERMAN,
Chief, Legal, Advisory, and Enforcement Division.

[FR Doc. 79-6825 Filed 3-6-79; 8:45 am]

[6712-01-M]

[CC Docket No. 79-19; FCC 79-96]

POLICY TO BE FOLLOWED IN THE ALLOWANCE OF LITIGATION EXPENSES OF COMMON CARRIERS IN RATEMAKING PROCEEDINGS

Inquiry

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The FCC is asking for public comment on whether legal expenses in connection with court litigation brought by or against communications common carriers should be paid for by the customers of the carriers or by their shareholders.

DATES: Comments must be received on or before April 16, 1979. Reply comments may be filed on or before May 18, 1979.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Jay L. Witkin, Common Carrier Bureau, (202) 632-4890.

SUPPLEMENTARY INFORMATION:

Adopted: February 14, 1979.

Released: February 27, 1979.

By the Commission: Commissioners Ferris, Chairman; and Fogarty issuing separate Statements; Commissioners Lee and White concurring in the result; Commissioner Quello absent.

1. Notice is hereby given of inquiry into the policy the Commission should follow in deciding whether and to what extent the expenditures incurred in connection with litigation should be allowed as reasonable expenses in connection with common carrier rate proceedings. While no specific allowances or disallowances will be made in this proceeding as to any carrier, it is felt that the development of a policy of general applicability will avoid the necessity of making this determination in each future rate proceeding.

2. In two recent rate cases, we determined those rate base and expense items which should reasonably be allowed, i.e., charged to the ratepayers, as opposed to the shareholders, in determining the lawfulness of rate levels of the American Telephone and Telegraph Company (AT&T)[1] and the Communications Satellite Corporation (Comsat).[2] During the test years in question in each of these proceedings, however, there were no significant amounts claimed for litigation-related expenses. We have also recently initiated a proceeding to determine the extent to which expenses connected with lobbying efforts should be allowed for ratemaking.[3] The amount of both private and Government litigation involving the various carriers has recently increased substantially, and we anticipate the need to determine in the near future whether the large sums which AT&T, for example, has been forced to expend in defending pending antitrust suits should be charged to the ratepayers. We also anticipate that the policies adopted here will be reflected in our pending audit of the international carriers, Docket No. 20778, and we shall order international carriers' litigation expenses to be accounted accordingly.

3. The litigation to be considered in this proceeding can be divided into four categories:

1. Cases brought against the carrier seeking damages or other relief, often under the antitrust laws.
2. Cases brought by the carrier against another carrier or a non-carrier seeking similar relief as in (1).
3. Cases brought against the carrier by a Government agency, such as the Department of Justice, Department of Defense, or this Commission.
4. Appeals by the carrier of orders of this Commission.

4. There is presently an antitrust suit pending against AT&T brought by the Department of Justice,[4] the defense of which will probably cost AT&T many millions of dollars. In addition, there are approximately 40 private antitrust suits pending against AT&T in various Federal courts, including several brought by other Commission-regulated carriers, such as MCI Telecommunications Corporation (MCI)[5] and Southern Pacific Communications Company (SPCC),[6] to which AT&T has filed counterclaims. The Bell Operating Companies in some States are also parties to private damage suits under non-antitrust claims. A long-standing suit filed by International Telephone and Telegraph Company against General Telephone and Electronics, Inc. involving the latter's ownership of Hawaiian Telephone Company has recently been settled.[7] Antitrust suits are also pending involving a number of other carriers and their parent companies. Finally, the Commission is appellee in a substantial number of cases seeking reversal or modification of our orders or decisions, brought by a variety of both domestic and international[8] carriers. The potential costs of all this litigation cannot reasonably be estimated at this time, but allowance or disallowance could have a substantial effect on the rates charged by some of the carriers.

5. Respondents are asked to comment on the following questions, as well as bring other information to our attention, not included within the scope of these questions, which may assist us in developing an appropriate policy:

1. To what extent are litigation expenses in each of the categories listed in paragraph

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[1] American Telephone and Telegraph Co., 64 FCC 2d 1 (1977).

[2] Communications Satellite Corporation, 56 FCC 2d 1101 (1975) aff'd in part and remanded in part, sub nom Communications Satellite Corp. v. FCC, —— F.2d ——, No. 75-2193, D.C. Cir., October 14, 1977.

[3] See Order and Notice of Inquiry in CC Docket No. 78-373, FCC 78-824, released December 12, 1978.

[4] United States v. AT&T, Civil Action No. 74-1698, U.S. Dist. Ct., D.C.

[5] MCI v. AT&T, No. 74 C 633, U.S. Dist. Ct., N.D., Ill., E. Div.

[6] SPCC v. AT&T, Civil Action No. 78-0545, U.S. Dist. Ct., D.C.

[7] ITT v. GTE, Civil No. 2754, U.S. Dist. Ct., Hawaii, Final Judgment released December 20, 1978.

[8] See, e.g., ITT World Communications Inc. v. FCC, No. 79-1046, D.C. Cir.

3 above used and useful, or reasonably necessary or ancillary to the provision of telecommunication services? [9]

2. To what extent does the statutory right of appeal of Commission decisions affect the reasonableness of charging the ratepayers with the expenses of such appeals?

3. Should the allowance of disallowance of any or all litigation expenses be based upon the result of such litigation, i.e., success or failure?

4. If the answer to question 3 is affirmative, how should the Commission treat the expenses of litigation that does not go to verdict, e.g., that is settled or voluntarily dismissed?

5. What accounting changes are required in order to isolate those activities of staff employees which are connected with litigation from non-litigation connected activities of the same personnel?

6. If any or all litigation expenses are allowed, should they be charged to the ratepayers in the year incurred or amortized over a longer period?

7. To what extent and using what standards should the Commission consider whether the amounts claimed as expenses for specific litigation activities are reasonable or excessive?

6. We hope to elicit comments in this proceeding from carriers, large users and user groups, and from consumer groups and private individuals, as resolution of the issues could have rather far-reaching legal and policy implication.

7. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201, 205 and 403 of the Communications Act of 1934, *as amended*, 47 U.S.C. 154(i), 154(j), 201, 205, 403, That an inquiry is hereby initiated into the policy to be followed in connection with treatment of litigation expenses for retemaking purposes, as discussed herein.

8. *It is further ordered*, That comments in this proceeding may be filed on or before April 16, 1979 and replies on or before May 18, 1979. Pursuant to the procedures set forth in § 1.51(c)(1) of the Commission's Rules (47 C.F.R. 1.51(c)(1)), an original and nine (9) copies of all filings shall be furnished to the Commission. All material received in response to this Notice will be avaliable for public inspection in the Docket Reference Room in the Commission's Offices in Washington D.C. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

9. *It is further ordered*, That the Secretary shall submit this Notice for publication in the FEDERAL REGISTER.

FEDERAL COMMUNICATIONS COMMISSION,[10]
WILLIAM J. TRICARICO,
Secretary.

FEBRUARY 14, 1979

In re: Separate Statement of Chairman Charles D. Ferris Notice of Inquiry: Policy To Be Followed in the Allowance of Litigation Expenses of Common Carriers in Ratemaking Proceedings.

Although I join in initiating this inquiry into allowing litigation expenses of common carriers for ratemaking purposes, I want to clarify my rationale for doing so. In particular, I do not want my vote interpreted as demonstrating a belief that broader and more detailed regulation of individual carrier business activities will necessarily provide the solution to all the common carrier problems that are brought before the commission. I hope that the comments filed in the NOI address the underlying question of whether Commission scrutiny of such expenses is an effective use of regulatory resources.

Conceptually, this Notice of Inquiry reflects the kinds of concerns which prompted our recently initiated proceeding on lobbying expenses of common carriers, and seemingly similar issues regarding the treatment of expenses for institutional advertising and charitable contributions now also before the Commission.

The instant Notice is distinguishable from the others on the basis of the higher dollar amounts involved here. There have been reports that AT&T estimates its litigation expenses for the U.S. government antitrust suit *alone* may reach one billion dollars. Certainly the magnitude of this figure calls attention to the general issue now addressed in this Notice of Inquiry.

I hope the comments in the public record will illuminate the answers to some of my initial questions, which include (1) whether, and if so, how we would establish a definitional line separation allowed from non-allowed litigation expenses; (2) the potential disparate effect of any resulting policy on AT&T and on other (smaller) common carriers; and (3) our possible encroachment (or at least the perception of such encroachment) on carrier First Amendment rights.

The Notice of Inquiry approved today should remind the Commission that this path of regulation brings us very close to the line between regulation and managing. I prefer an approach that leads away from government regulation and towards greater reliance on structural considerations. I hope our decision today will contribute to the wider critical reexamination of our basic regulatory assumptions and methodologies in the common carrier field that we have started elsewhere.

SEPARATE STATEMENT OF COMMISSIONER JOSEPH R. FOGARTY

In re: Notice of Inquiry into Revenue Requirements Treatment of Litigation Expenses.

This Notice inquires into a matter which could, depending on the outcome, have a significant impact on rates charged the customer. Press reports have estimated AT&T's expenses from the Justice Department's antitrust suit alone to be as much as $1 billion. Other cases involving regulated carriers may cost hundreds of millions of dollars.

I am certainly not prejudging my vote on issues raised here or the standards which the Commission should use. However, I want to express concern about recent proliferation of the carriers' use of the courts as a competitive tool and a "knee-jerk" reaction to unfavorable Commission orders. It appears to me that the immense cost of all this litigation should not automatically be charged to the ratepayers without Commission scrutiny as to the benefits the carriers' customers derive from the judicial proceedings.

[FR Doc. 79-6809 Filed 3-6-79; 8:45 am]

[9] Comments should also address what standard (e.g., "necessary and reasonable," "ordinary and necessary," "used and useful," etc. should apply to determining the appropriate treatment of litigation expenses.

[10] See attached Separate Statements of Commissioners Charles D. Ferris, Chairman and Joseph R. Fogarty.

[6712-01-M]

[Docket No. 20281; FCC 79-119]

INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION; PREPARATION FOR THE 1975 MEETING OF GOVERNMENTS N THE ESTABLISHMENTS OF AN INTERNATIONAL MARITIME SATELLITE SYSTEM [1]

Termination of Proceeding [Inquiry]

AGENCY: Federal Communications Commission.

ACTION: Termination of Docket No. 20281 involving an inquiry into the designation of a private commercial telecommunications entity to participate in the International Maritime Satellite Organization (INMARSAT) and to be provider of maritime satellite services in the United States.

SUMMARY: Commission terminates Docket No. 20281 as moot. The International Maritime Satellite Telecommunications Act; Pub. L. No. 95-564 (1978), designated Comsat as the U.S. entity to participate in INMARSAT.

EFFECTIVE DATE: Non-Applicable.

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

FOR FURTHER INFORMATION CONTACT:

James L. Ball, International Programs Staff, Common Carrier Bureau, (202) 632-3214.

Adopted: February 22, 1979.

Released: February 26, 1979.

By the Commission: 1. We released a Notice of Inquiry on December 5, 1974, (39 FR 43583, December 16, 1974) seeking comments from interested parties on a number of issues relating to the establishment of an international maritime satellite system. *International Maritime Satellite System*, 50 F.C.C. 2d 640 (1974). We considered the comments filed in adopting recommendations to the Department of State for the first session of the Intergovernmental Conference convened in 1975 to consider an international organization to establish a maritime satellite

[1] See 40 FR 26732, June 25, 1975.

system.[1] Subsequently, we invited further comments regarding the designation of a private communications entity to be the U.S. participant and investor in any such organization. *International Maritime Satellite System*, 55 F.C.C. 2d 87 (1975).[2]

2. On March 15, 1978, we adopted a Report and Order subject to editorial changes and further Commission consideration regarding the identity and operation of the U.S. entity to participate in INMARSAT. However, in view of impending Congressional consideration of legislation to designate a U.S. entity for this purpose, we did not release a final report.[3] Enactment of the International Maritime Satellite Telecommunications Act, Pub. L. No. 95-564, 92 Stat. 2392 (1978). has subsequently rendered this issue moot. Finalization and release of a report in this proceeding therefore is now unnecessary.

3. Accordingly, it is ordered, that Docket No. 20281 is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-7151 Filed 3-6-79; 11:19 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Notice of Proposed De Novo Nonbank Activities

The banking holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than March 28, 1979.

A. *Federal Reserve Bank of New York*, 33 Liberty Street, New York, New York 10045:

CITICORP, New York, New York (data processing activities; national, international): to engage, through its subsidiary, Citishare Corporation, in providing bookkeeping or data processing services for the internal operation of Applicant and its subsidiaries; and storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable, or billing services. More specifically, Citishare Corporation would provide computer services to Applicant and its subsidiaries, including remote time-sharing and on-site batch data processing; it would make available to others computer processing capacity as may from time to time be in excess of the needs of Applicant and its subsidiaries; and it would provide data processing services relating to economic, financial, or banking matters and incidental by-products of any of the foregoing. These activities would be conducted from an office in New York, New York, and the services would initially be offered to customers in 175 cities (and their environs) in 34 States, the District of Columbia, Puerto Rico, and four foreign countires.

B. *Federal Reserve Bank of Cleveland*, 1445 East Sixth Street, Cleveland, Ohio 44101:

MELLON NATIONAL CORPORATION, Pittsburgh, Pennsylvania (consumer finance and insurance activities; Indiana): to engage, through its subsidiary, Freedom Financial Services Corporation, in general consumer finance activities; and to act as agent with respect to the sale of life, accident and health, and property insurance directly related to its extensions of credit. These activities would be conducted from offices in Anderson and Indianapolis, Indiana, and the geographic areas to be served are Anderson and the adjoining territory in Southern Madison County, and Indianapolis and the surrounding territory in Marion County, Indiana.

C. *Federal Reserve Bank of Richmond*, 701 East Byrd Street, Richmond, Virginia 23261:

1. COLONIAL AMERICAN BANKSHARES CORPORATION, Roanoke, Virginia (consumer finance and insurance activities; Virginia): to engage, through its subsidiary, Colonial American Mortgage Corporation, in making, acquiring, and servicing loans secured primarily by second mortgages or on real property; and acting as agent in the sale of life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from two offices in Virginia Beach, Virginia, and the geographic areas to be served are within the Virginia Beach area.

2. FIRST UNION CORPORATION, Charlotte, North Carolina (data processing activities; North Carolina, national): to engage, through its subsidiary, First Computer Services, Inc., in providing bookkeeping, data processing and related management services for the internal operations of Applicant and its subsidiaries; marketing application software products developed by the subsidiary for financial applications in the internal operations of Applicant and its subsidiaries; storing and processing banking, financial and related economic data for outside firms; and making excess computer time available to outside firms by providing the facility and necessary operating personnel. These activities would be conducted from offices in Charlotte, Raleigh, Asheville, Lumberton, and Greensboro, North Carolina, and the principal geographic area to be served is North Carolina, although customers having offices outside North Carolina may be served, and the geographic area for some of the activities may be national.

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[1] Comments were filed by American Institute of Merchant Shipping (AIMS); American Radio Association, AFL-CIO, et. al., American Telephone and Telegraph Company (AT&T); Communications Satellite Corporation (Comsat); COMSAT General Corporation (COMSAT); Harris Corporation (R. F. Communications Division); ITT World Communications, Inc. (ITT); RCA Global Communications, Inc. (RCA); TRT Telecommunications Corporation (TRT); and Western Union International, Inc. (WUI).

[2] Comments were filed by the same parties as in response to the initial notice, except AIMS, ARA and Harris Corporation.

[3] The House Subcommittee on Merchant Marine, Committee on Merchant Marine and Fisheries held hearings on March 21, 1978, and released its Report on May 11, 1978. The House Subcommittee on Communications Committee on Interstate and Foreign Commerce held hearings on April 4, 1978 and also released its Report on May 11, 1978. The full House passed H.R. 11209 on May 15, 1978. The Senate Subcommittee on Commerce, Science and Transportation held hearings on May 8, 1978, and released its Report on July 25, 1978. The full Senate passed its version of H.R. 11209 on August 7, 1978.

3. VIRGINIA NATIONAL BANKSHARES, INC., Norfolk, Virginia (consumer finance and insurance activities; Virginia): to engage, through its subsidiary, VNB Equity Corporation, in making, acquiring, and servicing loans secured principally by second mortgages on real property; and acting as agent in the sale of life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from an office in Roanoke, Virginia, and the geographic area to be served is the Roanoke SMSA.

4. VIRGINIA NATIONAL BANKSHARES, INC., Norfolk, Virginia (consumer finance and insurance activities; Virginia): to engage, through its subsidiary, Atlantic Credit Corporation of Virginia, in making, acquiring, and servicing loans secured principally by second mortgages on real property; and acting as agent in the sale of life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from offices in Portsmouth and Suffolk, Virginia, and the geographic areas to be served are the Portsmouth and Suffolk areas.

D. *Federal Reserve Bank of Atlanta*, 104 Marietta Street, N.W., Atlanta, Georgia 30303:

TENNESSEE VALLEY BANCORP, INC., Nashville, Tennessee (insurance activities; Tennessee, Arizona): to act, through its subsidiary, Tennessee Volunteer Insurance Agency, Inc., as agent or broker for the sale of the following kinds of life, accident and health, and physical damage insurance directly related to extensions of credit by Applicant's bank and nonbank subsidiaries: insurance assuring repayment of an extension of credit in the event of death or disability of the borrower, and insurance protecting the collateral in which the lender has acquired a security interest. These activities would be conducted from an office in Nashville, Tennessee, the proposed services would be available at the offices of Applicant's subsidiaries in Nashville, Elizabethton, Chattanooga, Lawrenceburg, Memphis, Murfreesboro, Gallatin, Greeneville, Clarksville, Johnson City, Union City, McEwen, Camden, Columbia, Lebanon, Sparta, and Springfield, Tennessee, and Phoenix, Arizona, and the geographic areas to be served are the market areas expressed by each city location of these subsidiaries.

E. *Federal Reserve Bank of St. Louis*, 411 Locust Street, St. Louis, Missouri 63166:

MERCANTILE BANCORPORATION, INC., St. Louis, Missouri (insurance activities; Missouri, Florida, Illinois, Louisiana, Oklahoma, Oregon, South Carolina, Washington, West Virginia): to act, through its subsidiary, MBI Insurance Co., Inc., as agent or broker with respect to any insurance for Applicant's banking subsidiaries; and life, disability, accident and health, and (on property used as collateral) physical damage insurance directly related to extensions of credit or the provision of other financial services by a subsidiary of Applicant. These services would be available at offices of Applicant and its subsidiaries (or adjacent offices) in 55 locations in Missouri, 3 in Florida, 4 each in Illinois, Louisana, and Oklahoma, 5 each in Oregon, South Carolina, and Washington, and 11 in West Virginia, and the geographic areas to be served are Missouri and areas around the office locations in other States.

F. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, February 28, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6814 Filed 3-6-79; 8:45 am]

[6210-01-M]

INWOOD BANCSHARES, INC.

Formation of Bank Holding Company

Inwood Bancshares, Inc., Dallas, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more (less directors' qualifying shares) of the voting shares of Inwood National Bank of Dallas, Dallas, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 28, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 28, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6815 Filed 3-6-79; 8:45 am]

[6210-01-M]

M.S.B. AGENCY, INC.

Formation of Bank Holding Company

M.S.B. Agency, Inc., St. Paul, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 85 percent or more of the voting shares of Minnesota State Bank, St. Paul, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than March 27, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 27, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6816 Filed 3-6-79; 8:45 am]

[6820-38-M]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 79; Case No. 7300]

PUBLIC SERVICE COMMISSION OF MARYLAND AND POTOMAC ELECTRIC POWER CO.

Proposed Intervention in Electric Rate Increase Proceeding

The Administrator of General Services seeks to intervene in a proceeding before the Public Service Commission of Maryland involving an application by the Potomac Electric Power Company for an increase in its tariffed rates for intrastate electric service. The Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone (202) 566-0726, on or before April 6, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4)).

Dated: February 13, 1979.

JAY SOLOMON,
Administrator.

[FR Doc. 79-6781 Filed 3-6-79; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEE

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National advisory body scheduled to assemble during the month of April 1979:

Interagency Committee on Federal Activities For Alcohol Abuse And Alcoholism—April 10, 1979; 9:00 a.m.—Open Meeting. Conference Room 703-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201. Contact: Mr. James Vaughan, Room 16C-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3888.

Purpose: The Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism (1) evaluates the adequacy and technical soundness of all Federal programs and activities which relate to alcohol abuse and alcoholism and provides for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and (2) seeks to coordinate efforts undertaken to deal with alcohol abuse and alcoholism in carrying out Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity laws.

Agenda: The morning portion of the meeting will consist of a discussion of how the adequacy and technical soundness of Federal alcoholism programs can be evaluated, and what quantifiable evaluation criteria and performance standards can be used to accomplish this. The afternoon portion of the meeting will consist of reports on Federal Employee Alcoholism Programs; Research Programs; Prevention, Education and Information Programs; Treatment and Rehabilitation Programs; and Manpower and Training Programs.

Substantive program information may be obtained from the contact person listed above. The NIAAA Information Officer who will furnish summaries of the meeting and a roster of Committee members is Mr. Harry Bell, Associate Director for Public Affairs, National Institute of Alcohol Abuse and Alcoholism, Room 11A-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3306.

Dated: March 1, 1979.

ELIZABETH A. CONNOLLY,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR. Doc. 79- 6779 Filed 3-6-79; 8:45 am]

[4110-03-M]

Food And Drug Administration

[Docket No. 78N-0427]

SAFETY OF CERTAIN FOOD INGREDIENTS

Opportunity For Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces an opportunity for public hearing on the safety of certain ascorbates and certain copper salts to determine if they are generally recognized as safe (GRAS) or subject to a prior sanction. This action accords with procedures of a comprehensive safety review that the agency is conducting. Interested persons are invited to give their views on the safety of these substances.

DATE: Requests to make oral presentations at the public hearing must be postmarked on or before April 6, 1979.

ADDRESS: Written requests to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, and to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 26, 1973 (38 FR 20053), the Commissioner of Food and Drugs issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (hereinafter, the Select Committee), about the safety of ingredients used in food to determine whether they are GRAS or subject to a prior sanction.

The Commissioner now gives notice that the Select Committee is prepared to conduct public hearings on the following categories of food ingredients: certain ascorbates (L-ascorbic acid, calcium L-ascorbate, sodium L-ascorbate, ascorbyl palmitate, erythorbic acid, and sodium erythorbate for direct food use); and certain copper salts (copper gluconate and cuprous iodide for direct food use, and copper sulfate for direct food use and food-packaging materials). The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present scientific data, information, and views on the safety of these substances, in addition to comments previously submitted in writing as a result of notices published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20051, 20053), April 17, 1974 (39 FR 13798), and March 28, 1978 (43 FR 12941).

The Select Committee has reviewed all the available data and information on the categories of food ingredients listed above and, for each, has considered which one of the following five tentative conclusions would be appropriate:

1. There is no evidence in the available information that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when the substance is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when the substance is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard.

3. Although no evidence in the available information demonstrates a hazard to the public when the substance is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted. (This finding does not apply to the substances covered by this notice).

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the

public health when the substance is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice).

5. The information available is not sufficient to make a tentative conclusion. (This finding does not apply to the substances covered by this notice).

The following table lists each ingredient, the Select Committee's tentative conclusion (keyed to the five types of conclusions listed above), and the available information on which the Select Committee reached its conclusions:

Substance	Select Committee tentative conclusion	Scientific literature review (order No.; price code; price)	Animal study report (order No.; price code; price)	Other information (order No.; price code; price)
Ascorbates:				
L-Ascorbic acid	1	PB-241-969/AS (ascorbic acid); A-18; $13.25.	1. Teratological evaluation of FDA 71-65 (ascorbic acid) in mice and rats, by Food and Drug Research Labs., Inc., under FDA contract (PB-245-518/AS); AO3; $4.50.	1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service, PB-221-920 (set); E-99; $173.00.
Sodium L-ascorbate	1			
Calcium L-ascorbate	1	PB-223-866/AS (ascorbates); AO6; $6.50.		
Ascorbyl palmitate (Palmitoyl L-ascorbate)	1			
Erythorbic acid (D-isoscorbic acid)	2		2. Teratological evaluation of FDA 71-68 (sodium erythorbate) in mice and rats, by Food and Drug Research Labs., Inc., under FDA contract (PB-245-531/AS); AO3; $4.50.	2. Toxicity and teratogenicity studies in ascorbic acid; submitted by the University of Arizona.
Sodium erythorbate (Sodium D-isoascorbate)	2		3. Mutagenic evaluation (Tier I) of compound FDA 71-65 (ascorbic acid), by Litton Bionetics, Inc., under FDA contract (PB-245-491/AS); AO3; $4.50.	3. Investigations on the toxic and teratogenic effects of GRAS substances on the developing chick embryo: [Sodium ascorbate]; submitted by Ohio State.
			4. Mutagenic evaluation (Tier I) of compound FDA 71-66 (erythorbic acid USP, FCC), by Litton Bionetics, Inc., under FDA contract (PB-245-437/AS); AO3; $4.50.	4. Investigations on the toxic and teratogenic effects of GRAS substances on the developing chick embryo: [sodium erythorbate]; submitted by Ohio State.
			5. Mutagenic evaluation (Tier I) of compound FDA 75-64 (sodium ascorbate USP, FCC) by Litton Bionetics, Inc., under FDA contract (PB-279-262/AS); AO4; $5.25.	5. Investigations of the toxic and teratogenic effects of GRAS substances to the developing chicken embryo: calcium ascorbate; FDA in-house investigation.
			6. Mutagenic evaluation (Tier I) of compound FDA 75-63 (calcium ascorbate FCC) by Litton Bionetics, Inc., under FDA contract (PB-279-261/AS); AO4; $5.25.	6. Investigations of the toxic and teratogenic effects of GRAS substances to the developing chick embryo: Erythorbic acid; submitted by St. Louis University School of Medicine.
				7. Study of mutagenic effects of sodium erythorbate (No. 71-68); submitted by Stanford Research Institute.
				8. Letter dated February 17, 1960 to Pfizer and Co., New York.
				9. Letter dated October 13, 1961 to G. Stanley, New Hampshire.
				10. Memorandum dated November 4, 1977 to S. Foman.
				11. Comparison of metabolism of ascorbic acid and isoascorbic acid; FPC no. 0317; Merck Institute of Therapeutic Research.
				12. Absorption of L-ascorbate across membrane vesicles from guinea pig small intestine and renal cortex; inhibition by D-erythorbate (D-isoascorbate); 1978; *Biochimica et Biophysica Acta*; (in press).
				13. Steady-state turnover body pool of ascorbic acid in man; 1978; *American Journal of Clinical Nutrition;* (in press).

Substance	Select Committee tentative conclusion	Scientific literature review (order No.; price code; price)	Animal study report (order No.; price code; price)	Other information (order No.; price code; price)
Copper salts: Direct food use:				
Copper gluconate	1	PB-241-961/AS; AO5; $6.00	1. Mutagenic evaluation (Tier I) of compound FDA 71-62 (copper gluconate) by Litton Bionetics, Inc., PB-245-490/AS; AO3; $4.50.	1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Good Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service, PB-221-920 (set); E-99; $173.00.
Cuprous iodide	1	PB-275-749/AS; AO3; $4.50		
Copper sulfate	1			
Food packaging materials: Copper sulfate	1		2. Mutagenic evaluation (Tier I) of FDA 75-70, (cuprous iodide technical) by Litton Bionetics, Inc., (PB-279-263/AS); AO4; $5.25.	2. Letter dated October 29, 1976, with attachments to G. W. Irving, M.D. 3. Letter dated June 28, 1978 to F. R. Senti, M.D. 4. Memorandum dated September 12, 1978 from H. I. Chinn. 5. One year chronic oral toxicity of copper gluconate W10219A in beagle dogs; research report no. 955-0353; Warner-Lambert Research Institute. 6. Teratological and embryotoxicity study of W10219A (copper gluconate) in mice; report no. 250-0655; Warner-Lambert Research Institute. 7. Teratological and embryotoxicity study of W10219A (copper gluconate) in rats; report no. 250-0653; Warner-Lambert Research Institute. 8. Investigation of the toxic and teratogenic effects of GRAS substances to the developing chick embryo: copper gluconate; FDA in-house investigation. 9. Investigation of the toxic and teratogenic effects of GRAS substances to the developing chick embryo: copper gluconate; FDA in-house memorandum. 10. Fertility study of W10219A (copper gluconate) in male and female albino Wistar rats; report no. 250-0661; Warner-Lambert Research Institute.

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented its reviews, where appropriate, with specific information from specialized sources as announced in a previous hearing opportunity published in the FEDERAL REGISTER of September 23, 1974 (39 FR 34218).

The Select Committee's tentative reports on (1) L-ascorbic acid, calcium and sodium L-ascorbates, ascorbyl palmitate, erythorbic acid, and sodium erythorbate for direct food use, and (2) copper gluconate and cuprous iodide for direct food use, and copper sulfate for direct food use and food packaging materials are available for review at the office of the Hearing Clerk (HFA—305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St. SW., Washington, DC 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review at the office of the Hearing Clerk.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the amount of time requested to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall so inform the Select Committee in writing addressed to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. A copy of each such request, identified with the Hearing Clerk docket number found in brackets in the heading of this document, shall be sent to the Hearing Clerk, address noted above, and all requests shall be placed on public display in that office. Any such request must be

postmarked on or before April 6, 1979 and shall state the substance(s) on which an opportunity to present oral views is requested, and shall state how much time is requested for the presentation. As soon as possible thereafter, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the FEDERAL REGISTER.

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Because of time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views, identified with the Hearing Clerk docket number found in brackets in the heading of this document, shall be addressed to the Select Committee at the address noted above, and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views will be sent to the Hearing Clerk, Food and Drug Administration, and will be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will be placed on public display in the office of the Hearing Clerk, Food and Drug Administration.

Dated: March 1, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR. Doc. 79-6780 Filed 3-6-79; 8:45 am]

[4110-35-M]

Health Care Financing Administration

MEDICARE PROGRAM

Proposed Initial Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After June 1, 1979

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of Proposed Initial Schedule of Limits on Home Health Agency Costs Per Visit.

SUMMARY: Notice is being given of a proposed initial Schedule of Limits on Home Health Agency Costs that may be reimbursed under Medicare. The proposed schedule establishes limits by type of service on reimbursable costs per visit. The limits would apply for entire cost reporting periods beginning on or after June 1, 1979. They would be periodically revised for subsequent cost reporting periods.

DATES: We will carefully consider any written comments received by May 7, 1979.

ADDRESSES: Please refer to file code MAB-102-N and address your comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013.

Comments will be available for public inspection, beginning approximately 2 weeks from today, in Room 5231 of the Department Offices at 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., telephone 202-245-0950

FOR FURTHER INFORMATION, CONTACT:

Carl Slutter, Medicare Bureau, Health Care Financing Administration, Room 474 East Highrise Building, Baltimore, Maryland 21235, Telephone 301-594-8170.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider that will be reimbursed under Medicare, based on estimates of the costs necessary in the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

There has been a notable increase in Medicare expenditures for home health benefits in recent years from $287 million in fiscal year 1976 to a projected $789 million in fiscal year 1979. Although this increase is partially attributable to increased demand for services and inflation, there is evidence that some home health agencies are incurring costs in excess of those necessary in the efficient delivery of needed health services. For example high cost home health agencies were recently the subject of investigations conducted by the General Accounting Office and the Subcommittee on Oversight of the House Ways and Means Committee. For this reason, we believe limits on home health agency costs that may be reimbursed by Medicare are necessary and appropriate.

Most services furnished by home health agencies that are covered under Medicare involve making visits to beneficiaries who are homebound. Services that are covered under the home health benefit provision include intermittent skilled nursing care, physical therapy, occupational therapy, speech pathology, medical social services and intermittent services of home health aides (see 42 CFR 405.236). The proposed schedule establishes separate limits on the reimbursable costs per visit for each home health service. The limits are also applicable to physical therapy or speech pathology visits furnished by home health agencies under the outpatient physical therapy benefit (see section 1832(a)(2)(C) of the Social Security Act).

The home health benefit provision includes the use of medical supplies and medical appliances in conjunction with covered home health visits. The proposed schedule includes the cost of medical supplies routinely furnished in conjunction with patient care visits in the per visit limit amounts. However, the costs of medical supplies that are not routinely furnished in conjunction with patient care visits and which are direct identifiable services to an individual patient are excluded from the per visit limit amounts. The costs of medical appliances which are direct identifiable services to individual patients are also excluded from the per visit limit amounts. The reasonable costs of these items will be reimbursed separately from the schedule of limits.

CLASSIFICATION SYSTEM

We have classified home health agencies according to whether their main office is located in a metropolitan or nonmetropolitan area. This classification is based on our finding that there are variances between per visit costs of home health agencies operating in metropolitan areas and

those operating in nonmetropolitan areas that may be reflective of different operating modes.

In all areas of the United States other than New England, we have used the Standard Metropolitan Statistical Area (SMSA) and Standard Consolidated Statistical Area (SCSA) concepts to identify metropolitan areas. The SMSA and SCSA are statistical standards defined according to a body of objective, published criteria. The Department of Commerce has the responsibility for designating and defining SMSA and SCSA. Inquiries regarding definitions or designations should be referred to Director, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230.

SMSA designations in New England are based on cities and towns rather than on counties, as is the case in the rest of the United States. As a result, only a part of a New England county may be in an SMSA. In order to provide a county version of the New England areas, the Department of Commerce has develped New England County Metropolitan Areas (NECMAs) following criteria identical to those used to define SMSAs in the other States. Recognizing that a home health agency often services an entire county and in order to be consistent with the classification methodology used for the rest of the United States, we have used the NECMA concept to identify metropolitan areas in New England.

We considered further classifying home health agencies according to factors such as mix of services, size and the economic environment of the geographical area in which they operate. Although our analysis indicated there is a strong relationship between overall costs per visit and the mix of skilled nursing and therapy services versus home health aide services provided by agencies, it did not reveal a significant relationship between the costs per visit by type of service ad the mix of services. Therefore, we concluded that the establishment of separate limits by type of service gives sufficient recognition to the scope and mix of services provided by a home health agency and that these factors need not be incorporated into the classification system.

We also found no significant relationship between per visit costs and the size of a home health agency or between per visit costs and the per capita income or average wage levels of the area in which a home health agency operates. Based on our analysis, we concluded that the metropolitan/nonmetropolitan groupings give sufficient recognition to differences between home health agencies for purposes of the cost limits and that additional groupings based on size or economic indices are unnecessary.

We also considered establishing separate limits for hospital-based agencies as compared to free-standing home health agencies, since it has been indicated that hospital-based agencies tend to have higher costs. However, we determined that a substantial number of hospital-based agencies have costs that are comparable to those of free-standing agencies in the same grouping. Of those that do have higher costs, the higher costs are often attributable to controllable factors such as high administrative and support staff expenses and the provision of nursing and other services under contractual arrangements with free-standing home health agencies rather than directly by hospital-based agency employees. Moreover, in the absence of any evidence demonstrating that hospital-based home health agencies furnish services to more seriously ill patients, we believe it is reasonable to assume that, for a given service, all home health agencies generally furnish the same intensity of care to a similar mix of patients. We believe premium reimbursement to hospital-based home health agencies merely because their costs are higher is unwarranted; therefore, we are not proposing to set different limits for hospital-based agencies.

Methodology for Calculating Limits

The proposed limits were developed separately for home health agencies located in metropolitan and nonmetropolitan areas in the following manner:

1. Cost report data for 12-month reporting periods ending after June 30, 1976 and on or before June 30, 1977, were obtained for each participating home health agency from the fiscal intermediaries.

2. The average per visit cost for each type of service provided by a home health agency was determined, based on the Medicare cost apportionment method used by the provider. Many home health agencies separately determine the average per visit costs of each service they provide. In these cases, the necessary cost data were extracted directly from the cost reports. Other home health agencies have elected to utilize cost finding methods that do not result in a separate determination of costs per visit by type of service. We were able to include these providers in the data base by obtaining supplemental information from the fiscal intermediaries and computing an average cost per visit by discipline on the basis of this information.

3. The average per visit costs of each home health agency in the data base with a cost reporting period ending before June 30, 1977, were adjusted upward to reflect an estimated 7.00 percent increase on an annual basis in average per visit costs between cost reporting periods ending June 30, 1976, and those ending June 30, 1977. The estimate was obtained from the Office of Financial Actuarial Analysis, Office of Policy, Planning and Research, Health Care Financing Administration and is based on the increase in the average per visit interim reimbursement to participating home health agencies in 1976.

4. The data for each type of service were separately arrayed in descending order of adjusted per visit costs.

5. The adjusted average cost per visit at the 80th percentile of each array was computed to obtain a base limit.

6. The base limit was increased by an adjustment factor of 26.33 percent to take into account increases in per visit costs from cost reporting periods ending June 30, 1977, to the effective date of the proposed limits. The adjustment factor was computed by compounding various inflation rates for this period as discussed below.

The Office of Financial and Actuarial Analysis, based on interim reimbursement data, has estimated that average per visit costs increased 8.75 percent from cost reporting periods ending June 30, 1977, to December 31, 1977, and 6.92 percent during the first 9 months of 1978. We have used this estimate to inflate per visit costs to September 30, 1978.

After October 1, 1978, we have used an annual inflation rate of 7.371 percent. This factor is based on the voluntary standard for noninflationary price behavior in the health care sector established by the Council on Wage and Price Stability. We believe that this standard is appropriate for setting limits on costs necessary in the efficient delivery of needed health services. The base period is calendar years 1976 and 1977, during which home health agency per visit costs increased an estimated 7.0 percent and 8.75 percent, respectively. Subtracting a one-half percentage point from the average annual rate of increase over 1976–1977 results in an annual inflation rate of 7.371 percent, which we used to increase per visit costs from October 1, 1978, to cost reporting periods beginning June 1, 1979.

7. The amount calculated in Step 6 was rounded to the next highest dollar. The rounded amount established the limit for each type of service, subject to adjustment for home health agencies whose reporting period begins after June 1, 1979.

Proposed Schedule of Limits

The schedule of limits set forth below is applicable to 12-month cost reporting periods beginning June 1, 1979. Intermediaries for providers with shorter (or longer) cost reporting peri-

ods must contact the Health Care Financing Administration for adjustment factors.

LIMITS ON PER VISIT COSTS FOR HOME HEALTH AGENCIES BY METROPOLITAN/NONMETROPOLITAN LOCATION 1

Type of Visit	Limit for Metropolitan Location	Limit for Nonmetropolitan Location
Skilled Nursing Care	$42	$38
Physical Therapy	41	40
Speech Pathology	45	41
Occupational Therapy	47	49
Medical Social Services	53	44
Home Health Aide	33	28

[1] A home health agency whose main office as of the effective date of the initial schedule of limits is located in a Standard Metropolitan Statistical Area (SMSA) (or within a New England County Metropolitan Area (NECMA) if in New England) will be classified metropolitan. A home health agency whose main office is not located in a SMSA (or NECMA) will be classified nonmetropolitan.

The limits are applicable to any home health agency that has a cost reporting period beginning on or after June 1, 1979. For a home health agency that has a cost reporting period beginning after June 1, 1979, the published limit will be adjusted upward by a factor of .61 percent for each elapsed month between June 1, 1979, and the month in which the provider's reporting period begins. This factor is based on an estimated 7.371 percent annual increase in average per visit costs in keeping with anti-inflation standard for the health care industry. The result of this calculation is not rounded and is to be given in dollars and cents.

EXAMPLE: Home Health Agency A's cost reporting period begins January 1, 1980, and ends December 31, 1980. Assume that the published limit for a specific service furnished by home health agency A is $40.00.

COMPUTATION OF ADJUSTED COST LIMIT

Published Cost Limit	$40.00
Plus: Adjustment for 7-month period (June 1, 1979, to December 31, 1979), 7 months × .61=4.27 percent (Percent × Cost Limit)	1.71
Adjusted cost limit applicable to home health agency A for the January 1, 1980, to December 31, 1980, reporting period	$41.71

APPLICATION OF PROPOSED LIMITS TO DETERMINE REIMBURSABLE COSTS

The current cost reporting forms utilized by home health agencies provide for various cost finding and cost apportionment methodologies. As a result, home health agencies do not uniformly report their per visit costs by type of service. HCFA is developing revised cost reporting forms that will eliminate the multiple cost finding and apportionment methods and implement a single method of determining per visit costs. In the interim, we are proposing to apply the cost limits to each home health agency's total allowable costs attributable to Medicare patient care visits. Under this approach, an aggregate cost limit would be determined for each home health agency by multiplying the number of Medicare visits for each type of service furnished by the provider by the respective per visit cost limits. The sum of these amounts would be compared to the home health agency's aggregate allowable costs attributable to making patient care visits to Medicare beneficiaries.

EXAMPLE: Home Health Agency A, located within a metropolitan area, made 5,000 skilled nursing, 1,000 physical therapy and 1,000 home health aide covered visits to Medicare beneficiaries during its 12-month cost reporting period beginning June 1, 1980.

The aggregate cost limit would be determined as follows:

Type of Visit	Visits	Limit (multiplied by)	Amount
Skilled Nursing	5,000	$42	$210,000
Pysical Therapy	1,000	41	41,000
Home Health Aide	1,000	33	33,000
Aggregate Cost Limit			284,000

The provider's actual costs would be adjusted, as necessary, in accordance with Medicare principles of provider reimbursement, including 42 CFR 405.451, and for reimbursable costs that are not included in the limitation amount (e.g., medical appliances). The adjusted total adjusted costs would then be compared to the aggregate cost limit and reimbursement would be based on the lower of the two amounts.

We are proposing this approach on an interim basis in order to assure a home health agency's maximum reimbursable costs are not inequitably affected by its cost finding method. Once a single method of cost finding is implemented, however, we propose to apply the per visit limit separately for each type of service directly to the costs attributable to that service.

RECLASSIFICATION, EXEMPTIONS AND EXCEPTIONS

The provisions of 42 CFR 405.460 provide that classification adjustments, exemptions and exceptions may be made to the application of cost limits where certain conditions are met and would be applicable to home health agencies affected by the cost limits. If a provider obtains an exemption from the cost limits, its reimbursement is the lower of its reasonable cost or its customary charges. We are currently reviewing whether to replace the exemption for sole community providers, as it applies to home health agencies, with an exception process allowing payments higher than the cost limits for those agencies for whom unusual circumstances necessitate higher costs.

(Secs. 1102, 1861(v)(1), 1866(a) and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395x(v)(1), 1395cc(a) and 1395hh.)

(Catalog of Federal Domestic Assistance Program No. 13,773, Medicare—Hospital Insurance; No. 13.774; Medicare—Supplementary Medical Insurance.)

Dated: February 27, 1979.

LEONARD D. SCHAEFFER,
Administrator, Health Care Financing Administration.

Approved: February 27, 1979.

JOSEPH A. CALIFANO, Jr.
Secretary.

[FR Doc. 79-6642 Filed 3-6-79; 8:45 am]

[4110-83-M]

Health Resources Administration

GRADUATE PROGRAMS IN HEALTH ADMINISTRATION GRANTS

Application Announcement

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1979 grants for graduate programs in health administration are now being accepted under the authority of section 791 of the Public Health Service Act as amended.

Section 791 authorizes grants to public or nonprofit private educational entities (excluding schools of public health) to support graduate educational programs in health administration, hospital administration, and health planning. Each program for which support is requested must be accredited by an accrediting body or bodies approved for such purposes by the Commissioner of Education, DHEW.

Each application must contain assurances that at least 25 individuals will graduate from the programs for which support is requested, and that the applicant shall expend or obligate at least $100,000 from non-Federal sources for such programs.

Each applicant also must assure that it will maintain a first-year, full-time enrollment which exceeds the enrollment in 1976-77 by 5 percent, if such number was not more than 100, or by 2.5 percent, or 5 students, whichever is greater, if enrollment was more than 100.

Each applicant must provide an institutional plan for activities to be pursued in developing, expanding, or enriching the program in special areas specified in the application instructions.

Approximately $3 million is expected to be available in FY 1979 for grants.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782. Phone: (301) 436-7360.

To be considered for fiscal year 1979 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than March 23, 1979.

Should additional programmatic information be required, please contact:

Education Development Branch, Division of Associated Health Professions, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 5-27, 3700 East-West Highway, Hyattsville, Maryland 20782. Phone: (301) 436-6800.

Dated: February 23, 1979.

HENRY A. FOLEY,
Administrator.

[FR Doc. 79-6782 Filed 3-6-79; 8:45 am]

[4110-12-M]

Office of the Secretary

UNIVERSAL SOCIAL SECURITY COVERAGE STUDY GROUP

Notice of Establishment

In accordance with the provisions of 5 U.S.C. 552(a)(1), notice is hereby given that a Universal Social Security Coverage Study Group has been established to conduct the study required by section 311 of Public Law 95-216. The functions of the Universal Social Security Coverage Study Group are as follows:

1. To conduct the study, required by section 311 of Public Law 95-216, of the scope of coverage under the old-age, survivors, disability insurance and Medicare programs, and to examine the feasibility and desirability of providing social security coverage to Federal employees, State and local governmental employees, and employees of nonprofit organizations who are not now covered under social security.

2. To consult with the Director of the Office of Management and Budget, the Secretary of the Treasury, the Director of the Office of Personnel Management, and with other public and private organizations to obtain their views concerning the scope of coverage under social security.

3. To develop data on the extent to which employees of State and local governmental entities and nonprofit organizations are covered under existing social security provisions. To analyze problems in extending such coverages, including the economic impact of possible solutions on Federal, State and local, and nonprofit organizations and their employees.

4. To develop and recommend to the Secretary of Health, Education, and Welfare alternative methods or proposals for covering workers under Social Security, supported by analyses of possible structural changes required in social security programs and in other systems or programs, the financial impact of such changes, and the effects on benefit rights and contribution liabilities of affected individuals. To develop appropriate alternatives to extending universal coverage to noncovered employees.

Dated: February 28, 1979.

L. DAVID TAYLOR,
Acting Assistant Secretary for Management and Budget.

[FR Doc. 79-6829 Filed 3-6-79; 8:45 am]

[4410-09-M]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-1]

SUN KWOH-CHENG, M.D., SIREN, WIS.

Notice of Hearing

Notice is hereby given that on December 22, 1978, the Drug Enforcement Administration, Department of Justice, issued to Sun Kwoh-cheng, M.D., Siren, Wisconsin, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke Respondent's Certificate of Registration, AS4974730, issued to him pursuant to Section 303 of the Controlled Substances Act (Title 21, United States Code, Section 823).

Thirty days having elapsed since the said Order to Show Cause was received by the Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that the hearing in this matter, originally scheduled for February 6, 1979, will be held on Tuesday, March 13, 1979, commencing at 10:00 a.m. in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C.

Dated: March 1, 1979.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 79-6867 Filed 3-6-79; 8:45 am]

[4410-18-M]

Law Enforcement Assistance Administration

POLICE ACTIVITIES AND SERVICES

Solicitation

The National Institute of Law Enforcement and Criminal Justice is pleased to announce a competitive research grant to examine the positive and negative implications of efforts to redefine and restructure traditional police activities and services. The study aim is to conceptualize a crime-focused approach to policing which would involve the reassignment of many of the present service calls and duties to other agencies or groups, and to develop a model of the crime-focused approach for possible future testing. The ultimate objective of this research is to explore the feasibility of reconceptualizing the entire structure of the police function. The effort would entail describing the crime focused approach in detail, thereby identifying the social, administrative, organizational, political, economic, and philosophical consequences of such "focusing."

The solicitation asks for the submission of preliminary proposals rather than concept papers or full proposals. The selection of the grantee will be determined by a peer review panel process. In order to be considered, a preliminary proposal must be received by the National Institute no later than April 30, 1979. One grant, between $75,000-$100,000 will be awarded for an 18 month project.

Additional information and copies of the solicitation can be obtained by contacting Shirley S. Melnicoe, Police Division, NILECJ, 633 Indiana Avenue, N.W., Washington, D.C. 20531 (301) 492-9110.

BLAIR G. EWING,
Acting Director, NILECJ.

[FR Doc. 79-6783 Filed 3-6-79; 8:45 am]

[6820-35-M]

LEGAL SERVICES CORP.

GRANTS AND CONTRACTS

MARCH 5, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is

considering the grant applications submitted by:

1. Summit County Legal Aid Society in Akron, Ohio to serve Medina County.

2. Legal Aid Society of Cincinnati in Cincinnati, Ohio to serve Brown County.

3. Legal Aid Society of Cleveland in Cleveland, Ohio to serve Crawford and Ashland Counties.

4. Legal Aid Society of Columbus in Columbus, Ohio to serve Marion, Delaware and Marrow Counties.

5. Ohio State Legal Services Association in Columbus, Ohio to serve Lawrence, Athens, Meigs, Belmont and Jefferson Counties.

6. Allen County Legal Services Association in Lima, Ohio to serve Auglaize County.

7. Licking County Legal Aid Society in Newark, Ohio to serve Knox and Fairfield Counties.

8. The Rural Legal Aid Society of West Central Ohio in Greenville, Ohio to serve Clark, Preble, Miami and Greene Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, VA 22209.

THOMAS EHRLICH,
President.

[FR Doc. 79-6865 Filed 3-6-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

MARCH 6, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Macomb County Legal Aid Bureau in Mt. Clemens, Michigan to serve St. Clair County.

2. Kalamazoo County Legal Aid Bureau in Kalamazoo, Michigan to serve Kalamazoo and Van Buren Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, VA 22209.

THOMAS EHRLICH,
President.

[FR Doc. 79-6866 Filed 3-6-79; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (79-25)]

SPACE SCIENCE STEERING COMMITTEE VENUS ORBITING IMAGING RADAR (VOIR) AD HOC ADVISORY SUBCOMMITTEE

Establishment

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Committee Management Secretariat, General Services Administration, NASA has determined that the establishment of an Ad Hoc Advisory Subcommittee for the evaluation of Venus Orbiting Imaging Radar (VOIR) proposals, is in the public interest, in connection with the performance of duties imposed upon NASA by law. The Space Science Steering Committee, under which the Subcommittee will operate, is a NASA internal committee, composed wholly of government employees.

The function of this Subcommittee will be to obtain the advice of the scientific community on proposals in the specialized areas identified by the name of the Subcommittee.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

MARCH 1, 1979.

[FR Doc. 79-6756 Filed 3-6-79; 8:45 am]

[4510-30-M]

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Rescheduled Meeting

On January 26, 1979, FR 44, page 5542, notice was given of the eleventh meeting of the National Commission on Umemployment Compensation to be held on March 8, 9, and 10 at the Ramada Inn, Rosslyn, Virginia.

The meeting location and dates have been changed. The meeting of the National Commission will now take place on March 8 from 10:00 A.M. to 5:30 P.M., and on March 9 from 8:30 A.M. to 5:00 P.M., at the Shoreham Americana Hotel, 2500 Calvert Street NW., Washington, D.C.

Telephone inquiries and communications concerning this meeting should be directed to: JAMES M. ROSBROW, Executive Director, National Commission on Umemployment Compensation, 1815 Lynn Street, Room 440, Rosslyn, Virginia 22209, (703) 235-2782.

Signed at Washington, D.C. this 1st day of March, 1979.

JAMES M. ROSBROW,
Executive Director, National Commission on Umemployment Compensation.

[FR Doc. 79-6813 Filed 3-6-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-592A and 50-593A]

ARIZONA PUBLIC SERVICE CO., ET AL.

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 February 22, 1979, with respect to a construction permit application for Palo Verde Nuclear Generating Station, Units 4 and 5:

You have requested our advice pursuant to Section 105c of the Atomic Energy Act of 1954, as amended, in regard to a revision of the above-cited application which would expand the ownership of the units to include Los Angeles Department of Water and Power (LADWP), San Diego Gas & Electric Company (San Diego), City of Anaheim (Anaheim), City of Glendale (Glendale), City of Riverside (Riverside), City of Pasadena (Pasadena), City of Burbank (Burbank), and the Nevada Power Company (NPC).

The Palo Verde Nuclear Generating Station (PVNGS) Units 4 and 5 are two additional units planned for construction at the same site as Units 1, 2 and 3 currently being built pursuant to construction permits issues by the Nuclear Regulatory Commission ("Commission") in NRC Docket Nos. STN 50-528, STN 50-529, and STN 50-530, respectively.[1] The Department of Justice rendered antitrust advice to the Commission by letter of September 13, 1978, with respect to the initial applications of Arizona Public Service Company, El Paso Electric Company and Southern California Edison Company regarding their participation in PVNGS Units 4 and 5. The proposed revi-

[1]The Department rendered antitrust advice to the Commission by letter of April 8, 1975 with respect to the proposed participation in PVGNS Units 1, 2 and 3 by Arizona Public Service Company and El Paso Electric Company, and by letter of April 6, 1976 with respect to the participation of Southern California Edison Co. in Units 1, 2 and 3.

sion will result in the eight additional participants owning the following percentage of the two units:

LADWP	11.7%
San Diego	5.2%
Anaheim	1.5%
Glendale	1.0%
Riverside	1.0%
Pasadena	1.0%
Burbank	1.0%
NPC	2.2%

"LADWP has been the subject of antitrust review on two previous occasions. In connection with LADWP's participation in the San Joaquin Nuclear Project we advised by letter of November 24, 1975, that no antitrust hearing was necessary, and more recently we advised by letter of July 17, 1978, that no antitrust hearing would be required in connection with LADWP's participation in Sundesert Nuclear Plant, Units 1 and 2.

"San Diego has also been the subject of two previous antitrust reviews. We advised the Commission by letter of July 12, 1971, that a hearing was necessary in connection with Southern California Edison's participation in the San Onofre Nuclear Generating Station, Units 2 and 3, but concluded, with respect to San Diego's participation, that an antitrust hearing was not warranted. On May 12, 1976, we rendered antitrust advice in connection with San Diego's application to build the Sundesert Nuclear Plant, Units 1 and 2. We again advised that a hearing was not necessary.

"Anaheim, Glendale, Riverside and Pasadena filed applications to participate in both the San Joaquin and Sundesert plants, and the Commission was advised by letters of November 24, 1975, and September 2, 1977, that no antitrust hearings were necessary in connection with the participation by those cities in the San Joaquin and Sundesert plants, respectively. We also advised the Commission by letter of July 17, 1978, that no antitrust hearing would be required in connection with the City of Burbank's planned participation in the Sundesert Nuclear Plant.

"Our review of the information submitted for antitrust review purposes as well as other information available to the Department provides no basis at this time to conclude that the participation in PVNGS Units 4 and 5 by the above seven entities would warrant any change in our prior advice.

"The eighth applicant, the Nevada Power Company (NPC) has not heretofore been the subject of an antitrust review under section 105c. NPC is the largest electric utility in southern Nevada and in 1977 served approximately 136,000 customers (including the city of Las Vegas), with a peak load of approximately 1000 MWs. NPC's 2.2 percent interest represents about 4 percent of its 1978 generating capacity (approximately 1200 MWs).

"There is one municipally owned distribution system, two power districts, one REA cooperative, and one investor-owned distribution system in southern Nevada serving in areas adjacent to NPC's facilities, none of which have any generation in the area.[2] The investor-owned system purchases power from NPC. The public systems purchase power generated at Federal hydroelectric projects on the Colorado River from the U.S. Bureau of Reclamation and the Nevada Divsion of Colorado River Resources.

"The NPC performs central dispatching service for all of the utilities in the area, and thus, is in a position to control the ability of these other utilities to obtain power from sources outside of the area. It appears, however, that all the utilities are engaged in the planning of jointly owned generating plants Moreover, our investigation uncovered no evidence that NPC has acted to foreclose or hinder the development of alternative sources of power or has otherwise placed the smaller utilities at a competitive disadvantage. Accordingly it is the Department's view that NPC's ownership of 2.2 percent of PVNGS units 4 and 5 will not create or maintain a situation inconsistent with the antitrust laws and that an antitrust hearing on NPC's application is not necessary."

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and requests a hearing on the anititrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by April 6, 1979, either (1) by delivery to the NRC Docketing and Service Branch at 1717 H Street, NW, Washington, DC or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

For the Nuclear Regulatory Commission.

JEROME SALTZMAN,
Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

[FR Doc. 79-6644 Filed 3-6-79; 8:45 am]

[2]The investor-owned system (C-P National, formerly California Pacific Utilities Co.) does own some generation in Northern Nevada.

[7590-01-M]

[Docket No. 50-293]

BOSTON EDISON CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 to Facility Operating License No. DPR-35, issued to Boston Edison Company (the Licensee), which revised the license for opertion of the Pilgrim Nuclear Power Station Unit No. 1 (the facility) located near Plymouth, Massachusetts. The amendment becomes effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filings 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.

The licensee's filing dated November 7, 1977 as revised May 26, 1978 and January 8, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 37 to License No. DPR-35 and (2) the Commission's related letter to the Licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. 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 Operating Reactors.

Dated at Bethesda, Maryland this 23d day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6842 Filed 3-6-79 8:45 pm]

[7590-01-M]

[Docket Nos. 50-325 and 50-324]

CAROLINA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 21 and 45 to Facility Operating License Nos. DPR-71 and DPR-62 issued to Carolina Power & Light Company (the licensee) which revised the licenses for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (the facility), located in Brunswick County, North Carolina.

The amendments become effective on February 23, 1979.

The amendments modify the license condition to include the current Commission-approved physical security plan as part of the licenses.

The licensee's filings 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 amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments 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 the amendments.

The licensee's filings dated May 25, 1977, July 20, 1978 and February 16, 1979 and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 21 and 45 to Licenses Nos. DPR-71 and DPR-62 and (2) the Commission's related letter to the licensee dated February 23, 1979. 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 West Moore Street, Southport, North Carolina 28461. 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 Operating Reactors.

Dated at Bethesda, Maryland this 23d day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6843 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-295 and 50-304]

COMMONWEALTH EDISON CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 42 and 39 to Facility Operating License Nos. DPR-39 and DPR-48 issued to Commonwealth Edison Company (the licensee) which revised Technical Specifications for operation of the Zion Station, Unit Nos. 1 and 2, located in Zion, Illinois. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specification limits for total nuclear peaking factor (F_Q) for Zion Units 1 and 2 under base load and load follow modes of operation.

The applications for these amendments 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 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, or negative declaration and 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 February 2, as supplemented February 9, 1979, (2) Amendment Nos. 42 and 39 to License Nos. DPR-39 and DPR-48, 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. 20555 and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. 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, Maryland, this 16th day of February, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-6844 Filed 3-6-79 8:45 am]

[7590-01-M]

[Docket Nos. 50-3 and 50-247]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Issuance of Amendment to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 23 and 48 to Provisional Operating License No. DPR-5 and Facility Operating License No. DPR-26 issued to Consolidated Edison Company of New York, Inc. for operation of the Indian Point Station, Unit No. 1 and Indian Point Nuclear Generating Plant, Unit No. 2 (the facility), located in Buchanan, Westchester County, New York. The amendments are effective as of the date of issuance.

These amendments revise administrative controls in the Environmental Technical Specifications, Appendix B of each license.

The applications for the amendments 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 amendments. Prior public notice of these amendments was not required since the amendments did 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 or negative declaration and 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 applications for amendment dated April 20, 1977, April 25, 1977, December 30, 1977, March 22, 1978, April 24, 1978 and May 10, 1978; (2) Amendment Nos. 23 and 48 to DPR-5 and DPR-26, respectively; and (3) the Commission's letter dated February 15, 1979.

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 White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) and (3) may be ob-

tained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 17th day of February, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-6845 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-3, 50-247, and 50-286]

CONSOLIDATED EDISON CO. OF NEW YORK INC. POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 22 and 47 to Provisional Operating License No. DPR-5 and Facility Operating License No. DPR-26 issued to Consolidated Edison Company of New York, Inc. and Amendment No. 22 to Facility Operating License No. DPR-64 issued to Power Authority of the State of New York (the licensees), which revised Technical Specifications for operation of the Indian Point Station, Unit No. 1 and Indian Point Generating Plant, Unit Nos. 2 and 3 (the facilities, located in Buchanan, Westchester County, New York. The amendments are effective as of the date of issuance.

These amendments revise Technical Specifications to delete the method for calculating the rate of heat rejection to the river.

The applications for 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 these amendments were 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 or negative declaration and 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 amendment dated December 5, 1978; (2) Amendment Nos. 22, 47, and 22 to DPR-5, DPR-64, respectively; and (3) the Commission's letter dated February 15, 1978.

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 White Plains Public Library, 100 Martine Avenue, White Plains, New York. 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, Maryland this 15th day of February, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-6846 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-321 and 50-366]

GEORGIA POWER CO., ET AL.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 64 and 5 to Facility Operating License Nos. DPR-57 and NPF-5, issued to Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia (the licensee), which revised the licenses for operation of the Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2 (the facility), located in Appling County, Georgia. The amendments become effective on February 23, 1979.

The amendments add a condition in License No. DPR-57 and modify License No. NPF-5 to include the Commission-approved physical security plan as part of the license.

The licensee's filings 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 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 or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filing dated November 18, 1977, revised May 9, 1978, and January 12, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 64 and 5 to License No. DPR-57 and NPF-5 and (2) the Commission's related letter to the licensee dated February 26, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Appling County Public Library, Parker Street, Baxley, Georgia. 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 Operating Reactors.

Dated at Bethesda, Maryland, this 26th day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6847 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Facility Operating License No. DPR-46, issued to Nebraska Public Power District, which revised the license for operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska. The amendment becomes effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filings 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.

The licensee's filings dated May 24, 1977, as revised January 23, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 53 to License No. DPR-46 and (2) the Commission's related letter to the licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Auburn Public Library, 118—15th Street, Auburn, Nebraska 68305. 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 Operating Reactors.

Dated at Bethesda, Maryland this 23 day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6848 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-277 and 50-278]

PHILADELPHIA ELECTRIC CO., ET AL.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 51 and 51 to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensees), which revised the licenses for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility), located in York County, Pennsylvania. The amendments became effective on February 23, 1979.

The amendments add license conditions to include the Commission-approved physical security plan as part of the licenses.

The licensee's filings 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 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 or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filing dated May 25, 1977 as revised November 21, 1977, March 22, 1978, May 24, 1978, and January 31, 1979 and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 51 and 51 to License Nos. DPR-44 and DPR-56, and (2) the Commission's related letter to the licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (1) and (2) may be obtained upon request addressed to U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 23rd day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6849 Filed 3-6-79 8:45 pm]

[7590-01-M]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 45 to Facility Operating License No. DPR-59, issued to Power Authority of the State of New York (the licensee), which revised the license for operation of the James A. FitzPatrick Nuclear Power Plant (the facility) located in Oswego County, New York. The amendment becomes effective on February 23, 1979.

The amendment modifies the license condition to include the current Commission-approved physical security plan as part of the license.

The licensee's filings 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.

The licensee's filings dated October 31, 1977, April 25, May 26, June 12, 1978, and February 14, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 45 to License No. DPR-59 and (2) the commission's related letter to the licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public document room, 1717 H Street, N.W., Washington, D.C. and at the Oswego County Office Building, 46 East Bridge Street, Oswego, New York. 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 Operating Reactors.

Dated at Bethesda, Maryland this 23 day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6850 Filed 3-6-79; 8:45 am]

[7590-01-M]

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 4.15, Revision 1, "Quality Assurance for Radiological Monitoring Programs (Normal Operations)—Effluent Streams and the Environment," describes a method acceptable to the NRC staff for designing a program that complies with the Commission's regulations with regard to ensuring the quality of the results of radiological measurements in the effluents and the environment outside of nuclear facilities during normal operations. This guide was revised as a 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, U.S. Nuclear Regulatory 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 the latest revision 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 Technical Information and 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, Maryland, this 27th day of February 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 79-6841 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-244]

ROCHESTER GAS & ELECTRIC CORP.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Provisional Operating License No. DPR-18, issued to the Rochester Gas and Electric Corporation (the licensee), which revised the license for operation of the R. E. Ginna Nuclear Power Plant (the facility), located in Wayne County, New York. The amendment became effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filing 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 and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated January 18, 1978, as revised December 8, 1978, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. — to License No. DPR-18 and (2) the Commission's related letter to the licensee dated February 22, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14604. 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 Operating Reactors.

Dated at Bethesda, Maryland, this 22d day of February, 1979.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-6851 Filed 3-6-79 8:45 pm]

[7590-01-M]

[Docket Nos. 50-259, 50-260 and 50-296]

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Facility Operating License No. DPR-33, Amendment No. 43 to Facility Operating License No. DPR-52, and Amendment No. 20 to Facility Operating License No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised the licenses for operation of the Browns Ferry Nuclear Plant, Unit Nos. 1, 2 and 3, (the facility) located in Limestone County, Alabama. The amendments are effective on February 23, 1979.

These amendments add a license condition to include the Commission-approved physical security plan as part of the licenses.

The licensee's filings 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 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, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filings dated May 25, 1977, September 13, 1977, and June 15,

1978, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 49 to License No. DPR-33, Amendment No. 43 to License No. DPR-52, and Amendment No. 20 to License No. DPR-68, and (2) the Commission's related letter to the licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. 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 Operating Reactors.

Dated at Bethesda, Maryland this 23rd day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6852 Filed 3-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 51 to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation which revised the license for operation of the Vermont Yankee Nuclear Power Station (the facility) located near Vernon, Vermont. The amendment becomes effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filings 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 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.

The licensee's filings dated May 25, 1977, December 1, 1978 and February 12, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 51 to License No. DPR-28 and (2) the Commission's related letter to the licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont. 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 Operating Reactors.

Dated at Bethesda, Maryland this 23rd day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-6853 Filed 3-6-79 8:45 am]

[7590-01-M]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 55 to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), which revised the license for operation of the Yankee-Rowe Nuclear Power Station (the facility), located in Rowe, Franklin County, Massachusetts. The amendment became effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of license.

The licensee's filing 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 and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated November 29, 1978, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12

For further details with respect to this action, see (1) Amendment No. 55 to License No. DPR-3 and (2) the Commission's related letter to the licensee dated February 23, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. 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 Operating Reactors.

Dated at Bethesda, Maryland, this 23rd day of February, 1979.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-6854 Filed 3-6-79; 8:45 am]

[3310-01-M]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

UNIFORM RULES OF PROCEDURE FOR BOARDS OF CONTRACT APPEALS AND RELATED REGULATIONS

Interim Final Rules

FEBRUARY 26, 1979.

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Notice of Interim Final Uniform Rules of Procedure for Boards of

Contract Appeals and related regulations.

SUMMARY: This document sets out the text of interim rules which boards of contract appeals must adopt as well as rules which the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration must incorporate in their procurement regulations.

On November 1, 1978, the President signed into law Pub. L. 95-563, the "Contract Disputes Act of 1978." That Act, among other things requires changes to the Rules of Procedure currently in use by the Boards of Contract Appeals of the procuring agencies, as well as certain other changes in contract clauses and procurement regulations by March 1, 1979. Proposed Rules of Procedure and related regulations were published for comment in the January 25, 1979, FEDERAL REGISTER. The Interim final Rules and regulations set forth below incorporate the changes required by Pub. L. 95-563, and reflect many of the comments received on the proposed Rules and regulations. Some of the changes to the Rules and regulations made as a result of comments received are significant. These Rules and regulations are therefore issued as implementation of Pub. L. 95-563, effective on March 1, 1979, on an interim basis, and will automatically become final on June 1, 1979 unless changed before that time. This will enable the Office of Federal Procurement Policy to evaluate additional comments on the Interim Rules and regulations. The Rules of Procedure are to be adopted uniformly by all Boards of Contract Appeals.

DATE: These Interim Rules and regulations are effective on March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Owen Birnbaum, Deputy Associate Administrator for Acquisition Law, (202) 395-3455.

LESTER A. FETTIG,
Administrator.

RULES OF PROCEDURE FOR BOARDS OF CONTRACT APPEALS

PREFACE TO RULES

I. *Jurisdiction for considering appeals.*

The —— Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1979 (Pub. L. 95-563, 41 U.S.C. 601-613) relating to contracts made by (i) the —— (executive agency) or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. *Organization and location of the Board.*

(a) The Board's address is (——), telephone (——).

(b) The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of as least (——) members who decide the case by a majority vote. Board Members are designated Administrative Judges.

III. *Time, Computation, and Extensions.*

(a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extension of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

IV. *ExParte Communications.*

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to exparte communications concerning the Board's admininstrative functions or procedures.

RULES

Preliminary Procedures

1. *Appeals, How Taken.* (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

2. *Notice of Appeal, Contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Docketing of Appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File.* (a) Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board: (1) the decision from which the appeal is taken; and (2) the contract including specifications and pertinent amendments, plans and drawings.

(b) These documents are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object to consideration of a particular document or all documents in advance of hearing or of settling the record in the event there is no hearing on the appeal. If such objection is made, the Board will rule upon admissibility into the record as evidence in accordance with Rules 13 and 20 hereof.

5. *Dismissal for Lack of Jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

6. *Pleadings.* (a) Appellant—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received withing 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) Government—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

7. *Amendments of Pleadings or Record.* The Board upon its own initiative or upon

application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.* (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(1) simplification, clarification, or severing of the issues;

(2) the possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) agreements and rulings to facilitate discovery;

(4) limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) the possibility of agreement disposing of any or all of the issues in dispute; and

(6) such other matters as may aid in the disposition of the appeal.

(b) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

11. *Submission Without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional Small Claims (Expedited) and Accelerated Procedures. These procedures are available solely at the election of the appellant.*

12.1. *Elections to Utilize Small Claims (Expedited) and Accelerated Procedure.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a Small Claims (Expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in section 12.2 of this Rule.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an Accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the Small Claims (Expedited) procedure or the Accelerated procedure may be made by written notice within 20 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) In deciding whether the Small Claims (Expedited) procedure or the Accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

12.2. *The Small Claims (Expedited Procedure.* (a) Promptly upon receipt of an appellant's election of the *Small Claims (Expedited)* procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the Small Claims (Expedited) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 *The Accelerated Procedure.* (a) Promptly upon receipt of an appellant's election of the accelerated procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing and if either does, fix a time and place therefor; (iv) require the Government to furnish all correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued; and (v) establish an accelerated schedule for resolution of the appeal.

(b) Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record, and the filing of briefs, if any.

(c) Written decisions by the Board in cases processed under the accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of

the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 *Motions for Reconsideration in Rule 12 cases.* Motions for Reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions.* (a) General Policy and Protective Orders—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) When Depositions Permitted—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for the purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) Orders on Depositions—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) Use as Evidence—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) Expenses—Each party shall bear its own expenses associated with the taking of any deposition.

(f) Subpoenas—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents.* After an appeal has been filed with the Board, a party may serve on the other party: (a) written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders.

16. *Service of Papers Other than Subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. *Notice of Hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature; Examination of Witnesses.* (a) Nature of Hearings—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) Examination of Witnesses—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas.* (a) General—Upon written request of either party filed with the (clerk, recorder), or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(i) testimony at a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) production of books and papers—in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) Voluntary Cooperation—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) Requests for Subpoenas—

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpeonas not made within these time limitationss.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) Requests to Quash or Modify—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable

cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) Form; Issuance—

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall commmand each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) Service—

(1) The party requesting issuance of a supoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) Contumacy or Refusal to Obey a Subpoena—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. *Copies of Papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Posthearing Briefs.* Posthearing Briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

24. *Transcript of Proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts or copies of the proceedings shall be supplied to the parties at the actual cost of duplication.

25. *Withdrawal of Exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Decisions

28. *Decisions.* Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Motion for Reconsideration

29. *Motion for Reconsideration.* A motion for reconsideration, may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Dismissals and Defaults

30. *Dismissal Without Prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal or Default for Failure to Prosecute or Defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If no cause is shown, the Board may take appropriate action.

32. *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Sanctions

33. If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date

34. These rules shall apply (1) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979 or initiated thereafter.

REGULATORY COVERAGE AND CONTRACT CLAUSE

I. *Regulatory Coverage—Disputed Procedure.* Section 1-314 of the Defense Acquisition Regulation (DAR) and Section 1-1.318 of the Federal Procurement regulations (FPR) are amended to provide as follows:

1. *Contract Disputes Act of 1978.* (a) *General*—The Contract Disputes Act of 1978 (P.L. 95-563, 41 U.S.C. 601-613) establishes procedures and remedies to resolve disputes under Government contracts. It is the Government's policy, consistent with that Act, to try to resolve all disputes by mutual agreement at the Contracting Officer's level, without litigation. In appropriate circumstances, before issuance of a Contracting Officer's decision, informal discussions between the parties, to the extent feasible by individuals who have not participated substantially in the matter in dispute, can aid in the resolution of differences by mutual agreement and should be considered, The Contracting Officer is authorized (within any specific limitations in his warrant) to settle all disputes relating to a contract containing the Disputes clause in (DAR 7-103.12)(FPR 1-7.102-12).

(b) *Exceptions to Use of Disputes Clause.* The Disputes clause is prescribed for use in all contracts covered by this regulation, except contracts with a foreign government or agency thereof, or with an international organization or subsidiary body thereof, if the head of the agency determines that application of the Contract Disputes Act to the contract would not be in the public interest.

(c) *Exceptions to Applicability of Disputes Clause Procedures.* Under contracts containing the Disputes clause, the procedures and remedies in the clause and this paragraph do not apply to: (i) any claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to adminis-

ter, settle, or determine, or (ii) any claim involving fraud.

(d) *Public Law 85-804 Requests.* Requests for relief under Public Law 85-804 are not considered to be claims within the Contract Dispute Act of 1978 or the Disputes clause, and shall continue to be processed under (DAR Section XVII) (FPR Part 1-17). However, certain kinds of relief formerly available within the agency only under Public Law 85-804 and not within the Contracting Officer's authority, such as alleged legal entitlement to rescission or reformation for mutual mistake, are now within the Contracting Officer's authority under the Act and the Disputes clause. In case of doubt, the contracting officer should obtain legal advice as to authority to settle or decide specific types of claims.

2. *Contractor Certification of Claims Over $50,000.* Any contractor claim over $50,000 (either initially or as amended) must be certified in accordance with paragraph (c) of the Disputes clause before settlement or decision on the claim.

3. *Contracting Officer's Decision.* (a) When a claim cannot be satisfied or settled by agreement and a decision on the claim is necessary, the Contracting Officer shall:

(i) Review the facts pertinent to the claim;

(ii) Secure assistance from legal and other advisors; and

(iii) Coordinate with the contract administration office or contracting office, when appropriate.

(b) The Contracting Officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or any other method that provides evidence of receipt, and include in the decision:

(i) A paragraph substantially as follows: This is the final decision of the Contracting Officer. This decision may be appealed to the cognizant Board of Contract Appeals. If you decide to make such an appeal you must mail or otherwise furnish written notice thereof to the Board of Contract Appeals, within ninety days from the date you receive this decision. A copy thereof shall be furnished to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, should reference this decision, and identify the contract by number. In lieu of appealing to the cognizant Board of Contract Appeals you may bring an action directly in the U.S. Court of Claims, within twelve months of the date you receive this decision.

(ii) A description of the claim or dispute;

(iii) A reference to pertinent contract provisions;

(iv) A statement of the factual areas of agreement or disgreement;

(v) A statement of the Contracting Officer's decision, with supporting rationale;

(vi) Notification that the small claims procedure of the cognizant Board shall be applicable at the sole election of the contractor in the event the amount in dispute as a result of the final decision is $10,000 or less; and

(vii) Notification that the accelerated procedure of the cognizant Board shall be applicable at the sole election of the contractor in the event the amount in dispute as a result of the final decision is $50,000 or less.

(c) The Contracting Officer shall issue the decision within the following statutory time limitations:

(i) For claims not exceeding $50,000: Sixty days after receipt of the claim.

(ii) For submitted claims exceeding $50,000: Sixty days after receipt of claim; provided, however, if a decision is not issued within sixty days the Contracting Officer shall notify the contractor of the time within which he will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the contractor's supporting data and any other relevant factors.

(d) The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

4. *Government Claims Against the Contractor.* All claims asserted by the Government against a contractor relating to a contract which cannot be settled by agreement shall be the subject of a decision by the Contracting Officer.

5. *Payment of Interest on Contractor's Claims.* The Government shall pay interest on contractors' claims as prescribed in paragraph (d) of the Disputes clause.

II. *Disputes Clause.*

1. Sections 7-103.12 and 7-602.6 of the Defense Acquisition Regulation and Sections 1-7.102-12 and 1-7.602.6 of the Federal Procurement Regulations are amended to provide as follows:

The Contracting Officer shall insert the following clause in all contracts unless exempted by the head of the agency under 41 U.S.C. 603(c):

Disputes. (a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*). If a dispute arises relating to the contract, the contractor may submit a claim to the Contracting Officer who shall issue a written decision on the dispute in the manner specified in DAR 1-314 (FPR 1-1.318).

(b) "Claim" means:

(1) a written request submitted to the Contracting Officer;

(2) for payment of money, adjustment of contract terms, or other relief;

(3) which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) for which a Contracting Officer's decision is demanded.

(c) In the case of disputed requests or amendments to such requests for payment exceding $50,000, or with any amendment causing the total request in dispute to exceed $50,000, the Contractor shall certify, at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(Contractor's Name) _____

(Title) _____

(d) The Government shall pay the contractor interest:

(1) on the amount found due on claims submitted under this clause;

(2) at the rates fixed by the Secretary of the Treasury, under the Renegotiation Act, Public Law 92-41;

(3) from the date the Contractiong Officer receives the claim, until the Government makes payment.

(e) The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or action is timely commenced within the times specified by the Contract Disputes Act of 1978.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action related to the contract, and comply with any decision of the Contracting Officer.

(End of Clause)

III. *Regulatory Coverage—Section 5 of the Public Law 95-563.*

The Federal Procurement Regulations are amended by adding the following new section 1-1.328:

1-1.328 Fraudulent Claims. (a) Section 5 of the Contract Disputes Act of 1978 (41 U.S.C. 601, 604) provides that if a contractor is unable to support any part of its claim under the contract and such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, it shall be liable to the Government for—

(i) an amount equal to the unsupported part of the claim; and

(ii) costs to the Government attributable to reviewing that part of the claim.

(b) "Misrepresentation of fact" is defined by the Contract Disputes Act as a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(c) All instances of suspected fraudulent claims shall be reported, through channels, to the Attorney General.

The Defense Acquisition Regulation is amended by adding the following section 1-111.5:

1-111.5 Fraudulent Claims. (a) Section 5 of the Contract Disputes Act of 1978 (41 U.S.C. 601, 604) provides that if a contractor is unable to support any part of its claim under the contract and such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, it shall be liable to the Government for—

(1) an amount equal to the unsupported part of the claim, and

(2) costs to the Government attributable to reviewing that part of the claim.

(b) "Misrepresentation of fact" is defined by the Contract Disputes Act as a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(c) As indicated in 1-111.1 all instances of suspected fraudulent claims shall be report ed in accordance with procedures set forth in Part 6 of this section.

[FR. Doc. 79-6929 Filed 3-6-79; 8:45 am]

[3190-01-M]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Public Hearings

AGENCY: Office of the Special Representative for Trade Negotiations.

ACTION: Notice of Public Hearings.

SUMMARY: In Part VIII of the FEDERAL REGISTER of Monday, January 8, 1979, 44 FR 1933, the President published his notice to the Congress of his intent to enter into international agreements dealing mainly with nontariff trade matters. Public hearings conducted in satisfaction of section 133 of the Trade Act of 1974 (Pub. L. 93-618, 88 Stat. 1978) were held in 1975 (See: 40 FR 23546). Additional hearings will be held pursuant to 15 CFR 2003 to receive public views and comments on those matters covered by the President's January 8, 1979 notice which were not the subject of previous hearings. In particular, the hearings are intended to cover: (a) possible changes in the International Antidumping Code (19 UST 4348, TIAS 6431) to conform it to the agreement now being negotiated on subsidies and countervailing duties (44 FR 1935); (b) a possible agreement regarding counterfeit merchandise (44 FR 1944); (c) a possible agreement on trade in civil aircraft (44 FR 1945); and other nontariff matters (44 FR 1947-1950).

DATES: (1) Requests to present oral testimony should be received by close of business Wednesday, March 14, 1979. Related written views or briefs (in 20 copies) should be received by close of business Friday, March 16, 1979.

(2) Written views or briefs not related to requests to present oral testimony (in 20 copies) may be submitted at any time, but, in order to receive adequate consideration, should be received by 12:00 noon, Wednesday, March 21, 1979.

(3) Public hearings will be held beginning at 10:00 a.m., Tuesday, March 20, 1979, in Room 2008, New Executive Office Building, 17th Street and Pennsylvania Avenue, N.W., Washington, D.C.

ADDRESS: Requests to testify and written views or briefs (in 20 copies) should be submitted to the Secretary, Trade Policy Staff Committee, Room 728, Office of the Special Representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506, Telephone 202-395-7210.

SUPPLEMENTARY INFORMATION: Reference should be made to the President's notification in the Monday, January 8, 1979 FEDERAL REGISTER for information concerning the possible commercial counterfeiting and aircraft agreements, and other nontariff matters. The following provides additional information concerning the possible conclusion of an international agreement amending the existing International Anti-Dumping Code (IAC).

A number of the nations participating in the negotiation of a proposed code on Subsidies and Countervailing Duties have indicated a desire to amend the existing IAC, to which the United States became a signatory in 1968, as part of the Kennedy Round of Multilateral Trade Negotiations. The primary intent is to amend the IAC so that it conforms to parallel provisions in the Code on Subsidies and Countervailing Duties, the negotiation of which is nearing completion. Certain other other changes in the IAC may also be considered.

Both under United States law and the IAC, provision is made for the assessment of additional duties on imports which are sold to the United States at prices which, after appropriate adjustment, are lower than home market prices in the exporting country (or, as appropriate, prices to third countries or the constructed value of the merchandise in question), if such imports are causing or threatening to cause injury to, or preventing the establishment of, an industry in the United States. The principal United States statutory provisions with respect to Antidumping are set forth in the Antidumping Act of 1921 (19 U.S.C. 160-173) and section 516 of the Tariff Act of 1930 (19 U.S.C. 1516).

The proposed Code on Subsidies and Countervailing Duties will include provisions relating to:

The definition of "an industry" for the purpose of determining whether subsidized imports have caused or threatened injury to "an industry";

The factors that may be considered by the investigating authorities in determining whether injury has occurred or is threatened;

The procedural timing of proceedings and the contents of public decisions;

The use of "assurances" to expedite the conclusion of proceedings.

These are the major proposals for which conforming changes in the IAC may be considered.

RICHARD R. RIVERS,
General Counsel.

[FR Doc. 79-6778 Filed 3-6-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15593; SR-Amex-79-3, et al.]

AMERCIAN STOCK EXCHANGE, INC., ET AL.

Filing of Proposed Rules Changes and Order Approving Proposed Rules Changes

FEBRUARY 28, 1979.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; Midwest Stock Exchange, Incorporated, 120 South LaSalle Street, Chicago, Illinois 60603; Pacific Stock Exchange Incorporated, 618 South Spring Street, Los Angeles, CA 90014; Philadephia Stock Exchange, Inc., 17th Street & Stock Exchange Place, Philadelphia, PA 19103, SR-Amex-79-3, SR-CBOE-79-1, SR-MSE-79-7, SR-PSE-79-1, SR-Phlx-79-1.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that the American Stock Exchange, Inc. ("Amex"); the Chicago Board Options Exchange, Incorporated ("CBOE"); the Midwest Stock Exchange, Incorporated ("MSE"); the Pacific Stock Exchange Incorporated ("PSE"); and the Philadelphia Stock Exchange, Incorporated (Phlx") (collectively referred to as the "options exchanges") filed with the Commission copies of proposed rule changes to continue, through April 28, 1979, the existing 4:10 p.m. New York time closing hour for standardized options trading. Until that date, the options exchanges have agreed not to conduct daily closing rotations.[1]

The purpose of the proposed rule changes is to extend for two months an experiment involving uniform daily closing hours and uniform closing procedures among the options exchanges. This experimental program was approved by the Commission by order dated October 18, 1978 (the "October Order") [2] ; it commenced on October 23, 1978 and was initially scheduled to terminate on Febrary 28, 1979.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the re-

[1] A daily closing rotation is a procedure used to close trading in an options class by providing for bids and offers to be made and orders to be executed one series at a time. Prior to October 23, 1978, the CBOE, MSE and PSE conducted such rotations after the close of regular options trading each day.

[2] Securities Exchange Act Release No. 15241 (October 18, 1979), 43 FR 49867 (October 25, 1978).

quirements of Section 6 of the Act. This Section requires, among other things, that the rules of national securities exchanges be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealer.

The Commission approved the uniform closing hours experiment originally because of its concerns that daily closing rotations as conducted by some of the options exchanges, and the resulting disparity in closing hours among the options exchanges, might not be in the public interest or consistent with the promotion of just and equitable principles of trade. As indicated in its October Order approving the experiment, the Commission has used the four month trial period to explore the issues underlying these concerns and has published for comment proposed rules addressing these issues.[3] In addition, to assist the Commission in resolving these issues, the options exchanges have been monitoring the final ten minutes of trading over the past four months and have agreed to submit to the Commission the results of these monitoring efforts.

The Division believes that a continuation of the uniform closing hours experiment for another two months would provide additional time for interested persons to submit their views in this matter and for the options exchanges to complete and submit the results of their monitoring efforts. The two month extension also would give the Commission time needed to evaluate this new information, along with the comments and factual data only recently received, so that the Commission might resolve the issues underlying its concerns. The Commission, therefore, finds good cause for approving the proposed rules changes prior to the thirtieth day after the date of publication of notice of filing thereof.

Interested persons are invited to submit written data, views and arguments concerning the submissions within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File Nos. SR-Amex-79-3; SR-CBOE-79-1; SR-MSE-79-7; SR-PSE-79-1; and SR-Phlx-79-1.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rules changes which are filed with the Commission, and of all written communications relating to the proposed rules changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rules changes referenced above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-6820 Filed 3-6-79; 8:45 am]

[3] Securities Exchange Act Release No. 15503 (January 17, 1979), 44 FR 4703 (January 23, 1979). Proposed Rule 9b-3 under the Securities Exchange Act would prohibit any national securities exchange from conducting or employing any trading rotation in options if, during the rotation, new options orders could not be placed on the limit order book or existing orders on the book could not be cancelled, adjusted or replaced. Proposed Rules 9b-4(A) and (B) are alternative proposals which would prohibit exchange trading in options past 4:00 p.m. New York time and 4:10 p.m. New York time, respectively. The comment period for these rule proposals expired February 21, 1979. Four comments have been received.

[8010-01-M]

[Release No. 15595; SR-NASD-78-20]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

MARCH 1, 1979.

On December 15, 1978, the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend Section 5(a) of the NASD's Uniform Practice Code to provide that the ex-date for dividends, rights and warrants on an exchange-listed security will, where appropriate, be the day specified by a national securities exchange which has received information from the issuer of such security in accordance with Rule 10b-17 under the Act. According to the NASD, the purpose of the amendment is to clarify that the ex-date may be designated by either the NASD or the national securities exchange which has in effect appropriate procedures under Rule 10b-17.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15510, January 22, 1979) and by publication in the FEDERAL REGISTER (44 FR 6818, February 2, 1979). Comments were solicited on the proposed rule change but none were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities associations, and in particular, the requirements of Section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR. Doc. 79-6817 Filed 3-6-79; 8:45 am]

[8010-01-M]

[Release No. 20937; 70-6117]

SOUTHERN CO., ET AL.

Post-Effective Amendment Relating To Issuance and Sale of Short-Term Notes to Banks and Dealers in Commercial Paper; Exception From Competitive Bidding

FEBRUARY 28, 1979.

In the matter of The Southern Company, P.O. Box 720071, Atlanta, Georgia 30346; Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291; Gulf Power Company, P.O. Box 1151, Pensacola, Florida 32520; Mississippi Power Company, P.O. Box 4079, Gulfport, Mississippi 39501.

Notice is herby given that The Southern Company ("Southern"), a registered holding company, and three of its wholly owned electric utility subsidiary companies, Alabama Power Company ("Alabama"), Gulf Power Company ("Gulf"), and Mississippi Power Company ("Mississippi") have filed a post-effective amendment to the application-declaration in this proceeding, pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 45 and 50(a)(5) promulgated thereunder, as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding, dated March 24, 1978, the Commission, among other things, authorized Ala-

bama to issue and sell short-term notes to banks and commercial paper to dealers in commercial paper during the period ending March 31, 1980, in the maximum aggregate principal amount of $305,000,000 outstanding at any one time. Jurisdiction was reserved over an additional $250,000,000 of borrowings requested for Alabama in excess of the authorized amounts. On February 23, 1979, Alabama's short-term debt outstanding was $239,253,000.

Alabama is now seeking to extend its short-term borrowing authorization through September 30, 1980, the expiration date of its line of credit arrangement with Citibank, N.A., The Chase Manhattan Bank, N.A., Chemical Bank, Bankers Trust Company, Continental Illinois National Bank and Trust Company of Chicago, Irving Trust Company, Manufacturers Hanover Trust Company, The Bank of Nova Scotia, and Bank of America, and to increase the aggregate principal amount of such borrowings outstanding at any one time to $555,000,000, the amount requested in the original filing.

On November 22, 1978, the Alabama Public Service Commission ("PSC"), in a rate investigation proceeding, ordered a rate increase in the form of a 25% surcharge. This surcharge would have increased Alabama's revenues by $210,000,000 annually. That order was appealed to the Supreme Court of Alabama, which declared it void for lack of adequate notice of such increase. As of December 31, 1978, Alabama excluded from revenues approximately $2,300,000 billed under the new rate schedules and plans to refund these revenues. On December 20, 1978, Alabama filed a rate increase request with PSC estimated to increase its retail electric rates by $282,900,000, based upon a test year ended June 30, 1978. These rates were suspended through July 19, 1979, pending investigation and hearings. Alabama requested that the PSC allow the filed rates to go into effect immediately on an emergency basis. Hearings have been held on the requested emergency relief and a determination is pending.

Alabama's construction expenditures for the period January 1, 1979, through September 30, 1980, are estimated at $1.2 billion. Estimated construction costs incurred in connection with utility construction programs and commercial operating dates of units under construction may vary depending upon availability of funds, possible changes in costs, revised load estimates, and cost of capital. Because of these factors, Alabama has limited its construction program in recent years, primarily through postponements of generation units and other facilities. Construction on major projects was suspended in December 1978. Unless funds become available, further delays in construction will have to be made, which Alabama states could result in substantial increases in ultimate construction costs and, in the meantime, may affect reliability of service and increase cost of service through purchased power or increases in construction costs.

Through January 31, 1979, the peak demand of Alabama's customers was approximately 6,560 MW. The rated capability of Alabama's plants, at that time, was approximately 6,867 MW.

Alabama proposes to use the additional $315,747,000 of short-term borrowings to carry on its construction program pending issuance and sale of long-term debt and equity securities. It contemplates a public sale of approximately $475,000,000 of first mortgage bonds and $150,000,000 of preferred stock and the the receipt of $252,800,000 of common equity, all during the 18 months ending September 30, 1980. The sale of these securities is dependent upon the maintenance of a forecast level of earnings which, in turn, assumes the $282,900,000 in rate relief requested in the pending PSC proceeding. If Alabama fails to attain such earnings, it has not specified the means by which it could complete the proposed construction program or repay such short-term borrowings as it may incur.

No fees or expenses are estimated to be incurred in connection with the transactions proposed in said post-effective amendment.

In all other respects, the proposed transactions remain the same. The PSC has jurisdiction over the proposed transactions. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 23, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated adresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR. Doc. 79-6819 Filed 3-6-79; 8:45 am]

[8010-01-M]

[Rel. No. 6030; 18-29]

WILMER, CUTLER & PICKERING PENSION PLAN

Filing of Application

FEBRUARY 28, 1979.

Notice is hereby given that Wilmer, Cutler & Pickering ("Applicant"), 1666 K Street NW., Washington, D.C. 20006, a general partnership engaged in the practice of law in the District of Columbia and elsewhere, on December 28, 1978, filed with the Securities and Exchange Commission ("Commission") an Application pursuant to Section 3(a)(2) of the Securities Act of 1933 (the "Act") for an order exempting from the provisions of Section 5 of the Act interests or participations in the Wilmer, Cutler & Pickering Pension Plan (the "WC&P Keogh Plan"). All interested persons are referred to this Application, which is on file with the Commission, for the facts and representations contained therein which are summarized below.

I. INTRODUCTION

Applicant's Plan provides that partners and salaried lawyers of the Applicant are eligible to participate if they have completed three years of service with the Applicant. Each eligible partner or employee becomes a participant as of the first day of the first regular pay period in which he has completed three years of service with the Applicant. The Plan is a trusteed pension plan which covers persons (in this case, Applicant's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code") and, therefore, is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in certain employee benefit plans of corporate employers.

Section 3(a)(2) of the Act provides, however, that the Commission may

exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant represents that the Plan has been in effect since January 1, 1968, and has, since January 1, 1977, covered only partners and salaried lawyers of Applicant. At all times the WC&P Keogh Plan, as amended from time to time, has been determined by the Internal Revenue Service to be a qualified plan under Section 401(a) of the Code. The most recent Internal Revenue Service letter determining that the WC&P Keogh Plan is a qualified plan under Code Section 401(a) is dated November 1978.

Applicant states that under the Plan, contributions to the Plan are determined on an annual basis based on the participant's earned income. The rate of contribution is 7.5 percent of a participant's earned income from the Applicant up to a maximum contribution per year of $7,500. Applicnt further states that there is full and immediate vesting of all participants' accounts in the Plan. Each participant under the Plan is permitted, at his or her option, to make voluntary contributions aggregating up to 10 percent of his or her earned income (as defined in the Plan) in the case of participants who are not owner-employers (as defined in the Plan) and up to 10 percent of earned income but not to exceed $2,500 in the case of owner-employees.

Applicant represents that the Plan is administered by a group of Applicant's partners known as the "Fringe Benefits Committee" (the "Committee") appointed by Applicant and serving at the pleasure of the Applicant.

Applicant states that the assets of the Plan will be held in a trust for the exclusive benefit of Plan participants and their beneficiaries. State Street Bank and Trust Company, Boston, Massachusetts acts as trustee for the Plan. Participants can choose among four investmnent funds, all of which are registered under the Investment Company Act of 1940, for which the investment counsel Scudder, Stevens & Clark acts as investment adviser. These four investment companies are: Scudder Income Fund, Inc., Scudder Stevens and Clark Common Stock Fund, Scudder Special Fund, Inc. and Scudder Managed Reserves, Inc. Applicant maintains that each person becoming eligible to participate in the Plan is presented with a complete text of the Plan itself plus the most recent prospectus and quarterly report for each of these Scudder funds.

III. Discussion

Applicant states that the exemption from registration provided by Section 3(a)(2) of the Act is not available because of the participation in the Plan by Applicant's partners, who are "employees" within the meaning of Section 401(c)(1) of the Code. If Applicant's business were organized in corporate form, interests and participations in the Plan would be exempt from registration pursuant to Section 3(a)(2) of the Act. Applicant submits that the intent of Congress in drafting Section 3(a)(2) of the Act was to prevent the sale, without registration, of interests in mass-marketed plans offered by financial institutions to self-employed persons who might be unable to protect adequately their interests and those of their participating employees.

Applicant's plan is not a mass-marketed master or prototype retirement plan, but is, according to Applicant, an individualized plan covering eligible employees of Applicant only. The Plan is subject to the reporting requirements of ERISA and Applicant states it has complied with these requirements and will continue to do so.

Applicant concludes that under the circumstances, granting the requested exemptive order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than March 26, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter, accompanied by a statement as to the nature of his or her interest, the reason of such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following March 26, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-6818 Filed 3-6-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1581]

ALABAMA

Declaration of Disaster Loan Area

The following 54 counties and adjacent counties in the State of Alabama constitute a disaster area as a result of natural disasters as indicated:

County	Natural Disaster(s)	Date(s)
Autauga	Drought	6/1/78-11/17/78
Barbour	Drought	8/1/78-11/26/78
Bibb	Drought	7/1/78-12/1/78
Blount	Drought	6/15/78-11/30/78
Bullock	Drought	7/31/78-11/26/78
Butler	Drought	6/1/78-12/1/78
Calhoun	Drought	7/1/78-11/30/78
Chambers	Drought	8/6/78-12/2/78
Cherokee	Drought	5/15/78-11/1/78
Chilton	Drought	6/6/78-12/1/78
Choctaw	Drought	6/1/78-10/30/78
Clarke	Drought	3/1/78-11/30/78
Clay	Drought	6/1/78-12/31/78
Cleburne	Drought	5/1/78-11/30/78
Conecuh	Drought	8/1/78-11/25/78
Coosa	Drought	7/1/78-10/10/78
Covington	Drought	7/15/78-11/20/78
Dale	Drought	8/1/78-10/30/78
Dallas	Drought	7/15/78-11/30/78
Elmore	Drought	8/14/78-11/26/78
Escambia	Drought	7/15/78-11/26/78
Etoway	Drought	5/1/78-10/31/78
Franklin	Drought	7/1/78-11/15/78
Greene	Drought	7/6/78-11/16/78
Hale	Drought	7/1/78-11/16/78

County	Natural Disaster(s)	Date(s)
Houston	Drought	7/10/78-10/20/78
Jackson	Drought	6/1/78-11/1/78
Lamar	Drought	7/1/78-10/31/78
Lauderdale	Drought	7/14/78-11/14/78
Lawrence	Drought	7/15/78-12/5/78
Lee	Drought	8/11/78-11/15/78
Limestone	Drought	7/15/78-10/30/78
Lowndes	Drought	6/1/78-11/30/78
Macon	Drought	8/1/78-10/12/78
Madison	Drought	7/5/78-10/31/78
Marengo	Drought	7/1/78-11/17/78
Marion	Drought	6/1/78-11/30/78
Marshall	Drought	7/10/78-11/30/78
Mobile	Drought	8/1/78-11/30/78
Monroe	Drought	6/15/78-11/27/78
Montgomery	Drought	6/1/78-11/30/78
Morgan	Drought	7/1/78-11/30/78
Pickens	Drought	5/10/78-11/15/78
Pike	Drought	6/1/78-10/31/78
Randolph	Drought	5/1/78-12/1/78
St. Clair	Drought	6/13/78-11/29/78
Shelby	Drought	7/1/78-11/30/78
Sumter	Drought	7/1/78-11/30/78
Talladega	Drought	6/15/78-11/15/78
Tallapoosa	Drought	7/1/78-10/30/78
Walker	Drought	7/1/78-10/30/78
Washington	Drought	7/22/78-11/26/78
Wilcox	Drought	6/10/78-10/20/78
Winston	Drought	5/1/78-11/30/78

Applications will be processed under the provisions of Pub. L. 95-89. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 27, 1979, and for economic injury until the close of business on November 27, 1979, at:

Small Business Administration, District Office, 908 South 20th Street, Birmingham, Alabama 35205

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 27, 1979.

WILLIAM H. MAUK,
Acting Administrator.

[FR Doc. 79-6925 Filed 3-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1552; Amdt. No. 4]

KENTUCKY

Declaration of Disaster Loan

The above numbered Declaration (see 43 FR 59561), Amendment No. 1 (see 44 FR 2445), Amendment No. 2 (see 44 FR 5038), Amendment No. 3 (see 44 FR 10169) are amended by extending the filing date for physical damage until the close of business on March 14, 1979, and for economic injury until the close of business on October 12, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 15, 1979.

WILLIAM H. MAUK,
Acting Administrator.

[FR Doc. 79-6919 Filed 3-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1539; Amdt. No. 2]

LOUISIANA

Declaration of Disaster Loan Area

The above number Declaration (See 43 FR 52083) and amendment No. 1 (See 43 FR 55025) are amended by adding the following Parish:

Parish, Natural Disaster(s) and Date(s)

Jefferson Davis, Drought, 9/1/78-11/30/78

and adjacent Parishes within the State of Louisiana as a result of natural disaster as indicated. Applications will be processed under the provisions of Public Law 95-89. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on May 1, 1979, and for economic injury until the close of business on August 1, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 19, 1979.

WILLIAM H. MAUK, Jr.
Acting Administrator.

[FR Doc. 79-6920 Filed 3-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1580]

MARSHALL ISLANDS OF THE PACIFIC

Declaration of Disaster Loan Area

As a result of the President's declaration, I find that the following areas of the Marshall Islands District (Trust Territory of the Pacific Islands), Nomorik Atoll, Jaluit Atoll, Ujae Atoll, Santo Island, North Loi, Little Buster, Ebon Atoll, Ailinglapalap Atoll, Ebeye Island, Biji Island, Carlson Island, Gugeegue Islands, Kili Island, Namu Atoll, Carolos Island, Shell Island, and Big Buster constitute a disaster area because of damage resulting from Tropical Storm Carmen beginning about February 12, 1979. Applications will be processed under the provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 13, 1979, and for economic injury until the close of business on November 12, 1979, at:

Small Business Administration, Branch Office, Pacific Daily News Bldg., Room 507, Agana, Guam 96910.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 21, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-6921 Filed 3-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1582]

MARYLAND

Declaration of Disaster Loan Area

The Independent City of Baltimore, Maryland, constitutes a disaster area because of damage resulting from civil disorders following a blizzard which began on February 19, 1979. The widespread civil disorders included serious looting and vandalism involving an extensive number of business premises, many suffering considerable physical damage to real property, and the loss of merchandise. Therefore, this declaration is a result of civil disorders in the City of Baltimore, Maryland. Applications will be processed under the provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 27, 1979, and for economic injury until the close of business on Nov. 27, 1979, at:

Small Business Administration, District Office, Oxford Building, Room 630, 8600 LaSalle Road, Towson, Maryland 21204.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 26, 1979.

WILLIAM H. MAUK,
Acting Administrator.

[FR Doc. 79-6922 Filed 3-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1564]

NEW MEXICO

Declaration of Disaster Loan Area

The following 4 counties and adjacent counties within the State of New Mexico constitute a disaster area as a result of natural disasters as indicated:

County	Natural disaster(s)	Date occurred	
		Before 10/1/78 (P.L. 95-89)	After 9/30/78 (P.L. 94-305)
Catron	Flood		11/30/78
Eddy	Excessive rain and general adverse weather conditions entire crop year 1978, including month of November.	1/1/78-11/30/78.	
Grant	Flood		11/25/78
Lea	Excessive rains	9/15/78-11/30/78.	

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 23, 1979, and for economic injury until the close of business on November 23, 1979, at:

Small Business Administration, District Office, 5000 Marble Avenue N.E., Patio Plaza Building, Albuquerque, New Mexico 87110.

or other locally announced location.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 23 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-6923 Filed 3-6-79; 8:45 am]

[8025-01-M]

REGION X ADVISORY COUNCIL EXECUTIVE BOARD MEETING

Public Meeting

The Small Business Administration Region X Advisory Council Executive Board will hold a public meeting at 1:00 p.m. on Wednesday, March 21, 1979, in the Seattle-First National Bank Board Room, Dexter-Horton Building, 710 Second Avenue, Seattle, Washington 98104, to discuss such business as may be presented by members, the staff of the Small Business Administration, or others present.

For further information, write or call Larry C. Gourlie, Regional Director, U.S. Small Business Administration, Dexter-Horton Building, 710 Second Avenue, Seattle, Washington 98104—(206) 442-5676.

Dated: March 1, 1979.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-6918 Filed 3-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1561; Amdt. No. 1]

TEXAS

Declaration of Disaster Loan Area

The above numbered Declaration (see 44 FR 11019) is amended by adding the following counties:

County, Natural Disaster(s) and Date(s)

Schleicher, Drought, 05/23/78-11/14/78
Sterling, Drought, 01/01/78-11/14/78
Webb, Drought, 05/02/78-09/30/78
Williamson, Drought, 01/01/78-11/13/78
Zapata, Drought, 03/15/78-09/30/78

and adjacent counties within the State of Texas as a result of natural disasters as indicated. Applications will be processed under the provisions of Public Law 95-89. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on August 7, 1979, and for economic injury until the close of business on November 7, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 14, 1979.

WILLIAM H. MAUK,
Acting Administrator.

[FR Doc. 79-6924 Filed 3-6-79; 8:45 am]

[4710-08-M]

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/164]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW

Meeting

A meeting of the Study Group on Maritime Law Matters, a sub-group of the Secretary of State's Advisory Committee on Private International Law, will be held at 10:30 a.m. on Wednesday, March 21, 1979, in Room 5519 of the Department of State. Members of the general public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The purpose of the meeting will be to review the Report of the Chairman of the U.S. Delegation to the Hamburg Conference on the Carriage of Goods By Sea and solicit views of the Study Group and public concerning the advisability of the United States becoming a signatory to the 1978 Convention on the Carriage of Goods By Sea (The Hamburg Rules).

Entrance to the Department of State building is controlled, and members of the general public should use the "C" Street entrance. Entry will be facilitated if arrangements are made in advance, and it is requested that members of the general public who plan to attend the meeting inform their name, affiliation, and address to Ms. Suzanne C. Hicks, Office of the Legal Adviser, Department of State, prior to March 21, 1979. The telephone number is area code (202) 632-8134(5).

STEPHEN M. SCHWEBEL,
Chairman.

FEBRUARY 27, 1979.

[FR Doc. 79-6785 Filed 3-6-79; 8:45 am]

[4710-19-M]

[Public Notice 649]

FUNDS FOR THE UNITED NATIONS INSTITUTE FOR NAMIBIA

Secretarial Determination

Subject: Funds for the United Nations Institute for Namibia under Section 302(a) of the Foreign Assistance Act of 1961, as amended.

Pursuant to section 302(a)(3) of the Foreign Assistance Act of 1961, as

amended (the Act), and the authority vested in me by Executive Order 10973 of November 3, 1961 (26 FR 10469), as amended, I hereby determine that none of the funds made available under Section 302(a) of the Act for the fiscal year 1979 and used for the United Nations Institute for Namibia will be used to support the military or paramilitary activities of the Southwest Africa Peoples Organization.

This determination shall be reported to the Cngress.

This determination shall be published in the FEDEAL REGISTER.

Dated: February 6, 1979.

CYRUS R. VANCE,
Secretary of State.

[FR Doc. 79-6784 Filed 3-6-79; 8:45 am]

[4810-40-M]

DEPARTMENT OF THE TREASURY

Fiscal Service; Bureau of the Public Debt

TREASURY NOTES

Public Offer of Treasury Notes Denominated in Deutsche Marks, Including Text of Notes; Invitation for Subscriptions of Treasury Notes denominated in Swiss Francs, Including Text of Notes

The following are the official texts of the offerings made by the Department of the Treasury for the sale of (1) Treasury Notes denominated in Deutsche Marks, including the text of the securities, and (2) Treasury Notes denominated in Swiss Francs, including the text of the securities.

Dated: March 1, 1979.

H. J. HINTGEN,
Commissioner of the Public Debt.

Public offer of Deutsche Mark Schuldscheine (DM denominated Treasury Notes) of the United States of America on fixed terms

The United State of America, acting by and through the Secretary of the Treasury, is offering for its account through the Deutsche Bundesbank, acting as its agent, Schuldscheine denominated in Deutsche Mark (for text, see the Annex) against the extension of corresponding loans to the United States of America, on the following conditions:

(1) Designation: Schuldscheindarlehen (DM denominated Treasury Notes).

(2) Borrower: United States of America.

(3) Volume: Approximately DM 2.5 to DM 3 billion in aggregate amount and allocated at the discretion of the borrower between the two maturities being offered. The exact amount will be determined after receipt of the subscriptions. The borrower reserves the right to allot more or less than the aggregate amounts set forth above and to accept or to reject any or all subscriptions in whole or in part.

(4) Maturities: Subscriptions will be received for each of the following maturities (with respect to each maturity, the "maturity date")—

(a) 3 years, due December 15, 1981.

(b) 4 years, due December 14, 1982.

Subject to the provisions of section 247 of the Civil Code of the Federal Republic of Germany, the Schuldscheindarlehen shall not be callable by either party. The borrower declares that it intends not to exercise any call rights to which it may be entitled by law.

(5) Issue price: Par (100 percent) free of all charges.

(6) Interest rates: The interest rates will be announced by the Deutsche Bundesbank and its branches (Landeszentralbanken) on December 12, 1978. Inquiries can also be made there on that date.

(7) Payment of interest and principal: From December 15, 1978 to and including the day preceding the maturity date, the Schuldscheindarlehen shall bear interest at the rates to be announced.

Payments of principal and interest will be made in Deutsche Mark at the Landeszentralbanken to the lenders and assignees registered on the books of the Deutsche Bundesbank.

Interest shall be payable annually (each year having 360 interest days) in arrears on December 15 of each year ("interest payment date") and on the maturity date. If an interest payment date or the maturity date falls on a Saturday, Sunday or public holiday in the Federal Republic of Germany, payment of the amount due on such date will be effected on the following business day. No additional interest will be paid on account of such deferral of the payment of interest or principal.

(8) Subscriptions: Subscriptions are to be submitted in duplicate in sealed envelopes to the appropriate Landeszentralbank by 12.00 hrs. on December 13, 1978. The envelopes should be clearly marked: "Achtung, nicht sofort oeffnen, Zeichnung fuer Schuldscheindarlehen an die USA" (attention, not to be opened immediately—subscription for Schuldscheindarlehen of the United States of America). Subscriptions must be for DM 0.5 million or multiples thereof. Subscribers are bound to their subscriptions until 11.00 hrs. on December 14, 1978.

(9) Allotment: Allotments will be made not later than 11.00 hrs. on December 14, 1978.

(10) Payment: Payment in Deutsche Mark is to be effected for the account of the United States of America on December 15, 1978, before commencement of stock exchange trading in the Federal Republic of Germany, to the Landeszentralbank to which the subscriptions were submitted.

(11) Participants/Assignments: Subscriptions may be submitted by any German resident within the meaning of section 4(1) 3 of the Foreign Trade and Payments Act of April 28, 1961 of the Federal Republic of Germany ("Aussenwirtschaftsgesetz"). Subscriptions, directly or indirectly for the account of, as well as placements of allotted amounts to, third parties may not be made in favor of non-residents within the meaning of section 4(1)4 Aussenwirtschaftsgesetz. The subscribers must indicate to the Deutsche Bundesbank by January 9, 1979, in which denominations and for which lenders the Schuldscheine are to be made out with respect to the amounts allotted to them.

The Schuldscheindarlehen may be assigned as a whole or in amounts of DM 0.5 million or multiples thereof up to four times. The lender undertakes not to make assignments of the Schuldscheindarlehen, either as a whole or in part, to non-residents within the meaning of section 4(1)4 Aussenwirtschaftsgesetz. This undertaking also applies to transactions under repurchase agreements or other transactions transferring directly or indirectly any interest in the Schuldscheindarlehen.

An assignment will not become legally effective until the Deutsche Bundesbank has recorded the assignment on its books. Before the Deutsche Bundesbank will record an assignment on its books, the assignor must notify the office administering the Schuldscheindarlehen (the securities department of the appropriate Landeszentralbank—Main Office of the Deutsche Bundesbank) and shall provide that office with such evidence as it shall request to demonstrate that the assignee is a German resident within the meaning of section 4(1)3 Aussenwirtschaftsgesetz. The Deutsche Bundesbank will check to determine that the assignee is a German resident within such meaning. The recording of the assignment on the books of the Deutsche Bundesbank shall be conclusive evidence that the assignment is legally effective. The Deutsche Bundesbank will notify the assignor and the assignee when it has recorded the assignment on its books.

Notifications of assignments reaching the administering office in the period between November 15 and an interest payment date in any year or between November 15 and the maturity date in the year in which the Schuldscheindarlehen matures will be deemed to have been received on the day following the interest payment date or the maturity date, as the case may be. During this period no assignments will be effected.

The lender or any assignee undertakes not to raise funds outside the Federal Republic of Germany for the purpose of financing the extension of the Schuldscheindarlehen or of financing, directly or indirectly, the acquisition of any interest therein by assignment or otherwise.

In connection with each assignment the assignor is to advise the assignee of the text of the Schuldschein. The Deutsche Bundesbank will inform the Treasury Department of the United States of America of the names of the original lender and any assignee.

(12) Custody/Administration:

The Deutsche Bundesbank will take the Schuldscheine into custody and will not deliver them to the lenders throughout the life of the Schuldscheindarlehen.

The Schuldscheindarlehen will be administered by the securities departments of the appropriate Landeszentralbank (main Office of the Deutsche Bundesbank). Costs and fees will not be charged.

(13) Taxation:

Since the Schuldscheine will be issued in the United States of America, under section 12 (3) Kapitalverkehrssteuergesetz of the Federal Republic of Germany the extension of all assignments of the Schuldscheindarlehen are not subject to securities transfer tax (Borsenumsatzsteuer).

The income derived from the Schuldscheindarlehen is subject to taxes imposed under the Internal Revenue Code of 1954 of the United States of America. Under the Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation

(the "Tax Treaty"), the United States will not withhold Federal income taxes on interest income derived by a natural person resident in the Federal Republic of Germany or a German company, both such terms as defined in the Tax Treaty. The term "German company" does not include an OHG, KG or BGB-Gesellschaft. However, any one of such partnerships, all of whose partners are natural persons resident in the Federal Republic of Germany or German companies as so defined, or any individual partner thereof falling under one of such definitions qualifies for an exemption from withholding. The Schuldscheindarlehen are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, possession or local taxing authority of the United States of America.

Exclusion from the withholding of Federal income taxes on interest payments can be secured by a lender who qualifies under the Tax Treaty and has a properly completed IRS form 1001 on file on each November 20 prior to the interest payment date or the maturity date with the Treasury at: The Commissioner of Public Debt, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, USA. Under present regulations IRS form 1001 is valid for three years from the date of filing. Copies of IRS form 1001 will be available at the appropriate Landeszentralbank. The forms should be filed as soon as practicable by any lender wishing to claim the benefits of the Tax Treaty.

(14) Miscellaneous:

The United States of America will borrow the principal amount of the Schuldscheindarlehen and will issue the Schuldscheine under authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, of the United States.

This offer is published and the Schuldscheine will be issued in an English and a German version. In case of conflict the English version will control.

(15) Further Information:

In case further information is required, inquiries may be made at the Landeszentralbanken.

Frankfurt am Main,

Deutsche Bundesbank, as agent of the United States of America.

(Annex: Text of Schuldschein)

Annex: Text of Schuldschein

Schuldschein (DM denominated Treasury Note)

The United States of America, as borrower, for value received owes to————as lender, the principal amount of DM————(in words)————for repayment on December—, 198— (the "maturity date").

From December 15, 1978 to and including the day preceding the maturity date this Schuldscheindarlehen shall bear interest at the rate of——percent annum.

Payments of principal and interest will be made in Deutsche Mark at the Landeszentralbanken to the lenders and assignees registered on the books on the Deutsche Bundesbank.

Interest shall be payable annually (each year having 360 interest days) in arrears on December 15 of each year ("interest payment date") and on the maturity date. If an interest payment date or the maturity date falls on a Saturday, Sunday or public holiday in the Federal Republic of Germany, payment of the amount due on such date will be effected on the following business day. No additional interest will be paid on account of such deferral of the payment of interest or principal.

Subject to the provisions of section 247 of the Civil Code of the Federal Republic of Germany, this Schuldscheindarlehen shall not be callable by either party.

This Schuldscheindarlehen may be assigned as a whole or in amounts of DM 0.5 million or multiples thereof up to four times. The lender undertakes not to make assignments of this Schuldscheindarlehen, either as a whole or in part, to non-residents within the meaning of section 4(1)4 of the Foreign Trade and Payments Act of April 28, 1961 of the Federal Republic of Germany ("Aussenwirtschaftsgesetz"). This undertaking also applies to transactions under repurchase agreements or other transactions transferring directly or indirectly any interest in this Schuldscheindarlehen.

An assignment will not become legally effective until the Deutsche Bundesbank has recorded the assignment on its books. Before the Deutsche Bundesbank will record an assignment on its books, the assignor must notify the office administering this Schuldscheindarlehen (the securities department of the appropriate Landeszentralbank—Main Office of the Deutsche Bundesbank) and shall provide that office with such evidence as it shall request to demonstrate that the assignee is a German resident within the meaning of section 4(1)3 Aussenwirtschaftsgesetz. The Deutsche Bundesbank will check to determine that the assignee is a German resident within such meaning. The recording of the assignment on the books of the Deutsche Bundesbank shall be conclusive evidence that the assignment is legally effective. The Deutsche Bundesbank will notify the assignor and the assignee when it has recorded the assignment on its books.

Notifications of assignments reaching the administering office in the period between November 15 and an interest payment date in any year or between November 15 and the maturity date in the year in which this Schuldscheindarlehen matures will be deemed to have been received on the day following the interest payment date or the maturity date, as the case may be. During this period no assignments will be effected.

The lender or any assignee undertakes not to raise funds outside the Federal Republic of Germany for the purpose of financing the extension of this Schuldscheindarlehen or of financing, directly or indirectly, the acquisition of any interest herein by assignment or otherwise.

In connection with each assignment the assignor is to advise the assignee of the text of this Schuldschein. The Deutsche Bundesbank will inform the Treasury Department of the United States of America of the names of the original lender and any assignee.

Since this Schuldschein is issued in the United States of America, under section 12 (3) Kapitalverkehrssteuergesetz of the Federal Republic of Germany the extension and all assignments of this Schuldscheindarlehen are not subject to securities transfer tax (Börsenumsatzsteuer).

The income derived from this Schuldscheindarlehen is subject to taxes imposed under the Internal Revenue Code of 1954 of the United States of America. Under the Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation (the "Tax Treaty"), the United States will not withhold Federal income taxes on interest income derived by a natural person resident in the Federal Republic of Germany or a German company, both such terms as defined in the Tax Treaty. The term "German company" does not include an OHG, KG or BGB-Gesellschaft. However, any one of such partnerships, all of whose partners are natural persons resident in the Federal Republic of Germany or German companies as so defined, or any individual partner thereof falling under one of such definitions qualifies for an exemption from witholding. This Schuldscheindarlehen is exempt from all taxation now or hereafter imposed on the principal or interest hereof by any State, possession or local taxing authority of the United States of America.

Exclusion from the witholding of Federal income taxes on interest payments can be secured by a lender who qualifies under the Tax Treaty and has a properly completed IRS form 1001 on file on each November 20 prior to the interest payment date or the maturity date with the Treasury at: The Commissioner of Public Debt, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, USA. Under present regulations IRS form 1001 is valid for three years from the date of filing. Copies of IRS form 1001 will be available at the appropriate Landeszentralbank. The forms should be filed as soon as practicable by any lender wishing to claim the benefits of the Tax Treaty.

The Deutsche Bundesbank will take this Schuldschein into custody and will not deliver it to the lender throughout the life of this Schuldscheindarlehen.

This Schuldscheindarlehen will be administered by the securities department of the appropriate Landeszentralbank (Main Office of the Deutsche Bundesbank). Costs and fees will not be charged.

The United States of America has borrowed the above stated principal amount and issues this Schuldschein under authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, of the United States.

This Schuldschein is issued in an English and a German version. In case of conflict the English version shall control.

Secretary of the Treasury,
Washington, D.C.

Invitation for Subscriptions for Swiss Franc Denominated Treasury Notes of the United States of America on Fixed Terms

The United States of America, acting by and through the Secretary of the Treasury, is hereby inviting subscriptions for its account through the Swiss National Bank, acting as its agent, for Treasury Notes denominated in Swiss francs (for texts of the Notes, see the attachments) exclusively from Swiss residents on the following terms and conditions:

(1) Type of Security:

Swiss franc denominated Treasury Notes

(2) Issuer:

United States of America

(3) Amount:

Approximately SFr. 2 billion in aggregate amount subject to the conditions set forth in paragraph (9) below, the exact amount to be determined after receipt of subscriptions.

(4) Maturities:

Subscriptions will be received for each of the following maturities (with respect to each maturity, the "Maturity Date"):

(a) 2½ years, due July 26, 1981

(b) 4 years, due January 26, 1983

The Notes shall not be redeemed or called prior to maturity.

(5) Issue Prices:

The issue prices will be announced by 1700 hours on January 16, 1979. A Swiss turnover tax on the negotiation of securities amounting to 0.15 prcent of the issue price will be borne by the subscriber (see paragraph (15) below). Cantonal taxes of a similar nature, if any, will also be borne by the subscriber.

(6) The interest rates will be announced by the Swiss National Bank by 1700 hours on January 16, 1979.

(7) Payment of Interest and Principal:

From January 26, 1979 to and including the day preceding the Maturity Date the Notes shall bear interest at the announced rates per annum (each year having 360 interest days).

Payment of principal and interest will be made in Swiss francs at the Swiss National Bank, Zurich, to the owners of record of the Notes, as registered on the registry book maintained by the Swiss National Bank (the "Registered Owners").

Interest shall be payable in arrears, in the case of the 2½ year maturity, on January 26, 1980, January 26, 1981 and July 26, 1981 and, in the case of the 4 year maturity, on January 26, 1980 and each year thereafter to and including the Maturity Date (with respect to each maturity, the "Interest Payment Date").

No assignment, transfer or other disposition of the Notes shall be effected in the period betwene January 10 and the Interest Payment Date in any year and in addition, in the case of the 2½ year maturity, in the period between July 10, 1981 and the Maturity Date. If an Interest Payment Date or the Maturity Date falls on a Saturday, Sunday or on a day on which the office of the Swiss National Bank in Zurich is closed, payment of the amount due on such date will be effected on the following business day. No additional interest will be paid on account of such deferral of the payment of interest of principal.

(8) Subscriptions:

Subscriptions are to be submitted in the form attached hereto by letter or telex to the Swiss National Bank, Zurich, by 1200 hours on January 18, 1979. Subscriptions by telex shall be confirmed by letter which must be received by the Swiss National Bank, Zurich, by 1200 hours on January 19, 1979.

Subscriptions for each maturity must be for Swiss francs 0.5 million or multiples thereof. Subscribers shall be bound to their subscriptions until 1600 hours on January 26, 1979.

Subscriptions shall be submitted exclusively by and for the account of Swiss residents. Only Swiss residents may be Registered Owners. The residency of a subscriber or Registered Owner for these purposes shall be determined according to article 2, sections 1 to 3 (but excluding section 4) of the Ordinance Relating to the Investment of Foreign Funds in Swiss Securities (Verordnung uber die Anlage auslandischer Gelder in Inlandischen Wertpapieren) as in effect on January 11, 1979, except that Swiss nationals residing abroad (Auslandschweizer) shall not be considered Swiss residents. Each subscriber or Registered Owner shall provide such evidence as the Swiss National Bank shall request to demonstrate that the subscriber or Registered Owner is a Swiss resident.

The Swiss National Bank will not object to any subscription for, or purchase of, the Notes by a bank under article 8 of the Swiss Federal Banking Law (Bundesgesetz Uber die Banken und Sparkassen, vom 8. November 1934/11. Marz 1971) and the Regulations on Capital Export Transactions promulgated thereunder, provided that such bank complies with all the terms and conditions of the Notes and of this Invitation for Subscriptions.

(9) Allotment:

Allotment will be made on January 19, 1979. If aggregate subscriptions exceed the aggregate principal amount of the Notes to be issued, allotment will be made on a pro rata basis. In such event subscriptions in the minimum permissible amount of Swiss francs 0.5 million will be accepted in full and subscriptions for amounts in excess of Swiss francs 0.5 million will be prorated and the amount thus determined will be rounded up to the next highest multiple of Swiss francs 0.5 million.

The issuer reserves the right to allot more or less than the aggregate amount set forth in paragraph (3) above, and to accept or to reject any or all subscriptions in whole or in part. The issuer further reserves the right to determine in its sole discretion the proportion of the aggregate amount to be alloted between the two maturities being offered.

(10) Payment:

Payment in Swiss francs shall be made in immediately available funds for the account of the United States of America on January 26, 1979 before 1600 hours to the Swiss National Bank, Zurich.

(11) Initial Registration:

No later than January 22, 1979 and Subscribers must furnish to the Swiss National Bank for each maturity alloted to it a list of the initial owners to be registered and the amounts for which their respective Notes will have to be made out. The Notes shall be registered in the name of the beneficial owner and shall not be registered in nominee name. By the registration of the Notes in their names the Registered Owners represent and warrant that (i) they are Swiss residents as defined in paragraph (8) and (ii) they are the beneficial owners of their respective Notes.

Before the Swiss National Bank will record the initial registrations on its registry book, the initial owners to be registered shall provide such evidence as the Swiss National Bank shall request to demonstrate that they are Swiss residents. The recording of the initial registrations on the registry book of the Swiss National Bank shall be conclusive evidence of ownership.

The Swiss National Bank will notify the Subscribers and Registered Owners when it has recorded the initial registrations on its registry book. In cases where the Swiss National Bank refuses to register a name furnished to it by a subscriber, it will notify the subscriber by no later than January 24, 1979. The subscriber shall furnish an alternative name or names to be registered which are acceptable to the Swiss National Bank by no later than 1700 hours on January 26, 1979, the time at which initial registrations will be made, otherwise a Note in the amount to have been registered will be registered in the name of the subscriber. The Swiss National Bank will only refuse to register names on the basis that such names are not the names of Swiss residents.

The Swiss National Bank will inform the Department of the Treasury of the United States of America of the names of the Registered Owners and of the principal amounts of the Notes registered in their names.

(12) Financing Restrictions:

Subscribers and Registered Owners will represent and warrant that (i) in the case of subscribers or Registered Owners which are not banks, they have not sold or disposed of any other currency to acquire Swiss francs for the purpose of financing the acquisition of the Notes, or (ii) in the case of subscribers or Registered Owners which are banks, they have not engaged in foreign currency transactions exceeding their normal business practice for the purpose of financing the acquisition of the Notes. The foregoing representations and warranties will be made by the subscribers and Registered Owners by the submission of their subscriptions in the form required and by the registration of the Notes in their names, respectively.

(13) Assignments, Transfers or other Dispositions:

The Notes may not be assigned, transferred or otherwise disposed of, nor may any interest be granted therein, in whole or in part, directly or indirectly, except in cases of emergency or duress affecting any Registered Owner, the existence of such emergency or duress to be exclusively and conclusively determined by the Swiss National Bank in its sole discretion. Any assignment, transfer or other disposition of the Notes, or the grant of any interest therein, authorized in accordance with the preceding sentence may only be made to, or in favor of Swiss residents as such terms is used in paragraph (8) above.

Any assignment, transfer or other disposition will not be legally effective until the Swiss National Bank has recorded such assignment, transfer or other disposition on its registry book. Before the Swiss National Bank will record an assignment, transfer or other disposition on its registry book, the Registered Owner shall provide such evidence as the Swiss National Bank shall request to demonstrate that the assignee, transferee or other acquiree is a Swiss resident. The recording of an assignment, transfer or other disposition on the registry book of the Swiss National Bank shall be conclusive evidence that such assignment, transfer or other disposition is legally effective. The Swiss National Bank will notify the Registered Owner and the assignee, transferee or other acquiree when it has recorded the assignment, transfer or other disposition on its registry book.

(14) Custody/Administration:

The Swiss National Bank shall retain the Notes in its custody and shall not deliver the Notes to the Registered Owners throughout their terms. The Notes will be administered by the Swiss National Bank without costs and fees to the Registered Owners.

(15) Information concerning certain Taxes:

A Swiss turnover tax on the negotiation of securities amounting to 0.15 percent of the issue price will be borne by the subscriber. Payment of the turnover tax will be effected by the last involved Swiss dealer of securities according to the ordinary tax rules of the Swiss Confederation.

The income derived from the Notes is subject to taxes imposed under the Internal Revenue Code of 1954 of the United States of America. Unless entitlement to withholding at a lesser rate is established, a 30 percent withholding tax will be levied on such income by the United States of America. Under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation (the "Tax Treaty"), the amount of such withholding tax will be reduced to 5 percent for interest income derived by an individual who is a resident of Switzerland or by a Swiss corporation or other Swiss entity (as such terms are defined in the Tax Treaty).

The reduced rate of withholding can be secured by a Registered Owner who qualifies under the Tax Treaty and has a properly completed IRS Form 1001 on file on an Interest Payment Date with the Treasury at: The Commissioner of Public Debt, Department of the Treasury, 1435 G Street, N.W., Washington, D.C. 20226, USA. Under present regulations IRS Form 1001 is valid for three years from the date of filing. Copies of IRS Form 1001 will be available at the Swiss National Bank. The forms should be filed as soon as practicable by any Registered Owner wishing to claim the benefits of the Tax Treaty.

Although subject to taxation by the Federal government as described above, the income derived from the Notes is exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, possession or local taxing authority of the United States of America.

(16) Governing Law:

The Notes are issued under authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, of the United States of America and shall be governed by and construed in accordance with the laws of the United States of America.

(17) Further information:

In case further information is required, inquiries may be made at the Swiss National Bank in Zurich.

Zurich, January 12, 1979,
Swiss National Bank,
as agent of the United States of America.

ATTACHMENTS: Texts of Notes and form of subscription.)

SWISS FRANC DENOMINATED TREASURY NOTE

The United States of America for value received hereby promises to pay to———— the principal amount of Swiss francs ———— (in words: ————) on January 26, 1983 (the "Maturity Date").

From January 26, 1979 to and including the day preceding the Maturity Date this Note shall bear interest at the rate of percent per annum (each year having 360 interest days).

Payments of principal and interest will be made in Swiss francs at the Swiss National Bank, Zurich, to the owner of record of this Note, as registered on the registry book maintained by the Swiss National Bank (the "Registered Owner").

Interest shall be payable in arrears on January 26, 1980 and each year thereafter to and including the Maturity Date (the "Interest Payment Date"). If any Interest Payment Date or the Maturity Date falls on a Saturday, Sunday or a day on which the office of the Swiss National Bank in Zurich is closed, payment of the amount due on such date will be effected on the following business day. No additional interest will be paid on account of such deferral of the payment of interest or principal.

No assignment, transfer or other disposition of this Note shall be effected in the period between January 10 and the Interest Payment Date in any year.

This Note shall not be redeemed or called prior to maturity.

This Note may not be assigned, transferred or otherwise disposed of, nor may any interest be granted herein, in whole or in part, directly or indirectly, except in cases of emergency or duress affecting the Registered Owner, the existence of such emergency or duress to be exclusively and conclusively determined by the Swiss National Bank in its sole discretion. Any assignment, transfer or other disposition of this Note, or the grant of any interest herein, authorized in accordance with the preceding sentence may not be made to, or in favor of, persons or companies not residing in Switzerland within the meaning of article 2, sections 1 to 3 (but excluding section 4) of the Ordinance Relating to the Investment of Foreign Funds in Swiss Securities (Verordnung über die Anlage ausländischer Gelder in inländischen Wertpapieren) as in effect on January 11, 1979. Notwithstanding the foregoing, Swiss nationals residing abroad (Auslandschweizer) shall not be considered Swiss residents.

An assignment, transfer or other disposition will not be legally effective until the Swiss National Bank has recorded such assignment, transfer or other disposition on its registry book. Before the Swiss National Bank will record an assignment, transfer or other disposition on its registry book, the Registered Owner shall provide such evidence as the Swiss National Bank shall request to demonstrate that the assignee, transferee or other acquiree is a Swiss resident. The recording of an assignment, transfer or other disposition on the registry book of the Swiss National Bank shall be conclusive evidence that such assignment, transfer or other disposition is legally effective. The Swiss National Bank will notify the Registered Owner and the assignee, transferee or other acquiree when it has recorded the assignment, transfer or other disposition on its registry book.

The Swiss National Bank will inform the Department of the Treasury of the United States of America of the names of the Registered Owners and the principal amount of the Notes registered in their names.

The Registered Owner represents and warrants that (i) it is a Swiss resident as defined above, (ii) it is the beneficial owner of this Note and (iii)(a) in the case of a Registered Owner which is not a bank, it has not sold or disposed of any other currency to acquire Swiss francs for the purpose of financing the acquisition of this Note or (b) in the case of a Registered Owner which is a bank, it has not engaged in foreign currency transactions exceeding its normal business practice for the purpose of financing the acquisition of this Note.

The income derived from this Note is subject to taxes imposed under the Internal Revenue Code of 1954 of the United States of America. Unless entitlement to withholding at a lesser rate is established, a 30 percent withholding tax will be levied on such income by the United States of America. Under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation (the "Tax Treaty"), the amount of such withholding tax will be reduced to 5 percent for interest income derived by an individual who is a resident of Switzerland or by a Swiss corporation or other Swiss entity (as such terms are defined in the Tax Treaty). The relief under the Tax Treaty will be granted upon satisfaction of applicable administrative requirements of the United States of America.

Although subject to taxation by the Federal government as described above, the income derived from this Note is exempt from all taxation now or hereafter imposed on the principal or interest hereof by any State, possession or local taxing authority of the United States of America.

The Swiss National Bank shall retain this Note in its custody and shall not deliver this Note to the Registered Owner throughout its term. This Note will be administered by the Swiss National Bank without costs and fees to the Registered Owner.

This Note is issued under authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, of the United States of America and shall be governed by and construed in accordance with the laws of the United States of America.

Washington, D.C.

Secretary of the Treasury.

Dated:

* * * * *

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-6780 Filed 3-6-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

MARCH 2, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before March 22, 1979.

FSA 43670, Southwestern Freight Bureau, Agent's No. B-804, rates on chlorine, in tank cars, carload, from stations in Southwestern Territory, on the one hand, and East St. Louis, IL and St. Louis, MO, on the other, in Supplement 21 to its Tariff ICC SWFB 4616, to become effective March 21, 1979. Grounds for relief—Market Competition.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6909 Filed 3-6-79; 8:45 am]

[7035-01-M]

RAIL SERVICE DISCONTINUANCES

Notice Regarding Time Limits

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: This notice clarifies the relevant time limits which the Commission must observe in issuing investigation and train-continuance orders in proposed rail service discontinuances under 49 U.S.C. 10908 (formerly section 13a(1) of the Interstate Commerce Act).

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

G. Marvin Bober, 202-275-7564.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10908 (formely section 13a(1) of the Interstate Commerce Act) railroads may file a notice with the Commission indicating that they propose to discontinue certain rail service. The Commission is authorized to investigate proposed discontinuances, and to require the railroad to continue rail service for 4 months beyond the proposed discontinuance date.

In issuing investigation and train-continuance orders, the Act imposes certain time limitations upon the Commission. This notice clarifies how the Commission intends to administer the Act within those time limitations.

Investigation Orders: A railroad desiring to discontinue rail service under 49 U.S.C. 10908 must file notice of the proposed discontinuance with the Commission at least 30 days before the discontinuance's proposed effective date. The Commission may institute an investigation proceeding any time between the filing of the notice and the proposed effective date of the discontinuance.

Train-Continuance Orders: Upon institution of an investigation, the Commission may enter an order requiring continued operation of the affected trains pending hearing and decision in the investigation, if the Commission serves a copy of its train-continuance order on the carrier at least 10 days before the proposed effective date of the discontinuance. However, the Commission may not order the transportation continued for more than 4 months after the proposed effective date of the discontinuance.

Clarification: In the past, the Commission generally served investigation orders (and related train-continuance orders) by the 20th day after a railroad filed notice of its intent to discontinue rail service. This resulted from a reading of language in former section 13a(1) to the effect that the Commission could only enter an investigation order "during said thirty days notice period." However, it is clear that an investigation order can be issued any time during the notice period (not merely within 30 days from the filing of the notice) since the section's reference to "thirty days" provides merely a minimum notice period, and the notice period may well be longer than 30 days depending on how far in advance of its proposed discontinuance a railroad files its notice. Moreover, it is plain from a reading of section 13a(1) that train-continuance orders may be served any time after institution of the investigation, up to 10 days before the proposed discontinuance date.

Our revised interpretation of the time limits governing investigation and train-continuance orders in rail discontinuances is directly supported by the language used in 49 U.S.C. 10908(b), which states that the Commission may institute an investigation proceeding "if it begins the proceeding between the date the carrier files the notice * * * and the date on which the discontinuance * * * is intended to be effective." There is no rigid requirement that the investigation order be served within 30 days from the filing of the notice. With regard to train-continuance orders, the statutory language further states that, "after the (investigation) proceeding begins, the Commission may order the carrier * * * to continue any part of the transportation pending completion of the proceeding * * * if the Commission serves a copy of its order on the carrier at least 10 days before the date on which the carrier intended the discontinuance * * * to be effective." Here too there is no 30-day deadline, but rather a 10-day time limitation.

Accordingly, interested persons should note that the Commission intends to administer the investigation and train-continuance provisions of 49 U.S.C. 10908(b) within the time limitations summarized at the outset of this notice.

H. G. Homme, Jr.,
Secretary.

[FR. Doc. 79-6699 Filed 3-6-79; 8:45 am]

[7035-01-M]

[Disaster Relief Decision No. 14; Sub No. 4]

SOUTHERN PACIFIC TRANSPORTATION CO. AND NORTHWEST PACIFIC RAILROAD CO.

Disaster Relief

Decided March 1, 1979.

An application has been filed jointly by the Southern Pacific Transportation Company and the Northwestern Pacific Railroad Company (NWP) requesting authority to continue relief under 49 U.S.C. 10724 (formerly Section 22 of the Interstate Commerce Act), as afforded by Disaster Relief Order No. 14 and its Sub Nos. 1, 2 and 3. Petitioners seek to maintain allowances to provide reduced rates for persons who would normally ship via the NWP and Aracata and Mad River Rail Road Company but who cannot do so because of a fire in a tunnel on the NWP at mileage post 195 near Island Mountain, California. The outstanding relief is due to expire on March 12, 1979.

Petitioners request that relief be extended for a period of six months, or until September 12, 1979. Reconstruction is actively being conducted, but it is too early to give an exact date for reopening of rail service. Preliminary findings are that damage is more extensive than originally thought and unforeseen difficulties are being encountered in reconstruction.

It is ordered: Authority to extend the expiration date of Disaster Relief Order No. 14 and its Sub Nos. 1 and 2 from March 12, 1979, to and including September 12, 1979, is granted, including authority to make publication upon not less than one day's notice to the Commission and the public by blanket supplements. The terms of rule 9(e) of the Commission's Tariff Circular 20 [49 CFR 1300.9] are waived. In all other respects, the original terms and conditions of those decisions shall remain the same.

Any tariffs or tariff provision published under this authority shall make reference to this decision by number and date.

Notice to the affected railroads and the general public shall be given by depositing a copy of this decision in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register. Copies will be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y.; the Chairman of the Southern Freight Association, Atlanta, Georgia; the Chairman of the Executive Committee, Western Railroad Traffic Association, Chicago, Illinois; and the Vice-President, Economics and Finance Department of the Association of American Railroads, Washington, D.C.

By the Commission, Virginia Mae Brown, Vice Chairman.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-6910 Filed 3-6-79; 8:45 am]

[7035-01-M]

[Notice No. 34]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 27, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 16903 (Sub-62TA), filed January 31, 1979. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Iron and Steel articles* from the facilities of Jones & Laughlin Steel Corp. at Aliquippa and Pittsburgh, PA to points in IN on and south of IN Highway 28, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Jones & Laughlin Steel Corp., Room 121, 1600 W. Carson, Pittsburgh, PA 15263. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 18121 (Sub-23TA), filed January 11, 1979. Applicant: ADVANCE TRANSPORTATION CO., P.O. Box 719, Milwaukee, WI 53201. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703. Common carrier: Regular Routes: *General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between Chicago, IL and Green Bay, WI serving intermediate points on the following described routes in Sheboygan, Manitowoc, Brown, Outagamie, Winnebago and Fond du Lac Counties, WI: (1) From Chicago, IL over U.S. Hwy. 41 to Green Bay, WI and return over the same route. (2) From Chicago, IL over I-94 to its jct. with I-894 at or near Milwaukee, WI, then over I-894 to its jct. with U.S. Hwy. 45 at or near Menomonee Falls, WI, then over U.S. Hwy. 45 to its jct. with U.S. Hwy. 41 at or near Winnebago, WI, then over U.S. Hwy. 41 to Green Bay, WI and return over the same route. (3) From Chicago, IL over I-94 to its jct. with I-43 at Milwaukee, WI, then over I-43 to its jct. with U.S. Hwy. 141 at or near Cedar Grove, WI, then over U.S. Hwy. 141 to Green Bay, WI and return over the same route, serving all intermediate points. (4) From Chicago, IL over I-94 to its jct. with I-43 at Milwaukee, WI, then over I-43 to its jct. with U.S. Hwy. 57 near Saukville, WI, then over U.S. Hwy. 57 to Green Bay, WI and return over the same route. (5) From Chicago, IL over I-94 to its jct. with U.S. Hwy. 41 at Milwaukee, WI, then over U.S. Hwy. 41 to its jct. with U.S. Hwy. 45 at or near Richfield, WI, then over U.S. Hwy. 45 to its jct. with U.S. Hwy. 151 at or near Fond du Lac, WI, then over U.S. Hwy. 151 to its jct. with U.S. Hwy. 57 at Chilton, WI, then over U.S. Hwy. 57 to Green Bay, WI and return over the same route. (6) From Chicago, IL over I-94 to its jct. with U.S. Hwy. 41 at Milwaukee, WI, then over U.S. Hwy. 41 to its jct. with U.S. Hwy. 45 at or near Richfield, WI, then over U.S. Hwy. 45 to its jct. with U.S. Hwy. 151 at or near Fond du Lac, WI, then over U.S. Hwy. 151 to its jct. with U.S. Hwy. 55 at or near Brothertown, WI, then over U.S. Hwy. 55 to its jct. with U.S. Hwy. 41 at Little Chute, WI, then over U.S. Hwy. 41 to Green Bay, WI and return over the same route. (7) Between Fond du Lac, WI and Sheboygan, WI serving all intermediate points: From Fond du Lac, WI over U.S. Hwy. 23 to Sheboygan, WI and return over the same route. (8) Between Manitowoc, WI and Fond du Lac, WI serving all intermediate points: From Manitowoc, WI over U.S. Hwy. 151 to Fond du Lac, WI and return over the same route. (9) Between Appleton, WI and Manitowoc, WI serving all intermediate points: From Appleton, WI over U.S. Hwy. 10 to Manitowoc, WI and return over the same route. Service is authorized at all points in Sheboygan, Manitowoc, Brown, Outagamie, Winnebago, and Fond du Lac Counties, WI in connection with said carrier's otherwise authorized regular route operations to and from Chicago. Supporting Shipper(s): There are 30 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 42487 (Sub-899TA), filed January 29, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier:* regular routes: *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, serving the facilities of Gerber Industries, Inc., at St. Peters, MO, as an off-route point in connection with presently authorized regular route operations, for 180 days.

NOTE.—Applicant proposes to Tack the authority sought here with its existing operating authority held in Docket No. MC 42487 SUB 708. Supporting Shipper(s): Gerber Industries, Inc., 1 Gerber Industrial Drive, St. Peters, MO 63376. Send protests to: District Supervisor M. M. Butler, 211 Maine, Suite 500, San Francisco, CA 94105.

MC 43246 (Sub-29TA), filed January 29, 1979. Applicant: BUSKE LINES, INC., 123 W. Tyler Avenue, Litchfield, IL 62056. Representative: Howard Buske (same as above). Contract Carrier, over irregular routes, to transport Air conditioners, washers, dryers, and materials, equipment and supplies used in the manufacture, distribution, and repair of the above named commodities. Restricted against the transportation of commodities in bulk or those because of size and weight requiring the use of special equipment. Between the plantsite of Fedders Corp. at Edison, N.J., Buffalo, N.Y., Frederick and Elkton, MD. and Effingham and Herrin, IL. on the one hand, and, on the other, points in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Fedders Corp., Woodbridge Ave., Edison, NJ 08817. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 71452 (Sub-16TA), filed January 31, 1979. Applicant: INDIANA TRANSIT SERVICE, INC., 4300 West Morris Street, Indianapolis, IN 46241. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *General commodities, with a prior or subsequent movement by air, except classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and articles which, because of size or weight, require special equipment,* between Chicago, IL and its commercial zone, on the one hand, and, on the other, Indianapolis, IN and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Randy International, LTD, 147-95 Farmers Boulevard, Jamaica, NY 11434. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 79687 (Sub-23TA), filed February 7, 1979. Applicant: WARREN C. SAUERS CO., INC., 200 Rochester Road, Zelienople, PA 16063. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. *Glass containers* from the facilities of Brockway Glass Company at Columbus, and Zanesville, OH to St. Louis, MO and points within its commercial zone. (2) *Wooden pallets* from St. Louis, MO and points within its commercial zone to the facilities of Brockway Glass Company at Columbus and Zanesville, OH for 180 days. An underlying ETA seeks 90 days. Supporting Shipper(s): Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 90870 (Sub-21TA), filed January 31, 1979. Applicant: RIECHMANN ENTERPRISES, INC., Route 2, Box 137, Alhambra, IL 62001. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. *Iron and Steel Articles,* From the plantsite of Laclede Steel Co., Alton, IL. to points in Kentucky on and west of Interstate 65, points in Tennessee on and west of Interstate 65 and points in Mississippi on and north of US Hwy 82, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Laclede Steel Co., Equitable Building, St. Louis, MO 63102. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 97345 (Sub-3TA), filed January 30, 1979. Applicant: DUFFY STORAGE AND MOVING CO., d.b.a. DUFFY HEAVY MOVING CO., 389 South Lipan Street, Denver, CO 80223. Representative: Robert G. Shepherd, Jr., 915 Pennsylvania Building, 425 13th Street, N.W., Washington, D.C. 20004. (1) *commodities which because of size or weight require the use of special equipment,* (2) *concrete products,* (3) *selfpropelled construction equipment and machinery,* (4) *construction materials,* (5) *equipment and supplies,* (6) *telephone and power line materials,* (7) *transformers,* (8) *plant machinery and equipment (including incidental parts and materials moving in connection therewith),* between points in CO, WY, UT, NM, and AZ, and points in NE and KS on and east of U.S. Highway 183, (9) *general commodities,* between points in Denver, Adams, Arapahoe and Jefferson Counties, Colorado. RESTRICTIONS: Paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 are restricted against (a) service between points in Denver, Adams, Arapahoe and Jefferson Counties, State of Colorado, (b) transportation of commodities in bulk, and (c) transportation of oilfield commodities for the oil and gas industries, as defined in *Mercer, Extension—Oilfield Commodities,* 74 M.C.C. 459, for 180 days. Supporting Shipper(s): There are 8 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C. or copies of which may be examined in the field office named below. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 107012 (Sub-342TA), filed January 17, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same as applicant). *Floral foam and floral containers* from the facilities of S. S. Pennock Company at Finderne, NJ to points in and east of MN, IA, MO, AR, and LA for 180 days. Supporting Shipper(s): S. S. Pennock Company, Stokely Street, Philadelphia, PA 12129. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204

MC 109891 (Sub-33TA), filed January 8, 1979. Applicant: INFINGER TRANSPORTATION CO., INC., P.O. Box 7398, 2811 Carner Ave., Charleston Heights, SC 29405. Representative: Frank B. Hand, Jr., P.O. Drawer C, Berryville, VA 22611. (1) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds, (except commodities in bulk in tank vehicles), and filters,* from points in Warren County, MS to points in AL, FL, GA, KY, NC, SC, and TN, (2) *Petroleum,* petroleum products, vehicle body sealer and/or sound deadener compounds, filters, materials, supplies and equipment used in the manufacture, sale and distribution of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), from points in AL, GA, KY, and SC to points in Warren County, MS. Restricted to (1) and (2) above to shipments originating at or destined to the facilities of Quaker State Oil Refining Corp., located in Warren County, MS, for 180 days. SUPPORTING SHIPPER(S): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. SEND PROTESTS TO: E. E. Strotheid, I.C.C., Rm. 302, 1400 Bldg., 1400 Pickens St., Columbia, SC 29201.

MC 111941 (Sub-30TA), filed January 31, 1979. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. *Iron and steel articles,* from the facilities of Inland Steel Company at E. Chicago, IN to points in IL, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Inland Steel Company, 30 West Monroe Street, Chicago, IL 60603. Send Protests To: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 114457 (Sub-475TA), filed February 9, 1979. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Metal containers and container ends* from Mankato, MN to Mullins, SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Continental Can Company, 10050 Regency Circle, Omaha, NE 68114. Send Protests To: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, 414 Federal Bldg. & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 116371 (Sub-14TA), filed January 29, 1979. Applicant: LIQUID CARGO LINES LTD, Box 269, Clarkson, Ontario, Canada L5J 2Y4. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Sulfonic acid, in bulk, in tank vehicles,* from the ports of entry on the U.S.-Canada international boundary line at or near Detroit, MI and Port Huron, MI to the facilities of Witco Chemical at Chicago, IL, restricted to traffic originating at the facilities of Witco Chemical Canada Limited at Oakville, Ontario, Canada, for 180 days. An underlying ETA seeks 90 days authority. Supporting

Shipper(s): Witco Chemical Canada Limited, 2200 Yonge Street, Toronto, Canada M4P 1B1. Send Protests To: R. H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 West Huron Street, Buffalo, NY 14202.

MC 116544 (Sub-168TA), filed January 26, 1979. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Kirk W. Horton, P.O. Box 10061, Palo Alto, CA 94303. *Food products* moving in mechanically refrigerated equipment, from points within the Los Angeles, CA suburban area (beginning at the intersection of Sunset Blvd. and U.S. Hwy 101 Alternate south of Pacific Palisades, thence northeasterly along Sunset Blvd. to CA Hwy 7, thence along CA Hwy 7 to CA Hwy 118, via San Fernando to Pasadena, thence along U.S. Hwy 66 to CA Hwy 19, thence along CA Hwy 19 to junction with U.S. Hwy 101 Alternate at Ximeno St. thence along Ximeno St. and its prolongation to the Pacific Ocean, thence along the shore line of the Pacific Ocean to a point south of the intersection of Sunset Blvd. and U.S. Hwy 101 Alternate, thence in a direct line to point of beginning.) to Chandler, Fort Huachuca, Luke AFB, Tucson, Yuma Proving Ground, Safford, Florence, Phoenix, Fort Apache, Laveen, San Simon School, Cibecue, Cedar Creek, Santa Rosa Boarding School, Scottsdale and Sacaton, AZ for 180 days. Restricted to shipments moving on Government Bills of Lading. NOTE: Applicant proposes to Tack authority sought here with its existing authority in SUB NO. 162. Supporting Shipper(s): Department of the Army, United States Army Legal Services Agency, Nassif Bldg., Falls Church, VA 22041. Send Protests To: M. M. Butler, District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 117686 (Sub-240TA), filed February 9, 1979. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Blvd., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as above). *Chain saws, snow-throwers and garden, lawn, turf and golf course care equipment,* from the facilities of The Toro Corporation at or near Windom, MN, and Tomah, WI, to points in AL, AR, FL, GA, KY, LA, MS, NC, SC, and TN, for 180 days. Restricted to traffic originating at the named origins and destined to the named destinations. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Walter B. McComas, The Toro Company, 8111 Lyndale Avenue South, Minneapolis, MN 55420. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 118089 (Sub-30TA), filed January 29, 1979. Applicant: ROBERT HEATH TRUCKING, INC., 2909 Avenue C, P.O. Box 2501 Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Inedible meats, meat products,* and *meat by-products,* from the facilities of Consolidated Pet Foods, Inc., at or near Amarillo, TX, to the facilities of Kal Kan Foods, Inc., at or near Vernon, CA, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): Kal Kan Foods, Inc., 3386 East 44th Street, Vernon, CA 90058. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 119654 (Sub-66TA), filed January 24, 1979. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Glass containers, accessories, and cartons when moving in mixed shipments with glass containers* (except commodities in bulk), from the manufacturing facilities of Thatcher Glass Manufacturing Co., a Division of Dart Industries at Lawrenceburg, IN to points in IL, MI, MO and WI. Restricted to traffic originating at or destined to the named origins and named destinations, for 180 days. Supporting Shipper(s): Thatcher Glass Manufacturing Co.,. Division of Dart Industries, Inc., P.O. Box 265, Elmira, NY 14902. Send protests to: Beverly J. Williams, Trans. Asst., I.C.C., 46 E. Ohio St., Rm. 245, Indianapolis, IN 46204.

MC 119654 (Sub-67TA), filed January 24, 1979. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Pulpboard,* not corrugated, from the facilities of the Alton Box Board Company at Alton, IL to IN, MI, OH and WI, for 180 days. Supporting Shipper(s): Alton Box Board Company, 401 Alton Street, Alton, IL 62002. Send protests to: Beverly J. Williams, Trans. Asst., I.C.C., 46 E. Ohio Street, Rm. 429, Indianapolis, IN 46202.

MC 119654 (Sub-68TA), filed January 24, 1979. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza Indianapolis, IN 46204. (1) *Boxes,* corrugated or not corrugated; and (2) *waste paper,* in bales or packages, from the facilities of Alton Box Board Company at Godfrey and Highland, IL and Pacific and St. Louis, MO to points in IN, MI, and OH, for 180 days. SUPPORTING SHIPPER(S): Alton Box Board Company, 401 Alton Street, Alton, IL 62002. SEND PROTESTS TO: Beverly J. Williams, Trans Asst., I.C.C., 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 119741 (Sub-139TA), filed January 12, 1979. Applicant: GREEN FIELD TRANSPORT CO., INC., P.O. Box 1235, Fort Dodge, IA 50501. Representative: R. D. McMahon (same as applicant). *Animal drugs or medicines, N.O.I., and animal feed and supplement powder,* from Fort Dodge, IA to Chicago, IL; Albany and Hamilton, NY; Columbus, OH; Malvern and Upland, PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Fort Dodge Laboratories, Inc., Division of American Home Products Corp., 800 Fifth Avenue, N.W., Fort Dodge, IA 50501. SEND PROTESTS TO: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

Applicant: JEWETT SCOTT TRUCK LINE, INC., Box 267, Mangum, OK 73554. Representative: Jewett Scott Jr. (same as above). *Roofing, roofing materials, roofing products, roofing insulation* and materials, equipment and supplies used in the installation or manufacture thereof, except materials in bulk, from the facilities of Owens-Corning at Lubbock, TX to all points and places in AZ, for 180 days. Underlying ETA seeking 90 days authority was granted. SUPPORTING SHIPPER(S): Owens-Corning Fiberglas Corporation, Fiberglas Tower Toledo, OH 43659. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 124141 (Sub-12TA), filed February 9, 1979. Applicant: JULIAN MARTIN, INC., Highway 25 S, P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Meat and meat products and articles dealt with by meat packinghouses (except hides and commodities in bulk), form Dakota City, NE and Sioux City, IA, to points in AL, AR, GA, MS, NC, SC and TN, for 180 days, an underlying ETA seeks 90 day authority. SUPPORTING SHIPPER(S): Iowa Beef Processors, Inc., Dakota City, NE 68731. SEND PROTESTS TO: William H. Land Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 124151 (Sub-10TA), filed February 7, 1979. Applicant: VANGUARD TRANSPORTATION, INC., Lafayette Street, Carteret, NJ 07008. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street, N.W., Washington, DC 20001. Tetramethylam-

monium hydroxide, in methanol, and indene in toluene, in containers from Danville, PA to points in New York, NY and New York commercial zone, and empty containers on return for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Merck Chemical Mfg. Division, Merck & Co., P.O. Box 2000, Rahway, NJ 07065. Send protests to: Irwin Rosen, Transportation Specialist, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 124679 (Sub-98TA), filed January 26, 1979. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Daniel E. England (same address as applicant). *Cookies* from the facilities of Little Dutch Boy Bakeries, Inc., at Draper, UT, to Chicago, IL, and points in PA and NY for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Little Dutch Boy Bakeries, Inc., 12349 S. 970 E., Draper, UT. Send protests to: DS L. D. Helfer, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126091 (Sub-4TA), filed February 9, 1979. Applicant: FRALEY & SCHILLING, INC., Rushville, IN. Representative: Donald W. Smith, P.O. Box 40248 Indianapolis, IN 46240. *Contract carrier:* irregular routes: *Aluminum extrusion, ingots and materials* between the facilities of Pimalco Corp. at Chandler, AZ on the one hand and points within 50 miles of Niles, OH on the other for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Pimalco Corp., P.O. Box 5050, Chandler, AZ 85224. Send Protests To: Beverly J. Williams, Transportation Asst., Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 127705 (Sub-69TA) filed January 31, 1979. Applicant: KREVDA BROS. EXPRESS, INC., 501 S. Broadway, Gas City, IN 46933. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Glass containers* from the facilities of Glass Container Corporation at Knox, Marianville and Clarion, PA to points in VA. for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Glass Container Corporation, 114 Penn. Avenue, Knox, PA 16232. Send Protests To: Beverely J. Williams, Trans. Asst., Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 127705 (Sub-70TA), filed February 6, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Glass containers* from Columbus and Zanesville, OH to St. Louis, MO and points in its Commercial Zone for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Brockway Glass Company, Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: Beverly J. Williams, Transportation Asst., Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 134129 (Sub-10TA), filed January 22, 1979. Applicant: WILLIAM A. LONG, INC., Bealeton, VA 22712. Representative: Gary E. Thompson, 4304 East-West Highway, Washington, D.C. 20014. *Fence, fence fittings and accessories,* from the plant site of JL Fence Co. at Bladensburg, MD, to points in the United States in and east of WI, IL, KY, TN, and MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): JL Fence Company, 3334 Kenilworth Avenue, Bladensburg, MD 20710. Send protests to: Carol Rosen, TA, ICC, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 135052 (Sub-16TA), filed January 12, 1979. Applicant: ASHCRAFT TRUCKING, INC., 875 Webster Street, Shelbyville, IN 46176. Representative: Warren C. Moberly, 320 North Meridian Street, Indianapolis, IN 46204. *Kitchen cabinets and vanities and accessories,* from Shelbyville, IN, to points and places in the states of AR, CT, DE, IA, IL, IN, KS, KY, MA, MD, MI, MN, MO, ND, NE, NJ, NY, OH, OK, PA, SD, TN, VA, WI, WV and DC, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Welsh Custom Kitchens, Inc., 403 South Noble Street, Shelbyville, IN 46176. Send Protests To: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 135797 (Sub-176TA), filed January 29, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant (same as applicant). (1) *Tools* from Springdale, AR to Dallas, TX; Denver, CO; Franklin Park, IL; Asheville, NC; Birmingham, AL and Los Angeles, CA, and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1), from Chicago, IL and Buffalo, NY to Springdale, AR, for 180 days. Supporting Shipper(s): Brunner Industries, Inc., 1510 North Old Missouri Road, Springdale, AR 72764. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 136291 (Sub-11 TA), filed February 12, 1979. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Francis W. McInerny, 1000 16th St., NW., Suite 502, Washington, DC 20036. *Contract carrier*—Irregular route: *Liquid oxygen, liquid nitrogen, and liquid argon* in specially designed vehicles furnished by the shipper from the Union Carbide plant facility at Baltimore, MD to points in NC and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Union Carbide Corporation, 270 Park Avenue, New York, NY 10017. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, BOp, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, Fl 33166.

MC 138882 (Sub-211 TA), filed January 29, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., PO Drawer 707, Troy, AL 36081. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., PO Box 1240, Arlington, VA 22210. *Canned goods,* from the facilities of Hudson Industries, Inc., at Brundidge, AL, to points in the United States (except Alaska and Hawaii), for 180 days. Supporting Shipper(s): Hudson Industries, Inc., PO Box 847, Troy, AL 36081. Send protests to: Mabel E. Holston, Transportation Asst., Bureau of Operation, ICC, Room 1616-2121 Building, Birmingham, AL 35203.

MC 140717 (Sub-14 TA), filed February 9, 1979. Applicant: JULIAN MARTIN, INC., Highway 25 S, P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Contract carrier*—Irregular routes: *Meat and meat products, meat by-products and articles* distributed by meat packinghouses (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, from the facilities of Wilson Foods Corporation located at Cedar Rapids, IA, to points in DE, MD, VA and DC, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations, for 180 days. Supporting Shipper(s): Wilson Foods Corporation, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 140756 (Sub-4 TA), filed February 5, 1979. Applicant: FANN MCKELVEY d.b.a. MCKELVEY TRUCKING, 5420 West Missouri, Glendale, AZ 85301. Representative: A. Michael Bernstein, 1441 E. Thomas Road, Phoenix, AZ 85014. *Paper, paper articles, and materials, equipment and supplies used in the manufacture, assembly and handling of paper articles*

(except in bulk) from the plantsites of Inland Container Corporation at Santa Fe Springs, Bell and Newark, CA to points in AZ and NM, for 480 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Inland Container Corporation, 151 North Delaware Street, Indianapolis, IN 46206. Send protests to: Thomas E. Klobas, Acting District Supervisor, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 141871 (Sub-13TA), filed January 29, 1979. Applicant: WNI, INC., 8560 S. W. Salish Lane, Wilsonville, OR 97070. Representative: Warren L. Troupe, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. *Foodstuffs* from the facilities of Nabisco, Inc. at or near Portland, OR to Anaheim, Buena Park, Culver City, Fresno, Glendale, Hayward, Oxnard, Riverside, Sacramento, San Diego, San Francisco, San Jose, Union City, and Vernon, CA, and Spokane, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Nabisco, Inc., East Hanover, NJ 07936. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 141871 (Sub-14TA), filed February 5, 1979. Applicant: WNI, INC., 8560 S. W. Salish Lane, Wilsonville, OR 97070. Representative: Warren L. Troupe, 2480 E. Commercial Boulevard, Fort Launderdale, FL 33308. *Sodium bicarbonate, sodium carbonate,* and *cleaning, scouring, and washing compounds* from points in Sweetwater County, WY to Clackamas, Milwaukie, Portland, Salem, Sherwood, Pendleton, Albany, Eugene, Malin, and Wheeler, OR., and Bellevue, Kent, Seattle, Spokane, Tacoma, and Ellensburg, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Church & Dwight Co., Inc., P.O. Box 369, Piscataway, NJ 08854. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 142062 (Sub-20TA), filed February 7, 1979. Applicant: VICTORY FREIGHTWAYS SYSTEM, INC., Post Office Drawer P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. *Contract carrier:* irregular routes: *Such commodities as are dealt in or distributed by a manufacturer of animal feed (except in bulk),* from the facilities of Sunshine Mills, Inc., at Red Bay, AL and Tupelo, MS, to points in IL, IN, KY and OH for 180 days. RESTRICTION: Restricted to the transportation of shipments under a continuing contract or contracts with Sunshine Mills, Inc. Supporting Shipper(s): Sunshine Mills, Inc., P.O. Drawer S', Red Bay, AL 35582. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 142508 (Sub-4TA), filed February 5, 1979. Applicant: NATIONAL TRANSPORTATION, 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Welding equipment, materials and supplies,* from the facilities of Miller Electric Manufacturing Company at or near Appleton, WI, to points in CO, KS, LA, MO, NE, OK, SD, TX, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Jack J. Hanus, Miller Electric Manufacturing Company, 718 S. Bounds St., Appleton, WI 54912. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142723 (Sub-5 TA), filed February 8, 1979. Applicant: BRISTOL CONSOLIDATORS, INC., 108 Riding Trail Lane, Pittsburgh, PA 15215. Representative: William A. Gray, Esq., 2310 Grant Building, Pittsburgh, PA 15219. *Contract carrier:* irregular routes: *Such commodities as are dealt in by retail variety, department and drug stores, and equipment, materials and supplies used in the conduct of such business (except commodities in bulk),* between points in AL, AR, CT, FL, GA, IL, IN, KY, LA, MD, MI, MN, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WS and the District of Columbia, under a continuing contract or contracts with G. C. Murphy Company of McKeesport, PA for 180 days. Supporting Shipper(s): G. C. Murphy Company, 531 Fifth Avenue, McKeesport, PA 15132. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 143236 (Sub-27TA), filed February 8, 1979. Applicant: WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, Kearny, NJ 07032. Representative: Elizabeth Eleanor Murphy, 40 Hackensack Avenue, Kearny, NJ 07032. Drugs, medicine, toilet preps., N.O.I.B.N., cleaning scouring or washing compounds, foodstuffs, chemicals, N.O.I. (except in bulk) between the facilities of Alberto-Culver Company located at or near Melrose Park, IL on the one hand, and, on the other to points in the states of MD, MA, NJ, NY, OH and PA in dry vans and vehicles equipped with temperature control, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Alberto-Culver Company, 2525 Armitage Avenue, Melrose Park, IL 60160. Send protests to: Robert E. Johnston, D/C ICC, 9 Clinton St., Room 618, Newark, NJ 07102.

MC 143956 (Sub-4TA), filed January 29, 1979. Applicant: GARDNER TRUCKING CO., INC., Drawer 493, Walterboro, SC 29488. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Foodstuffs,* in vehicles equipped with temperature control from facilities of Holsum Foods, Waukesha, WI to point in PA, except Mechanicsburg, for 189 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Holsum Foods, 500 South Prairie Avenue, Waukesha, WI 53186. Send protests to: E. E. Strotheid, District Supervisor, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 144023 (Sub-7TA), filed January 26, 1979. Applicant: TAYLOR TRANSPORT, INC., Route 1, Fort Mill, SC 29715. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Contract carrier:* irregular routes: *Electric heaters, metering devices, switches, controllers, transformers, circuit breakers, and items used in the manufacture, sale and distribution of such commodities,* between the facilities of Federal Pacific Electric Company, at or near Fort Mill, SC, on the one hand, and, on the other, all points in the United States (except Alaska and Hawaii), for 180 days. Supporting Shipper(s): Federal Pacific Electric Company, Route 1, Fort Mill, SC 29715. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 144026 (Sub-2TA), filed January 25, 1979. Applicant: WILLIAMS CARTAGE COMPANY, INC., P.O. Box 897, Hartsville, SC 29550. Representative: Robert McGeorge, 1054 31st Street, NW., Washington, DC 20007. *Contract carrier:* irregular routes: *Iron and steel articles,* (1) from the facilities of Dubose Steel, at or near Roseboro, NC to points in MI, IN, KY, TN, SC, GA, FL, AL, MS, LA, VA, WV, MD, DE, PA, NY, NJ, CT, RI, MA, VT, NH, ME, IL, WI, MN, IA, MO, DC, AR, and OH; (2) from points in Darlington, Florence, Georgetown and Richland Counties, SC to points in MI, IN, KY, TN, NC, GA, FL, AL, MS, LA, VA, WV, MD, DE, PA, NY, NJ, DC, CT, RI, MA, VT, NH, ME, IL, WI, MN, IA, MO, OH and AR, under a continuing contract in "(1)" and "(2)" with Dubose Steel, for 180 days. Supporting Shipper(s): Dubose Steel, Inc., P.O. Box 1098, Roseboro, NC 28382. Send protests to: E. E. Strotheid, DS, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 144565 (Sub-2TA), filed January 29, 1979. Applicant: MERLIN CLARK d.b.a. CLARK TRANSPORTATION &

ENTERPRISES, 9421 South Hydraulic, Wichita, KS 67233. Representative: Clyde N. Christey, Suite 110L Kansas Credit Union Bldg., 1010 Tyler, Topeka, KS 66612. *Distilled Spirits, wine, coridals and malt beverages* from Lawrenceburg, IN to the facilities of A-B Sales located at or near Wichita, KS and at or near Hutchinson, KS, for 180 days. Supporting Shipper(s): A-B Sales, Inc., 435 Eldora, Wichita, KS 67202. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 144630 (Sub-9TA), filed January 24, 1979. Applicant: STOOPS EXPRESS, INC., 2239 Malibu Court, Anderson, IN 46011. Representative Donald W. Smith, 945-9000 Keystone Crossing, Indianapolis, IN 46240. *Overhead door sections, materials and hardware used in the manufacture and sale of overhead sections,* between the facilities of Overhead Door Corporation at Dallas and Ft. Worth, TX, on the one hand, and on the other points in IN, MI, KY, OH, CA and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Overhead Door Corporation, Hartford City, IN. Send protests to: Beverly J. Williams, Trans. Asst., I.C.C., 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 144663 (Sub-3TA), filed January 30, 1979. Applicant: DAVID L. HALDER, P.O. Box 513, Ojo Caliente, NM 87549. Representative: Roger V. Eaton, P.O. Drawer 965, Albuquerque, NM 87103. *Contract carrier:* irregular routes: *Wallboard,* from Rosario, NM, to Phoenix, and Tucson, AZ, for the account of Western Gypsum Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Western Gypsum Co., P.O. Box 2636, Santa Fe, NM 87501 Send protests to: District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 145152 (Sub-36TA), filed February 8, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. (1) *Malt beverages and related advertising materials;* and (2) *empty, used beverage containers* for recycling and *materials and supplies* used in and dealt with by breweries, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Adolph Coors Company, Golden, CO 80401. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145224 (Sub-1TA), filed January 25, 1979. Applicant: WILLIAM CURTIS HOWELL, d.b.a. All-Cal Tours, 3638 Primrose Avenue, Santa Rosa, CA 95401. Representative: James R. Benoit, 333 South E. Street, POB 5110, Santa Rosa, CA 95402. *Passengers and their baggage in the same vehicle with passengers in charter and special operations, in round trip sightseeing or pleasure tours* between points in the counties of Butte, Colusa, Contra Costa, El Dorado, Lake, Marin, Mendocino, Napa, Nevada, Placer, Sacramento, San Joaquin, Solano, Sonoma, Sutter, Yolo, and Yuba, in CA (on the one hand), and the states of AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY (on the other hand), for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Nationwide Travel, 5311 Elkhorn Blvd., Sacramento, CA 95842. Western Tours, 743 First Street, Napa, CA 94558. Arden Fair Ticket Agency, 1777 Arden Way, Sacramento, CA 95815. Send protests to: District Supervisor A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145332 (Sub-1TA), filed January 25, 1979. Applicant: STEPHEN HROBACHAK d.b.a. TRANS-CONTINENTAL REFRIGERATED LINES, P.O. Box 1456, Scranton, PA 18503. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Contract* carrier: irregular routes: *Foodstuffs* (except in bulk), from Johnson City, NY, to Denver, CO, Portland, OR, Seattle, WA, Salt Lake City, UT, Los Angeles, Oakland, Anaheim, and Vernon, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Douglas Foodservice Company, P.O. Box 71, Johnson City, NY 13790. Send protests to: P. J. Kenworthy, DS, ICC, 314 US Post Office Bldg., Scranton, PA 18503.

MC-145398 (Sub-1TA), filed January 26, 1979. Applicant: GIPSON TRANSPORTATION, INC., Rte. 2, Box 382, Casa Grande, AZ 85222. Representative: Phil B. Hammond, Esq., 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. *Cottonseed Meal* having subsequent movement by ship in foreign commerce from Casa Grande, Gilbert and Phoenix, AZ, to San Diego, Wilmington and Los Angeles, CA, for 180 days. Supporting Shipper(s): Arizona Feed Division of Wilbur Ellis Co., 5025 E. Washington St., Phoenix, AZ 85003. Send protests to: Thomas E. Klobas, Acting District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 145441 (Sub-20TA), filed February 9, 1979. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: E. Lewis Coffey (same as applicant). (1) *Materials and supplies* used in the manufacture and distribution of liquid plastics and urethane coating from points in the United States on and east of United States Highway No. 85, to St. Louis, MO and Riverside, CA, (2) *Urethane coating and liquid plastics* from Riverside, CA and St. Louis, MO to all points east of United States highway No. 85, (3) *Liquid plastics,* in containers, from Riverside, CA to points in the United States on and east of United States Highway No. 85, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Foam Systems Co., P.O. Box 5347, Riverside, CA 92517. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145441 (Sub-21TA), filed February 9, 1979. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: E. Lewis Coffey (same as applicant). Alcoholic beverages (except in bulk), from San Jose, CA to points in IL, IN, KY, MI, MN, and OH, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Paul Masson, Inc., P.O. Box 21069, San Jose, CA 95151. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145489 (Sub-1TA), filed January 29, 1979. Applicant: ROSE-WAY, INC., 1914 E. Euclid, Des Moines, IA 50306. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a contract carrier over irregular routes transporting *aluminum ingots and packaged aluminum scrap* (1) from the facilities of U.S. Reduction Co. at or near Fontana, CA to points in AL, AR, CO, IA, IL, IN, KY, MI, MS, MO, OH, TN and WI; and (2) from the facilities of U.S. Reduction Co. at or near Russelville, AL to points in CA, OR and WA, under continuing contract(s) with U.S. Reduction Co. for 180 days. Underlying ETA seeks 90 days authority. Supporting Shipper(s): U.S. Reduction Co., 4610 Kennedy Ave., E. Chicago, IN 46312. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145569 (Sub-3TA), filed January 26, 1979. Applicant: M & M EQUIPMENT CO., INC., 24400 E. Alameda Ave., P.O. Box 507, Aurora, CO 80011. Representative: Marvin M. Edelman (address as above). *Contract carrier:* Irregular routes: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* from facilities of United Packing Company at Denver, CO to points in CT, MA, NJ, NY, MD and PA for 180 days. Underlying ETA filed seeking 90 days authority. Supporting Shipper(s):

United Packing Company, 5000 Clarkson St., Denver, CO. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 145579 (Sub-1TA), filed January 29, 1979. Applicant: D. IRVIN TRANSPORT LIMITED, 3020 52nd Street S.E., Calgary, AB, Canada T2G 2A7. Representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. *Lumber, lumber products and wood products* from points in FL, LA, MS, AL, AR, GA, TN, SC, NC, VA, KY, PA, OH, IN IL, MO, CA, WA, OR, MT, TX and ID, for 180 days. Underlying ETA seeks 90 days authority. Supporting Shipper(s): McLean Lumber Sales Ltd. and Delta Pacific Lumber Company, Ltd., 5011 Macleod Trail, Calgary, AB, Canada. Elwood Distributors, 3640-7th Street S.E., Calgary, AB, Canada. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT. 59101.

MC 145874 (Sub-2TA), filed January 26, 1979. Applicant: KENNETH L. PETITT, d.b.a. PETITT TRUCKING, 1659 S. Route 22 N.E., P.O. Box 492, Washington Court House, OH 43160. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Contract carrier-irregular route. Fiberglass reinforced plywood and equipment, materials, and supplies used in the manufacture, sale and distribution of fiberglass reinforced plywood (except commodities in bulk) between the facilities of Cor-Tec, Inc. at or near Washington Court House, Ohio, on the one hand, and, on the other, points in United States except AK, FL, HI, IA, IL, IN, MD, NC, NJ, NY, PA and TN, for 180 days Supporting Shipper(s): Cor-Tec, Inc., 2351 Kenskill Avenue, Washington Court House, OH. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215

MC 145884 (Sub-1TA), filed January 12, 1979. Applicant: INTERLEAGUE CORP., d.b.a. W. T. TRANSPORT CO., 2137 Baylor Drive, P.O. Box 16466, Lubbock, TX 79452. Representative: John C. Sims P.O. Box 10236, Lubbock, TX 79408. (1) *Fabricated steel* for building construction and related parts; and (2) *materials, equipment and supplies* for manufacture of commodities in (1) above, (1) (a) from Lubbock, TX to the states of AZ, CO, and NM; and (2) (a) from AZ, CO, and NM to Lubbock, TX, for 180 days. Underlying ETA granted for 30 days. Supporting Shipper(s): W & W Steel Company, 2221 Erskine Street, P.O. Box 2219, Lubbock, TX 79408. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 145960 (Sub-1TA), filed Januauary 31, 1979. Applicant: JOHN AND RONALD COOPER, d.b.a. CIRCLE "C" FARMS, Route 2, Colby, WI 54421. Representative: Joseph E. Ludden, 324 Exchange Bldg., La-Crosse, WI 54601. *Bulk, natural and processed cheese,* from Wausau, WI to Wellsville, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): West Market Coop, 950 Townline Rd., Wausau, WI 54401. Send protests to: Mrs. Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146008 (Sub-1TA), filed January 15, 1979. Applicant: JOHN E. AND SHAROON KINNE, individuals, Route 1, Box 57 EE, Surface Creek Road, Cedaredge, CO 81413. Representative: John E. Kinne (same address as applicant). *Coal,* in bulk, in dump vehicles, between points in Delta County, CO and that portion of Gunnison County, CO lying West of State Highway 133 and 1 mile East or South of State Highway 133 to railheads in said area, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Grand Mesa Coal Company, P.O. Box 226, Delta, Colorado 81416. Send Protests to: District Supervisor H. C. Ruoff, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 145972 (Sub-1TA), filed January 23, 1979. Applicant: IDA/WEST CORP., 16755 Road 17, Fort Morgan, CO 80701. Representative: James M. VanEvery, 7604 Ingalls, Arvada, CO 80003. *Contract carrier:* irregular routes: *Meats and meat by-products and articles distributed by packinghouses* from the facilities of Peppertree Beef Co., Denver, CO to points in AZ, CA, MT, NV, OR and WA, for 180 days. Underlying ETA seeking 90 days filed. Supporting Shipper(s): Peppertree Beef Co., 5300 Franklin St., Denver, CO 80216. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 146053 (Sub-1TA), filed February 5, 1979. Applicant: SUN WEST CHARTER COMPANY, INC., 1031 Broadway, Fort Wayne, IN 46802. Representative: Robert D. Colestock, 323 West Berry Street, Fort Wayne, IN 46802. *Common carrier:* irregular route: Passengers and their baggage in round trip charter service from Adams, Allen, DeKalb, Huntington, Lagrange, Noble, Wells, Steuben and Whitley Counties in IN, and Fulton, Henry, Lucas, Defiance, Paulding and Williams Counties in OH to points in IN, OH, MI, IL, TN and KY and return for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ashley Travel, Inc., P.O. Box 280, Ashley, IN 46705. Send Protests to: Beverly J. Williams, Transportion Assistant, Interstate Commerce Commission, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 146075 (Sub-1TA), filed January 23, 1979. Applicant: TEXAS INTERMOUNTAIN TRANSPORTATION, INC., 6161 29th Place, Wheatridge, CO 80214. Representative: Delbert D. Ewing (as above). *Paint* from Houston, TX and Denver, CO to points in CO, MT and WY, for 180 days. Underlying ETA filed seeking 90 days. Supporting Shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 146078 (Sub-3TA), filed January 24, 1979. Applicant: CAL-ARK, INC., P.O. Box 394, Malvern, AR 72104. Representative: Thomas W. Bartholomew (same as applicant). *Glass containers, caps and closures thereof,* from the facilities of the National Bottle Company in Coventry, RI; Parkersburg, WV and Joliet, IL, to all points in the United States, except AK and HI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): National Bottle Company, One Bala Cynwyd Plaza; Bala Cynwyd, PA 19004. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 146081 (Sub-1TA), filed January 24, 1979. Applicant: SERVICE EQUIPMENT & TRUCKING, INC., Box 162, Mattoon, Ill 61932. Representative: Robert T. Lawley, Attorney, 300 Reisch Building, Springfield, IL 62701. Contract Carrier, over Irregular routes, to transport Equipment and machinery used for manufacture of concrete products, from Mattoon, IL and Vancouver, WA to points in the United States (except Alaska and Hawaii), for the account of Columbia Machine, Inc, for 180 days, An underlying ETA seeks 90 days authority. Supporting Shipper(s): Columbia Machine, Inc., 107 Grand Blvd., Vancouver, WA 98661. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, Ill 62701.

MC 146115 (Sub-1TA), filed January 26, 1979. Applicant: SPECIAL SERVICES DELIVERY, INC., P.O. Box 243,

Towanda, PA 18848. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Road, NE., Atlanta, GA 30326. *Contract* carrier: irregular routes: *Merchandise, equipment, and supplies,* sold, used, or distributed by a manufacturer of cosmetics, between Newark, DE, on the one hand, and, on the other, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin Delaware, Lackawanna, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming, and York Counties, PA, and all points in NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Avon Products, Inc., 2100 Ogletown Road, Newark, DE 19711. Send protests to: P. J. Kenworthy, DS, ICC, 314 US Post Office Bldg., Scranton, PA 18503.

MC 146159 (Sub-1TA), filed January 29, 1979. Applicant: CENTRAL BOTTLING CO., d.b.a. CENTRAL TRUCKING Box 717, Bismarck, ND 58501. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Contract carrier:* irregular routes: (1) *Non-alcoholic beverages* from South Sioux City, NE, and Minneapolis, MN, and their commercial zones, to Mandan, ND, and (2) *Materials and supplies used in the bottling of non-alcoholic beverages (except in bulk)* from points in CO, KS, NE, SD, MT, IA, WI, IL, and MN, to Mandan, ND, for the account of Central Bottling Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Central Bottling Co., Box 717, Bismarck, ND 58501. Send protests to: Ronald R. Mau, DS, ICC, Room 268 Federal Building, and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146191 (Sub-1TA), filed February 2, 1979. Applicant: JOHN I. RICKETTS d.b.a. RICKETTS TRUCKING, 1001 West Magnolia, Phoenix, AZ 85007. Representative: Andrew V. Baylor, 337 East Elm Street, Phoenix, AZ 85012. *Furniture, all kinds, knocked down and in cartons,* from the plantsite of Little Lake Industries at Pottstown, PA to points in AZ, CA, CO, FL, GA, IA, NM, MT, NE, ND, OR, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Gem Merchandisers Corporation, 6647 E. Camino Santo, Scottsdale, AZ 85254. Send protests to: Thomas E. Klobas, Acting District Supervisor, 2020 Federal Building 230 North First Avenue, Phoenix, AZ 85025.

MC 146194 (Sub-1TA), filed February 1, 1979. Applicant: MTS TRUCKING, INC., 113 Center Street, Jackson, MN 56143. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. *Hides, green or salted,* from the facilities utilized by John Morrell & Co., at Esterville, IA to Kansas City, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): John Morrell & Co., 208 S. LaSalle Street, Chicago, IL 60604. Send protests To: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, 414 Federal Bldg. & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146207 (Sub-1TA), filed January 31, 1979. Applicant: HAROLD E. YOUNG d.b.a. YOUNG'S SERVICE, 6911 "C" Street, Omaha, NE 68106. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. *Contract carrier:* irregular routes: *Trailers, semi-trailers, trailer chassis (except those designed to be drawn by passenger automobiles), and dollies, containers, parts, equipment, accessories, and supplies for the above-specified commodities (except commodities in bulk), in truckaway service,* between points in the United States (except AK and HI), for 180 days. Restricted to a transportation service to be performed under a continuing contract or contracts with Utility Midwest Trailer Sales, Inc., Omaha, NE. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Donald G. Engstrom, Utility Midwest Trailer Sales, Inc., 4225 South 80th Street, Omaha, NE 68127. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146210 (Sub-1TA), filed January 26, 1979. Applicant: MARK IV MESSENGER, INC., Marron Building, 50 North Franklin Turnpike, Hohokus, NJ 07423. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. Contract carrier: irregular routes: *Computer printouts;* Computer terminals and equipment, supplies and materials used or useful in the installation or operation of computer terminals. Between Rochelle Park, NJ and points in MA, RI, CT, points in PA on and east of U.S. Hwy 15 and points in Columbia, Dutchess, Greene, Nassau, Orange, Putnam, Rockland, Suffolk, Ulster and Westchester Counties, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Xerox Computer Service, 365 West Passaic St., Rochelle Park, NJ 07662. Send protests to: Joel Morrows, D/S—ICC, 9 Clinton St., Newark, NJ 07102.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-6912 Filed 3-6-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

[6320-01-M]

1

[M-197; Amdt. 5; Feb. 28, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the March 1, 1979, meeting agenda.

TIME AND DATE: 10 am., March 1, 1979, meeting agenda.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

22a. Dockets 34429, 34441, and 34636; National's Notices of Intent to Terminate Under Section 401(j)(2). (BPDA)

22b. Docket 34567, Piedmont's related exemption request. (BPDA)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: It was impossible to complete these Items any sooner because of weather conditions and illness-related staff absences. Action no later than March 1, 1979, is desirable so that National may have an actual decision prior to the date that it requested the exemption to terminate service early be effective—March 2, 1979. Accordingly, the following Members have voted that agency business requires the addition of items 22a and 22b to the March 1, 1979, agenda and that no earlier announcement of these additions was possible:

Chairman Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-443-79 Filed 3-5-79; 11:19 am]

[6320-01-M]

2

[M-199; Feb. 28, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 7, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: United States Tour Operators Association to make a presentation to the Board on matters affecting the independent tour wholesaler industry.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-444-79 Filed 3-5-79; 11:19 am]

[6320-01-M]

3

[M-200; Mar. 1, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 8, 1979.

PLACE: Room 1027-1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Docket 32090, *Mark Kodish* v. *United Air Lines, Inc.*, The third-part complainant has requested review of BCP's dismissal of third-party complaint alleging discriminatory refusal to hire as a pilot, on grounds of age (Memo 8551, OGC).

3. Amicus participation in *Association of National Advertisers* v. *FTC*, No. 79-117, D.C. Circuit (OGC).

4. Docket 28848, *Improved Authority to Wichita Case*—Tentative Opinion and Order disposing of deferred issues (Memo 8555, OGC).

5. Request for public comments regarding a report that the Board must make to Congress about direct sale of charter air transportation (OGC, BPDA).

6. Rulemaking delegating authority to the Director, Bureau of Pricing and Domestic Aviation, and the Director, Bureau of International Aviation, to act on exemption requests to provide substitute service during strikes in domestic and foreign markets, respectively (Memo 8561, BPDA, BIA).

7. Dockets 31726, 30595, and 24420; Application of Carla A. Hills and American Airlines for disclaimer of jurisdiction or approval of interlocking relationships; Application of Hobart Taylor, Jr. and Eastern Air Lines for approval of interlocking relationships; Application of Forrest N. Shumway and Transamerica Corporation for disclaimer of jurisdiction or renewal of approval of interlocking relationships (Memo 7197-C, BPDA, OGC).

8. Dockets 32338, 32339, and 32340; Application of Neil A. Armstrong, United Air Lines and UAL, Inc. for approval of interlocking relationships under section 409 of the Act (Memo 8563, BPDA, OGC).

9. Dockets 33048, 33235, 33614, 34075, 34572, 34542, and 34574; Applications for Colorado Springs authority (BPDA).

10. Dockets 34491 and 34485; Applications of Aeroamerica and Pacific Southwest Airlines for an exemption under section 416(b), authorizing Oakland service (Memo 8556, BPDA).

11. Docket 33221; Joint Application of Frontier and Louisville for Exemption Authority in the Louisville-Kansas City Market (Memo 8452-A, BPDA).

12. TWA's notice of intent, filed November 6, 1978: (1) To engage in single-carrier service between San Diego and London, England/Paris, France, via Los Angeles, pursuant to the exemption it received in Order 78-10-125, and (2) to carry local and connecting "fill-up" traffic (persons, property and mail) on its flights between San Diego and Los Angeles in addition to traffic moving in foreign air transportation, pursuant to new section 401(d)(6) of the Act (Memo 8260-A, BPDA, OGC).

13. Docket 34479, Ozark's 60-day notice to suspend nonstop and/or single-plane service in 16 markets (Memo 8562, BPDA, OCCR).

14. United States-Finland Aviation Negotiations to resume March 19, 1979, in Helsinki—Adoption of Board position (Memo 8332-A, BIA, BPDA).

STATUS: Open: Items 1-13. Closed: Item 14.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: This Memorandum for Board Action contains staff recommendations for the Board's position for U.S.-Finland negotiations. Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies in the negotiations could seriously compromise the ability of the United States Delegation to achieve an agreement which would be in the best interests of the United States. Accordingly, the staff believes that the meeting of this subject would involve matters to premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(9)(B) and 14 CFR section 310b.5(9)(B) and that any such meeting should therefore be closed.

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David M. Kirstein, Mr. Elias Rodriguez, and Mr. Stephen H. Lachter.
Acting Managing Director.—Mr. Sanford Rederer.
Executive Assistant to the Managing Director.—Mr. John R. Hancock.
Bureau of International Affairs.—Mr. Donald A. Farmer, Jr., Mr. Rosario J. Scibilia, Ms. Sandra W. Gerson, Mr. Francis S. Murphy, Mr. Donald L. Litton, Ms. Mary I Pett, Mr. James S. Horneman, Mr. Ivars V. Mellups, Mr. Richard M. Loughlin, Mr. Willard L. Demory, and Mr. Richard Stair.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary J. Edles, Mr. Peter B. Schwarzkopf, Mr. Michael Schopf, and Ms. Carol Light.
Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. James L. Deegan, Mr. Herbert P. Aswall, and Mr. Douglas V. Lesiter.
Office of Economic Analysis.—Mr. Robert Frank and Mr. Richard Klem.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Louise Patrick, and Ms. Linda Senese.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to public observation.

PHIL BAKES, Jr.,
General Counsel.

[S-445-79 Filed 3-5-79; 11:19 am]

Federal Register

WEDNESDAY, MARCH 7, 1979

PART II

DEPARTMENT OF COMMERCE

■

SEMI-ANNUAL AGENDA OF REGULATIONS

[3510-19-M]

DEPARTMENT OF COMMERCE

[13 CFR Ch. V]

[15 CFR Chs. I-IV, VIII, IX, XII]

[32A CFR Ch. VI]

[37 CFR Ch. I]

[45 CFR Ch. XX]

[46 CFR Ch. II]

[50 CFR Chs. II, VI]

SEMI-ANNUAL AGENDA OF REGULATIONS

AGENCY: U.S. Department of Commerce.

ACTION: Semi-Annual Agenda of Regulations.

SUMMARY: In compliance with Executive Order 12044, the Department of Commerce (DOC) will be publishing twice a year an agenda of significant regulatory actions under consideration by its various departmental units. Included in the agenda is a list of existing rules and regulations which have been selected for review. The purpose of the regulatory agenda is to provide information to the public on the Department's activities in the area of regulation and to facilitate comments and views by interested public parties on such matters.

FOR FURTHER INFORMATION CONTACT:

For additional information regarding any particular regulatory action contained in the agenda, contact the individual identified as the contact person in the agenda. Comments or inquiries of a general nature about the agenda should be directed to the following individual:

Mr. Robert T. Miki, Director, Office of Regulatory Economics and Policy, Room 7614, U.S. Department of Commerce, Main Commerce Building, Washington, D.C. 20230, Telephone Number: (202) 377-2482.

SUPPLEMENTARY INFORMATION: On March 23, 1978, President Carter signed Executive Order 12044, "Improving Government regulations". The Executive Order directs all executive branch departments and agencies to "adopt procedures to improve existing and future regulations." The term "regulation" is defined in the Order to encompass rules and regulations issued by agencies, including those which establish conditions for financial assistance. To comply with the President's Order, the Department, on January 9, 1979, published in the FEDERAL REGISTER (44 FR 2082) Department Administrative Order (DAO) 218-7, entitled "Issuing Departmental Regulations." The administrative order, including appendices, establishes the overall procedures to be followed by the various departmental units in developing and promulgating regulations.

One requirement established by the Executive Order is that all executive agencies publish semi-annually an agenda of significant regulations which are under consideration. The Order also requires that the agenda include a list of regulations which the agency intends to review. On October 2, 1978, the Office of the Federal Register published the dates that the Department's semi-annual agenda would appear in the FEDERAL REGISTER for the coming year; the dates specified were February 15, 1979 and August 15, 1979 (43 FR xiii). Because of unexpected delays, the Department was unable to meet the February 15 date of publication for its first agenda. Consequently, this is the Department's first regulatory agenda.

The Executive Order directs government agencies to provide in the agenda the following minimum information on significant regulations under consideration:

- A description of the proposed regulation under consideration.
- The need for the regulation.
- The legal basis for the action.
- The name and telephone number of an agency official knowledgeable about the regulation.
- Whether a regulatory analysis will be required.
- A list of regulations set for review.
- The status of regulations previously listed on the agenda.

In addition to these minimum requirements, the Department's agenda provides a broad outline of the respective agency's plan for obtaining public comments as well as the *major* issues to be considered by the agency before formulating the final regulation.

COVERAGE

The Department has attempted to list all significant regulations under consideration (Schedule A). Regulations under consideration include not only new regulations being proposed, but also major changes or additions to existing rules and regulations. Executive Order 12044 provides broad guidelines for determining the criteria which should be employed in designating regulations as being "significant." However, it further directs each agency to develop specific criteria for identifying which regulations should be treated as significant. To meet this requirement, the Department developed such criteria in DAO 218-7. The administrative order sets forth the basic considerations that each agency head should consider in determining whether a regulation is significant. More specific criteria for determining whether a regulation should be treated as significant is provided by each DOC operating unit in its respective agencys' current process for developing regulations.

The agenda also provides a list (Schedule B) of those regulations that have been schedule for review during the forthcoming year. This list is not limited to significant regulations but includes all regulations that will be reviewed by the Department's units.

EXPLANATION OF INFORMATION CONTAINED IN THE AGENDA

There are thirteen operating units within the Department in addition to departmental offices. Some of the operating units, such as the Maritime Administration, have major regulatory responsibilities whereas other operating units, such as the Office of Minority Business Enterprise, currently have no regulation in effect. The departmental offices, such as the Office of Investigations and Security and the Office of Administrative Services, have few regulations. For the purpose of the agenda, the names and abbreviations of the DOC units reporting regulations are as follows:

- Admin—Assistant Secretary for Administration
- EDA—Economic Development Administration
- ITA—Industry and Trade Administration
- MARAD—Maritime Administration
- USFA—United States Fire Administration
- NOAA—National Oceanic and Atmospheric Administration [includes the Office of Coastal Zone Management (CZM) and the National Marine Fisheries Service (NMFS)]
- NTIA—National Telecommunications & Information Administration
- OCE—Office of the Chief Economist [includes the Bureau of the Census (Census), Bureau of Economic Analysis (BEA), and Office of Federal Statistical Policy and Standards (OFSPS)]
- OMBE—Office of Minority Business Enterprise
- ORD—Office of Regional Development
- S&T—Assistant Secretary for Science and Technology [includes National Bureau of Standards (NBS), National Technical Information Service (NTIS) and Patent and Trademark Office (PTO)]
- USTS—United States Travel Service

Schedule A provides a list of significant regulatory actions which are under consideration by various units of the Department. The name and telephone number of a person familiar with the regulation is provided. Additional information on each significant pending or proposed regulation listed

in Schedule A is provided in the accompanying appendix which contains the complete agenda entry for each significant regulation. Each agenda entry provides the information required by Executive Order 12044 and DAO 218-7.

Schedule B provides a list of existing regulations which have to date been scheduled for review by DOC units over the next twelve months.

At the time the Department's agenda was compiled, a number of regulations under consideration by NOAA's National Marine Fisheries Service (NMFS) were still being reviewed to determine their potential impact. Rather than await NMFS's completion of this task, it was decided to publish the agenda as soon as possible with the inclusion of those NOAA regulations already classified as significant or under review. NOAA will add an addendum to the agenda on or about March 15 to reflect NMFS's addition to this agenda.

In the next DOC agenda scheduled for publication on August 15, 1979, the Department will provide an updated status report on the regulations listed in this agenda.

We hope that the agenda will enable public and private groups interested in the agency's regulatory activities to keep abreast of important regulatory actions anticipated by the Department during the forthcoming year.

JUANITA KREPS,
Secretary of Commerce.

SCHEDULE A.—*Significant Regulations Under Considerations by the Department of Commerce*

Department unit	Title	Contact person
ADMIN	Implementation of Section 504, of Rehabilitation Act of 1973	Mr. Art Cizek, Special Assistant, for Civil Rights (202) 377-4993.
EDA	Designation of Areas (13 CFR Part 302).	Mr. James Marten, Asst. Chief Counsel (202) 377-5441.
EDA	Special Economic Development Adjustment Assistnce Grants (13 CFR Part 308).	Mr. James Marten, Asst. Chief Counsel (202) 377-5441.
EDA	Supplementary Grants, Public Works and Development Facilities Program (13 CFR 305.5).	Mr. James Marten, Asst. Chief Counsel (202) 377-5441.
MARAD	Cargo Preference—U.S. Flag Vessels—Determination of Fair and Reasonable Rates (46 CFR 381.8, 381.9, and Part 382).	Mr. Frederick R. Larson, Dir., Office of Ship Operating Costs (202) 377-5532.
MARAD	Conservative Dividend Policy (46 CFR Part 283)	Mr. Murray Bloom, Subsidy Examiner (202) 377-4631.
MARAD	Construction-Differential Subsidy, (CDS) Contracts (46 CFR Part 251)	Mr. Melvin S. Eck, Attorney Advisor (202) 377-2771.
MARAD	Construction-Differential Subsidy (CDS) Requirements for Aid (46 CFR Part 251).	Mr. James E. Saari, Attorney Advisor (202) 377-2771.
MARAD	Merchant Marine Training (46 CFR Part 310)	Ms. Katherine A. Shetler, Manpower Mgmt. Officer (202) 377-5653.
MARAD	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services Principal Foreign-Flag Competition; Foreign Wage Cost (46 CFR 252.22; 252.31).	Mr. Frederick R. Larson, Dir., Office of Ship Operating Costs (202) 377-5532.
MARAD	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Service-Essential Service Requirement (46 CFR 252.21).	Mr. Kenneth Willis, Subsidy Examiner (202) 377-4660.
NOAA/OCZM	Evaluation of State Coastal Management Programs	Ms. Carol Sondheimer, Chief, Policy and Program Evaluation (202) 634-4245.
NOAA/OCZM	General Guidelines for Implementing the Marine Sanctuaries Program	Ms. JoAnn Chandler, Acting Director Sanctuary Program Office (202) 634-1672.
NOAA/OCZM	Regulations for Proposed Flower Garden Banks Marine Sanctuary	Ms. JoAnn Chandler, Acting Director, Sancturay Program Office (202) 634-1672.
NOAA/OCZM	Regulations for the Key Largo Coral Reef Marine Sanctuary	Ms. JoAnn Chandler, Acting Director, Sanctuary Program Office (202) 634-1672.
NTIA	Public Telecommunication Facilities Program	Mr. Kenneth Salomon, Asst. Chief Counsel for Public Telecomm. (202) 395-5616.
OCE/CENSUS	Certain Population and Per Capita Income Estimates, Challenge Procedures [15 CFR (new Part 90)].	Mr. Daniel B. Levine, Assoc. Dir. for Demographic Fields (301) 763-5167.
OCE/OFSPS	Standard Metropolitan Statistical Classification—Revised Criteria	Ms. Suzann K. Evinger, Research Analyst (202) 673-7965.
O/S	Departmental Administrative Order on Consultation with State and Local Governments (DAO 201-9, revised).	Mr. Richard W. Roper, Spec. Asst. for Intergovernmental Relations (202) 377-5017.
S & T/PTO	Advisory Opinions on the Validity of Patents [37 CFR (new Section 1.294)].	Mr. Herbert C. Wamsley, Exec. Asst. to the Commissioner (703) 557-3071.
S & T/PTO	Compulsory Counterclaim in Trademark Opposition and Cancellation Proceedings (37 CFR 2.106 and 2.114).	Mr. David J. Kera, Member, Trademark Trail & Appeal Board (703) 557-3551.
S & T/PTO	Deposit of Computer Program Listings (37 CFR 1.96)	Mr. Louis O. Maassel, Staff Member (703) 557-3070.
S & T/PTO	Examination of Reissue Applications (37 CFR 1.176)	Mr. R. F. Burnett, Spec. Asst. to Asst. Commissioner for Patents (703) 557-3054.
S & T/OEA	Implementing Procedures for Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions".	Mr. Fred Stein, Asst. Dir. for Environmental Impact Assessment (202) 377-2186.
S & T/PTO	Joinder of Inventions in One Application	Mr. Louis O. Maassel, Staff Member (703) 557-3070.
S & T/OEA	National Environmental Policy Act (NEPA) Implementation of Procedural Provisions; Final Regulations (40 CFR 1500 *et seq.*).	Mr. Fred Stein, Asst. Dir. for Environmental Impact Assessment (202) 377-2186.
S & T/PTO	Professional Conduct of and Advertising by Persons Practicing before the Office (37 CFR 1.344 and 1.345).	Mr. Harry I. Moatz, Asst. Solicitor (703) 557-2238.
S & T/PTO	Prosecution of Patent Applications After Final Rejection	Mr. Louis O. Maassel, Staff Member (703) 557-3070.
S & T/PTO	Recording Interests in Patents, Trademarks, Patent Applications, and Trademark Applications (37 CFR 1.331-334 and 2.185-187).	Mr. Herbert C. Wamsley, Exec. Asst. to the Commissioner (703) 557-3071.
S & T/PTO	Requirements for an Oath or Declaration in Patent Applications (37 CFR 1.65 and 3.18).	Mr. Louis O. Maassel, Staff Member (703) 557-3070.

SCHEDULE B.—*Regulations Selected For Review by DOC Department Units; Calendar Year 1979*

Title of Regulation	Responsible operating unit	Legal Authority:	Proposed date for start of review	Target date for completion of review	Contact person and address
Defense Materials System Order 1—Iron and Steel (32A CFR Part 631).	ITA	50 U.S.C. App. 2061 *et seq* and E.O. 10480.	Apr. 1979	Aug. 1979	Mr. John A. Richards, Acting Director, Office of Industrial Mobilization (202) 377-4506.
Defense Materials System Order 2—Nickel Alloys (32A CFR Part 632).	ITA	50 U.S.C. App. 2061 *et seq* and E.O. 10480.	Oct. 1979	Feb. 1980	Mr. John A. Richards, Acting Director, Office of Industrial Mobilization (202) 377-4506.
Defense Materials System Order 3—Aluminum (32A CFR Part 633).	ITA	50 U.S.C. App. 2061 *et seq* and E.O. 10480.	July 1979	Dec. 1979	Mr. John A. Richards, Acting Director, Office of Industrial Mobilization (202) 377-4506.
Defense Materials System Order 4—Copper and Copper-Base Alloys (32A CFR Part 634).	ITA	50 U.S.C. App. 2061 *et seq* and E.O. 10480.	Apr. 1979	Aug. 1979	Mr. John A. Richards, Acting Director, Office of Industrial Mobilization (202) 377-4506.
DPS Regulation 2—Operations of the Priorities and Allocations System Between Canada & the U.S. (32A CFR Part 652).	ITA	50 U.S.C. App. 2061 *et seq* and E.O. 10480.	Mar. 1979	Sept. 1979	Mr. John A. Richards, Acting Director, Office of Industrial Mobilization (202) 377-4506.
DPS Regulation 3—Compliance and Enforcement Procedures (32A CFR Part 653).	ITA	50 U.S.C. App. 2061 *et seq* and E.O. 10480.	Mar. 1979	Sept. 1979	Mr. John A. Richards, Acting Director, Office of Industrial Mobilization (202) 377-4506.
*Export Administration Regulations (15 CFR Parts 368-399).	ITA	50 U.S.C. App. 2401 *et seq*	May 1979**	May 1981	Mr. Rauer H. Meyer, Director, Office of Export Administration (202) 377-4293.
General Regulations Governing Foreign-Trade Zones in the U.S., with Rules of Procedure (15 CFR Part 400).	ITA	19 U.S.C. 81a-81u	Feb. 1979	Oct. 1980	Mr. John J. Da Ponte, Executive Secretary, (202) 377-2862.
Joint Export Associations (15 CFR Part 366).	ITA	15 U.S.C. 1512	Summer 1979	Fall 1979	Mr. Jonathan C. Menes, Director, Office of Market Planning (202) 377-5291.
*Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Service (46 CFR 252).	MARAD	46 U.S.C. 1114(b)	Spring 1979	Winter 1979	Mr. Frederick R. Larson, Director, Office of Ship Operating Costs (202) 377-5532.
*Operating-Differential Subsidy Rates for Liner Vessels (New Part).	MARAD	46 U.S.C. 1114(b)	Summer 1979	Winter 1979	Mr. Frederick R. Larson, Director, Office of Ship Operating Costs, (202) 377-5532.
Administration of Pribilof Islands (Marine Mammals) (50 CFR Part 215, Sub. C).	NOAA/NFMS	16 U.S.C. 1151-1187	Unknown	Unknown	Mr. Walter Kirkness, Director, Pribilof Islands Program, (206) 442-7776.
Estuarine Sanctuary Regulations (15 CFR 921).	NOAA/NFMS	16 U.S.C. 1461	Apr. 1979	May 1979	Mr. James W. MacFarland, Estuarine Sanctuaries Coordinator, (202) 634-4235.
Field Organization of the Nat'l Marine Fisheries Service (50 CFR Part 201).	NOAA/NFMS	5 U.S.C. 301	Mar. 1979	Fall 1979	Mr. Winfred H. Meinbom, Executive Director, NMFS, (202) 634-7292.
Offshore Shrimp Fisheries Act (50 CFR Part 245).	NOAA/NFMS	16 U.S.C. 1100(b) & 1100(b) Note.	June 1979	Unknown	Mr. Keith Brouillard, Staff Assistant, (202) 634-7267.
Uniform Standards for Organ. Practices and Procedures-Regional Fishery Management Council (50 CFR Part 601, Sub. C).	NOAA/NFMS	16 U.S.C. 1852, 1854 & 1855	Mar. 1979	Fall 1979	Mr. Winfred H. Meibohm, Executive Director, NMFS, (202) 634-7292.
U.S. Standards for Grades of Frozen Fried Scallops (50 CFR Part 266, Sub. B).	NOAA/NFMS	7 U.S.C. 1621-1630	Under review	Unknown	Mr. James R. Brooker, Staff Specialist, (202) 634-7458.
U.S. Standards for Grades of Raw Headless Shrimp (50 CFR Part 265, Sub. A).	NOAA/NFMS	7 U.S.C. 1621-1630	Under review	Fall 1979	Mr. James R. Brooker, Staff Specialist, (202) 634-7458.
Annual Reporting of Revenues for carrying imports to, and expenditures in, the U.S. of Shipping and Air Transport Operators of Foreign Nationality (15 CFR Part 802).	OCE/BEA	22 U.S.C. 286(f) and E.O. 10033.	Mar. 1, 1979	Apr. 1, 1979	Mr. Lester G. Welch, Management Analyst, (202) 523-0505.
Cutoff Dates for Recognition of Boundary Changes for the 1980 Census (15 CFR Part 70).	OCE/CENSUS	13 U.S.C. 4	July 2, 1979	Dec. 21, 1979	Mr. Daniel B. Levine, Associate Director for Demographic Fields, (301) 763-5167.
Direct Investment Survey (15 CFR Part 806).	OCE/BEA	22 U.S.C. 3101 and E.O. 11961.	Mar. 1, 1979	Apr. 1, 1979	Mr. Lester G. Welch, Management Analyst, (202) 523-0505.
Foreign Direct Investment in the United States Survey Regulations (15 CFR Part 804).	OCE/BEA	Pub. L. 93-479	Mar. 1, 1979	Apr. 1, 1979	Mr. Lester G. Welch, Management Analyst, (202) 523-0505.

SCHEDULE B.—*Regulations Selected For Review by DOC Department Units; Calendar Year 1979*—Continued

Title of Regulation	Responsible operating unit	Legal Authority:	Proposed date for start of review	Target date for completion of review	Contact person and address
Foreign Trade Statute (15 CFR Part 30).	OCE/CENSUS	13 U.S.C. 301-307	Feb. 5, 1979	June 29, 1979	Ms. Shirley Kallek, Associate Director, (301) 763-5274.
Furnishing Personal Census Data from Census of Population Schedules (15 CFR Part 805).	OCE/CENSUS	13 U.S.C. 8	July 2, 1979	Dec. 21, 1979	Mr. Robert L. Hagen, Acting Associate Director for Administration, (301) 763-5192.
Preliminary Survey of International Leasing Transactions in 1975 (15 CFR Part 805).	OCE/BEA	22 U.S.C. 286(f) and E.O. 10033.	Mar. 1, 1979	Apr. 1, 1979	Mr. Lester G. Welch, Management Analyst, (202) 523-0505.
*Public Information (15 CFR Part 807).	OCE/BEA	5 U.S.C. 301, 522 & 553	Mar. 1, 1979	Apr. 1, 1979	Mr. Lester G. Welch, Management Analyst, (202) 523-0505.
*Public Information (15 CFR Part 60)	OCE/CENSUS	5 U.S.C. 552	July 2, 1979	Dec. 21, 1979	Mr. Robert L. Hagen, Acting Associate Director for Administration, (301) 763-5192.
Regional Action Planning Commissions (13 CFR, Chapter V).	ORD	42 U.S.C. 3181 *et seq*, 42 U.S.C. 3211(12).	Mar. 1, 1979	Sept. 1, 1979	Mr. Keith Weaver, Attorney Advisor, (202) 377-3139.
Reports on Int'l Transactions in Royalties and Fees with Unaffiliated Foreign Residents (15 CFR Part 803).	OCE/BEA	22 U.S.C. 286(f)	Mar. 1, 1979	Apr. 1, 1979	Mr. Lester G. Welch, Management Analyst, (202) 523-0505.
Seal (15 CFR Part 20)	OCE/CENSUS	13 U.S.C. 3	Feb. 5, 1979	June 29, 1979	Mr. Robert L. Hagen, Acting Associate Director for Administration, (301) 763-5192.
Special Services and Studies by the Bureau nof the Census (15 CFR 50).	OCE/CENSUS	13 U.S.C. 8	July 2, 1979	Dec. 21, 1979	Mr. Daniel B. Levine, Associate Director for Demographic Fields, (301) 763-5167.
Training of Foreign Participants in Census Procedures and General Statistics (15 CFR Part 40).	OCE/CENSUS	5 U.S.C. 301, 22 U.S.C. 1456 and 31 U.S.C. 686.	Feb. 5, 1979	June 29, 1979	Mr. Daniel B. Levine, Associate for Demographic Fields, (301) 763-5167.
*Appeals to the Trademark Trail and Appeal Board (37 CFR 2.141, 2.142 and 2.64).	S&T/PTO	15 U.S.C. 1123	Under review	Oct. 1979	Mr. Saul Lefkowitz, Chairman, Trademark Trial and Appeal Board, (703) 557-3551.
*Barrels and other Containers for Lime (15 CFR Part 240).	S&T/NBS	15 U.S.C. 240	Feb. 1, 1979	June 1, 1979	Mr. Allen J. Farrar, NBS Legal Adviser, (301) 921-2425.
*Barrels for Fruits, Vegetables and other dry Commodities and for Cranberries (15 CFR Part 241).	S&T/NBS	15 U.S.C. 236	Feb. 1, 1979	June 1, 1979	Mr. Allen J. Farrar, NBS Legal Adviser, (301) 921-2425.
Inter Parties Proceeding and Procedures before the Trademark Trial and Appeal Board (37 CFR 2.91-2.136 & 2.27 (d)).	S&T/PTO	15 U.S.C. 1123	Under review	Oct. 1979	Mr. David J. Kera, Member, Trademark Trial and Appeal Board, (703) 557-3551.
*Petitions to the Commissioner in Trademark Cases (37 CFR 2.146-2.148, 2.64, 2.65 and 2.184).	S&T/PTO	15 U.S.C. 1123	Under review	Oct. 1979	Mr. Saul Lefkowitz, Chairman, Trademark Trial and Appeal Board, (703) 557-3551.
*Request for Identifiable Records (37 CFR 1.15).	S&T/PTO	35 U.S.C. 6	Apr. 1979	Aug. 1979	Mr. John W. Dewhirst, Associate Solicitor, (703) 557-3542.
*Secrecy of Certain Inventions & Licenses to File Applications in Foreign Countries (37 CFR Part 5).	S&T/PTO	35 U.S.C. 6, 181-187 & 188	Feb. 1979	Aug. 1979	Mr. C.D. Quarforth, Director, Special Laws Admin. Group, (703) 557-3877.
Public Safety Awards to Public Safety Officers (45 CFR Part 2000).	USFA	15 U.S.C. 2201 *et seq*, 278(f) 42 U.S.C. 290(a).	Feb. 15, 1979	Mar. 15, 1979	Mr. David Snyder, Acting Chief Counsel, (202) 632-9685.
Reimbursement for Costs of Fire-Fighting on Federal Property (45 CFR Part 2010).	USFA	15 U.S.C. 2201 *et seq*, 278(f) 42 U.S.C. 290(a).	Feb. 15, 1979	Mar. 15, 1979	Mr. David Snyder, Acting Chief Counsel (202) 632-9685.
Procedural Regulation Governing Applications of States, Cities and Non-Profit Organ. for matching Grants to Promote Int'l Tourism to U.S. (15 CFR 1200.	USTS	22U.S.C. 2121 *et seq*	Summer 1979	Fall 1979	Mr. Dave Edgell, Director, Office of Policy and Research (202) 377/4003.
Procedural Regulation Setting Forth the Criteria for Applications for Federal Recognition of Int'l Expositions (15 CFR 1202).	USTS	22U.S.C. 2801 *et seq*	Fall 1979	Dec. 1979	Mr. Dave Edgell Director, Office of Policy and Research (202) 377-4003.

*Regulation deemed significant by DOC operating unit.
**Regulatory analysis to be required.

APPENDIX

COMPLETE ENTRIES OF REGULATIONS IN DOC'S SEMI-ANNUAL AGENDA OF SIGNIFICANT REGULATIONS

DOC Operating Unit: Assistant Secretary for Administration, Office of Civil Rights

Title of Regulation: Section 504 of Rehabilitation Act of 1973

(a) Description and Need for Regulation: To prohibit discrimination against the handicapped in programs operated by recipients of federal financial assistance authorized by the Department of Commerce. The Department of Commerce is required to promulgate regulations which are based on regulations issued by the Department of H.E.W. the agency responsible for government-wide coordination of the enforcement effort to enable handicapped persons to participate more fully in those programs which are assisted in a variety of ways by the federal government.

(b) Legal Authority: § 504 Pub. L. 93-112, 29 U.S.C. § 794 as amended by § 111(a), Pub. L. 93-516, 29 U.S.C. § 706.

(c) Importance of Regulation: (i) Is the regulation significant? (yes ☐, no ☐, unknown X) (ii) Is the regulation major? (yes ☐, no ☐, unknown X)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed from (Published in Fed. Reg. Nov. 17, 1978 (43 Fed. Reg. 53765).)

(ii) In final form (June 1979)

(e) Tentative Plan for Obtaining Public Comments: Public comments received to January 31, 1979.

(f) Major Issues Surrounding Proposed Regulatory Action: Significance of the extent of and type of federal financial assistance for determining compliance; definition of an ultimate beneficiary; extent of self analysis; extent of structural changes to be required.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no ☐, unknown X)

(i) Anticipated date of draft analysis ( )

(ii) Anticipated date of final analysis ( )

(2) Other Documents Available: All public comments.

(h) Agency Contact: Art Cizek, Special Assistant for Civil Rights, Office of Civil Rights, Room 4069, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-4993.

DOC Operating Unit: Economic Development Administration (EDA)

Title of Regulation: Designation of Areas.

(a) Description and Need for Regulation: EDA will revise its regulations regarding the Designation of Areas under which the Agency identifies areas which are eligible to receive financial assistance under the Public Works and Economic Development Act of 1965, as amended (Act). These regulations, currently published as Part 302 of Volume 13 of the Code of Federal Regulations, establish the criteria which an area must meet to demonstrate that it is experiencing substantial and persistent unemployment and underemployment in order to be designated as a redevelopment area. Once designated, an area then becomes eligible to submit applications for the various types of financial assisitance available under the Act. EDA will revise these regulations to implement several changes to the statutory standards for designation made by an amendment to the Act and to clarify several of the requirements. This revision will then bring these regulations into conformance with the Act and will inform the public of the current requirements for designation as a redevelopment area.

(b) Legal Authority: The Public Works and Ecomomic Development Act of 1965, as amended (42 U.S.C. 3161 and 3211).

(c) Importance of the Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

The revision of these regulations does not meet most of the criteria for significant regulations insofar as the changes do not involve a major policy decision, are not anticipated to be a matter of controversy, will not have a major impact on individuals, businesses or State and local governments, and do not involve a substantial exercise of Agency discretion since the criteria for designation are established by the Act. In the spirit of Executive Order 12044, however, EDA will develop these regulations in accord with the requirements imposed on significant regulations because they set forth the criteria for designation of areas and will affect potential applicants for assistance generally.

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

EDA has not yet determined whether these regulations will require preparation of a regulatory analysis, but at this time EDA does not anticipate that the economic effects of this revision will be major.

(d) Timetable: Anticipated date the Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (February, 1979)

(ii) In final form (May, 1979)

(e) Tentative Plan for Obtaining Public Comment: In addition to publishing the regulations in proposed form, EDA will send a copy of the proposed regulations directly to the major State and local government associations at the same time it submits the proposal to the FEDERAL REGISTER for publication.

(f) Major Issues Surrounding the Proposed Regulatory Action: There are no major issues involved in the revision of Part 302 because the primary changes which EDA will be making are required by the amendment of the Act. Of the non-statutory changes which will be contemplated, EDA will propose modifying the requirements for designation of a public works impact program (PWIP) area so that the entire area seeking designation as a PWIP area meets the requirements of § 302.7. Currently, a smaller area within the proposed PWIP area may be the basis for the designation if the unemployed and underemployed within the smaller area will benefit from the proposed designation.

(g) Documents Available to Interested Parties:

(i) Regulatory Analysis Required? (yes ☐, no ☐, unknown X)

(ii) Other Documents Available: None.

(h) Agency Contact: James F. Marten, Assistant Chief Counsel, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, D.C., 20230, (202) 377-5441.

DOC Operating Unit: Economic Development Administration (EDA).

Title of Regulation: Special Economic Development and Adjustment Assistance Grants.

(a) Description and Need for Regulation: EDA will revise its regulations regarding Special Economic Development and Adjustment Assistance Grants, currently published in Volume 13 of the Code of Federal Regulations, Part 308. Under the regulations, EDA provides financial assistance to States and local areas experiencing acute economic development and adjustment problems as a result of economic dislocation and other severe changes in local economic conditions. EDA is considering revising these regulations to separate administration of this grant program into two parts: (1) a "long-term economic deterioration" program, and (2) a "sudden and severe economic dislocation program". The primary benefit of the revision of these regulations will be the facilitation of the management of the program by establishing separate criteria for the extension of assistance for each of the two basic types of economic adjustment problems experienced by prospective applicants. The current regulations provide a single framework for extending all assistance under the program and do not sufficiently delineate the differences between "long-term economic deterioration" and

"sudden and severe economic dislocation".

(b) Legal Authority: The Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3211 and 3241 *et seq.*)

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

Because the revision of these regulations will affect State and local government applicants generally, EDA will prepare them in accord with the procedural requirements imposed on "significant regulations" by Executive Order 12044.

(ii) Is the regulation major? (yes ☐, no ☐, unknown X)

(d) Timetable: Anticipated dates the Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (March, 1979)

(ii) In final form (May, 1979)

(e) Tentative Plan for Obtaining Public Comments: EDA published guidelines concerning the proposed Long-term Economic Deterioration Program and the proposed Sudden and Severe Economic Dislocation Program as advance notices of proposed rulemaking on November 9, 1978 (43 FR 52432) and December 11, 1978 (43 FR 57918). In addition, EDA will send a copy of the proposed regulations directly to various public interest groups at the same time it submits the proposed regulations to the FEDERAL REGISTER for publication.

(f) Major Issues Surrounding Proposed Regulatory Action. The major issues involved in developing these regulations concern the establishment of criteria to allow the Agency to judge among deserving applicants. For instance, should applicants experiencing long-term economic deterioration be required to demonstrate at least 12 percent unemployment? Should they be required to demonstrate per capita income no greater than 75 percent of the national average? Should their chronic distress be demonstrated in terms of five-year periods during which the rate of unemployment was greater than the national average, during which the growth of unemployment, growth in population, and change in per capita income was less than the national average? Should applicants experiencing sudden and severe economic dislocation be required to demonstrate that they have experienced the dislocation within the previous year or are threatened to experience the dislocation within two years? Should only those applicants outside Standard Metropolitan Statistical Areas be considered who can demonstrate that the dislocation will affect 2 percent of the population or 500 direct jobs and that their rate of unemployment exceeds the national average? Similar questions can be raised concerning all of the criteria listed in the November 9 and December 11 publications referred to in paragraph (e) above.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no ☐, unknown X)

(2) Other Documents Available: None

(h) Agency Contact: James F. Marten, Assistant Chief Counsel, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-5441.

DOC Operating Unit: Economic Development Administration (EDA).

Title of Regulation: Supplementary Grants, Public Works and Development Facilities Program.

(a) Description and Need for Regulation: EDA will revise part of its regulation in Volume 13 of the Code of Federal Regulations, § 305.5, which establishes maximum grant rates for assistance extended under the Public Works and Development Facilities Program. This program provides assistance to applicants, including States, political subdivisions of States, Indian tribes and certain private and public nonprofit organizations, which are experiencing various forms of economic distress. The regulation establishes criteria by which the Agency determines the amount of Federal assistance according to the relative distress of the areas in which the recipients are located. EDA is considering amending one subsection of this regulation to separate the determination of an area's maximum grant rate from the annual review which the Agency conducts to determine the eligibility of the area to receive assistnce under the statute. EDA is considering amending a second subsection of this regulation to permit certain cities which are located in areas designated under the Act as redevelopment areas and which can qualify for assistance on their own merits to receive maximum grant rates on the basis of municipal statistics. EDA is considering making the first of these changes to facilitate the administration of the program. The second change will allow certain cities to receive grant rates commensurate with their economic distress.

(b) Legal Authority: The Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3211).

(c) Importance of the Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

Since the proposed revision of this regulation would allow certain cities to receive grant rates on the basis of municipal statistics, instead of on the basis of statistics relating to the redevelopment area as a whole, this change may indirectly affect many different types of applicants. Accordingly, the Agency will treat the regulation as significant, even though the proposal does not represent a major policy decision and will not be a matter of controversy.

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates the Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (February, 1979)

(ii) In final form (May, 1979)

(e) Tentative Plan for Obtaining Public Comments: EDA will send copies of the proposed regulations directly to various public interest groups, including those representing State and local governments.

(f) Major Issues Surrounding the Proposed Regulatory Action: None

(g) Documents Available To Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: James F. Marten, Assistant Chief Counsel, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, D.C., 20230, (202) 377-5441.

DOC Operating Unit: Marad

Title of Regulation: Cargo Preference—U.S. flag vessels—determination of fair and reasonable rates (46 CFR 381.8, 381.9 and Part 382)

(a) Description and Need for Regulations: 46 USC § 1241 states that least 50% of the materials procured by the United States Government which are shipped by water shall be transported on privately-owned United States flag commercial vessels so long as they are available at "fair and reasonable rates." The Maritime Administration (Marad) is responsible for implementing this program.

The proposed regulations will set forth the standards and procedures used in determining "fair and reasonable rates." These standards and procedures have not been set forth by regulation in the past. It is expected that codification and publication of these standards and procedures will provide merchant ship operators with the information needed to determine the rates they could expect for section 1241 cargo. It will also allow othe government agencies to determine more easily under what conditions they are obliged to ship available cargoes on American vessels.

(b) Legal Authority: Sec. 204, Merchant Marine Act, 1936, as amended (46 USC 1114(b)).

(c) Importance of Regulations:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no ☐, unknown X)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (Spring 1979)

(ii) In final form (Summer 1979)

(e) Tentative Plan for Obtaining Public Comments: Under publication in proposed form in FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in drafting these regulations is to determine whether a proper balance is struck between the interests of private carriers and government agencies. A "fair and reasonable return" should allow efficient carriers to make a competitive profit at the lowest rates consistent with the development of a healthy merchant marine industry. Marad must also determine whether the economic assumptions about cost and financing on which the calculations of fair and reasonable rates are based are consistent with industry experience.

(g) Documents Avaliable to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no ☐, unknown X)

(2) Other Documents Available: None

(h) Agency Contact: Frederick R. Larson, Maritime Administration, Director, Office of Ship Operating Costs, Washington, D.C. 20230, (202) 377-5532.

DOC Operating Unit: Marad

Title of Regulation: Conservative Dividend Policy (46 CFR Part 283)

(a) Description and Need for Regulation: Conservative Dividend Policy: The Maritime Administration (Marad) provides operating-differential subsidies (ODS) for the operators of American-flag vessels in the foreign trades to compensate them for the added cost of operating under American registry. ODS recipients are contractually bound to follow a conservative policy on paying dividends to ensure that they have sufficient capital to meet their obligations and finance new vessels at the end of the useful life of subsidized ships. Since almost every ODS recipient also participates in a government mortage insurance program (Title XI), the dividend policy has an effect on that program as well. Vessel operators have argued that the current dividend policy, especially as it affects "working capital" requirements, is more restrictive than what is necessary to protect the Government's interests. The draft regulations would therefore modify these restrictions.

(b) Legal Authority: Sec. 204(b) Merchant Marine Act, 1936, as amended (46 USC 1114(b)).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (Spring 1979)

(ii) In final form (Summer 1979)

(e) Tentative Plan for Obtaining Public Comments: Through publication in proposed form in FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issues are whether the proposed regulation strikes an appropriate balance between the need to provide ODS recipients with sufficient financial flexibility, and the interest of the Government in the long-term financial stability of the operating companies, and whether the balance struck in the proposed regulation also meets the needs of the title XI program.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no, X, (unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Murray Bloom, Examiner, Maritime Administration, Office of Subsidy Contracts, Washington, D.C. 20230, (202) 377-4631.

DOC Operating Unit: Marad

Title of Regulation: Construction-differential subsidy (CDS) contracts (46 CFR Part 251)

(a) Description and Need for Regulation: The Maritime Administration (Marad) administers a construction-differential subsidy program (CDS) which is intended to encourage the construction of privately-owned merchant ships in American shipyards. The CDS payment compensates for the difference in cost for work done in American, rather than foreign shipyards. Three contracts are required for each project, one between the purchaser or owner and the shipyard, one between the purchaser or owner and Marad, and one between the shipyard and Marad. Currently, the terms of all three contracts are negotiated for each project even though the same set of legal standards applies to all projects. Marad will therefore promulgate a standard set of contracts for use by all parties on future projects. This will greatly reduce legal time and expenses for all parties and will ensure that all interested parties participate in a CDS program on an equal basis.

(b) Legal Authority: Sec. 204(b) Merchant Marine Act, 1936, as amended (46 USC 1114(b)).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates the Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (published)

(ii) In final form (Spring 1979)

(e) Tentative Plan for Obtaining Public Comments: Provided for through publication in FEDERAL REGISTER; comments are being received until March 1, 1979.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issues in drafting the standardized contracts are to ensure that they are consistent with legal requirements, that they adequately protect the interests of the Government, that they are consistent with industry practices and are sufficiently flexible to cover future contingencies.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Melvin S. Eck, Attorney-Advisor, Maritime Administration, Office of the General Counsel, Washington, D.C. 20230, (202) 377-2771.

DOC Operating Unit: Marad

Title of Regulation: Construction-differential subsidy (CDS)-requirements for aid (46 CFR Part 251).

(a) Description and Need for Regulation: The Maritime Administration (Marad) makes available construction-differential subsidies (CDS) for shipowners who undertake construction, reconstruction or reconditioning in Amercian shipyards. CDS payments are intended to offset the higher cost of work in American shipyards. It is made available only to qualified shipowners who will place the vessels in the foreign trades of the U.S. Marad has developed over the years many restrictions, requirements and procedures for administering the CDS program. These policies determine who is eligible, the procedures for application, the types of ships which may be built with CDS funds, the conditions of service for CDS built vessels, the level of CDS payments, and the obligations of both Marad and the vessel owner after construction. These policies have been set forth in a wide range of documents. Some of them have never been formally written down. The proposed regulation would therefore codify these policies without making any substantive change in them. Among the anticipated benefits are (1) clarification of the legal status of the CDS policies and procedures, (2) dissemination of program benefits and requirements, and (3) easing the task of administering the CDS program.

(b) Legal Authority: Sec. 204(b) Merchant Marine Act, 1936, as amended (46 USC 1114(b)).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (Spring 1979)

(ii) In final form (Fall 1979)

(e) Tentative Plan for Obtaining Public Comments: Through publication in proposed form in FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: The proposed regulations are codifications of existing policies and practices for the CDS program. Therefore, it is not anticipated that any major issues or controversies will develop over them.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: James E. Saari, Attorney-Advisor, Maritime Administration, Office of the General Counsel, Washington, D.C. 20230, (202) 377-2771.

DOC Operating Unit: Marad

Title of Regulation: Merchant Marine Training (46 CFR Part 310)

(a) Description and Need for Regulation: The Maritime Administration (Marad) is responsible for the administration of the U.S. Merchant Marine Academy, the aid programs to state merchant marine academies, and the U.S. Maritime Service, a voluntary maritime training organization.

The regulations relevant to these programs have not always been amended to immediately reflect policy and program developments. The need to bring the regulatory framework up to date is particularly great for the Maritime Service, since the regulations have not been revised since the Service was significantly restructured in the 1950's. The Select Subcommittee of the House Merchant Marine and Fisheries Committee, after reviewing these programs, recommended that the regulations be amended to reflect current practice and legal requirements. The draft regulations are intended to implement these recommendations.

(b) Legal Authority: Sec. 204(b) and 216, Merchant Marine Act, 1936, as amended (46 USC 1114(b) and 1126); P.L. 85-672 (46 U.S.C. 1381-1388).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER?

(i) In proposed form (Spring 1979)

(ii) In final form (Summer 1979)

(e) Tentative Plan for Obtaining Public Comments: Upon publication in proposed form in FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: Since the proposed regulations will conform with the existing program requirements and policies, it is not expected that any major issues will develop about their promulgation.

(g) Documents Available to Interested Parties:

(1) Regulatory analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Kathleen A. Shetler, Manpower Management Officer, Maritime Administration, Office of Maritime Manpower, Washington, D.C. 20230, (202) 377-5653.

DOC Operating Unit: Marad

Title of Regulation: Operating-differential subsidy for bulk cargo vessels engaged in worldwide services; principal foreign-flag competition; foreign wage cost (46 CFR 252.22; 252.31).

(a) Description and Need for Regulation: The Maritime Administration (Marad) administers an operating-differential subsidy (ODS) program which is intended to compensate American shipowners in foreign trade for the cost difference between operating a ship under American, rather than foreign registry. The level of ODS payments is based on the comparative costs incurred by representative American and foreign operators with respect to major items. The procedures for selecting representative cost items and representative foreign flags, as well as costs, and for calculating ODS payments are revised frequently as economic conditions change. The proposed amendments to these regulations will reflect consideration of these changes by the Maritime Subsidy Board (Board), which has the responsibility for making ODS determinations concerning awards and rates.

(b) Legal Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b))

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (*Spring 1979*)

(ii) In final form (*Summer 1979*)

(e) Tentative Plan for Obtaining Public Comments: Through publication in proposed form in FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: Among the issues which the Board had to consider in drafting the revised ODS standards were, (1) how to determine when domestic and foreign item costs were representative of the cost differences actually faced by an American operator on a particular trade route, and (2) whether the relative weight given to the costs of various items actually reflect their importance in determining the profitability of operating American ships in foreign trades.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Frederick R. Larson, Maritime Administration, Director, Office of Ship Operating Costs, Washington, D.C. 20230, (202) 377-5532.

DOC Operating Unit: Marad

Title of Regulation: Operating-differential subsidy for bulk cargo vessels engaged in worldwide service; essential service requirement (46 CFR 252.21)

(a) Description and Need for Regulation: The Maritime Administration (Marad) provides operating-differential subsidy (ODS) payments to American carriers engaged in the essential foreign trades of the United States to compensate them for the cost differences in operating under the U.S. flag, rather than under competitive foreign flags. For liner operators, the statutory definition of "essential foreign trade" covers only shipments to and from the United States. However, "essential foreign trade" for tramp trade bulk carriers includes foreign-to-foreign point shipments as well, since tramp ships must be able to go where cargo is available. Marad wrote into the tramp trade bulk carrier ODS contracts a requirement that they carry a certain percent of their cargo to and from U.S. ports in order to ensure that the subsidized bulk operations promoted the foreign trade of the U.S. Marad has suspended enforcement of the U.S. trade percentage restriction since 1977 while evaluating the need for this requirement. Experience since then has shown that subsidized tramp bulk operators tend to carry a high percentage of their cargo to and from U.S. ports, even without the contractual obligation to do so. However, the continued existence of the contractual restriction may hamper the operations of U.S. flag bulk carriers and so place U.S. operators at a competitive disadvantage. The proposed amendment to the regulations would therefore permanently eliminate this restriction in

existing ODS contracts for bulk carriers.

(b) Legal Authority: Secs. 204(b), 601(a), 603(a) and 211(b), Merchant Marine Act, 1936 as amended, (46 U.S.C. 1114(b)), 1171(a), 1173(a) and 1121(b)).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes X, no ☐, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (March 1979)

(ii) In final form (Spring 1979)

(e) Tentative Plan for Obtaining Public Comments: Upon publication in proposed form in FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issue in this regulation is to balance the interests of the U.S. Government in making sure that subsidy funds are used to promote the foreign commerce of the U.S. while weighing the impact and cost of foreign percentage restrictions that limit the ability of U.S. operators to compete with foreign-flag operators.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Kenneth Willis, Examiner, Maritime Administration, Office of Subsidy Contracts, Washington, D.C. 20230, (202) 377-4660.

DOC Operating Unit: Office of Coastal Zone Management, NOAA

Title of Regulation: Evaluation of State Coastal Management Programs

(a) Description and Need for Regulation: These regulations are needed to provide criteria for review of the performance of state coastal management programs approved under the Coastal Zone Management Act, and for termination of federal funding for unjustified deviation from agency approved programs.

(b) Legal Authority: Section 312 of the Coastal Zone Management of 1972, as amended, 16 U.S.C. 1461, 1463.

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (July 1979)

(ii) In final form (December 1979)

(e) Tentative Plan for Obtaining Public Comments: 1. A discussion paper will be made available to coastal states and other interested parties for comment.

2. A workshop will be held with coastal states.

3. The regulation will be published in the FEDERAL REGISTER in proposed form for public comment.

(f) Major Issues Surrounding Proposed Regulatory Action: 1. Procedures by which Section 312 reviews will be conducted.

2. Criteria for determining unjustified deviation from approved state coastal management programs.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: Discussion Paper

(h) Agency Contact: Carol Sondheimer, Chief, Policy and Program Evaluation, Office of Coastal Zone Management 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235, (202) 634-4245.

DOC Operating Unit: Office of Coastal Zone Management, NOAA.

Title of Regulation: General Guidelines for Implementing the Marine Sanctuaries Program

(a) Description and Need for Regulation: The guidelines revise existing procedures for designating marine sanctuaries and establish an appropriate Federal management system. The guidelines set forth the management approaches and statutory interpretations developed by NOAA during the administration of the program since 1974 and provide for additional clarity in the administration of the Program.

(b) Legal Authority: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, U.S.C. 1431-1434.

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (February 1979)

(ii) In final form (May 1979)

(e) Tentative Plan for Obtaining Public Comments: Publishing the guidelines as proposed rules for comment in the FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: 1. The appropriate procedures required to implement the statute in an efficient and open manner;

2. The criteria which will define the appropriateness of sites for consideration as marine sanctuaries.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: JoAnn Chandler, Acting Director, Sanctuary Program Office, Office of Coastal Zone Management, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 634-1672.

DOC Operating Unit: Office of Coastal Zone Management, NOA

Title of Regulation: Regulations for the Key Largo Coral Reef Marine Sanctuary

(a) Description and Need for Regulation: These regulations will revise the interim regulations first published in the FEDERAL REGISTER in January 1979. Revised regulations are needed to reflect comments on the interim regulations because of the increased visitor usage and because new information and recommendations have been developed.

(b) Legal Authority: Section 302(f), Title III of the Marine Protection Research and Sanctuaries Act of 1972, 16 U.S.C. 1431(f).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (February 1979)

(ii) In final form (May 1979)

(e) Tentative Plan for Obtaining Public Comments: Publishing the revised regulations in proposed form for comment in the FEDERAL REGISTER.

(f) Major Issues Surrounding Proposed Regulatory Action: 1. Whether to allow the taking of tropical fish for educational and public display purposes.

2. Whether to prohibit wire trap fishing.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: JoAnn Chandler, Acting Director, Sanctuary Programs Office, Office of Coastal Zone Management, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 634-1672.

DOC Operating Unit: National Telecommunications and Information Administration

Title of Regulation: Public Telecommunications Facilities Program (PTFP)

(a) Description and Need for Regulation: NTIA will prepare regulations governing the administration of the Public Telecommunications Financing Act of 1978. This Act provides funding for the planning and construction of facilities which will produce and distribute, either by broadcast or nonbroadcast means, noncommercial edu-

cational and cultural radio and television programs and related instructional and informational materials. The Act provides for grants of up to 100 percent of the cost for planning and up to 75 percent of the cost for the construction of facilities. One of the main objectives of the legislation is to extend the reach of noncommercial educational and cultural programming to as many people in the United States as possible by the most efficient and economical means. To that end, a priority is included in the Act directing that up to 75 percent of the program's funds may be available for extending programming to presently unserved areas of the country.

(b) Legal Authority: The Public Telecommunications Financing Act of 1978, P.L. 95-567, 92 Stat. 2405 (47 U.S.C. Sections 390-94).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

Because these are the initial regulations being adopted for this new DOC program and they will affect the public telecommunications industry, NTIA will prepare them in accord with the procedural requirments for "significant regulations" contained in Executive Order 12044.

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated Dates Proposal Will Appear in the FEDERAL REGISTER:

(i) In proposed form (February 1979)

(ii) In final form (April 1979)

(e) Tentative Plan for Obtaining Public Comments: In November 1978 NTIA distributed approximately 1200-1500 copies of a paper delineating several issues raised by the Act to members of the interested public, the industry and the trade press. Through the issues paper, NTIA solicited comments on the needs, interests and concerns of the public on this legislation. In December 1978, NTIA held an all-day public meeting to which the same groups were invited, in order to discuss the issues paper, NTIA's initial draft of the proposed funding priorities for the program and other matters of interest raised by the participants. Subsequently, on January 3, 1979, NTIA published an Advance Notice of Proposed Rulemaking (44 FR 897), which further identified issues raised by the Act that had to be addressed in the process of formulating the rules that will govern the program. More than 30 comments were received in response to the issues paper and the Advance Notice. A Notice of Proposed Rulemaking will be published in the FEDERAL REGISTER in February. Those who received the issues paper and those who commented on the Advance Notice will be sent a copy of the Notice. The public will be affored a minimum of 30 days to comment on NTIA's tentative resolution of issues and draft regulations.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issues included in developing the Public Telecommunications Facilities Program regulations concern the determination of eligibile applicants (including the eligibility of religious organizations and special interest groups), priorities among applicants for funding, implementation of the special consideration provision of the Act for fostering the control, operation and availability of PTFP-funded facilities by minorities and women, the procedures and criteria for the processing and evaluation of applications, and the administration and recovery of funds during the 10-year period of Federal interest.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no ☐, unknown X)

(i) Anticipated date of draft analysis ( )

(ii) Anticipated date of final analysis ( )

(2) Other Documents Available:

P.L. 95-567, legislative history materials, transcript of public meeting, issues paper, Advance Notice and public comments on the issues paper and Advance Notice.

(h) Agency Contract: Kenneth Salomon, Attorney, Office of Chief Counsel, Room 703, National Telecommunications and Information Administration, U.S. Department fo Commerce, Washington, D.C. 20504, (202) 395-5616.

DOC Operating Unit: Office of the Chief Economist, Bureau of the Census

Title of Regulation: Certain Population and Per Capita Income Estimates, Challenge Procedures

(a) Description and Need for Regulation: The Bureau of the Census has proposed the addition of a new Part 90 to title 15, Code of Federal Regulations to establish a two-part procedure to be followed whenever States or units of local government "challenge certain population and per capita income estimates prepared by the Bureau of the Census." First, the Bureau will receive challenges and attempt to resolve them informally with the challenging government. If the challenge is not resolved to the challenging government's satisfaction, it may then proceed formally, the second procedure. The formal stage includes the designation of a hearing officer, a hearing at the challenging government's option, and a final decision by the Census Director. The informal stage has existed since 1973 but has not been codified. The formal stage being proposed is new and grants to States and units of local government new substantive rights.

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

This new regulation grants substantive rights to all States and units of local government affected by the estimates; the Bureau of the Census will treat these rules as "significant."

(ii) Is the regulation major? (yes X, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (Oct. 31, 1978)

(ii) In final form (March, 1979)

(e) Tentative Plan for Obtaining Public Comments: The proposed rulemaking was published in the FEDERAL REGISTER on October 31, 1978, 43 FR 50696. The preamble to the proposed rulemaking provided:

"In addition to this notice in the FEDERAL REGISTER States and units of local government are being informed of this proposed rule through notification in the Census Bureau publication, "Data User News," advance notice to the National League of Cities and the National Association of Counties, and advance notice to the members of the Federal-State Cooperative Program for Local Population Estimates in each State."

(f) Major Issues Surrounding Proposed Regulatory Action: The major issues involved in developing these regulations concern the rights to be given the States and local governments in connection with these estimates which affect the distribution of Federal funding. For example, how can a local area have an impact on the resultant estimates if it believes the estimate is incorrect? How can an independent review of the statistical argument be achieved? How can a Census Bureau challenge procedure be differentiated from the appeal rights offered by the Treasury Department, in accordance with the State and Local Fiscal Assistance Act of 1972. Are two procedures desirable or are they confusing to the public? Will the burden placed on small local areas be minimal in order that they may challenge estimates as effectively as large areas? These major issues were considered and resolved through the development of these regulations.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(i) Anticipated date of draft analysis (*N.A.*)

(ii) Anticipated date of final analysis (*N.A.*)

Other Documents Available: Bureau has received 19 comments pursuant tof the proposed rulemaking. These

are available at Census Library, Room 2471, FB No. 3, Suitland, Maryland.

(h) Agency Contact: Daniel B. Levine, Associate Director for Demographic Fields, Bureau of the Census, Room 2061-3, Suitland, Maryland 20233 (301) 763-5167.

DOC Operating Unit: Office of the Chief Economist, Office of Federal Statistical Policy and Standards (OFSPS)

Title of Regulation: Standard Metropolitan Statistical Classification—Revised Criteria

(a) Description and Need for Regulation: The Federal Committee on Standard Metropolitan Statistical Areas has been considering changes in the criteria which define Standard Metropolitan Statistical Areas (SMSA's) an activity which is regularly done before a new decennial census is taken. The purpose of SMSA's is to provide a consistent way of presenting data about urban areas by all Federal agencies. The issues surrounding the current amendment process stem from: (1) the potential for allocating Federal funds according to SMSA status, and (2) maintaining the status quo concerning local identity—several areas purport that their current status is advantageous in attracting and keeping business in the area.

(b) Legal Authority: Section 103 of the Budget and Accounting Procedures Act of 1950, 31 U.S.C. 18b, and E.O. 12013 (October 9, 1977).

(c) Importance of Regulations:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER

(i) In proposed form (Proposal appeared in FEDERAL REGISTER on November 29, 1978. Comment period closed January 29, 1979).

(ii) In final form (Feb/Mar 1979).

(e) Tentative Plan for Obtaining Public Comments: In addition to publication in the FEDERAL REGISTER, several hearings were held in Washington, D.C., and New Jersey. These hearings included testimony from Congressional representatives, State and local government representatives, local data collection enterprises, industry and the news media.

(f) Major Issues Surrounding Proposed Regulatory Action:

(1) The establishment of tiers of Metropolitan Statistical Areas (MSA's) as well as "consolidated" MSA's. Certain suburban areas object to being linked with their adjacent cities in a statistical manner and in a variety of other contexts.

(2) The exclusion of some primary rural counties that cannot be classified as metropolitan.

(3) The need for improvement in the presentation of statistical data.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(i) Anticipated date of draft analysis (NA)

(ii) Anticipated date of final analysis (NA)

(2) Other Documents Available: All relevant documents are in the November 29 FEDERAL REGISTER notice and the public comments are available from OFSPS (see h).

(h) Agency contact: Ms. Suzann K. Evinger, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, 2001 S Street, N.W., Room 7001, Washington, D.C. 20230, (202) 673-7965.

DOC Operating Unit: Office of the Secretary (Immediate)

Title of Regulation: Departmental Administrative Order on Consultation with State and Local Governments (DAO-201-9, revised)

(a) Description and Need for Regulation: The Departmental Administrative Order describes a process to implement requirements initiated by the Carter Administration for consultation with State and local governments. It creates a system within the Commerce Department to assure that all departmental units provide State and local governments with an opportunity for early and meaningful participation in the development of policy, programs, regulations, budget, and legislative and operational proposals which affect them.

(b) Legal Authority: Executive Order 12044 "Improving Government Regulations"

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

The Order is significant because it revises a previous order on consultation to allow State and local governments to comment on a broader range of departmental activities. It also establishes a system that fosters greater access to Commerce decisionmaking by subnational levels of government through the inclusion of the Secretarial Representatives (one in each of the ten Federal regions) as facilitators in the consultation process.

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (February 1979)

(ii) In final form (April 1979)

(e) Tentative Plan for Obtaining Public Comments: Comments on the draft Order have been solicited and received from major public interest groups responsive to State and local government issues; comments have also been solicited from State and local government officials, through the Secretarial Representatives in the ten Federal regions.

(f) Major Issues Surrounding Proposed Regulatory Action: The Order specifies that the Assistant to the Secretary shall monitor adherence and assist agencies when consultation with national organizations representing State and local governments is required.

Each agency shall provide the Assistant to the Secretary with the name of a policy level official who shall serve as the intergovernmental (IG) liaison officer for the agency. The IG liaison officer shall have the following responsibilities:

- Determine if an agency action has intergovernmental significance
- Coordinate the agency's consultation plan
- Coordinate consultation efforts with the Deputy Under Secretary, the Assistant to the Secretary and other elements of the Department
- Maintain records on all such consultation, and
- Involve the Secretary's Representatives in cases where participation by field elements is indicated.

(g) Documents Available to Interested Parties: None

(i) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(h) Agency Contact: Richard W. Roper, Special Assistant to the Secretary, Immediate Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-5017.

DOC Operating Unit: Patent and Trademark Office (PTO)

Title of Regulation: Advisory opinions by the PTO on the validity of patents.

(a) Description and Need for Regulation: PTO proposes to revise its regulations, currently published in Title 37, Code of Federal Regulations, Part 1, to provide for an advisory opinion to be given by the PTO on the validity of a patent at the request of a member of the public upon payment of an appropriate fee. The proposed revision is limited to prior patents and publications which are pertinent to the validity of the patent but were not considered by the PTO before granting the patent. An advisory opinion will not be binding on any court but will give the courts the benefit of the PTO's opinion on prior art that a court otherwise would be called upon to evaluate in the first instance.

(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950, Sec. 6, as amended (35 USC § 6, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (has been published)

(ii) In final form (postponed until further notice)

(e) Tentative Plan for Obtaining Public Comments: PTO has published the proposed revision in the FEDERAL REGISTER (43 FR 59401, December 20, 1978) and the Official Gazette for comment. A public hearing was scheduled but has been postponed until further notice.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issues involved in the proposed revision concern the scope of the proposal, who should give the advisory opinion and review of advisory opinions. Should advisory opinions be limited to consideration of prior patents and publications or be expanded to include consideration of prior public uses and sales, fraud and failure to comply with the duty of disclosure, and inadequacy of the specification? Should an advisory opinion be given by the same examiner who issued the patent, or by a different examiner? Should some form of direct review of advisory opinions be provided within the PTO?

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: A file of the comments the PTO receives, a transcript of any hearing to be held and a summary and analysis of comments will be available for examination by interested parties.

(h) Agency Contact: Herbert C. Wamsley, Executive Assistant to the Commissioner, Commissioner of Patents and Trademarks, Washington, D.C. 20231 (703) 557-3071.

DOC Operating Unit: Patent and Trademark Office (PTO)

Title of Regulation: Counterclaims in cases involving an opposition to the registration of a trademark or a petition to cancel the registration of a trademark.

(a) Description and Need for Regulation: PTO is considering a revision of its regulations relating to counterclaims in trademark cases, currently published in Title 37, Code of Federal Regulations, Part 2. Defendants who could counterclaim to cancel a registration pleaded by the plaintiff in trademark opposition and cancellation cases are not required by current regulations to do so. The revision under consideration would require the defendant to do so. The primary benefit of the revision will be to avoid piecemeal litigation and settle all issues between the parties at one time with a minimum expenditure of time and effort by the parties and the PTO.

(b) Legal Authority: Public Law 489, 79th Cong., 2d Sess., ch. 540, Sec. 41, as amended (15 U.S.C. § 1123, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (March, 1979)

(ii) In final form (September, 1979)

(e) Tentative Plan for Obtaining Public Comments: PTO will publish the proposed revision in the FEDERAL REGISTER and the Official Gazette for comment.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in the revision being considered by the PTO is whether a defendant would, in certain circumstances, be precluded from filing a concurrent use application if he is required to counterclaim for cancellation of a registration pleaded by the plaintiff.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: David J. Kera, Member, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3551.

DOC Operating Unit: Patent and Trademark Office (PTO).

Title of Regulation: Deposit of computer program listings.

(a) Description and Need for Regulation: PTO proposes to revise its regulations relating to patent application disclosures, currently published in Title 37, Code of Federal Regulations, Part 1, to allow lengthy computer program listings to be deposited in the PTO and incorporated by reference in the patent application to the deposited listing. Under current regulations, lengthy computer program listings must be reproduced in the specification or the drawings as integral parts of a patent application. The proposed revision will benefit patent applicants by relieving them of the burden and expense of reproducing lengthy computer program listings in the specification or the drawings of a patent application. The PTO and patent applicants will both benefit from a reduction in the cost of printing patents which do not include a lengthy computer program listing in the specification or drawings.

(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950, Sec. 6, as amended (35 USC § 6, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (has been published)

(ii) In final form (May, 1979)

(e) Tentative Plan for Obtaining Public Comments: PTO published the proposed revision in the FEDERAL REGISTER (42 FR 30522, June 15, 1977) for comment and held a public hearing.

(f) Major Issues Surrounding Proposed Regulatory Action: None.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: A file of the written comments received by the PTO and a transcript of the hearing will be available for examination by interested parties.

(h) Agency Contact: Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3070.

DOC Operating Unit: Patent and Trademark Office (PTO).

Title of Regulation: Examination of reissue applications.

(a) Description and Need for Regulation: PTO is considering a revision of its regulation relating to the examination of reissue applications, currently published in Title 37, Code of Federal Regulations, Part 1. The current regulation defers the examination of a reissue application until two months after its filing has been announced in the Official Gazette to afford an opportunity for members of the public to call to the PTO's attention evidence relevant to the patentability of the original patent claims. The revision under consideration would allow examination to be undertaken as soon as possible after the reissue application has been filed if the original patent is in litigation. Expediting the examination will benefit Federal courts which have stayed litigation to allow the PTO to complete its examination of a reissue application.

(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950, Sec. 6, as amended (35 USC § 6, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates the Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (April, 1979)
(ii) In final form (October, 1979)
(e) Tentative Plan for Obtaining Public Comments: PTO will publish a proposed revision of the regulation in the FEDERAL REGISTER and the Official Gazette for comment. A public hearing will be held.
(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in the revision under consideration is whether expediting the examination will have an adverse effect on the ability of the public to call the PTO's attention to evidence relevant to the patentability of the original patent claims.
(g) Documents Available to Interest Parties:
(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)
(2) Other Documents Available: None
(h) Agency Contact: R. F. Burnett, Special Assistant to the Assistant Commissioner for Patents, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3054.
DOC Operating Unit: Office of Environmental Affairs (OEA)
Title of Regulation: Implementing Procedures for Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," (January 4, 1979).
(a) Description and Need for Regulation: The purpose of the Executive Order is to enable responsible agency officials to be informed of pertinent environmental considerations when making decisions on specified types of major actions which would significantly affect the environment of areas outside the U.S. The Executive Order provides a basis for agencies to develop procedures regarding such agency actions which require the preparation of an environmental assessment document and guidance as to the type of document to be used in connection with such actions. OEA is preparing a Department Administrative Order to provide guidance to DOC agencies developing their implementing procedures.
(b) Legal Authority: U.S. Constitution provisions and laws relied upon by Executive Order 12114 of January 4, 1979.
(c) Importance of Regulation:
(i) Is the regulation significant? (yes X, no ☐, unknown ☐)
Section 4.01 of the Assistant Secretary for Science and Technology's directive implementing Executive Order 12044 states that any regulation issued within the Office of Science and Technology shall be deemed significant for the purpose of the directive.
(ii) Is the regulation major?
We cannot determine whether the departmental regulation will be major until we know the extent to which DOC agency functions will be involved. Further, it is expected that individual subunits will address the application of the Executive Order to functions within their respective units.
(d) Timetable: Anticipated dates the Proposal will appear in the FEDERAL REGISTER:
(i) In proposed form (Summer 1979)
(ii) In final form (Summer 1979)
(e) Tentative Plan for Obtaining Public Comments: Commenting period after publication of proposed regulations in the FEDERAL REGISTER pursuant to the Administrative Procedure Act.
(f) Major Issues Surrounding Proposed Regulatory Action: Major issues surrounding the proposed regulatory action were addressed during interagency discussions prior to issuance of Executive Order 12114.
(g) Documents Available to Interested Parties:
(1) Regulatory Analysis Required? (yes ☐, no ☐, unknown X)
(i) Anticipated date of draft analysis (NA)
(ii) Aniticipated date of final analysis (NA)
(2) Other Documents Available: None
(h) Agency Contact: Fred Stein, Assistant Director for Environmental Impact Assessment, Office of Environmental Affairs, Room 3418, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 377-2186.
DOC Operating Unit: Patent and Trademark Office (PTO)
Title of Regulation: Examination of more than one invention in a patent application.
(a) Description and Need for Regulation; PTO in considering a revision of its regulations relating to the examination of more than one invention in a patent application, currently published in Title 37 of the Code of Federal Regulations, Part 1, to remove restrictions limiting the examination to only one invention. The revision would allow the PTO to examine more than one invention in a patent application if an additional fee is paid. The current regulations lead to the filing of a separate patent application for each invention claimed by a patent applicant. The revision would benefit patent applicants by relieving them from the burden of preparing more than one patent application where one might suffice. The PTO would benefit from a saving in file space, a reduction in handling and record keeping and a reduction in printing cost if a patent is issued on more than one invention.
(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950 sec. 6, as amended (35 U.S.C. § 6, as amended)
(c) Importance of Regulation:
(i) Is the regulation significant? (yes X, no ☐, unknown ☐)
(ii) Is the regulation major? (yes ☐, no X, unknown ☐)
(d) Timetable: Anticipated dates Proposal will appear in the FEDERAL REGISTER:
(i) In proposed form (June, 1979)
(ii) In final form (February, 1980)
(e) Tentative Plan for Obtaining Public Comments: PTO will publish its proposed revision of the regulations in the FEDERAL REGISTER and the Official Gazette and invite the public to submit comments. A public hearing may be held.
(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in the revision under consideration is whether it can apply to chemical inventions which do not fall in recognized chemical genus.
(g) Documents Available to Interested Parties:
(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)
(2) Other Documents Available: None
(h) Agency Contact: Louis O. Maassel. Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3070.
DOC Operating Unit: Office of Environmental Affairs (OEA).
Title of Regulation: National Environmental Policy Act (NEPA) Implementation of Procedural Provisions; Final Regulations[1]
(a) Description and Need for Regulation: Guidelines for the preparation of environmental impact statements were issued by the Council on Environmental Quality (CEQ) on August 1, 1973. These guidelines relate solely to the implementation of section 102(2)(C) of NEPA, which requires the preparation of a detailed statement (the environmental impact statement) for major Federal actions significantly affecting the quality of the human environment. Executive Order 11991, issued May 24, 1977, directed the issuance of regulations for the implementation of the procedural provisions of NEPA which includes all of Section 102(2). Accordingly, the CEQ regulations were issued on November 29, 1978. OEA is redrafting Department Administrative Order 216-6 ("Statement on Proposed Federal Actions Affecting the Environment") to established implementing procedures for the Department which will supplement the CEQ regulations.
(b) Legal Authority: National Environmental Policy Act of 1969, § 102(2), 42 U.S.C. § 4332(2) (1970), as amended by Act of August 9, 1975, Pub. L. No. 94-83, 89 Stat. 424 (1975); Exec. Order 11991, 3 C.F.R. 123 (1978); Council on

[1]Major revision to Department Administrative Order (DAO) 216-6.

Environmental Quality Regulations for Implementation of Procedural Provisions of the National Environmental Policy Act, § 1507.3(a), 43 Fed. Reg. 56,003 (1978) (to be codified in 40 C.F.R. § 1507.3(a)).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

Section 4.01 of the Assistant Secretary for Science and Technology's directive implementing Executive Order 12044 states that any regulation issued within the Office of Science and Technology shall be deemed significant for the purpose of the directive.

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (Spring 1979)

(ii) In final form (Summer 1979)

(e) Tentative Plan for Obtaining Public Comments: Commenting period after publication of proposed regulations in the FEDERAL REGISTER pursuant to the Administrative Procedure Act.

(f) Major Issues Surrounding Proposed Regulatory Action: Major issues surrounding the proposed regulatory action were addressed during the preproposal interagency comment period and public comment period preceding publication of the CEQ regulations.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(i) Anticipated date of draft analysis *(NA)*

(ii) Anticipated date of final analysis *(NA)*

(2) Other Documents Available: The CEQ has prepared a regulatory analysis on the regulations which the DOC procedures will implement.

(h) Agency Contact: Fred Stein, Assistant Director for Environmental Impact Assessment, Office of Environmental Affairs, Room 3418, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 377-2186.

DOC Operating Unit: Patent and Trademark Office (PTO)

Title of Regulation: Professional conduct of and advertising by persons registered to practice before the PTO.

(A) Description and Need for Regulation: PTO is considering a revision of its regulations prescribing the standards of conduct and advertising of persons registered to practice before the PTO, currently published in title 37, Code of Federal Regulations, Parts 1 and 2. PTO proposes to revise these regulations to make reference to the current version of the American Bar Association's "Code of Professional Responsibility," an older version being referred to in the current regulations, and to make the standards for advertising consistent with recent decisions of the Supreme Court.

(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950, Sections 6 and 31, as amended (35 USC §§ 6 and 31, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER:

(i) In proposed form (March, 1979)

(ii) In final form (October, 1979)

(e) Tentative Plan for Obtaining Public Comments: PTO will publish the proposed revision of these regulations in the FEDERAL REGISTER and the Official Gazette for comment. A public hearing will also be held.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in the proposed revision is whether the American Bar Association's "Code of Professional Responsibility" should continue to be the PTO's standard of conduct.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Harry I. Moatz, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-2238.

DOC Operating Unit: Patent and Trademark Office (PTO)

Title of Regulation: Prosecution of patent applications after final rejection.

(a) Description and Need for Regulation: PTO is considering a revision of its regulations relating to the closing of prosecution in patent applications, currently published in Title 37, Code of Federal Regulations, Part 1, to remove limitations against continuing the prosecution of patent applications after a final rejection. The revision under consideration would permit prosecution of a patent application to continue after a final rejection if an additional fee is paid. The revision will benefit patent applicants by making it unnecessary for them to file a second application in order to continue prosecution after a final rejection in the original application. The PTO will benefit from a saving in file space and a reduction in handling and record-keeping costs.

(b) Legal Authority: Public Law 593, 82nd Cong., 2d Sess., ch. 950, Sec. 6, as amended (35 U.S.C. § 6, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (April, 1979)

(ii) In final form (January, 1980)

(e) Tentative Plan for Obtaining Public Comments: PTO will publish its proposed revision in the FEDERAL REGISTER and the Official Gazette for comment. A public hearing may be held.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in the revision under consideration is whether such revision is within the Commissioner's rulemaking authority or will require legislative authorization.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3070.

DOC Operating Unit: Patent and Trademark Office (PTO)

Title of Regulation: Recording interests in patents, trademarks, patent applications and trademark applications.

(a) Description and Need for Regulation: PTO is considering an amendment of its regulations governing the recording of assignments and other interests in patents, trademarks, patent applications and trademark applications, curently published in Title 37, Code of Federal Regulations, Parts 1 and 2. The current regulations do not specifically identify every type of instrument which might be recordable but currently is not being recorded. The amendment being considered by the PTO would provide specific authorization to record those recordable instruments which are not identified in the current regulations, and therefore are not now being recorded. The public will benefit from having more complete information available concerning the title, and encumbrances on the title, to patents, trademarks, patent applications and trademark applications.

(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950, Secs. 6 and 261, as amended (35 USC §§ 6 and 261, as amended); Public Law 489, 79th Cong., 2d Sess., ch. 540, Secs. 10 and 41, as amended (15 USC §§ 1060 and 1123, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in FEDERAL REGISTER.

(i) In proposed form (April, 1979)

(ii) In final form (November, 1979)

(e) Tentative Plan for Obtaining Public Comments: PTO will publish its proposed amendment of the regulations in the FEDERAL REGISTER and the Official Gazette for comment.

(f) Major Issues Surrounding Proposed Regulatory Action: The major issue involved in the proposed amendment is whether it is in fact necessary. Do the current regulations provide adequate authority for recording specific types of instruments not expressly identified in the regulations? Would a notice in the Official Gazette, interpreting the current regulations, provide an adequate and satisfactory alternative?

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Available: None

(h) Agency Contact: Herbert C. Wamsley, Executive Assistant to the Commissioner, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3071.

DOC Operating Unit: Patent and Trademark Office (PTO)

Title of Regulation: Information required in the oath or declaration in patent applications.

(a) Description and Need for Regulation: PTO proposes to revise its regulations relating to the information patent applicants are required to provide in their oaths or declaration is patent applications, currently published in Title 37, Code of Federal Regulations, Part 1. PTO proposes to revise these regulations to require (1) that an oath or declaration acknowledge the "best mode" requirement of the patent law, and (2) that it speak as of the filing date of the application if the application is a continuation-in-part. These two requirements will provide information that court decisions indicate should be considered by the PTO in examining patent applications.

(b) Legal Authority: Public Law 593, 82d Cong., 2d Sess., ch. 950, Sec. 6, as amended (35 U.S.C. § 6, as amended).

(c) Importance of Regulation:

(i) Is the regulation significant? (yes X, no ☐, unknown ☐)

(ii) Is the regulation major? (yes ☐, no X, unknown ☐)

(d) Timetable: Anticipated dates Proposal will appear in the FEDERAL REGISTER:

(i) In proposed form (published 43 FR 55417, November 28, 1978)

(ii) In final form (August, 1979)

(e) Tenatative Plan for Obtaining Public Comments: PTO has published the proposed revision in the FEDERAL REGISTER for comment and held a public hearing on February 7, 1979.

(f) Major Issues Surrounding Proposed Regulatory Action: There are no major issues involved in the proposed revision.

(g) Documents Available to Interested Parties:

(1) Regulatory Analysis Required? (yes ☐, no X, unknown ☐)

(2) Other Documents Avialable: A fine of the written comments received ty the PTO, a transcript of the hearing and a summary and analysis of comments will be available for examination by interested parties.

(h) Agency Contact: Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557-3070.

[FR Doc. 79-6452 Filed 3-6-79; 8:45 am]

Federal Register

WEDNESDAY, MARCH 7, 1979

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

Office of Family Assistance

Social Security Administration

■

DISALLOWANCE FOR ERRONEOUS PAYMENTS

[4110-12-M]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 205 and 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

Title 45—Public Welfare

CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Fiscal Disallowance for Erroneous Payments in the Aid to Families With Dependent Children and Medicaid Programs; and Federal Fiscal Liability in the Supplemental Security Income Program

AGENCY: Department of Health, Education, and Welfare.

ACTION: Policy statement on final rules.

SUMMARY: The regulations that follow this policy statement establish policies by which we seek to reduce erroneous payments in Aid to Families with Dependent Children (AFDC), Medicaid, and Supplemental Security Income (SSI). In particular, States will be subject to a disallowance of Federal matching funds in AFDC and Medicaid if they fail to meet error rate standards for ineligibility and overpayment in AFDC and ineligibility in Medicaid. Correspondingly, the Department of Health, Education, and Welfare will assume fiscal liability for excess ineligibility and overpayment errors made in Federally-administered State supplements in the SSI program.

DATES: The final rules are effective March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

For AFDC: Sean Hurley, Division of Quality Control Management, 202-245-0788.

For SSI: William J. McCarthy, Division of Standards and Operating Policies, 301-594-4594.

For Medicaid: Victor Kugajevsky, Medicaid Bureau, 202-472-3846.

SUPPLEMENTARY INFORMATION: The disallowance provisions for AFDC and Medicaid are issued under statutory authority provided in the Social Security Act. These provisions are part of a broad Federal improvement effort directed at the State-operated programs. These initiatives include technical assistance to individual States and localities, the creation of an AFDC Welfare Management Institute to facilitate the exchange of information on management practices, the recently implemented incentive provisions of the Social Security Act whereby States may share in the Federal cost savings attributable to low rates of payment error in AFDC, and proposed performance standards for accuracy, quality of service, and cost effectiveness.

We believe that these regulations are fair in that no Federal funds will be disallowed to any State meeting either an absolute standard of error or a prescribed annual rate of error reduction. The final rules set a target improvement rate of 15.7 percent for Medicaid and 6.4 percent for AFDC. These performance targets have an empirical basis superior to that for the notice of proposed rulemaking.

While we are issuing separate regulations for AFDC and Medicaid, the disallowance provisions of the two programs share the following components:

- To avoid a disallowance, each State must meet either a national standard for percent of payments in error or a prescribed rate of reduction in the percent of payments in error.
- The national standard for error rate performance in any period is the national weighted mean payment error rate calculated for a prior specified base period.
- States will first be subject to disallowances for errors in the period April-September 1979. The national standard for this and the next period (October 1979-March 1980) will be established with respect to an initial base period (which differs between the two programs). Subsequently, national results from each April-September reporting period will be used to calculate the national standard in each program for the second and third subsequent six-month periods.
- The target rate of improvement for States unable to meet the national standard is based upon the historical experience in AFDC quality control.
- Errors which are attributed to client causes and those which are "technical" in nature (i.e., would not have affected the eligibility or benefit determination, if corrected) will be included in the measurement of error for purposes of judging compliance with these regulations. To do otherwise would create inappropriate incentives to the States as to the attribution of error and would undermine the intent of program eligibility and benefit provisions.
- Not included in the measurement of error will be underpayments to eligibles and negative case action errors. The appeals and fair hearings process, and recently implemented incentive payments, and the quality control system are all directed at underpayment and negative case action errors, as well as ineligibility and overpayment errors. Available evidence does not suggest that underpayments and incorrect denials and terminations increase as overpayment and ineligibility errors are reduced. On the contrary, a recent review found that quality control has reduced all categories of error.
- The amount of fiscal disallowance for any period will be the difference between (a) Federal matching funds for benefits actually paid and (b) Federal matching funds for benefits that would have been paid, had the State met either the national standard or the target rate of improvement (whichever requires less error reduction).
- States may be exempted from disallowances if they can establish good reason for not meeting their error target.
- States who wish to appeal a proposed disallowance may do so through the Grant Appeals Board, under procedures established in the Social Security Act.
- We are undertaking an 18-month study to determine a reasonable ultimate goal for error rates in each program. There is some point at which further error reductions are not cost-effective. We do not believe that the national mean error rate will reach such a point in the coming two years, but we anticipate that subsequent policy must be based on an informed judgment as to the cost-effectiveness of further corrective action.
- In two years, we will review these regulations to determine whether to revise either the expected improvement rate, on the basis of more recent quality control data, or the definition of the national standard, on the basis of the findings of the 18-month study.

● We do not feel that these regulations have sufficient economic impact to warrant a regulatory analysis as required by Executive Order 12044.

Beyond these common components, the regulations for AFDC and Medicaid differ in the following respects:

● The rate of improvement expected of States unable to meet the national standard is 6.4 percent for AFDC and 15.7 percent for Medicaid. Both figures are drawn from the historical experience in AFDC. The improvement rate employed in the AFDC regulation is the national trend rate of reduction in the sum of ineligibility and overpayment errors between January–June 1976 and July–December 1977. This recent period establishes a more reasonable expectation of future error reduction that the interval April–September 1973 to July–December 1976, which was used to calculate the 18 percent improvement rate in the notice of proposed rulemaking. The Medicaid improvement rate corresponds to the reduction in AFDC eligibility error between April–September 1973 and January–June 1975. This earlier period is used to reflect our expectation that the more recent implementation of quality control in Medicaid will lead to error reductions of the magnitude achieved in AFDC over a comparable earlier period.

● The initial base period, used to calculate a national standard for the April–September 1979 period, will be April–September 1978 in AFDC and July–December 1978 in Medicaid. This difference is due to recent changes in the Medicaid quality control program and the inability to immediately implement an April–September, October–March reporting cycle. Beginning with the period April–September 1980, disallowances in both programs for subsequent six-month periods will be based on a national standard corresponding to the April–September period occurring either two or three periods earlier.

● If a State is unable to provide a sample estimate of its error rate in Medicaid for any six-month period, we will assign an error rate to the State on the basis of the best information available to us. This will be necessary not only to judge compliance with the regulation but also to enable the national standard to be calculated on the basis of performance in all States.

The provisions related to SSI will protect States against fiscal liability for excessive errors made by the Social Security Administration in administering State supplements. The national standard will be 4.85 percent for April–September 1979 and 4.0 percent thereafter. States will be reimbursed for their share of any benefits paid in excess of these standards.

Dated: February 21, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-6786 Filed 3-6-79; 8:45 am]

[4110-07-M]

Title 20—Employee's Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

[Regs. No. 205 and 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart T—State Supplementation Provisions: Agreements; Payments

QUALITY ASSURANCE SYSTEM—PERFORMANCE STANDARD FOR FEDERAL ADMINISTRATION OF STATE SUPPLEMENTAL PAYMENTS FOR SUPPLEMENTAL SECURITY INCOME—FEDERAL FISCAL LIABILITY WHEN ERROR RATES EXCEED THE NATIONAL STANDARD

Title 45—Public Welfare

CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Quality Control System—Performance Standard for Aid to Families with Dependent Children (AFDC) Payments—Reduction in Federal Financial Participation (FFP) When Error Rates Exceed the National Standard

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: These regulations provide the rules we will use in the Aid to Families with Dependent Children (AFDC) program to reduce our Federal matching payments (FFP) to States which make incorrect AFDC payments that exceed a prescribed rate. The prescribed rate for each State will be the national standard or the State's target error rate, whichever is higher. The national standard will be the weighted mean payment error rate for all States. Data from the State Quality Control (QC) system and the Federal review monitoring system will be used to develop the payment error rate for each State. A State's target error rate will be figured by multiplying its base period payment error rate by 93.6 percent. (This figure is 100 percent minus the 6.4 percent national improvement rate.)

These regulations also provide that States failing to meet the prescribed rate may have 65 days to show there was good reason for not meeting the rate and thus avoid reduction in the matching funds. The State may also appeal the reduction under the usual section 1116(d) procedures.

These regulations also provide the rules we will use in the Supplemental Security Income (SSI) program to determine how much money we will need to pay back (Federal fiscal liability) to a State where we have agreed with a State to make both the mandatory and the optional State supplementary SSI payments. Basically, we will pay back to a State the total amount of incorrect payments we make above the goals established in these regulations. The goal is a 4.85 percent payment error rate for April–September 1979 and 4 percent beginning in October 1979. We will reduce the amount of money we must pay back by the amount of money we recover (recoup) from beneficiaries who have been overpaid or who have received payments even though they were ineligible.

We use the data from our SSI Quality Assurance system to develop our payment error rate in each State. A State may review a sample of the cases in our SSI quality assurance system, just as we may review a sample of cases from a State's AFDC quality control system.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

For AFDC—Sean Hurley, Division of Quality Control Management, 202-245-0788. For SSI—William J. McCarthy, Division of Standards and Operating Policies, 301-594-4594.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

We and the States are committed to reducing incorrect payments in both the AFDC and SSI programs, and we believe that improved management of these programs will increase public confidence in them. We intend to devote considerable resources to improving these programs. At the same time, we believe it is necessary to be able to impose some reduction in Federal funding for States which do not improve at an acceptable level and to impose sanctions against ourselves if we fail to achieve an acceptable level

of performance in administering State supplementary payments for the SSI program.

In recent years, errors have decreased in the Aid to Families with Dependent Children (AFDC) program from 16.5 percent of all payments in 1973 to 8.7 percent in 1977, and in the Supplemental Security Income (SSI) program from 11.5 percent in 1975 to 4.6 percent in 1977. Since the rate of the decline in error rates has slowed recently, these regulations will encourage States (for AFDC) and us (for SSI) to continue to reduce the payment error rates. We will continue to use the quality control systems to produce the error rate data required, and to provide information to help reduce the incorrect payments.

AFDC: History

In 1973, we published a regulation which permitted us to reduce our Federal matching funds to a State if the case error rate for ineligibility was more than 3 percent and if the overpayment case error rate was more than 5 percent. In 1976, the U.S. District Court for the District of Columbia ruled in *Maryland* v. *Mathews* (415 F. Supp. 1206, D. D.C., 1976) that the 3 percent and 5 percent error rate levels were "arbitrary" and "capricious" and that we could not reduce matching funds based on these levels in the 14 States involved in the litigation. We decided not to reduce matching funds in any State and withdrew our regulation.

After that court decision, we discussed the quality control program, error rate goals and funding disallowances and policies extensively with State and local governments and their representative organizations. We then published an NPRM on July 7, 1978, which provided our proposed rules. We have modified some of those rules in these final regulations based on comments we received.

AFDC: The Rules

In these rules, we establish a national standard for incorrect payments in the AFDC program. We establish this national standard every year using the payment error rate data from the April-September quality control system period. The national standard will be the weighted mean of all of the States' payment error rates. This standard will be used to measure performance of the States in the following April-September period and in the October-March period after that. A State whose payment error rate is below the national standard must not go above the standard, without risking reduction in Federal matching funds. A State whose payment error rate is above the standard must reduce its error rate to the national standard or to the State's target error rate established under these rules. To figure the target error rate, we have established 6.4 percent as a reasonable rate of improvement in a State's performance that is above the national standard. We, therefore, will establish the target error rate by multiplying the State's payment error rate by 93.6 percent. (This figure is 100 percent minus the 6.4 percent national improvement.)

AFDC: Major Differences Between NPRM and Final Regulation

In the NPRM, we proposed that the national standard for AFDC be the 50th percentile (median) of the payment error rate for all States. Based on comments we received, we are using the weighted mean payment error rate for the national standard in these final regulations.

In addition we have lowered the national improvement rate from 18 percent of the State's full payment error rate to 6.4 percent. The national improvement rate will stay unchanged for the 2-year period April 1979 to April 1981 instead of being adjusted annually as was proposed in the NPRM. We will evaluate the improvement rate at that time.

We have also rewritten these regulations in simpler and clearer language. We are not publishing these regulations as joint regulations with the Health Care Financing Administration which is responsible for the Medicaid program. We combined the proposed rules in the NPRM because we were proposing common policies and we wished to receive integrated comments.

AFDC: Response to Public Comments

The Notice of Proposed Rulemaking was published in the Federal Register on July 7, 1978 (43 FR 29311). Comments were received from 45 State and local welfare departments, 29 legal aid organizations, 16 private individuals, and other public or private organizations. The significant comments and our response follow.

APPROPRIATENESS OF FISCAL DISALLOWANCE (REDUCTION) POLICY

Comment: Most States were against any fiscal disallowance (reduction) policy. Their reasons ranged from the belief that reductions would reduce resources available for corrective action, to our not having the legal authority to impose fiscal reductions. Some States suggested that we have incentive provisions instead of fiscal disallowances.

Response: Our authority to issue regulations for reducing Federal financial participation for incorrect payments made by States is contained in sections 403 and 1102 of the Social Security Act. That authority was implicitly upheld in the U.S. District Court decisions in the case of *Maryland* v. *Mathews* (415 F. Supp. 1206, D. D.C., 1976). We have, however, no authority to provide incentive payments to encourage reduction in the amount of incorrect payments beyond those provided in section 403(j) of the Social Security Act. This section provides for payments to States if their payment error rate (including payments to ineligibles, overpayments, under payments, and incorrect terminations and denials) is 4 percent or below. At the same time, we believe that a national standard for performance, a national improvement rate and appropriate reductions in Federal matching funds to States which fail to meet their target error rates are necessary to encourage and maintain the States' commitment to reducing the amount of incorrect payments in the AFDC program.

MEAN VS. MEDIAN NATIONAL ERROR RATE

Comment: Many States said that the national mean (weighted average of State payment error rates) would be a more reasonable standard than the national median proposed in the NPRM. This was based on the belief that States with the largest caseload and expenditures should have a proportionally greater influence on the performance standard than States with smaller caseloads and expenditures.

Response: We have accepted this suggestion and the final regulation provides for using the weighted mean as the national standard. For the July-December 1977 AFDC period the national median, as used in the NPRM was 7.0 percent, and was met by 25 States; in the same period, the national mean, as used in the final regulation, was 8.7 percent and was met by 36 States.

INDIVIDUAL STATE PERFORMANCE STANDARD

Comment: Some States expressed the opinion that a national performance standard was unreasonable because of the wide variation among the States in terms of the complexity of their programs and caseloads. They proposed that individual State performance standards be established.

Response: We do not believe individual performance standards are desirable for several reasons:

(1) It is not administratively feasible to have individual performance standards.

(2) Analyses have shown that there is no pattern of statistical correlation between any given individual variable and high or low error rates.

(3) Beyond the basic Federal requirements, States have considerable latitude in deciding what kind of program rules and procedures they wish to have.

(4) We have to monitor all programs in the same way to be equitable.

Therefore, we will retain a national standard. Changing this standard from the median to the mean, however, means that about two-thirds of the States are already achieving the standard. Also, we provide that States with error rates above the national standard may avoid reductions in Federal matching funds if they achieve individual target rates that show reasonable progress toward the standard.

THE 18-PERCENT ANNUAL NATIONAL HISTORICAL AVERAGE RATE OF IMPROVEMENT

Comment: The States and others objected to the use of an 18 percent national historical improvement rate for two basic reasons: (1) QC data were used from the first 2 years (1973–1975) even though improvements from the least costly corrective actions and elimination of the most easily corrected errors were included in that period, and data from the latest QC period were not included; and (2) future corrective actions will cost more than the dollars saved as error rates get lower.

Response: We believe that a State whose error rate is above the national standard should reduce its payment errors at a reasonable rate to the national standard. However, we agree that the States make a good point and we have decided not to use the earlier QC data in determining the national improvement rate. We will use more recent data from January 1976 through December 1977. Using only these data lowers the national improvement rate from 18 percent to 6.4 percent.

We believe that in those States with AFDC error rates above the national standard, a 6.4 percent improvement rate is a reasonable expectation in light of the degree of error in those States and the historical nationwide experience in reducing error in the AFDC program.

We believe it is reasonable to hold the 6.4 percent improvement rate for 2 years. This rate may be higher or lower than would have resulted from the provision in the NPRM which allowed for calculating a new improvement rate after every base period. However, we believe that a constant rate will inform States with high error rates how much they must improve, and we must expect at least this degree of improvement annually over the next 2 years. After 2 years we will reexamine this standard.

We do not believe that States above the national standard are in the position that the only effective corrective actions are too costly. Several studies have shown that many corrective actions which result in high error reductions do not require significant allocations of resources.

COUNTING PROCEDURAL ELIGIBILITY AND RECIPIENT ERRORS

Comment: Some respondents objected to including procedural errors like the absence of WIN registration or social security number as part of the payment error rates. They argue that these errors do not mean a savings when the error is corrected, and therefore, they should not be included in the reduction calculation.

Response: We will include in the payment error rate errors like the absence of WIN registration or social security number. These are basic statutory eligibility requirements and we must ensure that all eligibility requirements are met. We must therefore measure all eligibility requirements.

AGENCY ERROR ONLY SHOULD BE COUNTED

Comment: Some commenters suggested that only agency errors, not those caused by beneficiaries, should be counted in determining the payment error rate.

Response: We believe that some beneficiary errors are controllable as shown by the 51.6 percent reduction in these errors since 1973. If we did not include these errors in the payment error rate, the States would not have as great an incentive to develop systems that are responsive to nonreporting and incorrect reporting errors. It would also build into the quality control system a potential bias because States might attribute more errors to the recipient than should be.

INCLUSION OF INCORRECT NEGATIVE CASE ACTION AND UNDERPAYMENT RATES

Comment: Some commenters suggested that negative case actions and underpayment error rates be included in calculating a State's payment error rate. Their concern is that the emphasis on reducing overpayments and payments to ineligibles will increase the number of incorrect denials or terminations and the number of underpayments. Recipient groups were also concerned that the emphasis on reducing incorrect payments would cause the States to impose unreasonable verification requirements on applicants and beneficiaries.

Response: Available evidence indicates that causes of errors affect ineligible cases, overpayments, underpayments, denials and terminations alike. Therefore, addressing causes of the error often reduces both overpayments and underpayments. Furthermore, in addition to the appeals and hearing process, which is designed to protect beneficiaries from the excesses suggested, section 403(j) of the Social Security Act provides for incentive payments to States which have low error rates; these error rates include underpayments, denials and terminations. We will, however, continue to monitor the negative case action and underpayment results. We will also examine ways to establish incentives for reductions in negative case errors and other means to achieve lower negative case error rates. However, because this regulation is grounded on the disallowance of incorrect expenditures of funds and because a negative case action does not result in an incorrect expenditure, we have not included any method for taking a disallowance based on negative case actions.

THE 4 PERCENT GOAL

Comment: Some States commented that the 4 percent goal for AFDC error rates had no empirical basis and should not be established until after the completion of our planned 18-month study. Several stated that an ultimate performance goal should be the limit under which no reduction in payment errors would be cost effective, and that a hold harmless tolerance above the ultimate goal should be provided.

Response: The 4 percent goal corresponds to, but is more narrowly based than, the error rate level which States must achieve in AFDC to qualify for incentive payments recently authorized by Congress (section 403(j) of the Social Security Act as amended by section 402 of Pub. L. 95–216). The fact that 9 States are now at or below this goal shows that it is attainable. However, we are not requiring any State to reduce its payment error rate to 4 percent. We are only requiring a State to improve to the national standard or to the State's target error rate, whichever is higher, or remain below the national standard.

We are going to do a study to determine a reasonable goal. If the results of that study indicate that the ultimate performance goal should be higher than 4 percent, we will set a new goal. In the meantime, the final regulations do not include any reference to the 4 percent goal.

THE $5 DISREGARD

Comment: Several States objected to the $5 disregard before we would count an incorrect payment as an error. The States contended that by disregarding incorrect payment of less than $5, we would overlook incorrect payments of more than 6 percent of the average benefit level in States with the smallest benefit level, while overlooking incorrect payments of only 1 percent of the average benefit level in States with the highest benefit level.

Response: While this ratio will always exist between larger and smaller payment States as long as there is

an individual case dollar tolerance, the impact of this tolerance on individual State payment error rates or the national mean will be negligible. We do not believe we should distort the analysis of case or payment error rates with insignificant error amounts. Therefore we will retain the $5 case tolerance.

ERROR RATES ASSOCIATED WITH TIME SPENT ON REVIEW

Comment: States commented that the time spent on quality control reviews varied widely from State to State and suggested that the quality of the review varied accordingly. The States also suggested that variation existed in the Federal rereview of the State's quality control systems.

Response: We agree that the quality control review can vary due to State program differences. Based on the data collected, however, there does not appear to be any statistical correlation between the time spent, the quality of the case review, and high and low error rates in States. The Federal rereview mechanism can also vary if not monitored closely; we will strengthen this function.

CHANGE TIME FRAME OF IMPLEMENTATION

Comment: States expressed concern that more lead time was necessary to secure legislative change and budget authorizations for corrective action initiatives. They suggested that no reductions in Federal matching be applied until the third or fourth periods after the base period. They also suggested that a base period after September 1978 should be used because the final regulations would not be published until after the end of the April-September 1978 period.

Response: The corrective action process is a continuous one and the basic causes of incorrect payments have not changed significantly. States, therefore, now have sufficient data to start on appropriate corrective actions. Furthermore, studies have shown that some significant corrective action projects have been and can be implemented without major allocation of new resources. Also, the States should find it easier to meet the prescribed rate because of the changes we have made in the final regulations—most specifically using the weighted mean payment error rate for the national standard, and lower national improvement rate. We believe that the time frames proposed are reasonable, and therefore, we have made no change.

COMPLIANCE WITH EXECUTIVE ORDER 12044

Comment: Several commenters said that the proposed regulations should have followed the Executive Order more closely. The order provides that proposed regulations that will have major economic consequences must be accompanied by a detailed regulatory analysis which includes an examination of alternatives considered.

Response: These regulations will not result in the level of economic impact which requires a regulatory analysis. We believe, moreover, that the NPRM did indicate the main issues involved in the proposed policies. Some of these were—

(1) The use of a national stardard vs. individual State standards;

(2) The reduction of error rates in stages vs. immediate application of a standard;

(3) The use of the payment error rate vs. the case error rate;

(4) Reasonable progress toward a goal based on an historical improvement rate vs. another rate; and

(5) Whether there should be "good cause" exceptions for failure to meet the prescribed error rate.

A number of States and others responded to the issues in the NPRM; this would indicate that the alternatives were presented in sufficient detail.

OFFSET OF DEDUCTION BY RECOUPMENT

Comment: Several States thought we should consider reducing the reduction of Federal matching funds by the amounts States recovered from overpaid or ineligible beneficiaries.

Response: We will consider this in more depth and are open to suggestions from States and others on how such a policy could become a part of the reduction calculation. Since no reductions in Federal matching will occur for more than a year, we can amend the regulations later if we decide to include this policy.

APPEALS PROCEDURES

Comment: Several States commented that the final regulations should describe the appeals process in more detail and that the "good cause" exceptions should be broader.

Response: The final rule retains the provisions regarding good cause exceptions. We disagreed with the general statements that the factors given as examples should be broadened. Because a State's failure to act upon legislative changes or to obtain budget authorization is within State control, in our view it does not justify a State's failure to administer the SSI or AFDC program effectively and to meet error reduction goals.

The Secretary's decision on whether the State's failure to meet its target was due, in whole or part, to factors beyond its control necessarily requires a judgmental weighing and balancing of many considerations. We have not established a formal administrative process for the Secretary's review of the State's good cause request. We believe this process must necessarily be informal, permitting a free interchange between the Secretary and the State, and allowing the Secretary to consider all the pertinent facts and circumstances. However, we have added a provision specifying that a final diallowance by the Secretary is subject to reconsideration within 45 days from the date of our notice. The regular procedures for appeal of disallowances will apply, including review by the Grant Appeals Board (see 45 CFR Part 416).

SSI: HISTORY AND RULES

Since January 1975, under our agreements with the States we have accepted Federal fiscal liability (FFL) for our incorrect payments of mandatory and optional State supplementary payments that we make for the States. We have used the case, rather than payment, error rates to determine our FFL. In these regulations, we are changing to using the payment error rate as the basis for determining the amount of our liability.

We will pay back to a State the total amount of the monies we misspend on its behalf, minus the amount we recover from beneficiaries, that exceed the payment error rate standard. This standard is 4.85 percent for the April-September 1979 period. This is midway between the current tolerance level of 8 percent case error rate (5 percent overpayments and 3 percent ineligibles) which equals a 5.7 percent payment error rate and an ultimate 4 percent performance standard. The 4 percent standard will be effective beginning October 1979.

SSI: RESPONSE TO COMMENTS

LACK OF STATE ROLE IN SETTING STANDARDS

Comment: Some commenters said that States are not given a role in setting the standards for the mechanism used in determining and calculating Federal fiscal liability.

Response: The current system does provide sufficient means for resolving differences between SSA and the States in determining the payment error rates. The rules for FFL determinations have been shared with the States. In addition, the States have had an opportunity to see the mechanism in action through the sub-sample review available under the Federal-State agreements. We will continue to discuss significant changes in the SSI QA system and will continue to meet with interested groups or representatives from States about the SSI QA system.

STATE REVIEW OF SAMPLE CASES

Comment: Some commenters said the States are not given the opportunity to perform a review of a sample of the cases reviewed by the Social Security Administration in calculating the error rates.

Response: Current Federal-State agreements explicitly provide the States with the right to review the QA system sample findings. States have the right under the agreements to exercise this option, although some States have chosen not to do so. If a State reviews the QA findings and the Social Security Administration agrees with the State's review findings, the Quality Assurance data base is revised to reflect the corrections. This provision is being added to the regulations to emphasize the Department's commitment to this policy (see new § 416.2086(h)).

EFFECT OF STATE SAMPLE REVIEW

Comment: Some commenters expressed concern that the States' subsample results have no effect on calculations of the final error rates.

Response: If a State chooses to review a sample of QA cases, we have a process for settling disagreements that may arise between the State and us as a result of the reviews. When we resolve the disagreement and if the State findings are correct, we change the QA data base to reflect the State's findings. Thus, the State's subsample results do have an effect on the calculation of the final SSI error rates.

TIMELY SSA ACTION AFTER REVIEW

Comment: A comment was made that there are no requirements that SSA's reviews be completed, results reported, and corrective action taken on a timely basis.

Response: The current system provides for the timely completion of SSA's reviews, the reporting of results and timely corrective action. Data relating to determination of Federal fiscal liability and adjustment of accounts are currently on a timely basis. For example, the October 1977 to March 1978 SSI data were recently reported at the point when the July to December 1977 AFDC data were released. Generally the SSI Quality Assurance results are on a tighter release schedule than AFDC results. The current data analyses and corrective actions are effective as shown by the significant reductions in payment error rates over a relatively short time frame. The Social Security Administration will continue to meet the current tight completion goals and will accept the completion requirements placed on the States.

STATE'S RIGHT TO AUDIT

Comment: One commenter said that the regulations are silent on the States' right to audit. This audit right should be explicit within the regulations.

Response: Current Federal-State agreements, developed with the States, provide for the States' right to audit SSA's payment of State supplementary payments. We do not believe this regulation is the appropriate place for rules about a State's audit rights.

REVIEW QA SYSTEM

Comment: Some States also indicated that they should be able to audit or rereview the SSI QA system and its findings.

Response: We include rereview procedures in these regulations. In addition, SSA is committed to informing the States of plans for significant changes in the system and will consider their views before implementing any changes. SSA has and will continue to discuss with the States matters of mutual concern affecting the QA system.

ELIMINATION OF FFL

Comment: Some commenters question the elimination of Federal fiscal liability for States which have only Federally administered mandatory supplements. There are no Federally administered optional supplements in these States.

Response. Federal administration and liability for the mandatory supplementation only States has continually declined. In most of these States there was no FFL in the past year. For those States in which the potential for liability still exists, the Federal payment would be a very small percentage of the actual cost of doing a QA sample. The cost to continue sampling for Federal fiscal liability for mandatory supplement only States is, therefore, prohibitive.

(Secs. 1102 and 1631 of the Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1745, as amended; 42 U.S.C. 1302 and 1383.)

(Catalog of Federal Domestic Assistance Program Nos. 13.807, Supplemental Security Income Program; 13.808, Assistance Payments—Maintenance Assistance (State Aid).)

Dated: February 14, 1979.

STANFORD G. ROSS,
Commissioner of Social Security.

Approved: February 21, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

1. 20 CFR Part 416 is amended by adding a new § 416.2086 to read as follows:

§ 416.2086 Federal liability when error rate in payment of Federallly administered State supplementation exceeds national standard.

(a) *Purpose.* This section provides the rules we will use to determine the amount of our liability (Federal fiscal liability or FFL) when our incorrect supplementary payments have exceeded an established level. If we have agreeed with a State to handle both its optional and its mandatory supplementary payments, we will reimburse the State when our error rate exceeds the national standard.

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

"National standard" refers to a combined dollar error rate of overpayments and payments to ineligible individuals which we must not exceed if we are to avoid FFL. The standard is 4.85 percent for the period April 1979 through September 1979, and 4 percent beginning October 1, 1979.

"Overpayment" refers to the amount by which a Federally administered State supplementary payment to an eligible individual for a specified month exceeds the amount the individual should have received for the month. An overpayment must be $5 or more to be included in the payment error rate. Overpayments exclude cases involving a payment adjustment lag.

"Payment to an ineligible individual" refers to any Federally administered State supplementary payment to an individual who was ineligible to receive any amount of either a Federally administered State supplementary payment or a Federal supplemental security income payment for the month. Payments to an ineligible individual exclude cases involving a payment adjustment lag.

"Payment adjustment lag" refers to a situation which results in an incorrect payment because a beneficiary's circumstances changed in the month before the month of payment, the month of payment, or a later month in the quarter during which we paid the beneficary. However, if we try to correct the error during this period, and we make an error in changing the payment, that payment is included in the payment error rate.

"We," "us," and "our" refers to the Department or the Social Security Administration as appropriate.

(c) *Applicability.* (1) This section applies to States that have entered into an agreement with the Secretary of Health, Education, and Welfare for Federal Administration of both mandatory and optional supplementary payments.

(2) This section will apply to 6-month periods beginning April 1979.

(3) For States that enter agreements for Federal administration of both

mandatory and optional supplementary payments after April 1979, this section will apply beginning with the first 6-month period, starting in April or October, throughout which the agreement is in effect.

(4) This section will apply to a 6-month period only if the agreement is in effect for every month of the period.

(d) *Assumption of liability.* When our error rate in the administration of State supplementary payments for a 6-month period exceeds the national standard, we will be liable to the State for the total amount by which the national standard is exceeded, less the total overpayments and payments to ineligible individuals that we recover.

(e) *Determination of liability.* In every State in which we administer both mandatory and optional supplementary payments, we will select and review a valid sample of cases of Federally administered State payments for each 6-month period beginning in April or October. We shall determine the payment error rate of Federally administered State supplementary payments for each of these States. We will assume fiscal liability for all incorrect payments which exceed a 4.85 percent payment error rate for the period from April to September 1979 and a 4 percent payment error rate for periods after that. We will compute our liability as follows—

(1) Determine the sum of the Federally administered State supplementary dollars incorrectly paid as overpayments and payments to ineligible individuals for all sampled individuals in the State for the 6-month period; and

(2) Divide the amount determined in paragraph (e)(1) by the total number of dollars paid as federally administered State supplementary payments to all sampled individuals in the State for the 6-month period; and

(3) If the quotient determined in paragraph (e)(2) does not exceed 0.0485 (4.85 percent) for the 6-month period beginning April 1979, and 0.04 (4 percent) thereafter, the national standard will not have been exceeded and the Secretary shall incur no liability to the State for incorrect payments of State supplementary payments for the 6-month period.

(4) If the quotient determined in paragraph (e)(2) of this section exceeds 0.0485 (4.85 percent) for the 6-month period beginning April 1979, and 0.04 (4 percent) after that—

(i) Multiply the quotient so determined by the total number of dollars expended as federally administered State supplementary payments to all beneficiaries in the State for the 6-month period;

(ii) Multiply the total number of dollars expended as federally administered State supplementary payments to all beneficiaries in the State for the 6-month period by 0.0485 (4.85 percent) for the 6-month period beginning April 1979, and 0.04 (4 percent) after that, and

(iii) Subtract the product obtained in clause (ii) from the product obtained in clause (i). The difference is the Federal fiscal liability to the State for incorrect payments of federally administered State supplementary payments for the 6-month period.

(f) *Recovery adjustment.* We shall try to recover our overpayments and payments to ineligible individuals. We shall reduce our liability to a State under paragraph (e) to the extent that we recover incorrect payments. We will determine the amount of our reduced liability by multiplying the amount recovered by the percentage of incorrect payment to which FFL applies and subtracting the product from the FFL.

EXAMPLE.—Total incorrect payments are $10 million and we determine our liability to be $1 million. We recovered $100,000. FFL applies to 10 percent (1 million/10 million) of the incorrect payments. Ten percent of the $100,000 we recovered is $10,000, which we subtract from the $1 million FFL to determine that our reduced liability is $990,000.

(g) *Exclusion from liability to "hold-harmless States".* If we find that we are liable under this section to a State which also receives Federal participation under the hold-harmless provision of § 416.2080, we will reduce our liability payments under this section by the amount necessary to avoid duplicate payment of Federal funds.

(h) *State review.*—(1) *Sample selection and review.* Each State may select for its own review a subsample of the cases we select for our review. The State must coordinate its review with our review of the same cases, and must conduct its review at the same time as ours. We will cooperate with the State in arriving at the time for reviewing our respective samples. The States must use the same operational and program policies and procedures we use in our review. All reviews performed by a State shall be entirely at State expense.

(2) *Adjustment to liability.* If a State's finding in a case differs from ours and if we agree that the State's finding is correct, we will revise our data base to include the State's findings. We will then determine our liability by treating the State's findings on cases that we agree upon as if they were the findings of our sample review.

2. 45 CFR Part 205 is amended by adding a new § 205.41 to read as follows:

§ 205.41 Reduction of FFP for incorrect payments by States.

(a) *Purpose.* (1) This section provides the rules we will use to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State, and, if so, the amount of the reduction. Basically, we will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(2) We will use the data from the quality control system (see § 205.40) in each State and the Federal monitoring system in determining the amount of incorrect payments. The quality control system provides data on incorrect payments for every 6-month period.

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

"Base period" refers to the April-September quality control system review period each year, beginning with the April-September 1978 period.

"Incorrect payments" refer to payments to people who are ineligible for a payment and overpayments to eligible people.

"National standard" refers to the weighted mean payment error rate of all of the States' payment error rates.

"Payment error rate" refers to the dollar amount of incorrect payments a State has made expressed as a percentage of the State's total payments.

"We," "us" or "our" refers to the Department or the Social Security Administration as appropriate.

(c) *General.* In these rules we are establishing a national standard for incorrect payments in the AFDC programs. We establish this national standard every year using the payment error rate data from the April-September quality control system period. The national standard will be the weighted mean of all of the States' payment error rates. This standard will be used to measure performance of the States in the following April-September period and in the October-March period after that. A State whose payment error rate is below the national standard must not go above the standard, without risking reduction in Federal matching funds. A State whose payment error rate is above the standard must reduce its error rate to the national standard or to the State's target error rate established under these rules. To figure the target error rate, we have established 6.4 percent as a reasonable rate of improvement in a State's performance that is above the national standard.

We, therefore, will establish the target error rate by multiplying the State's payment error rate by 93.6 percent. This figure is 100 percent minus

the 6.4 percent improvement rate. If a State make incorrect payments in a base period that are higher than the national standard, we will give the State until the second 6-month period after the base period to reduce its incorrect payments to an acceptable level. If a State fails to meet this level during the second or third 6-month period after the base period and cannot show good reason, we will reduce the amount of our matching funds for that 6-month period(s). We provide several examples of what we will consider good reasons for not meeting the goal. We describe this process in detail in the following paragraphs.

(d) *How we establish a national standard.*—(1) *Information we will use.* We will use the information provided by the Federal/State quality control system. This system measures the dollar amount of incorrect payments for every 6-month period (April-September and October-March).

(2) *How we use the information.* We will figure the weighted mean payment error rate for all States using each State's payment error rate and giving weight to the total amount of payments in the State's AFDC program. The weighted mean payment error rate will be the national standard.

(3) *When we will establish the national standard.* We will establish the national standard every year, using the quality control data for the April-September period of each year. We refer to this period as the "base period." We will establish the national standard for this time using the quality control data from the April-September 1978 period.

(e) *How we establish acceptable levels for State performance using the national standard.*—(1) *General.* We will measure each State's payment error rate for each base period against the national standard, and set performance goals which apply to both the second and third subsequent 6-month periods. If the State's payment error rate in the base period is below the standard, we consider that the State has reached an acceptable level of performance, and the State's payment error rate must continue to remain below the standard. If the State's payment error rate in the base period is higher than the standard, the State must achieve the standard. Alternatively, if it is to the State's advantage, the State must achieve its target error rate.

(2) *How we establish a target error rate for a State above the standard.* We have established 6.4 percent as a reasonable rate of improvement in the performance of a State with a payment error rate above the current national standard. To establish the target error rate, we multiply the State's payment error rate in the base period by 93.6 percent (100 percent minus the 6.4 percent improvement rate).

EXAMPLE.—The State's payment error rate in the base period is 20 percent. The national standard is 8 percent. To find the target error rate, we multiply 20 percent by 93.6 percent, which gives a target error rate of 18.7 percent.

(3) *When a State must meet and maintain the established rate.* A State must meet the higher of the national standard or its target error rate in the second 6-month period and in the third 6-month period following each base period. Therefore, if a State has a payment error rate above the national standard for the April-September period. The State must reduce its error rate to the national standard or to the State's target error rate by the next April-September period, and also must not exceed this error rate level in the following October-March period.

(f) *If a State fails to meet the established rate.* If a State does not meet the national standard or its target error rate for either of the required 6-month periods and cannot show a good reason for it, we will reduce our matching funds to the State for those 6 (12) months, using the following formula. We will reduce our matching funds by the amount we would not have paid if the State had reached its goal (the national standard or the target error rate).

EXAMPLE.—If the State's target error rate was 10 percent and the State's actual payment error rate was 12 percent, we will reduce our matching funds by 2 percent of the Federal share of the dollars the State paid under its AFDC program.

(g) *How a State can show good reason for not meeting the established rate.* (1) We will notify a State that we are going to reduce (or disallow) matching funds because the State did not meet the national standard or the target error rate established for the State. The State will have 65 days from the date on this notification to show good reason for not meeting the established error rate. If we find that the State did not meet the standard or the target error rate because of factors beyond its control, we will reduce the funds being disallowed in whole or in part, or not at all, as we find appropriate under the circumstances shown by the State. Some examples of good reasons are—

(i) Disasters such as fire, flood or civil disorders, that—

(A) require the diversion of significant personnel normally assigned the AFDC eligibility administration, or

(B) destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(ii) Strikes of State staff or other government or private personnel necessary to the detemination of eligibility or processing of case changes;

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulation, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period; and

(iv) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation.

(2) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources does not constitute a factor beyond the State's control.

(h) *Disallowance subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 45 days from the date of our notice. The regular procedures for appeal of disallowances will apply, including review by the Grant Appeals Board (see 45 CFR Part 16).

[FR Doc. 79-6787 Filed 3-6-79; 8:45 am]

[4110-35-M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

Medicaid; Fiscal Disallowance for Erroneous Payment

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth provisions for reducing Federal financial participation (FFP) in erroneous State Medicaid payments identified through State Medicaid Quality Control (MQC) systems. They also provide that, before action is taken, the State will have an opportunity to show why the reduction should not be made.

These provisions are necessary because it is estimated that in Fiscal Year 1978 erroneous payments due to eligibility errors resulted in over $1 billion in unnecessary Federal and State expenditures. The intent is to encourage States to implement strong corrective action programs that will reduce errors and save Federal and State funds.

DATE: Effective on March 7, 1977.

FOR FURTHER INFORMATION, CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

Since June 1975, the Department of Health, Education, and Welfare, together with the States, has operated a Quality Control (QC) program in the Medicaid program. The focus of this QC program was to measure eligibility errors. On April 1, 1978, this QC system was revised so that it also measures Medicaid payment errors due to uncollected third party insurance and claims processing errors. The Quality Control system is designed to measure error rates for these three types of errors and provide information on the nature and cause of errors, so that corrective action may be undertaken.

We recognize that it is not feasible for the States to administer an absolutely error-free program. However, we are concerned about our responsibility not to extend Federal financial participation (FFP) for erroneous expenditures, particularly when a State's error rate exceeds a level that it would reasonably be expected to achieve.

Prior to 1973, in the AFDC program, we withheld FFP only for erroneous payments uncovered in the Quality Control sample itself. In 1973, we promulgated for AFDC a regulation (38 FR 8743, April 6, 1973) that disallowed FFP for payments to ineligible persons and overpayments to eligible persons exceeding case error rate tolerance levels of 3 percent for ineligibility and 5 percent for overpayments.

On May 14, 1976, the U.S. District Court for the District of Columbia, *Maryland* v. *Mathews* invalidated these regulations, although it upheld our authority to promulgate rules of this nature. The Court specifically ruled as follows: (1) it upheld our interpretation that the Social Security Act does not require FFP in all erroneous payments; (2) it upheld our authority to promulgate a regulation providing for disallowance of FFP in some erroneous payments; (3) it confirmed that, under the efficient administration clauses of the various welfare titles of the Social Security Act, we have authority to set permissible error tolerance levels for erroneous payments; and (4) it rejected the specific error tolerance levels of 3 percent and 5 percent, on the ground that they had not been adequately justified by us at the time they were promulgated. Based on the evidence before it, the Court found the national error tolerance levels to be arbitrary and capricious and, accordingly, enjoined us from taking any disallowances based on these tolerance levels in the plaintiff States.

The Secretary decided not to appeal the *Maryland* decision. He also decided not to take disallowances in States which were not a party to the *Maryland* case but whose error rates exceeded the 3-percent and 5-percent tolerance levels. Instead, we undertook the development of a disallowance policy through extensive discussions with representatives of a number of State and local governments represented through the New Coalition (The National Conference of State Legislatures, National Governors Association, the National Association of Counties, the National Conference of Mayors, and the National League of Cities), the American Public Welfare Association, and others. To further demonstrate good faith in these negotiations, the Secretary rescinded the disallowance regulations on March 16, 1977, and returned to the policy of disallowing FFP only for erroneous payments uncovered in the Quality Control sample itself.

The Medicaid Quality Control (MQC) program began in June 1975, when HEW issued regulations requiring States to implement a Medicaid QC program based on the AFDC QC program model. The AFDC and Medicaid QC programs were similar in conceptual design, except for the fact that Medicaid QC had no policy for disallowing FFP for erroneous expenditures above certain levels. In Medicaid, FFP was disallowed only for erroneous payments uncovered in the Quality Control sample itself. No broader disallowance provision has been promulgated before now. Although information is not available on all error rates, we know in the case of eligibility determinations for the medically needy that there was virtually no reduction in error rates under the prior MEQC system. We estimate that erroneous payments due to eligibility error resulted in over $1 billion in unnecessary Federal and State expenditures in Fiscal year 1978. We, therefore, believe it is necessary to introduce a reasonable fiscal incentive to encourage States with high error rates to implement strong error reduction programs. This regulation is designed to fulfill this purpose.

SUMMARY OF THE REGULATION

The Medicaid Quality Control program seeks reasonable progress in error reduction. Although technical assistance, training, and positive incentives have a role in achieving continued error reduction, an effective error reduction program also needs national error standards and improvement targets, and appropriate fiscal disallowance when minimal progress is not achieved.

The fiscal disallowance policy in Medicaid embodies the following features. These principles are responsive to comments received on the proposed rule.

1. We propose to establish a series of nation-wide eligibility error standards based on performance levels actually achieved by the States. We believe that actual performance best reflects States' administrative and managerial capabilities to lower error levels. Therefore, we will use the weighted mean of the eligibility payment error rate achieved by all States as the national standard.

The July to December 1978 MQC review period data will be used to set the first national standard. This standard will apply to the April-September 1979 and October 1979 to March 1980 periods.

A new national standard will be established each year based on the payment error rates achieved by the States in each April-September period. This new standard will apply to the second and third six month periods following the base period in which the national standard was set.

States with error rates above the standard will be expected to reduce their rates to one of two targets, whichever is higher:

- The national standard, or
- A 15.7% improvement in their error rate in the base period, (i.e., an error rate equal to 84.3% of the base period error rate).

States will be expected to take corrective action continuously to reach their error reduction targets. Any State failing to meet its error reduction target will be liable for a reduction in FFP. For example, if the national standard is 7%, a State with an error rate of 8% in the base period of July to December 1978 will be required to reduce its rate to the national standard by the end of the April to September 1979 period. If its error rate remains at 8%, the State would be subject to a disallowance in FFP of 1% for the period during which the target was to be met.

Some States may have payment error rates that are considerably above the national weighted mean. It would be unrealistic to expect these States to reduce their erroneous payment error rates to the national mean in one or two six month periods. To accommodate these States, we expect them to lower their payment error rates by at least 15.7 percent per year. The 15.7 percent figure is the average annual rate of reduction in eligibility errors achieved by all States in the AFDC program during the first 27 months

after the AFDC Quality Control system was established in the April 1973 period. An example illustrating this situation follows.

If the State had an error rate of 15% in the base period, its error reduction target would be 2.4%, which is 15.7% of 15%. If this State's error rate remains at 15%, it would be subject to a disallowance of 2.4% for the period during which the target was to be met.

The FFP disallowance is computed for, and taken against, Federal payments for medical assistance services furnished to recipients, (i.e., the State expenditures to which that State's Federal medical assistance percentage is applicable) by the percentage points indicated.

2. Completion of a State's designated QC sample is vital to the effective operation of Quality Control in Medicaid and to the proper implementation of this regulation. In the past, some States have not completed their Medicaid QC review samples and this may occur again. In order to deal with this contingency and, we hope, encourage the States to complete their reviews, this regulation authorizes HCFA to assign an error rate to a State for any QC review period for which it does not complete a valid review as required under Section 431.800. An assigned error rate would be treated in the same manner, for all purposes, as would the State's actual error rate.

HCFA will estimate an error rate for the State on the basis of the best information available to it. This may entail extrapolating from the State's prior QC error rate data from the AFDC or Medicaid eligibility QC systems. Alternatively, we may use data from comparable States, or a combination of data involving both the State in question and a comparable State's. Another alternative would be for HCFA to conduct a sample review itself. The method chosen would be tailored to the circumstances for a particular State and might vary from one State to another, depending on the nature of the available information.

We wish to stress the importance of a State completing its QC review and we will use the compliance procedure, as appropriate, against States that do not do so. However, by assigning an error rate, as specified in the regulation, we are also able to implement this regulation effectively and take reasonable measures to control erroneous expenditures. We think basing an error rate on the best information available gives us the flexibility to derive the best approximation of what the State's actual error rate would have been, had it completed the QC review. This retains consistency with the fundamental concept of this regulation, which is the calculation of a disallowance for estimated erroneous expenditures.

3. Since unusual and extraordinary circumstances could significantly affect a State's ability to meet error reduction targets, the fiscal disallowance policy will allow appeals when extenuating circumstances intervene.

We will not make a disallowance under certain conditions when the State can demonstrate that its failure to reach the national standard or the 15.7 percent improvement rate was due to factors beyond its control. The following conditions are illustrative:

(1) Disasters such as fire, flood, civil disorders, etc., which:

(a) Require the diversion of significant personnel normally assigned to Medicaid eligibility administration, or

(b) Destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations.

(2) Strikes of State staff or other government or private personnel necessary to the determination of eligibility and processing of case changes.

(3) Sudden and unanticipated workload changes which result from:

(a) Changes in Federal law and regulation, or

(b) Rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period.

(4) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation.

The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources will not constitute an acceptable excuse.

When we notify a State that it is subject to a disallowance, that State will have 65 days to present to us with reasons why it could not have reasonably met its target error rate.

The process within the Department for determining whether the State's failure to meet its target error rate was due to factors beyond its control will be informal. The Secretary has broad discretion to weigh all the facts and circumstances bearing on the State's ability to meet its target error rate.

The Secretary may decide to disallow the entire amount by which the State failed to meet its target rate, part of that amount, or none of that amount, according to the extent he concludes the State's ability was affected by factors beyond its control.

4. The State may request reconsideration of the Secretary's decision to take a disallowance. The reconsideration would be heard by the Department's Grant Appeals Board in accordance with procedures specified in 45 CFR Part 16.

DISCUSSION OF COMMENTS

On July 7, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 29311). Comments were received from 45 State and local welfare and health departments, 23 legal aid organizations and 14 private individuals, and public and private organizations. All comments were considered in preparing the final rule. These comments and our responses are discussed below. Changes from the proposed rule resulting from comments received are indicated in the discussion.

1. Appropriateness of the Fiscal Disallowance Policy.

A major objection concerned the imposition of fiscal disallowances. The primary reasons given in support of that objection were: 1) imposition of a disallowance will reduce available State funds to cover costs of medical services for recipients, 2) our legal authority to impose disallowances is questionable, 3) disallowances for Medicaid are contrary to Congressional intent and may be counter-productive in reducing error rates. It was suggested that we follow a policy of fiscal incentives for MQC similar to that recently allowed for AFDC.

Response. The authority to promulgate regulations providing for a disallowance for erroneous expenditures is contained in Section 1903 of the Social Security Act. This authority is essentially the same as the authority for the AFDC Quality Control disallowance that was upheld in the District Court decision on *Maryland* v. *Mathews.* Although the commenters were correct that the Court's decision did not require us to implement a policy of fiscal disallowances, we believe that doing so will: 1) encourage States to reduce errors in the Medicaid eligibility process and 2) uphold our legal obligation to prevent or limit the use of Federal funds for erroneous and illegal payments.

We agree with the recommendation that incentive payments be provided to encourage error reduction. Presently there is no legislative authorization in the Medicaid program to grant States fiscal incentives.

2. Counting Procedural and Client Errors.

Many States and legal aid organizations recommended that procedural errors due to the States' oversight in completing all necessary paperwork before awarding benefits, such as failure to register for WIN, should not be included in the error rate because, when corrected, they do not reduce total Medicaid payments. It was also recommended that we exclude errors caused by the recipient's failure to report information to the State (client error). States indicated that, if they are held responsible for these errors,

unreasonable verification requirements will have to be imposed on recipients.

Response. The procedural errors included in the error rate are established by law as eligibility requirements. Medical payments made for recipients who do not meet these eligibility requirements are subsequently not eligibile for FFP. We believe that these errors are controllable, since they often require only better administrative controls.

We also believe that client errors can be controlled, because States that have reduced error rates substantially have been able to reduce both procedural and client errors. There is no empirical evidence that client errors cannot be controlled. If client errors were not included, States may potentially attribute all errors to the client. These errors have been included in our definition of the error rate so that States will be encouraged to develop mechanisms that will prevent and control client errors.

3. Inclusion of Underpayment and Negative Case Action Rates.

A number of commenters recommended that we include negative case actions (erroneous denial or termination of eligibility), and underpayment error rates in the definition of an eligibility error, thereby providing a more comprehensive scope to the disallowance policy. Legal aid organizations were concerned with the States' failure to adequately notify persons denied Medicaid benefits of fair hearing requirements that are provided by regulation. Some commenters recommended that we consider offering positive fiscal incentives to States that reduce negative case action rates, to offset disallowances imposed for erroneous eligibility determination.

Response. In our view, it is just as important that persons not be erroneously denied Medicaid services as it is that persons not be erroneously furnished Medicaid services. For that reason, we expect the States to reduce their negative case errors. We will monitor the States' performance through the negative case action Quality Control system and will continue to encourage States to develop corrective action programs to reduce and control negative case errors. We will also examine ways to establish incentives for reductions in negative case errors and other means to achieve lower negative case error rates. Moreover, we will use the compliance process when necessary to ensure that the States are properly affording applicants the fair hearings to which they are entitled. However, because this regulation is grounded on the disallowance of erroneous expenditures of funds and because a negative case action does not result in an erroneous expenditure, we have not included any method for taking a disallowance based on negative case actions.

4. The 4% National Goal.

The proposed regulation would have established a 4% national goal for error reduction, and provided that its reasonableness would be determined on the basis of an 18 month study.

A number of States opposed the 4% national goal indicating: 1) it is arbitrary and capricious, 2) it fails to meet the test of an empirical foundation, 3) it is contradictory to establish a standard while it is under study, 4) a 5% level would be more realistic (although remaining arbitrary), 5) an improvement rate is more realistic than a fixed standard, and 6) it is unreasonable to apply AFDC standards to Medicaid.

Response. We have accepted the States arguments on this issue and will not utilize the 4 percent as an interim goal in Medicaid. However, we will undertake an 18 month study of the reasonableness of a fixed national percentage. Based on the study results, we will review the possible reintroduction of an empirically based ultimate error rate reduction goal.

5. Individual State Goals.

Many States recommended the use of individual State standards rather than a national goal. There was some support for the concept of grouping States by comparable program variables and complexity.

Response. We have rejected these concepts as being impractical and unmanageable, because of the extensive administrative difficulties associated with monitoring 53 standards. Grouping States by comparable variables is difficult since there is no consensus on what these variables should be to group States into like clusters with comparable error rates. We would prefer to use a national standard because it is uniform, easier to administer, and offers a basis for comparative ranking for each State.

6. Use of Weighted Mean vs. Median.

The proposed regulation would have set a national error standard at the 50th percentile (median) of the payment error rate achieved by all States (until this was reduced to 4 percent). A number of States were concerned that this proposal disregards differences among State programs. They argued that a weighted average (mean) more accurately reflects the differences in case-loads and expenditures among the various jurisdictions.

Response. We agree that the mean is more accurate than the median as a reflection of the pattern of erroneous expenditures, and is an accurate empirical mid-point between high and low error rate States. Therefore, we will use the weighted mean.

7. The 13% Annual National Historical Average Rate of Improvement: Applicability of AFDC Data to Medicaid.

The proposed regulation provided that States with error rates above the median would not necessarily have to reduce the rate to the median within a single period. As an alternative, the payment error rate could be reduced by at least 18 percent per year without any loss of FFP.

The 18 percent represents the average annual reduction rate achieved by all States in the AFDC program between the April-September 1973 period and the July-December 1976 period. A large number of commenters objected to the use of the historic rate for the following reasons: 1) it is unreasonable to impose a reduction rate on the Medicaid program that is based on AFDC historical data, 2) the 18% figure is not based on the most current AFDC period available, i.e., inclusion of July-December 1977 data reduces the historic improvement rate of 14%, 3) it is unreasonable to assume a continuing reduction of error rates (as the error rate falls, the remaining errors are more difficult to correct). In fact, attempts at further reductions below a certain level of errors may not be cost-effective, 4) the base period of four or five years used in creating the improvement rate is excessive, 5) the 18% improvement factor is derived on a national average basis and disregards individual State improvement records, i.e., it is unreasonable to expect individual States to meet the historical record of all States.

Response. We believe that it is reasonable to expect States with error rates above the established national standard to reduce their error rate by at least the national historic improvement rate. The annual improvement rate has been changed to 15.7%. This figure is based on the average rate of improvement in AFDC eligibility errors during the first 27 months of operation of the AFDC Quality Control system. We believe this figure is better than the 18% used in the NPRM for the following reasons:

1. The 15.7% is based only on AFDC eligibility errors whereas the 18% was based on both overpayments and eligibility errors. Since the Medicaid disallowance will relate only to eligibility errors using AFDC data only for eligibility errors increases the comparability between the AFDC data and the Medicaid experience to be measured.

2. Because the MQC system was recently revised (to utilize a larger sample, provide better data, and place more emphasis on error reduction) and because there has been no significant improvement between 1975 and 1977 under the prior MEQC system, we think the present situation in Medicaid is essentially the same as AFDC

at the beginning of its QC program in April 1973.

3. We believe the present error rate in Medicaid is still high enough to warrant the expectation of reducing it, during the next 24 months, at the historical rate experienced by AFDC during the April–September 1973 to January–June 1975 periods.

This 15.7% rate will be held constant for 2 years, because we believe present error rates are still at a high enough level for us to expect a continuation of the historical rate of error reduction. After two years, we will re-examine this standard. We are taking this approach in order to develop a strong error reduction program in Medicaid that will reduce State and Federal dollar losses due to eligibility errors.

8. Federal Fiscal Liability for SSI Eligibility Errors.

A number of States objected to the provision that would make them responsible for payment errors made to Medicaid recipients because the Social Security Administration (SSA) determinations of eligibility for aged, blind, and disabled Supplemental Security Income (SSI) recipients were incorrect. The NPRM specified that States that have SSA determine Medicaid eligibility for SSI recipients under an agreement with SSA under Section 1634 of the Act, would not be responsible for SSA determined eligibility errors. States indicated that, by implication, the NPRM held States without Section 1634 agreements responsible for SSA determined eligibility errors. However, States that do not have 1634 agreements with SSA must, under Section 1902(a)(10) of the Act, automatically make SSI recipients eligible for Medicaid, unless they exercise the option under Section 1902(f) of the Act to adopt more restrictive eligibility criteria (the latter are commonly called "209(b) States.") Commenters also recommended that the Medicaid program be reimbursed by SSA for expenditures made on behalf of ineligible SSI recipients. In addition, States questioned the validity of holding them responsible for unnecessary SSA delays in notifying the State that a former SSI recipient has become ineligible.

Response. The final regulation has been changed to provide that SSI ineligibility errors will not be included in the Medicaid error rate. This applies whether or not the State has a Section 1634 agreement with SSA. This does not, of course, apply to 209(b) States. 209(b) States will have eligibility errors for all Medicaid recipients included in determining their Medicaid error rate.

We understand the concern of States in requesting some type of reimbursement from SSA for erroneous Medicaid expenditures made on behalf of ineligible SSI recipients. However, there is no provision under the Social Security Act to reimburse States for these expenditures. States will not be held responsible for SSA caused delays in receiving notification that a SSI recipient has lost eligibility.

9. Changing the Implementation Time Frames.

A number of States believe the proposed time frames are unrealistic. Comments included the following: 1) the initial base period should be revised from July–December 1978, to October 1978–March 1979, so that there could be conformity between this cycle and the standard MQC cycle, 2) the proposed 6-month period for corrective action is insufficient, 3) the initial three month grace period for the present MQC system is too short, 4) since the State summary report on eligibility findings is not required until eight months after the conclusion of the sample period and corrective action plans are not required for ten months, the corrective action period will not be helpful, 5) there are no constraints on us to produce statistical information in a timely manner.

Response. We have considered these views carefully, because we realize that the time frames specified in this regulation appear to be very short. However, we think the problems are not as difficult as the commenters suggest.

The MQC regulation implementing the expanded QC program became effective April 1, 1978, and established the initial sampling period to be July through September 1978. (See 43 FR 13574; March 31, 1978.) This regulation does not change the requirements for the QC reviews. (See 42 CFR 431.800.) States, therefore, should be conducting the required reviews and collecting the appropriate data needed to implement this regulation. Moreover, the States are supposed to be developing and reporting monthly data on eligibility errors under section 431.800(e)(2). Thus, even though the first base period under this regulation does not coincide with the 6-month sampling periods established under section 431.800, the States are not seriously inconvenienced, if they collect monthly data.

In addition, if the States use this monthly data during the base period, they know approximately what their eligibility error rate for the first base period will be. Although the commenters are correct that Section 431.800(e)(4) does not require the State to submit its summary report until 8 months after the sampling period, the base period error rates, national standard, and State error reduction targets can be estimated on the basis of monthly reports. We understand the need of the State to know their error reduction targets as soon as possible and will do everything we can to make this information available at the earliest possible date.

The commenters are also correct that a State's corrective action plan required under Section 431.800(g) is not due until July 31 each year. However, the fact that the State must submit its corrective action plan to us only once a year does not preclude a State from undertaking whatever corrective action it concludes is necessary throughout the year in order to reduce its error rate.

In the final regulation, we have deleted the use of the term "corrective action period" because we believe it is misleading. States are expected to take corrective action to reduce errors on a continuous basis rather than focusing corrective action efforts only on the period between the base and disallowance periods. The use of the term "corrective action period" implied that there was a period each year during which States were not subject to a disallowance. This is not true, since States are continuously subject to review for possible disallowance, beginning with the April–September 1979 review period.

The final regulation retains the sequence under which (after the first cycle) there is an April–September base period each year that is used to establish a target error rate applicable to the subsequent April–September and October–March review periods.

In our view, since the States will have monthly data from the beginning of the base period, they will have an advance indication of the frequency, nature, and causes of their eligibility errors. This lead time, plus the lag that occurs during the first disallowance period before it can be determined whether the State met its target, results in the State having well over six months to take corrective measures.

We understand the commenter's concern about the first period of disallowance beginning in April 1979. However, we think it is essential to implement this regulation promptly in order to carry out our responsibility not to extend FFP for erroneous expenditures. We also want to get on the regular MQC schedule as soon as possible. As noted above, the States have lead time to determine both their error rate and the reasons for the error rate. It is in the interests of the State to take corrective measures as soon as possible, even if the State is below the national standard, to reduce erroneous payments. We have decided, therefore, to retain the schedule set forth in the NPRM.

10. Determining the Magnitude of an Erroneous Payment.

Several commenters questioned the method utilized in the MQC program in determining the amount of payment in error, particularly in cases involving medically needy spend down requirements. The comments were apparently directed at the Medicaid Quality Control manual which does indicate that in certain circumstances the amount of the erroneous payment is the full amount of the total Medicaid payment, not just the amount of the spend down error which renders the recipient ineligible. States indicated that the policy should be changed to reflect simply the amount of the spend down error and not the entire amount of the Medicaid payment as the error.

Response. The statute requires that the spend down must be "incurred" before the recipient becomes eligible for Medicaid services [Section 1903(f) of the Act]. In our view, once the dollar amount of Medicaid services furnished the recipient exceeds his required spend down, the recipient may properly be said to be eligible for purposes of MQC review. Therefore, if a State furnishes medical services before the recipient has incurred his spend down, our current policy is to set the amount of the State's payment error equal to the lower of the unmet spend down or the medical expenses. The following cases illustrate this policy:

Case 1. Upon application for Medicaid, a person is told by the State agency that his spend down is $100. The person incurs the $100 spend down, receives a Medicaid card, and has medical expenses for the next month of $50 paid for by Medicaid. The QC review than picks the case for review and finds that the correct amount of the spend down should have been $125. Thus, there is a spend down error. The dollar amount counted in error is the smaller of (a) unmet spend down ($25), or (b) medical expenses paid for by Medicaid ($50).

Case 2. In this case, the person's spend down liability is properly determined by the State agency to be $125. However, before he incurs any medical expenses, he is given a Medicaid card by the State and receives benefits of $500. The case is picked for MQC review and the error is found. In this case, the amount of the error is $125, which is the unmet liability.

In the earlier Medicaid Eligibility Quality Control system, Case 2 would have been considered ineligible, and the entire amount of the Medicaid payment considered as a $500 error. This would have included the unmet spend down and the remainder of the payment which would have appeared to be valid.

Under the present MQC system, the procedure is to consider the smaller amount to be the error, as cited in Case 1. The person's eligibility is valid at the time that the expenses are incurred.

11. Compliance with Executive Order 12044.

Several commenters said we failed to comply with the requirements of Executive Order 12044. This order, signed by the President on March 23, 1978, provides that proposed regulations that will have major economic consequences must be accompanied by a detailed regulatory analysis that includes an examination of alternative approaches considered in the decision-making process.

Response. This regulation does not have sufficient economic impact to warrant regulatory analysis as required by the Executive Order. We have met the extensive public involvement requirement of the Executive Order through the extensive discussions with the public welfare community and the use of the standard 60 day comment period. Many alternatives were examined in the development of this regulation. Some of these issued were:

1. Use of a national standard versus individual State standards;

2. Reduction of error rates in stages versus immediate application of a standard;

3. Use of the payment error rate versus the case error rate; and

4. Should "good cause" exceptions exist for failure to meet the prescribed error rate.

Many States and other members of the public welfare community responded to the NPRM, which would indicate that there were alternatives presented in sufficient detail.

12. Appeal Process.

A number of commenters requested greater specificity of the appeals procedures, and a broadening of the good cause exceptions. Several States disagreed with the concept that the failure of a State to act upon necessary legislative changes or budget authorizations is an unacceptable excuse for not meeting error rate reductions targets.

Response. The final rule retains the provisions regarding good cause exceptions. We disagreed with the general statements that the factors given as examples should be broadened. Because a State's failure to act upon legislative changes or to obtain budget authorization is within State control, in our view, it does not justify a State's failure to administer the Medicaid program effectively and to meet error reduction goals.

We have not established a formal administrative process for the Secretary's review of the State's good cause request. We believe this process must necessarily be informal, permitting a free interchange between the Secretary and the State, and allowing the Secretary to consider all the pertinent facts and circumstances. The Secretary's decision on whether the State's failure to meet its target was due, in whole or part, to factors beyond its control necessarily requires a judgmental weighing and balancing of many considerations. However, we have added a provision specifying that a final disallowance by the Secretary is subject to reconsideration by the Grant Appeals Board. (See 45 CFR 201.14 and 45 CFR Part 16.)

13. Separate Tolerance Levels for Third Party Liability and Claims Processing.

We also requested suggestions regarding the proposal to apply fiscal reductions to erroneous payments resulting from Third Party Liability (TPL) and Claims Processing (CP) errors and, also, combining the three types of errors—ineligibility, Third Party Liability, and Claims Processing into a single payment error tolerance.

A number of States suggested: 1) that no tolerance level should be established for TPL and CP because there is a lack of empirical data available at this time, 2) if tolerance levels are established, they should be separate for each component.

Response. For the time being, we will not set a tolerance level for these types of errors. We do plan on doing this in the near future.

14. State Failure to Complete Quality Control Reviews.

The proposed regulation requested suggestions for possible methods of discouraging State failure to complete required QC sample reviews within the appropriate time frame. Recommendations to this request were: 1) the current compliance process is adequate, 2) error rates assigned to States that fail to complete required reviews should be specified, and this rate should be applied only if more than 11% of the States fail to complete their reviews, 3) an increase in FFP to 75-90% for QC costs would be more effective, and 4) States might prefer accepting a nation-wide error rate to publication of its own, probably higher, error rate.

Response. As discussed in item 2 under the Summary of the Regulation, we believe it is essential to have a method for assigning an error rate to States that do not complete their QC reviews. The method we chose is to estimate the State's error rate using the best information available to us. In our view, this is more logical and more consistent with the basis for the regulation than any of the suggestions. The error rate should be tied as specifically as possible to the actual experience of the State in question, rather than set at some arbitrary national rate or based on the experience of States whose experience or character-

istics might not be comparable. The suggestion that a rate be assigned only if more than 11% of the States fail to complete reviews does not have any apparent rationale. Moreover, the method for assigning a rate should not yield a rate that would be lower that the actual rate would have been, since this would act as an incentive not to complete the review. Finally, since this regulation is grounded on the disallowance of erroneous payments, rather than a sanction for failure to comply with statutory or regulatory requirements, there is no basis for assigning an arbitrarily high rate that has no relationship to the State in question.

42 CFR Part 431, Subpart P is amended by adding a new § 431.801 to read as follows:

Subpart P—Quality Control

Sec.
431.800 Medicaid Quality Control (MQC) system.
431.801 Disallowance of Federal financial participation for erroneous State payments.

Subpart P—Quality Control

§ 431.801 Disallowance of Federal financial participation for erroneous State payments.

(a) *Purpose.* This section establishes rules and procedures for disallowancing Federal financial participation (FFP) in erroneous Medicaid payments due to eligibility errors, as detected through the Medicaid Quality Control (MQC) system required under § 431.800 of this subpart.

(b) *Definitions.* For purposes of this section—"Base period" means a six month MQC sampling period used to calculate each State's error rate and the national standard. The initial base period is July through December 1978. For subsequent years, the base period is April through September.

"Eligibility errors" has the same meaning as specified in § 431.800(b).

"National standard" means the weighted mean of all State error rates for a base period.

"State error rate" means the rate of eligibility payment errors detected under the MQC system for each review period.

"State target error rate" means the error rate that a State must achieve in order to avoid a disallowance of FFP under this section. A State's target error rate is equal to the higher of the national standard or percent of that State's error rate during the base period.

(c) *Setting the State's error rate.* An error rate for each State will be determined for each MQC review period, in accordance with instructions issued by HCFA. Erroneous eligibility determinations by the Social Security Administration (SSA) of Supplemental Security Income (SSI) eligibility will not be included in determining the State's error rate. If a State fails to complete a valid MQC review as required for any sampling period, HCFA will assign the State an error rate based on the best information available to HCFA.

(d) *Establishing the target error rate.* Each year, after the end of the base period, HCFA will calculate a national standard and will notify each State agency what that State's target error rate is for the following April through September and October through March MQC review periods.

Example. The State's payment error rate in the base period is 20 percent. The national standard is 8 percent. To find the target error rate, we start with 20 percent and multiply by 84.3 percent which gives a target error rate of 16.9 percent. If this State reduces its error rate only to 18.2 percent during one of the subsequent disallowance periods, its FFP for that period may be reduced by 1.3 percent, the short fall from the 16.9 percent target.

(e) *Period for disallowance of FFP.* The State target error rate established for each base period will be used to determine whether the State is subject to a disallowance during the following April through September and October through March MQC review periods. During each of these two periods, a State will be subject to a reduction in FFP for program services (see § 433.10 of this subchapter) equal to the percentage points by which it exceeded its target error rate. The first disallowance period will be April through September, 1979.

(f) *Procedures for disallowance of FFP.* (1) HCFA will notify each State that is subject to a disallowance under paragraph (e) of this section. A State will have 65 days from the date on this notification in which to show that this disallowance should not be made because the State's failure to meet its target error rate was due to factors beyond its control.

(2) Events that will be considered by the Secretary in determining whether a State's failure to meet its target error rate was due to factors beyond its control include—

(i) Disasters such as fire, flood or civil disorders, that—

(A) require the diversion of significant personnel normally assigned to Medicaid eligibility administration, or

(B) destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(ii) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes;

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulation, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6 month period; and

(iv) State actions resulting from incorrect written policy interpretation to the State by a Federal official resonably assumed to be in a position to provide such interpretation.

(3) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources does not constitute a factor beyond the State's control.

(4) The Secretary may disallow the full amount calculated under paragraph (e) of this section or reduce the disallowance in whole or in part, to the extent he determines that the State's failure to meet its target error rate was due to factors beyond its control.

(5) A State may request reconsideration of a disallowance under this section in accordance with the procedures specified in 45 CFR 201.14 and 45 CFR Part 16.

(Sec. 1102 of the Social Security Act, 42 U.S.C. 1302.)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: February 13, 1979.

LEONARD D. SCHAEFFER,
Adminstrator, Health Care Financing Administration.

Approved: February 21, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-6788 Filed 3-6-79; 8:45 am]

federal register

WEDNESDAY, MARCH 7, 1979

PART IV

DEPARTMENT OF ENERGY

■

COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

[6450-01-M]

Title 10—Energy

CHAPTER X—DEPARTMENT OF ENERGY (GENERAL PROVISIONS)

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

AGENCY: Department of Energy.

ACTION: Final rulemaking.

SUMMARY: The Department of Energy (DOE) hereby establishes Part 1022 of Chapter X of title 10 of the Code of Federal Regulations, providing for compliance with Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands.

The regulations are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), and are designed to be coordinated with the environmental review requirements established pursuant to the National Environmental Policy Act (NEPA). The final regulations published herein contain certain revisions to the proposed regulations, published in the FEDERAL REGISTER on July 19, 1978 (43 FR 31108), based on DOE's consideration of comments received.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 6229, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-5998.

Mr. Stephen H. Greenleigh, Acting Assistant General Counsel for Environment, Room 8217, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-4266.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On July 19, 1978, DOE published in the FEDERAL REGISTER (43 FR 31108) a notice of proposed rulemaking to establish 10 CFR Part 1022, DOE regulations for compliance with floodplain/wetlands environmental review requirements. The proposed regulations were drafted in response to Executive Orders 11988 and 11990 regarding floodplain management and wetlands protection, respectively, which were issued on May 24, 1977. The regulations were proposed to be applicable to all organizational units of DOE, except the FERC.

A public hearing was scheduled to be held on August 17, 1978, but only one request to speak was received. The hearing was cancelled by subsequent notice in the FEDERAL REGISTER, and the requesting party, the Sierra Club, met informally with DOE representatives to discuss its views on the proposed regulations. The formal comment period closed on August 28, 1978; DOE has, however, considered late comments in the preparation of these final regulations.

II. COMMENTS RECEIVED

Written comments were received from 12 organizations and agencies, including the Department of the Interior (DOI), Army Corps of Engineers, Environmental Protection Agency (EPA), Water Resources Council (WRC), Federal Insurance Administration (FIA), Council on Environmental Quality (CEQ), Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Georgia State Department of Planning and Budget, State of Vermont Agency of Environmental Conservation, and Marathon Oil Company.

DOE has carefully considered all comments received, and has modified the proposed regulations, as appropriate, to assure that the final regulations represent sound policy and procedures for floodplain management and wetlands protection. DOE's analysis and treatment of the major substantive comments are summarized below.

III. DOE RESPONSE

A. RELATIONSHIP TO DOE NEPA PROCEDURES AND CEQ NEPA REGULATIONS

In accordance with the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures, such as those established to implement NEPA, DOE designed its proposed floodplain/wetlands regulations to be implemented in conjuction with its proposed regulations for compliance with NEPA, originally intended to be codified at 10 CFR Part 1021 (FEDERAL REGISTER, February 21, 1978). Several commenters questioned the relationship of the floodplain/wetlands regulations to the NEPA regulations, given the fact that the DOE NEPA regulations had not been promulgated.

DOE had intended to finalize 10 CFR Part 1021 prior to the promulgation of floodplain/wetlands regulations. However, due to the recent publication of final CEQ NEPA regulations (FEDERAL REGISTER, November 29, 1978), DOE no longer intends to finalize the rules which were proposed in February. Instead, DOE is preparing implementing procedures as required by the CEQ NEPA regulations. The basic approach of coordinating the floodplain/wetlands review procedures with existing (and future) DOE NEPA procedures remains intact. However, specific references to 10 CFR Part 1021 have been deleted. In addition, DOE has modified certain floodplain/wetlands requirements and definitions of NEPA documentation used herein to be consistent with the CEQ NEPA regulations and the anticipated DOE NEPA procedures.

A related comment pertained to the administrative framework for assuring DOE compliance with its floodplain/wetlands responsibilities. DOE intends to utilize the internal framework established with respect to NEPA compliance to fulfill its floodplain/wetlands responsibilities. Such internal authorities and responsibilities are embodied in internal DOE Orders and memoranda and are not included in these regulations, in order to maintain necessary flexibility. To address this concern, however, a new provision (§ 1022.18) has been added to identify the Assistant Secretary for Environment as the central point of contact for inquiries concerning DOE's floodplain/wetlands activities.

B. DETAILED STANDARDS AND PROCEDURES

In combined comments, WRC, CEQ, and FIA suggested that the final regulations establish "specific standards" for key substantive and procedural requirements of the floodplains Order. For example, it was suggested that specific standards be provided with respect to what constitutes a "practicable alternative" to siting in a floodplain. DOI also commented that the "spirit and intent" of the two Orders requires "considerably more details" in agency procedures "to provide a higher level of consideration to the natural and beneficial values of floodplains and wetlands."

While DOE is sympathetic to the goals expressed in these comments, it believes that the evaluation of floodplain/wetlands impacts is inherently site-specific in nature, and that the determination of what constitutes a "practicable alternative" can only be made after balancing relevant factors on a case-by-case basis. DOE believes that these regulations adequately provide the framework within which this process can take place, and that these regulations, as revised, fully satisfy the requirements of both Executive orders. Additional detailed guidance will be provided, as appropriate, through internal DOE Orders, guidelines and memoranda.

C. DEFINITIONS

Several comments were received regarding DOE's definitions of terms (§ 1022.4), which differed somewhat from the definitions set forth in WRC's Floodplain Management Guidelines (40 FR 6030, February 10, 1978). Two commenters objected to the definition of "action" as "any DOE activity," and suggested that DOE adopt WRC's definition, which specifies the kinds of activities covered by the term "action." DOE had included such language in the applicability section [§ 1022.5(d)] of the proposed regulations. Moreover, it was felt that the DOE definition of action assured broad application of the floodplain/wetlands review requirements. Nevertheless, to alleviate this concern, DOE has restructured the regulations so as to include the WRC language in the definition of "action."

Several commenters objected to DOE's definition of "minimize" as "to reduce to the smallest degree practicable," again suggesting that DOE use the WRC definition, i.e., "to reduce to the smallest degree." DOE believes that its definition is justified, and notes that the WRC Guidelines explain that:

> while minimize means to reduce to the smallest amount or degree, there is an implicit acceptance of practical limitations. Agencies are required to use all *practicable* (WRC's emphasis) means and measures to minimize harm. The Order does not expect agencies to employ unworkable means to meet this goal.

In light of the WRC qualification and to avoid possible confusion concerning the intended meaning of "minimize," DOE believes it is appropriate to reaffirm the practicable nature of the term "minimize" in its definition.

Another commenter objected to DOE's addition of implementation time to WRC's definition of "practicable." The WRC Guidelines listed cost, environment and technology as pertinent factors in judging practicability. In DOE's view, implementation time is an appropriate consideration in determining practicability since it may bear directly on the achievement of program objectives. Accordingly, implementation time has been retained in the definition of "practicable."

WRC expressed particular concern over the variance in DOE's definition of "floodplain." In response to this and similar comments, DOE has modified its definitions of "floodplain," "structure," and "flood or flooding" to conform with WRC's definitions.

In order to be consistent with the terminology established in the CEQ NEPA regulations, DOE has eliminated the term "Negative Determination" (a public notice that no environmental impact statement (EIS) will be prepared) from these regulations and substituted the term "Finding of No Significant Impact" (FONSI), which is used in 40 CFR Part 1500. Until the effective date of the CEQ regulations, a Negative Determination prepared pursuant to currently applicable DOE NEPA regulations will be considered synonymous with the FONSI used herein. Similarly, the definition of an environmental assessment (EA) for purposes of these regulations, has been modified to conform with the CEQ definition.

D. APPLICABILITY

Several commenters questioned the exclusion of FERC from the applicability of these regulations [§ 1022.4(a)]. In this regard, it should be noted that FERC is an independent regulatory commission within DOE and is not "subject to the supervision or direction of any officer, employee, or agent of any other part of the Department" (DOE Organization Act, 42 USC 7171). FERC has indicated its intention to incorporate floodplain/wetlands considerations into its NEPA compliance process, which is also administered independently from that of DOE.

Other commenters questioned DOE's application of the regulations to floodplain/wetlands actions "where practicable modifications of/or alternatives to the proposed action are still available" [§ 1022.5(b)]. The reviewers could not envision a situation in which alternatives had been foreclosed and in which it was no longer possible to *modify* an activity. DOE agrees that there may be circumstances in which it is still practicable to modify a proposed activity even after implementation has begun. DOE has therefore made a change in §1022.5(b) to specify that where the review of alternatives is no longer practicable or where DOE determines to take action in a floodplain, DOE shall design or modify the selected alternative to reduce adverse effects and mitigate flood hazard. This should also eliminate the confusion some reviewers experienced concerning the meanings of "modifications" and "alternatives."

Three commenters objected to the exemptions provided in § 1022.5(e) for floodproofing and flood protection of existing DOE structures or facilities, and maintenance activities. The commenters felt that such activities may indeed have long- and short-term adverse impacts on floodplains and wetlands. In response to these comments, DOE has eliminated the exemption of floodproofing and flood protection activities, and has modified the exemption of maintenance activities to include only routine maintenance [§ 1022.5(g)]. DOE has retained language which enables consideration of the need for a floodplain/wetlands assessment for routine maintenance involving unusual circumstances.

E. PUBLIC NOTIFICATION PROCEDURES

Several commenters felt that reliance on the publication of a notice in the FEDERAL REGISTER (§ 1022.14) with respect to a proposed floodplain/wetlands action does not satisfy the requirements for early public review and and does not encourage public participation in the floodplain/wetlands decisionmaking process. It is DOE's intent to incorporate floodplain/wetlands notification requirements into the current (and future) applicable NEPA procedures and documentation. DOE believes that these public notification requirements, including the enhanced notification and scoping requirements specified in the CEQ NEPA regulations, will assure an adequate public notification process for those DOE actions, requiring an EIS. Pending the effective date of the CEQ NEPA regulations and DOE implementing procedures, DOE shall, to the extent practicable, issue a Notice of Intent (NOI) to prepare an EIS for proposed floodplain/wetlands actions, where appropriate, and shall circulate the NOI to persons and agencies known to be interested in or affected by the proposed action. New language has been added to § 1022.14 to assure that similar policies and procedures apply to floodplain/wetlands actions, for which no EIS is prepared.

DOE has retained the proposed comment periods following publication of the early public notice and the statement of findings rather than expand these periods as suggested by several commenters. It is believed that the periods allotted in the proposed regulations will permit adequate public participation without unduly delaying agency decisionmaking.

F. OMISSIONS

Four commenters cited omissions in the proposed regulations concerning certain specific requirements of the Executive orders, including policies and procedures with respect to:

1. Consideration of flood hazards for actions involving licenses, permits, loans, grants, or other forms of financial assistance;
2. Delineation of past and probable flood height on DOE property;
3. Lease, easement, right-of-way, or disposal of property to non-Federal entities;
4. Leadership to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare; and
5. Periodic review and update of these regulations.

DOE notes that these items were inadvertently omitted and has, therefore, included provisions in § 1022.3 to

address items 1, 2, and 4 above; § 1022.5 to assess items 1 and 3; and § 1022.21 to address item 5.

G. MISCELLANEOUS

Four commenters cited the proposed regulations failure to identify compliance with National Flood Insurance Program (NFIP) standards as a *minimum* requirement, as stated in E.O. 11988. In response, § 1022.3(b) has been modified.

Two commenters were concerned with the procedures for making a wetlands determination in areas where the U.S. Fish and Wildlife Service National Wetlands Inventory maps are not yet available. Several possible alternate sources of information were recommended; these have been added to § 1022.11(c).

The WRC objected to the use of the final EIS as the vehicle to transmit the statement of findings because the final EIS is a pre-decisional document. WRC believes that E.O. 11988 requires the statement of findings to be issued *after* a decision is made. However, section 2(a)(2) of E.O. 11988 requires only that the statement of findings be prepared and circulated for brief public review *prior to taking action.* The final EIS is also issued for review prior to taking action. DOE believes it is useful to incorporate the statement of findings in a final EIS, where possible. Moreover, EPA in its comments, suggested it would be beneficial to issue a draft statement of findings in a draft EIS. Since E.O. 11988 provides for a period of public comment on the statement of findings, DOE feels that this document is most meaningful if it precedes the Agency's final decision.

Several commenters suggested that DOE delete the proposed requirement to review mitigation measures in the floodplain/wetlands assessment because of the Executive orders prohibition against actions in the floodplain/wetlands unless no practicable alternative is available. While DOE is aware of that requirement, it believes that the decisionmaking process as well as public participation in the decisionmaking process will be best served by a review of all relevant considerations in one document. Thus, DOE has continued the requirement that mitigation measures be reviewed along with practicable alternatives in the floodplain/wetlands assessment.

IV. EFFECTIVE DATE

Executive Order 11988 required agencies to issue or amend existing regulations and procedures within one year of its issuance to comply with the Order. DOE has exceeded the time allotted for promulgation of regulations and consequently believes that the goals of the Order will be best served by waiving the normal 30-day transition period prior to effectiveness of the regulations. Accordingly, these regulations will become effective March 7, 1979.

NOTE.—DOE has determined that because this document does not constitute a significant regulation within the meaning of E.O. 12044, preparation of a regulatory analysis is not required.

In consideration of the foregoing, Chapter X of Title 10 of the Code of Federal Regulations is amended as set forth below, effective upon publication.

Issued in Washington, D.C. February 28, 1979.

RUTH C. CLUSEN,
Assistant Secretary for Environment.

Part 1022 is added to Title 10, Chapter X, of the Code of Federal Regulations to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

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AUTHORITY: E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking. It is the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to compliance with E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain/wetlands factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in floodplain/wetlands, providing opportunity for early public review of such proposed actions, preparing floodplain/wetlands assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures.

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

(b) Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the hazard and risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with the standards and criteria set forth in, and consistent with the intent of, the regulations promulgated by the Federal In-

surance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*;

(5) Minimize the destruction, loss, or degradation of wetlands;

(6) Preserve and enhance the natural and beneficial values of wetlands;

(7) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property which has suffered flood damage or is in an identified flood hazard area and which is used by the general public; and

(8) Prior to the completion of any financial transaction related to an area located in a floodplain, which is guaranteed, approved, regulated or insured by DOE, inform any private participating parties of the flood-related hazards involved.

(c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE in wetlands not located in a floodplain.

(d) Identify, evaluate, and, as appropriate implement alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and

(e) Provide opportunity for early public review of any plans or proposals for actions in floodplains and new construction in wetlands.

§ 1022.4 Definitions.

For purposes of this part:

(a) "Action" means any DOE activity, including, but not limited to:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) DOE-undertaken, financed, or assisted construction and improvements; and

(3) The conduct of DOE activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.

(b) "Base Flood" means that flood which has a 1 percent chance of occurrence in any given year (also known as a 100-year flood).

(c) "Critical Action" means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.

(d) "Environmental Assessment" (EA) means a document for which DOE is responsible that serves to: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, (2) aid DOE compliance with NEPA when no EIS is necessary, and (3) facilitate preparation of an EIS when one is necessary. The EA shall include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) "Environmental Impact Statement" means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.

(f) "Facility" means any man-placed item other than a structure.

(g) "Finding of No Significant Impact" (FONSI) means a document prepared by DOE which briefly presents the reasons why an action will not significantly effect on the human environment and for which an EIS therefore will not be prepared.

(h) "Flood or Flooding" means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(i) "Floodplain" means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

(j) "Floodplain Action" means any DOE action which takes place in a floodplain.

(k) "Floodplain/Wetlands Assessment" means an evaluation consisting of a description of a proposed action, a discussion of its effects on the floodplain/wetlands, and consideration of alternatives.

(l) "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.

(m) "High Hazard Areas" means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

(n) "Minimize" means to reduce to the smallest degree practicable.

(o) "New Construction" for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.

(p) "Practicable" means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.

(q) "Public Notice" means a brief notice published in the FEDERAL REGISTER, and circulated to affected and interested persons and agencies, which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

(r) "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

(s) "Restore" means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(t) "Statement of Findings" means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes steps to be taken to minimize harm to or within the floodplain.

(u) "Structure" means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(v) "Wetlands" means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflow, mudflats, and natural ponds.

(w) "Wetlands Action" means an action undertaken by DOE in a wetlands not located in a floodplain, subject to the exclusions specified at § 1022.5(c).

§ 1022.5 Applicability.

(a) This part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this part, review the alternatives identified in the environmental review or in the final EIS to determine whether an alternative action may avoid or minimize impacts on the floodplain/wetlands. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of al-

ternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve floodplain values. DOE shall publish in the FEDERAL REGISTER, a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and persons or groups known to be interested in the action.

(c) This part shall not apply to wetlands projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropriated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to proposed actions located in wetlands (not located in a floodplain), this part shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property.

(d) This part applies to activities in furtherance of DOE responsibilities for acquiring, managing, and disposing of Federal lands and facilities. When property in a floodplain or wetlands is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, DOE shall: (1) identify those uses that are restricted under Federal, State, or local floodplains or wetlands regulations; (2) attach other appropriate restrictions to the uses of the property; or (3) withhold the property from conveyance.

(e) This part applies to activities in furtherance of DOE responsibilities for providing federally undertaken, financed, or assisted construction and improvements. Applicants for assistance shall provide DOE with an analysis of the impacts which would result from any proposed wetland or floodplain activity.

(f) This part applies to activities in furtherance of DOE responsibilities for conducting Federal activities and programs affecting land use, including but not limited to, water and related resource planning, regulating and licensing activity.

(g) This part ordinarily shall not apply to routine maintenance of existing facilities and structures on DOE property within a floodplain/wetlands since such actions normally have minimal or no adverse impact on a floodplain/wetlands. However, where unusual circumstances indicate the possibility of impact on a floodplain/wetlands, DOE shall consider the need for a floodplain/wetlands assessment for such actions.

(h) The policies and procedures of this part which are applicable to floodplain actions shall apply to all proposed actions which occur in a wetlands located in a floodplain.

Subpart B—Procedures for Floodplain/Wetlands Review

§ 1022.11 Floodplain/wetlands determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA requirements, DOE shall determine the applicability of the floodplain management and wetlands protection requirements of this part.

(b) In making the floodplain determination, DOE shall utilize the Flood Insurance Rate Maps (FIRM's) or the Flood Hazard Boundary Maps (FHBM's) prepared by the Federal Insurance Administration of the Department of Housing and Urban Development to determine if a proposed action is located in the base or critical action floodplain, as appropriate. For a proposed action in an area of predominantly Federal or State land holdings where FIRM or FHBM maps are not available, information shall be sought from the land administering agency (e.g., Bureau of Land Management, Soil Conservation Service, etc.) or from agencies with floodplain analysis expertise.

(c) In making the wetlands determination, DOE shall utilize information available from the following sources, as appropriate: (1) U.S. Fish and Wildlife Service National Wetlands Inventory; (2) U.S. Department of Agriculture Soil Conservation Service Local Identification Maps; (3) U.S. Geological Survey Topographic Maps; (4) State wetlands inventories; and (5) regional or local government-sponsored wetland or land use inventories.

§ 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to §§ 1022.5 and 1022.11, that this part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information:

(1) *Project Description.* This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and the nature and extent of the potential hazard shall be discussed.

(2) *Floodplain/Wetlands Effects.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wetlands, the effects on the survival, quality, and natural and beneficial values of the wetlands shall be evaluated.

(3) *Alternatives.* Alternatives to the proposed action which may avoid adverse effects and incompatible development in the floodplain/wetlands shall be considered, including alternate sites, actions, and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including but not limited to minimum grading requirements, runoff controls, design and construction constraints, and protection of ecology-sensitive areas shall be addressed.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is required, the floodplain/wetlands assessment shall be prepared concurrent with and included in the appropriate NEPA document.

(c) For floodplain/wetlands actions for which neither an EA or EIS is prepared, a separate document shall be issued as the floodplain/wetlands assessment.

§ 1022.13 Applicant responsibilities.

DOE may require applicants for a DOE permit, license, certificate, financial assistance, contract award, allocation or other entitlement to submit a report on a proposed floodplain/wetlands action. The report shall contain the information specified at § 1022.12 and shall be prepared in accordance with the guidance contained in this part.

§ 1022.14 Public review.

(a) For proposed floodplain/wetlands actions for which an EIS is required, the opportunity for early public review will be provided through applicable NEPA procedures. A Notice of Intent to prepare an EIS may be used to satisfy this requirement.

(b) For proposed floodplain/wetlands actions for which no EIS is required, DOE shall provide the opportunity for early public review through publication of a Public Notice, which shall be published in the FEDERAL REGISTER, as soon as practicable after a determination that a floodplain/wetlands may be affected and at least 15 days prior to the issuance of a statement of findings with respect to a proposed floodplain action. DOE shall take appropriate steps to inform Federal, State, and local agencies and persons or groups known to be interested in or affected by the proposed floodplain/wetlands action. The Public Notice shall include a description of the proposed action and its location and may be incorporated with other notices issued with respect to the proposed action.

(c) Following publication of the Public Notice, DOE shall allow 15 days

for public comment prior to making its decision on the proposed action, except as specified in § 1022.18(c). At the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and the mitigating measures, taking into account all substantive comments received.

§ 1022.15 Notification of decision.

(a) If DOE finds that no practicable alternative to locating in the floodplain/wetlands is available, consistent with the policy set forth in E.O. 11988, DOE shall, prior to taking action, design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a brief (not to exceed three pages) statement of findings which shall contain:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable State or local floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require preparation of an EA or EIS, the statement of findings may be incorporated into the FONSI or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the FEDERAL REGISTER and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and areawide A-95 Clearinghouses for the geographic area affected.

§ 1022.16 Requests for authorizations or appropriations.

DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB, if a proposed action will be located in a floodplain or wetlands, whether the proposed action is in accord with the requirements of E.O. 11990 E.O. 11988, and these regulations.

§ 1022.17 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

§ 1022.18 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the FEDERAL REGISTER.

(c) Where emergency circumstances, statutory deadlines, of overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived.

§ 1022.19 Selection of a lead agency and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, to identify the applicable regulations, and to establish procedures for interagency coordination during the environmental review process.

§ 1022.20 Public inquiries.

Inquiries regarding DOE's floodplain/wetlands activities may be directed to the Assistant Secretary for Environment, Department of Energy, Washington, D.C. 20545.

§ 1022.21 Updating regulations.

DOE shall periodically review these regulations, evaluate their effectiveness, and make appropriate revisions.

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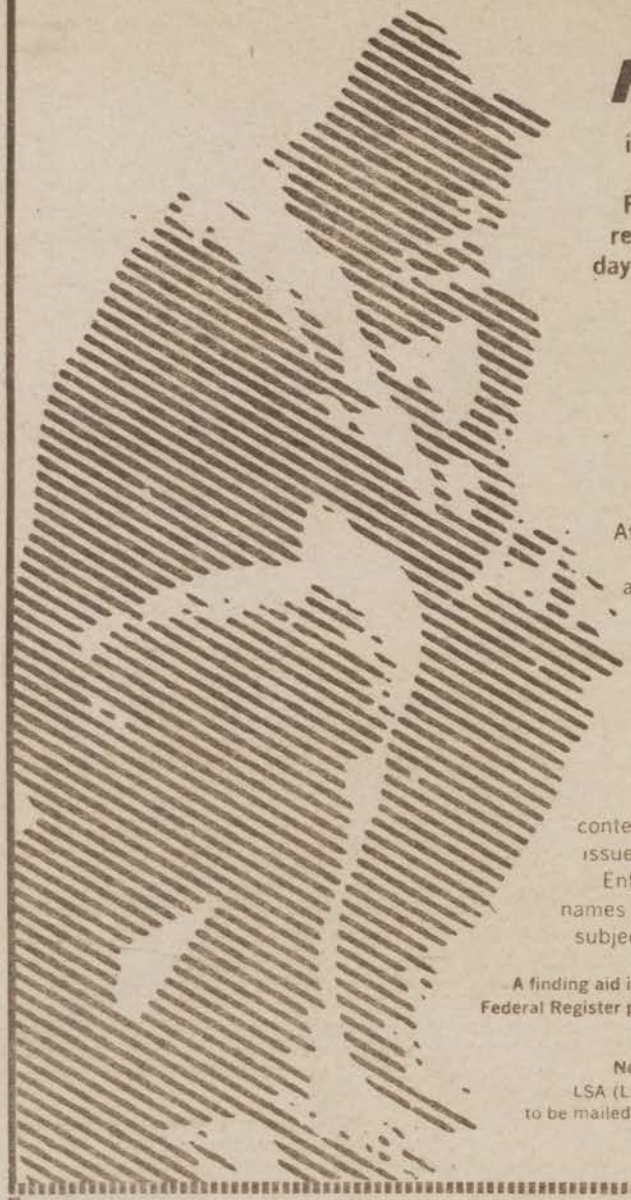

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